

Mozambique

Follow Up Report to Human Rights Committee – March 2015

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)

Reference document: CCPR/C/MOZ/CO/1
November 2013 (adoption of the
Concluding Observations)
November 2014 (Deadline for the follow-up
report)

Current Status: follow up report of the State
still pending

Recommendation 13	Grade	Overview
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.	B1	The implementation of the Judgment of the Constitutional Council (4/CC/2013) and the adoption of the new criminal code represent a potential step forward in complying with this recommendation.
The State 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 effective judicial redress and compensation, and that appropriate sanctions be imposed on those responsible.	B2	Some progress noted with regards to the provision of human rights training to police and prison forces.
Recommendation 14	Grade	
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.	B2	Mozambique has ratified the OPCAT which represents an important step forward. However, the National Human Rights Commission, which has been designated as the National Preventive Mechanism (NPM), is not yet in a position to suitably fulfil the requirements of an effective NPM.
The State party should consider in this regard 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.	B1	The new criminal code adopted in December 2014 envisages the possibility of community service as an alternative to incarceration.
The State party should investigate promptly cases of death in custody, prosecute those responsible and provide appropriate compensation to families of victims.	C	There have been no direct notable changes in that regard although some improvements were noted in the conditions of detention.
The State party 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.	C	No specific developments evidenced in this regard
Recommendation 15	Grade	
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.	B2	There is a recognition of the need to increase the number of judges and prosecutors, which remains to be fulfilled. On the issues of court fees, a minimal reform has been adopted but much more needs to be done to address the large scale of the problem
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.	C	No specific steps taken in that regard

Background & rationale

Mozambique's [initial report](#)¹ to the Human Rights Committee (HR Ctte) on the implementation of the ICCPR was reviewed in October 2013. In paragraph 24 of its [concluding observations](#)², the HR Ctte requested Mozambique to provide within one year information of 3 recommendations (N° 13, 14 and 15) deemed as requiring priority attention.

These 3 priority recommendations primarily relate to:

- Arbitrary arrest and legal safeguards for persons in detention
- Monitoring places of detention, alternatives to detention and deaths in custody
- Judicial reform, including increased of judges, court fees and community courts

At the time of writing, the undersigned organisations understand that the Mozambique government has not yet submitted [the information required by the HR Ctte](#)³.

The undersigned organisations are presenting information on paragraphs 13, 14, and 15 based on the [follow up procedure of the HR Ctte](#)⁴. The submission of the present report to the HR Ctte follows a [visit to Mozambique undertaken by the CCPR Centre](#)⁵ in November 2014. The focus on the 3 recommendations flagged as priority by the Human Rights Committee does not preclude in any way the relevance of other recommendations contained in the above mentioned concluding observations of the Committee to Mozambique, for which the authorities will be required to report in November 2017.

The tables below provide suggested grades on the level of enactment of the Committee, recommendations, justifications for these grades, further actions needed and other comments. The grades proposed in this report are based on the Committee's follow up procedure as follows:

Grade A: Response of the State Party / Action Satisfactory:

State Party Response / Action largely satisfactory

Grade B: Response of the State Party / Action partially satisfactory:

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional action / information required

Grade C: Response of the State Party / Action not satisfactory

C: No action taken by the State Party to implement the recommendation

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For questions and feedback, please contact Vincent Ploton: vploton@ccprcentre.org

¹ <http://www.ccprcentre.org/doc/2013/08/G1242970.doc>

² www.ccprcentre.org/doc/2013/10/CCPR_C_MOZ_CO_1_en.doc

³ http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/MOZ/INT_CCPR_FUL_MOZ_19319_E.pdf

⁴ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspttFNxTkgvXTPJWIZn3vkYvOw9PSedwR29kWvzz85iBTqSkX%2fNlaqz%2fTnQlap1opOvss4QoXGZP%2fAslgygKqgA02sRgNSOpDzqmuSHNoc%2b>

⁵ <https://www.facebook.com/media/set/?set=a.10152889140123839.1073741888.298121883838&type=1>

Paragraph 13

The Committee expresses concern at reports of arbitrary arrests and detention, including of children, lengthy pretrial detention beyond the legally prescribed limits, failure to inform detained persons about their rights, the reasons for their detention and the charges against them, and difficulties in detained persons having access to a lawyer from the very beginning of their detention. It is also concerned at the lack of knowledge by detained persons of their rights, which prevents them from claiming compensation for violations (arts. 9, 14, and 24).

