



Alternatives to imprisonment in Mozambique

The implementation of community service orders

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REFORMAR is a research, training and advocacy organisation working on criminal justice and human rights in Mozambique and in other Portuguese speaking African countries. Found in 2015, it has engaged in applied research, training and supporting advocacy by governmental, international and civil society organisations.

Executive summary

In December 2020 a revised Penal Code and new Criminal Procedure Code and Code on the Implementation of Penalties will enter into force in Mozambique. While substantial changes related to alternatives to imprisonment and specifically to community service will be introduced, this report assesses the implementation of community service orders (CSO) in Mozambique between 2015 and 2019. It examines its use by the courts and implementation by the Department for Corrections. The findings point to several implementation problems, such as its infrequent if not rare use by the courts as well as challenges in monitoring offenders by the Service for Alternatives to Imprisonment. Several systemic problems were found, such as the lack of management, procedural guidelines, and training; understaffing, and a serious lack of material and financial resources necessary for the effective implementation of CSO. Regardless of a new legal framework, it is submitted that valuable lessons need to be taken from the period under review. Based on the findings, the report concludes with recommendations to address the shortcomings.

Chapter 1 – Introduction

1.1 Background

The use of imprisonment in Africa originates from the colonial era. In pre-colonial Africa, imprisonment, as a form of punishment, was almost unknown.¹ Offenders were dealt with in the community, focusing on restitution and compensation to victims, rather than punishing the perpetrator.² This was also the case in Mozambique, where prisons were built, under Portuguese rule, since the end of 19th century.³ Prisons were used for Portuguese citizens convicted of serious crimes on the mainland and then exiled (*degredo*) to the colonies. It was only when *degredo* was abolished that prisons in the colonies were used for locals by the colonial administration.⁴

Prison overcrowding in Africa has been a persistent problem, especially post-independence, and regional initiatives to address this have seldom gone beyond rhetoric and verbal commitment.⁵ The excessive use of imprisonment by the courts, prison overcrowding and the awareness that imprisonment has a severely detrimental impact on offenders and their families, increased pressure to use alternatives to imprisonment, especially for less serious offences, such as theft and assaults.⁶ As Zvekic highlights:

The arguments for non-custodial sanctions are essentially the mirror image of the arguments against imprisonment. First, they are considered more appropriate for certain types of offences and offenders. Second, because they avoid ‘prisonisation’, they promote integration back into the community as well as rehabilitation, and are therefore more humane. Third, they are generally less costly than sanctions involving imprisonment. Fourth, by decreasing the prison population, they ease prison overcrowding and thus facilitate administration of prisons and the proper correctional treatment of those who remain in prison.⁷

The UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), lists, among others, the following sanctions as alternatives to imprisonment: verbal sanctions such as admonition, reprimand and warning; economic sanctions and monetary penalties, such as fines; confiscation or expropriation orders;

¹ Pete, S. (2008) A brief history of human rights in the prisons of Africa, In Sarkin, J. (ed), *Human Rights in African Prisons*. Pretoria: Human Sciences Research Council Press, p. 40.

² Pete (2008) pp. 41.

³ Rodrigues, L.F. (1963) *Contribuição para o estudo do sistema prisional no Ultramar*. Universidade Técnica de Lisboa. Instituto Superior de Ciências Sociais e Política Ultramarina, p. 18.

⁴ Rodrigues (1963) p. 21.

⁵ Kampala Declaration on Prison Conditions in Africa. Adopted at the Kampala Seminar on prison conditions in Africa, September 1996. Available at: <https://cdn.penalreform.org/wp-content/uploads/2013/06/rep-1996-kampala-declaration-en.pdf> Accessed 01 November 2019; Kadoma Declaration on Community Service Orders in Africa, Zimbabwe, 24-28 November 1997. Declaration of participants. Available at: https://cdn.penalreform.org/wp-content/uploads/2013/06/rep-1997-kadoma-declaration-en_0.pdf Accessed 01 November 2019; The Ouagadougou Declaration and Plan of Action on Accelerating Prisons’ and Penal Reforms in Africa, 2002, <https://www.achpr.org/legalinstruments/detail?id=42> Accessed 16 March 2020.

⁶ Muntingh, L. (2005) Alternative sentencing in South Africa: an update. In Maepa, T. (ed), *Beyond Retribution, Prospects for Restorative Justice in South Africa*. ISS Monograph Series, 111, pp.104-119.

⁷ Zvekic, U. (1997) International Trends in Non-Custodial Sanctions, In *Promoting Probation Internationally*. Publication No. 85, Rome: United Nations Interregional Crime and Justice Research Institute, p. 23.

suspended or deferred sentences; community service orders (CSO); house arrest and some combination of the measures listed above.⁸

There have been several initiatives to promote alternative sentencing in Africa, especially CSO. Alternative sentences have often been raised not only as a potential “cure” for prison overcrowding in Africa, but also for better reflecting traditional justice and punishment “within a framework of national interest and cultural integrity”.⁹

The 1996 Kampala Declaration on Prison Conditions in Africa pointed out that CSO and other non-custodial measures should, if possible, be preferred to imprisonment.¹⁰ In 1997, an international conference on community service was held in Zimbabwe, where community service was introduced, in 1992 with success. The Kadoma Declaration (1997) not surprisingly included the recommendation that overcrowding in Africa’s prisons could be tackled through the more widespread use of CSO, which was recognised as a measure “in conformity with African traditions”, “positive and cost-effective [...] to be preferred whenever possible to a sentence of imprisonment”.¹¹

Five years later a follow-up event in Burkina Faso produced the Ouagadougou Declaration on Accelerating Penal and Prisons’ Reform in Africa.¹² It calls for “increased use of proven effective alternatives, such as community service and exploring other sanctions such as partially or fully suspended sentence, probation and correctional supervision”. The plan also urged for imprisonment only to be imposed for the most serious offences and when no other sentence is appropriate.

However, while there have been successful examples on the use of CSO on the continent, as Zimbabwe for example, in many other countries, progress has been slow.¹³

1.2 Context

In 2017, Mozambique had a prison population of 18 185 prisoners, with an official capacity of 8 188, or 221% occupancy.¹⁴ Just less than 37% of sentenced prisoners serve sentences of up to one year.¹⁵ This makes them ideal candidates for a non-custodial sentence. Prison overcrowding undermines the state's ability to meet the minimum standards of humane detention with specific reference to food, accommodation, security and health care.¹⁶ Almost 80% of sentenced prisoners in the country serve sentences ranging from three months to eight years.¹⁷

⁸ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). GA Res. 45/110 of 14 December 1990, Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf> Accessed 01 November 2019.

⁹ Penal Reform International and Zimbabwe National Committee on Community Service (1997) *Community Service in Practice*. Available at: https://cdn.penalreform.org/wp-content/uploads/2013/06/man-1997-community-service-in-practice-en_0.pdf Accessed 05 November 2019.

¹⁰ The Kampala Declaration on Prison Conditions in Africa.

¹¹ The Kadoma Declaration on Community Service Orders in Africa.

¹² The Ouagadougou Declaration and Plan of Action on Accelerating Prisons’ and Penal Reforms in Africa.

¹³ Muntingh (2008) *Alternative Sentencing in Africa*, In Sarkin, J. (ed), *Human Rights in African Prisons*, Cape Town: Human Sciences Research Council Press, pp.178.

¹⁴ Ordem dos Advogados de Moçambique (2019) *Relatório sobre a situação dos Direitos Humanos em Moçambique 2017*, p. 27.

¹⁵ Ordem dos Advogados de Moçambique (2019) p. 27.

¹⁶ Ordem dos Advogados de Moçambique (2019) p. 27.

