



## International Covenant on Civil and Political Rights

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### Human Rights Committee 109th session

#### Summary record of the 3020th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 22 October 2013, at 3 p.m.

*Chairperson:* Ms. Waterval

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Initial report of Mozambique (CCPR/C/MOZ/1; CCPR/C/MOZ/Q/1/Add.1 and Add.2)*

1. *At the invitation of the Chairperson, the delegation of Mozambique took places at the Committee table.*

2. **Ms. Levi** (Mozambique) said that Mozambique had made considerable progress in the area of human rights since the end of the civil war. It had put in place a National Human Rights Commission and an Ombudsman, and had developed a draft national action plan for human rights. Mozambique was fulfilling its obligations under the regional and international human rights instruments to which it was party and had received several visits from African Union and United Nations special procedures mandate holders. It gave particular importance to access to justice, which was a fundamental right enshrined in the Constitution. The Government, in coordination with its partners from civil society, carried out information campaigns on the rights and duties of citizens and on the functioning of judicial institutions. It had also created the Institute for Legal Assistance and Aid, attached to the Ministry of Justice, which was responsible for providing legal aid, including free aid to the most disadvantaged. That body was continuing to grow and currently covered all provincial capitals and 90 per cent of districts. In order to strengthen the independence of the judiciary, in 2000 Mozambique had also established the Centre for Legal and Judiciary Training, which had already trained over 300 magistrates. Halls of justice, grouping several legal institutions together, had also been established as part of a pilot project.

3. The right to life was expressly protected by the Constitution, and any cases of excessive use of force resulted in an investigation and civil or criminal proceedings. The Government was working to improve the prison system. Human rights training for prison officers had been strengthened, increased human, material and financial resources had been allocated, 12 prisons had been renovated and others had been built. Efforts also focused on juvenile rehabilitation centres, and a new prison school had been inaugurated. Training and occupational activities were provided in all establishments to facilitate reintegration, and detainees approaching the end of their sentence were often placed in open detention centres. The Criminal Code was being revised to ensure better protection of human rights. In particular, there were plans to introduce sanctions that were individualized and commensurate with crimes committed, and alternative punishments to custodial penalties.

4. Gender equality was enshrined in articles 35 and 36 of the Constitution, and the role of the State in promoting women's participation in all areas was defined in article 122. The creation of the Ministry of Women and Social Action reflected the importance accorded to that issue. Laws had been adopted or amended to combat gender discrimination more effectively, and various programmes and policies, such as the national action plan to prevent and combat violence against women (2008–2012), had been implemented. Support and counselling services for victims of violence, especially women and children, had been put in place in over 200 police stations. The proportion of women in Parliament had risen from 28 per cent in 1997 to 39 per cent currently, while, between 2007 and 2013, the proportion of women ministers had risen from 24 to 28 per cent and that of female governors from 18 to 27 per cent. The Constitution also enshrined the rights of the child. The National Council of Child Rights, made up of representatives of the State, civil society and religious organizations, coordinated the application of legislation, policies, strategies and plans adopted in that area. Work still needed to be done to ensure that all children were registered at birth, particularly where the mother was single or had not given birth in a maternity unit, and awareness-raising campaigns were launched for that purpose.

Mozambique attached particular importance to the protection of children against abuse, and the police received special training in dealing with child victims.

5. Access to primary health services was fundamental in order to reduce mortality rates, in particular among women and children. To that end, the Government had put in place a maternal and infant health programme and had adopted a strategic plan for the health sector. Efforts were also being made to improve child nutrition, primarily through promoting breastfeeding and mounting awareness-raising campaigns in schools and communities. With regard to the prevention of HIV/AIDS, the National Council to Combat HIV/AIDS coordinated all activities in that area and had led the development of the national strategic plan to combat HIV/AIDS, 2010–2014, building on the positive results obtained through the previous plan (2005–2009). Over 350,000 adults, including 88,000 pregnant women and around 34,000 children, were currently receiving antiretroviral treatment. Given that education was a fundamental right for all, the Government had focused its efforts on guaranteeing access to quality education and on reducing both regional and gender inequality. It provided free and universal primary education and bilingual education in over 300 schools. Efforts were also being made to support girls' education, including through informal education.

