

Developments in addressing torture in Mozambique

A situational report

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Acronyms and abbreviations

A5I	Article 5 Initiative
AI	Amnesty International
CAT	Committee against Torture
CEMO	Centro de Estudos Moçambicanos e Internacionais - Centre for Mozambican and International Studies
CRM	Constitution of the Republic of Mozambique
GIEACPC	Global Initiative to End All Corporal Punishment of Children
NGO	Non-governmental organisation
NHRC	National Human Rights Commission
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
RENAMO	Resistência Nacional de Moçambique - Mozambican National Resistance
SPT	Sub-Committee for the Prevention of Torture
UIR	Unidade de Intervenção Rápida - Rapid Intervention Unit
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UPR	Universal Periodic Review

Executive summary

This article assesses developments in the prevention and eradication of torture in Mozambique. Despite several positive efforts and advances made, acts of torture and other cruel, inhuman and degrading treatment and punishment are still perpetrated by members of the security forces, especially police officials, often with impunity. The culture of impunity for such serious offences is a direct threat to human rights and the rule of law in the country and seriously compromises the country's public integrity. Two issues are of deep concern and require more efforts by the state, namely: a) addressing impunity and ensuring prompt and impartial investigations of all allegations of torture and other ill-treatment, and b) protecting victims and providing the necessary restitution, rehabilitation and compensation. In conclusion we provide recommendations on how to improve the situation. These are: engaging in outreach and advocacy; improving and strengthening the national legislative framework; strengthening institutions; developing mechanisms for the reporting of torture: monitoring and evaluating existing reporting mechanisms; improving conditions of detention; establishing effective oversight over places of detention, and by maintaining records to improve transparency and availability of information.

Introduction

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, punishment for an act committed or suspected of having been committed, or intimidation or coercion for any reason based on discrimination of any kind. Such acts are inflicted, instigated by or with the consent or acquiescence of a public official or other person acting in an official capacity.¹

By ratifying UNCAT and its Optional Protocol (OPCAT), the Mozambican Government showed its commitment towards the prevention and eradication of torture and other ill-treatment and committed to undertake a number of measures and activities towards fulfilling its international obligations under the convention.

The first part of this report sets out the international and national frameworks protecting people against acts of torture. Further, we analyse the first periodic report submitted by Mozambique to the Committee against Torture (CAT) after a 13-year delay, together with alternative reports submitted by various civil society organisations. Particular attention is given to the Concluding Observations made by CAT. While several developments undertaken by the government are acknowledged, the last part of the report illustrates that acts of torture and other ill-treatment are still perpetrated by public officials, members of the security forces, and they are seldom investigated and prosecuted. Based on these observations, the report makes recommendations aimed at the prevention and eradication of torture and other ill-treatment.

Methodology

The authors conducted desktop research and content analysis of several reports on the prevention and eradication of torture at the international and national levels. Often, reports produced by international organisations present the only reliable source of information, since data on individual cases reported, investigated and tried either does not exist or is not available to the public. This report is descriptive and summarises the most important developments to date. We assess how far the Mozambican institutions have gone in establishing measures to prevent and combating torture and what remains to be done.

¹ UNCAT, Article 1(1).

The international framework

Mozambique ratified UNCAT on 14 September 1999, forming part of the community of states that are committed to the prevention and eradication of torture.²

OPCAT represents an important instrument that supplements UNCAT and establishes an international inspection system for places of detention, the Sub-Committee for the Prevention of Torture (SPT)³ and the National Preventive Mechanism (NPM)⁴. OPCAT was adopted by the UN General Assembly on 18 December 2002, and entered into force on 22 June 2006. As of May 2017, the Protocol has 16 signatories and 83 parties, including Mozambique that ratified it on 1 July 2014.

The Constitution of the Republic of Mozambique (*Constituição da República de Moçambique*, CRM) states in Article 17(2) that "the Republic of Mozambique shall accept, observe and apply the principles of the United Nations Charter and the African Union Charter".⁵ Article 18 of the CRM states, with reference to international instruments, that:

1. [v]alidly approved and ratified international treaties and agreements shall enter into force in the Mozambican legal order once they have been officially published, for as long as they are internationally binding on the Mozambican state.

[n]orms of international law shall have the same force in the Mozambican legal order as have infra-constitutional legislative acts of the Assembly of the Republic and the Government, according to the respective manner in which they are received.⁶

This makes Mozambique one of the few African states that have a monist legal system, meaning that ratified international and regional laws automatically become part of domestic law. Therefore, the provisions of UNCAT and OPCAT, are domestically applicable to protect persons against acts of torture and other ill-treatment. However, at the time of writing, no court in Mozambique has ever applied these instruments directly.

² For the status of ratification see: UN Office of the High Commissioner for Human Rights, Interactive Dashboard, <http://indicators.ohchr.org/> (accessed 13 May 2017).

