



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

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Committee against Torture

Concluding observations on the initial report of Mozambique*

1. The Committee against Torture considered the initial report of Mozambique (CAT/C/MOZ/1) at its 1171st and 1173rd meetings, held on 28 and 29 October 2013 (CAT/C/SR.1171 and 1173), and adopted the following concluding observations at its 1197th meeting, held on 14 November 2013 (CAT/C/SR.1197).

A. Introduction

2. The Committee welcomes the initial report of Mozambique (CAT/C/MOZ/1). However, the Committee regrets that the report does not fully conform to the Committee's guidelines on the form and content of initial reports (CAT/C/4/Rev.3), and that it was submitted with a 12-year delay, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following its accession in 1999.

3. The Committee is grateful to the State party for the constructive and frank dialogue held with its high-level delegation and the additional information that was provided during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the State party's ratification of the following international instruments:

(a) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 4 November 2008;

(b) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, on 6 March 2003 and 19 October 2004, respectively;

(c) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 30 January 2012; and

* Adopted by the Committee at its fifty-first session (28 October–22 November 2013).



(d) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 19 August 2013.

5. The Committee welcomes the following legislative measures taken by the State party in areas of relevance to the Convention:

(a) The promulgation on 16 November 2004 (rev. 2007) of the Constitution, which establishes the overall framework for the protection of human rights, notably in Title III (Fundamental rights, duties and freedoms). Article 40 of the Constitution provides that “All citizens shall have the right to life and to physical and moral integrity and they shall not be subjected to torture or to cruel or inhuman treatment” and that “There shall be no death penalty in the Republic of Mozambique”;

(b) The adoption of Act No. 6/2008 on preventing and combating trafficking in persons, especially women and children, on 9 July 2008; and

(c) The adoption of Act No. 29/2009 on domestic violence practised against women, on 29 September 2009.

6. The Committee further welcomes the establishment of the National Human Rights Commission of Mozambique in September 2012, pursuant to Act No. 33/2009 of 22 December 2009.

C. Principal subjects of concern and recommendations

Definition of torture

7. While taking note of the existence of a draft penal code that would introduce a definition of the crime of torture into domestic law, the Committee regrets that torture, as defined in article 1 of the Convention, is still not codified as a specific offence under the Penal Code, but as an aggravating circumstance for certain criminal offences. As for the State party’s argument that other similar criminal offences are defined in its domestic legislation (CAT/C/MOZ/1, para. 59), the Committee draws attention to its general comment No. 2 (2007) on the implementation of article 2 by States parties, which emphasizes the preventive value of codifying torture as a distinct offence (para. 11) (arts. 1 and 4).

The State party should specifically criminalize torture in its domestic legislation and adopt a definition of torture covering all the elements contained in article 1 of the Convention. The State party should also ensure that such offences are punishable by appropriate penalties which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention.

Fundamental legal safeguards

8. The Committee notes with concern that arrested and detained persons are not always afforded all fundamental legal safeguards from the very outset of their deprivation of liberty. According to information before the Committee, arrested and detained persons are often not adequately informed about their rights and are frequently denied access to a lawyer. In addition, detainees are not given a medical examination upon arrival at police stations and the police fail to bring suspects before a judge within 48 hours of arrest. The information also documents instances of arbitrary arrest and detention, especially of disadvantaged people — young, unemployed or self-employed men in particular. The Committee is also concerned at the fact that contracted legal aid lawyers who work alongside salaried staff at the Instituto de Patrocínio e Assistência Jurídica (Institute for Legal Representation and Assistance) charge a fee for their services, as the delegation confirmed during its dialogue with the Committee (art. 2).

The State party should take effective measures to ensure that, in law and in practice, persons who are arrested have the benefit of all fundamental legal safeguards from the very outset of their deprivation of liberty. These safeguards include the right to be informed of the reasons for their arrest, access to a lawyer, the right to contact family members or other persons of their choice, the right to have an independent medical examination performed without delay and the right to be brought before a judge within 48 hours of arrest. The State party should also take the necessary measures to provide an effective free legal aid system, especially for indigent criminal suspects.

