



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

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

Initial report of States parties due in 2000

Mozambique^{*}

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* Annex can be consulted in the files of the Secretariat.

List of acronyms

AR – Assembly of Republic
BR – Official Gazette
CDCP - Commission of Political and Civil Rights
CEDAW- Convention on the Elimination of All Forms of Discrimination against Woman
CDH – Human Rights Council
CRC – Convention of the Rights of the Child
CEDESC – Convention on Economic, Social and Cultural
DH – Human Rights
ECC – Strategy for Fighting Corruption
MARP – African Peer Review Mechanism
MMAS – Ministry of Woman and Social Action
MDG – Millennium Development Goals
MISAU – Ministry of Health
MINED – Ministry of Education
MJ – Ministry of Justice
MNEC – Ministry of Foreign Affairs and Cooperation
MRPU – Universal Periodic Review Mechanism
MINT – Ministry of Interior
OE – State Budget
OPCAT – Optional Protocol of the Convention against Torture
CSO – civil society organizations
PARPU – Universal Periodic Review Action Plan
PARP – Action Plan for Poverty Reduction
PES – Economic and Social Plan
PEIJ – Justice Strategic Integrated Plan
PEPRM – Strategic Plan of the Police of the Republic of Mozambique
PGR – Republic General Attorney’s Office
PIDESC – International Covenant on Economic, Social and Cultural Rights
PNAAM – National Plan for Woman Advancement
PAPCVCM – National Action Plan for Prevention Fighting Violence against Women
PNDH – National Plan for Human Rights
PRM – Police of the Republic of Mozambique
PQG – Government Five-year Plan
RPU – Universal Periodic Review

SNAPRI – National Prisons Service

TA – Administrative Court

TADHJ – African Court for Human Rights and Justice

TPI – International Criminal Court

UTREL – Technical Unity for Legal Reform

Part one

I. Introduction

1. This report from the Government of Mozambique has been prepared under the article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention), ratified by the Mozambican State through its Resolution 4/93, of 2 July 1993.
2. This report is the first of its kind since the country ratified the Convention, covering, therefore, the period from 1994 to 2010. The basis for the preparation of the report has been the documental analysis on a number of cases reported during the period concerned, and the reports produced by civil society Organizations working in the area of Human Rights and involved Government sectors focusing on the issue of torture, under the coordination of the Ministry of Justice.
3. Its structure follows the guidelines for the country reporting to the Committee against Torture, established under article 19 of the Convention. In this context, the report is divided into four parts.
4. The first part provides a brief framework about the country in relation to geographical location, political, social and economic situation, and on the demographic composition, culture and religion.
5. In the second part, relating to basic information under the Convention, the report emphasizes the general legal regime for the prohibition and elimination of torture and other cruel or degrading treatment in Mozambique, the institutional mechanisms of protection against torture, constitutional provisions and the role of the civil society.
6. The third part focuses on the effective implementation of the Convention, taking as a basis, the analysis of the articles 1 to 16 as prescribed in the Guidelines for the Preparation of Reports under this instrument.
7. In the fourth part, the last for the purposes of this report, are presented the conclusions.

II. Country profile

A. Geographic location

8. The Republic of Mozambique is located on the Southwest African Coast, occupying a total area of 799.380 Km². (For map of Mozambique, see annex.) The country is divided into eleven provinces, namely: Niassa, Cabo Delgado, Nampula, Zambezia, Tete, Manica, Sofala, Inhambane, Gaza, Maputo Province and Maputo City. The capital of Mozambique is Maputo City. The provinces are divided into 128 districts.
9. The country is bordered to the north with Tanzania, in the south is bordered with South Africa (Natal province) and Swaziland, in the West with Malawi, Zambia, Zimbabwe and again with South Africa (Mpumalanga Province). It is delimited by the Indian Ocean to the full extent of its coast with 2.470 km.

B. Demography

10. Demographic data show that Mozambique has a population of about 21.854.000 inhabitants¹. The basis of the demographic structure is mainly young, and women are at higher percentage than men.

11. The Mozambican population is predominantly rural and the population density varies, being higher in Maputo city with around 4.509 inhabitants per Km² and lowest in Niassa province with about 9 inhabitants per Km². However the average population density of the country is 27 inhabitants per Km².

C. Some historical data and main political developments

12. Mozambique, a former Portuguese colony, is a recent state in the concert of nations, since has seen its sovereignty as an independent country legitimized on June 25, 1975 as a result of the heroic and secular resistance of its people.

13. The country's first constitution came into force with the proclamation of the independence, called the Constitution of the People's Republic of Mozambique of 1975, which although less explicitly already included 11 articles in the framework of principles and rules relating to the universal values of human dignity.

14. The Mozambican people is a product of cultural, religious, social diversity in its demographic composition, merged over centuries of trade relations with people and cultures from several parts of the world, and now takes a one and indivisible national identity as a modern nation where coexist and interact without tensions, the different systems of religious, ethnic, cultural and political values, rights of the citizens within the framework of pluralism and tolerance.

15. In 1990 a new constitution was enacted opening the country to a new political and economic order, with the introduction of a multiparty system and a market economy, which represented the introduction of multiparty democracy and a qualitative leap in matters of promotion and protection of human rights.

16. It was in the context of the promulgation of the Constitution of 1990, that the fundamental basis for the conduction of all political and diplomatic consultations to put an end to 16 years of destabilization war that tore the country, opposing the legitimate government of the Frente de Libertação de Moçambique (FRELIMO) and the rebel movement Resistência Nacional Moçambicana (RENAMO), were created. This conflict only ended with the signature of the General Peace Agreement (GPA) in 1992 in the Italian capital, Rome.

17. Since the introduction of the multiparty democracy, Mozambique has already held four general suffrages for the election of the President of the Republic and Members of the Parliament as well as three municipal elections in the context of decentralization of power.

18. It should be noted that the gains of the Constitution of 1990 were further expanded with the constitutional revision of 2004, where in addition to the extension of the human rights framework, also extended the framework of democratic action with the prediction of provincial assemblies whose first electoral exercise took place simultaneously with the fourth General Elections held in October 2009.

¹ Information available in the National Statistics Institute page www.ine.gov.mz

D. Economy

19. The economic situation has shown a good performance in recent years, one of those presenting higher rates of growth worldwide. According to estimations, only in 2010 the growth reached 8.1%. In 2010 the country's economy has also benefited both from FDI (Foreign Direct Investment) as well as the recovery registered in the aluminum prices that had settled down in the international market. On the other hand, the Coal Mining Industry of the megaprojects in Tete Province potentiated the volume of exports in 2011. According to macroeconomic scenarios, the country will continue to register in the medium term, high growth rates, driven by megaprojects of the extractive industry, mining and smelting.

20. Due to the elimination of the subsidy on domestic fuel prices in 2010, combined with the increase in international prices of fuel and food (food crisis), the depreciation of the national currency (Metical) against the U.S. Dollar and the South African Rand, and a poor performance of the sector, the inflation rate reached two digits in that year.

21. The strategic guidelines are based on the Action Plan for the Reduction of Poverty (PARP), launched by the Government, with a time horizon from 2010 to 2014, which, in addition to human development, focuses on agricultural production and productivity and creation of jobs in small and medium enterprises (SMEs).

22. It is important to highlight that the model of economic growth in Mozambique is still highly concentrated in the extractive industries, existing two Industrial Free Zones (ZFI). Despite this fact, agriculture is still the main vector of the economy, followed by transport and communications, trade and financial services. Despite the potential agricultural and environmental industries, manufacturing and tourism are still far below their real potential. In this framework, the country is trying to diversify agricultural exports, currently limited to cashew and cotton, and promote the transformation of raw materials.

E Social situation

23. Despite the steady progress of the macroeconomic indicators, the Mozambican population continues to present high rates of poverty. The urban population, which represents about 30% of the total, is directly exposed to international macroeconomic shocks, while the rural population suffers from the effects of climate changes, which damage crops and undermine food security. The Human Development Index (HDI) 2010, of the UNDP, placed the country at the 165th position among 169 countries.

24. In the education sector, the substantial investments in primary education have given encouraging results, with the net schooling rate reaching 92% in 2010, against 76.1% in 2005. The Gender Parity Index improved in primary and secondary education, to 0.94 and 0.90, respectively. The access to secondary education, however, remains a decisive structural bottleneck to growth: the current levels of infrastructure and staff are unable to absorb the large number of students completing primary education. The government is heavily engaged in supporting the Technical and Vocational Education as a way to absorb the students who are unable to join the general secondary education and provide technically qualified workforce to the booming industrial base.

25. Within the health sector, the number of health centers has registered a remarkable growth, but Mozambique remains one of the countries with less skilled health staff in the world, with only one doctor/30.000 inhabitants and one nurse/3.000. The most frequent diseases are Malaria, the major cause of death in Mozambique (29%) and HIV / AIDS (27%). Infant mortality in the first month of birth remains high, and maternal mortality rate, although improved, remained high at 550 per 100.000 births by 2009.

