



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 3<sup>rd</sup> to 5<sup>th</sup> Periodic Report to be considered at the 73<sup>rd</sup> Session of CEDAW

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### About REFORMAR – Research for Mozambique

REFORMAR – Research for Mozambique is an organisation providing research, training and advocacy on criminal justice and human rights in Mozambique and other Portuguese-speaking African countries.

Created in 2015, REFORMAR recognises that human rights in criminal justice systems are constantly violated; that the defence and promotion of human rights in criminal justice presupposes research based on evidence; the importance of regular and comprehensive training of all actors working in the criminal justice sector to increase knowledge and change behaviour and that the reforms are based on the development of laws, policies and practices.

## Acronyms and abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
NGO	Non-governmental organisation
SERNAP	Serviço Nacional Penitenciário (National Correctional Service)
SNAPRI	Serviço Nacional das Prisões (National Prison Service)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSMR	United Nations Standard Minimum Rules for the Treatment of Prisoners

## Introduction

In March 2018, Mozambique submitted its State Report to the Committee on the Elimination of Discrimination against Women. In the List of Issues related to State's Report, the Committee raised number of questions in needing additional information.

One of the issues concerned women in detention and this submission deals with that. There have been no comprehensive research in Mozambique on women in detention. The report relies on data obtained from relevant institutions, information available through very limited literature on the topic, as well as REFORMAR's prison research.

## Prison system and women in prison

There are 139 prisons,<sup>1</sup> 12 of which host both females and males and two are exclusively for women.<sup>2</sup> A third prison will soon be functioning in the province of Manica, in the center of the country.<sup>3</sup>

Since 2002 law reform has improved compliance with a human rights-based approach to the prison system. Prison Policy 65/2002 domesticated the guidelines of the 1996 Kampala Declaration on prison conditions in Africa.<sup>4</sup> Since 2006, the prison system resorts under the Ministry of Justice.<sup>5</sup> In 2013 the name was changed the National Correctional Service (*Serviço Nacional Penitenciário*,

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<sup>1</sup> Diploma Ministerial n. 71/2017 of 8 November 2017.

<sup>2</sup> Special Prison for Women of Maputo (Estabelecimento Penitenciário Especial para Mulheres de Maputo), located in the outskirts of the capital city of Maputo and Special Prison for Women of Nampula (Estabelecimento Penitenciário Especial para Mulheres de Nampula), situated in the North of the country.

<sup>3</sup> Special Prison for Women of Manica (Estabelecimento Penitenciário Especial para Mulheres de Manica).

<sup>4</sup> See Prison Policy 65/2002 of 27 August 2002 available at: [https://reformar.co.mz/documentos-diversos/politica\\_prisonal.pdf](https://reformar.co.mz/documentos-diversos/politica_prisonal.pdf) (accessed 27 May 2019).

<sup>5</sup> Law Decree 7/2006 of 17 May 2006.

SERNAP), with the aim to give new direction to the prison system, focusing on the rehabilitation and the reintegration of the inmates.<sup>6</sup>

In relation to women in prison, the development of appropriate national standards such as the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) is overdue.

The current law only addresses the separation of female inmates from males, pregnant women and mothers in prison. In compliance with the 2015 United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR), Guiding Principle 2 of the Prison Policy 65/2002 provides for the segregation of different categories of prisoners: "prisoners in pre-trial detention shall be segregated from sentenced ones. Sex, age, and type of crime and punishment are criteria for segregating prisoners."<sup>7</sup>

Law Decree 26643 of 28 May 1936 regulates the organisation of the prison system since colonial times and provides for the segregation of different categories of prisoners. Article 10 states that different prisons shall be operated for male and female prisoners.<sup>8</sup> In case the same prison hosts male and female prisoners, two different sections shall be provided, so that prisoners cannot communicate with each other.<sup>9</sup>

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<sup>6</sup> See Law 3/2013 of 15 January 2013 available at: <https://reformatar.co.mz/documentos-diversos/sernap.pdf> (accessed 27 May 2019).