³ The SPT is composed of 25 independent and impartial international experts. The SPT has two functions. It can make visits to states parties, during which it can visit any place where people are deprived of their freedom. Secondly, it has a consultative role, which involves providing assistance and advice to states parties.

⁴ The NPM should be a national, independent mechanism that can perform unannounced monitoring visits to all places where people are deprived of their liberty.

⁵ MOZLEGAL, Constitution of the Republic of Mozambique. 2004. Page 4. Available at [http://confinder.richmond.edu/admin/docs/Constitution_\(in_force_21_01_05\)\(English\)-Mozlegal.pdf](http://confinder.richmond.edu/admin/docs/Constitution_(in_force_21_01_05)(English)-Mozlegal.pdf). (accessed 12 January 2017).

⁶ MOZLEGAL, Constitution of the Republic of Mozambique. 2004. Page 4.

The national legislative framework

The CRM has several safeguards against torture and other ill-treatment. Under Article 40 of the CRM "[e]very citizen has the right to life and to physical and moral integrity and cannot be subject to torture or cruel or inhuman treatment".⁷ A particular provision regarding the prohibition of torture and cruel or degrading treatment is mentioned with reference to extradition in Article 67. The article states that no one shall be extradited where there are grounds to believe that the right not be subjected to torture or inhumane, degrading or cruel treatment may be infringed.⁸ Further, in line with Article 15 of UNCAT, Article 65(3) of the CRM notes that "all evidence obtained through the use of torture, coercion, offences against the physical or moral integrity of the person shall be invalid."⁹

While the constitutional provisions protect people from torture, it is the subordinate legislation that must define torture and other ill-treatment and determine the punishments for such acts. However, it was only in June 2015 that torture was officially criminalised by the new Penal Code.¹⁰ Prior to this, the penal and criminal procedure legislation made no mention of torture. In the new Penal Code, torture is considered as a 'heinous' crime (*crime hediondo*), implying the type of cruelty that should have no place in society whatsoever. Specifically, Article 160(i) states that torture, as an act perpetrated by an "agent" causing physical and psychological suffering with cruelty to obtain a confession, information or simply for pleasure, is punishable with a prison sentence of between 20 and 24 years.¹¹

The definition of torture is, however, much narrower than the definition in UNCAT, focusing on the direct infliction of harm and not creating criminal responsibility for acts such as instigation, acquiescence or giving consent. However, while UNCAT restricts torture to acts committed by public officials or whoever acts in an official capacity, the term "agent" used in the Penal Code is much broader, and potentially could include persons outside of the public sector, for example private security.

While torture should have been defined more thoroughly, the criminalisation of torture denotes a commitment by the state towards its prevention and eradication. Previously that commitment was only indirectly shown by the ratification of international instruments and more explicitly by the submission of the Initial Report to UNCAT in 2013. Although not perfect, the enabling legislation does provide some relief.

The ratification of OPCAT also reflects a commitment towards the establishment of a National Preventive Mechanism (NPM) to monitor all places of detention and make recommendations to the competent authorities. Government Resolution 23/2013 gave the power to the Minister of Justice to sign, ratify, implement and assure compliance with international human rights treaties. This resolution approved internally the ratification of OPCAT and designated the National Human Rights Commission (NHRC) as the NPM.

⁷ MOZLEGAL, Constitution of the Republic of Mozambique. 2004. Page 13.

⁸ MOZLEGAL, Constitution of the Republic of Mozambique. 2004. Page 22.

⁹ MOZLEGAL, Constitution of the Republic of Mozambique. 2004. Page 21.

¹⁰ Law 35/2014.

¹¹ Unofficial translation of the authors from the following: "tortura, quando o agente impõe sofrimento físico ou psicológico por crueldade, intimidação, punição para obter uma confissão, informação ou simplesmente por prazer". Penal Code, Law n. 35/2014, article 160(i).

The NHRC was created by Law 33/2009 and became operational in 2014. The eleven commissioners were appointed in 2012. Four members are nominated by civil society organisations active in the area of human rights and presented to the Prime Minister for the appointment; three members representing Health, Justice and Education sectors are nominated by the Prime Minister after consultations with the relevant Ministries; three expert members with the “recognised competence and merit, knowledge and experience” are elected by Parliament following principles of proportionality; and one member is nominated by the Mozambican Bar Association. The NHCR reports annually to the President and Parliament. Members are being appointed for a five- year period.

OPCAT mandates all NPMs to have access to all places of detention at any time and without prior notice where it can conduct visits and interview people. In Mozambique, however, all visits to places of detention, including those conducted by NPM, must be announced and approved by the responsible authority (Ministry of Justice for prisons and Ministry of Interior for police detention). This “approval procedure” is contrary to OPCAT that guarantees regular visits by independent international and national bodies without prior notification or approval.

