



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Chairperson: Mr. Grossman

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Initial report of Mozambique (continued) (CAT/C/MOZ/1)

1. *At the invitation of the Chairperson, the delegation of Mozambique took places at the Committee table.*
2. **Ms. Levi** (Mozambique) said that the Police Disciplinary Regulation was expected to be adopted no later than March 2014. As to whether superior orders could be invoked as grounds for exemption from criminal liability, the staff rules for civil servants and government employees expressly stipulated that State officials were not required under any circumstances to comply with a superior's order or instruction if doing so would entail the commission of a criminal offence. No authorization was needed to lodge a complaint of torture with the appropriate authority.
3. All allegations of torture or ill-treatment by police or prison officers gave rise to an investigation, which was conducted under administrative or criminal law, or both, depending on the circumstances of the case and the applicable legislation. Since torture had not yet been defined as a specific offence under criminal law, it was not yet possible to give direct effect to article 40, paragraph 1, of the Mozambican Constitution, which prohibited torture or other cruel or inhuman treatment. However, physical violence and other acts amounting to torture were criminalized, and during the period under review convictions involving such acts had been handed down in some 50 cases, with sentences ranging from 6 months' to 27 years' imprisonment. The Criminal Code was currently being revised, and there were plans to include the definition of a specific offence of torture in the new version. In one case of alleged ill-treatment and torture that had occurred at a maximum security prison in 2010, the prison governor and seven guards had been suspended and currently faced prosecution under criminal law.
4. Acts by a prison or police officer that could be equated with summary execution were also subject to prosecution. She cited as an example the Costa do Sol case, in which three police officers had been convicted and sentenced to prison terms ranging from 21 to 27 years for the murders of three men at a football field in Maputo.
5. The Code of Criminal Procedure in Mozambique was based on an old inquisitorial model that had been amended to such an extent that it approximated, but could not fully be considered, an adversarial system. Efforts were being made to address a lack of coordination in methods for registering persons as they moved through the various stages of the legal process, including pretrial detention, investigation and imprisonment. The maximum length of pretrial detention was seven months; however, the prosecution service could petition the court for an additional two months in order to complete a criminal investigation.
6. Victims of torture, human trafficking or domestic violence, or any person whose rights had been violated, could apply for reparation by means of a civil suit following a criminal court decision in which the perpetrator of the violation had been identified and found guilty. As part of efforts to rehabilitate victims of human trafficking, advisory and support services for women and child victims had recently been set up within the Ministry of the Interior, police stations and hospitals. The situation was still far from perfect, however. Although training in the areas of rehabilitation and reparation was provided for medical and judicial personnel, the number of trained staff in those areas remained insufficient. Article 58 of the Constitution provided that the State was liable for damage caused by unlawful acts of its agents in the exercise of their duties.

7. The number of cases of lynching had gone down in recent years, which was attributable to information and awareness-raising campaigns. The main aim of the campaigns had been to foster the rule of law, as opposed to a culture where people took justice into their own hands. Data on persons implicated in lynchings were difficult to come by, since the phenomenon usually involved large groups of persons, thus making it difficult to bring those responsible to justice.

8. The prison population was around 15,000, of whom, approximately two thirds were convicted prisoners and one third unconvicted. The problem of overcrowding was reflected in the fact that there was only one bed for every two prisoners. However, budget allocations for prisons had increased by some 40 per cent over recent years, with the result that significant improvements had been made in prisoners' living conditions and the construction of new prisons was helping to ease overcrowding.

9. It was difficult to provide figures on the extent of violence in prisons, both between prisoners and between prisoners and guards, as such cases often went unreported. Even when investigations were conducted, prisoners were unwilling to speak out. Yet despite the lack of statistics on cases of ill-treatment of prisoners, when violent incidents were reported appropriate action was taken to bring those responsible to justice. In the period 2010–2013 the number of disciplinary actions against prison staff had fallen from 24 to 8. That trend perhaps reflected an increasing awareness among prison guards that there was no impunity and that persons who committed an offence were accountable for their actions.

10. The Institute for Legal Assistance and Representation (IPAJ), which had been set up by the Ministry of Justice in order to provide legal assistance to persons unable to afford a lawyer, had trained and employed a number of public defenders over the past five years. However, since they were too few in number to cover all parts of the country, other lawyers not on the IPAJ payroll had provided their services for defendants on a fee-paying basis.