<sup>7</sup> Unofficial translation of the author from: "*Os reclusos em detenção preventiva estarão separados dos condenados. O sexo, a idade, e o tipo de crime e de pena são critérios de separação dos reclusos.*"

<sup>8</sup> Unofficial translation of the author from: "*Os estabelecimentos prisionais funcionam em edifícios diferentes para cada sexo.*"

<sup>9</sup> Unofficial translation of the author from: "*Nos estabelecimentos em que seja forçoso o internamento dos dois sexos, haverá duas secções, uma para cada sexo completamente separadas de modo que os presos de uma não possam comunicar com os da outra.*"

## Number of women in prison

In Mozambique, the current total prison population is approximately 18 000 people and as of end of March 2019 there were 553 female prisoners of which 517 were nationals and 36 were foreigners,<sup>10</sup> representing around 3% of the total prison population, as shown in Table 1. The highest number of women is detained at the Female Prison in Maputo.

Table 1

Prison	N	%
Maputo (Awaiting trial)	73	13.2
Provincial Maputo	4	0.7
Maputo (Female)	96	17.4
Provincial Gaza	35	6.3
Provincial Inhambane	54	9.8
Regional Centro	55	9.9
Provincial Sofala	47	8.5
Provincial Tete	45	8.1
Provincial Zambezia	55	9.9
Provincial Nampula	37	6.7
Provincial Cabo Delgado	36	6.5
Provincial Niassa	16	2.9
TOTAL	553	100%

Among national female prisoners, 110 (19.9%) were in pre-trial detention and 407 were sentenced. Among the foreigners, 6 inmates were in pre-trial detention and 30 inmates were sentenced.

## Offence profile

In a 2016 study on the socio-economic impact of pre-trial detention, fraud, theft and child-related offences were found to be the most common offences (26%)

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<sup>10</sup> Data from SERNAP, March 2019.

among female pre-trial detainees, while murder and poisoning charges comprised 13% of cases.<sup>11</sup> Recent information received from SERNAP (March 2019) pointed out that a much higher percentage of Mozambican women are imprisoned for murder, and foreigners for drug trafficking. The longest prison term is 40 years. However, the official desegregated offence profile was not provided.

Foreign women in prison are mainly from South American and other African countries.<sup>12</sup> Extensive research conducted by Hanlon found that Mozambique is one of the main corridors and distribution centres for cocaine and heroin, as an alternative route easy to control.<sup>13</sup> Since the end of the civil war in 1992, Mozambique became attractive to organised crime due to high levels of corruption in the police and civil service in general.<sup>14</sup> People trafficking drugs are most of the time women and if caught, face up to 20 years in prison.<sup>15</sup>

## Socio-economic profile of female pre-trial detainees – focus on Maputo prisons

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<sup>11</sup> Muntingh, L. and Redpath, J. (2016). The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia, Dullah Omar Institute.

<sup>12</sup> Data from SERNAP, March 2019.

<sup>13</sup> See article from 2001 available at:

<https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/pics/d135483.pdf> (accessed 28 May 2019). See also article available at:

<http://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/files/Heroina%20continua%20sendo%20uma%20das%20maiores%20exportac%CC%A7o%CC%83es.pdf> (accessed 28 May 2019).

<sup>14</sup> See article from 2001 available at:

<https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/pics/d135483.pdf> (accessed 28 May 2019).

<sup>15</sup> Articles 32 to 42 of Law 3/1997: according to the nature of substances, quantity and modus operandi, prison sentence can be of a maximum of 20 years.



The socio-economic profile of female pre-trial detainees in Maputo highlights the following:<sup>16</sup>

- The education levels among female detainees ranged from no education to 12<sup>th</sup> grade. The most common levels of education were the 5<sup>th</sup> and 10<sup>th</sup> grades, which was in line with trends for Mozambique as a whole, and suggested detainees are no more or less educated than other Mozambicans.
- Most of the pre-trial detainees were of income-earning age and economically active at the time of detention. The most common methods of earning money among women were domestic work; selling clothes and furniture; and formal employment.
- Different earning trends among men and women were noted, with women earning less, with median earnings being US\$ 79 per month, which was less than the statutory minimum wage of US\$ 95.
- The majority of female detainees were single; a third was married, and some widowed (7%). Female detainees were less likely to be married than ordinary Mozambican women.
- The vast majority of detainees had children (92%) and cared for their own or other children in the household. According to detainees they were integrally involved in children's lives at the time of their arrest, meaning that their absence would have a substantial impact.

