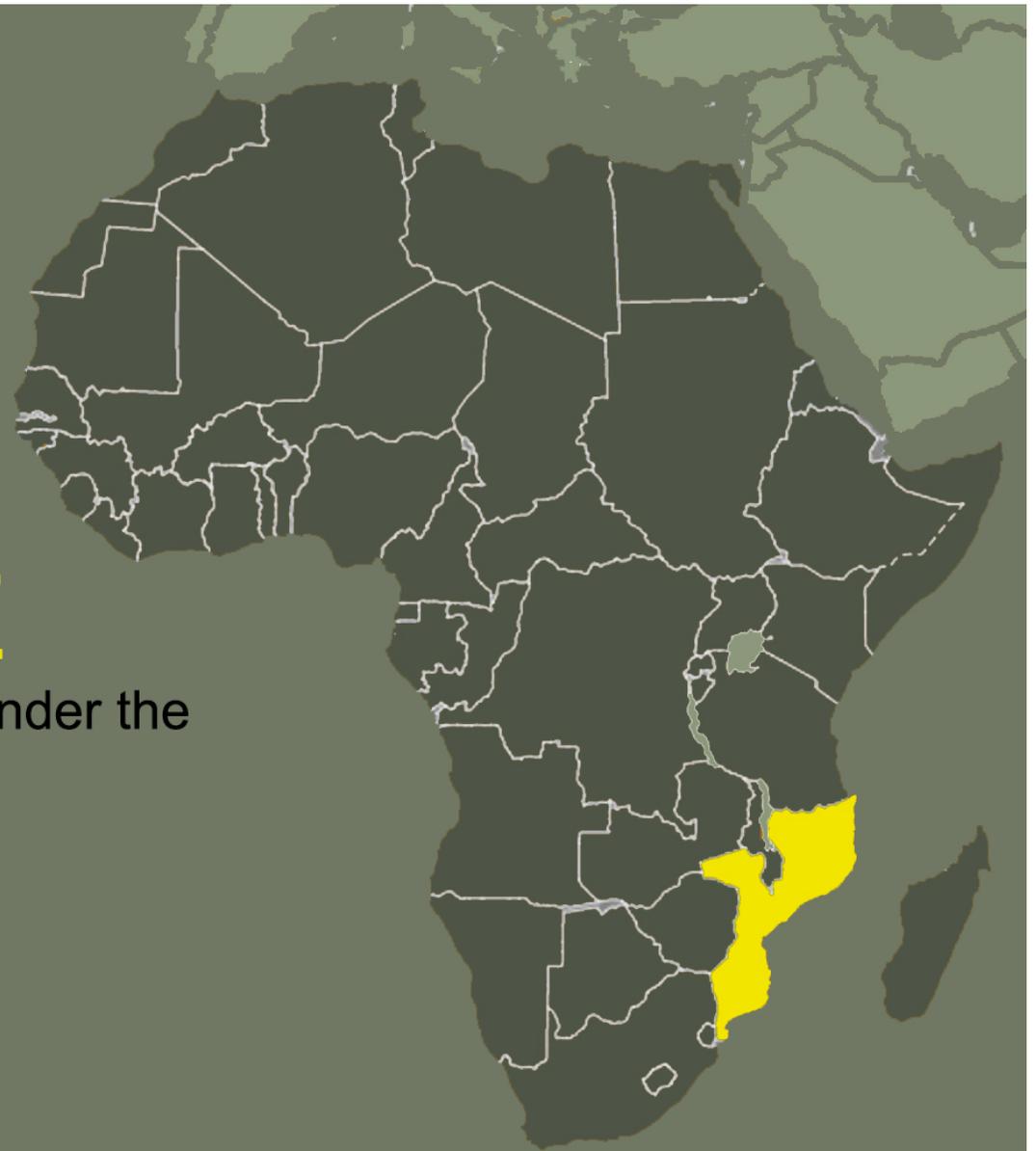


MOZAMBIQUE

Follow-Up Report to the review under the
Convention against Torture

September 2016



This report is submitted by REFORMAR – Research for Mozambique in cooperation with
the Human Rights League and the Civil Society Prison Reform Initiative (CSPRI)

