

List of Issues Prior to Reporting on the International Covenant on Civil and Political Rights (ICCPR) for Mozambique

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About the organization

TRANSformar.moz is a Trans Movement of Mozambique (TMM) established in 2020 by a group of young transgender persons in Mozambique. The movement seeks to advocate and promote the inclusion of sexual and gender identity especially transgender rights, in socio-economic, political, and cultural policy development agenda; advocate for legal gender recognition in law; eliminate associated stigma and discrimination and create awareness on transgender issues including access to comprehensive health care. Mulherestrans Demoz is located at Ave. Paulo Samuel Kankhomba, 2150, Maputo City; Cellphone: » 258842998464 e 258827676757

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The ASSOCIAÇÃO CHADAH, is a youth association that was founded by young people in Mozambique. Chadah's aims at creating awareness and demand for attention to issues of mental health amongst young people; provides psychosocial support and counselling sessions to young people especially those going through depression and or anxiety; creates support groups where young people can share their experiences, struggles, testimonies, achievements and ways of resolving their mental inadequacies; establish partnerships with health facilities to be identified for referral in specific cases, develop programmers facilitate linkages of young people with appropriate institutions of care; Organize conferences, seminars and meetings at national and local level to consolidate knowledge, education and dissemination of issues related to mental health.

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The information in this report is based on available research and information we have collected from our community of young key populations. All of the experiences included in this report was collected through a consultation held in Maputo, Mozambique in April 2021, and through individual interviews conducted by our members with members of our community.

Introduction

This report covers key human rights issues facing young key populations in Mozambique. Young key populations are defined as people between the ages of 10 and 24 who identify as lesbian, gay, bisexual, transgender and intersex (LGBTI) former inmates, and people who use drugs. It also includes young sex workers between the ages of 18 and 24.

The key human rights issues covered in this report are as follows:

1. Violence and arbitrary arrests of key populations, which impacts the following articles of the International Covenant on Civil and Political Rights (ICCPR)
 - a. Article 2: Implementation of the ICCPR at the national level
 - b. Article 6: The right to life
 - c. Article 7: The right to be free from torture and cruel, inhuman and degrading punishment and treatment
 - d. Article 9: The right to liberty and security of person
 - e. Article 10: Freedom of opinion and expression
 - f. Article 24: Rights of the child
2. Discrimination based on sexual orientation and gender identity, which impacts the following articles
 - a. Article 2: Implementation of the ICCPR at the national level
 - b. Article 6: The right to life
 - c. Article 26: Equality and equal protection
3. Recognition of gender identity
 - a. Article 2: Implementation of the ICCPR at the national level
 - b. Article 16: The right to recognition everywhere as a person before the law
 - c. Article 17: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation
 - d. Article 26: Equality and equal protection
4. Access to lifesaving medical treatment for young people
 - a. Article 6: The right to life
5. Implementation of comprehensive sexuality education
 - a. Article 6: The right to life
 - b. Article 24: Rights of the child

Issues for the Human Rights Committee

1. Violence and arbitrary arrests of key populations: Articles 2, 6, 7, 9, 10, and 24

LGBT youth, sex workers, people who use drugs (PWUD), and former inmates all experience violence, harassment, and arbitrary arrests from law enforcement. LGBTI youth also experience bullying and harassment in schools.

In its 2015 amendment to the Penal Code,¹ Mozambique decriminalized consensual relationships between adults of the same sex. Further, sex work itself is not criminalized. Despite this, young LGBT people and sex workers over the age of 18 continue to face significant harassment and violence by police and other law enforcement. There is little data from studies regarding the particular experience of LGBT youth and sex workers. However, our community regularly reports experiences of violence, including corrective rape, and arbitrary arrests by law enforcement:

- One of our members, a 16-year-old, gay person recounted to us the following: “Once I was on the street walking with my boyfriend holding hands, an agent found me and asked why I was holding hands with another man, I said that he was my boyfriend, and right away they hit us and hurt my little finger. I went to the Alto Mae police station to ask for help, I arrived there to explain the situation, and the policemen there laughed at me and I didn't get any help from them.”
- “I am 19 years old, and I am very masculine lesbian. I dress as a man because I feel comfortable that way and I identify more as a man. I always have problems with police officers because I am female, and that always makes me uncomfortable because I am afraid to walk on public roads. Once they wanted to sexually assault me because the policeman who found me...said that he wanted to show me that I am not a man but a woman, and that he was going to make me like men. That happened in a very closed alley. Thank God a lady came to help me, and I managed to escape.”
- “I am 23 years old. I live in Maputo and I am a sex worker. I have suffered a lot of violence from police officers. Whenever I position myself at my hot spots they show up. Sometimes they beat me, take my money. Some have sex with me and don't pay me. Once I was working near a bar and a police officer showed up and asked me why I was there dressed like a slut, and I said I was working. He told me to do the job with him. I said he should pay. He took me to his car, had sex with me and didn't pay. On top of that, he threatened me. I reported this to a community worker, but until today I haven't had any success with this case.”

Young people who use drugs also face significant violence, arbitrary arrest and harassment from the police in part because personal drug use is still criminalized. Almost 3 out of 4 people who inject drugs (PWID) in Maputo and almost 1 in 2 PWID in Nampula/Nacala reported having been incarcerated.² Further, PWID report being fearful of carrying around clean needles as police use that as an excuse for arrest.³ One member who identifies as a

¹ Penal Code Law No. 35.

² Ministry of Health (MISAU), National Institute of Health (INS). Final Report: The Mozambique Integrated Biological and Behavioral Survey among People Who Inject Drugs, 2014 (2017).

³ Semá Baltazar C, Boothe M, Kellogg T. Young People who Inject Drugs in Mozambique: Should We Emphasize Them in the National Harm Reduction Plan?. *Harm Reduct. J.* 2020;17(1):20. (2020 Mar 26).

person who uses drugs recounted that they were arrested just because the police knew they used drugs even though at the time of the arrest the police had no evidence that they had drugs on them or were using. The police assumed they are guilty.

Bullying and harassment of young key populations within schools is one of the major barriers to accessing education. LGBTI youth in Mozambique have high rates of suicide, are more likely to drop out of school and often experience stigma and discrimination, physical, verbal, and sexual harassment from their peers and teachers due to their sexual orientation and gender identity (SOGI) status. This is reflected in the experiences from our members:

- “I am 19 years old...So far I am in Grade 10 because I suffer bullying and run away from school. That’s why I have been in the same grade for 5 years. The teachers don’t like me. They call me ugly names. They make me feel like the worst person in the world and nobody wants to approach me because many teachers make the other students dislike me. I am afraid that I will never be able to go to university because I am gay.”
- “I am a transgender woman and I am 24 years old. I stopped studying because I couldn’t stand the discrimination at school. No one accepted me at school. They always beat me. Again, in physical education class they gave me a punishment because I didn't want to play football with the boys...I stopped going to school because they wanted me to dress like a man and I didn’t want to. Several times they made me leave the classroom because my nails were painted.”

Former inmates recount similar experiences. One of our members, an ex-prisoner, had a vehicle breakdown at 20:50pm. This prevented him from complying with the 21:00 curfew in place during the state of emergency declared because of COVID. The police approached him. He tried to justify himself, but they recognized he was a former inmate and he was subjected to inhuman treatment and arrested.