## Mothers with children in prison

Whereas female prisons are not specifically designed with a maternity ward, children of incarcerated mothers are allowed in the prisons.<sup>17</sup> The law states that

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<sup>16</sup> Muntingh, L. and Redpath, J. (2016). The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia, Dullah Omar Institute. P. 65-73.

prisons for incarcerated mothers shall be used for the custody of prisoners sentenced to any custodial sentence who are pregnant or who have children under three years old.<sup>18</sup> This provision is similar to other African jurisdictions: in South Africa, children are allowed with their mothers until the age of two years and in Kenya, children can stay with their mothers until they are four years old.<sup>19</sup>

Data from SERNAP shows that there are 58 women in prison with their 62 children (as of March 2019), as shown in Table 3:

Table 2

Prisons	Mothers with children	Children in prison with their mothers
Maputo (Awaiting trial)	2	2
Maputo (Female)	8	8
Provincial Gaza	1	1
Provincial Inhambane	6	6
Regional Centro	7	7
Provincial Sofala	3	3
Provincial Tete	9	9
Provincial Zambezia	1	1
Provincial Cabo Delgado	20	24
Provincial Niassa	1	1
TOTAL	58	62

The law further requires that “The directors of prisons for incarcerated mothers shall notify the juvenile court of their respective district of the names, ages and affiliation of the children of incarcerated mothers [...]. The communication shall

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<sup>17</sup> Article 103 of Law Decree 26643 determines that “maternity prisons are common prisons with measures in place determined by the status of the internees and the interests of the children.”

<sup>18</sup> Article 102 of Section III of Chapter I of Law Decree 26643. Unofficial translation by the author: “As prisões maternidades serão destinadas ao internamento de presas condenadas a qualquer pena privativa da liberdade que estejam grávidas ou que tenham filhos com menos de 3 anos.”

<sup>19</sup> Ackermann M. (2014). Women in pre-trial detention in Africa. A review of the literature. CSPRI. South Africa. P. 36.

be made at least six months before the child reaches the age of 3 years”.<sup>20</sup> It is furthermore required that “The children of prisoners aged 3 years or more, if their mothers continue in prison, shall be brought before a juvenile court, which shall take the appropriate measures, after having made the necessary social inquiry”.<sup>21</sup>

Research has showed that the separation of mothers and infants is highly undesirable, being more appropriate for babies to stay with their mothers, to limit the anxiety and stress of the mother, and the emotional well-being of the infant.<sup>22</sup> However, in practice, when children are 3 years old, they are placed with the family members (if there are any), even though the family might not be able to take care of the child while the mother is incarcerated.

In Mozambique it was found that 53% of female pre-trial detainees were the heads of their households and more than 90% of female detainees provided care for the children in the household.<sup>23</sup> Consequently, due to their detention, the families of these detainees reported not only a loss of income as a result of their detention, but they were also socially affected. They had less food, and in general less security. Children were particularly affected by the detention of the mother. Children often faced number of difficulties to attend school or dropped out of school. They also experienced stress and trauma from being separated from their mothers. The study concluded that “this situation can cause children’s

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<sup>20</sup>Article 106 of Law Decree 26643. Unofficial translation of the author from: “*Os Directores das prisões maternidade comunicarão ao tribunal de menores da respectiva comarca os nomes, idades, e filiação dos filhos das presas menores de 16 anos, a anterior residência e sua conduta antes e depois da prisão.*”

<sup>21</sup> Article 107 of Law Decree 26643. Unofficial translation of the author from: “*Os filhos menores das presas com 3 ou mais anos, se as mães continuarem na prisão, serão postos a disposição do tribunal dos menores, que adoptará as medidas convenientes, depois de ter feito o necessário inquérito social.*”

<sup>22</sup> Ackermann M. (2014). Women in pre-trial detention in Africa. A review of the literature. CSPRI. South Africa.

<sup>23</sup> Muntingh, L. and Redpath, J. (2016). The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia, Dullah Omar Institute. P. 65-73.

marginalization and exclusion, often with far-reaching and long term consequences.”<sup>24</sup>

## Health care for women in detention – focus on HIV/AIDS

Access to proper health care is a major challenge to the prison system. 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 with general painkillers used for a variety of illnesses.<sup>25</sup> These centres are open during the week, but not over weekends and no internal service is possible in the case of an emergency.<sup>26</sup> The poor access to healthcare needs to be contextualised: Mozambique does not have sufficient hospitals and sanitary facilities for its population and existing health care centres do not meet the needs of the population as there are not enough doctors, nurses and technicians; laboratories are functioning poorly; medicines are lacking and when available are expensive.<sup>27</sup>

Some 40% of female pre-trial detainees in Maputo said they were suffering from an illness at the time of their arrest.<sup>28</sup> Women reported having had high blood

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<sup>24</sup> Muntingh, L. and Redpath, J. (2016). The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia, Dullah Omar Institute. P. 139.