It should be noted that the NHRC had already conducted inspection activities and monitoring of prisons. However, none of the findings nor recommendations have been published to date. Without any reporting and efforts in responding to violations of rights, the work of the NHRC as NPM is compromised not fulfilling its duties. The first Chairperson of the NHRC, Custodio Duma, confirmed that during the first five years of its mandate, the institution had not been able to meet all the expectations and respond to all the complaints brought before the Commission, and particularly those related to illegal detention.¹² He especially highlighted the lack of cooperation with the previous Minister of Interior, who were unsure about the role of the NHRC in responding to complaints about illegal detention and other ill-treatment implicating police officials. Subsequently, cooperation with the new Minister has improved, although illegal detention remains problematic. The term of office of the first eleven commissioners ended in October 2017 and it remains to be seen how the new chairperson, Luis Bitone, will lead the NHRC in the prevention of torture and other ill-treatment and the interpretation of the NPM mandate.

The Initial Report to the Committee against Torture

Article 19 of UNCAT requires that states submit an Initial and subsequent Periodic Reports every four years. Considering that Mozambique ratified UNCAT in 1999, the Initial Report should have been submitted within one year. However, it failed to comply with this requirement and submitted the Initial Report in March 2013; a 13-year delay. Nonetheless, the report’s submission should be taken as a sign of new political will and commitment by the state, giving hope for more positive developments in human rights reform. A brief description of the report follows.

¹² Grande Entrevista Dossiers & Factos Edition 216. 8 May 2017.

The first part of the Initial Report¹³ provides a description of the country with reference to geographical location, political, social and economic situation, and the demographic composition, population, culture and religion. This is not in line with guidelines on the form and content of initial reports.¹⁴ The government meant this part to represent the 'common core document' while it should have described not only the state's constitutional and legal framework in relation to torture and other ill-treatment, but also information on the state of human rights in the country and measures undertaken in the preparation of the report.¹⁵ The purpose of the common core document is 'to avoid the lengthy repetition of historical and general statutory and policy provisions in the Initial and Periodic Reports.'¹⁶ However, the Initial Report failed to comply with the guidelines and the CAT reporting requirements.

The second part of the Initial Report describes the constitutional and legal framework, the institutional mechanisms for the protection against torture and the role of civil society organisations. However, in terms of the particular mechanisms, this section lacks substance. It only provides a list of the institutions and organisations, failing to engage with their roles, responsibilities and particular mechanisms and measures in place for the prevention and eradication of torture. Some specific measures were, however, explained in the third section of the report in relation to each article of the Convention.

The third part elaborates on the implementation of UNCAT by reporting on the 15 articles of the Convention. In terms of the particular mechanisms the state relied strongly on the constitutional and legal safeguards, as well as administrative measures to prevent torture and other ill-treatment. These mechanisms focus mostly on what is written in law, regulations and internal disciplinary and ethical provisions. However, little attention is paid to compliance with the overall regulatory framework, implementation and effectiveness of those measures.

While some consideration was given to matters such as jurisdiction, extradition, investigation of acts of torture and other ill-treatment and protection of victims, the emphasis is placed police and prison detention and neglecting other places of detention, such as the psychiatric hospital at Infulene (near Maputo) and the refugee camp of Maratane (in Nampula). Particular attention is given to conditions in prisons (particularly overcrowding), reasons for it and efforts to address it. One of the most frequently highlighted activities that the state implemented to prevent acts of torture, was the training of police and prison officials. However, particulars of such training (i.e. how often and how many officials were trained, the curricula of the Police Basic School, Police Science Academy and the National Penitentiary Service, the impact of the training, etc.) were not reported on. Such information would contribute towards much needed knowledge, informed planning and monitoring future activities.

¹³ UN COMMITTEE AGAINST TORTURE. Consideration of reports submitted by states parties under article 19 of the Convention. Mozambique. CAT/C/MOZ/1. 29 January 2013. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2fMOZ%2f1&Lang=en. (accessed 15 June 2017).

¹⁴ UN COMMITTEE AGAINST TORTURE. Guidelines on the Form and Content of Initial Reports under Article 19 to be submitted by state parties to the Convention against Torture. CAT/C/4/Rev.3. 18 July 2005.

¹⁵ Reports under the revised reporting system consist of two parts: the common core document and the treaty-specific document. Common core document should contain information of a general and factual nature which may be of relevance to all or several treaty bodies. See: UNITED NATIONS INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, HRI/GEN/2/Rev.6, 2009.

¹⁶ MUNTINGH. L. The betrayal of Steve Biko – South Africa's Initial Report to the UN Committee against Torture and responses from civil society. Law, Democracy & Development. University of Western Cape. n.12(1). Page 32. 2008.