Committee Recommendation	Grade	Action taken by the State	Further Actions needed	Other comments from the NGOs
<p><i>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.</i></p>	B1	<p>In September 2013, i.e. a month before the HR Ctte review, the Constitutional Council adopted judgment 4/CC/2013⁶ which introduced important changes in relation to arbitrary arrest or detention.⁷</p> <p>In December 2014 the State enacted the new Criminal Code (through law 35/2014) which will enter into force in June 2015⁸ The new Criminal Code includes provisions against arbitrary arrest (Art. 7(2), 484 and 485) which used to be present in the previous version of the code (Art. 292).</p> <p>The new code criminalises lynching, which is a new provision (Art. 159).</p> <p>Despite the advances related to the new Criminal Code, civil society including the undersigned organisations have emphasized that the process leading up to the adoption by the National Assembly of the new Code lacked inclusiveness and transparency⁹.</p>	<p>The State should ensure that those authorities who arbitrary arrest or detain citizens are made accountable before relevant courts of law.</p> <p>The State should secure the implementation and enforcement of Art. 59 and 64 of the Constitution and Art. 484 and 485 of the new Criminal Code (after it comes into force) which prohibit arbitrary detentions.</p> <p>The State should take concrete steps to ensure that detained persons in penitentiary establishments have access to legal assistance and are able to enjoy freely all legal guarantees in accordance with Art. 61, 62 and 64 of the Constitution.</p>	<p>The Constitutional Council judgement of 2013 followed a national campaign led by the undersigned organisation LDH and consorts. However, more needs to be done in practice to put an end to arbitrary arrests and detentions. For instance, the undersigned organisations report cases of citizens arbitrarily detained for being unable to pay court fees.</p> <p>In general, the authorities who abuse power and the use of force to arbitrarily arrest or detain citizens are not made accountable for their actions. The public prosecution rarely carry out investigations against the police, which promotes a culture of impunity.</p>

⁶ <http://www.cconstitucional.org.mz/Jurisprudencia/04-CC-2013>

⁷ Also see "Revolution in Pretrial detention in Mozambique" Open Society Initiative for Southern Africa, 7 October 2013 <http://www.osisa.org/law/mozambique/revolution-pre-trial-detention-laws-mozambique>.

⁸ Approved by the Assembly of Republic through Boletim da República n. 105, I Série, 14^a Suplemento de 31 de Dezembro de 2014.

⁹ Verdade; 17 July 2014 <http://www.verdade.co.mz/destaques/democracia/47589-novo-codigo-penal-entra-em-vigor-em-fevereiro>

<p><i>The State 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 effective judicial redress and compensation, and that appropriate sanctions be imposed on those responsible.</i></p>	<p>B2</p>	<p>The prison administration (SERNAP) slightly improved the provision of human rights training to the penitentiary agents. Although the training does not cover comprehensively and on a regular basis all matters relating to human rights, there is a new commitment to train the staff on human rights related issues. An undergraduate degree on Penitentiary Administration has been designed in collaboration with ACIPOL (<i>Academia de Ciencias Policiais</i>). The curriculum includes modules on human rights. Other ad hoc training courses for penitentiary staff are provided and sometimes include human rights provisions.</p>	<p>The State should deliver effective and regular human rights training to all prison staff in order to guarantee the application of legal safeguards for detained persons and the compliance with the recommendation of the Human Rights Committee. The impact of the training should be assessed.</p>	<p>Most of the persons deprived of their liberty are not promptly and properly informed about their rights and in certain situations are not even informed about the charges against them.</p>
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Paragraph 14

While noting the efforts made by the State party to improve conditions of detention, including the ongoing construction of a new prison facility, the Committee expresses concern at the severe overcrowding, deplorable conditions of detention, including insanitary conditions, inadequate food and health care, and cases of death in custody. The Committee is further concerned that the separation of minors from adults is not always guaranteed and that prisoners who have completed their sentences are sometimes not released by prison authorities (arts. 6, 7, 9, 10, 14, 24).

