

# MOZAMBIQUE

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# CONTENTS

Introduction .....	5
Legislative, administrative, judicial and other measures to prevent torture and other cruel, inhuman or degrading treatment or punishment (Art. 1, 2, 4 and 16).....	5
Failure to make an immediate preliminary inquiry, carry out prompt and impartial investigations (Art. 1, 6, 12 and 16).....	7
Right to complain, redress and reparations (Art 12, 13 and 14).....	8
Recommendations .....	9
Appendix: Amnesty International documents for further reference .....	10



## **INTRODUCTION**

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination, in October 2013, of Mozambique's initial report on the implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or the Convention against Torture).

The document highlights the main aspects of Amnesty International's ongoing human rights concerns in Mozambique in relation to the provision of the Convention. In particular, Amnesty International is concerned about the failure of the Mozambique government to fully comply with its international obligations under Articles 1, 2, 4, 6, 12, 13, 14 and 16 of the Convention. This submission highlights concerns with respect to lack of effective legislative, administrative, judicial or other measures to prevent torture or other ill-treatment; the failure to take suspected offenders into custody and to initiate immediate preliminary inquiries into the facts; failure to carry out prompt and impartial investigations into allegations of torture or other ill-treatment; failure to uphold the right of individuals to complain to, and to have their case promptly and impartially examined by, competent authorities, as well as to protect such individual or witnesses from ill-treatment and intimidation; and failure to provide compensation including rehabilitation and compensation for families.

The document is based on Amnesty International's research and information the organization has received in the past five years.

## **LEGISLATIVE, ADMINISTRATIVE, JUDICIAL AND OTHER MEASURES TO PREVENT TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ART. 1, 2, 4 AND 16)**

Apart from being a party to the Convention against Torture, Mozambique has also ratified the International Convention on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention of the Rights of Persons with Disabilities, as well as the African Charter on Human and Peoples' Rights, all of which prohibit torture.

The Constitution of the Republic of Mozambique (the Constitution) enshrines a prohibition

against torture<sup>1</sup> and, according to the Penal Code torture constitutes an aggravating circumstance for crimes.<sup>2</sup> Article 40 of the Constitution also prohibits cruel or inhuman treatment. However Article 40 does not specify a prohibition on degrading treatment, which is only mentioned in the context of extradition in Article 67. Furthermore, the Constitution does not refer to cruel, inhuman or degrading punishment.

With regard to cruel, inhuman, degrading treatment or punishment, all the above mentioned international human rights treaties as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, to which Mozambique is also a party, prohibit such treatment. Certain forms of cruel, inhuman or degrading treatment and/or punishment are also prohibited in law by Article 6 of the Law for the Promotion and Protection of the Rights of the Child;<sup>3</sup> as well as the Law Abolishing the Penalty of Whipping.<sup>4</sup> The latter outlaws only whipping as a penalty for crimes while the former prohibits cruel treatment of the child, but does not refer to inhuman or degrading treatment or punishment.

The Police Disciplinary Regulations of 1987 prohibit torture and ill-treatment by police;<sup>5</sup> however in September 2012 the Constitutional Court ruled that these regulations had been revoked as they had come into force during the time of the Mozambique Popular Police (PPM) when Mozambique was a one-party State. A new Disciplinary Regulation is not yet known to have been enacted. Therefore, although there are a number of national laws that can be used to punish torture, cruel, inhuman or degrading treatment and/or punishment in the country, Mozambique has not yet enacted any legislation that specifically prohibits torture and such treatment and punishment, particularly by agents of the State.

As there is no law criminalising torture, Mozambique courts have not prosecuted anyone for the crime of torture. Where cases of torture appear before the courts, suspected perpetrators are prosecuted for crimes such as those covered by abuse of authority;<sup>6</sup> excessive use of power and disobedience;<sup>7</sup> and corporal offences.<sup>8</sup> The Mozambique Constitution in Article

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<sup>1</sup> Article 40, "All citizens ... shall not be subjected to torture or to cruel or inhuman treatment."

<sup>2</sup> Article 331 and 351 of the Penal Code of August 2006.

<sup>3</sup> Law 7/2008 of 9 July 2008 which states, "No child shall be subjected to negligent, discriminatory, violent and cruel treatment or be subjected to any form of exploitation or oppression..."

<sup>4</sup> Law 4/89 of 18 September 1989. Article 1 revoked Law 5/83 of 31 March 1983 which introduced whipping as a penalty for crimes while Article 2 pardoned all sentences of whipping that had not been executed at the time of entry into force of the law

<sup>5</sup> Article 4(3) (h) and (i) of the Disciplinary Regulations of the Police of Mozambique of 1987. In September 2013 the Mozambique Constitutional Court ruled that the Police Disciplinary Regulations had been revoked as these regulations had come into force during the time of the Mozambique Popular Police (PPM) when Mozambique was a one-party state.

