

**MOZAMBIQUE REVIEW OF THE PROVISIONS OF ARTICLE 19 ON THE
CONVENTION AGAINST TORTURE**



**INFORMATION FOR
INTERACTIVE DIALOGUE**

Partners:



MAPUTO, OCTOBER 2013

PRESENTATION

1. This document was prepared by the Mozambican League of Human Rights, in collaboration with two other Mozambican civil society organizations working in the field of human rights throughout the country, namely :
2. The Center for Mozambican and International Studies (CEMO) and JOINT – Mozambique League of NGOs.

SUMMARY AND METHODOLOGY

3. The afore-cited organizations, in response to the recommendations of the Committee against Torture (CAT), endeavored in synthesizing relevant information about the situation of torture in Mozambique, in order to maximize the gains that can come from the review of Mozambique by CAT.
4. This information precede the cumulative report (1994 to 2010) of the Government of Mozambique prepared pursuant to Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), submitted to the Committee against Torture in May 2012.
5. It is a fact that the Government has advanced in some points on the implementation of human rights in Mozambique. However, the civil society, based on this instrument, attempted to clarify some points, add others and emphasize some gains and challenges for Mozambican state, in order to foster the debate on the implementation and defence of human rights in the country, particularly with regard to torture and other forms of cruel, inhuman and degrading treatment.
6. Accordingly, the methodology presents findings and for each point, we provide our proposed recommendation.
7. This set of information is presented in three parts, the first relates to the legal and institutional framework regarding the prevention of torture, the second is on the implementation of CAT and the third is related to our findings.

PART - I
LEGAL AND INSTITUTIONAL FRAMEWORK IN RELATION TO THE
PREVENTION OF TORTURE

a) Legal Framework

Findings

8. Mozambique is a member state and signatory to various regional and international instruments especially the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture, Cruel or Degrading Treatment (CAT), the African Charter on Human and Peoples' Rights, among others.
9. However, the country is not yet part of the Optional Protocol to the Convention Against Torture.
10. The Constitution of the Republic of Mozambique (CRM) established the prohibition of acts of torture under Article 40, stating that *“Every citizen has the right to life and physical and moral integrity and cannot be subjected to torture or cruel or inhuman treatment”*.
11. However, in the Penal Code in force in Mozambique, torture is not typified as crime, being treated as mere physical violence for purposes of criminal liability.
12. There is no specific law or public policy to prevent and fight it as a serious violation of human rights.
13. In the current process of Revision of the Penal Code, started in 2000, the proponent (the Committee on Constitutional Affairs, Direct Human and Legality – 1st Committee of the Assembly of the Republic), did not enshrine torture as a specific crime, disregarding the proposals from the civil society and scholars.

Proposed recommendations

14. The Mozambican State should ratify the Optional Protocol to the Convention Against Torture.
15. The Parliament should enshrine torture as a specific crime in the Proposed Revision of the Penal Code and punish more severely in relation to physical assault under the Penal Code.

16. The Government should adopt a policy to prevent and fight against acts of torture, particularly acts of torture committed by police officers and Internal State Security Services.

b) Institutional Framework

Findings

17. Nowadays there are several institutions in Mozambique that promote and protect human rights such as torture, namely:

- At the judicial level – the courts, the Constitutional Council and the Attorney General's Office.
- At the executive level – the Ministry of Justice, including the National Directorate of Human Rights, the Ministry of Foreign Affairs, the Ministry of Home Affairs.
- At the parliamentary level – the Parliament, particularly the Committee on Constitutional Affairs, Human Rights and Legality (1st Committee of the Parliament and the Committee on Petitions).
- The National Commission of Human Rights was created.
- The Ombudsman
- The Department of Human Rights of the Bar Association of Mozambique
- Civil society organizations of human rights

18. The coming into operation of the Ombudsman and the National Commission of Human Rights reinforce the protection and promotion scope against cases of torture.