Stakeholders' reports

Rule 63(1-2) of CAT's Rules of Procedure¹⁷ states that civil society organizations can submit to CAT information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention.¹⁸ This allows civil society organisations to submit information in the form of alternative reports as a response to state reports. As Muntingh noted "this is probably the most often used and most accessible way for civil society to take part in CAT's work".¹⁹

After the submission of the Initial Report, four alternative reports were submitted to CAT by the following organisations: Amnesty International (AI), Article 5 Initiative (A5I), Global Initiative to End All Corporal Punishment of Children (GIEACPC) and a joint submission by three NGOs.²⁰

The report by AI highlighted the absence of effective legislative, administrative and judicial measures to prevent torture and other ill-treatment in the country; the failure to initiate immediate and impartial investigations and prosecute alleged perpetrators; failure to uphold the right of individuals to complain to, and to have their case promptly and impartially examined by competent authorities; failure to protect such individuals or witnesses from ill-treatment and intimidation as well as to provide compensation and rehabilitation for victims and their families.²¹ The report was supported by case descriptions of torture, some of which have already been documented in previous reports by AI.²² Similar issues were raised in the joint NGO submission.

The alternative report by A5I²³ focused on the policing and prison systems. Particular attention was paid to the lack of statistics, data and information on torture and other ill-treatment. A5I highlighted the lack of information on the number of cases of torture in the country; the frequency of training on human rights and the prevention of torture conducted by different institutions and the impact of such training; the number of investigations conducted against

¹⁷ UN COMMITTEE AGAINST TORTURE, Rules of Procedure. CAT/C/3/Rev.6. 1 September 2014. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2F3%2FRev.6&Lang=en (accessed 15 June 2017).

¹⁸ The Rule gives this possibility also to United Nations bodies, Special Procedures of the Human Rights Council, intergovernmental organizations, National Human Rights Institutions and non-governmental organizations.

¹⁹ MUNTINGH. L. 2008. Page 31.

²⁰ The Mozambican League for Human Rights, Centre for Mozambican and International Studies (*Centro de Estudos Moçambicanos e Internacionais*, CEMO) & JOINT - Mozambican League of NGOs.

²¹ AMNESTY INTERNATIONAL, Mozambique submission to the United Nations Committee against Torture. 51st Session of the United Nations Committee against Torture (28 October – 22 November 2013). Available at: http://tbinternet.ohchr.org/treaties/cat/shared%20documents/moz/int_cat_ngo_moz_15401_e.pdf. (accessed 26 June 2017).

²² AMNESTY INTERNATIONAL, I can't believe in justice anymore, Obstacles to justice for unlawful killings by the police in Mozambique. 2009, Available at: <https://www.amnesty.org/en/documents/AFR41/004/2009/en/> (accessed 26 June 2017).

AMNESTY INTERNATIONAL, License to Kill: Police Accountability in Mozambique. 2008. Available at: <https://www.amnesty.org/en/documents/afr41/001/2008/en/> (accessed 26 June 2017).

²³ ARTICLE 5 INITIATIVE, 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. 2013. Available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MOZ/INT_CAT_NGO_MOZ_15428_E.pdf (accessed 12 January 2017).

perpetrators of torture as well as the punishments imposed; as well as data around victims of torture and the protection offered.

The submission of the GIEACPC²⁴ described the *de facto* legality of corporal punishment of children. Given the obligation under international human rights law to prohibit all forms of corporal punishment of children,²⁵ the organisation recommended that Mozambique enact legislation prohibiting corporal punishment in all settings, including the domestic environment and train people towards non-violent forms of punishment.

The information included in both the state and stakeholders' reports assisted CAT in drafting Concluding Observations. The evidence-based submissions made by the international and national NGOs are of importance as they often complement the less accurate or less detailed information submitted by government. These reports provide a much needed critical analysis and added value to the overall evaluation of the state's progress.

Concluding Observations of CAT and follow-up activities

In its Concluding Observations CAT acknowledged the positive developments that had taken place in the country in relation to combating torture. However, several concerns remained and were highlighted. CAT recommended that the country must criminalise torture (which was subsequently done), establish jurisdiction over the crime of torture and guarantee fundamental safeguards of arrested people. Among these safeguards, access to a lawyer and family members, independent medical examination and access to legal aid were specifically noted. CAT emphasised that the country should thoroughly investigate all allegations of torture and other ill-treatment and officials should be trained on the minimum use of force. Judges and magistrates should also undergo training and the impact of such training should be monitored. In addition, conditions in places of detention relating to food, sanitation, medical care and access to water were seen as serious issues. CAT recommended that overcrowding be addressed as well as inter-prisoner violence and excessive pre-trial detention, the establishment of an independent complaints mechanism and a system for monitoring all places of detention. On child justice, CAT pointed out that the country should prohibit corporal punishment of children in all settings and improve child justice in general.

