

Recommendation	Overview/Commentary	Actions to be taken by the State:
Right or area: 5.2. Institutions & policies		
128 .15	In the past 5 years there has been several capacity building initiatives, aimed at strengthening human rights in the criminal justice sector, mostly through international and regional donors and development organisations. Institutions that benefited from it were: Ministry of Justice, SERNAP (National Prison Authority), Police, Judiciary, IPAJ (Legal Aid Institute). However, beneficiaries are, in majority of the cases, representatives located in the capital of Maputo, and sometimes at the provincial government, in bigger cities like Nampula and Beira. Local, district officials and especially in the more remote and rural areas, are often under-looked and they seldom benefit from these opportunities.	Mozambique is called upon to continue strengthening institutional capacity in the criminal justice sector, especially at the local/ district level.
128 .16	Last 5 years saw some important reforms in the area of criminal justice (Area 12.6). Comprehensive policies are, however, still needed on police custody, use of force and firearms, juvenile justice and victims' rights.	Mozambique is invited to continue and broaden legal and policy reforms focused in the promotion of human rights in the area of criminal justice, especially within police and with the special focus on vulnerable groups.

128.68 - 128.69	<p>The Police of Mozambique still faces various challenges with regard to professionalism and adherence to human rights in its policing practices. Under pretext of security concerns, there is very little information about the number of police officers, functioning and daily practices of police, conditions of police custody, etc. However, research done in prisons revealed some serious violations of human rights occurring in police custody.¹ Police misconduct, excessive use of force, arbitrary arrests are also frequently being revealed by the media. Police abuse of power, excessive use of force and even killing of civilians occurred under the State of Emergency (under COVID-19 crisis).²</p> <p>The efficiency of the police is not being measured, or at least comprehensive data on the performance of police is not publicly shared and discussed. Overall numbers of arrest are not publicly available in conjunction with the overall number of complains, response times, etc, making it impossible to analyse and understand the effective challenges of police conduct. Also there have been no national surveys done about citizens' views on police performance. The State does not have trustful national crime statistics.</p>	<p>Mozambique is urged to improve professionalism within its police force, improve human-rights based education and training of its police officials, and establish data collection and statistics on crime rates and police performance.</p>
128.70	<p>Prison authorities have benefited from a number of training opportunities; however, it is mostly officials from provincial and specialised prisons that benefit from them. Training needs to reach all prisons across the country and especially district prisons, which are often under-looked, under-researched and severely under-resourced. At the initial prison training at the Pessene School (Maputo Province), content on human rights needs to be strengthened, and impact of the training monitored and evaluated.</p>	<p>Mozambique is invited to continue its effort to improve professionalism within its prison officials, improve human-rights based education and training of its prison officials.</p>
<p>Right or area: 6. Human rights education and training</p>		

128.25	Curriculum needs to be strengthened at the Basic Police School of Matalane ³ and the School of Sergeants of Beira. ACIPOL (Police Academy) has disciplines on human rights, however its content needs to be strengthened. In-house, initial and continuous training needs to exist in all criminal justice system institutions. The curriculum of the CFJJ (Legal Training Centre) has substantially improved, over the last five years. However, training of the judicial apparatus across the country should be more regular and continuous. Also, OAM (Bar Association) should insert disciplines on human rights in the initial training of lawyers.	Mozambique is invited to strengthen its efforts to introduce human rights education in the curriculum and training programmes
Right or area: 12. Right to physical and moral integrity		

