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**PRISON REFORM IN MOZAMBIQUE: EARLY ACHIEVEMENTS AND CHALLENGES AHEAD**

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**Introduction**

The past 50 years have seen a proliferation of global, regional and sub-regional initiatives focussing on the rights of prisoners. The UN Standard Minimum Rules for the Treatment of Prisoners (1955), the Kampala Declaration (1996) and a number of other existing international instruments are good examples of legislative initiatives advancing the promotion and protection of prisoners' rights. Recently (February 2010), the UN Special Rapporteur on Torture has called for the drafting of a UN Convention on the Rights of Detainees.<sup>2</sup> There are also other existing initiatives at the domestic level under state jurisdictions aiming at ensuring safe custody of inmates. These include the reform and passage of new legislation applicable to the penal system, as well as , the adoption of state policies relevant to the prison system.

Against this background, this newsletter explores Mozambique's recent efforts to advance the rights of prisoners. The discussion highlights the problems that require urgent attention in order to achieve the most effective and adequate protection of prisoners' rights. Three issues are addressed (1) an overview of the prison system; (2) the initiatives and measures established with view to advance rights of prisoners; and (3) the gaps to be addressed.

**An overview of the system**

Recent information on the prison system of Mozambique reveals a significant imbalance between available capacity of the prison system and the number of prisoners.<sup>3</sup> Table 1 below presents a quantitative overview of Mozambique prisons for 2008 and 2009.<sup>4</sup>

**Table 1**

CATEGORY	2008	2009
Total prison pop.	17407	15998
Sentenced	12374	11697
Unsentenced	5033	4301
Number of prisons	73	73
Capacity	8346	8346
Occupation	208.5%	191.7%
Children	53	4
Females	304	358

As shown in Table 1, the prison system is characterised by general overcrowding with an average occupation rate of 200.1% for the last two years. As is the case with overcrowding in other jurisdictions, this contributes to other problems currently affecting the system, including poor health conditions and the spread of contagious diseases. It should also be noted that Mozambique has antiquated prison legislation that governs the conduct of prison officials and prisoners. Decree-law No. 26 643, dated 28 May 1936, is a good example of such inadequate legal instruments which remain applicable to the prison system. Although this instrument was adopted in Portugal, in 1954 its application was extended to its colonies, including Mozambique as prescribed under Decree-law No. 39 997. Both these decrees do not include specific provisions which are protective of the rights of prisoners. In most cases their provisions merely enumerate the competencies and powers of prison officials. When comparing the Correctional Services Act of South Africa<sup>5</sup> with the prison legislation of Mozambique, it is concluded that the Mozambican prison system marginalises the rights of prisoners. The antiquated prison legislation, left by the colonial power, does not regulate issues of hygiene and nutrition, nor does it make any reference to health care of inmates. These are some of the basic issues that modern prison legislation must address.

During the colonial era, the prison system was directly under the control of a special police force known as the *Policia Judiciaria*. However, after independence in 1975<sup>6</sup> and following the establishment of newly created ministerial departments, all prison facilities were brought under the Ministry of Justice.<sup>7</sup> At a later stage, centres of detention for unsentenced prisoners were placed under the Criminal Investigation Police, *Policia de Investigaçao Criminal*, operating under the Ministry of the Interior. This left the Ministry of Justice in complete charge of prisons for sentenced prisoners, while detention facilities for unsentenced prisoners were placed under the domain of the Ministry of Interior, thus creating a dual prison system.