REFORMAR

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The report is endorsed by the following organisations:

- Centre of Human Rights (Centro de Direitos Humanos, CDH) of University Eduardo Mondlane;
- Network of Civil Society Organisations working on children rights (Fórum da Sociedade Civil para os Direitos da Criança, ROSC);
- Bar Association (Ordem dos Advogados de Moçambique, OAM)
- Mozambican Association of Judicial Journalism (Associação Moçambicana de Jornalismo Judiciário, AMJJ)¹
- Women and Law Southern Africa (WLSA)
- Forum Mulher

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Timeframe and Relevant Documents:

October 2012: State Party's Report;
November 2013: Follow up issues;
Pending (due November 2014): Follow up State Party's Report;
December 2014: Follow up CAT's Reminder Letter

The report is provided in compliance with the new Procedure of the Committee against Torture

¹ The Mozambican Association of Judicial Journalism was created in 2011 to promote the specialised, systematic and professionalized coverage of justice issues. The AMJJ aims at training on judicial journalism; promote human rights and citizenship and monitor the situation of arrested journalists.

Recommendations	Grade ²	Action taken by the State ³	Overview
The State party should take effective measures to ensure that, in law and in practice, persons who are arrested have the benefit of all fundamental legal safeguards from the very outset of their deprivation of liberty. These safeguards include the right to be informed of the reasons for their arrest, access to a lawyer, the right to contact family members or other persons of their choice, the right to have an independent medical	3	D	<p><u>Law</u></p> <p>The decision of the Constitutional Council (4/CC/2013) is considered to be far-reaching. The Council took the power to arrest <i>fora flagrante delicto</i> away from the Criminal Investigation Police authorities; Heads of Administrative and Prosecutors. The judicial authority is now the only authority authorising an arrest and with a warrant.</p> <p>The right to privacy with specific reference to search people is not provided for in the legislation. The right to humane conditions of detention in police stations suffer the same defect. The only constitutional and legislative provisions on such matters relate to the search of premises (article 68 of the Constitution of the republic of Mozambique (CRM) and articles 300-302 of the Procedure Criminal Code).</p>

² The information provided will be assessed, by follow-up recommendation, using the following classification:

- (a) The information is thorough and extensive, and relates directly to the recommendations (satisfactory - 3);
- (b) The information is thorough and extensive, but fails to respond fully to the recommendations (partly satisfactory - 2);
- (c) The information is vague and incomplete and/or fails to address the recommendations (unsatisfactory - 1);
- (d) The State party has not addressed the concern or recommendations in the response (no response - 0).

³ Implementation will be assessed, by follow-up recommendation, using the following categories:

- (a) The recommendation has largely been implemented (the State party has provided evidence that sufficient action has been taken towards the full or almost full implementation of the recommendation - A);
- (b) The recommendation has been partially implemented (the State party has taken substantive steps towards the implementation of the recommendation but further action is needed - B1);
- (c) The recommendation has been partially implemented (the State party has taken initial steps towards implementation but further action is needed - B2);
- (d) The recommendation has not been implemented (the State party has taken no action to implement the recommendation or the action taken has not addressed the situation - C);
- (e) The information provided is insufficient to assess implementation (the State party has not provided enough information on the measures taken to implement the recommendation - D);
- (f) The recommendation has been counteracted (the State party adopted measures that are contrary or have results contrary to the recommendations of the Committee - E).

