



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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6 December 2016

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 13, 14 and 15 of the concluding observations on the report submitted by Mozambique ([CCPR/C/MOZ/CO/1](#)), adopted by the Committee at its 109th session in October 2013.

On 24 November 2015, the Committee received the reply of the State party. At its 118th session, held in October-November 2016, the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations ([CCPR/C/118/2](#)). I hereby attach a copy of the advanced unedited version of the relevant section of the said report.

The Committee considered that the recommendations have not been fully implemented and decided to request additional information on their implementation. Taking into account that the next periodic report of the State party is due by 1 November 2017, the Committee requests the State party to provide this information in the context of its next periodic report.

The Secretary of the Human Rights Committee, Ms. Kate Fox, can be contacted for any additional information (kfox@ohchr.org and ccpr@ohchr.org).

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Sarah Cleveland
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

His Excellency
Mr. Pedro Afonso Comissário
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Assessment of replies

Reply/action satisfactory

A Response largely satisfactory

Reply/action partially satisfactory

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional information and measures required

Reply/action not satisfactory

C1 Response received but actions taken do not implement the recommendation

C2 Response received but not relevant to the recommendation

No cooperation with the Committee

D1 No response received within the deadline, or no reply to a specific question in the report

D2 No response received after reminder(s)

The measures taken are contrary to the Committee's recommendations

E Response indicates that the measures taken are contrary to the Committee's recommendations

Mozambique

Concluding observations:	CCPR/C/MOZ/CO/1, 19 November 2013
Follow-up paragraphs:	13, 14 and 15
First reply:	24 November 2015
Committee's evaluation:	Additional information required on paragraphs 13[B2][C1], 14[B1][B2][B2][C1][D], 15[C1][C1][D]
Non-governmental organizations:	Liga Moçambicana dos Direitos Humanos (LDH), Article 5 Initiative (T. Lorizzo), Centro de Estudos Moçambicanos e Internacionais (CEMO), Centro de Aprendizagem e Capacitação da Sociedade Civil (CESC), Centro de Estudos e Promoção de Cidadania, Direitos Humanos e Meio Ambiente (CODD), Centro de Estudos de Democracia e Desenvolvimento (CEDE), Associação Moçambicana para Defesa das Minorias Sexuais (LAMBDA), Ordem dos Advogados de Moçambique, Associação Centro de Direitos Humanos (ACDH), Fórum Mulher and Governance Development Institute (GDI)

Paragraph 13: The State party should take appropriate measures to ensure that no one under its jurisdiction is subject to arbitrary arrest or detention and that detained persons enjoy all legal guarantees, in compliance with articles 9 and 14 of the Covenant. It should ensure that persons deprived of their liberty are adequately informed about their rights so as to enable them to exercise in practice their right to

Mozambique

effective judicial redress and compensation, and that appropriate sanctions be imposed on those responsible.

Summary of State party's reply:

The State party repeated information in its Initial Report (CCPR/C/MOZ/1, para. 112) about police training and from its Replies to List of Issues (CCPR/C/MOZ/Q/1/Add.2, paras. 53-56) about the Institute for Legal Assistance and Representation (IPAJ) and its mandate. When violations do occur, appropriate corrective measures are taken and the IPAJ regularly provides legal assistance to detainees, but access to legal assistance remains an issue.

In partnership with civil society organizations, the Ministry of Justice, Constitutional and Religious Affairs (MJCR), the National Penitentiary Service (SERNAP), the National Directorate for Human Rights Citizenship (DNDHC) and the IPAJ conduct civil/legal educational programs in detention facilities.

NGO Information:

In September 2013, the Constitutional Council adopted a judgment that introduced important changes related to arbitrary detention. A new Criminal Code entered into force in June 2015; it contains provisions against arbitrary arrest.

The State has increased its human rights trainings for police officers and prison staff.

Citizens continue to be arbitrarily arrested and detained, for instance due to inability to pay court fees. The current legislation does not provide a clear framework for compensation for unlawful detentions. Most people arrested or detained are not promptly and adequately informed of their rights or even of the charges against them.