Extrajudicial executions and excessive use of force

9. The Committee is gravely concerned about allegations of unlawful killings, including extrajudicial executions, by members of the police during the period under review. It is also concerned at allegations that the police resort to excessive and sometimes lethal force, especially when apprehending suspects and controlling demonstrations. While noting the information provided by the State party on several highly publicized cases, such as the *Costa do Sol* case, the Committee regrets that it has not received additional information on investigations, prosecutions, convictions and sentences imposed in cases involving excessive use of force and extrajudicial executions that took place during the period under review (arts. 2, 12 and 16).

The State party should take steps to investigate promptly, effectively and impartially all allegations of the involvement of members of law enforcement agencies in extrajudicial executions and other unlawful killings. It should also investigate without delay allegations of instances of excessive use of force, especially lethal force, by members of the police, bring those responsible for such acts to justice and provide the victims with redress.

The Committee urges the State party to implement effective measures to prevent law enforcement officers from committing acts such as extrajudicial killings and using excessive force by ensuring that they comply with the Convention, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). The provisions of these instruments should be integrated into the new Police Disciplinary Regulation. In particular, the State party should provide adequate training for its law enforcement officials, who should receive clear instructions on the use of force and firearms in line with international standards, and be informed of the liabilities they incur if they make unnecessary or excessive use of force.

National human rights institution

10. The Committee welcomes the establishment of the National Human Rights Commission in 2012, although it regrets the lack of information regarding the resources and budget the State party has allocated for its effective functioning (art. 2).

The State party should ensure that the National Human Rights Commission has the financial, human and material resources it needs to execute its mandate effectively on a fully independent basis, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Committee further recommends that the National Human Rights Commission apply for accreditation to the Sub-committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Access to justice and independence of the judiciary

11. The Committee takes note of the adoption of an integrated strategic plan of the justice sector and the information provided by the delegation regarding judicial salaries and

remuneration. However, it remains concerned about the low number of magistrates, the backlog of cases in the courts and reports of “a lack of respect for the presumption of innocence lengthy trials and the inadequate implementation of the principle of equality before the law”, as described on 10 December 2010 by the Special Rapporteur on the independence of judges and lawyers in her preliminary conclusions and observations on her visit to Mozambique (art. 2).

The State party should ensure the effective functioning of the justice system and guarantee access to justice for all victims of torture and cruel, inhuman or degrading treatment. It should take further steps to ensure the independence and impartiality of the judiciary in the performance of its functions, in particular by implementing the recommendations of the Special Rapporteur on the independence of judges and lawyers (A/HRC/17/30/Add.2, paras. 118-123).

Non-refoulement and access to a fair and expeditious asylum procedure

12. The Committee expresses concern about reports of excessive delays in the determination of refugee status. It also regrets the lack of information provided by the State party on the number of cases of refoulement, extradition and expulsion carried out during the reporting period and on the number of instances and type of cases in which it has offered and/or accepted diplomatic assurances or guarantees (art. 3).

The State party should take the necessary steps, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to review its refugee status determination procedures so as to reduce the backlog of asylum applications.

Jurisdiction over acts of torture

13. While noting that article 67 of the Constitution establishes the principles governing extraditions, the Committee is concerned at the lack of clarity regarding the existence of the necessary legislative measures establishing the State party’s jurisdiction over acts of torture (arts. 5, 6, 7 and 8).

The State party should ensure that its domestic legislation permits the establishment of jurisdiction over acts of torture, in accordance with article 5 of the Convention. Domestic legislation should include provision to bring criminal proceedings, under article 7, against foreign nationals who have committed acts of torture outside the territory of the State party, who are present in its territory and have not been extradited.

Training

14. The Committee takes note of the information provided by the State party on the training courses for judges, magistrates and other public officials that are taught at the Centre for Legal and Judicial Training. However, it regrets the scant information available on the evaluation of such courses and their effectiveness in reducing the incidence of torture and ill-treatment. The Committee is also concerned at the lack of specific training provided to law enforcement officials, judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on how to detect and document physical and psychological sequelae of torture and other cruel, inhuman or degrading treatment or punishment (art. 10).

The State party should:

(a) Provide mandatory training programmes in order to ensure that all public officials, in particular members of the police and prison staff, are fully aware of the provisions of the Convention, that breaches are not tolerated but are investigated and perpetrators brought to trial;

(b) Assess the effectiveness and impact of training courses on the incidence of torture and ill-treatment; and

(c) Provide training on the use of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for all relevant personnel, including medical personnel.