<p>128.79 - 128.77 128.76 & 128.78</p>	<p>In 2016 Mozambique saw an increase in extrajudicial and arbitrary killings due to the conflict between the government and the opposition party RENAMO. Several reports have detailed severe beatings and excessive use of force by police officers, as well as by members of the UIR (Rapid Intervention Unit); abuse, theft of personal belongings, the extortion of refugees; extrajudicial killings, summary executions perpetrated by the police; as well as various forms of ill-treatment documented in prisons.⁴ What is common to all these is that in the majority of the cases there was no investigation, perpetrators were not prosecuted and no one was held accountable. The Amnesty Law 17/2014 does not contain any provisions providing for redress to the victims of these crimes.</p>	<p>Mozambique is called upon to establish a clear regulatory framework to govern the police and policing practices, especially in the area of the use of force; work on developing a transparent, accountable and ethical police force.</p> <p>Mozambique should establish accessible and safe avenues to report torture and other ill-treatment, and establish an independent complaints system especially in places of detention. The State is called to ensure thorough and impartial investigations and appropriately sanction perpetrators of torture and other abuses of power. The State is urged to establish measures to protect victims and provide necessary restitution, rehabilitation and compensation</p>
<p>Right or area: 12.3. Extrajudicial, summary or arbitrary executions</p>		

128.38	<p>Even though Mozambique ratified UNCAT in 1999, the Initial Report was only submitted in March 2013. The state is already late in its subsequent submission. OPCAT mandates all National Preventive Mechanisms to have access to all places of detention at any time and without prior notice where it can conduct visits and interview people. In Mozambique, however, all visits to places of detention, including those conducted by NPM (National Human Rights Commission), must be announced and approved by the responsible authorities. The NPM has done inspections in the last years. However, none of the findings nor recommendations have been published to date. Without any reporting and efforts in responding to violations of rights, the work of the NHRC as NPM is compromised not fulfilling its duties.⁵</p>	<p>Mozambique is invited to submit its Periodic Report to Committee Against Torture and allow NPM to visit places of detention without prior notice.</p>
<p>Right or area: 12.6. Conditions of detention</p>		

<p>128.81 128.82 128.83</p>	<p>Overcrowding still remains a serious problem in Mozambican correctional facilities. In November 2016 the average level of occupation was 206.3%.⁶ In 2017, Mozambique had a prison population of 18 185 prisoners, with an official capacity of 8 188, or 221% occupancy.⁷ At the beginning of 2020, there were 21 000 people incarcerated, prison overcrowded being at more than 250%.⁸ At the beginning of the COVID-19 crisis, the State promulgated the Amnesty and Pardon Law, aimed at decongesting prisons. The Supreme Court released a directive to accelerate parole processes. Consequently, around 5.600 prisoners were freed. With these measures, the national prison-overcrowding rate decreased to 190%.⁹ Even more problematic, however, was that in the first months of the State of Emergency more than 1 000 people were being arrested, detained and ultimately sentenced to a short prison sentences, for disobeying the State of Emergency.</p> <p>Other serious human rights violations in prisons include: sentenced and unsentenced prisoners are often not segregated; at some facilities (e.g. Nampula and Xai-Xai) juveniles are not separated from adults; poor sanitation and access to proper health care remains a major challenge to the prison system.¹⁰ Not every prison has health care centres and where they do exist, it was found that they are not able to provide proper care and that the availability of medicine is severely restricted.¹¹ Police detention remains particularly problematic, and unregulated, with no minimum standards legally established.</p>	<p>Mozambique should increase its efforts to improve the overall conditions in prisons and police custody. Mozambique is urged to separate juvenile and adult offenders in all places of detention.</p>
<p>128.80</p>	<p>Important changes are introduced through the new legislation on the Execution of Penalties. The law will come into force in December 2020. Only after a period of monitoring of its implementation, it will be possible to see whether changes are introduced in practice and to which extent.</p>	<p>Mozambique should monitor the implementation of the Code on the Execution of Penalties and that is in line with the Mandela Rules.</p>
<p>Right or area: 13.3. Arbitrary arrest and detention</p>		