Committee's evaluation:

[B2]: The Committee notes the Constitutional Council's judgment 4/CC/2013 and the enactment of the Criminal Code, as indicated by civil society. It requests further information on the content and implementation of any new protections related to arbitrary arrests and detentions resulting from these measures since the adoption of the concluding observations of 30 October 2013 (CCPR/C/MOZ/CO/1).

[C1]: The Committee takes note of the civil/legal educational programs conducted in detention facilities and the trainings provided to police and prison staff, but requests information on the number and content of such trainings and the number of persons trained since the adoption of the concluding observations. The Committee also notes the State party's acknowledgment that access to legal assistance remains an issue, and requests information on measures taken since the adoption of the concluding observations to ensure that all detainees have access to counsel. The Committee requests information on investigations carried out on arbitrary arrest or detention, prosecutions and sanctions imposed on those responsible since the adoption of the concluding observations, as well as compensation awarded to victims. The Committee reiterates its recommendation.

Paragraph 14: The State party should take urgent measures to establish a system of regular and independent monitoring of places of detention and to reduce overcrowding and improve conditions of detention, including for juvenile offenders, in line with the Covenant and the Standard Minimum Rules for the Treatment of Prisoners. In this regard, the State party should consider not only the construction of new prison facilities but also the application of alternative measures to pretrial detention, such as bail, home arrest, etc., and non-custodial sentences, such as suspended sentences, parole and community service. The State party should investigate promptly cases of death in custody, prosecute those responsible and provide appropriate compensation to families of victims. It should also ensure that the principle of separation of juvenile detainees from adults in detention facilities is respected and that prisoners who have completed their sentences are released without delay.

Mozambique

Summary of State party's reply:

Law 3/2013, establishing the National Penitentiary Service (SERNAP) was reinforced in December 2013 by Decrees 63 and 64, which approved SERNAP's Organic Statute, Staff Regulations, and Internal Regulation.

In the first half of 2015, forty disciplinary offenses were recorded in correctional facilities. These offenses resulted in eight communications, twenty-five disciplinary proceedings and seven dismissals.

Alternatives to imprisonment have been introduced in the new Criminal Code adopted in December 2014, but its implementation depends on the approval of the Penal Procedure Code and the Correctional Execution Code. It is expected that overcrowding will be minimized with the construction of more prisons and the introduction of alternatives to imprisonment.

The State ratified the Optional Protocol of the Convention Against Torture (OPCAT) and identified the National Human Rights Commission (NHRC) as a monitoring mechanism. As a result, the situation in places of detention has improved considerably.

The State party has no record of any individuals detained beyond the end of their sentences. Any recorded cases are referred to the judiciary.

NGO Information:

Mozambique ratified the OPCAT on 1 July 2014. The NHRC is not in a position to suitably fulfil the requirements of an effective NPM, as its access to police detention facilities is limited.

The December 2014 Criminal Code introduced alternatives to pretrial detention and non-prison sentences.

There has been some improvement in the conditions of detention, but overcrowding remains a problem. Projects to build new prisons have not been fully implemented.

Food quantity has increased and sanitation and access to water in prisons has improved but many detainees are held in prolonged pre-trial detention.

No notable changes have been made regarding the investigation of cases of death in custody.

There have been no notable changes regarding the separation of adults and juveniles in custody.

Committee's evaluation:

[B1]: The Committee welcomes the ratification of the OPCAT and the designation of the NHRC as an NPM. The Committee requests further information on measures envisaged to ensure that the NHRC can undertake in full independence regular and unannounced visits to all places of detention in the State party, including police stations.

[B2]: The Committee welcomes the adoption of new legislation and measures to improve conditions of detention and reduce overcrowding, but requests information on the content and impact of those measures, including:

- (a) current levels of overcrowding, disaggregated by facility;
- (b) the content of the new legislation on alternative measures to detention and steps taken to implement those measures; and
- (c) the plans for constructing new prison facilities and progress made in implementing those plans.