Recommendations	Grade ²	Action taken by the State ³	Overview
<p>examination performed without delay and the right to be brought before a judge within 48 hours of arrest. The State party should also take the necessary measures to provide an effective free legal aid system, especially for indigent criminal suspects.</p>			<p>The right of defence is guaranteed by article 62 CRM. The Institute for Legal Aid (<i>Instituto Patrocínio e Assistência Judiciária</i>, IPAJ)⁴ as well as lawyers of the Bar Association, provide legal representation to indigent persons, via the newly created institute of legal assistance, IAJ.⁵</p> <p>Law 34/2014 on Access to Information provides that the right to information is governed also by the right to dignity.⁶ Article 5 provides more detail, stating that 'the exercise of the right to information should safeguard other rights and interests protected by the Constitution, including the right to honour, good name, reputation...' However, article 20 of the same law states that 'the right to information may be restricted, conditioned or limited where the information requested applies to ... information relating to criminal proceedings, disciplinary proceedings or otherwise, when its disclosure would undermine the on-going investigation and other constitutionally enshrined principles'.⁷</p> <p>Article 51 CRM provides for the right to freedom of assembly and demonstration. Law 9/91 (11 July) amended by Law 7/2001 regulates that demonstrating does not need authorisations (article 3(1)). The provision states 'all citizens can, pacifically and freely, exercise their right to assembly and demonstration, without any authorisation provided by law'. Article 11 of Law 9/91 specifically provides that 'the decision to prohibit or restrict [the freedom to assembly and demonstration] must be grounded and notified to the promoters... within two days of the communication's receipt.</p>

⁴ IPAJ was created by Law 6/94.

⁵ The OAM was created by Law 7/94. Its Statute, approved by Law 28/2009 contains provisions on the role of lawyers for providing legal aid to people. <http://www.oam.org.mz/wp-content/Docs/1-Estatuto/Estatuto-da-Ordem-de-Advogados-de-Mocambique-actual.pdf>

⁶ Art. 4.

⁷ Tina Lorzio, 'Linchamento Mediatico?' in Savana 6 November 2015.

Recommendations	Grade ²	Action taken by the State ³	Overview
			<p><u>Practice</u></p> <p>The Attorney General's Office, in its function of monitoring detentions (Article 4 (h) Law 22/2007) created the "TRIAGEM". In Maputo, five prosecutors on duty monitor detention in the 24 police stations of the city, also outside office hours and during weekends. A telephone contact number is available to the public to facilitate access to detainees.⁸ However, there is no automatic review of pre-trial detention in the country.</p> <p>Between April and May 2016, the Human Rights Centre (HRC) at the University Eduardo Mondlane held two training sessions on pre-trial detention reviewing international and national developments. Cadets of the Mozambique Police Academy (ACIPOL) and judges and prosecutors of the Judicial Training Centre (Centre for Legal and Judicial Training, CFJJ) participated in the training.</p> <p>In an opinion piece 'The Police cannot eliminate the right to demonstration', the organisation Women and Law Southern Africa (WLSA) expressed its apprehension regarding the abuse of power and intimidation used by the police in relation to two demonstrations held in Maputo on 18 June and 27 August 2016.⁹ The first demonstration was organised by a group of civil society organisations¹⁰ while the organisers of the second march were the Juvenile Parliament and the Human Rights League. Also the Chairperson of the Human Rights League reported that she has repeatedly received threats to stop the demonstrations.¹¹</p> <p>Civil society organisations have also been subject to intimidation, because of the nature of the work they conduct, especially those working on public policies and governance. Recently <i>Forum Mulher</i> and other organisations tried to organise a street action to</p>

⁸ The TRIAGEM operates also in the other cities such as Beira and Nampula.

⁹ Available at <http://www.wlsa.org.mz/a-policia-da-republica-de-mocambique-contra-o-direito-a-manifestacao/> accessed 30 September 2016.

¹⁰ Available at <http://www.wlsa.org.mz/marcha-pelo-direito-a-esperanca-realizou-se-como-previsto/> accessed 30 September 2016.

¹¹ Available at <http://opais.sapo.mz/index.php/sociedade/45-sociedade/41105-alice-mabota-diz-que-sofre-ameaca-para-abortar-marcha-do-proximo-sabado-.html> accessed 30 September 2016.