19. The civil society organizations and the media also participate in the proceedings to fight these practices through allegations of violations of human rights and advocacy actions for their mitigation.

20. However, at the State level, there is no technical unit with specific responsibilities to prevent and punish acts of torture.

21. At the Police level, there is no specific department to prevent and fight against torture practiced against the detainees.

Proposed recommendations

22. Create at the Structure of the Attorney General's Office or as an autonomous institution, a Technical Unit Against Torture.
23. Institutionalize within the Police of the Republic of Mozambique, a specific department to deal with cases of torture committed by agents of the police force.

PART - II IMPLEMENTATION OF CAT PROVISIONS

Article 1: Definition of Torture

Findings

24. The Mozambican state has ratified the Convention against Torture, through Resolution No. 4/93 of 2 July 1993, thus becoming part of domestic or national legal system, which means that the definition of torture by CAT is valid in the Mozambican legal system.
25. However, the Criminal Code is not clear on the issue of torture, to the extent that it is not considered as set out in CAT and indiscriminately uses the term torture, including acts committed by the Average Citizen.

Recommendations

26. Clarify the criminal law that torture can only be committed by state agents or on their service.
27. Include the issue of torture in the sections of Criminal Code dealing with specific offenses relating to Civil Servants, or enshrine explicitly that torture only refers and applies in relation to acts committed by agents serving the State.

Article 2: Measures to prevent torture

Findings

28. The Constitution of the Republic of Mozambique (CRM), in accordance to articles 40 and 65, prohibits the use of torture. There are several institutions and norms that reflexively prohibit and sanction the act of torture.

29. However, the Government does not have under its priorities the fight against this practice. The official discourse of the Government is that the practice of torture is not official policy of the State and occurs in some isolated cases of excesses perpetrated by some State agents¹.
30. This type of speech shows that the Government is not committed to fight a serious violation of rights, which is torture practiced indiscriminately, especially by the officers at the police stations, in prison setting, such as the case of cells at the Mozambican police command in Maputo on public roads during the exercise of law and freedom of expression of citizens and often torture has been used as an investigative means by agents of the Criminal Investigation Police.

Recommendations

31. The Government should adopt a new discourse regarding torture, acknowledging as a serious violation of human rights in Mozambique.
32. Exhort the Mozambican government to take concise steps to empower and equip the Criminal Investigation Police with modern means of investigation, in order to avoid the use of torture in the investigation process.
33. Promote the use of disciplinary and criminal measures against the perpetrators of such practices.

Article 3: Expulsion, Return and Extradition

Findings

34. The external refugees entering Mozambique have been victims of a “degrading treatment”, being target of illegal evictions, extortion and abandoned in the open sea.
35. The report of the Mozambican League of Human Rights on the situation of refugees and Ethiopian and Somali asylum seekers in Mozambique based on a survey the organization conducted between 30th June and 6th July in refugee centers at the provinces of Nampula and Cabo Delgado, in the northern region of the country, shows the existence of violations against human rights.
36. The research, under which 21 refugees and asylum seekers were interviewed, found that the Mozambican police have made arbitrary expulsions of Ethiopians and Somalis.

¹ See Final Assessment of Mozambique on the Universal Periodic Review mechanism at **A/HRC/17/16**.

37. “Only in the month of June 2012, 93 Ethiopian and Somali asylum seekers and refugees were expelled, including 59 Somalis and 34 Ethiopians. This act took place on the night of 20 to 21 June 21 to 20. As a matter of fact,
38. The document points out the psychological and physical abuse, plunder of personal belongings and extortion as some of the abuses that refugees have been subjected by the Mozambican authorities.
39. There is record of deaths by drowning in the islets of the shoals of Rovuma river, where they are usually left by river operators, whose bodies subsequently appear floating on the shores of river banks”, as stated on the same report.