26. The HIV prevalence rate is 13%. This rate is higher in the southern part of the country, including Maputo, due to its proximity to neighboring countries with high rates of this disease, and is particularly high among people aged between 15 and 24 years. .

F Culture and religion

27. In general, the Mozambican culture is based on customs, beliefs, and traditional values from each area of the country and population group. In the rural areas, the population embraces at a large extent, the beliefs, practices and traditional cults.

28. Culture is an instrument for the promotion of patriotic consciousness and national unity. The singing, dancing, poetry, sculpture, painting and other forms of cultural expression have always had a very important role in the mobilization of Mozambican citizens in the struggle for the dignity and valorization of the Mozambican culture.

29. The country has Portuguese as the official language and a diversity of national languages -- about 40 native languages. The most spoken national languages are Emakhuwa, Xichangana, Elomwe, Cisena and Echuwabo.

30. With regard to religion, a considerable part of the population professes the Catholic religion (23.8%) and has been following religious practices that result from contact with the outside world. The Muslim religion (representing 17.8%) is also prevalent, especially in the north of the country and particularly in the coastal zone. It should be noted that the Constitution of the Republic enshrines in the article 12 the principle of secular State, establishing the separation between the State and religious denominations. It also establishes that religious denominations are free to organize and exercise their duties of worship, and must comply with the laws of the State.

Part two

I. General legal framework

A. The general legal framework for the prohibition and elimination of torture and other cruel or degrading treatment in Mozambique

31. Mozambique is a State Party and signatory to several regional and international instruments, namely, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment (CAT) and the African Charter on Human and Peoples' Rights, among others. The Constitution of the Republic of Mozambique (CRM) enshrines in paragraph 2 of article 17 that "the Republic of Mozambique shall accept, observe and apply the principles of the United Nations Charter and the African Union Charter". And in Article 18, that "international treaties and agreements, validly approved and ratified, apply in the Mozambican legal order after official publication, while internationally binding on the State of Mozambique." and that "the rules of international law in domestic law have to assume the same value as the infra normative acts issued by the Parliament and the Government, according to the respective form of reception." In this sense, all provisions emanating from international law on the matter, ratified by the country, are applicable and enforceable, thus resulting in the protection against torture, a legal system with a special legal force, even before the ratification of the Convention against Torture.

32. Mozambique, within the internal legal order, through CRM, enshrined the prohibition of practices of torture under article 40, establishing that "Every citizen has the

right to life and to physical and moral integrity and cannot be subject to torture or cruel or inhuman treatment." At international level, as mentioned above, Mozambique ratified treaties that enshrine provisions prohibiting the application of torture and other maltreatment. This is the case of article 2, paragraph 2, of the Convention Against Torture strengthened by article 4 of the International Covenant on the Civil and Political Rights, which provides that in no case may be invoked exceptional circumstances, such as state of war or threat of war, internal political instability or any other public emergency, as a justification for torture

33. In the Penal Code, despite being ambiguous on this matter, the physical violence and other acts, as we shall see later in this document, are criminalized and proofs obtained through torture are null.

Other constitutional guarantees

34. The CRM provides that all citizens are equal before the law. Associated with this principle are, guarantees, rights and freedoms enshrined under Title III (Chapter III):

(a) Everyone has the right to safety and no one can be arrested and put on trial except in accordance with the law (Article 59, para. 1);

(b) Defendants enjoy a presumption of innocence until a final court decision (Article 59, para. 2);

(c) No one can be convicted for an act not considered a crime at the time of its practice (Article 60, para. 1);

(d) Preventive detention is allowed only in the cases provided by law, establishing deadlines. Citizens under preventive detention shall be presented to a judge of instruction to establish the legality of their detention within the time established by law (Article 64, para. 2);

(e) People deprived of their liberty have the right to be informed of the reasons for their detention and their rights while in detention (Article 64, n° 3). The relatives of the detainee or any other person specified by him/her should be informed of the detention (Article 64, para. 4);

(f) The trial hearings in criminal proceedings are public (with some exceptions) (Article 65, para. 2);

(g) Proofs obtained under torture are not admissible (Article 65, para. 3);

(h) There is a right, in case of illegal arrest, to appeal for habeas corpus proceedings before a court, which must decide within eight days (Article 66);

35. It should be clarified that the right to *habeas corpus* includes situations where:

- The deadline for submitting the detainee to the Judge of Instruction to analyze the lawfulness of the arrest or the deadline for formally stating the charge was exceeded;
- The arrest occurred at a place outside the provisions of the law;
- The arrest was ordered by a not competent authority to do so;
- The arrest was motivated by a not criminal fact under the law, or even classified as such, not punishable by imprisonment;
- The time spent in prison exceeds the time determined by the final court judgment;
- The request for habeas corpus may be made by or owned by a legal representative such as a lawyer or public defender, recognized by the competent authorities;

- Although some of the above provisions not directly enshrine the prohibition of torture, they aim at protecting the rights, freedoms and legal guarantees for defendants in custody or citizens under police custody, given that the scope of torture in the Convention, as we shall see later on, when we look into its definition, it is applied to cases of torture committed by public officials or by persons in the exercise of public functions.

B. Institutional mechanisms for protection against torture

36. The main existing institutional mechanisms in Mozambique are divided into two major groups:

- State:

(a) The President of the Republic - In the constitutional framework, under Chapter II, Article 159, subparagraph i), in the exercise of his functions, is competent to grant pardons and commute sentences;

(b) The Courts;

(c) The Attorney General's Office;

(d) The Committee for Legal Affairs, Human Rights and Legality of the Parliament;

(e) The Petitions Committee of the Parliament;

(f) The Ministry of Justice (including the National Service of Prisons);

(g) The Ministry of Interior (including internal inspection services and the Department of PRM for Assistance to Women and Children);

(h) The Public Protector (Ombudsman), (constitutional body, but not yet functional) - which as defined in Chapter III, article 256 of CRM, shall be independent and impartial in the exercise of his functions and only observe the Constitution and laws, and is incumbent to provide the guarantee of citizens' rights, and the defense of legality and justice in the performance of Public Administration;

- Non-State:

(a) The National Human Rights Commission - NHRC – established with the aim of reinforcing the State institutions in the promotion and protection of human rights, and still in the installation phase;

(b) Civil society organizations and associations (CSOs)

C. The role of the civil society organizations

37. Since the entry into force in 1990 of a new constitution that enshrines the pluralistic democratic rule of law, the Government has created a favorable environment for the flourishing of civil society. It is in this context that the practice of governing advocacy of civil society is a relatively recent phenomenon in Mozambique. Currently are operating over 200 civil society organizations (CSOs) in the human rights area, mainly in Maputo and other major cities

38. From the point of view of its real civic role, the civil society develops functions of monitoring, advocacy and representation of the interests of the mostly disadvantaged and vulnerable citizens, even if is still done in an incipient form. It is important to note that numerous national CSOs mainly located in the capital city, Maputo, support human rights

in general and women rights in particular, disseminate information, engage in activities to raise awareness and promote citizen participation in public life.

39. The work of the CSOs is largely supported by the Development Assistance Programs and other partners welcomed by the openness policy followed by the Government of Mozambique. Among many others, it is important to mention the most prominent: the Mozambican Human Rights League (LDH), the Center for Public Integrity (CIP), the Association of Mozambican Women in Legal Careers (AMCJ), the Association Women, Law and Development (MULEIDE), Women's Forum, Women and Law in Southern Africa (WLSA), Children's Network, Rede Came, Southern Africa Network Against Trafficking and Child Abuse (SANTAC), Mechanism for the Support of Civil Society Organizations Support (MASC), Mozambican Association for the Development of Democracy (AMODE), among others.

40. These organizations play a very important role in driving the agenda in the framework of promotion and defense of human rights, being one of the positive examples to highlight its key role during the country's participation in the Universal Periodic Review Mechanism (UPRM) in 2011.

Part three

Comments on the articles of the Convention

Article 1: Domestic definition of torture

41. The Mozambican State has ratified the Convention against Torture through its Resolution No. 4/93, of July 2, 1993, passing therefore to become part of internal or domestic legal order. However, the CRM is a material law, reason why, rights, duties and guarantees enshrined therein can only be implemented using instrumental rules, which define the status, requirements and procedures for such acts.

42. Thus, the effective implementation of the Convention would be guaranteed with the elaboration of legislation for its implementation, since it requires its contextualization in the Mozambican legal order, or the drafting of a law that enshrines the legal requirements and determines the type of criminal frame applicable to the crime of torture. This implies that the Convention can be invoked in cases of torture in the country, but for the condemnation of offender on the ground of this type of crime there is a need for the approval of implementing legislation containing specific criminal frames and this has not happened yet.

43. Once the framework of the crime is developed, it is now important to analyze the definition of torture and how the state deals with the crimes included by this.