Recommendations	Grade ²	Action taken by the State ³	Overview
			<p>demonstrate against the increasing violence against girls in school, as well as against the ruling of the Ministry of Education aimed at controlling students' dress,¹² The police suppressed this action, arresting five of the activists, using force, intimidation with weapons and confiscation of materials such as posters, mobile phones and cameras.¹³</p> <p>The Spanish human rights activist Eva Moreno was expelled from Mozambique. On March 29, police officers took her to the airport in order to be deported, although without a warrant of arrest or expulsion order. She suffered police harassment and threats since the moment she was released, that same night, by prosecutors, until the time of her expulsion, the day after. The Attorney General's Office Commission of Inquiry concluded that her expulsion was illegal.¹⁴</p>
<p>The State party should take steps to investigate promptly, effectively and impartially all allegations of the involvement of members of law enforcement agencies in extrajudicial executions and other unlawful killings. It should also investigate without delay allegations of instances of excessive use of force, especially lethal force, by members of the police, bring those responsible for such acts to justice and provide the victims with</p>	3	D	<p><u>Law</u></p> <p>Article 33 of Law 16/2013 permits the use of force, but respecting the principles of proportionality and necessity. The police can use the necessary, proportionate and reasonable force and other means to overcome the unlawful resistance against police officers. This provision lacks the essential degree of specificity that could limit the abusive use of force.</p> <p><u>Practice</u></p> <p>There is no information available on investigations of all allegations of torture and ill-treatment, as well as extrajudicial executions and other unlawful killings involving members of law enforcement agencies.</p>

¹² Available at <http://www.verdade.co.mz/vozes/37-hora-da-verdade/57563-selo-as-maxi-saias-do-resgate-da-decencia-a-feminizacao-da-indecencia-nas-escolas-por-maria-velemo> accessed 1 October 2016.

¹³ Available at <http://www.wlsa.org.mz/comunicado-do-forum-mulher/> accessed 1 October 2016.

¹⁴ Available at <http://www.verdade.co.mz/destaques/democracia/57837-pgr-considera-que-eva-moreno-foi-detida-ilegalmente-e-recomenda-inspeccao-e-controle-da-legalidade-na-execucao-do-despacho-de-expulsao> accessed 1 October 2016.

Recommendations	Grade ²	Action taken by the State ³	Overview
<p>redress.</p> <p>The Committee urges the State party to implement effective measures to prevent law enforcement officers from committing acts such as extrajudicial killings and using excessive force by ensuring that they comply with the Convention, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). The provisions of these instruments should be integrated into the new Police Disciplinary Regulation. In particular, the State party should provide adequate training for its law enforcement officials, who should receive clear instructions on the use of force and firearms in line with international standards, and be informed of the liabilities they incur if they make unnecessary or excessive use of force.</p>			<p>Police training in the Basic School of Matalane and ACIPOL does not include regular and specific training on human rights. No specific training is offered on the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, or on the Code of Conduct of the Southern Africa Regional Police Chiefs Co-operation Organisation (SARPCO).</p>

Recommendations	Grade ²	Action taken by the State ³	Overview
<p>The State party should:</p> <p>(a) Take appropriate measures to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated, perpetrators are duly prosecuted and, if found guilty, sentenced to penalties that take into account the grave nature of their acts;</p> <p>(b) Ensure that investigations into allegations of torture or ill-treatment are conducted by an independent body that is not under the authority of the police;</p> <p>(c) Establish an independent complaints system for all persons deprived of their liberty; and</p> <p>(d) Unambiguously reaffirm the absolute prohibition of torture,</p>	2	E	<p><u>Law</u></p> <p>a) There are no publicly available information on appropriate measures by the state, to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated, perpetrators are duly prosecuted and, if found guilty, sentenced to penalties that take into account the grave nature of their acts.</p> <p>b) There is no an independent body that conduct independent investigations of allegations of torture or ill-treatment.</p> <p>c) There are different complaints mechanisms in place for persons deprived of their liberty such as the Attorney General's Office and the National Human Rights Commission.</p> <p>d) The new Penal Code, which entered into force on June 29, 2015, criminalised torture as a 'heinous' crime, punishable by a prison sentence of between 20 and 24 years (Article 160 (i)). The definition of the crime of torture was unfortunately not included in the legislation and judges will have to refer to the jurisprudence of the Committee against Torture for such a definition.</p> <p>After the ratification of OPCAT, following the resolution of the Council of Ministers no. 23/2013 of 3 May, the National Commission on Human Rights (NCHR), recently established by Law 33/2009 of 22 December 2009, was recognized as a National Preventive Mechanism (NPM). While the NPM should have been an economically and politically independent body, the appointment of members of the NCHR is of a concern. The NCHR depends on state budget¹⁵ and international agencies such as the United Nations Development Program. Among the eleven commissioners, three must</p>