¹⁷ Ordem dos Advogados de Moçambique (2019) p. 27.

The impact of imprisonment, even for short periods, is also felt on the outside as was found in a study on the socio-economic impact of pre-trial detention in Maputo.¹⁸ Even though the study dealt with pre-trial detention, the impact on the families of sentenced prisoners will at least be similar:

The majority of detainees are of prime income-earning age and have some basic education. Their families are not wealthy and have incomes, which are highly likely to be reliant on the income and non-monetary support formerly generated by the pre-trial detainees. [...] The continued incarceration of the detainee, in many instances, more than halves the family income and places additional economic and social strain on the family, including the cost and burden of visiting the detainee over extended periods.¹⁹

Overcrowding and the socio-economic impact of imprisonment affect particularly children and the youth. As of December 2018, there were 2 934 children and juveniles (16-21 years old) imprisoned.²⁰ The majority of them are sentenced to short prison terms and for property crimes.²¹ Courts frequently impose custodial sentences rather than suspended prison terms or fines.²²

A new Penal Code was adopted in 2014 that enabled the use of alternatives to imprisonment. The Code set out three such options:

- socially useful educational measures (*medidas educativas socialmente úteis*),
- alternative measures (*medidas alternativas*), and
- alternative penalties (*penas alternativas*).²³

The law entered into force in 2015 and this report reflects on some of the implementation trends concerning CSO from 2015 to 2019.

A revised Penal Code, Criminal Procedure Code, and Code on the Implementation of Penalties were promulgated in December 2019 and in December 2020 they will enter into force. These reforms introduce substantial changes to alternative sentences to imprisonment. However, this reform package of laws will not be assessed in this report, as the objective is to discuss the implementation of CSO between 2015 and 2019.

1.3 Focus of the report

This report focuses on the implementation of CSO as an alternative punishment²⁴ for three reasons. Firstly, limited resources and time constraints necessitated a focus on CSO and not on all the possible alternatives provided for in law. Secondly, the analysis of the Supreme Court data showed that CSO was, between 2015 and 2019, the most applied alternative penalty to imprisonment. Thirdly, legislative reforms repealed many alternative sanctions, while CSO will remain one of the main alternatives to imprisonment.

¹⁸ Muntingh, L. and Redpath, J. (2016) *The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia*. Bellville: Community Law Centre, p. 68

¹⁹ Muntingh and Redpath (2016) p. 2.

²⁰ SERNAP Data, December 2018.

²¹ Trindade, J.C., Muntingh, L., do Amaral, A., Lorizzo, T. and Cruzio, B. (2018) *Crianças em Conflito com a Lei em Moçambique - Em Busca de uma Estratégia de Protecção*. Procuradoria-Geral da República p.78. Available at: <https://reformatar.co.mz/publicacoes/criancas-em-conflito-pdf.pdf> Accessed 21 January 2020.

²² Trindade, Muntingh, do Amaral, Lorizzo and Cruzio (2018) p.76.

²³ More about these alternatives will be said in the section on national legislative framework.

²⁴ CSO have been used by Community Courts. These courts, recognised by Law 4/1992 could punish using public critiques, fines and CSO up to 90 days of community work (Article 3).

Community service has been described as a “cardinal alternative to imprisonment”.²⁵ The discourse on alternative sentencing in Africa has been mainly focused on CSO, compared to a range of other alternative sentencing options, identified by the Tokyo rules.²⁶

The 2014 Penal Code provides that CSO should, when requirements are met, be used by a court as an alternative to imprisonment for offences punishable with a prison sentence of between two and eight years.²⁷ By way of comparison, the Brazilian legislation sets the upper limit at four years,²⁸ and the Portuguese Penal Code at two years.²⁹ Since the upper limit is eight years and could thus cover some rather serious offenses, CSO may be considered by some as too lenient an option. The legislature, however, established other criteria for the imposition of CSO, such as previous convictions and the rights of victims, while also placing restrictions on some violent crimes. Nonetheless, the legislation created an excellent opportunity to use CSO extensively to reduce prison overcrowding, given that the majority of sentenced prisoners are serving sentences of less than eight years.³⁰

1.4 Research questions

Prison population size is by large a function of government policy.³¹ The 2014 Penal Code and the introduction of CSO as an alternative sanction, reflects an important policy shift in government thinking towards less punitive and more restorative approaches to criminal justice, and an important opportunity to reduce the prison population and associated costs.

However, CSO has since its introduction not been the subject of research and important questions need to be asked and answered:

- How often is CSO used as a sanction by the courts?
- How is CSO being implemented and monitored?
- What are the challenges and realities in practice?
- What lessons can be learned from the period 2015 to 2019 about CSO?

1.5 Methodology

The availability and accessibility of information on alternative sentencing in Africa is often problematic.³² What follows is an overview of the legal provisions and system performance to date since the introduction of CSO. It serves as a base line and make recommendations for improvement.

²⁵ Ume, C. (2008) Alternatives to Imprisonment: Community Service Orders in Africa, In Saleh-Hanna, V. (ed) Colonial Systems of Control: Criminal Justice in Nigeria. Ottawa: University of Ottawa Press, p.385.

²⁶ Muntingh (2008) p.182.

²⁷ Article 89 Penal Code.

²⁸ Article 44 of the Brazilian Penal Code. Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm Accessed 14 January 2020.

²⁹ Article 58 of the Portuguese Penal Code. Available at: https://bdigital.ufp.pt/bitstream/10284/3321/3/PG_21910.pdf Accessed 14 January 2020.

³⁰ Ordem dos Advogados de Moçambique (2019) p. 27.

³¹ Lappi-Seppälä, T. (2000) ‘The Fall of the Finnish Prison Population’ *Journal of Scandinavian Studies in Criminology and Crime Prevention*, Vol 1, Issue 1, p. 28.

³² Muntingh (2008) p. 179.

In the collection of data, the following methods and sources were used:

- Desktop research examining legislative developments on CSO, the broader national context, regional literature on the topic, as well as lessons learned from other African countries;
- Available statistics from the Supreme Court of Mozambique, showing CSO imposed by judges
- Data from the National Correctional Service (SERNAP - *Serviço Nacional Penitenciário*,) showing CSO monitored by Service for Alternative Penalties to Imprisonment (SPAP - *Serviço de Penas alternativas a Prisão*,);
- Qualitative interviews with selected stakeholders.

The statistics analysed covered national data on CSO from 2015 to 2019, but noting that the data for 2019 was incomplete as well as earlier years for some provinces.

The following institutions participated in the research: two sections of the City Court of Maputo, three District Courts (KaLhamankulu, KaMaxaquene and KaMubukuana which are located in the city of Maputo and represent urban districts of the capital city) and SPAP, within SERNAP, in charge for the implementation of CSO. A total of seven interviews were conducted as listed in Table 1.

Table 1 Interviews conducted

Date	Institution	Interviewees
29 October 2019	Section 3 and 4 of the City Court of Maputo	2 Judges
08 November 2019	District Court KaLhamankulu	1 Judge
11 November 2019	District Court KaMaxaquene	1 Judge
12 November 2019	District Court KaMubukuana	1 Judge
13 November 2019	District Court KaMaxaquene	Court Registrar
14 November 2019	SPAP – SERNAP	2 senior officials from SPAP
04 December 2019	Private consultant	Private Consultant contracted for drafting the 2014 Penal Code

Chapter 2 – Legal framework

2.1 National legal framework

The 2014 Penal Code entered into force introducing three alternatives to imprisonment:

- alternative measures (*medidas alternativas*),
- socially useful educational measures (*medidas educativas socialmente úteis*) and
- alternatives penalties (*penas alternativas*).