11. In Mozambique, the age of criminal responsibility was 16, whereas the age of majority was 21. Thus, minors between the ages of 16 and 21 who had come into conflict with the law could be deprived of their liberty. A prison school for minors had been inaugurated, and a separate facility for minors had been set up in two of the country's main prisons. Further action was needed in order to bring remaining prisons into line with the principle of separating minors from adults, and a number of prison construction projects, which would include separate facilities for minors, were currently under way.

12. The anti-trafficking law, which had been enacted in 2008, had had a very positive impact. Nevertheless, Mozambique had a rural population who were often not aware of their rights or even of the existence of that law. The national authorities were doing their utmost to publicize the law and enjoyed the cooperation of NGOs in that regard. She outlined four characteristic cases of trafficking in which the perpetrators had been convicted and ordered to pay compensation to the victims. Those cases indicated that Mozambique was a source country for the trafficking of men, women and children, in particular for the purposes of forced labour and forced prostitution – sometimes with the complicity of family members.

13. Reported cases of domestic violence had increased from some 22,000 in 2011 to 24,000 in 2012. In the vast majority of those cases the victims were women, but in nearly 4,000 cases the victims were men, and in nearly 7,000 they were children. In addition, 41 cases of marital rape had been reported. Those figures testified to the fact that victims were aware of their rights and had begun asserting them under the legislation in force. The section of the Criminal Code pertaining to sexual offences included the specific offence of *stupro*, which differed from rape in that it involved not sexual assault but rather seducing a virgin (girl or boy) who engaged in intercourse in the erroneous belief that the seducer was

committed to a lasting relationship. That offence would be reviewed as part of the reform of the Criminal Code.

14. The Government had launched a series of national awareness-raising campaigns targeting women, young people and other vulnerable groups and dealing with issues relating to domestic violence, trafficking in persons and juvenile crime.

15. Although not all traditional practices were harmful, the practice of early marriage ran counter to human rights and had a negative impact not only on girls but also on the community and society as a whole. Early marriage usually meant that a girl would not finish her education and would consequently be ill equipped to bring up and nourish her children properly. An additional problem was that of maternal and infant mortality and morbidity, since the bodies of girls between the ages of 12 and 16 were often not capable of bringing pregnancy to a successful term. Decrees and legislation were not sufficient to combat that phenomenon, which required a change in attitudes.

16. The human and financial resources allocated for the mental health-care system were well below what was needed to meet demand. There were only 416 beds in specialized hospitals, in addition to 4 beds for mental patients in each hospital in provincial areas. Among the 1,400 health facilities, only 92 provided psychiatric services, which were available in only 55 of the 128 districts. There were 17 psychiatrists, 85 psychiatric technicians, 65 psychologists, 44 nurses and 4 occupational therapists working in the country, all of whom had been trained in human rights. The most frequent pathologies were schizophrenia, substance abuse and epilepsy. In recent years, there had been a drive to rescue homeless mental patients, some of whom had been abandoned by their families, and to refer them to the appropriate services. Mental health care focused on outpatient treatment, since it was believed that it was beneficial for mental patients to live at home. With the assistance of hospitals, diagnosis and treatment, including the possibility of exemption from sentencing, were provided for prisoners with mental health problems.

17. The extradition process in Mozambique included two phases: administrative and judicial. At the administrative stage, the Government assessed the extradition request to determine whether to entertain it or to reject it. If the decision was made to entertain the request, it was referred to the judiciary. At that stage, which was under the exclusive competence of the courts, the person whose extradition was requested was consulted and a decision taken as to whether to grant the extradition. There were a number of circumstances in which Mozambique did not grant extradition, including cases where there was reason to believe that the suspect would be subject in the requesting country to a penalty that was not provided for, not allowed or heavier than that provided for in the Mozambican legal order.

18. Persons who migrated legally to Mozambique enjoyed all the rights and benefits granted to immigrants. Those who were illegally present in its territory were returned to the country from which they had entered, once their situation had been determined in conformity with the Convention relating to the Status of Refugees. On the issue of restrictions that could be placed on the movement of refugees, the Government was currently engaged in a national debate on whether to withdraw the reservation entered by Mozambique to article 26 of the above-mentioned Convention. It would therefore be premature for the delegation to respond to the Committee's question on that point. The same applied to the question whether Mozambique planned to accede to the Convention relating to the Status of Stateless Persons.