6. **The Chairperson** thanked the delegation and invited those Committee members who wished to do so to ask questions.

7. **Ms. Majodina** said she was pleased that the Committee finally had the opportunity to consider the initial report of Mozambique, and, moreover, in the presence of a delegation, but noted that the written replies to the list of issues had been received very late. She hoped that, in the future, the State party would submit its documents in good time. Regretting that the Covenant was never invoked in the Mozambican courts, she asked whether the State party planned to take measures in that respect. Noting the lack of details on remedies available to victims of human rights violations, even though certain laws dating from the colonial era ran counter to the provisions of the Covenant, she invited the delegation to provide information on the legal status of those remedies and on their effectiveness. She also asked whether the National Human Rights Commission was consistent with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and whether its activities to promote and protect human rights were truly effective, given the inadequate resources available to it and the practical difficulties related to the socioeconomic situation of the country. Despite the existence of an appropriate legal framework, a national action plan and policies aimed at defending persons with disabilities, discriminatory practices seemed to persist. For example, a student with disabilities had been unable to continue studying after the school principal had decided to move the class to an upper floor, inaccessible to that student. Details on what the Government was doing to prevent that kind of situation would be welcome.

8. **Mr. Matadeen** emphasized the need to rapidly finalize and implement the national action plan for human rights, the preparation of which had begun in 2010. There were reports of discrimination towards the black population in tourist areas, discrimination in recruitment in certain firms and tensions in the construction sector. It would be useful to know what was being done in that respect, and what measures had been taken to amend the Criminal Code, the revision of which had been announced in Mozambique's twelfth periodic report to the Committee on the Elimination of Racial Discrimination (CERD/C/MOZ/12), with a view to explicitly criminalizing all racial discrimination, xenophobia and other forms of intolerance. A recent study conducted by the Human Rights League had revealed that trafficking in organs was a common practice in Mozambique. So-called witches removed the organs of living persons for the preparation of traditional medicines; and albinos were especially targeted for the healing and aphrodisiacal properties

attributed to their organs. The number of attacks committed, particularly against children, was reportedly rising. It would appear that efforts undertaken by the State party to combat that practice remained inadequate. He invited the delegation to provide further information on that issue, including the number of persons who had been prosecuted for organ trafficking.

9. **Mr. Kälin** noted that, according to the State party, there was no need for legislation prohibiting discrimination because article 35 of the Constitution enshrined the principle of equality and protected the rights of all citizens. However, several of the grounds for discrimination prohibited under articles 2 and 26 of the Covenant were not mentioned in article 35 of the Constitution, which prompted the question of whether a person who was a victim of discrimination on grounds of sexual orientation, for example, would be protected. In addition, article 71 of the Criminal Code provided that security measures could be applied against those who had “vices against nature”, an expression used during the colonial era which could be presumed to refer to homosexuality. How was that provision interpreted and had it already been applied in cases regarding relations between persons of the same sex? Lastly, he invited the delegation to state whether it was true that the authorities had refused, since 2008, to register the only national NGO that defended the rights of sexual minorities (LAMBDA). Considerable delays had been noted in the processing of asylum applications, apparently related to the mechanism’s complexity, and it would be helpful to know whether the State party recognized that the existing procedure needed to be revised and simplified and, in addition, whether it had planned to reconsider the numerous reservations it had made to the 1951 Convention relating to the Status of Refugees, which no longer seemed justified in light of its current practice.