The use of a particular alternative depends on the seriousness of the offence, the stage in the criminal justice process where it can be imposed (i.e. criminal instruction phase or sentencing), and the offender's eligibility for such a sanction.³³

2.1.1 Alternative measures

Alternative measures must be imposed for offences punishable with prison terms of between one and two years. These measures resort under the Public Prosecution, and are mediation facilitated by the prosecution and the conditional suspension of the prosecution. They are applied before the trial phase during the criminal instruction phase.³⁴ However, the law does not stipulate what should happen if the mediation fails and if these cases would then proceed to trial. The law fails to provide any alternatives to imprisonment to be applied by the trial judge for offences punishable with one to two years of imprisonment. This is a lacuna in the current legal framework.

2.1.2 Socially useful educational measures

Socially useful educational measures are the following:

- judicial rebuke at the trial;
- the reparation of the damages;
- community service for a period not exceeding 90 days;
- the deprivation, for a period not exceeding 90 days, of the exercise of the right whose use originated the offense; and
- a fine.³⁵

These educational measures are intended for less serious crimes and offenders considered to be less dangerous. They aim to replace imprisonment and are applied at sentencing. The legislature was, however, not specific about what constitutes offences of "little gravity" (*pequena gravidade*), but based on the timeframes set up for alternative measures and penalties, it can be assumed that educational measures are applicable for offences punishable by a prison sentence of less than one year.

2.1.3 Alternative penalties

Alternative penalties are:³⁶ 1) community service; 2) payment in cash or in kind to the victim or to the family members entitled to the same; 3) confiscation or expropriation of property and value; 4) fine and 5) temporary interdiction of rights.³⁷

³³ Article 102 Penal Code.

³⁴ Article 88(3) Penal Code. Alternative measures are approved by the Judge of Criminal Instruction (article 93(1) Penal Code).

³⁵ Article 85 Penal Code.

³⁶ Article 89(1) Penal Code.

³⁷ The temporary interdiction of rights consists of a real limitation of individual rights. Temporary interdiction of rights is a criminal sanction applicable regardless of applied administrative sanctions. Prohibitions are, among others: prohibition of public office, function or activity, as well as an elective mandate; suspension of authorization or authorization to drive motor and motor vehicles and bicycles; prohibition to frequent certain places.

Alternative penalties are compulsory for offences punishable by imprisonment of more than two years and up to a maximum of eight years. As in the case of educational measures, these are imposed at the sentencing phase.

Table 2 summarises the types of alternatives for different types of offences and the phase for their application:

Table 2 Alternatives to imprisonment in the 2014 Penal Code

Alternatives	Type of alternatives	Type of offenses	Application phase
Alternative measures	<ul style="list-style-type: none"> • suspension of the case • penal mediation. 	Compulsory and applied to offences punishable by a prison sentence of between one and two years.	Criminal instruction phase. It is under the authority of the prosecution and approved by a Judge of Criminal Instruction.
Socially useful educational measures	<ul style="list-style-type: none"> • judicial rebuke at the trial; • the reparation of damages caused; • community service for a period not exceeding 90 days; • the deprivation, for a period not exceeding 90 days, of the exercise of the right whose use originated the offense; • fine (A fine is set to be between 0,5% and 50% of the salary of the convicted person.) 	The legislation does not specify.	Sentencing phase
Alternative penalties	<ul style="list-style-type: none"> • community service; • payment in cash or in kind to the victim or to the family members entitled to the same; • confiscation or expropriation of property and value; • fine; (A fine is set to be between 0,5% and 50% of the salary of the convicted person.) • temporary interdiction of rights. 	Compulsory applied to offenses punishable by prison sentence between two and eight years.	By a judge at the sentencing phase, after suspending the sentence of imprisonment

2.2 About community service

2.2.1 What is community service?

Community service means work performed in the community or in a public or private entity pursuing public or communitarian interests.³⁸ While the law is clear that CSO can be done at public and private entities, it has to be noted that private companies, regardless of communitarian interest, still make a profit on the services or products they provide. Community service should be for a non-profit public benefit.

CSO can include the following placements:

- schools, orphanages, institutions for elderly and people with disabilities;
- construction and maintenance of public roads and public sanitation;
- supply and distribution of water, gas, electricity and other sources of energy;
- construction, conservation or maintenance of public or social interest infrastructures;
- general cleaning, conservation and maintenance of gardens, parks and other public or public interest spaces or infrastructures.³⁹

Along with these activities, other tasks can be performed taking into consideration the person's intellectual abilities, involving, for example, teaching, professional training, and consultancy work.⁴⁰

2.2.2 Who imposes CSO?

A CSO, as set out in Table 2, under alternative penalties, is imposed by a judge.⁴¹ After deciding that the convicted person will receive a term of imprisonment, the judge will suspend the implementation of the term of imprisonment on condition that the person performs CSO.⁴² The court will take into consideration the educational and professional abilities of the convicted person, as well as their personal circumstances (e.g. health). When imposing a CSO, the following information must be recorded:

- the name of the court that issued the order;
- the judge's name;
- the name of the offender
- the facts of the crime;
- the decision suspending the execution of the prison sentence;
- the duration of community service.⁴³

³⁸ Article 90 (1) Penal Code.

³⁹ Article 90 (3) Penal Code.

⁴⁰ Article 90 (2) Penal Code.

⁴¹ Article 93 (1) Penal Code.

⁴² Article 93 (2) Penal Code.

⁴³ Article 93 (3) Penal Code.

2.2.3 Who is eligible to CSO?

The Penal Code provides that CSO, when the requirements are met, must be used by the judge as an alternative to imprisonment for an offence punishable by a prison sentence between two and eight years.⁴⁴ The imposition of a CSO can be considered if the following requirements are met:

- the person is a first offender;
- the person has returned the property stolen (if applicable);
- the person has fully or partially repaired the damages caused to the victim or community.

The law does not provide any requirement related to the age of offenders. However, an offender must be at least 16 years old, which is the minimum age of criminal responsibility.

In case of the partial reparation, it is important that he/she has taken responsibility to continue repairing the damage within a fixed period and under fixed conditions.⁴⁵

People convicted of the following crime are excluded from consideration for CSO:

- murder and attempted murder;
- sexual offences;
- abduction of, or trafficking in persons;
- trafficking in drugs or psychotropic substances;
- terrorism, organized crime or criminal association;
- crimes committed with the use of firearms, violence or serious threats to persons;
- crimes committed against children, the disabled, the elderly or pregnant women;
- A car accident resulting in death, which is caused by speeding, or driving under the influence of alcohol, psychotropic or narcotic substances.⁴⁶

While most of the serious crimes attract long prison terms,⁴⁷ some offences listed above are punishable by prison sentences of up to eight years, such as sexual offences⁴⁸ or abduction of a child under the age of 12 years from his/her parents.⁴⁹ The legislature was therefore clear that the duration of the prescribed imprisonment is not the only criterion enabling the imposition of CSO and that certain offences, even if punishable by a shorter prison sentence, would still not qualify for CSO.

2.2.4 Who implements CSO?

SPAP is in charge for implementing CSO with the main duties being:

⁴⁴ Article 89 (2) Penal Code.

⁴⁵ Article 102 Penal Code.

⁴⁶ Article 103 Penal Code.

⁴⁷ For example, for premeditated murder the prescribed prison sentence is 16 to 20 years (article 155 Penal Code); Abduction - 20 to 24 years (article 199 Penal Code); Trafficking in persons - 16 to 20 years (article 198 Penal Code); Terrorism - 16 to 20 years (article 382 Penal Code).

