



**Submission by the Article 5 Initiative on Policing and
Imprisonment for the review of the Mozambique
Consolidated Report 1994-2010 to the UN Committee
Against Torture to be considered at the 51st Session of CAT**

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About the Article 5 Initiative

Article 5 of the Universal Declaration of Human Rights and Article 5 of the African Charter on Human and People's Rights (the African Charter) guarantee the right of all people to be free from torture and other cruel, inhuman and degrading treatment (hereafter, other ill treatment). The Article 5 Initiative draws its name from these two articles, and is a collaboration of four organisations working for the prevention and eradication of torture in Africa through research and the development of practice-aimed resources.

The Article 5 Initiative is a partnership between the University of Cape Town (Gender, Health and Justice Research Unit), the University of the Western Cape (Community Law Centre), the University of Bristol (Human Rights Implementation Centre) and the African Policing Civilian Oversight Forum (APCOF). The Article 5 Initiative is supported by the European Union (EU) through the European Instrument for the Development of Human Rights (EIDHR).

The Article 5 Initiative aims to support African institutions to improve domestic compliance with international law obligations, norms and procedures under the United Nations Convention against Torture (UNCAT) and the African Charter on Human and Peoples' Rights. The Article 5 Initiative focuses on six post-conflict African countries, namely Burundi, Kenya, Mozambique, Rwanda, South Africa and Uganda.

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INTRODUCTION

This submission on Mozambique's Consolidated Report 1994-2010 (*the Report*), dated May 2012 to the Committee against Torture (**CAT**), and was prepared by the Civil Society Prison Reform Initiative (**CSPRI**)¹ on behalf of the Article 5 Initiative (**ASI**).

This submission comments on the Report where relevant and provides further information to the **CAT** on measures taken by Mozambique to fulfil its obligations under the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)*.

This submission provides further information to assist the Committee in its consideration of the Mozambican government's response at its next session in October 2013 when the State Party's initial report will be considered.

The Consolidated report is Mozambique's first report to CAT under article 19 and we wish to congratulate the government of Mozambique in taking this important step to promote transparency and accountability, and to fulfil its obligations under UNCAT.

1 The CSPRI, established in 2003, is a research and advocacy project focusing on prisons and places of confinement in the African region, with the aim of furthering constitutional and human rights imperatives within these settings. The CSPRI's objectives include the promotion of good prison governance, the use of non-custodial sentencing options and improved reintegration services in order to reduce the recidivism rate. The CSPRI works to achieve these objectives through high quality research, lobbying and advocacy efforts and the development and strengthening of other civil society institutions and initiatives in order to promote effective awareness and oversight of prison-related issues. The range of issues examined in the field of prison reform by the CSPRI include: sentencing, parole, torture, pre-trial detention, conditions of detention and children in prison.

EXECUTIVE SUMMARY

This submission deals specifically with matters pertaining to the policing and prison systems in Mozambique. We are fully aware of the severe resource constraints that the Mozambican government is experiencing whilst facing numerous developmental and governance challenges. However, we encourage the government of Mozambique to take active measures to prevent and eradicate torture as it is obligated to do under article 2 of the UNCAT. To this end we call on the government of the Republic of Mozambique to draw on the skills and experiences of civil society groups and human rights defenders in general to assist it in meeting its obligations under article 2 of the UNCAT.

Significant developments have characterised Mozambique's political, judicial, economic and social systems since the Rome General Peace Accord was concluded in October 1992. In 2004 the new Constitution of the Republic of Mozambique (**CRM**) came into operation, replacing the previous constitution of 1990, further strengthening individual rights and the independence of the courts.

During the last two decades, Mozambique has made legislative reforms in support of the new Constitution. However, these are yet to be fully implemented to strengthen the detection, prevention and punishment of torture and other ill treatment in the context of policing and prison systems. At the time of writing (October 2013), legislative reforms relevant to the Mozambique's criminal justice system are waiting to be passed by Parliament.

We wish to congratulate the government of Mozambique's in adopting a resolution (Res. 23/2013) to ratify the *Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*.

POLICE AND POLICING STRUCTURES

1. The Police of the Republic of Mozambique (*Policia da República de Moçambique, PRM*) and the Intelligence Services (*Servico Nacional de Informação do Estado, SISE*), under the responsibility of the Ministry of Interior, are currently responsible for internal security. The PRM, governed by the Commander-General (Comandante-Geral) is organized into three main branches: Protection Police (*Policia de Protecção, PP*) responsible for Public Safety and Order; Criminal Investigation Police (*Policia de Investigação Criminal, PIC*) and Special Forces divided into several specialized units, including the Rapid Reaction Force (*Força de Intervenção Rápida, FIR*), the Protection Forces (*Força de Protecção de Responsáveis*), the Border Guards (*Força de Guarda Fronteira*), and special task forces which deal with drugs, car-theft, and organised crime.²
2. Paragraph 1 of Article 254 of the CRM states that the Mozambican police forces must ensure law and order, protect the security of people and property, preserve public peace, and ensure respect for the rule of democratic law and strict observance of the rights and freedoms of citizens. In observance of the principle of multiparty democracy, paragraph 2 of article 254 provides that the Police are non-partisan.
3. While statistics are not easily available and official data are not accessible, estimates suggest that the country has a total police force of just over 20 000 officials, a ratio of approximately 1 official for every 1089 citizens compared to the international average ratio of 1 to 350/450.³