<sup>25</sup> Lorizzo, T. Há muitos Problemas que Comprometem os Direitos dos Reclusos em Prisão Preventiva. Centro de Integridade Publica (CIP), Newsletter 15/2015 – Maio. Available at: [https://reformar.co.mz/publicacoes/tina-lorizzo\\_cip-2015.pdf](https://reformar.co.mz/publicacoes/tina-lorizzo_cip-2015.pdf) (accessed 28 May 2019).

<sup>26</sup> Lorizzo, T. Há muitos Problemas que Comprometem os Direitos dos Reclusos em Prisão Preventiva. Centro de Integridade Publica (CIP), Newsletter 15/2015 – Maio. Available at: [https://reformar.co.mz/publicacoes/tina-lorizzo\\_cip-2015.pdf](https://reformar.co.mz/publicacoes/tina-lorizzo_cip-2015.pdf) (accessed 28 May 2019).

<sup>27</sup> Massarongo-Jona, O. (2016). O Direito à Saúde como um direito humano em Moçambique. Cad. Ibero-Amer. Dir. Sanit., vol. 5 supl. 1:152-164, Brasília. Dez. 2016.

<sup>28</sup> Muntingh, L. and Redpath, J. (2016). The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia, Dullah Omar Institute.

pressure, 15% said they had HIV/ AIDS; 15% asthma; 8% malaria; 8% a uterine infection; and the remainder had other pains and rheumatism.<sup>29</sup>

Official data shows that 4500 prisoners out of 19 000 (or 24%) prisoners were HIV+, in 2018. <sup>30</sup> The prevalence of HIV/AIDS in the Mozambican population, typically in the 15-49 year age range, is estimated at 11.5%.<sup>31</sup>

Table 4 below shows the number and percentage of female prisoners who are HIV positive per prison.<sup>32</sup>

Table 3

Prison	HIV+ female prisoners	Total female prisoners	% with HIV
Maputo (Awaiting trial)	0	73	0.0
Provincial Maputo	1	4	25.0
Maputo (Female)	50	96	52.1
Provincial Gaza	7	35	20.0
Provincial Inhambane	10	54	18.5
Regional Centro	0	55	0.0
Provincial Sofala	4	47	8.5
Provincial Tete	10	45	22.2
Provincial Zambezia	16	55	29.1
Provincial Nampula	0	37	0.0
Provincial Cabo Delgado	1	36	2.8
Provincial Niassa	5	16	31.3
Total	104	553	18.8

<sup>29</sup> Muntingh, L. and Redpath, J. (2016). The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia, Dullah Omar Institute.

<sup>30</sup> See available at: <http://agenciaaids.com.br/noticia/mocambique-combate-propagacao-do-hiv-no-interior-das-cadeias/> (accessed 28 May 2019).

<sup>31</sup> See available at: <https://www.unaids.org/en/regionscountries/countries/mozambique> (accessed 28 May 2019).

<sup>32</sup> Data from SERNAP, March 2019.

Overall it then appears that more than one out of every five female prisoners are HIV+ and this is reason for concern, especially seen against the limited access to proper health care.

Medical screening is provided upon admission, which includes a general medical check-up but not HIV testing.<sup>33</sup> An HIV test is provided only upon request by the prisoner.<sup>34</sup> The infection rate may thus be higher as many women may not request to be tested.