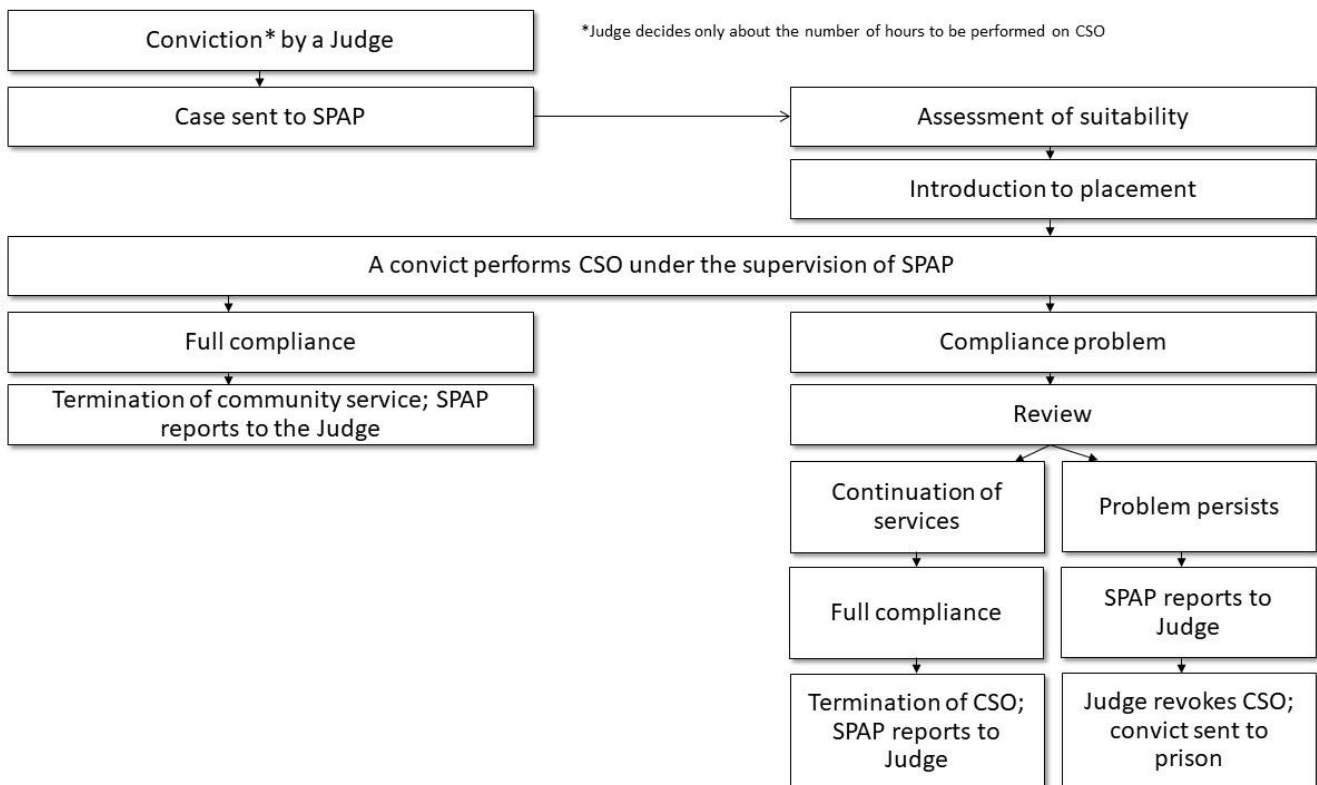
⁴⁸ Prison sentence of 2 to 8 years (Article 218 Penal Code).

⁴⁹ Prison sentence of 2 to 8 years (Article 210 Penal Code).

- the operations and management of the alternative sentencing system;
- the development and operationalisation of an Annual Monitoring and Evaluation Plan;
- coordination and cross-sectoral cooperation between the alternative sentencing system, the administration of justice and social support system;
- the implementation of monitoring and follow-up activities and the preparation of periodic reports on the implementation of CSO;
- that psycho-social interviews are conducted with sentenced persons and propose appropriate placement agencies that match the profile of the offender;
- that consultations are conducted with placement institutions and conditions for the implementation of the CSO is agreed upon;
- monitoring the offender at the placement institution and ensuring compliance with the order;
- investigating and making adjustments to the order if there are compliance issues;
- establishing monitoring and evaluation plans.⁵⁰

Figure 1 sets out the process of implementing and monitoring a CSO.

Figure 1 Process of implementation of CSO



⁵⁰ Article 15 Law Decree 63/2013 created the Service for Alternative Sentences (SPAP) under the responsibility of SERNAP.

If a compliance problem has been identified, the case will be reviewed by SPAP. If there is reason to believe that the offender would be able to comply with the order, he/she is returned to complete the service. If, however, this is not possible, the case is sent back to Court for decision-making. In case of any logistical problems, SPAP would need to communicate with the judge who would then decide about the case.

The law does not indicate the possibility for the court to amend the conditions and issue a different CSO.

2.2.5 Duration of community service

Community service can be performed on any day suitable to the placement and the offender performs community service without prejudice to his/her normal work activity.⁵¹

Community service is to be performed in sessions (*periodos de trabalho*) of no longer than four hours and there must be no less than 35 such sessions, thus totalling 140 hours as the minimum. The upper limit is 1120 service sessions at four hours each or 4480 hours.⁵² It is not compulsory to work four hours each time, but a judge will determine the distribution of hours. The distribution of the working periods takes into consideration the following:

- the circumstances surrounding the crime;
- the possible impact of the CSO, taking into account the personality of the person;
- the economic value of the work to be performed;
- the location of the placement where the CSO will be performed and the time spent to reach the venue;
- the consequences of CSO for the family of the person and potential consequences for the placement institution where CSO will be performed.

The commentary of the Penal Code points out that one day of community service should be limited to one “period” or 4 hours.⁵³ Consequently, a sentence of eight years could equal to a lengthy three years of every-day community service. This might undermine the restorative objective of CSO since research found that a short jail sentence is less punitive than a lengthy CSO.⁵⁴ As Nagin states, “the certainty of punishment is far more consistent and convincing than for the severity of punishment”.⁵⁵ It should also be noted that the minimum daily working time is not established by law, and it is up to the judge to set the minimum working time.

⁵¹ Article 91(1) Penal Code.

⁵² This is considerably higher than the maximum of 420 hours prescribed by the Zimbabwean legislation.

⁵³ Comment II of Article 92 in: de Sousa, E. (2015). *Código Penal Mocambicano anotado e comentado*. Maputo, Escolar Editora.

⁵⁴ Nagin, D. S. (2013) ‘Deterrence in the twenty-first century’ *Crime and Justice*, Vol. 42, No. 1, pp. 199-263; Friesen, L. (2012) ‘Certainty of punishment versus severity of punishment: An experimental investigation’ *Southern Economic Journal*, Vol. 79, No. 2, pp. 399-421.

⁵⁵ Nagin (2013) p. 248.

2.2.6 When can CSO be suspended?

The implementation of CSO can be suspended due to serious illness of the person and the submission of a medical certificate.⁵⁶

2.2.7 When can CSO be revoked?

The court can revoke the order whenever the convicted person:

- intentionally puts himself or herself in a position to be unable to work;
- refuses, without a just cause, to render the service;
- infringes the duties arising from the penalty or fails to perform the work;
- if he/she is convicted of another crime and thus demonstrates that the aim of CSO will not be achieved.⁵⁷

The repeal of a CSO has as consequence the imposition of the penalty of imprisonment.⁵⁸ The time spent performing CSO will be deducted from the duration of the initially prescribed prison sentence. As already mentioned, this is calculated in a way that each “period” of CSO performed constitutes one day of prison sentence.⁵⁹

Chapter 3 – Implementation of CSO in Mozambique

This section described the implementation of CSO based on data collected by the Supreme Court and SERNAP.