2 AfriMap and Open Society Initiative for Southern Africa. (2006). *Mozambique Justice Sector and the Rule of Law*, available at [http://www.afri-map.org/eng/images/report/Mozambique%20Justice%20report%20\(Eng\).pdf](http://www.afri-map.org/eng/images/report/Mozambique%20Justice%20report%20(Eng).pdf). (Accessed on 1 October 2013).

3 Baker, B. (2003), 'Policing and the rule of law in Mozambique', *Policing and Society*, Vol. 13, No. 2, p 145. See also Human Rights League, unpublished report 2005.

4. On the face of it this suggests that there are insufficient police officials for Mozambique as a whole. However, observation suggests that police officials are concentrated in urban areas such as Maputo, while the majority of the population is concentrated in rural areas. Consequently it is possible that urban areas are over-policed and rural areas under-policed.
5. A5I urges the Mozambican government to make available information in relation to police and policing structures in the country. This information should be easily accessible to the public. A5I also calls on the government to evaluate the number and distribution of well-trained law enforcement officials in the country.
6. Police community councils were created in 2001 to combat the increase in crime by providing a forum for communication between the police and citizens on problems of public security, and to involve citizens in crime prevention.⁴ In November 2005, the Minister of the Interior announced that there were 1 125 police community councils in the country.
7. Although these structures have the potential to be a useful in improving neighbourhood safety, various challenges have emerged relating to the use of firearms by their members, insufficient or inadequate training of members and a strained relationship with the PRM.⁵
8. At the same time, mob justice has also increased in the urban areas of the country.⁶ This suggests frustration with the actions or inactions of the PRM. Since the beginning of 2000, a growing number of vigilante actions have been reported against persons suspected of having committed a crime (often theft). From 1991 to March

4 Supra note 3.

5 Kyed, H.M. (2009). 'Community policing in post-war Mozambique', *Policing and Society*, 19, p 354-371.

6 See the work of the Mozambican sociologist Carlos Serra available at <http://oficinadesociologia.blogspot.pt/>. See also Lorizzo, T. (2011). Mozambican Suburb Lynching Prevention Policy. Department of Criminology at University Cape Town (UCT) - South Africa, unpublished work.

2008 records exist of 168 people having been victims of vigilantism in the cities of Maputo, Matola, Beira, Dondo, Chimoio, XaiXai and Nampula. In 2009 alone, 51 people in 78 reported cases of vigilantism died as a result of the vigilante actions.⁷ The United Nations Refugee Agency reported that in 2010 they were aware of 14 cases of vigilante actions occurred in the city of Beira and nine in the city of Manica.⁸

9. In August 2013 a criminal group called *G20* began intimidating the population of the suburban areas of Maputo. The media reported that the group, composed of 20 male persons, started to terrorise the neighbourhoods of Matola, Boane, Kongolote and other suburban areas, entering citizens' houses with iron bars, violating women and torturing men.⁹ As a response, the local population began patrolling their areas during the nights.¹⁰ In the resultant clashes between the supposed members of the *G20* and patrollers, at least six people died.¹¹ The famous Mozambican sculptor, Alexandria Ferreira, lost his life during the night of 11 August, while defending himself from a mob suspecting him to be a member of the *G20*.¹²
10. While government institutions and the judiciary have publicly condemned these incidents, this has not been sufficient to prevent the escalation of mob justice.¹³
11. There is no evidence of a clear policy response from the PRM in relation to *G20* and associated vigilante action.

7 Moçambique: 78 casos de linchamento em 2009, 51 mortos – PGR. Fonte: Expresso.sapo, 5 May 2010. Available at <http://expresso.sapo.pt/mocambique-78-casos-de-linchamento-em-2009-51-mortos-pgr=f580543#ixzz2hDf5Z2M3> (Accessed on 13 May 2013).

8 UNHCR (United Nation Refugee Agency). (2010). *Country Reports on Human Rights Practices – Mozambique*. Available at <http://www.unhcr.org/refworld/country,COI,USDOS,,MOZ,456d621e2,4da56da3a4,0.html>.

9 *G20 – A Gang dos Violadores e Engomadores*. Fonte: *Moz Maniacos*, 13 August 2013. Available at <http://www.mozmaniacos.com/2013/08/g20-engomadores-violadores.html> (Accessed 5 October 2013).

10 As cicatrizes deixadas pelas patrulhas nocturnas. Fonte: Notícias, 28 August 2013. Available at <http://noticias.sapo.mz/aim/artigo/879425082013142813.html> (Accessed on 6 October 2013).