10. **Mr. Salvioli** said that the State party had not indicated the number of investigations conducted into cases of extrajudicial execution and torture, and of persons tried or sentenced for such acts. Nor had it provided information on compensation to victims, on the 12 deaths of detainees in Mogincual prison or on the acts of torture committed in Machava prison in 2010. He therefore invited the delegation to reply to those questions, and also asked whether cases of lynching, which the State party had acknowledged in its report, had given rise to prosecutions and convictions. Further details would also be appreciated on the results of the national action plan to prevent and combat violence against women (2008–2012) and on the Act adopted in that area, which, according to NGOs, was rarely applied, and on complaints received on violence against women, inquiries conducted, sanctions imposed and compensation afforded to the victims, and the criminalization of marital rape, if provided for. According to information available to the Committee, there was a bill designed to protect elderly women accused of witchcraft, which had been approved by the Council of Ministers but was not on the Parliament’s agenda. Might the delegation indicate the measures taken to put an end to that form of harassment?

11. **Mr. Vardzelashvili** commended the State party for its efforts to improve prison conditions, including by building new prisons and applying alternative measures to detention, but asked why the implementation of those reforms was so slow. He would be grateful for the State party’s assurance that the Constitutional Council’s recent decision declaring unconstitutional several provisions that arbitrarily authorized the extension of pretrial detention would be upheld, as it appeared that decision had been criticized by members of the police force and judicial authorities. He asked whether the authorities had investigated why persons had been held in pretrial detention well beyond the authorized period of time, sometimes without charge, and whether the authors of those violations had been identified and punished. Would the delegation also indicate the time frame envisaged for the construction of new prisons, and whether prisoners could apply to the Ombudsman if their rights were violated? It would also be useful to have information on measures taken to remedy cases of arrest without warrant and of failure to bring a person before a judge within 48 hours and on the number of police officers who had been sentenced for such acts.

Given that impunity of human rights violations committed by police officers was sometimes justified by the difficulty of identifying the officers involved, it would be helpful to know whether the law enforcement agencies cooperated in that respect and whether police officers were required to wear an identity badge. As only a minority of Mozambicans were in possession of a birth certificate, might the delegation indicate how the age of a detainee who claimed not to have reached the age of criminal responsibility was determined? Lastly, further information would be appreciated on the Community Policing Councils.

12. **Mr. Shany** asked whether the State party has adopted a comprehensive strategy to combat the practice, which had been consistently reported for around 20 years already, of prisoners who had served their sentence having to pay a bribe to the prison guards in order to be released. Relevant statistics on the number of prosecutions and convictions for that practice would be appreciated.

13. **Mr. Bouzid** asked whether it was true that buildings belonging to the Ministry of the Interior were used as prisons. If that was the case, how many persons were held there and did the Government envisage ending that practice by placing the whole prison system under the authority of the Ministry of Justice?

14. **Mr. Flinterman**, noting that, once ratified by the State party, regional and international instruments, including the Covenant, had the same value as infra constitutional laws, asked whether that meant that a more recent law could prevail over the Covenant. He would also like to know whether the Constitutional Council, when interpreting the provisions of the Constitution, took into account international obligations under the Covenant, and whether Mozambique planned to ratify the first Optional Protocol, through which States recognized the competence of the Committee to receive communications from individuals, given that it was an excellent way of encouraging lawyers and magistrates to take due account of obligations under the Covenant and the rights it guaranteed.

*The meeting was suspended at 4.35 p.m. and resumed at 5.05 p.m.*

15. **The Chairperson** invited the delegation to reply to the questions put to it.

16. **Ms. Levi** (Mozambique) explained that the Constitution, which dated from the country's accession to independence in 1975, provided for all laws in force at the time of its adoption to remain applicable as long as they did not contravene its provisions, which was why certain laws from the colonial era were still applied. The courts did not base their decisions on international law because the law curriculum had for a long time focused on domestic law, which did not include international instruments as they did not need to be transposed in order to be applicable. Those instruments had since become an integral part of the curriculum, but many judges still had little knowledge of them. Any victim of a human rights violation could apply to the courts for redress. Unfortunately, most Mozambicans were not aware of their rights, and therefore did not exercise them. The National Human Rights Commission, established in 2012, was not yet fully operational owing to internal organizational problems which it was working to resolve with assistance from the Ministry of Justice. The case of the pupil with disabilities that had been raised by a Committee member had come before the courts, which had found that the school had acted wrongly, with the result that the student had been reinstated. If there were acts of discrimination, they were, above all, committed by foreigners, particularly South Africans and Chinese nationals, against Mozambicans. Severe punishments were administered against those found guilty, even including expulsion from the country. The current reform of the Criminal Code aimed to introduce alternative punishments to custodial sentences for minor offences. Although it was punishable by law, organ trafficking remained a problem, but it was not true that albinos were especially affected. LAMBDA was not recognized by the authorities, but that did not mean that sexual minorities were the target of discrimination or