Furthermore, CAT recommended that the Government make publicly available the Concluding Observations in the country; to submit its common core document as provided for in the guidelines; to provide follow-up information on matters related to safeguards for persons in detention, on investigations of acts of torture involving law enforcement officials and prosecution of suspects as well as on redress to victims of torture and other ill-treatment.

²⁴ GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, Briefing on Mozambique for the Committee against Torture, 51st session, October/November 2013. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=INT%2fCAT%2fNGO%2fMOZ%2f15402&Lang=en (accessed 8 May 2017).

²⁵ See United Nations Convention on the Civil and Political Rights.

The Concluding Observations represent a useful instrument not only for the state but also for civil society organizations. In response to the Committee's remarks, the state and civil society organisations can submit additional information to the Committee, create an agenda to address the issues raised by the Committee and finally consult with other stakeholders in the preparation of the responses.²⁶ CAT recommended that the Government submit the additional information by 22 November 2014. However, at the time of writing (March 2018), the follow-up state report had not been submitted.²⁷ In addition, the deadline for the submission of the next periodic report is set for 22 November 2017, a deadline that has now also been missed.

In the absence of the follow-up state report, a number of NGOs drafted and submitted a follow-up report assessing the state's progress against a selection of CAT's recommendations in the Concluding Remarks.²⁸ The report assessed actions undertaken by the state in response to the recommendations denoting an insufficient implementation grade (between D and E). The submission focused on: ensuring legal safeguards for detained and arrested persons; ensuring impartial investigations, and the prosecution of perpetrators and redress for the victims of torture

It is not to say that the state has not made significant efforts and taken measures to deal with certain issues. For example, a hotline called the "Number of the Prosecutor" (*Linha do Procurador*), within the Attorney General's Office, is available to citizens to report abuses in places of detention.²⁹ Training was conducted with police and prison officials on pre-trial detention.³⁰ However, much more needs to be done in the prevention of torture and other ill-treatment to ensure effective implementation and the development of a new and improved mechanism for detecting and responding to rights violations.

From *de jure* to *de facto* in combating torture and implications for the country's public integrity

A number of civil society organisations monitor the incidence of torture and other ill-treatment. The alternative reports submitted by NGOs to CAT provide a number of documented cases of torture, showing that the law alone does not prevent torture. The cases detail severe beatings and excessive use of force by police officers, as well as by members of the Rapid Intervention Unit (*Unidade Intervenção Rápida*, UIR); abuse, theft of personal belongings, the extortion of refugees; extrajudicial killings, summary executions perpetrated by the police; as well as various forms of ill-treatment documented in prisons. What is common to all these is that in the majority of the cases there was no

²⁶ MUNTINGH. L. 2008. Page 36.

²⁷ In December 2014 a letter was sent to the state as a reminder on the obligation for reporting. In the meantime, the SPT conducted a visit in the country, mainly as a way to assist the new NMP, in September 2016. The results of that visit remain confidential, a peculiar characteristic of the work of the Sub-Committee.

²⁸ The report was submitted by REFORMAR in cooperation with the Human Rights League and the Civil Society Prison Reform of University of Western Cape, 2016.

²⁹ A number is available to ask for Prosecutors' assistance in case of arrest and detention. The line is available 24 hours a day, every day.

³⁰ In 2016, the Centre for Human Rights of the University Eduardo Mondlane provided training to the ACIPOL and the Legal Training Centre.

investigation, perpetrators were not prosecuted and no one was held accountable.³¹

The alternative reports reported on cases that happened up until 2013 but there has been little, if any, improvement in practice. Torture and other ill-treatment are frequently reported in the media and by human rights organisations.

The 2015 US State Department report on Mozambique noted that “[t]he most significant human rights problems included arbitrary or unlawful deprivation of life; harsh prison and detention conditions, including reports of torture.”³² For example, in March 2015 a police officer in Lichinga shot and killed an elderly man who didn’t have a bicycle license and reportedly resisted when the officer wanted to confiscate the bicycle. In February 2016 a police officer in Beira shot and killed Cristovão Marcos Inoque, an auto-rickshaw driver, because he thought Inoque was filming him drinking a beer.³³

In 2015, Judge Dimas Marroa condemned the continued illegal detention of people by police officials,³⁴ although the Judgment of the Constitutional Council 4/CC/2013 has changed the legal framework for pre-trial detention. The Council removed the powers of the police, prosecutors and administrative chiefs to authorise detention and only the judiciary may now authorise detention *fora flagrante delicto*.