Conditions of detention in prisons and police stations

15. While acknowledging the steps taken by the State party to improve conditions in detention centres, including the construction of two new penitentiaries and the allocation of additional resources, the Committee remains concerned at the extremely high levels of overcrowding and the harsh conditions prevailing in detention facilities, including holding cells in police stations. According to the information provided by the State party's delegation, 15,430 inmates in the country's prisons were being held in facilities built to house 7,804. Furthermore, the State party's initial report acknowledges the existence of deficiencies in the prison system, such as dilapidated infrastructure, insufficient water supply and sanitation facilities, the shortage and poor quality of food and the prevalence of infectious diseases (para.140). The Committee regrets that it has not received the information it requested on the incidence of inter-prisoner violence. The Committee is also concerned at reports from non-governmental sources of prolonged pretrial detention beyond the statutory limits prescribed by law and continued detention after the expiry of sentences (arts. 11 and 16).

The State party should continue its efforts to improve prison conditions and to reduce overcrowding. In particular, it should:

(a) Take the necessary measures to ensure that the basic needs of persons deprived of their liberty are met with regard to sanitation, medical care, food and water, in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(b) Set up a system for monitoring places of detention on a regular basis with a view to ensuring that conditions of detention in the country's prisons are compatible with the Convention and other international human rights standards;

(c) Increase its efforts to reduce prison overcrowding, in particular by instituting alternatives to custodial sentences in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(d) Take steps to prevent inter-prisoner violence and investigate all such incidents so that the suspected perpetrators may be brought to trial and victims may be protected; and

(e) Ensure, in law and in practice, that pretrial detention is not unduly prolonged and that inmates are not detained beyond the expiry of their sentence.

Juvenile justice

16. The Committee is concerned at reports that pretrial detention is frequently applied to juveniles and that deprivation of liberty is not used as a measure of last resort for them. Despite the existence of youth sections in two of the country's main prisons, the Committee remains concerned about the placement of juvenile offenders and adult detainees in the same facilities, especially as it cannot be guaranteed that there will be no contact whatsoever between them (arts. 11 and 16).

The State party should increase its efforts to improve the juvenile justice system in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). In particular, the State party should ensure that detention pending trial is used for juveniles only as a measure of last resort and for the shortest possible period of time. It should also ensure that sufficient facilities are available so that all juveniles in conflict with the law are held separately from adults.

Conditions in psychiatric hospitals

17. While taking into account the information provided during the dialogue about mental health services in Mozambique, the Committee regrets that little information was supplied concerning the conditions and legal safeguards for persons placed in involuntary treatment in psychiatric facilities. In this regard, the Committee is concerned at the delegation's statement that involuntary admissions in psychiatric hospitals are not statistically recorded (art. 16).

The Committee recommends that the State party take all necessary measures to ensure that persons in involuntary treatment have access to complaint mechanisms. The State party should ensure that all cases of forced internment in mental health-care institutions are properly and duly registered. The Committee requests the State party to provide information on conditions for persons in psychiatric hospitals.

Prompt, thorough and impartial investigations

18. The Committee expresses concern at reports of persistent impunity for police officers and prison officials who torture or ill-treat arrested and detained persons. The Committee notes that, according to the information provided by the State party's delegation, 50 cases of torture reached the sentencing stage during the period under review, with sentences ranging between 6 months' and 27 years' imprisonment. Nonetheless, the State party was unable to provide comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) **Take appropriate measures to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated, perpetrators are duly prosecuted and, if found guilty, sentenced to penalties that take into account the grave nature of their acts;**

(b) **Ensure that investigations into allegations of torture or ill-treatment are conducted by an independent body that is not under the authority of the police;**

(c) **Establish an independent complaints system for all persons deprived of their liberty; and**

(d) **Unambiguously reaffirm the absolute prohibition of torture, publicly condemn practices of torture and issue a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for those acts and will be subject to criminal prosecution and appropriate penalties.**

Deaths in custody

19. The Committee notes that, despite the request it made to the State party's delegation to provide information on cases of death in custody that had occurred during the period under review, no information has been received on this subject (arts. 2, 11 and 16).

