

PERMANENT MISSION OF THE
REPUBLIC OF MOZAMBIQUE
TO THE UNITED NATIONS OFFICE
GENEVA



MISSÃO PERMANENTE DA
REPÚBLICA DE MOÇAMBIQUE
JUNTO DAS NAÇÕES UNIDAS
GENEVA

Ref. 1031 /PM/ 15

Geneva, 23rd November 2015

The Permanent Mission of the Republic of Mozambique to the United Nations Office in Geneva and other International Organizations presents its compliments to the Special Rapporteur on the follow recommendations of the Human Rights Committee to Mozambique, on the occasion of the 109^a. Sessions of this Committee and has the honor to here with send the requested responses.

The Permanent Mission of the Republic of Mozambique to the United Nations Office in Geneva and other International Organizations avails itself of this opportunity to renew to Special Rapporteur on the follow up recommendation of the Human Rights Committee the assurances of its highest consideration.

**To the:
Special Rapporteur on the Follow up
Recommendation of the Human Rights Committee**

GENEVA



OHCHR REGISTRY

24 NOV. 2015

Recipients :.....H.R. Comm. Acc

Enclosure



REPÚBLICA DE MOÇAMBIQUE

**Response to concerns raised in paragraphs 13, 14 and
15 of the recommendations made by the Human Rights
Committee following the examination of the
Government of Mozambique during its 109th Session**

Paragraph 13: The questions is on taking appropriate measures against arbitrary detention, and ensure the enjoyment of legal guarantees in accordance with Articles 9 and 14 of the Covenant; the need of information on the persons deprived of liberty on their rights in order to guarantee the exercise of their right to access justice and redress, where appropriate, sanctions on those responsible.

Responses:

1. With regard to paragraph 13 measures have been taken to ensure that the police and correctional officers have the proper training to prevent arbitrary detentions and other violations of norms. Wherever the existence of irregularities is proven, appropriate measures are taken to correct them.
2. The Ministry of Justice, Constitutional and Religious Affairs (MJCR), through the National Penitentiary Service (SERNAP), the National Directorate for Human Rights and Citizenship (DNDHC) and the Institute for Legal Assistance and Representation (IPAJ), in partnership with Civil Society Organizations have been conducting civic and legal education campaigns in detention premises.
3. Legal assistance to detainees who have no possessions to fund their own defence has been regularly provided by IPAJ, this is still a challenge to its larger scope.

Paragraph 14: This paragraph refers to the situation in places of detention, where the Committee raised concerns on the overcrowding of prisons, the establishment of a regular and independent monitoring system in places of detention; improved conditions of detention, including youths in conflict with the law. The Committee proposed the construction of new establishments and application of alternatives to imprisonment; Investigation into cases of deaths in custody, punishment of those responsible and compensation to the families; Separation of young prisoners from adults and release of prisoners who have completed their sentence without delay.

Responses:

4. The penitentiary system is one of the pillars of justice administration system in Mozambique. It is also one of its biggest challenges although some positive steps have been made in the efforts to reduce its negative impact on the issue of human rights. In this regard, the Government of Mozambique has been adopting initiatives in order to ensure compliance with the CRM fundamental principles for the establishment of the Rule of Law, in line with international standards. It was following the enactment of Law n° 3/2013 of 16 January, establishing the National Penitentiary Service (SERNAP), that a new dynamics in the correctional services was achieved. The Law was further reinforced by Decrees n° 63 and 64, of 6 December 2013, which approve the SERNAP Organic Statute and SERNAP Staff Regulations to fulfill the duties of Prison Guard, as well as SERNAP Internal Regulation.

5. The maintenance of Security, Order and Discipline in correctional facilities in the country for the period in analysis was calm, despite some offences. During the first half of 2015, forty (40) disciplinary offenses were recorded and resulted in eight (08) communications; twenty five (25) disciplinary proceedings and seven (07) dismissals.
6. With regard to measures and alternative sentences to imprisonment adopted by the Penal Code, Law 35/2014 of December 31, we have to state that its effective implementation depends on the approval of the Penal Procedure Code and the Correctional Execution Code, instruments that complement matters contained in the Penal Code. Thus, it is understood that in the context of the Penal Code in force, the existence of adjective law does not clearly appear, except for the educational and social measures, the fine for prison substitution, among other administrative measures, which in terms of the adjective law in force, may be applied without taking into account the reform which is expected from the Penal Procedure Code and from the approval of the Correctional Execution Code.
7. Despite these achievements, there are still challenges in the Correctional and other detention Facilities, although improvements were made in certain units, with emphasis on places with very high overcrowding rates. It is expected that this problem will be minimized with the construction of more prison complexes, the possible use of open correctional centers and the introduction of measures and alternative sentences to imprisonment.
8. The State has ratified the Optional Protocol to the Convention against Torture. The National Human Rights Commission is the national monitoring mechanism to prevent the occurrence of torture in places of detention, a mission already initiated by the said institution. As a result of this action and the implementation of the Memorandum of Understanding between the MJCR and the League of Human Rights and also the opening of the Government to regular visits to places of detention the situation has improved considerably.
9. As for the maintenance of prisoners after serving their sentence, in general, there is no record of individuals who have completed their sentences and for whatever reason they are at the penitentiary beyond conviction period. However, any recorded case is duly communicated to the judiciary at local and or central level.

Paragraph 15: The Committee made recommendations to the Government on the judicial system. It proposed the increase of the number of qualified professionals in this area; Continuation of efforts aiming to reduce the backlog of court proceedings; Simplification transparency of the procedures for the calculation of court fees; provision of legal assistance where necessary. It also proposed the improvement of

the functioning of the Community Justice System, including the operation of the Community courts.

10. The assignment of separation of powers, the independence of the judiciary and the creation of civil society organizations aimed at defending the rights of citizens are the most fundamental ways for providing effective access to justice to citizens. In this perspective, the judiciary is one of the most important guarantees.
11. The justice administration sector has been going through major reforms. These include the development of a legal and institutional framework, the judicial network expansion, the creation and commissioning of Superior Courts of Appeal. This will allow for the relief of other courts in the enforcement of verdicts. The reforms also include the expansion and operation of regional administrative courts, the creation and operationalization of the National Human Rights Commission and the PJ, and the establishment of Conflict Mediation and Arbitration Centers. These are remarkable developments, but prevailing challenges to citizen satisfaction require increased efforts of the state and of the society in general.
12. The Access to Legal Assistance in Mozambique is based on the constitutional principle of legal pluralism expressed in Article 4 of CRM. This means that in Mozambique the citizens are free to resort to formal and informal justice bodies, provided that the later ones do not undermine the principles of the rule of law founded on legality. This principle, combines with Article 62 also of CRM which provides free access of citizens to the courts, assistance and legal representation and protection. In practical plan, in order to realize the right of access to justice by citizens, the state created the Institute for Legal Assistance and Representation (IPAJ) an institution, under the MJCR, whose function is to ensure the realization of the Protection Right providing to the economically deprived citizen, sponsorship and free legal assistance they lack.
13. Aiming to ensure that justice is accessible to all, the IPAJ covers the entire national territory and it has established offices in all 11 provinces. During the period 2010-2014, IPAJ further expanded its territorial coverage, achieving the number of 140 districts, out of 148. Of these, in 135 the presence is physical while for the remaining regime and 5 the coverage is ambulatory. Within the period above, 462 059 economically less advantaged citizens benefited from legal aid and legal representation.
14. It should be noted that the Court Fees Code has been revised with the aim of improving the court procedures.

Maputo, November 2015