



Constitutional petition filed in Mozambique against privileged prison conditions for the rich

Maputo, 24 May 2023 – Today, 2000 Mozambican citizens, under the leadership of lawyer and human rights activist, Maria Alice Mabota, filed a petition before the Constitutional Council against section 8(2) of the Sentence Execution Code of 2019. The case is supported by REFORMAR and the Southern Africa Litigation Centre, under the auspices of the Global Campaign to Decriminalise Poverty and Status. The case challenges a provision which, despite the principle of non-discrimination in prisons, allows for inmates to secure more favourable conditions of detention upon payment.

REFORMAR believes that section 8(2) of the Sentence Execution Code of 2019 extends to prisons' settings, the inequality between the poor and the rich existing in society and have enacted such a distinction goes against the principle of non-discrimination internationally and nationally recognised. The norm gives rise to a dual system of execution of prison sentence: one for the poor majority and one for the richest.

Mozambique's Constitution entrenches the right to equality and protection from discrimination. The United Nations Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules, are a set of guidelines that set minimum standards for the humane treatment of all persons deprived of their liberty. Rule 2 of the Mandela Rules states that "There shall be no discrimination on grounds of race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. ... For the principle of non-discrimination to be put into practice, prison administrations must take into account the individual needs of prisoners, particularly those in a more vulnerable situation". The Mandela rules are bringing on Mozambique under article 18 of the Constitution.

Mozambique's Sentence Execution Code is in direct opposition to the Mandela Rules. Whilst section 8(1) of the Code says that "enforcement is impartial and cannot privilege, benefit, harm, deprive any right or exempt any prisoner from any duty, namely on grounds of sex, race, language, territory of origin, nationality, origin ethnicity, religion, political or ideological beliefs, education, **economic situation and social status**". Section 8(2) "ensures access to more favorable conditions upon payment of their cost by the inmate who intends to take advantage of them".

According to [World Prison Brief](#), Mozambique's occupancy of prisons is at 238%, placing it among the ten countries in Africa with the highest levels of prison overcrowding.

In a 2020 [advisory opinion](#) from the African Court on Human and Peoples' Rights, the Court emphasised that any distinction within the criminal justice system based on economic status is prohibited under the African Charter.



“Africa’s colonial legacy continues to result in people being imprisoned without legal representation in inhumane conditions. To then have a law which allows the rich and politically connected who have been convicted of crimes to pay their way to a more lenient punishment, is repugnant to the fight against crime and colonialism,” said Anneke Meerkotter, Director of the Southern Africa Litigation Centre.

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