The State party should take measures to ensure that all instances of death in custody are promptly investigated and that those found responsible for deaths in custody that

result from torture, ill-treatment or wilful negligence are convicted and adequately punished.

Redress, including compensation and rehabilitation

20. While noting the content of article 58 of the Constitution (Right to compensation and State responsibility) and the existence of several institutional mechanisms to claim redress for human rights violations, the Committee is concerned at reports that victims of torture and ill-treatment hardly ever receive redress, including adequate compensation and rehabilitation. In this regard, the Committee regrets that the State party provided insufficient information on redress and compensation measures, including means of rehabilitation, that have been ordered by the courts or other State bodies and actually provided to victims of torture or their families since the entry into force of the Convention in the State party (art. 14).

The State party should take the necessary steps to ensure that victims of torture and ill-treatment receive redress, including fair and adequate compensation and the means for as full a rehabilitation as possible. The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it elaborates on the nature and scope of States parties' obligations to provide full redress to victims of torture.

Coerced confessions

21. The Committee is concerned at reports that a number of detainees have alleged that they were forced to sign confession documents without understanding the documents or being aware of their content. While taking note of the constitutional safeguards establishing the inadmissibility of evidence obtained through torture, the Committee expresses concern at the lack of information on decisions taken by the Mozambican courts to refuse as evidence confessions that were obtained under torture (art. 15).

The State party must adopt effective measures to guarantee that coerced confessions or statements are inadmissible in practice, except when invoked against a person accused of torture as evidence that the statement was made. The State party should also ensure that law enforcement officials, judges and lawyers receive training in how to detect and investigate cases in which confessions are obtained under torture.

The Committee requests the State party to include in its next report information on any specific jurisprudence excluding statements obtained as a result of torture and on any cases in which officials have been prosecuted and punished for extracting a confession under torture.

Lynching

22. While taking note of the delegation's statement that the number of cases of lynching has begun to decrease recently, the Committee remains concerned at the persistence of this phenomenon. It also regrets that it has not received the information it requested on the outcome of investigations, related criminal proceedings and punishment of perpetrators (arts. 2, 12 and 16).

The State party should continue to pursue its efforts to prevent, investigate, prosecute and punish lynchings, including by continuing to conduct awareness-raising campaigns in communities.

Violence against women and children, including domestic violence

23. While welcoming the information provided by the State party on measures taken to combat domestic violence (see para. 5 (c) of the present concluding observations), the Committee remains concerned about the high prevalence of domestic violence in the

country. The Committee also notes with concern that the age of statutory rape of a minor is under 12 years (art. 394 of the Penal Code); that article 392 of the Penal Code includes virginity and seduction as prerequisites to define the crime of *estupro*; and that, pursuant to article 400 of the Penal Code, a person accused of a crime of rape who marries the victim is not subjected to pretrial detention (arts. 2 and 16).

The State party should ensure that all cases of violence against women are thoroughly investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims obtain redress, including fair and adequate compensation.

The State party should complete the process of amending the Penal Code with a view to bringing the provisions criminalizing various forms of sexual violence and abuse into line with its obligations under international human rights law relating to women and children.

Violence and sexual abuse against girls in schools

24. The Committee is seriously concerned about violence and sexual abuse against girls in schools by teachers and male classmates. According to information before the Committee, very few cases are reported, even fewer are appropriately prosecuted and the institutional response to the problem remains limited (arts. 2 and 16).

The State party should strengthen its efforts to eradicate violence and sexual abuse against girls in schools and implement all necessary protective measures, in particular by:

(a) **Taking all measures necessary to investigate, prosecute and appropriately punish those found guilty of such acts, and providing the victims with redress;**

(b) **Making resources available for prevention and protection programmes to eliminate the persistent pattern of violence and sexual abuse against children in schools;**

(c) **Making complaints mechanisms available to victims and their families;**

(d) **Strengthening awareness-raising and mandatory in-service training programmes on the subject for teaching staff; and**

(e) **Guaranteeing victims full access to health services specialized in family planning and the prevention and diagnosis of sexually transmitted diseases. The State party should ensure that victims obtain redress, including fair and adequate compensation, and the fullest possible rehabilitation.**

Harmful traditional practices

25. The Committee is aware of the efforts made by the State party to prevent early marriages. However, it remains concerned at the persistence of this and other harmful traditional practices, such as forced marriage, polygamy, adulthood initiation rites and child debt bondage. The Committee is also concerned at reports of corporal punishment (whipping) inflicted by some traditional authorities. Furthermore, it regrets the lack of information on the steps taken to ensure that customary law in Mozambique is not incompatible with the State party's obligations under the Convention (art. 16).