11 Artista plástico linchado por vigilantes nos arredores de Maputo. Fonte: Jornal Notícias, 12 August 2013. Available at <http://noticias.sapo.mz/info/artigo/1332219.html> (Accessed on 6 October 2013).

12 Ibid.

13 Serra, C., (2008). *Linchamentos em Mocambique* [Vigilantism in Mozambique]. Maputo: Imprensa Universitaria.

12. A5I calls on the Government to develop and implement a policy to prevent and reduce factors contributing to mob justice and vigilantism and to restore citizens' confidence in the criminal justice system and the rule of law.
13. A5I encourages the Mozambican government to adopt an inclusive approach involving the executive, the judiciary, civil society organizations and local communities to address challenges in the criminal justice system and policing in particular. The aim would be to establish coordination mechanisms to develop and implement sustainable initiatives in targeted communities. In order to have a longer term impact, the policy should seek to promote a strong coordinated and engaged approach between the communities, the judiciary and the police.¹⁴
14. As is the case elsewhere in the world, private security agencies have grown in Mozambique in recent years. However, there is no official data available on the number of these companies, the number of employees, how they are trained and how they are regulated. Unregulated private security companies who employ people who are not aware of human rights, pose a risk.
15. Traditional authorities (for example the *regulos and other traditional chiefs*) can be considered important quasi-judicial structures, especially in the rural and peri-urban areas. These authorities operate according to local practices and there is therefore variation in their operation. For example, some deal only with very minor issues, while others adjudicate more substantial disputes; some administer corporal punishment while others do not; some involve representatives from government-recognised community authorities in their adjudication, and others do not.¹⁵ It has been reported that in recent years, the practice of corporal punishment (whipping) is

14 Supra note 7.

15 AfriMap and Open Society Initiative for Southern Africa. (2006). *Mozambique Justice Sector and the Rule of Law*, available at [http://www.afriMap.org/eng/images/report/Mozambique%Justice%report%20\(Eng\).pdf](http://www.afriMap.org/eng/images/report/Mozambique%Justice%report%20(Eng).pdf)

becoming more widespread and, moreover, it is meted out as punishment against children as well as adult men and women.¹⁶

16. **A5I encourages the Mozambican Government to make available official statistics on the number of private security companies and traditional authorities; to implement a policy which regulates the role and the structure of private security companies and police community councils. In accordance with its obligations under article 10 of UNCAT, the government of Mozambique should be encouraged to ensure that private security agencies and traditional authorities are aware of the absolute prohibition of torture, and to publicise the inconsistency of corporal punishment with the prohibition against torture.**

UNCLEAR POSITION OF THE CRIMINAL INVESTIGATION POLICE

17. The Criminal Investigation Police (*Policia de investigação criminal*, PIC) is under the supervision of the Attorney General's Office to conduct criminal investigations while, as part of the police force, is under the command of the Ministry of the Interior. This dual accountability system has created ambiguities with regard to the effectiveness and oversight of criminal investigations.¹⁷ While PIC's officials are accountable to the prosecution, for investigation purposes, prosecutors struggle to assert their authority over investigators. This is because PIC has a high degree of autonomy and resources, as the police force under is the Ministry of the Interior.¹⁸ The situation regarding the future operation of the PIC remains unclear.

16 *President of the Republic of Mozambique v Bernardo Sacarolha*, Proc 5/2004-A Supreme Court, Criminal Section I.

17 AfriMap and Open Society Initiative for Southern Africa. (2006). *Mozambique Justice Sector and the Rule of Law*, available at [http://www.afriMap.org/eng/images/report/Mozambique%Justice%report%20\(Eng\).pdf](http://www.afriMap.org/eng/images/report/Mozambique%Justice%report%20(Eng).pdf)

18 Ibid.

18. Furthermore, in 2006, the Prosecutor General highlighted problems with the PIC stating that *'chronic situations of gross corruption...leave us in despair and suffocate the work of the honest'*.¹⁹ He cited the case of 'manifestly apathetic and negligent' PIC officers who had been removed from the Carlos Cardoso case,²⁰ but who were shortly thereafter promoted to occupy positions of provincial directors in the PIC. The high level of corruption within PIC has been highlighted as a daunting challenge by other researchers.²¹ In 2011 the Prosecutor General, Augusto Paulino, emphasised the critical conditions in which PIC officials conduct their work in the investigation of criminal cases. The Prosecutor General added that if crime is not investigated in a way which is fully compliant with international and national obligations, and suspects are systematically released for lack of evidence which should have been gathered by the PIC, then the fight against criminality is stymied.²²
19. There are no statistics available on the number of PIC officials. There is no accessible information around its activities and outcomes achieved.
- 20. A5I urges the Mozambique government to clarify and regulate the structure and functioning of the PIC to achieve optimal results and respect for human rights standards. A5I calls on Mozambican authorities to ensure independence and impartiality of the investigative police. A5I also encourages the government to**

19 Ibid.

20 Cardoso was a journalist and Mozambican patriot who made it his life's work to expose corruption in Mozambique. Cardoso's investigative work earned him an international reputation, and his assassination has been seen as a blow for press freedom in Mozambique and the region. However, successful attempts to prosecute those responsible for his death – though allegedly not fulfilled – are indicative of the attempt by the Mozambique state to challenge corruption and enforce the rule of law. See http://www.ipocafrika.org/index.php?option=com_content&view=article&id=72&Itemid=65 (Accessed 10 October 2013).