Regardless of this duality, the overall features affecting the system as a whole, including detention centres under the Ministry of the Interior and the prisons under the direct control of the Ministry of Justice, both before and after independence, were similar. As it was noted above, overcrowding of facilities, poor conditions of sanitation, lack of qualified personnel and generally unmotivated staff are the main problems affecting the system.<sup>8</sup> Some efforts to improve the system began in the 1990s after the enactment of the 1990 Constitution,<sup>8</sup> which established a democratic order and articulated basic human rights principles.<sup>9</sup>

### **Initiatives and measures promoting prisoners' rights**

The 1990 Constitution recognised citizens' right to life<sup>10</sup> and abolished the death penalty by stating that *[i]n the Republic of Mozambique there shall be no death penalty*.<sup>11</sup> For the first time the Constitution recognised that *[c]itizens held in preventive imprisonment shall, within the period fixed by law, be brought before the judicial authorities who shall have the power to decide on the validity and continuation of imprisonment*.<sup>12</sup> In addition, the Constitution provided the scope for citizens to interpose a writ of habeas corpus to challenge the lawfulness of custody.<sup>13</sup> Detainees kept longer than the period prescribed by law before a formal charge was raised against them could now challenge the lawfulness of custody. Regardless of the facts of the case, all detained persons must appear in court within 48 hours of arrest to verify the legality of the detention.

In 1996 the African Commission on Human and Peoples Rights (ACHPR) established the Special Rapporteur on Prisons and Conditions of Detention in Africa (SRP). This initiative of the Commission was viewed as an innovative procedure aimed at addressing the dire situation of detainees in Africa.<sup>14</sup> In fulfilling his mandate the SRP at the time, Dr. Victor Dankwa, visited Mozambique in 1997. During this visit, the SRP noted that 11 000 people were imprisoned out of a total population of 16 million. The SRP also noted that the prison system faced problems with overcrowding, lack of separation of children from adults, as well as, the lack of trained personnel to ensure the respect of prisoners' rights. The SRP recommended that the government of Mozambique address all his findings and concluded by urging it to consider implementing non-custodial sentencing options.<sup>15</sup>

In 2000 a mission of the ACHPR, during a promotional visit to Mozambique, enquired with the government on the question of the establishment of a National Human Rights Commission and the problem of overcrowding in prisons and detention centres. The government regarded some of the mission's enquiries as a follow-up of SRP Dankwa's visit and informed the mission that it was making efforts to address the concerns raised.<sup>16</sup>

Five years after the SRP's last visit in 1997 to Mozambique, the government in 2002 adopted a comprehensive policy on prison reform, the *Política Prisional e Estratégia da sua Implementação* (PPEI).<sup>17</sup> This policy proposed several measures aimed at establishing a unified prison system which favours the management of prisons and detention centres by one institution and thus consolidating the dual system. The overall objectives of the PPEI are the recruitment and training of staff for prisons and detention centres, as well as, the improvement of the management of such facilities. Other objectives include the improvement of sanitary conditions in prisons and the upgrading and re-

organisation of the existing prison infrastructure.

In order to achieve these objectives, the PPEI sets out nine guiding principles:

- ? respect for human dignity and for the rights of the prisoners;
- ? separation of the different types of prisoners;
- ? continuity in serving of sentences;
- ? individual detainee follow-up and monitoring;
- ? institutional cooperation with the justice administration system;
- ? collaboration with civil society entities;
- ? promotion of staff professionalism and ethics;
- ? transparency and accountability to the State and society; and
- ? gradual unification of the system.

The PPEI also articulates the relevant strategies for the implementation of the new policy. In this regard, institutional and legal reforms are considered the key components for the realisation of the goals of the PPEI.<sup>18</sup> The overall goal is to ensure that the prison system has sufficient capacity and an appropriate legal framework.

Progress has, however, been limited and to date only one major institutional reform has been achieved. In so far as prison management is concerned, the activities that were undertaken by the Ministry of Justice and the Ministry of Interior have been entrusted to the newly established National Prison Services, *Serviços Nacional das Prisões (SNAPRI)* operating under the Ministry of Justice.<sup>19</sup> SNAPRI was established to harmonise the mandates of the two departments. This has been a major achievement as many of the other proposed reforms are dependent on a unified prison service.

