



National Commission for Human Rights and Citizenship of Cabo Verde (CNDHC) Report to the UN Human Rights Committee

Introduction

On submission of the Initial Report of the State of Cabo Verde on the implementation of the International Covenant on Civil and Political Rights (ICCPR), which took place on February 9, 2018, the National Commission for Human Rights and Citizenship (CNDHC) is pleased to submit to the UN Human Rights Committee this contribution, containing its perspective on the implementation of civil and political rights in Cabo Verde, in the following areas.

Covenant Information Dissemination

The State of Cabo Verde ratified the International Covenant on Civil and Political Rights in 1993 and, in 2000, its two Additional Protocols.

The CNDHC, as a national human rights institution responsible for the promotion and protection of human rights in the country, has been working to disseminate all human rights conventions, thereby promoting better knowledge of human rights and fostering better exercise of citizenship. Through the Human Rights document series, the CNDHC published in 2014 the International Covenant on Civil and Political Rights and its two additional Protocols, namely: Optional Protocol to the International Covenant on Civil and Political Rights and Political Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

This publication has been freely distributed to universities and in the activities carried out by the CNDHC, namely in communities, schools and training for prison officers, the National Police (PN) and youth associations.

The CNDHC regularly conducts training for its focal points in all municipalities and for human rights activists, where the contents of the Covenant are addressed. With these actions, it is intended that the Covenant and its additional protocols are known as broadly as possible and the appropriation of its contents ensured.



Despite the CNDHC's work in promoting the rights enshrined in the Covenant, the contact made with civil society organizations and the promotion activities carried out, there is still a great lack of knowledge of these rights.

In this sense, it is recommended that the actions to promote the rights provided for in the Covenant be strengthened, in particular by civil society organizations and public entities with responsibilities for promoting knowledge of human and fundamental rights.

Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is enshrined in both the Constitution and the Penal Code, in line with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture, which prohibit such practices.

Cabo Verde ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1992 and, in 2016, ratified the Optional Protocol to this Convention, which demonstrates the State of Cabo Verde's formal commitment to preventing and combating torture or cruel, inhuman or degrading treatment. In 2018, the Government designated CNDHC as the National Prevention Mechanism, as provided for in that protocol and the members were sworn in in July 2019.

Regarding police action, the law sets limits on the use of force within its activity, prohibiting the use of excessive force. In addition, the Public Administration Official Code of Ethics and Conduct prohibits abuse of authority.

With regard to the performance of prison security agents, the law sets limit on these professionals, in order to preserve the right to life and the physical and psychological integrity of the prisoner, detained or inmates. The Statute of the Prison Security Staff and its Disciplinary Statute reinforce the duty of urbanity towards prisoners, although not yet strong in relation to the prohibition of violation of their right to physical and mental integrity. Respect for the physical and moral integrity of the detainee, prisoner or inmates, avoiding the adoption of any useless, vexatious and unnecessary measures or means is provided in the new Code of Execution for Condemnatory Sanctions (CESPC), dated 2018. This instrument became clear that prison administration should ensure right of protection, life, physical and mental integrity and freedom of conscience of the inmates, not being subjected to torture, cruel, degrading or inhuman treatment or punishment [Article 78, paragraph a]. From the information available, there is no record of many cases of specific crime of torture. At court level, by 2016, 5 cases of allegations on the use of torture or cruel treatment were recorded.



Between 2010 and 2018, the CNDHC received 527 complaints, 72 of which were abuse of authority and police violence, corresponding to 14% of the total number of complaints received.

Within the scope of the PN, it is reported that from July 2015 to July 2016 34 complaints were received denouncing the use of violence by police officers, and from July 2016 to May 2017 15 complaints were filed.

It should be noted that, in addition to the complaints submitted to the competent institutions, there have also been some cases that are reported in the media and may eventually coincide with those reported to the authorities.

National authorities have invested heavily in training PN agents. As part of the training course for PN agents, some courses are taught whose essential focus is police action in accordance with ethical and human rights principles. These are the cases of “Police Ethics and Deontology” and “Human Rights and Citizenship”, the latter being taught by CNDHC.

Since 2012, CNDHC has taught the Human Rights and Citizenship subject in the 5 (five) PN Agent Training Courses, namely: 2012, 2014, 2016, 2017 and 2019.

Despite the investments made in the agents training and in the acquisition of new equipment, the numbers of reports of abuse of power or police violence still worry.

