



Forum das Associações Moçambicanas de Pessoas com Deficiência

Mozambique

International Convention on Civil and Political Rights

Submission by: Forum of Disabled Persons Organizations of Mozambique - FAMOD

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FAMOD is a civil society organization that works to support, coordinate and promote the human rights and well-being of people with disabilities in Mozambique. FAMOD is made up of associations of and for people with disabilities, and currently has more than 30 affiliated organizations.

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Introduction

This submission has been prepared by the Forum of Mozambican Associations of Persons with Disabilities (FAMOD). The issues raised relate to the right to political participation, torture or to cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, right to privacy and prohibition of discrimination.

Article 35 of Mozambique's Constitution establishes that all citizens are equal before the law and prohibits discrimination against any social status. Article 37 specifically indicates that persons with disabilities are entitled to enjoy the same rights as others. Mozambique is a State Party to the Convention on the Rights of Persons with Disabilities (CRPD), having completed ratification in 2012. In January 2020, the Mozambican Government concluded the submission to the Committee 'CRPD' of the initial report on the implementation of the same Convention.

In 2017, the Government passed a bill on the Promotion and Protection of the Rights of persons with Disabilities. However, Organizations of Persons with Disabilities in Mozambique rejected the document because it was not aligned to the human rights model of the CRPD, instead it reinforced existing norms that discriminate against disability. Therefore it was not approved in the Parliament.

The right to political participation

Although Mozambique has made relevant human right commitments to promote political participation of persons with disabilities (CRPD¹, the African Charter on Democracy, Elections and Governance²), progress has been slow to ensure that persons with disabilities can exercise citizenship rights on an equal basis with others. Electoral laws discriminate on the basis of disability and do not provide sufficient guarantees for people with disabilities to exercise their right to political participation on an equal basis with others. Some examples include:

- Use of degrading language to designate people with disabilities in the law;
- Use of a restrictive approach to disability in laws (does not include, for example, needs of persons with albinism, deaf people, etc.);
- Limitation on electoral capacity based on disability;
- Lack of supports for candidates with disabilities;
- Violation of the right to secret ballot for persons with visual impairments;

¹ Ratified by Mozambique in 30 January 2012 <http://indicators.ohchr.org/> .

² Ratified by Mozambique in 09 May 2018 <https://au.int/sites/default/files/treaties/36384-sl-AFRICAN%20CHARTER%20ON%20DEMOCRACY%2C%20ELECTIONS%20AND%20GOVERNANCE.PDF>

- Lack of mandatory requirements to provide accessible information, accessible voting materials and accessible voting facilities.

Therefore, the members of the Committee may wish to ask:

What has been done to remove electoral capacity restrictions based on disability and degrading disability terminology from the electoral legislation, and what type of measures have the state considered to ensure that persons with disabilities can access electoral information, electoral facilities and use electoral materials on an equal basis with others?

What measures have been put in place to secure that person with visual impairment can also enjoy the right to secret ballot?

Torture or to cruel, inhuman or degrading treatment or punishment

Mozambique is a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The CRPD, article 17, also reinforces that persons with disabilities should not be subject to such treatments. However, there have been recurrent reports, including on the media, of cases of violence against persons with psychosocial disabilities including practices of physical abuse, chaining and shackling. The Psychiatric Hospital is particularly known for such cases.³ Legal consequences against the perpetrators of such acts have never been publicly disclosed.

The National Human Rights Commission has been designated as the National Mechanism for Preventing and Combating Torture in Mozambique. However, this body has not been monitoring places where human rights of persons with disabilities are at most risk, such as psychiatric hospital, despite recurrent reports of abuse practices.

Therefore, the members of the Committee may wish to ask:

What measures have been taking to prevent, investigate and prosecutes situation of torture or cruel, inhuman or degrading treatment or punishment in Psychiatric Hospitals;

³ DW, To live chained: O drama dos pacientes de saúde mental em Moçambique < www.dw.com/pt-002/viver-acorrentado-o-drama-dos-pacientes-de-saúde-mental-em-moçambique/a-55221138 >

MMO, An inmate of the psychiatric hospital of infulene is tortured in Maputo
<https://noticias.mmo.co.mz/2021/01/doente-torturado-no-hospital-psiquiatrico-do-infulene-em-maputo.html>

What measures have been take to ensure that the National Mechanism for Preventing and Combating torture can monitor mental health treatment facilities.

Right to liberty and security of person

The right to liberty and security of the person is also reinforced in the CRPD, article 14, requiring state parties to ensure that persons with disabilities enjoy this right on an equal basis with others and that disability is not used as a ground to restrict liberty. Nevertheless, in Mozambique persons with disabilities continue facing unlawful and disability based restrictions of liberty.