<sup>6</sup> These are found in Articles 291 – 300 of the Criminal Code and include crimes such as violent acts in the exercise of public functions

<sup>7</sup> These are found in Articles 301 – 305 and include excessive use of power and conflicts between

65(3) provides, “All evidence obtained through the use of torture, coercion, offences against the physical or moral integrity of the person... shall be invalid.” However, Amnesty International has spoken to a number of prisoners who stated that they were beaten to force them to confess to having committed the crimes for which they were accused and it does not appear that evidence obtained against them in this manner was invalidated by the courts.

Government authorities have stated on numerous occasions that law enforcement officials receive human rights training in which they are told that torture and other ill-treatment is a violation of human rights. They have also repeatedly stated that torture and ill-treatment are sometimes carried out by “overzealous” officials, but are not a part of government policies. Such conduct is subject to disciplinary (as well as criminal) proceedings. However, in reality disciplinary proceedings are rarely carried out. For example, in November 2012, Amnesty International received information of repeated complaints of ill-treatment by a female prison guard at the Ndhavela Women’s Prison in Maputo. In May 2013, Amnesty International delegates found the same prison guard working at the prison and it did not appear that any investigation had been carried out into complaints of alleged ill-treatment by her or that any subsequent disciplinary proceedings had been instituted against her.

Furthermore, no investigations or subsequent disciplinary proceedings appear to have been carried out either in relation to reports of torture and ill-treatment by police particularly at police stations such as the 7th and the 16th Police Stations in Maputo city; the 2nd Police Station in Moamba, Maputo Province; the 2nd Police Station in Nampula city; the Police Post at Faina, Nampula Province and the General Police Command in Maputo where such acts have been reported to occur regularly. The alleged acts of torture and other ill-treatment at these police stations included beatings all over the body by more than one police officer at once, threats of beatings by police officers, police officers taking detainees to secluded areas and threatening to shoot them if they did not confess, as well as police officers placing guns to the heads of detainees and threatening to shoot.

## **FAILURE TO MAKE AN IMMEDIATE PRELIMINARY INQUIRY, CARRY OUT PROMPT AND IMPARTIAL INVESTIGATIONS (ART. 1, 6, 12 AND 16)**

As stated there have been a number of reported cases of law enforcement officials torturing and otherwise ill-treating individuals, particularly accused, arrested and detained persons. In February 2012 Amnesty International delegates visited the Maputo Civil Prison; Machava Maximum Security Prison (*Brigada Operativa* - B.O) in Maputo province; the Ndhavela

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administrative and judicial authorities

<sup>8</sup> Articles 359 - 378

Women's Prison in Maputo; the Nampula Provincial Prison; and the Industrial Penitentiary in Nampula for male convicts. They also visited detention facilities at the 1<sup>st</sup> Police Station in Maputo, the Provincial Police Command in Nampula and the 1<sup>st</sup> Police Station in Nampula. In May 2013 the delegates revisited these places of detention and also visited the Zambezia Provincial Prison. During visits to these places of detention many detainees and prisoners interviewed by the delegates mentioned the same places of detentions as locations where incidents of torture and ill-treatment occur. The local human rights organisation, the Mozambique Human Rights League, and lawyers in the country have also on a number of occasions denounced the use of torture in the General Police Command in Maputo. Despite this the authorities have failed to carry out preliminary inquires or prompt and impartial investigations into such allegations. The lack of preliminary inquiries and investigations have also meant that police officers and prison guards suspected of perpetrating acts of torture and ill-treatment have not been taken into custody nor have other legal measures been taken against them to ensure their presence during a trial in accordance with the provisions of the Convention. In fact, it appears that in most cases they have not even had disciplinary measures taken against them and have therefore been permitted to continue carrying out acts of torture and other ill-treatment against detainees and prisoners.

## **RIGHT TO COMPLAIN, REDRESS AND REPARATIONS (ART 12, 13 AND 14)**

Article 58 of the Constitution provides for the right of individuals to claim compensation for damages caused by the violation of their rights. It also provides that the State is responsible for harm caused by its agents in the exercise of their functions.<sup>9</sup> However, the Constitution does not currently provide for forms of redress other than compensation and there is no other law which provides for the means for other forms of reparations such as for as full rehabilitation as possible.

