



12 SEPTEMBER 2019

## MID-TERM REFLECTION ON MOZAMBIQUE'S UPR COMMITMENTS

### WRITTEN STATEMENT

#### ITEM 6: UPR General Debate

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On the occasion of the mid-term point between the second and third UPR of Mozambique, in January 2016 and January 2021, respectively, Amnesty International and Civicus offer a number of reflections below on the state of implementation of commitments made by Mozambique at the second review, including through its acceptance of recommendations made by other states.

Amnesty and Civicus are concerned about the lack of progress in implementing several recommendations supported by Mozambique at its second review, including to end arbitrary arrest and detention by security forces, to ensure prompt, thorough and impartial investigation into cases of human rights violations and abuses, to guarantee the rights to freedom of expression, peaceful assembly and association, and to protect the rights of refugees and asylum seekers.

### ARBITRARY ARREST AND DETENTION

In the 2016 UPR, Mozambique committed to carry out prompt, thorough and impartial investigations into cases of arbitrary arrest and detention by the security forces and to put an end to such practices.<sup>1</sup> However, in breach of safeguards in national law,<sup>2</sup> the security forces continue to arbitrarily arrest individuals, including cases where the Police of the Republic of Mozambique (PRM) and the National Military Forces have arrested individuals without an arrest warrant in situations where such a warrant is required and without informing those arrested of

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<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Mozambique*, A/HRC/32/6, recommendations 128.74 (Costa Rica), 128.76 (France), 128.77 (Australia), 128.78 (Ghana), 128.79 (Canada) and 128.88 (Austria).

<sup>2</sup> The right to security of person and not to be arbitrarily arrested is enshrined in Mozambique law. Article 59 of the Constitution states that no one can be deprived of their liberty except in accordance with the law and Article 61 prohibits the unlimited or indefinite deprivation of liberty as a penalty or security measure. Article 251 of the Mozambique Criminal Procedure Code defines an arrested person as "one on whom there is a strong suspicion of having committed a crime, the existence of which is sufficiently proven." This indicates that a person cannot be arrested unless there is a strong suspicion that they have committed a crime and there is sufficient proof that that crime took place.

their rights.<sup>3</sup>

Amnesty and Civicus are also concerned about the human rights situation in the northern province of Cabo Delgado where, since October 2017, there have been appalling attacks by individuals believed to be members of the extremist group known as "Al-Shabaab".

According to local reports, the attackers have invaded villages, set houses on fire, hacked villagers to death with machetes and looted their food. Although the authorities have increased the military presence in the region, their response to these attacks has been woefully inadequate. Moreover, we are alarmed by reports that the security forces have intimidated, arbitrarily arrested and detained, subjected to torture and other ill-treatment, and summarily executed civilians on suspicion of belonging to extremist groups. Journalists who attempt to report the attacks, are also target of intimidations, arbitrary arrests and detention, torture and other ill-treatment.<sup>4</sup> The following cases are examples of arbitrary arrests and detention:

- On 5 January 2019, journalist Amade Abubacar was arrested without a warrant by police officers of Macomia district, while he was interviewing people who had fled their homes due to the intensification of attacks carried out by individuals believed to be members of "Al-Shabaab".<sup>5</sup> Amade was held in pre-trial detention for nearly 100 days, including 12 days in incommunicado military detention.<sup>6</sup> On 23 April, he was granted provisional release, although he is still accused of the crimes of "public incitement through electronic media", "incitement" and "injury against public officials".<sup>7</sup>
- In December 2018, Estacio Valoi, an investigative journalist, and David Matsinhe, Amnesty's researcher, were arrested by the military and held incommunicado for two days in Mocímboa da Praia district, accused of spying and aiding and abetting the extremist group, "Al-Shabaab".<sup>8</sup> They were released without charge, but their equipment remains confiscated by the military.
- On 1 August 2018, Andre Hanekon, a South African businessman, was shot in the arm and stomach and abducted by four armed men in Palma district. He was kept nearly four months in military incommunicado detention and on 14 January 2019 he was transferred back to police custody, while being investigated for his allegedly involvement with the extremist group "Al-Shabaab". On 23 January 2019, Andre was declared dead; his body had signs of torture, including a broken nose and bruises on his head, feet and back.