128.88	<p>The hotline of the Attorney General’s Office (Linha do Procurador) is operational and accessible to citizens wishing to report abuses in places of detention. Prosecutors are also mandated to monitor the legality of police detention. However, in cases of illegal detention, prosecutors appear to release the person illegally detained, but often without opening an investigation and laying charges against the responsible officials, as per law.¹²</p> <p>The Constitutional Council Decision 4/CC/2013 deals with the powers to arrest, and limits to judges the authority to order pre-trial detention for cases falling outside of <i>flagrante delicto</i>. Despite the decision, unlawful arrests continue to happen although the impressions from the legal community is that these have decreased.¹³ Efficient accountability mechanisms for arbitrary arrest and detention are still lacking.</p>	<p>Mozambique should ensure thorough and impartial investigations of arbitrary and illegal arrest and detentions, holding perpetrators accountable.</p>
<p>Right or area: 15.1. Administration of justice & fair trial</p>		
128.107	<p>The following needs to be address in relation to access to justice: Dissemination of laws and regulations in local languages making sure that all citizens are aware of their rights and obligations; Access to Legal Aid and quality of legal aid services (Legal Aid institute is understaffed, not being able to adequately respond to the demand for their services); Access to legal aid immediately after an arrest and while in police custody is severely compromised; Accessibility of the formal justice institutions (police and courts) outside of the main urban areas; Compliance with the deadlines for processing and judging criminal cases, as a way of guaranteeing respect for the human right to be tried in a reasonable time, has to be improved; Confidence in the judiciary has to be improved through strengthening its integrity, impartiality and independence. Special attention needs to be given to improving access to justice to the most vulnerable in the communities, particularly the poor and illiterate, women, people with disabilities and children.¹⁴</p>	<p>Mozambique should strengthen reforms to ensure access to justice for all, with particular reference to vulnerable groups</p>

<p>128.112 128.113 128.115 128.116 128.114</p>	<p>The CSMJ (Higher Council of the Judiciary) and CSMMP (Higher Council of the Public Prosecution) are in charge of overseeing and taking disciplinary action against the judiciary, prosecutors and justice officials. Reports indicate that the number of cases before these institutions has increased over the years, probably due to more awareness about judicial integrity.¹⁵ What is needed is to understand better of the work and performance of these institutions, beyond the numbers of cases heard. Detailed annual reports must be available to the public, with information about the type of complaints about the judges, investigations and elaboration of the penalties imposed. Corruption in the judiciary cannot be dealt with only through disciplinary action. More serious cases of abuse of power must be criminally prosecuted and punished accordingly. Independent reporting/complaint mechanism should be established.</p>	<p>Mozambique should increase its efforts to uphold independence and integrity of the judiciary, establish new independent and transparent complaint mechanisms, and criminally prosecute and punish abuse of power in the judiciary.</p>
<p>128.110</p>	<p>In the public selection process in 2018, 648 candidates applied for nearly 100 vacancies available for admission of judges and public prosecutors, but only 34 were admitted, due to the failure to pass the admission test. The selection process included a written test and it was found that there was an overall lack of knowledge of legislation and legal standards among the applicants. This indicates that legal education has to be strengthened at the University level. In order to have highly qualified judicial personnel, continuous training opportunities need to exist after the initial training at the CFJJ.</p>	<p>Mozambique is invited to invest in and improve legal education starting from the tertiary education institutions, and following through the continuous training and capacity building of judges and judicial officials.</p>
<p>128.87</p>	<p>In 2017, there were 243 IPAJ assistants, out of which only 68 Public Defenders who can represent clients in Courts.¹⁶ However, while there are a total of 140 prisons and an unknown number of police stations, it is almost impossible to access justice with the current number of IPAJ staff. Rehabilitation activities are not available in all correctional facilities. Even where available, pre-trial detainees are excluded and do not have access to them. Recidivism rates should be studied.</p>	<p>Mozambique is called upon to increase the number of IPAJ staff, especially Public Defenders, and make their services available and present in all places of detention including in police detention.</p>