21 Overview and Analysis of the Anti-Corruption. Legislative Package of Mozambique. Findings. Basel Institute on Governance. (2011). http://www.baselgovernance.org/fileadmin/docs/publications/commissioned_studies/Mozambique_Findings.pdf

22 PIC continua a trabalhar em condições críticas. Fonte: Portaldogoverno, 27 Abril 2011. Available at <http://www.portaldogoverno.gov.mz/noticias/governacao/abril-2011/pic-continua-a-trabalhar-em-condicoes-criticas/>. (Accessed on 10 October 2013).

make available and accessible to the public statistics and information around the PIC.

PRISON SYSTEM

21. The National Penitentiary System (*Serviço Nacional Penitenciário, SNP*), is a semi-independent institution, partly under the supervision of the Ministry of Justice and currently responsible for the prison system of the country. The recently established SNP is administratively independent, but its director is nominated by the Minister of Justice. The newly constituted SNP replaced the National Prisons Service (*Serviço Nacional Prisões, SNAPRI*) in November 2012.²³ Differently from SNAPRI, the SNP will be in charge of alternative measures to imprisonment as inserted in the draft of bill that will amend the penal code, which is awaiting approval by Parliament.

22. In 2012 there were 184 centres of detention in Mozambique under the authority of the Ministry of Justice.²⁴ These included central, civil, provincial and district prisons. In Maputo there are five prisons: central, maximum security, civil, and a female prison. Also included are a number of prison farms spread across the country.²⁵

23. In 2011 the Minister of Justice, Benvinda Levy, inaugurated the first Juvenile Prison in Boane district, about 30 km west of the capital. It is the first establishment in the country aimed at preparing juvenile offenders for their reintegration into society.²⁶ This development is welcomed.

23 Available at <http://allafrica.com/stories/201211150283.html>. (Accessed on 6 October 2013)

24 Available at http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=35. (Accessed on 20 September 2013).

25 José, N. And al. (2001). Os Centros Prisionais Abertos em Moçambique [Correctional Farms in Mozambique]. Maputo: Projecto de Apoio ao Sector da Justiça – PNUD.

26 Available at <http://www.globaltimes.cn/NEWS/tabid/99/ID/662982/Mozambique-inaugurates-prison-for-juvenile-offenders.aspx>. (Accessed on 6 October 2013).

24. While the official capacity of the prison system is 7 804 people, the total prison population is estimated to be 15 735 as at December 2012, or more than 200% occupied above capacity. It is well-known that overcrowding adversely affects conditions of detention and frequently amounts to other ill treatment as defined in article 16 of UNCAT.
25. There are no statistics easily available about the number of prison officials in the country. However observation suggests that the number of officials available to supervise prisoners at larger prisons such is insufficient, particularly given the overcrowding rate.
26. Of the total prison population 2.2% (2009) are women, 0.9% (2012) foreigners and 35.1% are in pre-trial detention.²⁷ While the percentage in pre-trial detention is not extremely high, it is worth noting that neighbouring Malawi has succeeded in reducing its pre-trial population to below 20%.
27. In 2002 the Council of Ministers released a prison policy (Política Prisional)²⁸ which strengthened prisoners' human rights, including stipulations relating to human dignity, separation of detainees according to age and sentence status, and a framework for cooperation with civil society organisations. Although this was not a detailed and comprehensive policy, it highlighted the need for structural reform in the prison system.²⁹

27 Available at http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=35 (Accessed on 6 October 2013).

28 Resolution n. 65/2002 of 27 August 2002.

29 Supra note 12.

28. A5I urges the Mozambican government to adopt a comprehensive and systematic legislative and policy framework to regulate the prison system of the country to meet human rights standards.

EXCESSIVE USE OF FORCE BY LAW ENFORCEMENT OFFICIALS

29. Article 73 of the Mozambique Police Statute (*Estatuto da Policia*) states that an officer “may only use force and firearms in situations where there is a reasonably serious risk to the officer’s life or physical integrity, or those of third persons, or in circumstances in which it may be supposed that there is a serious risk to public security, and in conformity with the principles of opportunity, appropriateness and proportionality”.³⁰

30. However, Amnesty International and other organisations have reported numerous cases in which the police did not act in accordance with Article 73 of the Mozambique Police Statute. The media has also reported abuses and the use of excessive force perpetrated on private security companies’ employees by the officers of the Force for Rapid Intervention of the Police (*Força de Intervenção Rápida, da Polícia, FIR*) while they were on strike in 6 April 2011.³¹

31. The authorities have alleged that police officers in such circumstances were acting in self-defence and have claimed that a commission of inquiry has been set up to investigate the cases.³² However, Amnesty International reported that ‘between

30 Translation provided by the Amnesty International submission to the United Nations Universal Periodic Review. Tenth session of the UPR Working Group, January 2011. Available at <http://www.refworld.org/docid/4c7f87bf2.html>. (Accessed on 6 October 2013).