[B2]: The Committee welcomes the information on disciplinary offenses recorded, but requests further information on the types of offenses committed and the penalties imposed. It reiterates its request for information on investigations of cases of death in custody, and efforts to prosecute those responsible and provide appropriate compensation to families of

Mozambique

victims.

[C1]: The Committee notes the State party's statement that it has no record of individuals detained beyond the end of their sentence, and requests information on measures taken to prevent and remedy such detention.

[D]: The Committee regrets the absence of information on the separation of juveniles and adults and requests information in this regard. The Committee reiterates its recommendation.

Paragraph 15: The State party should continue to increase the number of qualified and professionally trained judicial personnel, as a matter of urgency; continue efforts to decrease delays in proceedings, simplify and make transparent the procedure by which court fees are calculated and ensure that legal assistance is provided in all cases where the interest of justice so requires. The State party should also ensure that the system of community courts function in a manner consistent with article 14 and paragraph 24 of general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, and decisions emanating from these bodies do not run counter the State party's obligations under the Covenant.

Summary of State party's reply:

The judiciary has gone through major reforms, including: the development of a legal and institutional framework, the judicial network expansion, and the creation and commissioning of Superior Courts of Appeal. These improvements will relieve the burden of other courts in enforcing verdicts. Regional administrative courts have also been expanded. The National Human Rights Commission is now operative (as mentioned in its Replies to List of Issues CCPR/C/MOZ/Q/1/Add.2, paras. 53-56) and Conflict Mediation and Arbitration Centres have been established.

The Court Fees Code was revised to improve court procedures.

The State party repeated information found in its Replies to List of Issues (CCPR/C/MOZ/Q/1/Add.2, paras. 54-55) about legal representation and the establishment of the Legal Assistance and Representation (IPAJ). The IPAJ has offices in all 11 provinces. Thanks to the IPAJ, in 2010-2014, 462,059 economically disadvantaged citizens benefited from legal aid and representation.

NGO Information:

There are plans to increase the training of new judges and prosecutors, but there are no plans to increase their number. There are only 288 active judges and 374 prosecutors in the country. The State's single training centre for judges and prosecutors trains an average of 60 new students a year. Since the adoption of the concluding observations, NGOs have received numerous complaints from rights holders about the poor quality of the justice system.

The issue of court fees remains a problem despite the adoption of a decree in November 2014, which reformed three provisions of the national Code on Court Fees. The process of calculating court fees remains unclear. Furthermore, court fees are connected to the remuneration of judges and prosecutors, so judges have a personal interest in denying poverty certificates and requiring the payment of fees. There is a trend towards condemning individuals with resources since those who are acquitted do not have to pay court fees.

The State party has taken no steps to improve the functioning of Community Courts. Community Courts are sources of human rights violations—particularly, judgments may violate the rights of women and promote discrimination, and sentences sometimes involve corporal punishment and property burning or expulsion from the community.

Most Community Courts have no proper facilities. There is concern over the Community Courts' political dependence.

Committee's evaluation:

Mozambique

[C1]: The Committee acknowledges the information provided on measures aimed at reforming the judicial system, but requests information on which actions occurred after the adoption of the Committee's concluding observations on Mozambique (CCPR/C/MOZ/CO/1), on 30 October 2013, including measures to increase the number of judicial personnel.

[C1]: The Committee notes the adoption of the decree No 67/2014 amending the national Code on Court Fees, as indicated by civil society, and requests information about: (a) the content of that decree, including changes made to the calculation of court fees and plans for systemic reform with a view to addressing abuses, simplifying procedures, and transparency; and (b) steps taken to ensure the provision of legal assistance since the adoption of the concluding observations.

[D]: The Committee regrets that the State party has not provided information regarding Community Courts and concrete measures taken and the mechanisms in place since the concluding observations to ensure Community Courts operate consistent with article 14 of the Covenant. The Committee also regrets the lack of any information on increasing the number of members of the judiciary. The Committee reiterates its recommendations in this regard.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 1 November 2017.