In this sense, it is recommended to reinforce the training actions so that all the PN structures, at national level, are regularly covered with training actions that improve the police performance and contribute to prevent actions that violate the human rights of citizens.

It is also recommended that action be taken to publicize the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol with law enforcement and security services to prevent the occurrence of torture or cruel, inhuman or degrading treatment.

Treatment of Persons Deprived of Freedom

The Code of Execution for Condemnatory Sanctions (CESPC), approved in 2018 by Legislative Decree No. 6/2018 of October 31, establishes the principles and procedures to be observed by those responsible for the prison system, within the scope of compliance with the penalty.

The Article 13 of the aforementioned law provides that the authorities responsible for the execution of condemnatory criminal sanctions shall ensure respect for the prisoner or inmate dignity, respect the prisoner or inmate physical and moral integrity, avoiding the adoption of any useless, vexatious and unnecessary measures or means and ensure that the individual needs of the prisoner or inmate in vulnerable situations are met.



The Central Prison of Praia Regulations, approved by Ordinance No. 54/2009, of November 30, and amended and republished by Ordinance No. 14/2016, of March 23, establishes the rules of internal organization of the prisons to be observed by the Direction, Prison Agents, administrative personnel, personnel who render services in the Prison, prisoners and all those who visit or are in the Prison. Pursuant to Article 29 of the CESPC, Public Prosecution Service is responsible for visit prisons regularly and whenever necessary or convenient to exercise their constitutional and legal powers. The same law provides in the Article 55 that the CNDHC is one of the entities with competence to carry out inspections in prisons.

Through Council of Ministers Resolution No. 98/2018, of September 24, the Government designated the CNDHC as the National Prevention Mechanism, giving it powers to (i) make regular visits, with or without notice and without restriction to any place where persons are deprived of freedom in order to strengthen, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment and (ii) to make recommendations addressed to the competent authorities in order to improve the treatment and situation of persons deprived of freedom and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into account international, regional and national standards.

As a national human rights institution, the CNDHC has been conducting periodic visits to prisons to assess the conditions of persons deprived of freedom and to prevent situations of human rights violation. These visits are scheduled and includes not only prison structures, but also police stations, judicial police facilities, military prison structures and border detention posts. These visits also include the internment and reception structures of people with mental illness, children in conflict with the law, the elderly, among others.

In 2013 and 2014 the CNDHC completed a cycle of visits to all prisons, police stations, military prisons, border detention posts, childcare centers for children in conflict with the law, detention facilities and care for people with mental illness, elderly care facilities / centers, among others in order to verify the conditions existing in these places.

These visits resulted in a report with recommendations to the appropriate authorities on steps to be taken to improve existing conditions.

In 2017 and 2018, the CNDHC made a new visit to all these structures to follow up on the implementation of the recommendations made in the previous visit and make new recommendations.

During these visits, it was found that in almost every prison there is a problem of overcrowding.

From the visit made by CNDHC in 2013/2014, the situation of the prison population was as follows:

Prison	Capacity	Number of inmates
Central Prison of Praia	673	944
Central Prison of Ribeirinha –	200	313



São Vicente		
Regional Prison of Fogo	50	98
Regional Prison of Sal	16	39
Regional Prison of Ponta do Sol – Santo Antão	24	50

Source: CNDHC, Cabo Verde Prison Visit Report, August 2014

The analysis of the table above shows that all prisons have far more prisoners than their capacity. The Prison Census conducted in 2018 by the National Institute of Statistics (INE) and promoted by the Ministry of Justice and Labour, presented the following picture on the situation of the prison population in Cabo Verde:

Name of the Prison	Capacity	Number of inmates
Central Prison of Praia	673	1112
Central Prison of Ribeirinha – São Vicente	200	250
Regional Prison of Fogo	50	64
Regional Prison of Sal ¹	250	116
Regional Prison of Ponta do Sol – Santo Antão	24	25

From the data presented in the Prison Census, only the Regional Prison of Sal is not overcrowded. The Census presents the following scenario regarding occupancy rate:

Name of the Prison	Capacity	Imprisoned Population	Occupancy Rate
Cabo Verde	1.197	1.567	130,9
Regional Prison of Santo Antão	24	25	104,2
Central Prison of São Vicente	200	250	125,0

¹ New Regional Prison of Sal



Regional Prison of Sal	250	116	46,4
Central Prison of Praia	673	1.112	165,2
Regional Prison of Fogo	50	64	128,0

Source: INE, 1st Cabo Verde Prison Census - 2018

According to the data presented above, of the five existing prisons in the country, only one is not overcrowded, the one in Sal.