Committee Recommendation	Grade	Action taken by the State	Further Actions needed	Other comments from the NGOs
<p>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.</p>	B2	<p>Mozambique ratified the Optional Protocol to the UN Convention against Torture on 1st July 2014 (OPCAT). The National Human Rights Commission was designated as the National Preventive Mechanism (NPM) under OPCAT (Resolution 23/2013). The NHRC as an independent body performs some monitoring of the places where persons are deprived of their liberty. However, the NHRC does not benefit with several requirements as spelt out in the OPCAT & SPT Guidelines on NPMs¹⁰, including access to police detention facilities.</p>	<p>The State should urgently adopt and implement concrete measures as to reduce overcrowding and deplorable conditions of detention especially regarding inadequate food and health care.</p> <p>The State should take concrete measures to cater for the specific needs of detainees with mental health problems; lengthy pretrial detentions, and mixing of sentenced detainees with pre-trial detainees.</p> <p>One of the best ways to implement the two above measures is to strengthen the NPM in accordance with the SPT Guidelines.</p> <p>Both the prison and judicial systems should</p>	<p>The current capacity of all existing prisons nationwide is 6,674 people. However, data from the National Penitentiary Service both of 2013 and 2014, indicate that the existing prison population in the country, including convicted and detainees exceeds 15 000 citizens. This figure clearly shows the overcrowding of prisons in three times, exceeding largely the real capacity of the prison system.</p> <p>The prisons have a significant number of inmates suffering from mental health problems, particularly in Maputo. These inmates should be moved to specialised institutions given that prison staff is not trained to deal with them and have complained of difficulties in managing this situation.</p> <p>Although it is mandated to monitor all places of detention, the NHRC has no access to the Police of Republic of Mozambique (PRM) Command cells, despite repeated formal request to visit these cells. Unlike prisons which are under the authority of the Ministry of Justice, Police cells are under the authority of the Ministry of Interior. The undersigned report repeated lack of access to lawyers in these police premises.</p>

¹⁰ Guidelines on national preventive mechanisms; CAT/OP/12/5; December 2010 http://www2.ohchr.org/english/bodies/cat/opcat/docs/SPT_Guidelines_NPM_en.doc

			suitably respond to legally sound requests for parole.	
<i>The State party should consider in this regard 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.</i>	B1	<p>Alternatives to pretrial detention and non-prison sentences were adopted in the recently approved Criminal Code¹¹.</p> <p>As one of the strategies for mitigation the prison overcrowding, the Government of Mozambique has decided to build new prisons with larger capacity in Maputo Province and two prison complexes in the central and northern regions of the country. However, this project is yet to be fully implemented.</p>	The State should take concrete actions to ensure that the Criminal Procedure Code and other penal legislation is amended to ensure the implementation of the changes provided in the new Penal Code.	<p>The new Criminal Code introduces alternative punishments and measures to imprisonment. While Article 85 introduces educational and socially useful measures, Article 88 and 89 provide respectively for the alternative measures to imprisonment and alternative punishment to imprisonment.</p> <p>In practice, community service, for example, can be applied by judges to all people who will commit crimes punishable with a maximum of 8 years of imprisonment. It is estimated that if operational, the alternatives could help reducing the prison population from the current 16000 people to only 4000 people. According to Article 5 Initiative, 30% of the current prison population is on pre-trial detention while more than 50% of the sentenced people are serving a prison sentence between 2 and 8 years. This means that if the alternative system to imprisonment was already working at its completely capacity, more than 80% of the current prison population could be serving alternative sentences out of prison.¹²</p>
<i>The State party should investigate promptly cases of death in custody, prosecute those responsible and provide appropriate compensation to families of victims.</i>	C	There have been no direct notable changes in that regard although some improvements were noted in the conditions of detention.	In addition to seeking to comply with the recommendation of the Human Rights Committee, the State should revise the legislation on victims' rights. At the moment only compensation is	<p>The public prosecution rarely carry out investigations regarding deaths in custody which are all portrayed as due to natural causes. There is no record of payment of compensation to families of victims in this regard.</p> <p>The Mozambican government approved the Organic Statute of the National Penitentiary Service through Decree No. 63/2013 in</p>

¹¹ *Novo Código Penal de Moçambique traz muitas novidades*; Deutsche Welle; 16 July 2014 <http://dw.de/p/1Ce9o>

¹² See <http://ppia.org/countries/mozambique>.

			provided, which is difficult to be achieved. Redress in general, including access to psychological support, is not provided. Law 15/2012 ¹³ on protection of victims, witnesses and whistle-blowers is yet to be implemented. The offices of protections of these victims are yet to be created.	December 2013 and the Statute of the National Penitentiary Service personnel which define the roles of the penitentiary guards and improve their working conditions. Prisons have known some improvements at sanitation and food levels through improved access to water and sanitation as well as increase in food quantity. However, prisons are still overcrowded and many detainees are held in prolonged pre-trial detention. ¹⁴ According to the National Human Rights Commission, poor conditions of detention could be blamed in some instances of death in custody.
<i>The State party 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.</i>	C	No specific developments evidenced in this regard	The State should urgently take concrete actions as to provide more juvenile penitentiary establishments	The only Centre for Juvenile Rehabilitation is in Boane, 30 km from Maputo. Here juveniles between 16 and 21 years old, serve their sentences. In the other Penitentiary Centres of the country juveniles are likely to be detained and serve their sentences with adults.

¹³ https://www.baselgovernance.org/sites/collective.localhost/files/publications/dfid_anti-corruption_mozambique.pdf pg 19.