In addition, some people were detained for several months and beyond the maximum investigative detention period and several cases were reported where officials demanded bribes to release prisoners who had already completed their sentences.³⁵ The hotline of the Attorney General’s Office is operational and accessible to citizens wishing to report abuses in places of detention. However, in cases of illegal detention, prosecutors appear to release the person illegally detained, but often without opening an investigation and laying charges against the responsible officials, as regulated by Articles 84 and 85 of the Penal Code.³⁶

In April 2016 Mozambique accepted a substantial number of recommendations under the UN Universal Periodic Review (UPR). This includes amongst others, the recommendation to ensure that all allegations of arbitrary detention, excessive use of force, extra-judicial executions, torture and other ill-treatment by state actors are

³¹ HUMAN RIGHTS WATCH. Mozambique. No Justice for Abuses Before Ceasefire. Prosecuting Security Force, Renamo Crimes, Key for Enduring Peace. 2018. Available at: <https://www.hrw.org/news/2018/01/12/mozambique-no-justice-abuses-ceasefire> (accessed 12 February 2018). AMNESTY INTERNATIONAL, Mozambique: Arbitrary arrest and detention, torture and ill-treatment, and impunity for police killings, Submission to the UN Universal Periodic Review, January - February 2016. AMNESTY INTERNATIONAL, Mozambique submission to the United Nations Committee against Torture. 2013. The Mozambican League for Human Rights, Centre for Mozambican and International Studies. 2013. AMNESTY INTERNATIONAL, I can’t believe in justice anymore, Obstacles to justice for unlawful killings by the police in Mozambique. 2009.

³² UNITED STATES DEPARTMENT OF STATE, Mozambique Human Rights Report 2015, 2015. Available at: <https://www.state.gov/documents/organization/252921.pdf> (accessed 15 May 2017).

³³ UNITED STATES DEPARTMENT OF STATE, Mozambique Human Rights Report 2016. 2016. Available at: <https://www.state.gov/documents/organization/265494.pdf> (accessed 15 May 2017).

³⁴ ONLINE NOTÍCIAS, Polícia continua a prender fora do flagrante delito - queixa Dimas Marrôa, Juiz Presidente de Nampula, 27 Julho 2015. Available at: <http://www.jornalnoticias.co.mz/index.php/primeiro-plano/40418-policia-continua-a-prender-fora-do-flagrante-delito-queixa-e-de-dimas-marroa-juiz-presidente-de-nampula.html> (accessed 15 June 2017).

³⁵ UNITED STATES DEPARTMENT OF STATE, Mozambique Human Rights Report 2015, 2015.

³⁶ Centro Estudos Aquino de Bragança (CESAB) and Civil Society Reform Initiative (CSPRI) for the Attorney General’s Office 2015. Children in conflict with the Law- Searching for a Strategy of Protection in Mozambique. Unpublished report.

promptly, thoroughly and impartially investigated.³⁷ This is not different from the undertaking that the state gave during the first UPR in 2011. However, in practice little was achieved to implement the undertaking.³⁸ While this acceptance of recommendations is important and was welcomed by the international community, human rights organisations, such as Amnesty International, remain concerned about a continued reports torture and other ill-treatment in practice.³⁹ For example, in a recent case in May 2016, Benedito Sabão, a subsistence farmer from Catandica town in Manica Province, was arbitrarily arrested, ill-treated and shot at by suspected secret service agents being accused of being a RENAMO supporter. He survived, but the perpetrators were never found and brought to justice.⁴⁰

A range of factors contribute to these abuses, such as: the lack of transparency of the security forces under the responsibility of the Ministry of Interior; the lack of comprehensive and regular training of public officials, especially police and prison officers focusing on human rights; a pervasive culture of ‘capture and punish’ in the police system;⁴¹ recent political instability and armed conflict,⁴² and generally poor socio-economic conditions with inadequate salaries for police and prison officials encouraging corruption. Seen together, these realities perpetuate the abuse of power, including torture. The failure to respond effectively to violations erodes the principles of good governance and compromises the rule of law and public integrity.⁴³

Public integrity is defined as the integrity of the public sector institutions and/or its elected officials.⁴⁴ Ulman explains that “divergence from the public integrity means: first, the contravention of the principle of the law; second, lack of transparency; then, failing in offering the proper impartiality; and lastly, deficiency in the public responsibility.”⁴⁵ While the departure from public integrity is mostly studied through and epitomized in corruption, corruption represents only one form the abuse of power. Practices of torture and other ill-treatment probably represent the most severe and brutal forms of the abuse of power. Those acts constitute the infliction of severe physical and mental suffering perpetrated by public officials generally from the security sector. This directly violates the

³⁷ UN HUMAN RIGHTS COUNCIL, Report of the Working Group on the Universal Periodic Review. Mozambique. A/HRC/32/6. 12 April 2016. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/075/29/PDF/G1607529.pdf?OpenElement> (accessed 25 June 2017).

³⁸ AMNESTY INTERNATIONAL, Mozambique: Arbitrary arrest and detention, torture and ill-treatment, and impunity for police killings, Submission to the UN Universal Periodic Review, 2016.

³⁹ AMNESTY INTERNATIONAL, Public statement. 28 June 2016.

⁴⁰ AMNESTY INTERNATIONAL, Public statement. 2016.