3.1. Imposition of CSO by courts

3.1.1. Statistics from Supreme Court

The data showed very low use of CSO. For example, in 2018 the Supreme Court data showed only 328 CSO being imposed. Inaccuracies in the data are noted. Some courts appeared not to use CSO (or any other alternative sanction) and this could be because they simply did not collect the data or did not submit the data to the Supreme Court.

There are also clear discrepancies between the Supreme Court and SERNAP (SPAP) data on the overall number of cases. Since all cases sentenced to CSO should be sent to SPAP, these figures should be consistent, but they are not. The Supreme Court data shows considerably lower numbers of CSO than SERNAP data. For example, 2018 Supreme Court data shows 328 CSO compared to 609 CSO recorded by

⁵⁶ Article 94 Penal Code.

⁵⁷ Article 95 (1) Penal Code.

⁵⁸ Article 95 (2-3) Penal Code.

⁵⁹ Article 96 Penal Code.

SERNAP (See section 3.2.1.) The total number of CSO for the period 2015-2018 was 729 according to Supreme Court data and 1 324 according to SERNAP data.

If cases are considered for CSO, but then not imposed and sentences to imprisonment, that data would not be recorded by courts, but by SERNAP under number of prisoners.

3.1.2. Interviews with Judges

Due to the limited resources and time constrains, a decision was made to focus the research on Maputo City. For logistical reasons, only in-land district courts were selected: City Court of Maputo, and district courts of KaLhamankulu, KaMaxaquene and KaMubukuana. The intention was to assess the extent to which CSO are imposed at these courts and the challenges experienced. Five judges from the four courts were interviewed.

None of the judges interviewed had received legal or practical training on non-custodial sanctions. The only training they received was the general training at the Legal and Judicial Training Centre (*Centro de Formação Jurídica e Judiciária*, CFJJ), which does not cover non-custodial sanctions. It is important to note that UNDP is working with CFJJ to introduce this topic into the curriculum.

In the district courts of KaLhamankulu, KaMaxaquene and KaMubukuana, judges confirmed that they are applying CSO. At the KaMubukuana Court, the judge interviewed said she imposed 14 CSO in the preceding twelve months. The judge at KaMaxaquene said she had imposed 19 CSO since 2017. The judge at KaLhamankulu did not indicate a number. The sentence jurisdiction of the District Courts is eight years, implying that if other requirements are met, a potentially large number of cases would qualify for CSO. Based on interview data it is estimated that a District Court would deal with some 700 cases in a year and less than 20 CSO per judge then seems very low and worthy of further investigation.

From the Maputo City Court, it was reported that none of the two judges interviewed had imposed a CSO in the preceding two years. There was one case where the complainant had requested the judge to impose a CSO. Asked about the reasons for not using CSO, they replied that they have difficulties in placing offenders for community service. At face value it then appears that there is some misinterpretation of the law and distribution of duties. It is not the task of the court to find suitable placements and monitor offenders, but rather the responsibility of SERNAP (SPAP).

The judges from KaMaxaquene and KaMubukuana confirmed that they considered imposing CSO for all the offences provided for in law. The judge from KaLhamankulu remarked that most of the time she had imposed CSO for domestic violence cases. The reason for this, in the respondent's words, was the fact that unlike with domestic violence cases, other offenders often do not have a fixed address making monitoring difficult.

Tracing offenders is a common issue and not restricted to KaLhamankulu, but it is not really the responsibility of the courts as that falls with SPAP. The courts should rather be concerned with the facts at hand and whether the individual meets the requirement for CSO and if there is a reasonable prospect that he or she will comply with the order.

At the three courts, when considering the imposition of a CSO, the judges took into account the personal circumstances of the offender as well as the facts of the crime itself. If the offender was unemployed, the number of community service hours per day is usually higher. If the offender is employed, he or she can get to work as little as one hour per day, but spread over a longer period.

The judges noted many positive aspects alternative sentencing and particularly CSO bring. They reported that reoffending amongst servers who complied with the order was low, but did not present any data to corroborate this. They also noted that CSO reduces the prison population and bring offenders closer to the community with higher reintegration potential. It then seems that they are *au fait* with the theory behind non-custodial sentencing, but there is little evidence that they embrace it and make it truly part of the overall sentencing regimen and practice.

The main problem highlighted by respondents was the enforcement of CSO. In cases of non-compliance, tracing offenders has been particularly hard. However, it is emphasised that these are implementation issues for SPAP and should not influence judges' decisions to impose CSO or not.

The judges from KaLhamankulu, KaMaxaquene and KaMubukuana were satisfied at the cooperation with SPAP as there is a SPAP officer assigned to each provincial prison to whom judges can send offenders to, making collaboration easier and more efficient. However, one of the judges at the Maputo City court did not know about the existence of SPAP, pointing to a lack of knowledge about the law and alternative sentencing. If this is a more common situation it may explain why some judges simply do not use alternative sentencing at all.

3.2 Implementation of CSO by SPAP

3.2.1 Statistics on the CSO implemented by SPAP

This section analyses statistical data from SERNAP on CSO from 2015 to 2019. The full data set for 2019 not available at the time of writing. There are also notable gaps in the data as different provinces do not collect the same data.

Number of cases per province from 2015 to 2019

The number of cases per province as well as percentages per province per year is shown in Table 3, indicating that the highest number of cases came from Inhambane province (312 or 18.6% of the total). The lowest number of cases came from Cabo Delgado. Five provinces make up 72.5% of the total case load, being Tete, Manica, Sofala, Inhambane and Gaza. From 2016 to 2018 there was a steady increase in cases which is encouraging. Maputo City and Maputo province show surprisingly low numbers of cases, given that all the main justice institutions, like Government Ministries, Parliament and the Supreme Court, are located there, giving them a logistical advantage in receiving information (on legislative changes for example).

Table 3 CSO cases per province

Province	2015	%	2016	%	2017	%	2018	%	2019	%	Total	%
Cabo Delgado	0	0,0	0	0,0	0	0,0	8	1,3	2	0,6	10	0,6
Nampula	0	0,0	0	0,0	0	0,0	89	14,6	46	13,1	135	8,1
Niassa	0	0,0	0	0,0	9	2,1	59	9,7	4	1,1	72	4,3

Province	2015	%	2016	%	2017	%	2018	%	2019	%	Total	%
Zambezia	0	0,0	7	2,6	28	6,5	64	10,5	11	3,1	110	6,6
Tete	5	23,8	48	18,0	44	10,3	52	8,5	18	5,1	167	10,0
Manica	0	0,0	61	22,9	80	18,7	98	16,1	48	13,6	287	17,1
Sofala	6	28,6	90	33,8	67	15,7	40	6,6	26	7,4	229	13,7
Inhambane	5	23,8	41	15,4	110	25,7	87	14,3	69	19,6	312	18,6
Gaza	5	23,8	17	6,4	76	17,8	72	11,8	50	14,2	220	13,1
Maputo Provincial	0	0,0	1	0,4	14	3,3	4	0,7	46	13,1	65	3,9
Maputo Cidade	0	0,0	1	0,4	0	0,0	36	5,9	32	9,1	69	4,1
Total	21		266		428		609		352		1676	

Type of work performed

Table 4 shows the types of work performed. Almost 90% is cleaning work, followed by a very small percentage of agricultural and construction work. While we do not know the profile of the offenders and their personal and professional skills and competences, the impression is that the scope of work available for CSO is not being used in a way that maximises its potential.

