

## FEATURE

# Forgotten or Embraced? A Critical Look at the Right to Health of Prisoners in Mozambique

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*Governments usually have a strong concern in the health of their country's citizens irrespective of age, gender, economic status, and so on. However, the same cannot be said of prisoners. They may be confined for years in overcrowded and 'dirty quarters with insufficient food allocations, unhygienic conditions as well as no clothing and lack of other amenities' (Sarkin 2008).*

It is no different in the case of prisoners in Mozambique, who are often forgotten when it comes to the provision of health care and recognition of the right to health (Lorizzo 2012). Yet the fact that their liberties are restricted obligates the government all the more to ensure their enjoyment of that right.

This article investigates the causes of the deplorable situation in Mozambican prisons and the reasons why access to health has been neglected, and goes on to make recommendations for improvement.

## The right to health

Article 10 of the International Convention on Civil and Political Rights (ICCPR) entreats states to provide equal health treatment and respect for persons with legally restricted liberties and to ensure their enjoyment of rights set out in international law. Furthermore, article 7 prohibits torture or cruel, inhuman or degrading treatment or punishment, while article 10 calls for better treatment of prisoners and respect for their human dignity. This is reiterated in article 10 of the Universal Declaration of Human Rights (UDHR); article 25(1) of the same calls for adequate and healthy living standards, including food and medical care, for prisoners.

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also provides for the rights mentioned above. In addition, article 12(1)-(2) recognises the maximum standard of mental and physical health attainable for all citizens. It calls for steps to improve environmental hygiene and prevent, control and treat endemic and epidemic diseases through access to medical services for citizens.

The General Assembly's Resolution 45/111 on the Basic Principles for the Treatment of Prisoners calls for respect of prisoners' dignity and their enjoyment of all rights set out in the International Bill of Rights as well as other treaties and protocols, excluding restrictions necessitated by their incarceration. Article 9 of the Basic Principles for

the Treatment of Prisoners seeks to give prisoners equality of health care with other citizens, stating that the detainment of prisoners should not be a reason for the inaccessibility of available health services.

In its preamble, the 2004 Constitution of Mozambique recalls that the aim of the country's independence is to realise citizens' fundamental rights. The Constitution reiterates the importance of fundamental human rights, stating in article 43 that they shall be interpreted and incorporated in accordance with the UDHR and African Charter. Article 89 of the Constitution obligates the state to promote and protect public health, and grants citizens the right to access the best medical and health care as the law provides. Citizens shall also benefit from the National Health System of Mozambique, which is accessible free of charge in terms of article 116. Furthermore, article 40(1) prohibits torture or cruel and inhuman treatment of any citizen.

## Conditions in Mozambique's prison system

The prison apparatus in Mozambique was renamed the National Penitentiary Service (SERNAP) as part of a shift from a retributive to a restorative system of justice. Mozambique currently has about 184 places of detention, six of which are located in Maputo (Institute for Criminal and Policy Research 2015). Eighty-one of these facilities are under the aegis of the Ministry of Justice, with the Ministry of Interior taking care of the rest of them. The 184 facilities have an official capacity of 8,188 inmates, but the *World Prison Brief* estimates that they house 15,976 of them – in other words, an excess of 195 per cent, with 3.9 per cent of inmates being female and 0.9 per cent, foreigners (Institute for Criminal and Policy Research 2015).

In the study that informed this article, the methodology which was used to assess prison conditions included visits to the headquarters of SERNAP, Central Hospital in Maputo, and the

Human Rights Commission, as well as interviews with a range of role-players. Among them were released prisoners, officials of the Ministry of Health, prison officials, civil society organisations, and representatives of the National AIDS Council and National Human Rights Commission. The interviews were conducted in April 2016 and the transcripts are available from the author.

## 1. Prison facilities

Article 12(2b) of the ICESCR provides for improvement in the environment of citizens regardless of their legal situation. However, a respondent from SERNAP and a former detainee said the prisons are very old buildings and remain in a poor condition despite several renovations. Facilities were said to lack basic amenities such as adequate water supplies, toilets, and beds and mattresses, with the result that some prisoners sleep on floors and in toilets and bathrooms.

The respondent from SERNAP said that 90 per cent of prisons were built before the 1950s under colonial rule and are out of keeping with modern trends. Lamenting the woeful health conditions,



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the former detainee said prisoners believe they have been neglected by the government due to their incarceration. Overcrowding was mentioned several times. Increases in the number of prisoners have not been met with new facilities, leading to overcrowding and aggravating the inadequacy of the amenities.