44. Under the Convention, torture means "any act by which a violent pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from him/her or a third person, information or a confession; to punish for an act that him/her or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or other person acting in the exercise of public functions, or by his instigation or with the consent or acquiescence. Shall not be considered torture, the pain or suffering, consequence inherent or arising from legitimate penalties".

45. Therefore, for the purposes of this Convention the crime of torture intended to be approached here is the one that is mainly practiced by public officers who should safeguard the security and integrity of people. Although any citizen can be convicted for crimes of torture, in the range of maltreatment and aggressions, this Convention aims at targeting especially those whose professional duties is to enforce laws and protect the lives and

physical integrity of people. It attributes to the State, through its institutions a duty to prevent torture, refraining from practising it. Since the State drew upon *itself* the use of force and conviction for offenses, that State should also refrain from arbitrarily using force.

46. Although the crime of torture is not typified in the Mozambican criminal law, there are criminalized within other practices related to acts of torture and other cruel, inhuman and degrading treatment, jeopardizing the physical integrity and liberty of people, whether or not committed by public officials.

Article 2: Measures to prevent torture

47. It is known that Mozambique had a destabilizing war that lasted 16 years, whose scars are still being felt. However, the collaborative effort by the major contenders has always favored peace and stability in the context of national reconciliation in letter and spirit of the principles enshrined in the General Peace Agreement (GPA) of 1992 between FRELIMO and RENAMO. The nature of a war involves serious violations and abuses of human rights with greater emphasis on the practice of torture, cruel and inhuman treatment. In this sense, the GPA has developed a policy approach which enabled a smooth but solid transition based on the Principle of National Reconciliation on the assumption that all parts had some responsibility in the actions committed during the war and this resulted in a policy of general amnesty for the preservation of the precious good the Peace represented.

48. Given the multiple dimensions of analysis that the evaluation of this article requires, this report will describe measures to prevent torture in different domains:

A. Legislative domain

49. As we referred in article 1 above, torture is still not regarded as an offence under criminal law in Mozambique.

50. However, the Title III of the Constitution provides for the right to Life, Liberty and Safety of a person, including the right to not be tortured and confess in court by coercive means of physical or psychological violence. Article 65, para. 3, on the Principles of the criminal process invalidates any and all evidences that could be brought to criminal prosecution obtained through torture, coercion, infringement of physical or moral integrity of the person. The fact that the Basic Law recognizes the international treaties and agreements, validly approved and ratified, to be in force in the domestic law order and clearly assumes that they have the same value in the Mozambican legal order, assuming normative acts of ordinary character (infra-constitutional) as stated in Article 18, strengthens the domestic legislative framework and it is a mean for the realization of the UDHR and CAT instruments adopted by the Country.

51. Pursuant to article 3 of the CRM: "Republic of Mozambique is a rule of law based on pluralism of expression, in the democratic political organization and in the respect and guarantee of the rights and freedoms of the human being." The fundamental rights are enshrined in the CRM and other laws and as set out in the referred article; the state must ensure the materialization of fundamental rights. It is on this basis that citizens, in accordance with article 69 of the CRM "may contest acts that violate their rights established in the CRM and other laws". They may, on the one hand, recourse to the courts against acts that violate their rights and interests recognized by the Constitution and the law, under article 70 of the CRM, and on the other hand, they can claim compensation for the injuries arising from the violation of their fundamental rights, including to the State in case of violation of their rights when caused by illegal acts of its servants in the performance of their duties, under article 58, paras. 1 and 2, of the CRM.

52. In this framework, any person who commits an act considered torture, degrading, cruel or inhuman treatment, including agents and or state entities, can be charged based on

the legal requirements referred to in the previous paragraph combined with paragraphs 1 and 2 of the article 58 of the CRM.

53. The violation of human rights carried out by the said agents will result in a criminal and or administrative responsibility. In the case of police and correctional service officers, they are also subject to their disciplinary statutes. Thus, all criminal cases committed by agents of law and order, including prison officers, are submitted to the courts and deserve the treatment stipulated by the Law. The cases proved by investigation result in criminal civil or disciplinary liability, for the agents involved. It is also important to mention that, as a rule, such processes are monitored by the family members of the victims.

54. Moreover, all agents of law and order and prison officers receive throughout their career, trainings and specific instructions on respect for human rights and above all, the respect for the right to life and security while on duty. These professionals are aware of the use of force and the constitutional and legal principles concerning the appropriateness, necessity and proportionality.

55. In the case of prison staff, they receive training related to: implementation of imprisonment measures and human rights; the main national, regional and international mechanisms, for the protection of the rights of people deprived of liberty, as well as behavioral issues, such as the management of interpersonal conflicts and relationships.

56. A prove that the Government has made efforts to eliminate the practice of torture is the fact that the government itself has been publicly declaring the cases of torture in prisons and the measures taken against its officials which have even resulted in expulsion and criminal procedures.

57. It is also in the legislative field that Mozambique, besides being State Party to the UDHR, ICCPR, CAT, also enacted domestic legislation and ratified regional instruments at the SADC, the African Union and at the United Nations level on the matter, including the following instruments.

Table 1: Legal basis of human rights instruments

<i>Instrument</i>	<i>Legal Base</i>
Convention on the Rights of the Child	Resolution n.º 19/90, of 10 de October
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty	Resolution n.º 6/91, of December 12
Law of Abolishment of Whip Penalty that revokes the Law n.º 5/83, of March 31, as well as the stated in article 21st, point e) of the Law n.º 17/87, of December 21 (Law of Military Crimes)	Law n.º 4/89, of September 18.
Convention for the Suppression of Unlawful Seizure of Aircraft	Resolution n.º 69/2002, of October 2
Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation	Resolution n.º 72/2002, of October 2
Protocol for the Suppression of Unlawful Acts of Violence at Airports	Resolution n.º 73/2002, of October 2
Convention for the Suppression of Unlawful Acts against the Safety of	Resolution n.º 74/2002, of October 2

<i>Instrument</i>	<i>Legal Base</i>
Maritime Navigation	
Convention for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf	Resolution n° 75/2002, of October 2
Convention on the Prohibition and Elimination of the Worst Forms of Child Labour	Resolution n.º 6/2003, of April 23
SADC Protocol on Gender and Development	Ratified on August 17, 2008
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,	Ratified in 2006
Declaration on the Elimination of Violence against Women	
Law Against Domestic Violence	Law n.º 29/2009
Law of Preventing and Combating the Trafficking in Persons, Especially Women and Children	Law n.º 6/2008

58. It should be noted that Mozambique is a State Party to the four Geneva Conventions of 1949 and their Additional Protocols of 1977. All Geneva Conventions require the protection of the principle of humanity. As such, they prohibit murder, torture, corporal punishment, mutilation, outrages upon personal dignity, taking of hostages, collective punishment, without regular executions, testing and all cruel, inhuman or degrading treatments.

59. The Penal Code also contains criminal provisions that though not directly relating to torture criminalize other cruel, inhuman and degrading treatments.

60. Therefore, under article 1 of the Penal Code: "crime or offense is a voluntary fact declared as a crime and punishable by law". Equally, the principle, also enshrined in CRM, of *nullum crimen sine lege* is in force in Mozambique: no facts, consisting of action or inaction, can be considered criminal without a previous law qualifies them as such.

61. The Penal Code criminalizes in its Title IV, Chapter I, the crimes against the liberty of people, for example, private captivity (article 328), physical coercion (article 329), the private incarceration (article 330), and this last can be worsened if the person committing the crime pretends to be a public authority, or if, the offense is accompanied by threats of death or torture or any other corporal injury. Still relating to civil servants, article 333 establishes that criminalization of these types of legal crime, applies to public employees who commit them outside the course of their duties; In Chapter III, relating to crimes against security of the people, qualified murder, when there is used torture or acts of cruelty to increase the suffering of the victim (article 351, 2nd circumstance), the crime of simple voluntary corporal offenses (article 359).

62. The Penal Code also contains some provisions aiming at criminalizing acts committed by public officials or civil servants. The penalty for civil servants engaged as agents of authority is due to the fact that, particularly they have a duty to safeguard the life and physical integrity of people and therefore an implicit duty to refrain from committing crimes, especially crimes that offend the liberty and physical integrity of people.

63. Thus, for the crimes committed by public servants in the exercise of their functions, the Penal Code criminalizes the following crimes that threaten the physical integrity and freedom: the illegal imprisonment (article 291), formally illegal arrest (Article 292), unnecessary violence in the exercise of public duties (article 299). This is to safeguard the rights of people in custody in detention facilities.

64. With regard to the internment in detention facilities, the Article 306 of the Penal Code establishes the mode of treatment for prisoners and states that "it is forbidden to any authority or agent of authority in charge, of making any arrest, to mistreat or use violence or any insult to prisoners, and only in case of resistance, escape or escape attempt it is lawful the use of force or the necessary means to overcome this resistance or carrying out or keep the prison".