¹⁵ The NHRC began appearing in the state budget in 2015, when it received 6.494.000, 45 Meticaís (Mozambican currency) for the functioning of the Commission (1.494.000,45 Meticaís for salaries and 5.000.000 Meticaís for goods and services). Available at http://www.dno.gov.mz/docs/OE2015/LEI_02_2015_APR_OE2015.pdf (accessed 1 October 2016). In 2016, the budget decreased: 847.000,30 Meticaís for salaries and 4.376.000,00 Meticaís for goods and services. Available at http://www.dno.gov.mz/docs/OE2016REV/BR_91_I_SERIE_SUPLEMENTO_2016.pdf (accessed 1 October 2016).

Recommendations	Grade ²	Action taken by the State ³	Overview
<p>publicly condemn practices of torture and issue a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for those acts and will be subject to criminal prosecution and appropriate penalties.</p>			<p>be elected by the Parliament and following parliamentary proportionality. At the moment, two commissioners are from the ruling party (FRELIMO) and one person from the main opposition party (RENAMO). No other parties are represented on the Commission.</p> <p>Articles 484 and 485 of the Penal Code criminalise illegal and irregular detention.</p> <p><u>Practice</u></p> <p>a) There is no information available that allegations of torture or ill treatment are promptly, thoroughly and impartially investigated and perpetrators are duly prosecuted. Research conducted noted that, often, police with alleged cases of torture, ill treatment and other crimes are simply transferred to other police stations.¹⁶</p> <p>c) While there are different complaints mechanisms in place, visits to centres of detention are not done on a regular basis. Visits should be conducted also to the Psychiatric Hospital of Infulene and to the Refugee Camp of Maratane.</p>
<p>The State party should take the necessary steps to ensure that victims of torture and ill-treatment receive redress, including fair and adequate compensation and the means for as full a rehabilitation as possible. The Committee draws the State party's attention to its general comment No. 3 (2012) on</p>	3	E	<p><u>Law</u></p> <p>Article 79 CRM provides for the right to approach a court to file a complaint and apply for compensation following the violation of human rights, while article 58 CRM notes the state's responsibility to compensate people whose human rights have been violated by public officials.</p> <p>Law 15/2012 of 14/08/2012 for the protection of victims, whistle-blowers and witnesses. The law mainly provides for economic compensation although the creation</p>

¹⁶ ¹⁶ Available at http://www.amnistia-internacional.pt/dmdocuments/Mocambique_policia_licenca_para_matar.pdf Accessed 18 July 2016.

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<p>the implementation of article 14 by States parties, in which it elaborates on the nature and scope of States parties' obligations to provide full redress to victims of torture.</p>			<p>of Centres for Victims' Assistance was legislated. However, these centres are yet to be established.</p> <p>Following the 2014 unrest that have negatively affected the central provinces of the country,¹⁷ Amnesty Law 17/2014 does not contain any provisions providing redress to the victims of these events.¹⁸</p> <p><u>Practice</u></p> <p>There is no available information about the number of victims of torture and ill-treatment.</p> <p>SERNAP, in partnership with the Ministry of Veterans (MICO), the Association of Veterans of the National Liberation Struggle (ACCLIN) and the Gaza provincial government opened a museum inside the penitentiary establishment of Mabalane, Gaza province. The museum was created to honour 75 political prisoners (women and men), jailed in 1964, and it represents a symbol against the torture perpetrated during the colonial period.¹⁹</p>

¹⁷ Available at <<http://www.dw.com/pt/tropas-moçambicanas-bloqueiam-acesso-a-sede-da-renamo-em-mar%C3%ADngué/a-17919033>> accessed 18 July 2016.

¹⁸ Available at <<http://www.portugues.rfi.fr/africa/20140821-lei-de-amnistia-esquece-vitimas-do-conflito-em-mocambique>> accessed 1 July 2016.

¹⁹ Available at <http://www.magazineindependente.com/www2/nyusi-imortaliza-ex-prisioneiros-politicos-de-mabalane/> accessed 1 July 2016.