⁴¹ BAKER, B. Policing and the rule of law in Mozambique. *Policing and Society*. n.13(2). p.139-158. 2003. OPEN SOCIETY INITIATIVE FOR SOUTHERN AFRICA, Mozambique Justice Sector and the Rule of Law. 2006. Available at: [http://www.unicef.org/mz/cpd/references/21-Mozambique%20Justice%20report%20\(Eng\).pdf](http://www.unicef.org/mz/cpd/references/21-Mozambique%20Justice%20report%20(Eng).pdf) (accessed 25 June 2017).

⁴² Last year particularly saw an increase in politically motivated abuses on behalf of the state’s security forces due to the armed conflict in the country, including abductions, killings, summary executions and torture of suspected RENAMO (militarised opposition, national resistance party) members and supporters. (see: HUMAN RIGHTS WATCH. Mozambique. No Justice for Abuses Before Ceasefire. Prosecuting Security Force, Renamo Crimes, Key for Enduring Peace. 2018). Confrontations started in 2013 and escalated in 2016 in rural areas of the central and northwest parts of the country. The Amnesty Law was promulgated in 2014, however, with no immediate outcome. The tension came to an end in November 2016.

⁴³ On a public integrity index scale, Mozambique is rated 84 out of 105 countries, with the overall score of score 5.2 out of 10. See: Index of Public Integrity, <http://integrity-index.org/>.

⁴⁴ ULMAN, S. R. Approaches to Public Integrity, *CES Working Papers*, n.2. p.340-356. 2015.

⁴⁵ ULMAN, S. R. Approaches to Public Integrity, 2015. Page 242.

constitutional rights to life, physical and moral integrity of a person, and involving public actors as perpetrators and violators of those most important human rights that they paradoxically are mandated to safeguard.

Impunity for these acts also means that victims remain unprotected and without redress, diminishing the credibility of the state in the eyes of the public. The CRM provides in Article 58 for the right of individuals to compensation for damages caused by a violation of their rights. However, the national legal framework in place lacks norms to fully protect victims of torture and ill-treatment. The 2012 Law on the Protection of Victims, Witnesses and Whistleblowers has not yet been implemented and an office for the protection of the victims has not been established.

To date, there has only been one successful civil claim for acts of torture and ill-treatment which resulted in death of the victims: the 'Costa do Sol' case.⁴⁶ In 2008, the state was ordered to pay 1.8 million Meticaís (approximately US\$ 75 000) to the families of the three murdered victims.⁴⁷

There have been no other cases where victims and families of victims of torture and other ill-treatment have been compensated and the conclusion to be drawn is that judges seem intimidated to criticise the government, hold officials accountable and order compensation for victims of torture and other ill treatment. The following was noted by the Human Rights League:

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. 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

CAT highlighted the need for the full redress to victims in reference to General Comment 3 on the implementation of the UNCAT's Article 14. As a duty of a state party, the responsibility to fully protect victims relates to compensation, restitution, rehabilitation and guaranties of non-repetition.⁴⁹ However, since the mechanisms to implement such rights do not exist, the country should demonstrate additional efforts and initiate the legal and policy developments to ensure compliance with constitutional and international norms and obligations.

⁴⁶ In this case, three police officers led three detainees, Sousa Carlos Cossa, Mustafa Assane Momedé and Francisco Nhantumbo, from a Police Station in Laulane (outskirts of Maputo City) to an open field in the neighborhood Costa do Sol where they subsequently shot them dead. Following the investigation, the three police officers were suspended from their duties and subsequently tried in court and were sentenced to the more qualified homicide.

⁴⁷ LIGA MOÇAMBICANA DOS DEREITOS HUMANOS, CEMO and JOINT, Mozambique review of the provisions of article 19 on the Convention against Torture: Information for interactive dialogue. Maputo. October 2013. Available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MOZ/INT_CAT_NGO_MOZ_15464_E.pdf (accessed 12 May 2017).

⁴⁸ LIGA MOÇAMBICANA DOS DEREITOS HUMANOS, CEMO and JOINT, Mozambique review of the provisions of article 19 on the Convention against Torture: Information for interactive dialogue. Maputo. October 2013.

⁴⁹ (CAT/C/GC/3, 2012).

Conclusion

Compliance with UNCAT on the duty to report to CAT is, without a doubt, an important development for Mozambique, even when 13-years late. The state's Initial Report has potentially opened a new door towards the prevention and eradication of torture and other ill-treatment in Mozambique. The ratification of OPCAT is a further important and positive development, together with the enactment of the new Penal Code with provisions that officially criminalised torture.

The government's willingness and efforts are indeed key requirements in the prevention of torture and other ill-treatment. Civil society organisations are important stakeholders contributing to the overall effort to combating torture and are important watchdogs. The alternative reports submitted to CAT by civil society organisations provided comprehensive and useful information, demonstrating an active participation in the process.