These practices impact articles 2, 7, 9, 10, 14, and 24 of the ICCPR. The Human Rights Committee has made clear that violence, harassment and arbitrary arrest by law enforcement is prohibited by the ICCPR, including under articles 7 and 9. Countries must ensure LGBT youth are safe from violence and bullying in school environments, and this is additionally so in the case of children as required under article 24. Article 9 of the ICCPR guarantees the right to liberty and security of person. This encompasses an obligation on the part of governments to protect people’s right to personal security against attacks by private persons. The Human Rights Committee has previously expressed concern about violence and harassment against LGBT people.⁴

With respect to Mozambique, this Committee has previously recommended that it “take practical steps to prevent the excessive use of force by law enforcement officers by ensuring that they comply with the 1990 Basic Principles on the Use of Force and Firearms by Law

⁴ See e.g. Human Rights Committee. Concluding Observations: Russian Federation. CCPR/C/RUS/CO/6 (24 Nov 2009), para. 27; Human Rights Committee. Concluding Observations: Cambodia. CCPR/C/COL/CO/6 (4 Aug 2010), para. 12; Human Rights Committee. Concluding Observations: Ireland. CCPR/C/IRL/CO/3 (30 July 2008), para. 8.

Enforcement Officials. It should take appropriate measures to eradicate torture and ill-treatment, including by ensuring that law enforcement personnel receive training on the prevention of torture and ill-treatment by integrating the 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in all training programmes. The State party should ensure that allegations of unlawful killings, excessive use of force, torture and ill-treatment are effectively investigated, that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims or their families are provided with effective remedies, including appropriate compensation.”⁵

Recommended questions to the State:

1. Please describe measures taken to prevent the excessive use of force by law enforcement officers against young key populations. Please identify the steps taken to protect young key populations from arbitrary deprivation of their liberty and torture, cruel, inhuman and degrading treatment by law enforcement and third parties. What steps have been taken to prevent young key populations from being subjected to torture and cruel inhuman and degrading treatment by law enforcement and other third parties?
2. Please provide details of training for law enforcement officers to prevent the arbitrary detention, torture, mistreatment and harassment of young key populations, and of what measures are in place to effectively monitor places of detention. To what extent has law enforcement personnel received training on the prevention of torture and ill-treatment and to what extent have the trainings incorporated the 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment?
3. Please list all measures taken to ensure the full investigation, prosecution and punishment of all police officers known to have carried out arbitrary arrests or detentions and ill-treatment of young key populations, and to provide appropriate redress, including compensation, to all victims for such violations. Please report on the number of people who have been attacked since 2015 based on their sexual orientation or gender identity, including by police or other security forces, and specify whether perpetrators have systematically been prosecuted and punished. How is gender-based violence amongst young people monitored?
4. What laws or policies are currently in place to protect young people from homophobic and transphobic violence in schools and by law enforcement? Are issues of sexual and gender diversity included into the life skills programme or comprehensive sexual education programme.
5. How are suicides related death amongst young people monitored? What is often the reason or cause for the suicide or suicidal ideation? Are the programmes aimed at promoting mental health or psychosocial support for young people including young key populations.

⁵ Human Rights Committee. Concluding Observations: Mozambique. CCPR/C/MOZ/CO/1 (19 Nov 2013), para 11.

6. Please provide details for how many consumers of drugs and how many drug traffickers have been arrested since 2015?

2. Discrimination based on sexual orientation and gender identity: articles 2, 6 and 26

Though consensual sex between adults of the same sex is no longer criminalized, LGBT youth face significant stigma and discrimination. A 2018 study by the University KwaZulu Natal and the University of Eduardo Mondlane Faculty of Medicine found that discrimination against young key populations prevents them from accessing life-saving healthcare, education, and justice. However, there is no legal protection from discrimination on the basis of sexual orientation or gender identity in Mozambique. Our members experiences are recounted below:

- “I am a transgender woman and I am 21 years old. I am HIV positive, and I have been through a lot of discrimination in health units. Once ...when I was going to pick up my antiretrovirals, the nurse said that I should stop being deviant and that was why I had HIV. She said that if I continued like that, I would die with HIV as punishment. To this day when I go to the health center, I encounter the same situations.”
- “I was a victim of discrimination at the health center. I once went with my partner to a health center because we [were] showing signs of sexually transmitted infection. Upon arriving at the hospital, the nurse called only my partner, but I went with him and explained that he is my partner. Then the nurse started asking us why we are together, since we are two men. Are we not seeing that many women are single and that we are not fulfilling our role as men? What shocked me the most was the fact that the nurse called her colleague, saying, ‘Come over and see those sissies here’. And they started to mock us. Unaware of our rights at that time, we returned home without medical assistance. It left us with a trauma.”