The State party should:

(a) **Strengthen its efforts to prevent and combat harmful traditional practices, particularly in rural areas, and ensure that such acts are investigated and the alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions;**

(b) Provide victims with legal, medical, psychological and rehabilitative services and compensation, and create the conditions for them to report complaints without fear of reprisal; and

(c) Provide judges, prosecutors, law enforcement officials and traditional authorities with training on the strict application of the relevant legislation criminalizing harmful traditional practices and other forms of violence against women and children.

In general, the State party should ensure that its customary law and practices are compatible with its human rights obligations, particularly those under the Convention. In its next periodic report, the State party should provide information on the hierarchy between traditional practices and codified law, especially with regard to forms of discrimination against women and children.

Human trafficking

26. The Committee takes note of the efforts made by the State party to prevent and combat human trafficking. However, it is concerned at reports of internal and cross-border human trafficking for the purpose of sexual exploitation or forced labour, as well as at the information provided by the delegation on trafficking in organs. The Committee is also concerned at the lack of statistics in the State party's report on, inter alia, the number of prosecutions, convictions and sentences of perpetrators of trafficking (arts. 2, 12 and 16).

The State party should:

(a) **Intensify its efforts to prevent and combat trafficking in human beings, including by implementing the 2008 anti-trafficking legislation (see para. 5 (b) of the present concluding observations) and providing protection for victims, including shelters and psychosocial assistance;**

(b) **Conduct prompt, impartial investigations into cases of human trafficking, ensure that those found guilty of such crimes are punished with penalties appropriate to the nature of their crimes, and guarantee that all victims of such acts obtain redress; and**

(c) **Conduct nationwide awareness-raising campaigns and provide specialized training on victim identification and investigation for labour inspectors and law enforcement officials, including the Women and Child Victim Assistance Units established by the National Police.**

Corporal punishment

27. While recognizing that corporal punishment has been abolished as a penalty for crime and that it is prohibited in penal institutions, the Committee is concerned that it is not explicitly prohibited in the home, schools and all care settings (art. 16).

The Committee recommends that the State party prohibit the corporal punishment of children in all settings, conduct public awareness-raising campaigns about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment.

Data collection

28. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment perpetrated by law enforcement and prison personnel, as well as on deaths in custody, extrajudicial executions, gender-based violence, trafficking, lynching and criminal conduct related to harmful traditional practices.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment, deaths in custody, extrajudicial executions, enforced disappearances, gender-based violence, human trafficking, lynching, criminal conduct related to harmful traditional practices, as well as on means of redress, including compensation and rehabilitation, provided to victims.

Other issues

29. The Committee recommends that the State party ratify the Optional Protocol to the Convention. It also recommends that the State party make the declarations provided for in articles 21 and 22 of the Convention in order to recognize the competence of the Committee to receive and consider communications.

30. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto, the Optional Protocol to the International Covenant on Civil and Political Rights and the International Convention for the Protection of All Persons from Enforced Disappearance. The Committee also invites the State party to withdraw its reservations to the Convention relating to the Status of Refugees (1951). In addition, the State party should consider becoming a party to the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

31. The State party is requested to disseminate widely the report it submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

32. The State party is invited to submit its common core document, in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

33. The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening legal safeguards for persons in detention; (b) conducting prompt, impartial and effective investigations into cases of the involvement of members of law enforcement agencies in extrajudicial executions and other unlawful killings; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8, 9 and 18 of the present concluding observations. In addition, the Committee requests follow-up information on remedies and redress to the victims of torture and ill-treatment, as contained in paragraph 20 of the present concluding observations.

34. The State party is invited to submit its next report, which will be the second periodic report, by 22 November 2017. For that purpose, the Committee invites the State party to agree, by 22 November 2014, to report under its optional reporting procedure, which entails the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.