31 Força de Intervenção Rápida agride trabalhadores de empresa de segurança. Fonte: Verdade, 7 April 2011. Available at <http://www.verdade.co.mz/nacional/18681-forca-de-intervencao-rapida-agrude-trabalhadores-de-empresa-de-seguranca>. (Accessed on 6 October 2013).

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

2005 and June 2009, practically no information has been made publicly available concerning the results of the investigations or any criminal proceedings instituted against police officers, either by the police or the Public Prosecution Service. Indeed, very few police officers have been brought to justice for such excessive use of force.³³

32. **ASI urges Mozambique to prevent and combat the use of excessive force by law enforcement officials. Moreover, where law enforcement officials are implicated in the use of excessive force, the government should ensure that prompt investigations are undertaken by independent and impartial authorities whose findings are made public.**

ARBITRARY ARREST AND DETENTION

33. The Constitution of Mozambique provides broad individual and collective human rights protections, and enshrines adherence to the rule of law, the right to life, physical and moral integrity, personal liberty and security, and prohibits torture and other cruel, inhuman or degrading treatment or punishment.³⁴ Article 59(1) of the Constitution provides the right to safety guaranteeing that no one can be arrested and put on trial except in accordance with the law.

34. The Mozambique Police Disciplinary Regulation (*Regulamento de Disciplina*) states that the police have a duty to abstain from carrying out arbitrary arrests and detentions.³⁵ Hence, disciplinary action should be instituted if officials violate this requirement.

33 See "I can't believe in justice any more": Obstacles to justice for unlawful killings by the police in Mozambique (AFR 41/004/2009)

34 Articles 3, 40(1), and 70, of the Constitution of Mozambique.

35 Article 4(3) (g) of the Disciplinary Regulation approved by Service Order 5/GMI/87, of 3 March 1987.

35. The repressive culture of punishment without trial perpetrated by law enforcement officials is well-known.³⁶ The extant literature and media reports point to a ‘culture of arrest’ (*cultura do prender*), signifying an attempt by police officials to coerce respect for law enforcement officials and other policing bodies from the public.³⁷ Frequently homeless adults and young persons, and people who do not carry identity documents (ID) are arrested without being informed of the reason for their arrest.
36. Disciplinary processes for arbitrary arrests and detentions appear to be rarely instituted against police officials. Amnesty International has been informed that police officers responsible for arbitrary arrests or other human rights violations are often transferred to other police stations. No police officer is known to have been brought to justice for carrying out an arbitrary arrest or detention and victims practically never receive compensation for such violations.³⁸
37. During May 2013, media reports noted the arrest of students at a secondary school in Chibuto, Gaza province, accused of promoting disorder when they refused to attend school protesting the lack of chairs and tables.³⁹ To criminalise their

36 Human Rights Council. (2011). *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Mozambique*, A/HRC/WG.6/10/MOZ/1, [44] – [45]. Amnesty International. (January 2011). *Submission to the UN Universal Periodic Review: Mozambique*, 10th Session of the UPR Working Group. Global Justice Solutions.(2012). *Mozambique Police Reform Project*, available at <http://www.global-justice.com/programs/mozambique-police-reform-project/> (accessed on 4 June 2012).

Lalà, A. & Francisco, L. (2008). ‘The Difficulties of Donor Coordination: Police and Judicial Reform in Mozambique’, *Managing Insecurity: Field Experiences of Security Sector Reform*, eds G. Peake, E. Scheye and A. Hills, Routledge, Abingdon/New York.

37 Amnesty International. (2009). *I can’t believe in justice anymore: Obstacles to justice for unlawful killings by the police in Mozambique*, AFR 41/004/2009; Amnesty International, *Human Rights in the Republic of Mozambique*, POL 10/001/2009; Amnesty International. (2008). *License to Kill: Police Accountability in Mozambique*, AFR/41/001/2008.

38 Mozambique Amnesty International submission to the UN Universal Periodic Review, Tenth session of the UPR Working Group, January 2011.

39 Falta de carteiras enfurece alunos em Chibuto. Fonte: Verdade, 30 May 2013. Available at <http://www.verdade.co.mz/nacional/37348>. (Accessed on 6 October 2013).

behaviour fails to address the problem underlying their behaviour, namely the lack of educational infrastructure.