It should be noted that this achievement resulted from other complementary efforts including the establishment of the Technical Unity on Unification of the Prison System - *Unidade Técnica de Unificação do Sistema Prisional*; the establishment of the Provincial Advisory Council on Unification and Reform of the Prison System - *Conselhos Provincias de Unificação e de Reforma do Sistema Prisional (CPUs)*; as well as, the establishment of the Central Department on Prison Statistics - *Gabinete Central de Estatística Prisional*.<sup>20</sup> Each of these state institutions had important roles in the establishment of SNAPRI in 2006.

### **Gaps to address**

As mentioned above, the PPEI acknowledges legal reform as a key area to facilitate overall prison reform.<sup>21</sup> It enumerates four important areas of law reform to ensure the protection of prisoners' rights. Firstly, it requires the enactment of appropriate legislation dealing with the serving of custodial sentences and, secondly, it requires the enactment of legislation applicable to prison officials. In addition, the policy requires the passing of rules and regulations applicable to specific sub-types of prison facilities, as well as, the establishment of general rules of imprisonment.<sup>22</sup>

Both, the general rules of imprisonment and such other instruments relating to prisons and prisoners rights should be in line with international standards and principles pertaining to the treatment of prisoners. The most relevant international instruments dealing with such standards and rules, as indicated under the PPEI, are the UN Minimum Standard Rules on Treatment of Prisoners and the Kampala Declaration.<sup>23</sup> This does not mean that the new laws must not take into account other international instruments emanating from regional and sub-regional entities to which Mozambique is a state party to, including the UN Convention Against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (UNCAT).<sup>24</sup>

Despite the requirements of the PPEI, to date, none of the proposed law reforms have been realised, save for earlier reforms introduced in 1993.<sup>25</sup> Such earlier reforms include the institutionalisation of the "*Juíz de Instrução Criminal*" with a specific mandate to assess whether or not the terms of arrest and detention are legal. This has helped to reduce the period of preventive detention prior to sentencing. Legislation dealing with the serving of custodial sentences, legislation applicable to prison warders, the rules and regulations applicable to specific sub-types of prison facilities, as well as, legal instruments concerning general rules of imprisonment are still to be enacted.

Additionally, having ratified the UNCAT<sup>26</sup> it is a concern that Mozambique has not signed or ratified the Optional Protocol to UNCAT (OPCAT). Ratification of OPCAT would promote transparency and the implementation of the standards emanating from UNCAT. OPCAT requires the establishment of a National Preventive Mechanism (NPM) that will be mandated to visit, inspect and report on all places of detention. In respect of the protection of prisoners'

rights, the establishment of an NPM will bring greater transparency to the prison system and create the forum for constructive dialogue with the State on the treatment of prisoners and conditions of detention. An important part of the NPM's mandate is to make recommendations to the relevant authorities with the aim of improving the treatment and conditions of such persons.<sup>27</sup>

A final issue relates to financial expenditure on prisons. Mozambique is a poor country with a GDP per capita at \$370.<sup>28</sup> The country's limited resources are insufficient to cater for all its needs, including the needs of prisoners. Since the inception of the SNAPRI in 2006, a budget has only been allocated to it in 2008. Between 2006 and 2008 there has been a gradual increase in funds allocated to the security and justice services, although the allocations remain inadequate to address the needs. Moreover, the funds allocated are not in line with the activities planned and the number of prisoners.<sup>29</sup> In most cases there are also disparities in the funds allocated to the different prisons. Even when more funds are made available to a particular prison or detention centre, they have not been sufficient to address the needs of the system as a whole.

## Conclusion

In view of the above, it is evident that some initial steps towards the improvement of the prison system have been taken. Mozambique's ratification of UNCAT; its recognition of the UN Minimum Standards of Treatment of Prisoners and the Kampala Declaration; the provisions in the Constitution protecting prisoners' rights; as well as the recent efforts to implement reforms in the prison system, represent developments which need to be built upon.