As indicated earlier, the law proposes different types of work that could benefit a community and the country at large, such as construction, conservation and maintenance of public goods and infrastructure, work in schools, orphanages, institutions for elderly or people with disabilities. However, we rarely see this type of work having been performed in the last five years. SPAP would need to diversify the placement institutions and the type of work performed on CSO.

Table 4 Type of work performed

Category	N	%
Cleaning	1470	89.6
Construction	46	2.8
Teaching	12	0.7
Administrative Work	21	1.3
Agricultural Works	67	4.1
Kitchen work	6	0.4
Other handicrafts	5	0.3
Health care	2	0.1
Social assistance	1	0.1
Security	0	0.0
Inspection	10	0.6
Total	1640	100.0

Gender profile

Table 5 shows the provincial gender profile of cases. Only three provinces contributed more than 2.5% female cases, being Sofala, Inhambane and Gaza. Overall, 15.7% of CSO were imposed on female offenders,

creating the impression that few women are considered for CSO. However, we should note that the female prisoners represent around 3% of the total prison population.

Table 5 Gender profile of CSO

PROVINCE	Male	Female	Total	Male %	Female %
Cabo Delgado	6	4	10	0,4	0,2
Nampula	96	39	135	5,7	2,3
Niassa	69	1	70	4,1	0,1
Zambezia	95	15	110	5,7	0,9
Tete	140	27	167	8,4	1,6
Manica	267	20	287	16,0	1,2
Sofala	187	42	229	11,2	2,5
Inhambane	264	48	312	15,8	2,9
Gaza	171	47	218	10,2	2,8
Maputo Provincial	52	13	65	3,1	0,8
Maputo Cidade	63	6	69	3,8	0,4
Total	1410	262	1672	84,3	15,7

Age profile per province

Most people who received CSO appear to be between the ages of 27 years and 32 years as indicated in Table 6 below. The youngest person was 15 years and the oldest 88 years. As we can see from the table, three provinces appear to have applied CSO on 15-year-old offenders, which is problematic given that the age of criminal responsibility is set at 16 years.⁶⁰ This finding needs further investigation.

Table 6 Age profile of offenders

PROVINCE	AVERAGE	MEDIAN	MAXIMUM	MIN	N
Cabo Delgado	32,8	26,5	65,0	19,0	10
Nampula	27,4	25,0	65,0	15,0	135
Niassa	31,5	29,0	88,0	17,0	72
Zambezia	29,3	28,0	64,0	-	110
Tete	26,3	24,0	70,0	15,0	167
Manica	29,4	28,0	64,0	15,0	287
Sofala	29,6	28,0	66,0	-	229
Inhambane	31,1	28,0	81,0	-	312
Gaza	31,6	30,0	86,0	16,0	220
Maputo Provincial	28,2	27,0	53,0	16,0	65
Maputo Cidade	30,4	28,0	54,0	16,0	69

Number of hours of community service per gender

⁶⁰ Article 46 Penal Code.

Table 7 below shows the number of hours of community service imposed according to gender. It is notable that both the average and median for males are substantially higher than for females. This is in all likelihood a function of the crimes they were charged with. The maximum number of hours imposed for a male was 11 520 and the offence was homicide. Two problems are evident from this. Firstly, the imposed number of hours exceeds the limit of 4 480 hours established by law, and secondly, that the crime of homicide was even considered for CSO is contrary to the law. The maximum number of hours imposed for females was 5 760, which again goes above the prescribed maximum, and there were three cases involving three different crimes being theft, fraud and arson.

Table 7 Hours of CSO per gender

Gender	Average	Median	Min	Max
Men	532	240	-	11 520
Women	367	150	12	5760

Number of hours of community service per province

Table 8 presents the average and median number of hours of community service imposed per province, as well as the minimum and maximum values. The data was, however, not available for Cabo Delgado and Zambezia. As can be seen, there is significant variation between the provinces in respect of the averages and medians. It will be shown later that the overwhelming majority of cases are for three crimes, indicating that courts impose vastly varying punishment for similar crimes.

Table 8 Hours of CSO per province

Province	Average	Median	Min	Max	N
Cabo Delgado					10
Nampula	504	360	60	2800	135
Niassa	290	240	36	980	72
Zambezia					110
Tete	1273	360	28	4480	167
Manica	333	240	50	4320	287
Sofala	374	145	35	5760	229
Inhambane	580	240	30	11520	312
Gaza	196	120	12	2920	220
Maputo Provincial	461	240	50	1440	65
Maputo Cidade	712	600		4320	69
AVERAGE	525	283			
MEDIAN	461	240			

Offence by gender

Table 9 shows the offence profile according to gender. The majority of both males and females were charged with three offences, being theft, domestic violence and common assault. In Table 9 the offence

categories are presented in English and Portuguese. The English version is the unofficial translation by the authors.

Table 9 Offence profile

Offence	Male	Female	Total	Male	Female
Theft [Furto]	373	34	407	28,7	13,6
Domestic violence [Violencia Domestica]	296	89	385	22,8	35,6
Common assault [Ofencas Corporais]	195	74	269	15,0	29,6
Robbery [Roubo]	145	6	151	11,1	2,4
Illegal exploration of mineral resources [Exploração ilegal de recursos minerais]	65		65	5,0	
Damage to property [Dano à propriedade]	29	1	30	2,2	0,4
Abuse of trust [Abuso de confiança]	26	3	29	2,0	1,2
Swindling [Fraude]	23	6	28	1,8	2,4
Use and sale of drugs [Consumo e venda de estupefacientes]	16	2	18	1,2	0,8
Poaching game [Caça Proibida]	16		16	1,2	
Threats [Ameaças]	11	3	14	0,8	1,2
House invasion or occupation [Introdução em casa alheia]	10	3	13	0,8	1,2
Falsification [Falsificação]	8	4	12	0,6	1,6
Gambling [Jogos]	2	8	10	0,2	3,2
Arson [Fogo Posto]	7	2	9	0,5	0,8
Disobedience [Desobediência]	7	1	8	0,5	0,4
Corruption [Corrupção]	5	2	7	0,4	0,8
Homicide [Homicidio Simples/Qualificado]	7		7	0,5	
Forbidden weapons [Armas Proibidas]	6		6	0,5	
Injury [Injuria]	4	2	6	0,3	0,8
Rape [Violação]	6		6	0,5	
Stealing of cars, parts of cars, accessories and other objects [Subtração de Veículos, Peças, Acessorios e outros objectos]	6		6	0,5	
Violation of public decency [Ultraje ao Pudor]	4		4	0,3	
Disturbance of public peace [Ordem e Tranquilidade Públicas]	3		3	0,2	
Illegal driving [Condução Ilegal]	3		3	0,2	
Defamation [Difamação]		3	3		1,2
Rape of a child [Violação de menores]	3		3	0,2	
Drug trafficking [Trafico de Drogas]	3		3	0,2	
Abortion [Aborto]	3		3	0,2	
Illegal imprisonment [Cárcere Privado]	2		2	0,2	
Illegal use of uniform [Uso de Traje ilegal]	2		2	0,2	
Possession, transport and trafficking of human organs [Posse, transporte e trafico de órgãos humanos]	2		2	0,2	
Child abandonment [Abandono de menor]		2	2		0,8
Abuse of position or function [Abuso de Cargo ou função]	2		2	0,2	
Abduction [Rapto]	1		1	0,1	
Instigation [Instigação]		1	1		0,4
Electoral fraud [Illicitação Eleitoral]	1		1	0,1	
Culpable homicide [Homicidio Involuntario]	1		1	0,1	
Illegal imprisonment [Prisão Ilegal]	1		1	0,1	