Protection from discrimination on the basis of sexual orientation and gender identity under the ICCPR has been well-established by the Human Rights Committee.⁶ Though sexual orientation and gender identity are not specifically listed as prohibited grounds under the prohibition of discrimination in the ICCPR, the Human Rights Committee, found that sexual orientation was included in the definition of “sex” in articles 2 and 26 of the ICCPR which provide for the rights to non-discrimination and equality, respectively.⁷ States are obligated to protect everyone from discrimination on grounds of sexual orientation or gender identity and take appropriate action to provide redress when discrimination occurs. This includes legislation that lists sexual orientation and gender identity among prohibited grounds of discrimination. Further, countries are obligated to provide redress for discrimination whether committed by public authorities or private people.⁸ Finally, countries must take “affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination”.⁹

⁶ *Toonen v Australia*. Communication No. 488/1992. CCPR/C/50/D/488/1992 (1994), para. 8.7.

⁷ See *id*; *Salah et al. v Egypt* E/CN.4/2003/8/Add.1 (2002), at 68.

⁸ Human Rights Committee. General Comment No. 18: Non-Discrimination (10 Nov 1989), para 9.

⁹ *Id.* at para 10.

Recommended questions:

1. What measures have been taken by the State party to adopt specific legislation prohibiting discrimination on the basis of sexual orientation and gender identity, and to include sexual orientation and gender identity as specific prohibited grounds in existing legislation?
2. Please indicate non-legislative measures taken to protect persons from discrimination on the basis of their sexual orientation or gender identity.
3. What steps have been taken to provide education and training programmes aimed at preventing discrimination and stigmatization of young people on the basis of their sexual orientation and gender identity?
4. What is in place to promote the immediate and thorough investigation and sanction of homophobic and transphobic acts?
5. List the ways in which the State Party has sent a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation.

3. Recognition of gender identity: articles 2, 16, 17 and 26

Mozambique does not criminalize based on an individual's gender identity nor does it criminalize cross-dressing, which is often used against trans people. However, transgender persons are still unable to change their name and gender identity on identification documents. In addition, hormone therapy, gender affirming counselling and sex reassignment surgeries are unavailable in the country.

Though there are no particular prior recommendations to Mozambique on enabling individuals to change their name and gender identity on identification documents, it is clear that every person has a right to legal recognition of his or her gender identity, and that to ensure this right, countries must have in place procedures for modifying an individual's gender identity and name on all State-issued identity documents, including birth certificates and passports. The Human Rights Committee has recommended that countries enact legislation that provides for the changing of an individual's gender on their identity documents.¹⁰ For instance, in its Concluding Observations for Ireland, the HRC recommended that Ireland "should also recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates".¹¹ The United Nations High Commissioner for Human Rights has also expressed concern over the frequent denial of this right and recommended that States provide for the changing of one's gender identity on legal identity documents: "In spite of recent advances in several countries, transgender persons are generally still unable to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity documents. As a result, they face multiple rights challenges, including in employment and housing, applying for bank credit or State benefits, or when travelling abroad."¹²

¹⁰ United Nations Human Rights Office of the High Commissioner. *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*. HR/PUB/12/06 (2012).

¹¹ Human Rights Committee. *Concluding Observations: Ireland*. CCPR/C/IRL/CO/330 (July 2008).

¹² Human Rights Council. *Discrimination and Violence against Individuals Based on their Sexual Orientation and Gender Identity*. A/HRC/29/23 (4 May 2015).