128.86	In the period between 2015 and 2019 research pointed out several problems in the implementation of CSO (community service orders), as one of the alternatives available. Infrequent if not rare use of CSO by the courts as well as challenges in monitoring offenders by the SPAP (Service for Alternatives to Imprisonment within SERNAP). Lack of management, procedural guidelines, and training; understaffing, and a serious lack of material and financial resources for the effective implementation of CSO. It remains to be seen if the new legislation will overcome these gaps and bring much needed changes.	Mozambique is invited to use alternatives to imprisonment with the new legislation in place, and monitor and report on its implementation.
Right or area: 18. Right to participate in public affairs & right to vote		
	Article 73 of the Constitution of the Republic of Mozambique, as well as the current Electoral Law (Law no. 12/2014, Law no. 11/2014 and Law no. 7/2018) do not provide any limitations and do not prohibit prisoners' right to vote, but they have never voted. On February 2019, REFORMAR with a group of organisations submitted a request to the NHRC (National Human Rights Commission) and to the Ombudsman to take a position on the right of prisoners to vote. ¹⁷ In June 2019, the Ombudsman made a recommendation stating to set up the mechanisms with the government and other authorities in order to include prisoners in future voting processes.	New Recommendation: Enable prisoners to vote in the next elections as per Ombudsman recommendation.
Right or area: 25. Right to education		
128.144 - 128.148	Research has found that in many correctional facilities, including in specialised juvenile prison in Boane, children and youth do not have access to formal education/schools. ¹⁸	New Recommendation: Enhance access to education and increase allocations for education in prison settings
Right or area: 29.1. Discrimination against women		

	<p>Up to date there has been no research about the conditions and experiences of women in prisons. There would need to be quantitative and qualitative information available that would inform policy and practice, address the needs and improve conditions and treatment of female detainees. Specific attention should be on their specific needs, related to health care, child-care, rehabilitation and reintegration services.¹⁹</p>	<p>New Recommendation:</p> <p>Develop national standards on treatment and conditions for Women Prisoners in line with international standards; Conduct research to better understand the realities and address the needs and challenges of incarcerated women.</p>
<p>Right or area: 30.1. Children: definition, general principles, protection</p>		
	<p>Currently, in the criminal justice sector there are no specialised services for children in conflict with the law. Legal Aid provided to children in the country does not follow child-friendly principles, different lawyers/legal assistants are assigned to children in different stages of criminal justice, with very limited engagement and information sharing. Inside the prisons there are limited opportunities for education, and other rehabilitation and reintegration activities, with some prisons not having any available. Where available activities are offered to all, none of them are specially designed for the needs of children and juveniles. It is of great concern that none of the available activities are offered to juveniles in pre-trial detention.²⁰</p>	<p>New Recommendation:</p> <p>Work towards creation of an efficient juvenile justice system; increase the use of alternative penalties for juveniles and create specific child-friendly services to juvenile offenders.</p>

¹ Centro Estudos Aquino de Bragança (CESAB) and Civil Society Reform Initiative (CSPRI), 2015. Crianças em Conflito com a Lei em Moçambique. Em Busca de uma Estratégia de Proteção. Procuradoria-Geral da República; Ordem dos Advogados de Moçambique. 2017. RELATÓRIO DE DIREITOS HUMANOS MOÇAMBIQUE 2017.

² REFORMAR. Junho 2020. CARTA ABERTA SOBRE O IMPACTO DO ESTADO DE EMERGÊNCIA NO SECTOR DA JUSTIÇA CRIMINAL. Available at: <https://reformar.co.mz/publicacoes/carta-aberta-impacto-estado-de-emergencia-1.pdf>

³ Adriano Nuvunga, Borges Nhamirre, Jorge Matine, Tina Lorizzo. 2016. Em Matalane e na ACIPOL Militarização da Formação Policial É Preocupante - Afecta o exercício de cidadania. CIP. Available at: <https://reformar.co.mz/publicacoes/reformar-cip-05-2016.pdf/view>

⁴ Tina Lorizzo and Vanja Petrovic. March 2018. Developments in addressing torture in Mozambique: a situational report. Available at: <https://acjr.org.za/resource-centre/tortureacj-22-3-2018.pdf>

⁵ Ibid.