## JUSTICE FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS AND ABUSES

During the 2016 review, Mozambique accepted recommendations to ensure prompt, thorough and impartial investigations into cases of arbitrary detention, excessive use of force, extrajudicial executions, and torture and other ill-treatment by the police, and to bring those suspected to be responsible to justice.<sup>9</sup> Similar

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<sup>3</sup> According to Articles 287 and 288, an arrest may be carried out by any individual when a person is caught in flagrante delicto, that is, caught in the act of committing a crime, or is pursued running from the scene of the crime, or caught soon after the commission of a crime with objects or some other clear indication that the individual participated in the commission of the crime. Article 291 provides that where a person is not caught in flagrante delicto an arrest may only be made pursuant to an arrest warrant and only when the person being arrested is suspected of having committed a crime punishable by imprisonment.

<sup>4</sup> Human Rights Watch, *Mozambique: Security forces abusing suspected insurgents*, 4 December 2018. Available: <https://www.hrw.org/news/2018/12/04/mozambique-security-forces-abusing-suspected-insurgents>

<sup>5</sup> Amnesty International, *Mozambique: Journalist Arbitrarily detained incommunicado: Amade Abubacar*, 11 January 2019. Available: <https://www.amnesty.org/en/documents/afr41/9674/2019/en/>

<sup>6</sup> Amnesty International, *Mozambique: Further Information: Detained journalist denied family visits: Amade Abubacar*, 5 February 2019. Available: <https://www.amnesty.org/en/documents/afr41/9792/2019/en/>

<sup>7</sup> Amnesty International, *Mozambique: Further Information: Journalist granted provisional release: Amade Abubacar*, 30 April 2019. Available: <https://www.amnesty.org/en/documents/afr41/0278/2019/en/>

<sup>8</sup> Committee to Protect Journalists, *Mozambican journalist arrested, held in military prison*, 9 January 2019. Available: <https://cpj.org/2019/01/mozambican-journalist-arrested-held-in-military-pr.php>

<sup>9</sup> A/HRC/32/6, recommendations 128.76 (France), 128.77 (Australia), 128.78 (Ghana), 128.79 (Canada) and 128.88 (Austria).

recommendations were accepted during its first review in 2011.<sup>10</sup> Despite these commitments, we have documented several cases of serious human rights violations and abuses by state and non-state actors for which no one has yet been held to account.

The continued impunity for such crimes has created an environment of public fear and insecurity and several cases to date remain unresolved:

- On 27 March 2018, unknown gunmen abducted human rights lawyer and political commentator Ericino de Salema outside the office of the Mozambican Union of Journalists in Maputo. The men then beat and abandoned him by the roadside with serious fractures to his arms and legs.<sup>11</sup>
- On 4 October 2017, an unidentified gunman assassinated the then Mayor of Nampula City, Mahamudo Amurane, at his home. Since his election as Mayor in 2013, Mahamudo Amurane had embarked on a public quest to root out corruption in the city's administration and revitalize public infrastructure.

### **THE RIGHTS TO FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY AND ASSOCIATION**

During the 2016 review, Mozambique committed to take necessary measures to guarantee the rights to freedom of expression, including of the press, peaceful assembly and association<sup>12</sup>. However, contrary to these commitments, there has been an increased crackdown on civil society activists, journalists and others opposing government views since the last review. The situation is all the more concerning in the context of increased repression in the lead up to presidential, legislative and provincial elections scheduled for October 2019.

The following cases are examples of violations of the rights to freedom of expression, peaceful assembly and association:

- On 23 July 2018, the Council of Ministers issued Decree 40/2018 requiring journalists and media organizations to pay prohibitive accreditation and licensing fees for both local and foreign press wanting to report on the country.<sup>13</sup>
- Following the October 2018 municipal elections, several civil society activists and local journalists have received anonymous death threats and intimidating phone calls and messages related to their involvement in the monitoring of the election process. Their close monitoring of the election results is believed to have prevented several instances of election fraud. However, Mozambique Liberation Front (FRELIMO) supporters have blamed the activists and journalists for contributing to the losses suffered by their party.
- On 18 January 2019, the Centre for Public Integrity (CIP), an independent civil society organisation, launched a campaign against the repayment of illegally acquired secret loans amounting to USD2.2 billion which were taken under former President Armando Guebuza. On 21-24 January 2019, the police surrounded CIP's office in Maputo, and ordered people to remove campaign T-shirts and CIP's employees to stop distributing the T-shirts.