19. No cases of violence against individuals motivated by their sexual orientation had been reported in the State party, nor was anyone discriminated against for such reasons. The Government had yet to decide whether to recognize the Lambda Association.

20. Only 380 of the approximately 1,000 lawyers in the country made a living exclusively from that profession. Few of them worked outside Maputo and the provincial

capitals. Some of the legal experts working for the Legal Aid and Support Institute (IPAJ) were private practitioners who charged for their services. The Government was working to increase the proportion of State employees in the IPAJ, who did not charge clients.

21. The role of the State Information and Security Service (SISE) was to provide the authorities with security intelligence in order to prevent terrorism, sabotage, piracy, espionage, mercenary activities, insurrection, money-laundering, trafficking in persons, drugs and weapons, and any other threats to the security of the State.

22. The Office of the Ombudsman was charged with safeguarding the rights of citizens and ensuring that public officials acted within the law. The Office had been operational for a year and had already submitted its first annual report to the President. Persons could appeal to the Office against unlawful acts by civil servants and government bodies, either individually or in a class action. The National Human Rights Commission had also been working for around one year. Its role was to receive and investigate complaints regarding human rights violations and to monitor the implementation by the State of international and regional human rights treaties and the relevant domestic legislation. In conformity with the Paris Principles, it was made up of 11 members with a broad range of backgrounds and specializations, who elected a chairperson from among their number. The Commission was mandated to present an annual report on its activities to the President and parliament.

23. When the Centre for Legal and Judicial Training had opened its doors in 2000, it had been responsible for the training only of judges. It currently provided courses for all branches of the legal profession. In addition to core courses lasting one or two years, the Centre offered refresher courses of one to two weeks' duration. The average yearly output of graduates was 20 to 25. The Centre had resident teachers and invited legal experts and civil society specialists to lecture on specific subjects. Students had the opportunity to supplement theory classes with visits to prisons, hospitals and other institutions of interest. The manuals produced by the Centre had become standard textbooks for law students around the country. Quality control of training, which was yet to be fully consolidated, was conducted by senior and former instructors. Enrolment in the Centre's core courses was by competitive examination. On average, up to 200 candidates applied to fill 25 to 50 places.

24. There was still a shortage of judges in the country, but as more qualified, appointment would also be by a system of competitive selection. The executive in no way interfered with the judiciary. The President appointed the head of the Supreme Court but the nomination required the approval of parliament. The independence of the judiciary was further guaranteed financially by the fact that judges were among the best paid professionals in the country. Prison warders, who had previously been trained by the police, currently attended one and two-year courses at a specialized institute in Maputo. All courses contained a human rights component, with emphasis on the prevention of torture.

25. **Mr. Mariño Menéndez** (Country Rapporteur) said that he would like to know by whom allegations of ill-treatment in prisons and police stations were investigated. He asked the delegation to clarify paragraph 151 of its initial report, in which it was conceded that there was "no external independent mechanism to investigate complaints against the police and prison services", and whether it was true that civil servants enjoyed the protection of the Ministry of the Interior, which could impede investigations. He asked whether complainants had the right to appeal directly to the courts and whether allegations of torture were investigated at all. Could the delegation comment on the case of a woman who had allegedly been ill-treated in a Maputo prison in 2013?

26. He welcomed the fact that the State party was considering inclusion of a definition of torture in the Criminal Code. Turning to the matter of reparation for torture victims, he asked whether compensation was ever paid and, if so, how such payments were funded.

Could the delegation provide examples of cases in which such payments had been ordered by the courts?

27. Referring to paragraph 102 of the State party's report, he asked whether border guards could send refugees or asylum seekers back to the country from which they had arrived without any order from the authorities that could be contested by the persons concerned. Approximately 8,000 refugees and asylum seekers were interned in a camp in the State party, and the latter had been known to wait up to eight years for the Ministry of the Interior to issue a decision on their requests for refugee status. He asked whether the State party applied article 5 of the Convention with regard to the presence in its territory of persons accused of committing acts of torture. He would like to know whether the SISE, in addition to its intelligence-gathering function, had an operational role and, if so, whether such activities were subject to judicial supervision. He asked the delegation to provide more information about the mandate of the State's anti-corruption office.