Practices of chaining and chackling of persons with disabilities have been reported, including in the media and international reports. However Government authorities have taken no measures to prosecute, prevent and abolish such practices.⁴

In Mozambique, there is no legislation regulating the exercise of mental health powers. Persons with mental health diagnosis have been admitted forcibly to mental health facilities without any legal basis not even the possibility of challenging their admission orders before a judge. Psychiatric Hospitals are also considered places of detention under international law.⁵

Therefore, the members of the Committee may wish to ask:

What measures have been taken to enforce legislation that regulates restriction of the right to liberty of persons with mental health disabilities, including the right to challenge their admission?

What measures have been take to investigate, prevent and prosecute cases of chaining and chackling persons with psychosocial disabilities in Mozambique?

Right to privacy

The right to privacy is also reinforced on the CRPD, under article 21, requiring state parties to ensure in particular protection of information regarding health and rehabilitation for persons with disabilities. Nevertheless, Mozambique has not made progress to ensure that information of persons with disabilities is kept private. Hospitals do not provide information in accessible formats for persons with disabilities; therefore they are forced to reveal their private information to third parties to be able to understand instructions.

⁴ Human Rights Watch, Living in Chains, Chackling of People with Psychosocial Disabilities Worldwide, p 7, 15, 25 < https://www.hrw.org/sites/default/files/media_2020/10/global_shackling1020_web_2.pdf >

⁵ < https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_49_AUV.docx >

Persons with visual impairments have also been denied the right to open and manage their own bank accounts themselves. This practice finds no legal basis and is contrary to the CRPD but has been imposed by some of the banks operating in Mozambique.

Therefore, the members of the Committee may wish to ask:

What measures have been taken to ensure that persons with disabilities can use medical services and access medical information without having to share their private information with third parties, such as assistants and interpreters?

What measures have been taken to ensure that Banks operating in Mozambique to not impose to persons with visual impairments to have an assistant to use their services?

Prohibition of discrimination

In 2018, the Mozambican Government attended the Disability Global Summit in London, where voluntary commitments were made regarding the implementation of the rights of persons with disabilities.⁶ Among other commitments, the Government indicated that a human rights compliant Disability Law would be approved by 2021. The government also expressed the commitment to eliminate all forms of discrimination against persons with disabilities which was recently reinforced by the Ministry of Justice statement during Mozambique review on the 38th Session of the Universal Periodic Review.⁷

Nonetheless, many laws that discriminate against persons with disabilities remain in force even after eight years since the ratification of the CRPD. Below are some examples of such laws:

Article 28 of the Labor Law, Law No. 23/2007, of August 1, besides using degrading terminology, recommends that a worker who acquires impairment is integrated into jobs suitable for their residual capacity. This is a medical approach to disability. According to the CRPD⁸, employers must provide reasonable accommodation to workers with disabilities so that they can enjoy the same opportunities at the workplace as others.

The Civil Code, besides using degrading language as well, in articles 138 and 153 it authorizes the restriction of legal capacity based on disability. Due to this legal framework, persons with disabilities find themselves unable to take decisions on the management of their own assets, bank accounts and other matters of their lives when, at the request of their relatives, courts decide to

⁶ <https://www.internationaldisabilityalliance.org/commitments/stakeholder/government-mozambique#inclusive-education-92>

⁷ Statement of the Ministry of Justice, before the Human Rights Council, 38th Session of the Universal Periodic Review <<http://webtv.un.org/search/mozambique-review-38th-session-of-universal-periodic-review/6252363599001/?term=upr&sort=date&page=5>>

⁸⁸ Article 27.

substitute their legal capacity.⁹ This is also reflected in other ordinary legislation in Mozambique such as the Family Law (Law No. 10/2004, of 25 August) and the Electoral Laws.

Under article 12/3 of the CRPD has clearly recommended state parties to abolish such regimes and adopt/develop systems of supported decision making to ensure that persons with disabilities can exercise their legal capacity on an equal basis with others.

Therefore, the members of the Committee may wish to ask:

What measures have been taken to approve a disability law that is aligned to the human rights model of the CRPD?

What measures have been taken to review laws and policy that dispose contrary to the CRPD, particularly on issues of legal capacity?

⁹Ester Fenias, Analysis of the legal regime of limitation of legal capacity due to disability in light of the United Nations Convention on the Rights of Persons with Disabilities, End of Course Work - ISCTEM, 2018.