Offence	Male	Female	Total	Male	Female
Image publishing [Publicação de Imagem]		1	1		0,4
Possession of drugs [Porte de Estupefaciente]	1		1	0,1	
Sexual assault [Atentado ao pudor]	1		1	0,1	
Discrimination [Discriminação]		1	1		0,4
Sale or display of poisonous or abortion inducing substances [Venda ou exposição de substancias venenosas ou abortivas]	1		1	0,1	
Burial in violation of burial laws [Enterramento com violação das leis sobre inumações]		1	1		0,4
Breaking the law [Violação de leis]		1	1		0,4
Public indecency [Prática de actos sexuais]	1		1	0,1	
Late payment of pension [Atraso no pagamento de Pensão]	1		1	0,1	
Unlawful use of electricity [Pratica ilícita de electricidade]	1		1	0,1	
Harassment [Ligações clandestinas]	1		1	0,1	
TOTAL	1301	250	1551		

As we can see from Table 9, the data shows a wide range of offences. However, some of these offences are problematic. While the law clearly states that CSO cannot be imposed for the crime of homicide, the table above shows seven such cases. There are also examples of crimes against children and sexual offences which should not have been considered for CSO as they are excluded by law.

Average number of hours imposed for theft, common assault and domestic violence per province

Table 10 below shows the distribution of the average number of hours imposed for the three most common crimes, being theft, common assault and domestic violence. In Nampula there were 32 cases that received on average 462 hours for the crime of theft. Inhambane had the highest number of theft cases at 101, but it also on average imposed the stiffest punishment at 561 hours. Gaza had 35 theft cases and offenders received the lowest number of hours at 239 on average. In the case of domestic violence, the highest number of hours imposed was 1273 in Tete (N=25) and the lowest was 174 hours in Gaza (N= 41). It seems that for these offences, vastly different punishments are imposed, which would raise questions about fairness and proportionality. However, we also have to consider that cases of theft, domestic violence and assault can be of different gravity and therefore attract different sentences.

Table 10 Number of hours imposed for the most common crimes

Province	Theft		Domestic Violence		Common assault	
	N	Average hrs	N	Average hrs	N	Average hrs
Cabo Delgado						
Nampula	32	462	41	379	24	552
Niassa			6	533	2	560
Zambezia			16		16	
Tete	36	306	25	1273	28	2546
Manica	92	339	34	425	50	411
Sofala	80	281	14	581	1	324
Inhambane	101	561	67	317	16	316
Gaza	35	239	41	174	2	380

Maputo Provincial	2	240	4	360	1	240
Maputo City	5	888	12	1152	1	

Compliance rate and number of hours

Table 11 shows the compliance categories for the total sample. Some 10% are still busy with their CSO. Just more than 17% have absconded and thus failed to comply with the order, and almost 72% completed their service successfully.

Table 11 Compliance rate

Category	N	%
Still busy	180	10,8
Absconded	293	17,5
Completed	1196	71,5
Deceased	2	0,1
Pardoned	1	0,1
Total	1672	100,0

The above raises the question whether there is a link between the number of hours imposed and the completion rate. In other words, is there a limit to how many hours should be imposed to maximise the completion rate? Table 12 presents the average and median number of hours imposed for the three categories. Those that are still busy can be excluded for now. Noteworthy is that the average for absconders was 881 hours compared to 396 for those who completed successfully. Similarly, the medians were respectively 360 and 240 hours. This appears to indicate that excessively long hours imposed become a reason to abscond. Courts should take note of this and impose tariffs to encourage compliance.

Table 12 Number of hours imposed

Category	Average	Median	Min	Max
Still busy	613	360	36	11520
Absconded	881	360		8640
Complied	396	240	0	5760

Table 13 shows the outcome of the orders imposed according to four categories of hours imposed, i.e. 1 to 1000 hours; 1001 to 1999 hours etc. Again, it shows that imposing less than 1000 hours has a higher compliance rate.

Table 13 Outcome of the orders based on the hours imposed

	1-1000	1001-1999	2000-3999	4000+
Busy	9,4	21,2	23,5	2,0
Abscond	15,3	42,3	32,4	44,9
Completed	75,3	36,5	44,1	53,1

If people who are still busy with their CSO are excluded, the profile is even clearer, as shown below in Table 14. It appears that when more than 1000 hours are imposed between 42% and 54% of people abscond. Similarly, for those who received less than 1000 hours, the compliance rate was 83% and less than 17% absconded. The tariff imposed can also be a proxy indicator for the crime committed (i.e. seriousness) and personal circumstances of the offender with more hours imposed for more serious offences and individuals with higher risk profiles (i.e. previous offences).

Table 14 Outcome of the orders based on the hours imposed (without people currently busy)

	1-1000 hrs	1001-1999 hrs	2000-3999 hrs	4000+ hrs
Abscond	16,9	53,7	42,3	45,8
Completed	83,1	46,3	57,7	54,2

Compliance rate per province

The overall abscondment rate is 17.5%, with Manica Province performing best with only 3.1% of people absconding. The shaded blocks indicate province above the national rate. On the other end of the spectrum is Maputo City, where nearly 28% of cases absconded, followed closely by Maputo Province at nearly 25%. This finding, together with the low level of imposition of CSO in these two provinces should come as a warning sign for authorities and an indication that initiatives should be taken to address these unfavourable rates.

Table 15 Compliance rate per province

Province	Abscond	Comply	Total	Abscond rate
Cabo Delgado	0	10	10	0,0
Nampula	29	86	135	21,5
Niassa	8	63	72	11,1
Zambezia	16	79	110	14,5
Tete	31	136	167	18,6
Manica	9	213	287	3,1
Sofala	50	166	229	21,8
Inhambane	66	196	312	21,2
Gaza	49	168	220	22,3
Maputo Provincia	16	34	65	24,6
Maputo Cidade	19	45	69	27,5
TOTAL	293	1196	1676	17,5

What is the profile of absconders compared to those who completed?

The profiles of those who have completed CSO successfully compared to those who have absconded show slight differences.

Absconders tend to be slightly younger with an average age of 27 years and a median age of 25 compare to the ones complying at an average age of 30 years and a median age of 28 years. Absconders are also more likely to be male as males make up 84.3% of the total group, but 92% of absconders are male.

Persons charged with theft and robbery also seem to be slightly more likely to abscond: 26% of the total charged with theft and 32% of absconders charged with theft; 10% of total charged with robbery and 17% of absconders charged with robbery. It is noteworthy that 25% of the total were charged with domestic violence, but only 17% of absconders were charged with domestic violence.

The type of service being performed does not appear to have a noticeable impact since 90% of the total were given cleaning duties. The most noticeable difference is the number of hours imposed, with the total average being 505 hours and median 240 hours whilst the absconders' hours were 881 on average and the median 360 hours.

In short, younger males charged with theft or robbery and who received longer hours tend to have a higher risk of absconding.

3.2.2. Qualitative data on the implementation of CSO

Internal organisation

Much of requested information about the internal organisation of SPAP was not available either for security reasons, or due to the lack of official permission to share the information, or because some data is simply not collected. The following is unknown:

- the total number of SPAP offices in the country,
- overall number of SPAP employees,
- number of SPAP officers in charge for monitoring the offenders,
- the ratio between offenders and SPAP officers,
- the budget of SPAP.

While the exact numbers are unknown, there was a clear indication that SPAP doesn't have enough human and material resources to efficiently perform its duties and implement the necessary activities. In practice, the heads of prisons often assign prison officials to assist or take over some of the daily duties related to the supervision of CSO. Therefore, the number of personnel working for SPAP is fluid and changing daily.