In a report to Parliament covering the period April 2015-March 2016, Mozambique's ombudsman also drew attention to prison overcrowding as well as



## It is the duty of public authorities to care for prisoners, who cannot, by reason of their deprived liberties, care for themselves

infrastructural problems such as leaking roofs, lack of ventilation, and toilets with no running water (Frey 2016).

In the *Kudla v Poland* case, the European Court of Human Rights ruled that states have a duty to ensure that prisoners are held in conditions compatible with respect for their human dignity and that the way in which sentences are executed should not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

### 2. Access to health care

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The Basic Principles for the Treatment of Prisoners call for a country's available health services to be accessible to people without discrimination on the grounds of their legal situation. The provision of health care is further enshrined in the ICCPR. However, interview respondents painted a gloomy picture on this front too.

The former inmate, as well as officials from SERNAP and the Ministry of Health, revealed there was only one small clinic and one nurse at Maputo Central Prison to attend to the overpopulation of inmates. The SERNAP official explained that SERNAP has provided small clinics with one nurse in a few of the major prisons in Maputo and that it was hoping to increase this provisioning.

According to the official, there is a memorandum of understanding (MOU) between the Ministry of Justice, the Ministry of Health and various civil society organisations (CSOs). The MOU aims to give ministries and CSOs access to prison facilities to enable them to play an active role in addressing reported increases in mental health challenges.

However, the respondent from the health ministry claimed that they are given hardly any access to prisons; as a result, they have little idea of what happens there and prisoners are deprived of their rights to health. A report by the US Department of State (2016) supports these claims, stating that NGOs continue to encounter difficulties in visiting detention facilities run by the Ministry of the Interior, particularly its facilities in police stations.

The former detainee gave an account of how he chanced upon other inmates who were seriously sick and found them lying on bare floors, where they received treatment from other inmates who had little to no medical knowledge. Drips had to be put in the mouths of the sick before they could drink water, indicating the low level of health access in prisons.

In this regard, in United States' case of *Estelle v Gamble*, where prisoners were intentionally denied medical care, the court ruled that since it is the duty of public authorities to care for prisoners, who cannot, by reason of their deprived liberties, care for themselves, deliberate indifference to the serious medical needs of prisoners constitutes unnecessary and unwarranted infliction of pain, which is prohibited by the American constitution.

### 3. Screening prisoners' health status

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In terms of article 9 of the Basic Principles for the Treatment of Prisoners, the health status of incoming prisoners should be checked before admission to control outbreaks of diseases such as tuberculosis, HIV/AIDS and hepatitis.

The respondent from SERNAP said prisoners are screened for any ailments to avoid these risks to health, but the former detainee denied this was so. Officials from the Ministry of Health and Human Rights Commission said they did not know much about the screening exercise. The respondent from the Human Rights Commission added that in her periodic visits she has seen many prisoners suffering from skin disease. In this vein, a report by Dr Crimilda Anly, the SERNAP National Director of Health Care, revealed that 51 prisoners died in the first quarter of 2016, most of them from HIV/AIDS and tuberculosis (AllAfrica 2016).

One major cause of the spread of diseases is overcrowding. A 2001 report by the Special Rapporteur on Prisons and Conditions of Detention in Africa, Dr Vera Chirwa, indicated that overcrowding was a key factor in the spread of disease and recommended the establishment of new prison facilities. However, Human Rights Watch (2017) points out that while the prison population keeps increasing, there is scant improvement in the number of detention facilities. The Office of the Attorney General of Mozambique noted in 2015 that problems with hygiene, food and medical assistance are aggravated by overcrowding, which was at an unprecedented level (US Department of State 2016).

#### 4. HIV/AIDS in prisons

The prevalence of HIV/AIDS in Mozambican prisons was also investigated. SERNAP informed media in April 2016 that its statistics showed an estimated 20 per cent of 15,000 prisoners were HIV-positive, compared with an estimated 11 per cent of the country's total population (US Department of State



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2016). In 2017, UNAIDS reported an increase of 24 per cent in the prevalence of HIV/AIDS in prisons, largely a result of unprotected sex (mostly anal and between males), rape, sex bartering, and 'prison marriages' (UNAIDS 2017).

The respondent from the National AIDS Council confirmed that they do not have direct access to the prisons, but rather deliver whatever they have to SERNAP; as such, they do not have accurate information about HIV/AIDS in prisons. The same respondent said the Council regularly provided prisoners with HIV/AIDS drugs, a claim disputed by the respondent from the National Human Rights Commission and the former detainee. As proof, the AIDS Council respondent showed the author medication, condoms and lubricants, but these had expired more than seven years ago.