38. The literature has also reported on how officials of the Community Policing Councils (*Conselhos de Policiamento Comunitário – CPCs*) were trained. An interview with a member of a Community Policing Council revealed the following: ‘The chief of police also showed us (CPCs’ officials) how to arrest people and how to tie their hands. Then we were shown how to do a search, like look for drugs and weapons, by putting the person up against a wall. We were also shown to sjambockear [beat with a baton or cane] misbehaving persons’.⁴⁰

39. It has also been observed that officials of private security companies in Maputo are armed with firearms and batons. However, there is no information available on the training that members receive and the weapons they carry.

40. ASI urges the Mozambican government to prevent and respond to the alarming and continuing culture of unlawful punishment and unlawful and arbitrary arrests perpetrated by members of the PRM and other policing bodies. ASI also encourages the government to regulate the use of weapons by private security structures.

PROFESSIONALISATION

41. Article 10 of UNCAT states that training should be provided to ‘other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment’. The *Plano Estrategico*

40 Kyed, H.M. (2009). ‘Community policing in post-war Mozambique’, *Policing and Society*, 19, p 354-371.

*da PRM 2003 - 2012 (Strategic Plan of the Police)*⁴¹ includes a programme of work to increase human rights observance by the police, and the integration of human rights standards into the police training curricula.⁴²

42. International organisations such as Penal Reform International, DANIDA, UNDP, UNICEF and Pathfinder International have provided human rights training on specific issues, such as children's rights. However, there is no specific information about the outcomes of these trainings and the measures taken to monitor the impact of the training provided.

43. The Police Academy (ACIPOL), created by Decree 24/99 of 18 May 1999 and situated near Maputo, is focused on intensive training and professionalization of the police staff in the form of three and four year high level courses, and continuous training for high ranking officers. Since 1999 until 2006 ACIPOL has graduated about 120 police officers.⁴³ In its curricula, ACIPOL has modules on human rights.⁴⁴ However there is no available information about the specific content of these courses and there has been no evaluation of the training from a human rights perspective.

44. The small number of law enforcement officials' training courses on human rights is insufficient to transform the culture of policing in Mozambique. Moreover, there is no available information indicating that training is being undertaken to prevent and eradicate torture and other ill-treatment.

41Republica de Mocambique, Ministerio do Interior. (May 2003). *Strategic Plan of the Police of the Republic of Mozambique – SPPRM – 2003 – 2012*, Volume 1.

42 Article 5 Initiative, *Baseline Study for Mozambique*.

43Republica de Mocambique, Ministerio do Interior. (May 2003). *Strategic Plan of the Police of the Republic of Mozambique – SPPRM – 2003 – 2012*, Volume 1.

44Republica de Mocambique, Ministerio do Interior. (May 2003). *Strategic Plan of the Police of the Republic of Mozambique – SPPRM – 2003 – 2012*, Volume 1. Global Justice Solutions.(2012). *Mozambique Police Reform Project*, available at <http://www.global-justice.com/programs/mozambique-police-reform-project/>. (Accessed on 10 October 3013).

45. As far as could be established, there is only one Master's Degree course in human rights and is presented by the Mozambique Technical University (*Universidade Tecnica de Moçambique, UDM*) financed by Open Society Initiative Southern Africa (OSISA) and the Federal University of Pará in Brazil.⁴⁵
46. Other courses and training on Human Rights and Prison Administration have been organised by OSISA, SNP, the UDM and other national academic institutions for the personnel working within the National Penitentiary System. There is no available information about the number of people trained in such courses and their outcomes.
47. A5I urges the Mozambican government to continue professionalising the staff corps of the Prison System in the respect of a human rights culture, against torture and other ill-treatment.
48. No information about training of community police and private security companies' members is available. There is no information about how the members of these companies are trained and if they receive education on human rights related issues including torture and other ill-treatments.
49. **A5I calls on the Mozambican Government to continue efforts to professionalise the law enforcement agencies through career-directed training, with clear human rights and torture-prevention components. A5I encourages the Mozambican Government to make available and easily accessible information about training provided to penitentiary, police and other policing structures.**

⁴⁵ http://www.udm.ac.mz/index.php?option=com_content&task=view&id=50&Itemid=139 (Accessed 10 October 2013).

RULES AND INSTRUCTIONS FOR INTERROGATION

50. Article 65(3) of the Constitution declares that evidence obtained through torture and other ill-treatments is prohibited. Articles 253, 264 e 265 of the Criminal Procedure Code define general norms on the interrogation of detained and non-detained suspects of criminal offenses. However, the Criminal Procedure Code dates back to 1936, during colonial times, and it is therefore incompatible with the requirements set in article 11 of UNCAT, which calls for a *'systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture'*.
51. There is no information available about how interrogations are conducted by law enforcement and prison officials, nor the rules for interrogations undertaken by traditional authorities.
52. **A5I urges the Mozambique Government to protect individual's human rights in the course of interrogations conducted by law enforcement and prisons officials and other policing bodies and to allow academic research on police and prison system practices. To this end, we call on the government to (a) develop clear standards in the relevant legislation governing interrogations by law enforcement and prison officials and traditional authorities (b) allow research to be undertaken on the stands of and practices relating to interrogations, and (c) ensure that all law enforcement and prison officials are properly trained on the standards regulating interrogations.**