It is therefore recommended that measures be taken to extend and improve prisons to ensure better dignity for prisoners.

In addition to the issue of overcrowding, the visits made by CNDHC also revealed other situations that need attention.

In terms of health, there is an insufficient number of professionals to meet the needs. There are not enough psychologists to meet inmates with mental problems. Flagged cases and the most critical cases are dealt with in health facilities dedicated to treating these problems, and there may be unidentified situations of prisoners with mental problems, as there are no regular consultations made by psychiatrists and psychologists to identify potential cases or risky situations. There are reports related to prisoner's difficulties to attending scheduled appointments, especially inmates in the Central Prison of Praia, due to the lack of transport and agents available for this purpose.

Due to the lack of health professionals, psychologists have not accompanied prison officers, which would be advisable given the nature of their work.

At the accommodation level, the most worrisome situation is in the Central Prison of Praia where the cells eventually receive twice as many prisoners as they can. A cell sized to receive four inmates eventually houses eight.

In the Central Prison of Praia it was found the existence of homosexual and HIV inmates who were removed from the conviviality of the others one, for fear of the disease transmission. There were also situations of suspected cases of homosexual prisoner who was also removed from contact for fear of involvement with other prisoners. These situations have been configured as some of the most worrying discrimination situations in prisons.

In addition to its performance as a national human rights institution, in July 2019, the CNDHC began visits to prisons as a National Prevention Mechanism. These visits are made without any prior notice. Concerning access to justice for prisoners, especially those with weak economic resources, the data indicate that this access is limited and that prisoners only have contact with the lawyer on the day of



the trial hearing. On the other hand, prisons are not subject to periodic visits by the public defender, which makes it difficult to file allegations of violation of their rights, especially as regards torture, cruel, inhuman or degrading treatment.

However, the CESPC, approved by Legislative Decree No. 6/2018 of October 31, provides in its article 347, a less restrictive regime of receiving and sending correspondence, allowing the interception or seizure of correspondence only in specific cases of suspicion, upon prior notification to the Public Prosecution Service.

Currently, the prisoner has the possibility to make a complaint or claim to the prison management, but this option limits his freedom since this fact is likely can generate fear and further retaliation.

In terms of compliance with the sentence, the Public Prosecutor's Annual Report on the Situation of Justice - 2017/2018 states that “on the execution of criminal sanctions, it issued opinions on 151 (one hundred and fifty-one) requests for conditional release/parole, more 62.3% than in the 2016/2017 legal year, 30 (thirty) requests for work outside the prison, 20% more than in the 2016/2017 legal year, 615 (six hundred and fifteen) temporary permission to leave, plus 42.4 % that in the 2016/2017 legal year, 322 (three hundred and twenty-two) requests for judicial rehabilitation, 98.8% more than in the 2016/2017 legal year, 1 (one) pardon process, which did not occur in the previous year and verified 197 (one hundred and ninety-seven) completion of the sentence, 8.8% more than in the legal year 2016/2017”. However, it should be noted that, due to the lack of technicians in prisons, many requests are not even made or are made late to the prosecutor, with serious damage to the rights of prisoners.

The same report also states that Public Prosecution Service magistrates placed in the Public Prosecution Offices where the prisons are located held meetings and contacts with the directorates of these prisons and conducted regular visits, verifying compliance with the rights and duties of prisoners and the safety conditions.

The same report also states that public prosecutors in service where the prisons are located held meetings and contacts with the directorates of these prisons and conducted regular visits to verify the compliance with the prisoners’ rights and duties and the safety conditions.

However, in the context of visits held by the CNDHC to prisons, information obtained from prisoners indicates that the prosecutors has not made regular visits to prisons and when they do there is no direct contact with prisoners.

There are some islands, such as Boa Vista, Maio and São Nicolau, where there are no prisons, and pre-trial detainees and inmates notified for trial remain in the PN Station while awaiting transfers to central or regional prison.



The public prosecution report states that prosecutors visited these establishments to find out about the accommodation conditions, food, recreation, family visits and contact held not only to prisoners and to inmates, but also held meetings with commanders, any facts or anomalies regarding the guaranteeing of the human rights of prisoners and pre-trial detainees are reported or found.