28. **The Chairperson**, speaking as Country Rapporteur, underlined the importance of including a definition of torture in the Criminal Code. He asked whether there were plans to simplify the Code of Criminal Procedure in order to make the trial process adversarial and more transparent. Such a change would also reduce the need for pretrial detention, which accounted for 32 per cent of the prison population. Were there legal limits on the amount of time by which courts could extend pretrial detention? He also wished to know whether article 15 of the Convention had been applied directly in the courts.

29. He asked whether the Government had taken measures to establish a centralized statistics office, whether it had a system for properly assessing requests for refugee status by asylum seekers who might face torture or death if returned to their countries, and whether it intended to amend legislation in order to fully implement article 14 of the Convention and provide comprehensive redress for torture victims.

30. Regardless of whether or not there was active discrimination against persons because of their sexual orientation, *de jure* discrimination found expression in the sexual offences defined in the Criminal Code. They should be expunged from the law. It remained a fact that the Lambda Association had not been granted official recognition. He asked whether the lynchings reported in 2008 had been investigated and whether there had been further instances of lynching since.

31. **Mr. Gaye** reiterated his earlier request for clarification of whether authorization was required in order to deport irregular immigrants and, if so, which body was responsible for taking those decisions. Could they be contested? Turning to the matter of the independence of the judiciary, he asked whether judges could be removed from their posts and in what circumstances.

32. **Mr. Domah** said that the Committee needed specific and detailed responses as to whether training for State officials included a component on the prevention of torture. The Committee required evidence of the judicial and administrative steps taken to ensure that torture victims were in a position to obtain reparation and rehabilitation.

33. **Ms. Belmir** said that underage offenders frequently were not separated from adults in places of detention, even when they had been imprisoned for minor offences.

34. **Ms. Sveaass** asked whether measures had been taken to address prison overcrowding. On the question of domestic violence, she wished to know whether the perpetrators of such acts were investigated, prosecuted and punished in accordance with the national Act on domestic violence. She enquired whether the State party intended to raise the age of statutory rape of a minor from 12 to at least 14. She sought clarification on the total number of psychologists and psychiatrists working in prisons and asked whether medical and health-care personnel, in addition to police officers, received training on

rehabilitation methods for victims of torture in accordance with the Istanbul Protocol. Lastly, she asked what steps had been taken to criminalize the sexual abuse and harassment of schoolchildren by teachers and whether such acts were investigated, prosecuted and punished.

35. **Mr. Bruni** asked the delegation to provide further information about the cases of torture referred to in the last paragraph of the report, including the context in which such acts had taken place and the efforts made to investigate, prosecute and punish the offenders.

36. **Mr. Tugushi** asked the delegation to comment on reports that some prisoners had remained in prison or had to pay in order to secure their release upon completion of their sentence. He wished to know whether steps had been taken to ensure that men, women and minors were detained separately and that pretrial detainees were separated from convicted prisoners.

37. **Ms. Levi** (Mozambique) said that her Government was fully aware of the challenges facing the country. Although the Criminal Code did not contain a definition of torture consistent with the Convention, any act amounting to torture was subject to criminal prosecution under the existing categories of offences. As to women's prisons and reports of impunity for guards, the delegation would require more information about the nature and context of the alleged offences in order to provide a specific answer. However, in general, whenever a State official was suspected of abusive behaviour, the institution where he or she was working would investigate the offence and impose penalties. Depending on the severity of the offence, the public prosecutor's office could also initiate a parallel criminal investigation. Regarding the lack of an independent investigation body for acts of torture, she shared the concerns of the Committee; the Government would take steps to address the matter.

38. In relation to reparation, any person whose rights under the Convention had been violated could submit an application for consideration. There was no specific budgetary allocation for compensation in cases of torture but a unit within the Ministry of Finance was responsible for vetting applications for compensation. Very few applications were approved by the unit and reparation obtained by victims to date did not include compensation for psychological or moral damage. In order to consider such damage in future cases, the Government would need to fully incorporate the Convention into the Criminal Code.