Recommendations

40. The Government must ensure repatriations with greater dignity to illegal immigrants.
41. Strengthen mechanisms for oversee state agents in repatriation cases and treatment of refugees.

Art. 4: Legislation to Criminalize Torture

42. Refers to what was said regarding the legal framework on the protection of torture in Mozambique.

Art. 5: Establishment of Jurisdiction

Findings

43. The Right to Compensation and Liability of the State constitutionally enshrined pursuant to paragraph 2 of Article 58 provides that “The State is responsible for damage caused by unlawful acts of its agents, in the exercise of their duties, subject to the right of return in accordance with law”.
44. The Government's report indicates that “when there is an act of torture which is clearly illegal under the law, the prosecuting jurisdiction is the competence of the Administrative Court since the agent in question is a civil servant²”.
45. There are few cases in which the State was ordered to compensate citizens victimized by human rights violations and in both cases were related to summary executions. The first in

² Report of Government of Mozambique pursuant to Article 19 of Convention, Consolidated Report 1994-2010, page 28, paragraph 108.

2008, in the famous “Costa do Sol” that three police officers were convicted for the murder of three defendants by the Judicial Court of Maputo City, and the State was ordered to pay in solidarity 1,800,000.00 Mt (one million and eight hundred thousand Meticaïs) to each family of the murdered victims. The second was in 2011, in which the Administrative Court ordered the State to pay 500,000.00 MT (five hundred thousand Meticaïs) for the murder of minor Hélio Muianga by the police during demonstrations in Maputo on the 2nd and 3rd September 2010.

46. As a rule, the courts have taken protectionist attitudes towards the state in cases of torture or illegal detention, particularly in cases that are not mediated, often the Administrative Court refused knowing cases of alleged torture as such criminal matters should be treated in the ordinary jurisdiction.
47. In turn, the ordinary courts have had a practice of avoid condemning the State liability, where agents are convicted of illicit linked to torture, illegal arrests and other acts that violate fundamental rights and freedoms.
48. Where the State is condemned, sentences are passed difficult to apply, thus, condemning the state in gross amounts, which then become hard to settle since these refer to moral damages.
49. The Public Prosecutor’s Office, which under its Organic Statute³, is the defender of legality and simultaneously representative of State interests, has been accomplice in these situations as it has requested the liability of the State, in such cases.

Recommendations

50. Regulate the constitutional provision which sets the state liability for human rights violations committed by its agents.
51. Review the procedural law of the Administrative Court in order to remove the ambiguity regarding competence over matters related to criminal acts, establishing clearly that the individual can choose to seek in civil compensation at the Administrative Court separately from the criminal matter.

³ Law No. 22/2007 of 20 August

Art. 10: Training

Findings

52. In the prison system, it is found that correctional officers has evolved on the issue of the treatment given to inmates, due to training programs carried out by the Ministry of Justice in collaboration with the Civil Society Organizations. The Mozambican Human Rights League in many situations was warned by the prison officers themselves of irregular situations that occur in prisons, for example, in cases of detention of minors not subject to criminal penalties.
53. However, within the police forces where there is a huge lack of training in human rights issues, cases of torture happen in all police stations during the investigation phases⁴.
54. Police acts mainly through reactive methods, rather than proactive, and the speeches that are often made by police command structures, reveal the existence of an authoritarian character⁵.

Recommendations

55. Introduce human rights courses for all Police ranks and units, which must be delivered in partnerships with civil society organizations working in the field.

Art. 11: Custody and Treatment of Prisoners, Detainees and Convicts

Findings

56. The mistreatment of detainees is a normal practice within the police stations and other detention centers belonging to the Ministry of Home Affairs.
57. The Mozambican League of Human Rights and Amnesty International reported in 2012, in a joint report that several irregularities occurred within the prison system in Mozambique⁶.