⁶ Data from: Serviço Nacional Penitenciário (SERNAP), January 2020.

⁷ ORDEM DOS ADVOGADOS DE MOÇAMBIQUE. 2019. RELATÓRIO DE DIREITOS HUMANOS MOÇAMBIQUE 2017.

⁸ Data from: Serviço Nacional Penitenciário (SERNAP), 2018.

⁹ REFORMAR. Junho 2020. CARTA ABERTA SOBRE O IMPACTO DO ESTADO DE EMERGÊNCIA NO SECTOR DA JUSTIÇA CRIMINAL. Available at: <https://reformar.co.mz/publicacoes/carta-aberta-impacto-estado-de-emergencia-1.pdf>

¹⁰ REFORMAR. 2018. Mozambique Thematic Report on the Implementation of the ICCPR in relation to criminal justice: In preparation for the Civil Society Submission to the United Nations Human Rights Committee. Available at: <https://reformar.co.mz/publicacoes/moz-iccpr-criminal-justice-reformar.pdf>

¹¹ Ibid.

¹² Tina Lorizzo and Vanja Petrovic. March 2018. Developments in addressing torture in Mozambique: a situational report. Available at: <https://acjr.org.za/resource-centre/tortureacj-22-3-2018.pdf>

¹³ Tina Lorizzo and Vanja Petrovic. 2019. Powers of arrest curtailed by Constitutional Council of Mozambique – the impact of the 2013 decision. Available at: <https://reformar.co.mz/publicacoes/impact-of-2013-decision.pdf>

¹⁴ For more information see: ORDEM DOS ADVOGADOS DE MOÇAMBIQUE. 2019. RELATÓRIO DE DIREITOS HUMANOS MOÇAMBIQUE 2017.

¹⁵ REFORMAR. 2019. An Assessment of some Questions on Judicial Integrity in Mozambique. CIP. Available at: <https://reformar.co.mz/publicacoes/an-assessment-of-some-aspects-of-judicial-integrity-in-mozambique.pdf>

¹⁶ ORDEM DOS ADVOGADOS DE MOÇAMBIQUE. 2019. RELATÓRIO DE DIREITOS HUMANOS MOÇAMBIQUE 2017.

¹⁷ REFORMAR. 2019. Pedido de Posicionamento sobre o Direito dos Reclusos ao Voto - Provedor de Justiça. Available at: <https://reformar.co.mz/publicacoes/direito-ao-voto-provedorfina-1.pdf/view>

¹⁸ REFORMAR. 2019. CRIANÇAS EM CONFLITO COM A LEI - ACESSO À ASSISTÊNCIA JURÍDICA E PROGRAMAS DE REABILITAÇÃO E REINserÇÃO SOCIAL. Rede da Criança. Available at: <https://reformar.co.mz/publicacoes/manual-de-criancas-em-conflito-com-a-lei-2019.pdf>

¹⁹ Submission by REFORMAR to the UN Committee on the Elimination of Discrimination against Women on Women in Prison in Mozambique for the review of Mozambique's combined 3rd to 5th Periodic Report to be considered at the 73rd Session of CEDAW. 2019. Available at: https://reformar.co.mz/publicacoes/int_cedaw_css_moz_35133_e-convertido-1.pdf

²⁰ REFORMAR. 2019. CRIANÇAS EM CONFLITO COM A LEI - ACESSO À ASSISTÊNCIA JURÍDICA E PROGRAMAS DE REABILITAÇÃO E REINserÇÃO SOCIAL. Rede da Criança. Available at: <https://reformar.co.mz/publicacoes/manual-de-criancas-em-conflito-com-a-lei-2019.pdf>