During Amnesty International's visit to places of detention the delegates spoke to many detainees and prisoners who stated that they did not know their rights or how to claim compensation for the violation of these rights. Even where people are aware of this right and the procedure to be followed they often do not complain or seek redress due to lack of access to a lawyer. Although Mozambique law does not require that a person have a lawyer before complaining and seeking redress, the knowledge and expertise of a lawyer is generally required to do this effectively. The Institute for Legal Representation and Assistance (*Instituto de Patrocínio e Assistência Jurídica* – IPAJ) is supposed to give free legal assistance to economically disadvantaged citizens,<sup>10</sup> but in some cases IPAJ lawyers charge a

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<sup>9</sup> Article 58(1) Everyone shall have the right to claim compensation in accordance with the law, for damages caused by a violation of their fundamental rights. (2) The State shall be responsible for damages caused by the unlawful acts of its agents, in the performance of their functions, without prejudice to rights of recourse available under the law.

<sup>10</sup> Article 1 of the Organic Statute of IPAJ



fee for their services, which many individuals cannot afford.

Furthermore, many individuals do not seek redress due to a lack of faith in the criminal justice system and, in some cases, for fear of reprisals against them. This fear is often aggravated by the lack of investigations into allegations, continued employment of State agents alleged to have committed acts of torture and ill-treatment in the same posts and the apparent impunity these agents enjoy.

## RECOMMENDATIONS

Amnesty International calls on the government of Mozambique to:

- Enact legislation criminalising torture and cruel, inhuman or degrading treatment, as well as punishment, and providing those who have been subjected to such acts the right to claim full reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Ensure that the new Police Disciplinary Codes contain a clear prohibition against torture, and cruel, inhuman or degrading treatment as well; and that they specify the steps to be taken in the event of allegations of violations of the Convention's provisions by police officers;
- Ensure that where there is an allegation of torture and other ill-treatment a preliminary inquiry into the facts is immediately carried out, and where there is sufficient information and the circumstances so warrant, the suspected perpetrator is taken into custody or has other legal measures taken against them to ensure their presence during a trial in accordance with Article 6 of the Convention. In this regard Amnesty International calls on the government to ensure an immediate preliminary inquiry into reports of torture and ill-treatment in places of detention reputed to regularly carry out such practices;
- Carry out an investigation into all alleged cases of torture and other ill-treatment once sufficient information is established through preliminary inquiries and ensure that disciplinary and criminal proceedings are instituted against those suspected to have carried out acts of torture, cruel, inhuman and degrading treatment;
- Ensure that all individuals, particularly detainees and prisoners, are aware of the right to claim reparations and are protected from any reprisals for exercising such rights;
- Ensure that those who have been subjected to torture and other ill-treatment are provided with free legal assistance, if they cannot afford their own lawyer, to help them claim their rights.

## **APPENDIX: AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>11</sup>**

Mozambique: Submission to the United Nations Human Rights Committee, 109th Session Of The United Nations Human Rights Committee (14 October – 1 November 2013), September 2013, AI Index: AFR 41/005/2013

Amnesty International's Comments on the Draft Constitution of Mozambique AI: Index AFR 41/003/2013

Mozambique: Locking up my rights - case sheet, AI Index: AFR 41/006/2012, 22 November 2012

Mozambique: 'Locking up my rights': Arbitrary arrest, detention and treatment of detainees in Mozambique, AI Index: AFR 41/001/2012, 22 November 2012

Arbitrary arrest, detention and treatment of detainees in Mozambique: Summary of findings, AI Index: AFR 41/004/2012, 22 November 2012

Press Release: Mozambique: Thousands unlawfully held in substandard prisons, 22 November 2012

Amnesty International Report 2012, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2011)

Mozambique: Amnesty International urges investigation into cases of extrajudicial executions, arbitrary detention, torture and ill-treatment, and excessive use of force, AI Index: AFR 41/002/2011, 9 June 2011

Amnesty International Report 2011, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2012)

Suggested recommendations to States considered in the tenth round of the Universal Periodic Review, 24 January – 4 February 2011, AI Index: IOR 41/034/2010, 1 November 2010

Press Release: Mozambique police must only use live ammunition to protect life during demonstrations, 1 September 2010

Amnesty International Report 2010, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2009)

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<sup>11</sup> All of these documents are available on Amnesty International's website:  
<http://www.amnesty.org/en/region/Mozambique>

“I can’t believe in justice any more”: Obstacles to justice for unlawful killings by the police in Mozambique (AI Index AFR 41/004/2009)

Briefing to the Parliament (Assembly) of Mozambique (AI Index AFR 41/002/2009)

Amnesty International Report 2009, State of the World’s Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2009)

Press Release: Thirteen die in Mozambican police cell, 20 March 2009

Licence to Kill: Police accountability in Mozambique (AI Index AFR 41/001/2008)

Abranches Afonso Penicelo in Worldwide Appeals November 2008, (NWS 22/003/2008), 1 November 2008

Amnesty International Report 2008, State of the World’s Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2008)

Amnesty International Report 2007, State of the World’s Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2007)

Amnesty International Report 2006, State of the World’s Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2006)

Amnesty International Report 2005, State of the World’s Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2005)

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