At the larger prisons, such as the Provincial Prison in Maputo have a medical centre offering specialised treatment for people with HIV/AIDS. The situation in the other prisons is unknown. However, the international NGO *Pathfinder* supports prison-based projects to increase access to ARV medication and also training prisoners on dealing with the disease in prison and how to enhance awareness in the prison population.<sup>35</sup>

## Education, job skills training and social services for women in prisons

Access to education for women is a challenge. According to UNESCO, the adult literacy rate is 45%, but the number of women who cannot read is twice as high as men.<sup>36</sup> Illiteracy is more prevalent in rural areas, where 57% of illiterate people live compared to those living in urban areas (23%).<sup>37</sup>

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<sup>33</sup> ProgettomondoMlal. (2010). Manual de Boas Praticas em Processos de Reabilitação das Pessoas Privadas da Própria Liberdade. Maputo

<sup>34</sup> ProgettomondoMlal. (2010). Manual de Boas Praticas em Processos de Reabilitação das Pessoas Privadas da Própria Liberdade. Maputo

<sup>35</sup> See available at: <https://www.dw.com/pt-002/mo%C3%A7ambique-combate-propaga%C3%A7%C3%A3o-do-v%C3%ADrus-da-sida-no-interior-das-cadeias/a-42048341> (accessed 28 May 2019).

<sup>36</sup> See available at: <https://news.un.org/pt/story/2019/01/1654602> (accessed 28 May 2019).

<sup>37</sup> See available at: <https://news.un.org/pt/story/2019/01/1654602> (accessed 28 May 2019).

In 2016, only 27% of sentenced prisoners attended school education and literacy courses.<sup>38</sup> Pre-trial detainees are not allowed to access any courses, as their legal situation is considered on-hold by the administration. This is contrary to international standards. However, it confirms findings of other research concluding that pre-trial detainees are often worse off than sentenced prisoners despite the fact that they have not been convicted of any crime yet.<sup>39</sup>

In 14 prisons literacy courses are available, while only at the Regional Prison of Nampula and the Provincial Prison of Maputo, inmates can attend school to the 12<sup>th</sup> grade.<sup>40</sup>

Access to rehabilitation and reintegration programmes is problematic. SERNAP does not have the human and financial capacity to implement rehabilitation and reintegration programmes at all prisons.<sup>41</sup> Only tailoring and sewing activities are available for women, in some prisons as well as agriculture and chicken farming, while a broader range of activities is available for men. Carpentry, metalworking, training for electricians and mechanics, are available as well as tailoring, handcrafting and cultural activities, such as theatre, music and dance.<sup>42</sup>

## Conclusion

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<sup>38</sup> Tamele, E. F. O Direito à Educação da População em Estado de Reclusão Penitenciária em Moçambique: Leis e sua implementação. Dissertação para Mestrado em Direitos Humanos, Desenvolvimento Económico e Boa Governança. Universidade Técnica de Moçambique.

<sup>39</sup> See work of Penal Reform International and Open Society Foundations available at: [https://cdn.penalreform.org/wp-content/uploads/2013/11/Factsheet-1-pre-trial-detention-v10\\_final2.pdf](https://cdn.penalreform.org/wp-content/uploads/2013/11/Factsheet-1-pre-trial-detention-v10_final2.pdf) <https://www.opensocietyfoundations.org/voices/pretrial-detention-jailed-no-trial-condemned-illness-and-death> (accessed 28 May 2019).

<sup>40</sup> Tamele, E. F. O Direito à Educação da População em Estado de Reclusão Penitenciária em Moçambique: Leis e sua implementação. Dissertação para Mestrado em Direitos Humanos, Desenvolvimento Económico e Boa Governança. Universidade Técnica de Moçambique.

<sup>41</sup> ProgettomondoMlal. (2010). Manual de Boas Praticas em Processos de Reabilitação das Pessoas Privadas da Própria Liberdade. Maputo.

<sup>42</sup> ProgettomondoMlal. (2010). Manual de Boas Praticas em Processos de Reabilitação das Pessoas Privadas da Própria Liberdade. Maputo.

This submission reflected on some issues related to women in prisons in Mozambique. However, the topic is severely under-researched. There is a great need to explore this area further and provide both quantitative and qualitative information that would inform policy and practice. Due to the lack of empirical evidence, it is hard to point out with certainty at specific discriminatory practices or provide specific recommendations. What is certain is that women in detention need more attention and interest from researchers and policy makers.

While there should be many improvements in the prison system as a whole in Mozambique, a specific focus should be placed to improve conditions for women in prisons, taking into account their specific needs (related to health care, child care, rehabilitation and reintegration services, etc.) or vulnerabilities (i.e. gender based violence). Use of alternatives to detention should be explored and promoted. The State should allocate resources to implement gender perspectives into their policies and practices and provide gender specific services to detained women.