65. Thus, it is clear that the Mozambican legislation, despite not criminalizing torture, penalizes all acts that create physical and moral violence and attempt against the safety and physical integrity of people in all circumstances and practiced by anyone, having special provisions for when they are taken by public authorities. For these, and as already mentioned, the resulting special duty to refrain from the practice of certain behavior, the criminal responsibility shall be additional to disciplinary responsibility.

B. Administrative measures

1. Police of the Republic of Mozambique

66. The Police of the Republic of Mozambique (PRM) has been developing a set of Policies and Strategies for the Prevention of Torture and Treatment of People in Custody, which starts at the training and retraining, where the curricular structure includes subjects on Human Rights, including the application of internal mechanisms of supervision (internal inspection) and legislative measures expressed in the internal regulations.

67. It should be noted that the PRM, in accordance with paragraph 1 of article 254 of the CRM, has the function, of ensuring the law and order, to protect the security of people and goods, public tranquility, respect for the Rule of Law and strict observance of the fundamental rights and freedoms of citizens. The PRM includes in its structure, among others, the Protection Police (PP), the Criminal Investigation Police (PIC) and the Rapid Intervention Force (FIR) which are under the political direction of the Ministry of Interior (MINT). Despite the political direction being under the aegis of the MINT, the operative role is under the supervision of the General Police Command (CGPRM).

68. The current configuration of the police forces is a result of the historic change the country has suffered, especially with the end of the armed conflict through the GPA of Rome (1992) which required among other things the redefinition of the role of the Defense and Security Forces, which under point 5 of the Protocol IV, include the police. It was in this context that the current configuration of the police forces was molded through the Law establishing the PRM, Law No. 19/92 of December 31.

69. During the reporting period in which the Police was reformed so as to harmonize with the new constitutional context based on the democratic rule of law and safeguarding the fundamental rights and freedoms of citizens, a package of basic tools that together constitute a Prevention System against Acts of Torture or Cruel and Inhuman treatment to People in Custody was developed. For this purpose, the following instruments were developed:

- Decree n° 27/99 of May 24 - approving the Organic Statute, the Staffing, Table, the table of Commanding Functions , Leadership and Management and the organizational chart of PRM;
- Decree n° 28/99 of May 24 - which approves the Statute of the Police.

70. For the police, the Police Disciplinary Regulation is in force, which defines the behaviour and disciplinary procedures followed when a police officer breaks discipline.

71. Also in this context, failure to follow the disciplinary provisions of the PRM constitutes disciplinary infraction which can lead to criminal or disciplinary proceedings as applicable. Accordingly, the internal accountability mechanisms of PRM are restricted in the following:

- The control and supervision of the sequence of command at the level of the corporate structure;
- Procedures for reporting actions undertaken by the Police (General Inspectorate);
- Disciplinary procedure contained in the Disciplinary Regulations;
- Rules of conduct contained in the Statute of the Police and other legislation relating to the Police;
- Ethical code in the operative context, and;
- Mechanism of receiving public denunciations (green line).

72. To complement the above mentioned instruments and mechanisms developed in the police, the Government created the Police Sciences Academy (ACIPOL) through Decree n° 24/99, a higher education institution focused on educating and training police officers at university level with a strong approach to human rights and citizenship. To elucidate the fact, the following table shows the scientific structure of the courses offered in the academy, that despite being two - Bachelor and Honours degree - and being similar, they follow independent curricula.

Table 2: Structure of courses offered in the police academy

<i>Area</i>	<i>Contents</i>
1. Police Sciences and Technologies	Rules, laws, practices, investigation, ethical relations and Regulations.
2. Juridical Sciences	Civil code, penal code, judicial systems and Fundamentals of the Rule of Law
3. Exact Sciences and Management	Control, management and finances, transparency and standards.
4. Social Sciences and Humanities	Ethics, Human Rights, Culture, Environment (...)
5. Traineeship	Professionalism and competence

73. On the other hand, Mozambique is part of the Southern African Regional Police Chiefs Cooperation Organization (SARPPCO), that developed a code of conduct based on international human rights instruments, adopted in Harare (18/09), which in its Article 4 (torture and cruel, Inhuman or degrading penalties and treatments) provides that "No police officer shall, under any circumstances, inflict, instigate or tolerate any act of torture or other punishment or cruel, inhuman or degrading treatment against any person."

74. Still in the police institutional framework, the strategic planning exercises have been harmonized within the guiding principles of the preservation of human rights and citizenship. As an example, we mention the PRM Strategic Plan (2001-2008) and the current (2009 - 2014).

75. The above prevention system, in conjunction with the constitutional and other complementary legislation is a counterbalance to protect people in police custody against

acts of torture, and other cruel, inhuman or degrading treatment committed by members of the police force.

76. In terms of policy as enshrined in several laws, no member of the police shall torture any person or allow anyone else to do it or tolerate torture by anybody else. The same applies to an attempt to commit torture and to any act of any person which constitutes complicity or participation in torture. Whether in the Constitution or in other legal instruments, it is clear and evident that, without exception, any situation, including a state of war or threat of war, emergency, internal political instability or any other public emergency, may serve as a justification for torture or cruel or degrading treatment.

77. In case of such practices, the immediate superior in the command sequence of the PRM, from the lower level (Post Commander) to the upper level (General Commander or Deputy General Commander), is required to conduct a proper investigation and inform the complainant of his right to have the matter internally sanctioned or subjected to justice for the repair and replacement of the right of the victim. In this context, the Republic Prosecutor is the first instance and independent public authority to deal with such cases reported at this level where there are established criminal acts in the context of the Convention.

78. The PRM also deals with complaints and reports of torture, protects citizens victims of torture in the context of the phenomenon "vigilante justice" carried out by citizens, and elucidates about the steps to be taken to inform people in custody of their rights.

2. Armed Forces for the Defense of Mozambique

79. The Armed Forces for the Defense of Mozambique (FADM) are the direct product of the political and military transition process in recent history of the country. The current model of the FADM is based upon the provisions of Chapter I of Title XIII (National Defense and National Defense and Security Council) of the CRM and in accordance with the principles set forth in the Protocol IV of the GPA. The achievement of the constitutional provisions, finds its material expression in the Law of the National Defense and the Armed Forces, Law No. 18/97 of October 1 that regulates the organizational structure of the army.

80. The FADM owe obedience to the competent sovereign organs and in matters of justice and discipline are governed by the Code of Military Justice which under its Article 41 of Chapter II (Crimes against Rights of Persons) punishes the practice of torture to any prisoner, and concurrently with the Military Discipline Rule.

81. The armed forces are nonpartisan and are structured into three branches, the Army, Air Force and Navy.

82. In the framework of international law, the FADM are bound to principles and standards emanating from the Geneva Conventions of 1949 that amongst other prohibit the practice of torture under any circumstances, to which Mozambique is a State party, which also.

83. It is important to report that despite Mozambique being in peace for more than 18 years with the end of the 16 years of war, the FADM are engaged in global efforts to Combat International Terrorism and in this context they are combating the maritime piracy in the region of Southern Africa, more particularly along the Mozambique Channel, which remains on the top the agenda in the bilateral cooperation between the Armed Forces of Mozambique and of the SADC region, in particular with South Africa and Tanzania. In this point of view, the strict enforcement of discipline and ethical conduct governing the military exercise of internal law combined with the principles of human rights and international humanitarian law constitutes the main lines of action of FADM, safeguarding the human dignity of those imprisoned in these missions.

84. Moreover, they are also engaged in peace missions under the African Union's efforts to pacify the continent, which is expressed in sending military contingents to Rwanda and Burundi where FADM observed exemplary behavior at all levels and have never been reported acts of torture to anyone.

3. Prison services

85. The National Service of Prisons is one of the vertices of the pyramid of administration of criminal justice system in Mozambique, regarding the policy of penalties execution.

86. Although the main legislative framework date from 1936 (Decree-Law 26.634 of 1936, with some amendments introduced by the Decree-Law 39.997 of 1954) as a legacy of the colonial past, in the point of view of treating inmates, the entry into force of the new Constitution has produced significant advances.. Associated with those marks, it is important to highlight the approval of the Defense of Legality and Justice Policy (Resolution No. 16/2001 of April 24, by the Council of Ministers) which emphasizes the correctional treatment approach (respecting the dignity of human) as opposed to punitive treatment based on confinement in cells; the approval of the Prison Policy and its Implementation Strategy (PPEI) approved by Resolution n° 65/2002 of 27 August, by the Council of Ministers, which deepens the provisions of the Defense Policy on the Legality and Justice and precisely defines the mission of prisons, advocating that "... is part of the broader and complement the Criminal Justice System and is based on respect of the norms of internal law and internationally recognized laws".

87. The legislation governing the National Prison Service is in the process of reform, given the urgent need that has been imposing over the time, for being inadequate to the context of development of the country as well as the context of the evolution of the penitentiary science internationally, since the same dates from the colonial time as beaded above. It is recalled that the PPEI - instrument that guides the institutional philosophy - defines an institutional framework conducive to the safeguarding of human rights in treating inmates, expressed on eight principles, namely: Respect for Human Dignity and Rights of Prisoners; Separation of Different Group Types (sex, age and prison situation), the Progressive Regime of Penalty Compliance ; Promotion of Individual Monitoring of prisoners; Cooperation with Partners of the Justice Administration System; Promotion of Professionalism and Ethics of the Staff; Transparency and Accountability before the State and Society; Gradual Unification of the System.