In the *Salakhov and Another v Ukraine* case, the government neglected to provide medication to prisoners with HIV/AIDS. The court found violations of the rights of the prisoners on account of the inhuman and degrading treatment and inadequate medical care provided to them.

#### 5. Access to food

The UDHR in article 25(1) provides for, among other things, the right to food. This is further enshrined in article 11 of the ICESCR. By contrast, the majority of the respondents highlighted the poor state of nutrition in prisons. The former detainee said that they sometimes ate only once a day, with the food typically being unhygienic and causing diarrhoea. The respondent from the National Human Rights Institution stated that in her last visit to Maputo Central Prison, inmates were being poorly fed once a day. Similarly, the Attorney General expressed dissatisfaction with food and hygiene conditions in Mozambican prisons (US Department of State 2016).

Most of the respondents attributed the frequent illnesses to the quality of the food. In *Moisejevs v Latvia*, the court ruled that Moisejevs's rights had been violated by the meagre diet he received during his detention, finding that a slice of bread,



## Restriction of liberties does not extinguish human rights

an onion and a piece of grilled fish or a meatball was insufficient to meet the body's functional needs and was, as such, degrading treatment.

### Contributory factors to poor health conditions

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The right to health is not primarily about health status per se but the availability and accessibility of health care. In this sense, the right to equal health is best construed as a demand for equality of access or entitlement to health services (Daniels 1985).

The research found that Mozambican prisoners' poor health conditions and access to health services are part of a multifaceted situation. Overcrowding was often mentioned as a major cause of the spread of diseases. The majority of respondents said the government lacks the political will to address prisoners' problems and wider issues in the country's justice system. New prison facilities need to be built to accommodate prisoners and reduce overcrowding. The respondent from SERNAP, however, stated that the government recognises the problem and is negotiating with partners to provide new prison facilities at district level.

The criminal justice system also contributes to overcrowding in that delays in adjudicating cases leave numerous people in remand – in this regard, several respondents referred to difficulties in applying for bail. In addition, the lack of coordination between the Ministry of Health and SERNAP was evident. SERNAP has refused to give

access to CSOs who could provide health support to prisoners. The health ministry said that in spite of its MOU with SERNAP, it is given little access to prisons to provide health care.

The respondent from the National Human Rights Commission believed that the country's adoption of the Kampala Declaration on Prison Conditions in Africa came a result of pressure from the Centre for Human Rights at Eduardo Mondlane University, which suggests that CSOs would push for better health conditions if they were given access to prisons. He also believed that the periodic access given to the Human Rights Commission will help improve matters.

Most of the respondents bemoaned prison officers' lack of training in being able to meet prisoners' right to health. The officers lack know-how on first aid mechanisms and should give health professionals access to prisons to enable them to conduct regular screenings and attend to sick inmates. The unavailability of adequate clinics, health practitioners and medications is a major impediment to prisoners' access to health.

### Conclusion

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Prisoners in Mozambique comprise a small percentage of the national population but record a very high percentage of disease prevalence. While Mozambican citizens benefit from free access to health and enjoy rights enshrined in the Constitution, this is not the case for prisoners. It must be emphasised that restriction of their liberties does not extinguish their human rights but instead makes it all the more imperative for the government to provide for rights that they cannot access personally due to their incarceration. As Nelson Mandela put it, 'No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.'

This study recommends the following:

1. Overcrowding must be addressed by providing

more infrastructure to house prisoners. The government should also decentralise the prison system to district level to avoid putting pressure on the main prison facilities in Maputo.

2. The justice system should adopt alternative measures of punishment for minor crimes that do not warrant incarceration. This system must be accessible to citizens, and bail application procedures should be improved to accelerate processing of pretrial detainees and rid prisons of remand inmates.
3. SERNAP must improve the quality and amount of prison food rations. CSOs must be given greater access to prisons. SERNAP must also partner with CSOs to receive appropriate assistance in regard to food, infrastructure, medication and the servicing of other basic needs of prisoners.
4. Prison officers must be trained regularly on health and rights issues. They must also be given training in first aid to be able to attend to inmates when necessary. Other personnel must be trained on HIV/AIDs and communicable diseases so as to conduct regular prison visits and attend to inmates.
5. SERNAP must give better recognition to the MOU with the Ministry of Health and ensure that health professionals have regular access to prisons to provide services. This should include screening prisoners before admission into facilities, as well as regular screening of prisoners to avoid outbreaks of disease. The government must also provide more health facilities in prisons and increase the number of health practitioners available in prisons to attend to emergencies.

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