39. On the question of immigration and refugees, she noted that the vast majority of persons entering Mozambique illegally were not, in fact, seeking asylum but were using the country as a means of access to neighbouring countries, such as South Africa. Any person genuinely seeking refuge could submit an asylum request and would remain in a specially designed holding facility until a decision was reached on their case; but persons entering the country illegally were repatriated upon arrival in accordance with the law. An appeal procedure was in place for anyone wishing to challenge an immigration decision. Regarding extradition, the Government ensured that all relevant legal conditions were met before any extradition request was forwarded to the judiciary for approval.

40. As to the functions of State security officials, extensive investigations required prior judicial approval and a judicial authority had been established to monitor information-gathering assignments. Her Government had taken steps to combat corruption and an internal newsletter was published monthly describing various cases that had recently been investigated. Concerning confessions obtained under duress, there were cases where confessions extracted through torture had been disregarded by the courts, but the Government did not have specific data on the subject. The revised Code of Criminal Procedure had already been submitted to parliament for approval and the revision of the Criminal Code would soon be completed. Those actions would ensure that criminal procedures were more flexible, simple and transparent for all parties concerned.

41. Regarding the length of pretrial detention, she said that in many cases neither the victim nor the prosecutor asked the judicial authorities to inform them that the relevant period of pretrial detention had expired. In an attempt to address the matter, the Government had begun to monitor a national list of pretrial detainees so as to ensure their timely release or to expedite their judicial proceedings. As to reports of prisoners not being released upon completion of their sentence, the Government had recently implemented a procedure whereby the competent authorities were informed 15 days in advance of a prisoner's release date in order to allow sufficient time for a release order to be prepared.

42. She agreed that a lack of data continued to hamper the Government's efforts to prepare effective short, medium and long-term policies; it would endeavour to allocate more resources to data collection in future. She also agreed with the suggestion to remove the reference to sexual orientation in the Criminal Code and to amend the definitions of debauchery and rape.

43. As to the dissemination of the Convention, some army officers received training in preparation for antiterrorism operations but it was unclear whether such training incorporated modules on human rights or the prevention of torture. Regarding lynching, she said that there had been over 20 cases reported in 2013, but no up-to-date statistics were available. Similarly, there were no data on the number of cases of lynching involving persons accused of witchcraft but such occurrences, were very rare.

44. Although judges were fully independent, they could be dismissed for disciplinary reasons by the Supreme Court. The maximum penalty was removal from office, after which they could not hold any other public office. Such measures ensured that judges were held accountable for their actions and could not operate outside the rule of law. Structural weaknesses in the judicial system meant that although all public officials should be aware of the rights of detainees, in practice that was not always the case. Efforts had been made to address such discrepancies but as the judicial system involved a wide range of stakeholders with overlapping competencies, real progress would only begin once the review of the Criminal Code had taken place.

45. It was not always possible to separate minors from adult detainees in prisons owing to material and financial constraints. However, separate facilities had been created wherever possible to ensure that minors had separate cells and access to a prison school. In order to address the issue of prison overcrowding, several new facilities had been built and alternatives to imprisonment had been introduced, including open detention centres where detainees could serve the final years of their sentences.

46. Regarding cases of domestic violence, traditional cultural stereotypes made sentencing offenders difficult. Family members and even the victims would sometimes request a more lenient sentence for male offenders as they were the main breadwinners of the family. Despite such challenges, the Government remained committed to tackling domestic abuse and would provide the Committee with data on the investigation, prosecution and punishment of domestic violence at a later date.

47. In relation to the punishment of teachers who committed acts of sexual abuse in schools, she said that such abuse was defined as an offence in the Criminal Code; the context and nature of each offence would be taken into account in deciding whether there were aggravating factors. She agreed that public officials other than police officers should also receive training pursuant to the Istanbul Protocol and that the number of health-care professionals fell well below the country's needs. Measures had been taken to broaden the training provided for public officials and to recruit more psychologists and psychiatrists to work in prisons.

48. Regarding the last paragraph of the report which referred to the continuing incidence of torture in the country, she explained that, despite the Government's best efforts to

eradicate torture in all settings, isolated cases still occurred. It was hoped that over time the number of such cases would decrease as the provisions of the Convention became more fully integrated into domestic legislation.

49. **The Chairperson** thanked the delegation for the open and transparent dialogue and expressed the hope that due consideration would be given to the Committee's concluding observations.

The meeting rose at 5.55 p.m.