The CNDHC has also made visits to these sites and has already made some recommendations to the government to seek a solution to this issue.

However, it should be emphasized that the PN is not prepared and dedicated to deal with prisoners and the police stations are not adequate spaces for receiving prisoners.

Thus, regarding the treatment of persons deprived of freedom and, in view of the above, it is recommended:

- i. Reinforcement of supervision and inspection visits by the competent authorities.
- ii. Improvement of mechanisms for receiving complaints that allow prisoners to make their complaints easier and with more privacy.
- iii. In islands where there are no prisons, the Government establishes appropriate structures and designates specialized personnel to ensure that prisoners on these islands are properly received and treated, in a dignified condition and in accordance with human rights standards regarding the treatment of prisoners.

Right to a fair trial and access to justice

The Constitution of the Republic of Cabo Verde, in its Article 22, guarantees to everyone the right of access to justice and to obtain, within a reasonable period of time and through fair procedure, the protection of his or her rights or interests legally protected.

The State of Cabo Verde has gradually taken steps to improve access to justice in the country, making it faster and more effective. Despite this effort and the Code of Criminal Procedure (CPP) foreseeing that every defendant has the right to be tried as soon as possible, delay is still one of the major problems in access to justice in Cabo Verde and there are recorded situations that hinder access to justice for all, in a timely and equal manner.

The Supreme Judicial Council and the High Council of the Public Prosecution Service reports have consistently referred to this problem.

The 2017 /2018 Report on the Status of Justice of the Supreme Judicial Council refers to the efforts that have been made, notably by appointing new judges and bailiffs and acquiring new equipment. However, despite these efforts, there are still quite significant procedural backlogs.



It refers to the decrease in pending cases from 12.196 to 11.980 cases over the previous year, but recognizes the need to continue efforts to reduce pending issues, recommending “the recruitment of more judges to meet the increased demand for justice, which has recorded in both the litigation indicator and the cases brought.”

At the level of the Public Prosecution Service, the Annual Report on the Situation of Justice - Judicial Year 2017/2018 - by the High Council of the Public Prosecution Service refers to the gradual and consolidated decrease in pending cases.

The same report states that between 2016/2017 and 2017/2018 there was a reduction of 18.368 (eighteen thousand, three hundred and sixty-eight) criminal cases, which corresponds to a decrease of 18.3%.

However, it acknowledges that the number of judges and bailiffs is still insufficient to deal with the volume of pending cases and current proceedings.

At the procedural level, the CPP amendment, processed in 2015, incorporated the procedural acceleration mechanism, for situations in which the deadlines set by law for the duration of each phase of the process have been exceeded and the request may be made by the Public Prosecution Service, the defendant, the assistant or the civil parties.

However, from the available information, this mechanism has been underused.

One of the problems that has also hindered the realization of the right of access to justice is the realization of the right to legal aid for natural and legal persons who demonstrate they do not have sufficient economic means to pay all or part of the normal costs of proceedings or fees owed to legal professionals for their services. In accordance with the law, it is for the State, in consultation with the appropriate entities, to organize the mechanisms for legal information and legal aid.

In this context, the State is responsible for guaranteeing the payment to the legal professionals and the Cabo Verdean Bar Association (OACV) for the appointment of the defense lawyer and his/her payment, recalling that the trial court is responsible for the decision of granting legal aid.

It should be noted that there are only OACV delegations in two islands, Santiago and São Vicente, which is a limiting factor for citizens from the 7 remaining islands to have access to justice in addition to the fact that there are no resident lawyers in all the municipalities or even island, like Maio and Brava.

It should also be noted that, in 2005, the Casa do Direito (Houses of Law) were created, with the mission of promoting access to justice and law, guaranteeing, inter alia, legal information and consultation, and also functioning as mediation centers. With their formal extinction in 2017, the citizen ended up with limited support in regard to access to justice and law until the end of 2017 and



2018 when agreements between the Ministry of Justice and the Municipalities to are reached to provide services exclusively for legal information services by hiring a lawyer. Thus, part of the important work done by the Houses of Law is no longer done, and the citizen is effectively undermined in their right to access justice.

In this regard, it is recommended:

- i. Improving the provision of legal information and judicial sponsorship so that justice is effectively accessible to the citizen on all islands;
- ii. Disseminate legal services provided in the municipalities and the places where they are offered;
- iii. Establish OACV delegations in all islands and publicize the services and place where citizens should go for obtaining free legal aid.