⁴ In Case No. 16/2012, with terms are based on the Judicial Court of Maputo City, 10th Section, and were judged several cases of kidnappings that occurred at Maputo and Matola Cities, all defendants complained of being tortured when they were arrested in the initial interrogations phase, facts sustained by the unlawfulness verified on the first stage in the case, considering that the defendants were taken to the premises of riot police, they were not presented to the judge within the legally established deadline of two days, but these were presented to a judge a month after the arrest.

⁵ In 2012, the General Police Commander informed the media that the police did not follow orders from the courts, yet no measure was taken.

⁶ See, “Aprisionando os Direitos, Prisão e Detenção Arbitrária e Tratamento de Reclusos em Moçambique”, Joint Report of Amnesty International and the Mozambican League of Human Rights available in http://www.amnistiainternacional.pt/files/Noticias_anexos/novembro2012/Mocambique_Aprisionando_os_meus_dir_eitos_embargado_01h00_de_dia_22nov2012.pdf

58. For example, in the well-known cells of the Police Command of Maputo City, detainees and convicts serving sentences in that facility, are not entitled to receive visits and cannot be fed by their relative, differently to what happens in other prisons. Lawyers do not have access to their constituents in these cells and these detainees and convicts have no right to sunbathing.
59. Even the courts and prosecutors have difficulty enforcing their decisions when compared to the procedures on the detainees and convicts who are in the cells of the Police Command of Maputo City.

Recommendations

60. The government should take concrete measures so that all prisoners in the cells of the Police Command of Maputo City are transferred to other prisons, such as those already recommended by the Ombudsman and the Attorney General of the Republic.
61. The Ministry of Home Affairs should allow civil society organizations to make regular visits to police stations, as happens in prisons that are under the jurisdiction of the Ministry of Justice.

Article 10: Immediate and Impartial Investigation

Findings

62. Few are the cases of torture and illegal detentions that had immediate investigation and these only occur when citizens refer complaints directly to the Public Prosecutor's Office.
63. There is huge protectionism within the police which makes these investigations to be not impartial. The police do not cooperate with the investigation of these cases and often the Public Prosecutor's Office cannot continue with the investigations due to lack of cooperation by the police.
64. For example, the League submitted a series of complaints for crimes by summary executions and assaults perpetrated by the Police during demonstrations in February 2008, where people protested against the deterioration of prices of public transport in the cities of Maputo and Matola, however, no investigation proceeded since the Police General Commander refused to provide data about the police and their related shift for that day.
65. More recently, one of the leader of the Forum of War Demobilized, Mr. Jossias Matsena, was illegally arrested and was later released by the 3rd Section of the Municipal District Judicial Court of Kampfumo at Maputo City, due to lack of basis for detention.

66. Mr. Jossias Matsena , sponsored by the Mozambican Human Rights League, filed a lawsuit against the officers who arrested him, but the Attorney General´s Office failed to locate them, because the Police Command of Maputo City did not cooperate and the Maputo Attorney General's Office had to issue a certificate that recognized that the detention was illegal and that the citizen could appeal to the Administrative Court for the purposes of civil compensation⁷.

Recommendations

67. Take disciplinary and criminal actions against State agents that do not comply with the court decisions.
68. Create specific and joint units between the Criminal Investigation Police and the Public Prosecutor´s Office to investigate cases of torture.
69. Treat torture cases as priority.

Article 14 – Compensation and Rehabilitation

70. In the country, there are no situations by which the State has compensated citizens victimized by torture.
71. Moreover, there are no rehabilitation centers for victims of torture. These are usually treated in common health institutions.
72. For example, Mr. Jossias Matsena one of the leaders of the Forum of War Demobilized was tortured by agents of the Rapid Intervention Force and transported to Inhambane Province to answer a case on illegal possession of firearms, to be released 6 months later due to lack of evidence, however he has health problems, and he has made it known to the Public Prosecutor´s Office but he was not referred to a specific treatment program.

⁷ Data found at Case 101/13 - 1st Section of Administrative Court.