88. The Principle of Respect for Human Dignity and Rights of Prisoners PPEI defines that "the prisoners under the responsibility of prison services retain all their rights, except those that have been expressly limited or withdrawn by the conviction to be complied". Notwithstanding the law, cultural and religious differences of prisoners are respected; This statement, in conjunction with the principle on Promoting Professionalism and Ethics of the Staff recommending that employees are the key element in achieving the mission of the prison services and are institutional bases that reinforce compliance with the values of human dignity of individuals, even in a situation of deprivation of liberty

89. On the other hand, the Law of Prisons Organization in its unique paragraph of its Article 29 provides that it is prohibited to use in the performance of any punishment, any process of inhuman rigor. In this sense, it is understood that it is prohibited the practice of any act of torture and mistreatment in regard to the treatment of prisoners.

90. Because of the poverty situation in the country, many infrastructures date from the colonial period and in most cases did not receive any rehabilitation, making that its degraded state influence negatively in the treatment of prisoners, in relation to accommodation, which may indicate degrading treatment, but not associated with any Government policy in this regard.

(a) ‘Super-internment’ in prisons

91. The deficient compliance with time limits of preventive detention is one of the reasons for the existence of “super-internment” in detention centres of the country. Almost all the prisons of the country present a generalized framework of overcrowding, which accelerates the deterioration of prison conditions. The Article 229 of Decree Law n° 39:997, 1955, still in force, states that “prisoners should be treated with justice and humanity, so that by feeling the severity of the necessary penalty, they do not suffer superfluous humiliation or influences detrimental to their rehabilitation.” Generally, the prison centers have an overcrowding rate twice higher than its projected capacity.

92. There are currently 9.610 inmates above the total installed capacity in the prisons of the country, i.e. the difference between the existence (16.284 inmates) and the installed capacity at the national level (6.674 inmates), which corresponds to a level of 244% of the installed capacity.

93. Prison overcrowding in Mozambique is being aggravated for the following reasons: (a) the existing prison infrastructure in the country at the time of independence, were built mostly between 1910 and the 1960s, near the major urban centres and for a population of about 5,000 people, (b) the less application of alternate penalties and measures to short prison sentences, particularly correctional, namely by increasing the fine and the suspension of execution, (c) insufficient building of new prisons that can replace those that no longer are able to function properly; (d) insufficient maintenance and recovery actions capable of preventing the degradation of prisons and) irregularly use of relaxation measures of the sentence in prison, which would put a greater number of inmates in freedom or out of the prison centers, e.g. conditional release); insufficient means of transportation, which slows down the speed of the procedure (submission of prisoners in court or for acts of criminal investigation).

94. This situation reflects negatively on the inmate's life in reclusion in matters of food and accommodation (each inmate costs about 30.3 MT per day to the State), in implementing the actions of appropriate treatment to inmates, and in matters of training and health and equity; in maintaining order and prison safety, compared to the sharp slope of the recommended ratio (1 to 5) prison guard/inmate; in the existing water and sanitation structures that are insufficient to respond to the significant increase in the prison population and further degradation of the facilities; in facilitation and deepening of relationships that may enhance the effects of social deviance and criminal to the citizens deprived of freedom.

95. This phenomenon is a major challenge to the efforts of reform that the Mozambican state has been developing in recent years. Therefore, the super-internment remains the biggest challenge of the Mozambican Penitentiary System and continues to threaten and undermine the efforts to enforce international standards of treatment of prisoners.

(b) Fighting super-internment

96. At this moment, ways to mitigate and even eliminate the super-internment are being studied and implemented several measures both at the level of infrastructure and at the introduction of penalties and measures alternative to prison. These actions are made operational, on the one hand, with the opening of more prison facilities, especially at the district level. On the other hand, the State is developing a new judicial-legal package based on the introduction of penalties alternatives to imprisonment under the Penal Execution Policy. These instruments are being developed in the light of the above reforms. As a result of this commitment, it has been deposited in the National Assembly for consideration three key instruments, namely the proposed revision of the Penal Code, the Law of Prison Organization and the Framework for careers of the Prisons Guard Staff (QCPCGP). Still in

the field of combating overcrowding, the Prison Services are developing a Policy on Rehabilitation and Social Reintegration of Offenders.

(c) Relationship between prison staff and inmates

97. The Correctional Services, under the reform, are developing a set of initiatives based on the materialization of the principle of Promoting Professionalism and Ethics of the Staff enshrined in the PPEI and crossed with the principles relating to Respect for Human Dignity and Rights of Prisoners and promotion of Individual Monitoring of prisoners in the field of promoting a harmonious relationship between the staff responsible for criminal execution and the prisoners. That relationship is based on education and training in human rights with a strong focus on universally accepted international norms on the treatment of offenders; in the internal services of inspection and supervision; in the development of organizational policies to the human resources, contextualized and harmonized with the principles of the PPEI under reform - as in the case of the new LOP and QCPCGP - as well as the involvement of civil society in monitoring actions that resulted in the signing of the Memorandum of Understanding between the Ministry of Justice and the Mozambican League of Human Rights, in August 2009, granting the entry of activists of this organization in prisons for the purpose of national monitoring of detention conditions without any obstacle.

4. Information and Security Service of the State (SISE)

98. SISE is integrated in the defense and security forces of the state and is a vehicle that oversees the security, which forces the State to provide adequate legislation to the real needs, taking for granted the fact that Mozambique is a State of Law and Democratic based on the principles of human rights.

99. SISE was created by Law No. 2/91 of August 23. However, in the context of negotiations in Rome that conditioned the end of the 16 years' war between FRELIMO government and RENAMO, the role of SISE was revalued and its operation has to be governed under Point IV of Protocol IV of the 1992 AGP 1992, of October 14. In the chapter of protection of the rights of citizens, in accordance with subparagraph b) of paragraph 3 of the GPA, SISE now undertakes to respect human rights and the fundamental freedoms of citizens. Since the outset, the legal basis of the action of SISE inhibits any form or act of torture and cruel to citizens. Moreover, during the Fourth Ordinary Session of the Seventh Legislature of the National Assembly, which was held from October 24 to December 21, 2011, it was approved the new Organic Law of SISE which is an important legislative package that opens space for monitoring of the actions of SISE by the Parliament.

Article 3: Expulsion, return or extradition

100. In the Republic of Mozambique, the recognition of the need for granting asylum and the refugee status to foreign citizens and stateless persons is fully enshrined in CRM under Article 20. Moreover, Mozambique is State party to the Convention relating to the Status of Refugees and the Additional Protocol to the Geneva Convention on the Status of Refugees, ratified by Resolution 11/88 and 12/88 of August 25, by the Popular Assembly and the Convention of the Organization of African Unity Relative to the Specific Aspects of Refugee Problems in Africa. With a view of regulating the constitutional precepts, under domestic law, and to ensure the implementation of international law, Mozambique enshrined, among others, three key instruments, namely the Laws n° 21/91 of December 31 establishing the procedure for the provision of refugee status and n° 5/93 of December 28, which regulates the legal regime of foreign citizens, as well as Decree n° 33/2007 of August 1 which regulates the process of assignment of the status of refugees. By doing so,

Mozambique recognizes and assumes certain obligations to receive and treat refugees on its territory, in accordance with the norms and principles of international law.

101. Pursuant to article 20, para. 2, CRM, the Republic of Mozambique shall grant asylum to foreigners persecuted because of their struggle for national freedom, democracy, peace and human rights. On the other hand, n° 3 of article 67 of CRM provides that "extradition is not permitted by the crimes that matches in the law of the requesting State, death penalty or life imprisonment, or where is recognized that the extradited might be subjected to torture, inhuman, cruel or degrading treatment. The provisions relating to refugees above referenced ensure the provision of the Right to Asylum, as well as protection and a possible prohibition of extradition of any refugee to a country which the sentence implies any form of torture and death. It is important to recall that the death penalty was abolished in Mozambique for over 20 years with the entry in to force of the new Constitution that provided democratic opening and the exercise of the rule of law, and where in the current Constitution (2004) it is stated in paragraph 2 of Article 40. Moreover, once the refugee status has been granted to the asylum seeker, he becomes governed by internal rules, which objectively prohibit any form of torture or cruel or inhuman treatment in any circumstance of life.