There are SPAP offices in all provinces, but not in all districts. Provincial offices are located at the provincial prisons and are responsible for the placement and supervision of cases in districts where there is no SPAP office.

The coordination of activities and cooperation between national, provincial and local offices is limited. Reports are submitted quarterly, bi-annually and annually. Due to a lack of resources, the national office has not visited any of the provincial offices in the past five years. Provincial meetings were arranged in

Maputo province (in the south), but not in other provinces.⁶¹ This was a result of logistical reasons and the geographical proximity to the city of Maputo where the national SPAP office is located.

Training opportunities were also scarce as only one respondent from SPAP received one session of training on alternatives to imprisonment in 2012. At the time of data collection, there were no on-going training opportunities. There were regional workshops (in the North and South) organised for judges, prosecutors and SERNAP in 2014, 2015 and 2016, but for the past three years there were no capacity building opportunities.

Implementation practices and challenges

The first issue in the implementation of CSO is that there is no strategic plan, nor any specific guidelines set up for the efficient management of cases. It was indicated that currently SERNAP is in the process of drafting its strategic plan, but SPAP was not included in the discussions. As primary implementing agent, the exclusion of SPAP seems odd.

Resources are not evenly distributed between the offices, with some being inadequate. This has a significant impact on the effective implementation and monitoring of CSO. Monitoring is specifically challenging at offices where no resources were allocated to the transportation of officials. This lies at the heart of the monitoring problem.

Training of SPAP personnel was raised as one of the biggest gaps, affecting the work of the unit. Being part of SERNAP, most of the officers had undergone SERNAP training, which was characterised as paramilitary in nature. Many of the officers assigned to SPAP were prison guards and their understanding of and approach to punishment is most likely different from a restorative justice perspective.

Supervision of offenders is done through routine visits, but, as indicated by one respondent, only when the placement institution is near SPAP office. If further afield, it is done through telephone calls. There are not enough resources for transportation costs, and often not even for regular telephone calls. Due to the lack of resources the supervision of CSO is not done in a consistent and rigorous manner.

Nationally SPAP requires performance reports from regional offices CSO. However, there is no standardised reporting system, and usually the only requested information is whether or not the supervision is being done. As pointed out by one respondent, much of the information is shared through “Whatsapp” rather than standardised and formal reporting. SPAP reports to the Head of SERNAP, but these reports are not publicly available.

SPAP should keep a case file on each offender and monitor compliance with the CSO. However, there is no consistency in record keeping. In some provinces records are not kept as required due to limited personnel and lack of skills due to inadequate training.

The office for monitoring and evaluation within SPAP is focusing on supervision of offenders and evaluation of their work performance once community service is completed. However, internal evaluations of SPAP activities, procedures and processes in place have not been done. Monitoring of local SPAP offices could be used to improve internal processes and increase efficiency.

⁶¹ The last meeting was held on 14 December 2019 between the central office of SPAP and the Maputo provincial personnel. The research team participated in the meeting and gathered valuable insights.

The cost of community service is not known as there has been no official calculation or estimate of this. It would, however, be important to explore this in order to compare the cost of CSO to imprisonment.⁶²

Cooperation between stakeholders

Cooperation mechanisms between different stakeholders in the system are weak. It was highlighted that there was often confusion about roles, responsibilities and steps to be taken in the implementation of CSO. The legal framework clearly states that the decision on the type of work and placement for community service are to be made by SPAP.⁶³ However, one respondent indicated that judges are often the ones who make this decision. This finding was also confirmed in the interviews with judges. In addition, when offenders are sentenced to CSO, one respondent explained, judges sometimes send them to prison or home until SPAP can accommodate the case. With regard to absconders, it is unclear whose responsibility it is to trace them - SPAP, police or justice officials.

While SPAP is in contact with community leaders, the respondents could not specify the nature of community involvement in the implementation of CSO. There are no formal partnerships or cooperation structures with civil society organisations or the private sector.

Chapter 4 – Conclusion and recommendations

Despite an increased acknowledgment of the importance of alternative sentencing and recommendations for their wider use, the reality is that these recommendations are often not implemented.

The findings of the research on CSO implementation between 2015 and 2019 indicate various system failures and some of the problems are:

- non-compliance with the law,
- under-utilisation of CSO by courts;
- role and responsibility confusion;
- lack of staff training,
- unclear strategy and organisational and administrative procedures,
- scarcity of material resources that affects effective implementation and supervision of CSO.

Based on the research findings the following recommendations for effective implementation of CSO are made:

- **Allocation of human, material and financial resources**
 - Improving allocation of resources for the implementation of CSO through sound budgeting.

⁶² Bitone, L., Comoane, P, Nkamate, S., Duma, C., Sousa, S., Gomes, N., Paive, M., Muntingh, L., Redpath, J., Lorizzo, T (2015) *Pre-trial detention in the Mozambican Legal Framework. Evaluation of the Legal Framework and its practical application in relation to international standards* p. 134. The work found that, on average, the cost of pre-trial detention is US\$15 666 per day or about US\$ 5.7 million per year.

⁶³ Article 15 Law Decree 63/2013.

- Allocating enough permanent, trained staff for SPAP. Introducing performance targets and reviews that would ensure quality of service.
- Enhancing technical resource capacities especially at local SPAP offices. Ensuring minimum requirements, such access to electricity, transport, phone and ideally computers.
- Ensuring initial donor support.

- **Creation of clear strategy and management procedures**

- Creating a Strategic Plan for the implementation of CSO. This plan should include, a clear division of tasks, strategy for the coordination and cooperation with donors, capacity building plan, public relation strategy, internal communication strategy ensuring better co-operation between all parties involved in the administration of CSO.
- Creating alternative sentencing guidelines for Judges. This process should be led by the Ministry of Justice and Chief Justice.
- Creating clear Guidelines for the management and administration of CSO. This process should be led by Ministry of Justice and SPAP, with a full cooperation from expert community.

- **Training**

- All judges to receive standardised training on legislation and practice of CSO. Alternative sentencing should be included in the curriculum of CFJJ and supported with refresher training. Specialised training on alternative sentencing should also be developed for judges after entering the duty.
- Ensuring training on CSO for all SPAP officials before commencing duties. The training should cover the nature and purpose of CSO, responsibilities of SPAP personnel, procedures, rights of the offenders, ethics and professionalism, etc. In order to maintain and improve their knowledge and professional capacity, in-service training should be regularly carried out.

- **Information management**

- Information mechanisms should be built for the collection and analysis of data and statistics on the implementation of CSO.
- All Courts should rigorously collect data on the use of alternative sentences, including CSO.
- All SPAP offices should collect standardised case information on CSO.
- Ensuring formal, regular and detailed reporting system between local and central SPAP offices.

- **Public participation and cooperation**

It is emphasised in the Tokyo Rules (Rule 17) that public participation in the implementation of non-custodial sanctions complements the efforts of the criminal justice administration and is one of the most important factors in improving ties between offenders and the family and community.

- Conferences, seminars, and other community-based activities should be regularly organised to stimulate awareness of the need for public participation in the implementation of CSO.
- Different media channels (radio, TV, newspapers and online media) should be used to promote constructive public attitudes and conducive environments for CSO (and other non-custodial sentencing options) and better social integration of offenders in the community.

- **Research, monitoring and evaluation**

- Research on challenges confronted by judges, SPAP officers, offenders on CSO, and communities/placement institutions involved in the implementation of CSO should be undertaken on a continuous basis.
- Measure the cost of CSO as compared to imprisonment.