¹⁴ *Prison reforms in Mozambique fail to touch the ground*; Tina Lorizzo; 2012, *South African Crime Quarterly* no. 42; available at <http://www.ajol.info/index.php/sacq/article/download/101398/90586>

Paragraph 15

While noting the efforts made by the State party regarding the training and employment of more judges, the Committee remains concerned about the insufficient number of judges and their inadequate training. It is further concerned about the lengthy delays in the administration of justice, the lack of clarity on the calculation of court fees and difficulties encountered by disadvantaged persons in accessing legal assistance. The Committee is also concerned at reports that the system of community courts inherited from colonial times does not appear to function according to basic fair trial principles and their decisions can contradict human rights principles (arts. 2 and 14).

Committee Recommendation	Grade	Action taken by the State	Further Actions needed	Other comments from the NGOs
<p>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.</p>	B2	<p>There are plans to increase the training of new judges and prosecutors. Regarding court fees the adoption of a decree in November 2014 fails to bring suitable solutions to this entrenched problem</p>	<p>The initial steps taken to fundamentally reform court fees, simplify and improve the justice system must be fruitfully completed.</p> <p>Judges, prosecutors and members of State legal support institution IPAJ (<i>Instituto de Patrocínio e Assistência Jurídica</i>) should be remunerated regardless of court fees.</p> <p>The State should take concrete actions to ensure effective control over illicit payments made to judiciary staff and quench corruption.</p>	<p>The only training centre for judges and prosecutors in the country trains an average of 60 new students every year. There are no plans to increase that number, which has been consistent throughout the past few years. Nationwide, only 288 judges and 374 prosecutors are in active duty, a very low figure for a country of approx. 24 million people.¹⁵</p> <p>The quality and commitment to justice and protection of human rights by the judicial staff is deficient. This contributes to a weak rule of law. The undersigned organizations continued to receive numerous complaints from rights holders on the poor quality of the justice system after the review of Mozambique.</p> <p>In November 2014, the Mozambique government adopted decree N° 67/2014, which introduced reforms to 3 provisions of the national Code on Court Fees (46, 160 & 167). Although this process represents a positive step in the right direction, the undersigned organisations reported that the process of calculating court fees was still very unclear. Many legal professionals do not understand the method of calculating court fees which directly contributes to hindering access to justice in Mozambique.</p> <p>According to the undersigned organisations, the amount of court fees also relates to the remuneration of judges and Public Prosecutor's Office. Due to that, the judges have denied exemption from court fees to citizens by refusing the</p>

¹⁵ See Informe Anual de 2014 do Procurador Geral da República, Discursos de Abertura do Ano Judicial 2015, Discursos da Abertura Oficial do ano Judicial de 2015 e Discurso oficial da Procuradora Geral da República na tomada de posse de 18 magistrados Distritais a 30 de Janeiro de 2015.

				poverty certificates in order to benefit from the fees. Furthermore, the magistrates have promoted delays of processes to profit from the payment of additional court fees. There is a growing trend to condemn those who are better capable of paying the legal fees, as individuals who are acquitted do not have to pay court fees.
<i>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.</i>	C	No specific steps taken in that regard	<p>The State should adopt concrete measures to ensure that Community Courts respect human rights and the rule of law.</p> <p>The State should provide training to the judges of Community Courts regarding the functioning of the courts and tribunals and on human rights.</p> <p>The state should revise law 2/1994 which regulates the functioning of community courts.</p> <p>Academic studies should be carried out in all provinces of the country to understand the reality of the problems facing community courts and how to tackle them.</p>	<p>Community courts are recognised constitutionally (Art.4 – Legal Pluralism) as a form of customary justice and they have notoriously contributed to dispute solving at the local level. However, these courts have also become sources of human rights violations, as in cases of decisions that violate rights of women and promote discrimination; or sentences which apply corporal punishment and damage to property burning the house of the adulterer, expulsion from the community of citizens accused of witchcraft, etc.¹⁶ Various such cases have been documented by LDH.</p> <p>Most of the Community Courts have no proper facilities and have been functioning in the office of the 'Segretario do Bairro' i.e. the premises of the ruling Frelimo party.</p> <p>There are places, as Mocimba da Praia, in the North of the country, Cabo Delgado Province and Nampula Province, where some community courts are operated by FRELIMO and others of RENAMO. This has been a source of concern on the political dependence of these mechanisms.</p>

¹⁶ See AfriMap. Mozambique Justice Sector and the Rule of Law. Pg. 133 .Available at [http://www.afrimap.org/english/images/report/Mozambique%20Justice%20report%20\(Eng\).pdf](http://www.afrimap.org/english/images/report/Mozambique%20Justice%20report%20(Eng).pdf).