102. It is a fact that there have been occurring extraditions of illegal immigrants who come to Mozambique. This occurs because Mozambique is a country with a geographical position that is characterized by a long sea border of over 2.700 km along the Indian Ocean, more than 670 km from the border with river access to the sea (Rovuma River) in the north, along the United Republic of Tanzania and 2.685 km of land border on the side of hinterland, which associated with the weak institutional capacity of the border control conditions, creates opportunity for a massive entry of illegal immigrants with "status" of refugees and asylum-seekers from areas of political-military crisis and affected by drought and hunger as in the case of the countries of the Horn of Africa, including Somalia and Ethiopia, and the Great Lakes region and Zimbabwe. These extraditions are not in any way of criminal nature due to a court order, but of an administrative character, on account of border violation of a sovereign country in the light of international law, and they are made within the framework of legality based on Decree No. 33 / 2007 of August 1, approving the Regulation on the Assignment of Status of Refugees and the Law 5/93 of the Legal Regime for Foreign citizens and in strict compliance with international standards of human rights to which Mozambique is a signatory. These acts are lining in the form of expatriations.

103. For cases of judiciary extraditions, the prevailing principles are the constitutional precepts referenced above and the foundation for its materialization are agreements between states on a bilateral basis or between preferential blocks. Examples of this are extradition agreements between Mozambique and Brazil concluded in 2009, that for which, extradition will occur only if the crime has not been prescribed by the laws of both Brazilian and the Mozambican laws, other than the following principles and questions listed in: natural judge; criminal detraction, non-switching term of imprisonment or corporal punishment of death, non-extradition without the consent of the defendant, not trial by facts preceding the application; respect to pardon, amnesty or grace, not extradite for political crimes, fact related or crime strictly military crime.

104. Still under this agreement with Brazil, it is determined to be taken into account humanitarian issues, if the requested country assumes that the extradited will be persecuted for reasons of race, religion, nationality or political opinions.

105. In the context of the Community of Portuguese Language Countries (CPLP) of which Mozambique is a Member State, the Mozambican parliament unanimously approved the ratification of the Treaty on Extradition within the member countries, signed in November 2005 in Cape Verde by the Ministers of Justice of the organization.

106. The Treaty allows Member States to request one another, extradition of persons wanted for crimes in their country of origin. In the treaty, there are specified restrictions to extradition in cases where the penalty applicable to the committed offense is the death penalty or in cases where the offense is classified as a political crime - remembering that this principle does not apply to crimes of genocide, crimes against humanity or terrorism. Also in this regard, was ratified in the same parliamentary session the Convention on Mutual Assistance in Criminal Matters between the CPLP members.

107. One of the major concerns in this area of extraditions that worried the Government had to do with the fact that within SADC by 2010 there was still no mechanism in this regard. This was particularly experienced during the sentencing to death of 15 Mozambicans in Malawi, an inhuman punishment that has long been abolished in Mozambique, but even if Mozambique submitted an extradition request, its acceptance would depend on the goodwill of the Malawians, what was worrying since we are from the same region and countries with mutual interests in many fields. However, with the adoption by consensus by the Mozambican Parliament of the Law on Extradition of Prisoners in SADC and CPLP on 13/05/2011, the situation has changed positively. This legal instrument governs the parameters in which extradition of prisoners can occur in the in CPLP and SADC countries. The law governing the transmission of international arrest warrants for persons wanted for crimes committed in Mozambique determines the conditions for delivery to the States that so request, the defendants accused by their courts and convicted of the offense of common order.

Article 4: Legislation for criminalization of torture

108. There is no any ordinary law defining what torture or cruel, inhuman and degrading treatment is besides the rules of the Convention that Mozambique is Part to. The 2004 Constitution provides in Article 40, para. 1, that "Everyone has the right to life and to physical and moral integrity and cannot be subjected to torture or cruel or inhuman treatment." In the spirit of the legislature, torture is considered a crime and its practice is constitutionally prohibited.

109. The Criminal Code and Code of Criminal Procedure refer the issue of torture to the Constitution. However, these tools allow the punishment of crimes of violence against the person who carries heavy penalties. These, however, are not substitutes for torture under CAT.

Article 5: Establishment of jurisdiction

110. The Right to Compensation and Liability of the State constitutionally enshrined under paragraph 2 of Article 58 provides that "The State is responsible for the damages caused by unlawful acts of its agents, in the exercise of their duties, subject to the right of appeal in accordance with the law." Now, in this context, where there is commission of an act of torture which is manifestly illegal under the law, the jurisdiction for the prosecution rests with the Administrative Court because the agent in question is a state officer.

111. The Code of Criminal Procedure provides for jurisdiction over offenses related to torture (aggressions, imprisonments, murders, etc...) and the criminal action is of the responsibility of the Public Ministry (Section 2, Article 5) with some restrictions laid down in Articles 1 and 2 of Decree law No. 35.007 of October 13, 1945, and that it depends on "the authorization of the Ministry of Interior when the accused are authorities or agents of authority who have administrative safeguards, according to the law (Article 3 of Decree law n° 35.007).

112. The Mozambican state, despite not being yet Party to the Rome Statute establishing the International Criminal Court, inter alia, illegalize torture and creates a universal jurisdiction to criminalize it, and is part of the African Court of Human Rights and Peoples'

Rights and the SADC Court - although this last is in the process of institutional reform and therefore not functional as was desirable. Mozambique, by joining the ICC in the near future and have already ratified the statutes of the continental courts will promote legislation for its implementation.

113. Referring to the jurisdictional rules applicable to the practice of criminal offenses in Mozambique or any territory of its jurisdiction, it must be said that the general rule, the jurisdiction is territorial, that is, under Article 45 of the CPP, is competent to judge the infraction the Court of the area where it was consummated. In the case of tentative or frustrated murder, is competent the court of the area where the last act or offense was practiced. In the case of crimes with permanent effects, kidnapping, false imprisonment, is competent to try the offense the court of the area where the latter fact is practiced or where the consummation ceased.

Article 6: Exercise of jurisdiction

114. The CPP, approved in 1929 by Decree No. 16.489, on February 15, implemented from 1931, remains the basis of procedural law for prosecution in case of criminal activities in Mozambique. In this context, there are four types of common processes mostly used by courts:

(a) Transgressions Process - used for prosecution in case of violation of regulations (contraventions), including regulations adopted by the municipal authorities, generally punishable by fines (Article 66 of CPP and Article 56 of the CP);

(b) Summary procedure - for crimes punishable with a sentence of 3 days to 1 year of imprisonment (Article 67 of the CPP and Article 56 of the CP);

(c) Process of correctional Police - for crimes punishable with a sentence of 1 to 2 years of imprisonment (Article 65 of the CPP and Article 56 of the CP); and

(d) Process of quarrel - for crimes punishable by penalties of 2-30 years of imprisonment (Article 55 and 63 of the Penal Code). This is a longer and more complex process, and directed to serious crimes. According to the CP, the maximum penalty that can be applied directly to the crimes therein is 24 years of imprisonment (Article 55 CP), although the concurrent sentences may lead to a sentence up to 30 years (Article 73, CP). The Law against Drug Trafficking and Consumption provides a prison sentence of up to 30 years.

115. Under the principle of presumption of innocence, which is one of the constitutional guarantees under paragraph 2 of Article 59, the CPP provides that no person shall be detained unless there are strong suspicions that he committed an offense based on facts or sustainable evidence for accusation.

116. The law provides that all detainees must be brought before a Judge of Instruction within 48 hours, that is, two days after having been arrested. The judge will assess the legality of the detention and may extend this period up to a maximum of five days, if required and duly supported by the prosecution.

117. For the cases corresponding to contraventions, usually punishable by a fine (process of transgressions) or with penalties less than one year of imprisonment (summary procedure), should be tried and determined in a maximum period of 5 days from the time of the arrest, but in the practice, there have been difficulties in the enforcement due to structural weakness of the justice sector and which the State is seeking solutions through numerous reform initiatives molded in the Integrated Strategic Plan of the Justice Sector. But if the offense corresponds to a type of a serious crime, the investigating judge decides on the lawfulness of detention, or ordering or not the loosening of the suspect. In the case of detention to be lawful, the Criminal Investigation Police (PIC) under the Ministry of Interior and the Public Ministry (Attorney General) will have thus more time to prepare the

process through investigation and collection of group of proofs of the crime. If, on the other hand, the detention is illegal, the judge will also decide whether the suspect may be released or not without the payment of a bail.

Article 7: Implementation/initiation of processes

118. The information submitted under Article 4 above is also relevant for analytical purposes of this Article. However, as stated earlier, torture under CAT is still not considered as an offence of criminal law. This offense is treated in the context of crimes of aggression with intention of causing grievous bodily harm, common assault, etc. If a person who commits crimes related to torture is not extradited immediately, then he will probably be processed for the above mentioned offenses as prescribed under the internal law. However, the Constitution provides for the trial and conviction of a criminal in violation of national and international legislation. The issue did not come to court to authorized interpretation in terms of jurisprudence. Moreover the paragraphs 1 and 2 of Article 18 of the CRM set down the following:

"The international treaties and agreements, validly approved and ratified, apply in the Mozambican legal order after its official publication, while internationally binding the Mozambican State, and the rules of international law in domestic law have the same value that assume the regulatory acts infra-constitutional emanating from Parliament and the Government, according to the respective form of reception."