CODES OF CONDUCT

53. The Statute of State Officials (*Estatuto Geral dos Funcionários do Estado*, EGFE), approved by Law Decree 14/2009, sets the strict observance of legal norms by all state institutions and organisations, including state employees and officials. This statute establishes that institutions of state and their employees carry out their activities within the law.⁴⁶
54. Despite a clear constitutional and legislative framework enforcing respect for the rule of law, including codes of conduct and sanctions applicable against state officials that violate such standards, there is little knowledge about codes of conduct for law enforcement and prison officials.⁴⁷ Information about the norms contained in the code of conduct is not easily accessible to the public.
55. While Mozambique has recognised the SARPCCO⁴⁸ code of conduct, in Harare in 2001, Joao Jose Uthui from the NGO National Forum has said after their research on the issue: *“There was little awareness of the SARPCCO Code of Conduct in Mozambique beyond the police leadership. It was also difficult to ascertain the extent to which the Code was being implemented. Information in this regard was not readily available.”*⁴⁹
56. Despite the challenges of police abuse and corruption, there have been a number of positive developments that include focused efforts to address corruption and violence against women. Screening for new police recruits now includes screening by the communities they will serve to verify the desirability of the new recruits. Public

46 Article 38 of the Law Decree 14/2009.

47 AfriMap and Open Society Initiative for Southern Africa. (2006). *Mozambique Justice Sector and the Rule of Law*, available at

[http://www.afri-map.org/eng/images/report/Mozambique%20Justice%20report%20\(Eng\).pdf](http://www.afri-map.org/eng/images/report/Mozambique%20Justice%20report%20(Eng).pdf). http://www.kubatan.a.net/docs/demgg/sarpcco_code_of_conduct.pdf. (Accessed on 6 October 2013).

48 Southern African Regional Police Chiefs Cooperation Organisation.

49 Available at <http://www.apcof.org/files/SARPCCO%20Report%20cover%20prf02.pdf>. (Accessed on 6 October 2013).

awareness of the SARPCCO Code of Conduct and efforts to encourage compliance could assist in promoting a more ethical and professional police force in Mozambique.⁵⁰

- 57. A5I urges the Mozambican government to improve awareness of national and regional codes of conduct's norms within law enforcement, prison officials and other policing forces. A5I encourages the government to make accessible to the public information about codes of conduct of law enforcement officials and other policing forces in the country.**

PRE-TRIAL DETENTION

58. Article 64 of the Constitution states that pre-trial detention shall be permitted only in cases provided for by the law, which shall determine the duration of such imprisonment. Citizens held in pre-trial detention shall, within the period fixed by law, be brought before the judicial authorities who alone shall have the power to decide on the lawfulness and continuation of the imprisonment. Everyone deprived of their liberty shall be informed promptly and in a way that they understand of the reasons for their imprisonment or detention and of their rights. The judicial decision by which imprisonment or detention is ordered or maintained shall be communicated at once to a relative or trusted acquaintance of the detainee, as indicated by the detainee.

59. While 35.1% of the total prison population is in pre-trial detention, there are no statistics on pre-trial detainees in police cells.⁵¹ There is equally no comprehensive information about access to procedural safeguard at police stations.

50 Available at <http://www.apcof.org/files/SARPCCO%20Report%20cover%20prf02.pdf>. (Accessed on 6 October 2013).

51 Available at http://www.prisonstudies.org/info/worldbrief/wpb_stats.php. (Accessed on 6 October 2013).

60. A5I urges the Mozambican Government to make available official statistics about pre-trial detention in police cells in the country. A5I also calls on the Mozambican police to respect procedural safeguards for all people in police detention. A5I encourages international organisations to support projects that will enhance the respect of human rights of people detained in police cells.

61. In August 2009, the UN Special Rapporteur on Torture noted that people from the poorest and most disadvantaged sectors of society are particularly at risk of torture. They are more likely to be discriminated against by the police and less able to pay bribes, and thus more likely to end up in detention. While detained, the discrimination usually continues and exposes them to an increased risk of torture, compounded by their inability to afford a lawyer.⁵²

62. A5I congratulates the Mozambique's Constitutional Council to declare unconstitutional paragraph 2 of Article 291; paragraphs 1, 2 e 3 of Article 293; paragraph 3 of Article 308 and paragraph 1 of Article 311 of the Criminal Procedure Code which violated pre-trial detention protections recognised in the Constitution.

63. While the unconstitutionality of these provisions will produce an important impact on the use of pre-trial detention, A5I encourages the Mozambican government to continuing challenging the misuse of pre-trial detention.