Recommended questions

1. What processes are in place to permit individuals to change their name and/or gender identity on official identification documents?
2. What is the plan for enacting legislation permitting individuals to change their name and/or gender identity on identification documents?

4. Access to lifesaving medical treatment for young people: Article 6

Access to harm reduction, including needle and syringe exchange programmes (NSPs) and opioid substitution therapy (OST) has been shown to result in better health outcomes for PWUD, and in many cases save the lives of PWUD.¹³ Young people who use drugs are particularly at risk of HIV infection due to drug use and other high-risk activities. Data from the first Integrated HIV Bio-behavioral Surveillance study in Mozambique show that HIV prevalence among PWID aged 18–24 in Maputo was 18.8%. Nearly half of PWID (46.1% for Maputo and 48.2% for Nampula/Nacala) had their first contact with drugs when they were 18–24 years of age. Young PWID also reported high-risk sexual and drug use behaviors. Among sexually active young PWID who injected drugs in the last 12 months, only 44.4% in Maputo and 32.5% of PWID in Nampula/Nacala used a condom during their last intercourse. Less than 70% (66.5% for Maputo and 67.3% in Nampula/Nacala) reported using brand new injection equipment during their last drug injection. Among younger PWID unaware of their status, HIV testing was low, with only 22.4% and 20.2% in Maputo and Nampula/Nacala, respectively, tested for HIV in the 12 months before the survey.¹⁴ Despite this, as of 2019, there are minimal harm reduction interventions available in Mozambique for PWID. According to one study, there is only one needle and syringe programme in Mozambique and no other harm reduction services available.¹⁵ Further, PWID report being fearful of carrying around clean needles as police use that as an excuse for arrest.¹⁶

This Committee has clarified that the right to life entails a positive obligation for states to take appropriate measures to address the general conditions in society that may give rise to direct threats to life, including the prevalence of life-threatening diseases and “extensive substance abuse”.¹⁷ This would include the provision of harm reduction services to PWUD.

Recommended questions:

1. What harm reduction services are available in Mozambique? Where are they offered? How many people have utilized those services? Can you provide this data disaggregated by age?

¹³ Global Commission on HIV and the Law. *Risks, Rights and Health* (2012).

¹⁴ Semá Baltazar C, Boothe M, Kellogg T. Young People who Inject Drugs in Mozambique: Should We Emphasize Them in the National Harm Reduction Plan?. *Harm Reduct. J.* 2020;17(1):20. (2020 Mar 26).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Human Rights Committee. General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life. CCPR/C/GC/36 (30 Oct 2018), para. 26

2. What steps are being taken to expand the geographic coverage of any existing harm reduction services? What steps are being taken to increase the harm reduction services offered in country?
3. At what age are individuals able to access harm reduction services without parental consent?
4. How many drug-related deaths among young people have occurred since 2015? Can you provide this data disaggregated by age?

5. Implementation of comprehensive sexuality education: articles 6 and 24

In 2013, Mozambique released a Ministerial commitment to provide comprehensive sexuality education for all young people in schools. However, this has yet to be implemented. The failure to implement a policy to provide comprehensive sexuality education in schools violates articles 6 and 24 of the ICCPR. Though the HRC has not issued prior recommendations to Mozambique on this issue, it has previously expressed concerns regarding sexual education in Poland, recommending that schools should “include accurate and objective sexual education in their curricula” as the failure to do so impacted the country’s compliance with article 6 of the ICCPR.¹⁸

Recommended questions

1. What steps have been taken to implement the 2013 Ministerial Commitment calling for comprehensive sexuality education in schools? What information is included in comprehensive sexuality education or does it explicitly cover issues of sexual orientation and gender identity? How well does it comply with the United Nations’ International Technical Guidance on Sexuality Education?

¹⁸ Human Rights Committee. Concluding Observations: Poland. CCPR/ CO/82/POL (2004), para. 9.