PRE-TRIAL DETENTION
Research and Litigation before the Mozambique Constitutional Council
Mozambique

27,000,000 country population (WB 2015)

19,137 prison population (SERNAP 2017)

36% pre-trial detention (SERNAP 2017)

380 prosecutors/judges

1 Judiciary and Judicial Training School in Maputo

1500 lawyers (Bar Ass. 2017)

20,000 police officers (PRM 2003)

No public statistics on arrested people

1 Police Academy (ACIPOL)
FROM GLOBAL TO NATIONAL

- OSISA campaign -2009
- High number of preventivos
  - 75% = 2003
- Problematic Legal framework
  - Right to arrest *fora flagrante delito*
  - *Incommunicado detention*
- Problematic practices
  - No monitoring
  - No respect of legal terms
  - Problematic conditions of detention
  - No shared responsibilities: Attorney Office/Judges/prisons
AUDIT & CASES FLOW MANAGEMENT
2013-2015
INTERNATIONAL LEVEL

- International Convention on the Elimination of All Forms of Racial Discrimination: 1983
- International Covenant on Civil and Political Rights: 1993
- Convention on the Elimination of all Forms of Discrimination against Women: 1997
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: 1999
- Optional Protocol to the Convention against Torture: 2014
Civil Law Country

- Penal Code (1886, 2014)
- Criminal Procedure Code (1932; last amended in 1993)
- Penitentiary Law (1936)
- Prison Strategy (65/2002)
- SERNAP (2013)
## Legal Terms – 308 CPP

<table>
<thead>
<tr>
<th></th>
<th>1º prazo</th>
<th>2º prazo</th>
<th>Tempo max.</th>
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<tbody>
<tr>
<td>P. Correcional (P.C.)</td>
<td>20 dias</td>
<td>3 meses</td>
<td>3 meses e 20 dias</td>
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<tr>
<td>Querela (Q.)</td>
<td>40 dias</td>
<td>4 meses</td>
<td>5 meses e 10 dias</td>
</tr>
<tr>
<td>Instrução Preliminar da PIC</td>
<td>90 dias</td>
<td>3 meses se P.C.</td>
<td>6 meses</td>
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<tr>
<td></td>
<td></td>
<td>4 meses se Q.</td>
<td>7 meses</td>
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Prison Strategy 65/2002

- Following the Kampala Declaration (1996)
- Brief and general document

**Principles:**
- Separation of prisoners
- Access to health
- Access to work for rehabilitation
- Cooperation with NGOs
In practice

- 36% people in pre-trial detention
- People with no process in prison
- People for Processo Sumário Crime in pre-trial detention
- Children in pre-trial detention
- Not respect legal terms
- Deplorable conditions of detention
ACHIEVEMENT
The role of the HRL

- Representing the CSOs
- Concerned on this issue
- Well prepared personnel
- Petition (20,000 signature)
Constitutional Council 4/CC/2013

- Unconstitutionality of paragraphs 1, 2 and 3 of Article 293 of the CPC, amended by Law No. 2/93 and Article 43 of the Organic Law of Prosecutors that provided that administrative authorities and prosecutors could order pre-trial detention. Respecting Article 64(2) CRM that provides that only the judiciary may order pre-trial detention.

- Unconstitutionality of paragraphs 2 of Article 291 CPC: providing preventive detention for the accused facing a charge on an offence punishable by a sentence of imprisonment. In respect of presumption of innocence as in the 2 of Article 59 CRM. So to order pre-trial detention it is necessary to assess whether the prosecution has concrete evidential foundation and whether there is a risk the accused will flee, interfere with the investigation or commit further crimes.
Unconstitutionality of Article 311 of the CPC provides for incommunicado detention of an accused person before the first interrogation. Respecting 4 of Article 63 CRM, which provides that the lawyer of an accused person may communicate with the accused at any time.

Unconstitutionality of paragraph 3 of Article 308 and paragraph 1 of Article 311 CPC, which permit indefinite remand detention. Respecting 1 of Article 61 CRM.
- Training
  - CFJJ
  - SERNAP
  - ACIPOL

- Shared responsibility

- Green Line – Attorney General Office
CONFLICTS
Statistics – historical

A bar chart showing the comparison of Preventivos and Condenados from 2000 to 2017.
Challenges

- Law VS Practice
- Monitoring detentions (no many criminal processes opened)
- Changing ‘punitive culture’
Way forward

- Focus on arrest and police custody
- Focus on training
- Reinforce existing mechanisms of monitoring
- Particular attention to juvenile justice