119. In this context, all international instruments on torture and extradition validly recognized by the Mozambican state are binding judicial authorities.

120. Furthermore, Mozambique within, the criminal justice policy provides for international cooperation in criminal matters with foreign states in relation to the provision of evidences, the enforcement of judgments and orders of compensation, among others expressed in bilateral and multilateral agreements already reported in the analysis of the article 3 of this report.

Article 8: Infraction liable to extradition

121. Article 67 of the Constitution provides that in Mozambique the extradition can occur only by court order and follows three basic principles, namely:

- (a) Extradition for political reasons is not permitted;
- (b) It is not allowed extradition for crimes that corresponds in the law of the requesting State death penalty or life imprisonment, or where it is accepted that justifiably extradited might be subjected to torture, inhuman, degrading or cruel treatment;
- (c) The Mozambican citizen cannot be deported or extradited from the national territory.

122. It is Important to stress that the legal basis for granting the Right of Asylum and Refugee Status to foreign citizens and stateless persons is based on the constitutional provision of the right to asylum enshrined in the Article 20, the accession of Mozambique to the Convention relating to the Status of Refugees and the Additional Protocol for Geneva Convention on the Status of Refugees, adopted by Resolutions n° 11/88 and 12/88 of August 25, of the Popular Assembly and the Convention of the Organization of African Unity Relating to Specific Aspects of Refugee Problems in Africa.

123. In addition to the provisions of the Constitution, the legal basis governing extradition in Mozambique is founded on Decree-Law No. 437/75 of August 16, which regulates the legal regime for extradition. However, this law cannot be applied outside the constitutional principles enunciated above, to the extent that the Constitution is the Supreme Law and no infra law is above the Constitution.

Article 9: Mutual judicial assistance

124. The Judicial Policy foresees international cooperation in criminal matters with foreign states in relation to the provision of evidences, the execution of judgments and other measures.

125. The Mozambican state has agreements on Mutual Legal Assistance in Criminal Matters, with member countries of the Community of Portuguese Language Countries, Southern Africa Development Community and Brazil.

126. It is important to recall that the SADC Protocols on this matter are two (on Extradition and Mutual Legal Assistance in Criminal Matters) and have been developed and discussed by experts in the SADC meeting in South Africa in March 2001. They were approved by the Ministers of Justice and General Attorneys and recommended to the Council of Ministers of SADC for its approval having been adopted by the Summit of Heads of State and Government of SADC held in September 2002.

127. If the judicial assistance does not require that the requested State have a similar law prohibiting the offense, where assistance is requested to provide proof, Mozambique can help foreign States in obtaining evidences. No cases of torture in which the evidence has been investigated by a foreign State in Mozambique.

128. Clearly, all these instruments have something in common: their general provisions reflect a concern for judicial cooperation on the basis of extensive exchange of information.

129. Request Letters often exist among the State parties on crimes and offenses of all kinds. However, cases specifically related to torture, direct or indirect, are almost nonexistent in practice.

Article 10: Training

130. In this context, the Constitution frames the educational function in the exercise role of criminal courts under its article 213, states that "The courts educate citizens and public administration in the voluntary and conscious compliance with the laws, establishing a fair and harmonious social coexistence".

131. Within the prison system, the overall purpose as defined by the PPEI is to contribute to the maintenance of a safe and fair society by performing custodial sentences imposed by courts through the custody and supervision of offenders; rehabilitation and resocialization of prisoners through educational programmes and socio-professional training so that they are law-abiding citizens. This means that the interaction with the inmate is directed to correct his/her offensive behaviour. The role that the staff of Correctional Services plays in the rehabilitation of those who are under their custody (correction) is always crucial to bring more changes in behaviour and conduct, thereby contributing to the prevention of crimes associated to torture.

132. Police forces also play a very important role in the educational activity of citizens to the extent that one of its basic roles is to educate the public for compliance with the law.

133. Therefore, both the Correctional Services and the Police Forces have a training base with a component in programs of Human Rights, in order to prevent acts of torture, inhuman and degrading treatment of acts in their action.

134. There is no policy on the Prevention of Torture and Treatment of Persons in Custody yet, but all members of the Prison Service and Police are trained through seminars and lectures on torture prevention, either within internal programs or through the actions of the Civil Society Organizations working on Human Rights related issues. The Center for Legal and Judicial Training in its formative action directed both to Magistrates and Judicial Prosecutors and other officials and employees of the justice sector has always included in

the curricula modules on human rights which include the prohibition of acts of torture and other cruel and degrading treatments.

Article 11: Custody and treatment of prisoners, detainees and condemned

135. The custody of people deprived of liberty by suspicion or commission of crime is the responsibility of the PRM, under the Ministry of Interior, through the police stations and police posts within 48 hours prescribed in Article 311 of the CPP and the National Prison Service under supervision of the Ministry of Justice for prisoners awaiting for trial and already in legalized detention by Judge of Instruction and retained on trial, convicted, with correctional sentences.

136. It should be recalled that the detentions may occur by court order in flagrante offense and respect four constitutional principles enshrined in the article 64 of CRM:

(1) "Preventive detention is allowed only in the cases prescribed by law, fixing deadlines;

(2) The citizen under preventive detention must be submitted within the time allowed by law for the decision of a judicial authority, which is the only jurisdiction in the validation and maintenance of the prison;

(3) All persons deprived of their liberty shall be informed immediately and understandably of their rights and the reasons for the arrest or detention;

(4) A court order that keeps a measure of deprivation of liberty must be immediately communicated to a relative or of a person of trust indicated by the detained."

137. The citizens in custody of the authorities in charge of law enforcement should be treated humanely within the principles and norms of international law signed by Mozambique, of the Constitution, of the Prison Policy and its Implementation Strategy, as well as the rules and discipline regulations governing both the PRM and the SNAPRI.

138. With respect to PRM, the respective legal framework governing it, objectively establishes equal protection for all citizens. To elucidate this fact, article 67 of Decree No. 28/99 of May 24, provides that "a member of the PRM, in the exercise of his duties, must act with complete impartiality and political neutrality and therefore without discrimination for reasons of race, religion, color, ethnic origin, place of birth, nationality, political affiliation, education, social or professional". This legal statement limits any tendency for acts of torture using discriminatory fundaments.

139. On the other hand, the principles that guide the Prison Policy and its Implementation Strategy are clear relating to humane treatment that should be given to persons in custody. Hence, despite the shortage of resources, various training programs and retraining for staff have been developed from the perspective of human rights; the increasing improvement of the diet either by strengthening the budget or by the increase of agricultural and livestock activities; incentive partnerships with civil society to develop rehabilitation programs and monitoring of the situation in prisons and building other prisons for minors in conflict with the law.

140. It is a fact that in the prison, conditions are not the best nor the most desired because they still have overcrowding problems, degraded infrastructures inherited from the colonial period, tight budgets given the structural weaknesses of the country, a deficient system of water supply and sanitation, deficient feeding both in quantity and quality, existence of infectious diseases, among others. However, there should be highlighted the fact that the prisoners are separated by gender, age, state of reclusion (detained and convicted); the opening for NGOs, access to information, access to external visits, the prohibition of corporal punishment, and increases of several rehabilitation and recreational programs.

141. Just to clarify the drama of overcrowding, for example, by the end of 2010 the national prison population in prison establishments was 16.304 and the capacity of internment of 6.654, which causes an overcrowding rate of 144.66%, corresponding to 9.640 inmates above capacity. Among these, 10.781 were convicted, 66.12% and 5.523 in preventive detention, which corresponds to 33.88% of the total number of inmates.

142. In order to reduce the deficit internment in jails, in addition to actions of prison system reform, the Government has been building new prisons, namely; District Jail of Muecate, designed to host 200 inmates and that of Mabote District estimated for the internment of 30 inmates. On the other hand, the jails of Moma District were rehabilitated in 2010 and, in June the Prison Establishment for youth recovery was inaugurated in Maputo Province, with capacity for 180 of teenage inmates, and this capacity will be increased as are constructed the other buildings that make up this complex. It is intended to internment of minors from 16 to 21 years old.

143. Despite this positive legal and institutional scenario, remain allegations of human rights abuses by both the police and in prisons, although they have decreased in the late 1990s. Several organizations and the media have reported from time to time, cases of police abuse or prison guards, including arbitrary detentions, excessive use of force and summary executions. However, these practices are isolated cases and do not represent any policy of the State in this regard and when they occur have been investigated and measures have been taken either disciplinary and or criminal depending on the nature of the case.

144. Moreover, the PRM has made efforts to improve assistance to victims, particularly women and children. In this context, in recent years Offices for Assistance to Women and Children have been created in some Police Stations, which officers are trained by psychologists and skilled staff from NGOs and development partners.

Article 12: Immediate and impartial investigation

145. In the Republic of Mozambique complaints for purposes of the Convention are constitutionally guaranteed through the combination of three sequential predictions.