violence. The inquiry into the deaths of two detainees at Mogincual prison was under way, and the police officers involved had been dismissed. Likewise, the officials involved in the Machava case had all been dismissed. Specific data on the number of persons concerned would follow. The practice of lynching persisted but the number of cases had fallen. Those acts rarely resulted in proceedings because the persons who could identify those responsible generally refused to cooperate with inquiries. Campaigns were carried out to raise awareness among the population of the fact that the only justice authority was the judiciary. There was a law against violence towards women, but victims of domestic violence rarely availed themselves of it because of the weight of tradition, which dictated that a woman should submit to her husband, even when he abused her. In addition, judges, who were mainly men, were not always willing to condemn that type of violence. A dramatic change in attitudes was needed in order for the law to be effectively applied. Marital rape was punished by law. The bill designed to protect elderly women accused of witchcraft had been presented to Parliament but it was unlikely that it would be considered during the current session.

17. The segregation of men and women was ensured in all the country's prisons. There was a detention centre for minors aged 16 to 18, but its inadequate capacity meant that some minors had to be placed in establishments holding older detainees. In addition, where young persons did not have identity papers, it was sometimes very difficult to determine whether they were minors. However, it would be ensured that minors and adults were systematically separated in the new establishments currently under construction. A new prison complex was due to open in two years' time and the construction of at least two others was planned. Detainees could file their complaints directly with the Ombudsman, but the Ombudsman could only bring proven cases of ill-treatment before the courts. Persons detained by the police were placed under the responsibility of the Ministry of the Interior, and those detained in prisons, under that of the Ministry of Justice. Ratification of the Optional Protocol to the Covenant was still under consideration.

18. **Mr. Salvioli** asked what measures were taken to facilitate inquiries into cases of lynching. The fact that judges, because they were men, could justify violence towards women was a cause for great concern and raised the question of training for judges and the selection criteria used. It would be useful to have information on the number of persons tried and convicted of marital rape. Since it appeared that the bill to protect elderly women accused of witchcraft would not be considered shortly, might the delegation indicate the measures taken in the meantime to protect such women?

19. **Ms. Majodina** requested further details on the National Human Rights Commission. According to certain sources, the procedure for appointing its members was not truly independent and priority was given to candidates from the governing party. She invited the delegation to comment on those reports and to indicate whether other sectors of society, including firms, civil society and universities, were also represented in the Commission, and whether the latter reported to the legislature or to the executive.

20. **Mr. Kälin** repeated his request for information on "vices against nature" under article 71 of the Criminal Code, and on the non-prohibition of discrimination on the grounds of sexual orientation. Why did the authorities refuse to recognize LAMBDA?

21. **Mr. Bouzid** asked whether it was true that offenders deemed to be dangerous were currently held in establishments that fell under the authority of the Ministry of the Interior with no possibility of contacting their families or a lawyer and, if that were the case, how many there were.

22. **Mr. Vardzelashvili** said he would like to know when the State party envisaged completion of the Criminal Code reform which aimed to introduce alternatives to custodial sentences for minor offences. According to certain NGOs, inquiries conducted into

violations committed by police officers lacked transparency and victims were not informed of their progress. Would the delegation indicate whether that was the case? The Commissioner of Police had recently declared in the press that the police did not answer to any judge, as its only authority was its internal regulations. The delegation was also invited to comment on that statement.

*The meeting rose at 6 p.m.*