### **THE RIGHTS OF REFUGEES AND ASYLUM SEEKERS**

During the 2016 review, Mozambique committed to strengthen the protection of the rights of migrants, refugees and asylum seekers,<sup>14</sup> although disappointingly it also rejected important recommendations to improve the protection and integration of refugees.<sup>15</sup> We have received worrying reports of arbitrary arrests and

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<sup>10</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Mozambique*, 28 March 2011, A/HRC/17/16, recommendations 89.53 (Canada), 89.54 (Austria), 89.55 (Netherlands), 89.56 (Slovakia), 89.57 (Ecuador), 89.58 (Germany), 89.59 (Hungary), 89.60 (Sweden), 89.62 (Switzerland), 89.63 (Slovakia), and 89.64 (Italia).

<sup>11</sup> Committee to Protect Journalists, *Mozambique journalist abducted, assaulted*, 13 April 2018. Available: <https://cpj.org/2018/03/mozambique-journalist-abducted-assaulted.php>

<sup>12</sup> A/HRC/32/6, recommendations 128.21 (France) 128.22 (Iraq), 129.35 (Latvia).

<sup>13</sup> Amnesty International, *Mozambique: Effectively closing the media space with exorbitant media accreditation fees*, 14 August 2018. Available: <https://www.amnesty.org/en/latest/news/2018/08/mozambique-effectively-closing-the-media-space-with-exorbitant-accreditation-fees/>

<sup>14</sup> A/HRC/32/6, recommendations 128.156 (Holy See)

<sup>15</sup> A/HRC/32/6, recommendations 129.4 (Panama) and 129.38 (Togo)

attempts to deport refugees and asylum seekers.

- 15 refugees and asylum seekers from the Democratic Republic of Congo and one refugee from Ethiopia have been held in arbitrary detention for more than seven months, and have not been notified of the reason for their detention or of any criminal charges against them. They have also not been brought before a court. The group was arbitrarily arrested on 17 January 2019, after being handcuffed and allegedly beaten by police and immigration officers in Maratane Camp in Nampula province. The 16 people are currently detained at the Third Police Station in Pemba.

## **RATIFICATION OF HUMAN RIGHTS TREATIES**

During its second review in 2016, Mozambique agreed to ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, and the First Optional Protocol to the International Covenant on Civil and Political Rights.<sup>16</sup> Mozambique made a similar commitment in its first review in 2011.<sup>17</sup> However, more than eight years on, Mozambique has yet to accede these treaties.

## **RECOMMENDATIONS TO MOZAMBIQUE**

Amnesty International and Civicus urge Mozambique to promptly act on the recommendations below so as to deliver on its UPR commitments before its third review in the UPR Working Group in early 2021;

### *Arbitrary arrest and detention*

- Carry out prompt, thorough, impartial and independent investigations into all cases of arbitrary arrest and detention and ensure that anyone suspected to be criminally responsible for these acts are brought to justice in fair trials;

### *Justice for victims of human rights violations and abuses*

- Carry out prompt, impartial, thorough and effective investigations into all allegations of extrajudicial executions or unlawful killings by the security forces and ensure that the suspected perpetrators are brought to justice;

### *The right to freedom of expression, peaceful assembly and association*

- Respect, protect, promote and fulfil the right to freedom of expression, peaceful assembly and association and ensure that Civil Society Organisations and journalists are able to carry out their work without fear of attack, intimidation or harassment.

### *The right of refugees and asylum seekers*

- Stop the practice of arbitrary arrest and forcible return of foreign nationals without due process and respect the principle of *non-refoulement*;

### *Ratification of human rights treaties*

- Ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, and the First Optional Protocol to the International Covenant on Civil and Political Rights.

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<sup>16</sup> A/HRC/32/6, recommendations 128.1 (Australia), 128.2 (New Zealand), 128.3 (France) (Georgia), 128.4 (Ghana), 128.5 (Germany) (Kenya) (Montenegro) (Turkey) (Timor-Lest) (Poland) Tunisia, 128.6 (Spain), 128.7 (Indonesia), 128.8 (Namibia), 128.9 (Portugal).

<sup>17</sup> A/HRC/17/16, recommendations 88.1 (Algeria), 88.2 (Nigeria), 88.3 (Spain), 88.4 (Argentina), 88.5 (Portugal), 88.6 (Austria), 88.7 (Slovakia) and 88.8 (Australia), 90.2 (Spain), 90.5 (Portugal) and 90.6 (Slovakia)..