CONDITIONS OF DETENTION IN POLICE CELLS

64. Articles 98, 253, 264 and 265 of the Criminal Procedure Code states that the interrogation of a suspect may not take place without the presence of a lawyer or proxy, under the risk of becoming null and void. If the accused cannot afford a

⁵² UN Special Rapporteur on Torture, A/64/215.

lawyer, the state should nominate a representative from the Mozambican Bar Association (*Ordem Advogados Moçambicanos, OAM*). Law n. 7/94, in Articles 50, 58 and 61, states that OAM's members should accept a nomination for this type of work as one of their duties and should represent their client free of charge, until the completion of the case.

65. While the Mozambican Human Rights League, one of the most prominent civil society organisations in the country, has access to police stations upon authorization, there is no information available about detainees' access to a doctor, lawyer, visits by family as well as to adequate conditions of detention in police cells.⁵³

66. UNDP financed a project with the Institute for Legal Aid that provided legal assistance to persons who had been detained in police cells. Each legal assistant was assigned to a different police station in Maputo.⁵⁴ However, the outcomes of this project have never been published. There is no available and accessible information about the continuity of this promising project.

67. A5I calls on Mozambican government to increase transparency on detention in police cells.

CONDITIONS OF DETENTION IN PRISONS

68. Available research reports that most of detainees are not informed of their rights upon admission to prison.⁵⁵ A5I urges the government to train prison officials on international standards. Moreover, there should be clear procedure in place to

⁵³ Supra note 3.

⁵⁴ Personal experience working with IPAJ in 2010.

⁵⁵ Lorizzo, T. (2012). From the Rule of Law towards Human Rights-based approaches to Criminal Justice Reform in Mozambique. The Case of Pre-trial detention, Unpublished thesis for the LLM in Criminal Justice at the University of Cape Town.

ensure that all person admitted to prison are informed of their rights, and information on how to access services and how to lodge complaints.

69. Vulnerable groups of people such as women, children, persons affected by HIV-AIDS, disabled persons and people affected by contagious diseases should receive particular attention while in detention. Article 37 of the Convention on the Rights of the Child requires that children are detained separately from adults and this is further supported by the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Principle 5(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

70. Available research has found that no particular measures are in place to protect the rights of these vulnerable people.⁵⁶ A5I urges the Mozambican government to create protections for these groups of people when detained.

71. The Kampala Declaration on prison conditions in Africa⁵⁷ and the Ouagadougou Declaration on accelerating Prison and Penal Reform in Africa⁵⁸ called for the reduction of prison populations.

72. Overcrowding is one of the biggest challenges of the prison system. The limited capacity of the prison system and the high number of prisoners is the main reason

56 Supra note 54.

57 Available at <http://www.penalreform.org/wp-content/uploads/2013/06/rep-1996-kampala-declaration-en.pdf>. (Accessed on 6 October 2013).

58 Available at <http://www.achpr.org/instruments/ouagadougou-planofaction/> (Accessed on 6 October 2013).

why different categories of prisoners are not separated and in particular adults from children and sentenced from unsentenced prisoners.

73. A5I urges the Mozambican government to deal with overcrowding by undertaking the following: (a) reducing the use of pre-trial detention (b) creating and promoting non-custodial sentencing option (c) limiting the use of imprisonment sentences for less serious crimes (d) improving infrastructure.

74. Rule 22 of the SMR states that in each prison will have a medical officer which shall be available to the detainees as well as psychiatric services. It also states that sick prisoners shall be transported to hospitals if they cannot be treated in the prison. A dental officer should be also available to every prisoner.

75. Prisoners face many challenges access health care in the Mozambican prison system. Often health services in prisons are little more than a dispensary and the transportation of prisoners to hospitals occurs seldom.⁵⁹

76. A5I urges the Mozambican government to improve access to health care for prisoners.

TRANSPARENCY AND ACCOUNTABILITY

77. Paragraphs 150 and 151 of the country Consolidated Report to CAT read: *'The Legal acts governing the PRM in terms of its internal structure require an internal inspection body, which is responsible for the supervision of scrupulous compliance with the ethical and deontological rules of the institution. Externally, there is no external independent mechanism to investigate complaints against the police and*

59 Supra note 54.

*prison services: a need that the government recognizes relevant. Despite numerous police and prison service officers having been dismissed over the past years, much more have to be done to purify the ranks as part of the on-going reforms.*⁶⁰

78. A5I supports the government in its awareness of the need for an independent oversight mechanism for the police and prison systems. Although parliamentary committees sporadically visit prisons, reporting on conditions of detention, this system cannot be a substitute for a permanent, external mechanism, but complementary to it.⁶¹ While the new established Human Rights Commission and the Ombudsman can be considered as important institutions in ensuring an independent oversight, A5I recommends the government to investigate and prosecute the misconducts of police and prison officials.

79. A5I urges the Mozambique's Government to create an external mechanism to investigate complaints of rights violations against the police and prison services.

60 Relatório do Governo da República de Moçambique nos termos do Artigo 19 da Convenção (Relatório Consolidado 1994 a 2010). Maputo, Maio de 2012. <http://www2.ohchr.org/english/bodies/cat/cats51.htm>. 61 (OSISA 2006).