National media and international organisations have repeatedly reported cases of torture and other ill-treatment perpetrated by public officials, specifically police and prison officers. They are seldom held accountable. The lack of investigations and prosecutions are particular concerns, as they indicate the lack of institutional transparency and accountability, and are sustaining a climate of impunity. A further cause for concern is the lack of legal and practical mechanisms to ensure full redress for victims of torture. Seen together, these trends undermine the rule of law and public integrity. The apparent unwillingness to hold public officials and institutions accountable raises questions about the independence and impartiality of the judiciary with much broader implications, not only about combating torture but also other abuses of power. This has far-reaching consequences for the political, economic, and social development of the country. However, with enough political will and cooperation amongst relevant institutions and organisations, a positive climate can be created contributing to the prevention and eradication of torture.

Recommendations

A. Strengthening the national legislative framework

The legislature should define the crime of torture at least in compliance with UNCAT, with clear and unambiguous description of what constitute the acts of torture or cruel, inhuman and degrading treatment. In addition, a comprehensive policy framework needs to be developed to provide strategic direction and guidelines to ensure the effectiveness of relevant institutions in detecting, investigating and prosecuting these offences. Legislation that protects and supports victims of torture is required. Laws and policies should generally be more victim-centred, emphasising victim assistance and support, as well as concrete remedies assuring restitution, compensation, rehabilitation and guarantees of non-repetition. Drafting a Victims' Charter, as an overall framework for the protection of victims, would be a desirable step in this regard.

B. Monitoring, Evaluation and Research

Relevant institutions should keep record of all allegations of torture and different ill-treatment, as well as of the progress on investigations and subsequent prosecutions. All data and relevant governmental reports should be publicly available, and especially those reports related to the work of criminal justice institutions. The reports and other important documents about torture need to be made available at least in Portuguese, so interested parties can have access to information and from there take informed actions.

A monitoring and evaluation system should be established to assess the effectiveness of training and other mechanisms aimed at preventing acts of torture. The system would create much needed knowledge on what is effective.

The NPM should regularly visit places of detention, as per the OPCAT guidelines and publish all the findings and recommendations.

C. Outreach and advocacy

Raising awareness through civic education campaigns would improve citizens' knowledge on the prohibition of torture and other ill-treatment, as well as on other important constitutional rights and liberties. Only informed citizens can claim their rights, and take the first necessary step, namely to speak out and report acts of torture or any other ill-treatment. All stakeholders both within the Government (i.e. the National Directorate of Human Rights and Citizenship) as well as civil society should engage in disseminating relevant information on the prohibition of torture and other ill treatment (including available legal protections) as widely as possible.

D. Strengthening institutions

All relevant institutions should show commitment and invest resources in preventing and responding to torture. This should be done by:

- Having a strong leadership that would reaffirm the absolute prohibition of torture in the country, strongly condemning its practices and warn that anyone using, participating, aiding and abetting in acts of torture will be held accountable and subjected to criminal prosecution and appropriate penalties.
- Building capacity for an effective response through training. Development of intra- and inter-departmental strategies for preventing and combating torture, allocation of human and material resources and training of government officials are important in building strong and responsible institutions. Specific training should be carried out in both the Police and National Penitentiary Service, focusing on the prohibition of torture and the respect of human rights of detained, charged and sentenced persons. The Institute for Legal Aid (IPAJ), should provide legal assistance to arrested citizens from the time of arrest until sentencing to prevent potential acts

of torture and inhumane treatment during the process. Judges should be trained on the application of alternative and non-custodial sentences.

- Ensuring prompt, impartial investigations of alleged acts of torture and subsequent prosecutions by the Attorney General's Office. Prosecutors and lawyers at police stations should monitor the legality of the arrests and prevent ill-treatment of arrested persons and they are also in the position to immediately verify allegations of ill treatment and if these allegations are investigated and prosecuted.

E. Improving conditions of detention

Some infrastructural investments would need to be made to improve conditions of detention. The development and implementation of measures to reduce overcrowding are essential. The Ministry of Health should allocate medical personnel to places of detention and self-sustainable agricultural projects should be established at all detention facilities to improve the diet of detained and imprisoned people.

F. Monitoring places of detention and reporting

Even though the law governing the composition and work of the NHRC has its flaws, the Commission should carry out its prescribed duties as NPM and develop and implement a plan for regular monitoring of places of detention and the protection of victims of torture and other ill-treatment. The reports and recommendations should be regularly published. The Attorney General's Office, responsible for monitoring police detention, should make sure that all police stations in the country are indeed being visited.

A crucial step in addressing the torture and other ill-treatment is knowing where and under which circumstances it happens. Therefore, having accessible and safe avenues to report, and establishing an independent complaints system are key steps in combating torture. Particular attention should be paid to reporting mechanisms in places of detention.

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