However, some immediate measures should be taken if adequate protection of prisoners' rights is to be achieved. Eight years after the establishment of the PPEI the envisaged legal reform has not come to fruition. The system still grapples with issues of overcrowding of facilities and poor sanitary conditions. Lack of coordination between entities entrusted with the mandate to administer the prison system also represents another difficulty. This often leads to disastrous consequences for arrested and detained persons who are left to spend lengthy periods in pre-trial detention before a first hearing and often longer before their cases are adjudicated.

## Endnotes

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1[2]A/HRC/13/39/Add. 5 para 259(e).

1[3] MGA *Advogados e Consultores, Limidata, & Lex Terra* (2009), *Avaliação sumária do impacto das realizações do PARPA II no acesso a justiça*, Maputo, Moçambique. See also Liga dos Direitos Humanos (LDH) (2008), *Dados estatísticos das cadeias relatório de 2008*, and Liga dos Direitos Humanos (LDH) *Relatório 1 Semestre 2009*.

1[4] The content for this table was extracted from the *Liga dos Direitos Humanos* (LDH) 2008 and 2009 reports.

1[5] Act No. 111, dated 1998 (Correctional Services Act of the Republic of South Africa).

1[6] Mozambique attained independence from the Portuguese colonial master on 25 June 1975.

1[7] See Decree No. 1/75, dated 27 July concerning the mandates and attributions of Mozambique Ministerial Departments.

1[8] See Resolution No. 65/2002, dated 27 August 2002.

1[9] 1990 Constitution of the Republic of Mozambique (CRM 1990), adopted 2 November 1990 and entered into force on 30 November 1990.

1[10] Article 70(1) CRM 1990.

1[11] Article 70(2) CRM 1990.

1[12] Article 101 CRM 1990.

1[13] Article 102 CRM 1990.

1[14] Viljoen F (2005), 'The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and possibilities', in *Human Rights Quarterly*, p. 125 - 171.

1[15] See Special Rapporteur on Prison and Conditions of Detention in Africa 1997 report to visit in Mozambique.

1[16] See African Commission on Human and Peoples Rights (ACHPR) Report of the promotional mission to the Republic of Mozambique, 7<sup>th</sup> - 9<sup>th</sup> August 2000.

1[17] *Política Prisional e Estratégia da sua Implementação*, approved under Ministerial Council Resolution n.º 65/2002, dated 27 August 2002.

1[18] See the *Política Prisional e Estratégia da sua Implementação*, approved under Ministerial Council Resolution n.º 65/2002, dated 27 August.

1[19] The National Prison Service, *Serviço Nacional das Prisões* (SNAPRI), was established under Decree n.º 7/2006, dated 17 May.

1[20] See Ministerial Diploma n.º 43/2003, dated 16 April (establishes the Technical Unity on Unification of the Prison System),

Ministerial Diploma n.º 117/2004, dated 14 July (establishes the Provincial Advisory Council on Unification and Reform of the Prison System), and Ministerial Diploma n.º 118/2004, dated 14 July (establishes the Central Department on Prison Statistics).

1[21] See *Política Prisional e Estratégias da sua Implementação* approved under Resolution n.º 65/2002, dated 27 August.

1[22] *Idem*.

1[23] *Ibidem*.

1[24] MGA *Advogados e Consultores, Limidata and Lex Terra* (2009), *Avaliação sumária do impacto das realizações do PARPA II no acesso a justiça*, Maputo, Moçambique.

1[25] Mozambique ratified the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment (UNCAT) in September 1999.

1[26] See Art. 19 of the OPCAT.

1[27] By way of comparison, South Africa has a GDP per capita of \$5 820. (World Bank), available at <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20535285~menuPK:1192694~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html> )

1[28] KPMG Audit Report on Evaluation of Progress in the Justice Sector, March 2009, pg. 75.

1[29] n 3 above, pg. 81.

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