146. First, article 79, which under the principles of the right of petition, grievance and complaint states that "all citizens have the right to present petitions, complaints and claims before the competent authority to demand the restoration of their violated rights and in defense of the public interest ". Second, article 80 on the Right of the resistance states the following: "citizens have the right to disobey illegal orders or orders that affect their rights, freedoms and guarantees". And finally, article 81 on the principle of popular action, postulates the following:

“(1) All citizens have, personally or through associations of defense of the interests involved, the popular right of action under the law.

(2) The right of popular action includes namely:

- (a) The right to apply to the victim or victims compensation that they are entitled to;
- (b) Right to promote the prevention, termination or judicial prosecution of offenses against public health, consumer rights, environmental conservation and cultural heritage;
- (c) (...)”

147. The above confers rights and supreme legitimacy to victims of torture and other forms of cruel or degrading treatment or their singular representatives (family members or direct relatives and lawyers) or plural (group or individuals associated to the cause and outraged or civic organizations) to complain violated rights in the context of this crime through the interposition of complaints, appeals and grievances as provided for in

paragraphs 58, 60 and 69 of CRM which will be more deeply approached later in its analysis of article 14 (compensation and rehabilitation) under this report.

148. With regard to the criminal procedure, Decree-Law no. 35.007 establishes that the prosecution is public and incumbent upon the public prosecutor to the exercise unless if it depends on the complaint, grievance or offended participation or authorization of the competent authority, in the case of being accused agents of the authority or authorities which have an administrative warranty, under the law, that under article 1 in conjunction with Article 3 of the decree.

Article 13: Investigation by impartial authorities

149. Under the principle of the universality and equality, the 2004 Constitution provides that "All citizens are equal before the law, enjoy the same rights and are subject to the same duties, regardless of color, race, sex, ethnic origin, place of birth, religion, education, social status, marital status of parents, profession or political option". In this context, despite the fact that police officers enjoy a special status because of their function they have the same rights and duties, i.e., they are citizens and as such they must obey the laws and regulations of the Republic. Regarding impartial investigation, beside the information given below, it is also relevant the information given in article 6 above.

150. The legal acts governing the PRM and SNAPRI in terms of its internal structure predict a body of inspection, generally designated internal inspection, responsible for the supervision of the scrupulous compliance with the ethical and deontological corporative norms.

151. Externally, there is no external independent mechanism to investigate complaints against the police and prison services: a need that the government recognizes relevant. Despite numerous police and prison service officers having been dismissed over the past years, much more have to be done to purify the ranks as part of the ongoing reforms.

152. Still at the external level, we can say that the body empowered to conduct impartial investigations of offenses committed by agents of the State is the Public Prosecutor, to whom within its attributions compete the state representation in the courts and defend the interests determined by law, control of legality, the duration of detentions, direct the preparatory instruction of the criminal proceedings, institute criminal proceedings and ensure the legal protection of minors, absentees and the disabled (article 236 of the CRM). It is associated with this body, the figure of the Public Protector (Ombudsman) that is a body - despite still not working - which has the function to guarantee the rights of citizens, the defense of legality and justice in the action of the Public Administration (Article 256 of the CRM). The two mechanisms are constitutional bodies which gives them some independence and impartiality in their work.

153. For example, to illustrate the above, in 2007 (April) there was a case named Costa do Sol in which 3 PRM officers led three detainees, Sousa Carlos Cossa, Mustafa Assane Momede 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. This event was triggered by the Mozambican Human Rights League and was investigated by the PRM through an investigation which concluded that the three people had been "summarily executed". Given the conclusive results of the PRM, the three police officers were suspended from their duties by the General Command of the PRM and subsequently tried in court and were sentenced to the more qualified homicide.

154. To cases of wilful misconduct proven against police agents or Prison Guard Corps, administrative measures and criminal proceedings are taken using the analysis in each case, in terms of severity. Likewise, also, immediate measures are taken to protect persons who report acts of torture against vitalization. Though these measures, there are recognized flaws in the strategy for disclosure to citizens in promoting and disseminating more

transparent information about the disciplinary action against police officers which could contribute to a greater public confidence in the police and custodial prison staff.

Article 14: Compensation and rehabilitation

155. Article 58 of the CRM states that "Everyone shall have the right to require, by law, compensation for damages caused by the violation of their fundamental rights".

156. In case of an individual or individuals not be satisfied with the treatment received in a court or other custodian entity, the concerned individuals have the right to challenge such acts and to promote recourse. These rights are guaranteed under Article 69 which states that: "The citizen can challenge acts that violate the rights established in the Constitution and other laws" in conjunction with article 60 which says that "The citizen has the right to appeal to courts against acts that violate their rights and interests recognized by the Constitution and the law ", both of the CRM.

157. On the other hand the victim may appeal to institutional mechanisms to claim for compensation, reparation and rehabilitation before the Administrative Court, the Attorney General Office - as the guardian of legality - of Public Protector (Ombudsman) (body provided in the Constitution, but not yet working), the National Human Rights Commission (in installation phase), the Committee of Legal Affairs, Human Rights and Legality, of the AR, the Ministry of Justice and Ministry of Interior.

158. To the extent that "every citizen has the right to honor, good name, and reputation, the defense of his public image and reserve of his private life" as the Constitution provides under article 41; the rehabilitation of a victim is founded in the constitutional framework which gives real guarantees of the requirement of this fundamental right.

159. Finally, further notes that, pursuant to n° 2 of article 58 of CRM, the State is liable for damages caused by unlawful acts of its agents, in the exercise of their duties, subject to the right of recourse under the law. This legal provision also provides that a victim can sue the state for damages and appeal to compensation and rehabilitation under the principle of civil responsibility.

Article 15: Statements obtained under torture

160. One of the pillars for the prohibition of torture in the context of criminal proceedings is based on constitutional principles enshrined in criminal procedure n° 3 of Article 65 of CRM that prescribes the following: "Are null all the proofs obtained through torture, coercion, infringement of physical or moral integrity of the person, wrongful interference with his private and family life, the domicile, correspondence or telecommunications". Accordingly, all acts that configure torture as a means of obtaining evidence are invalid and give rise to a criminal case against the agent or employee of the State who has used this degrading method to obtain confession or proof.

161. Still in the same area, it is expected that the confession made by an accused person is irrelevant if the taking of the confession appears to the court by coercion caused by force, violence, threat or promise calculated to make a false confession to the benefit or detriment of others in the process.

162. The justification for this legal approach lies in the need of ensuring that declarations of persons in custody are voluntary and not forced.

163. Furthermore, the Code of Criminal Procedure already refers to procedural invalidity by recourse to this method, the precepts of the Mother Law (Chapter III, Section I - the nullities). Thus, the citizen who has been a victim of a similar action can trigger the Institute of Habeas Corpus, or use the provisions of paragraph 1 of Article 59 in conjunction with Article 58, both of CRM.

164. On the other hand, the Deontological Code and the Statute of the police, as well as during the process of training of police officers there is already prohibited the use of any form of torture as a means of obtaining confession in criminal procedure.

IV. Conclusion

165. The fight for national liberation from Portuguese colonial rule from 1964 to 1974 and later aggression of the racist regime of Ian Smith in Southern Rhodesia (now Zimbabwe) associated with 16 years of war between the FRELIMO Government and RENAMO, left their indelible traces that marked the indescribable suffering of Mozambican citizens. However, with the entry into force of the new 1990 Constitution which enshrines the rule of law and Democracy, as well as the signing of the GPA which marks the end of nearly 30 years of war, there has opened a new era of true constitutional democracy and peace phase, deepened by the Constitutional Law of 2004, which provides for the right to liberty and security of person with specific reference to the right to life and not to be tortured in any way, is the basis of Mozambique as a sovereign State and modern for legislative and administrative measures necessary to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

166. Although Mozambique has no legislation criminalizing torture in the strict sense, torture can be treated as a form of aggression in the ordinary law. However, there are some pieces of legislation to deal with other forms of torture, including the issue of the revision of the Criminal Law, which provides for the repeal of the death sentences, and the abolition of other forms of punishment. PRM, FADM, the Prison Services and SISE are the Mozambican Defense and Security Services and have policies and programs to deal with any form of torture, and they have training programs and or manuals intended to educate them on human rights and treatment that should be given to a suspect, criminal and the public in general. In addition to these instruments, there are codes of ethical and deontological conduct that prohibit such practices and are in some way harsh towards the offenders.

167. Despite the good policies and training against torture in the context of the Defense and Security Services, there are still incidents of torture. This problem, given the legacy of the past, will continue to be a challenge for a while. The Government is committed to deal with this scourge, and its main challenge is to transform the agents of the defense and security forces with a remarkable time of service to a new culture based on respect and promotion of democratic values, including the humane treatment of suspects, offenders and the public in general in situations of transgression. But for this purpose, the State needs the support of everyone from companies, unions, civil society and international partners in the struggle to transform and modernize our security forces. The aim is that Mozambique becomes a safe and prosperous country to live with human dignity.
