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# INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee (the Committee) ahead of its examination, in October 2013, of Mozambique's initial report on the implementation of the International Covenant on Civil and Political Rights (the Covenant or ICCPR).

The document highlights the main aspects of Amnesty International's ongoing human rights concerns in Mozambique in relation to a number of questions on the Committee's list of issues to be taken up in connection with its review of the state report.<sup>1</sup> In particular, Amnesty International is concerned about the failure of the Mozambique government to fully comply with its obligations under Articles 6, 7, 9, 10, 14, 19, 21, 22 and 24 of the Covenant. This submission highlights concerns with respect to persisting impunity for unlawful killings – including extrajudicial executions – by the police; torture and ill-treatment of arrested and detained persons; arbitrary arrest and detention; treatment of persons lawfully and unlawfully deprived of liberty and conditions of detention; lack of access to justice; suppression of freedom of opinion, expression, association and assembly, as well as the failure to protect children, particularly those in conflict with the law.

The document is based on Amnesty International's research and information the organization has received in the past five years.

## RIGHT TO LIFE (ART. 6)

The right to life is enshrined in article 40 of the Constitution of the Republic of Mozambique (henceforth the Constitution).<sup>2</sup> Mozambique has also abolished the death penalty. However, police in Mozambique have shot and killed numerous individuals in circumstances which amount to a violation of their right to life. In 2009, Amnesty International published a report documenting over 26 incidents of police shooting at alleged criminals, between 2006 and 2009 in which at least 46 people were killed. Some of these cases appeared to be extrajudicial executions.<sup>3</sup> As demonstrated by the cases of Hortêncio Nia Ossufo and Alfredo

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<sup>1</sup> Initial report of Mozambique, UN Doc. CCPR/C/MOZ/1, 23 May 2013, submitted on 27 February 2012, [http://www.un.org/ga/search/view\\_doc.asp?symbol=CCPR/C/MOZ/1](http://www.un.org/ga/search/view_doc.asp?symbol=CCPR/C/MOZ/1). List of issues to be taken up in the absence of the initial report of Mozambique, CCPR/C/MOZ/Q/1 of 19 August 2011.

<sup>2</sup> Article 40 (1) All citizens shall have the right to life and to physical and moral integrity, and they shall not be subjected to torture or to cruel or inhuman treatment. (2) There shall be no death penalty in the Republic of Mozambique.

<sup>3</sup> For further information see "I can't believe in justice any more": Obstacles to justice for unlawful killings by the police in Mozambique (AFR 41/004/2009); Briefing to the Parliament (Assembly) of Mozambique (AFR 41/002/2009); and Licence to Kill: Police accountability in Mozambique (AFR

Tivane below, killings at the hands of police –including extrajudicial executions - have continued.

Authorities have often tried to justify these killings by stating that those who were killed were criminals, even in cases where the individuals had never been convicted of a crime. Regardless of the conviction or lack of conviction of an individual, extra-judicial executions are a violation of Mozambique’s national and international human rights obligations and commitments.

Police authorities have also told Amnesty International on numerous occasions that extra-judicial executions and excessive use of force by police are not part of police practice and that such acts are carried out by “over-zealous” police officers. However, by failing to ensure thorough, prompt, impartial and adequate investigations and bringing suspected perpetrators to justice in the majority of cases of police killings, they have failed to send a clear message to all police officers that such actions will not be tolerated and those found responsible for these actions will be held to account.

In 2008, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions requested a visit to Mozambique. To date the government has not responded to this request.

## **KILLING OF HORTÊNCIO NIA OSSUFO IN 2011**

On Saturday 5 March 2011, police went to the home of Hortêncio Nia Ossufo in the neighbourhood of Muatala in Nampula province apparently with the intention of carrying out an arrest. A family member, who was on the scene at the time, reported that the police appeared to mistake Hortêncio Nia Ossufo for another family member, Frederico, who had fled the house at the time. They demanded Hortêncio Nia Ossufo accompany them, in handcuffs, to the police station. When Hortêncio Nia Ossufo insisted that he was not Frederico an argument ensued and the police then reportedly shot him resulting in his death.

An autopsy was carried out which revealed that Hortêncio Nia Ossufo had been shot through the heart. The Provincial Police spokesperson justified the killing of Hortêncio Nia Ossufo by alleging that he was a criminal despite the fact that Hortêncio Nia Ossufo had apparently never been found guilty of a criminal offence by a court of law. Furthermore, regardless of the conviction or lack thereof of an individual, extra-judicial execution is a violation of Mozambique’s national and international human rights obligations.

Amnesty International has asked police authorities on several occasions, in person and in writing, for information on whether an investigation had been carried out into this killing but has received no direct response.

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41/001/2008).

## **THE KILLING OF ALFREDO TIVANE IN 2013 AND USE OF FORCE DURING SUBSEQUENT DEMONSTRATIONS**

Alfredo Tivane was a minibus driver who operated between the centre of Maputo city and T3 neighbourhood in Matola (Maputo province). On Tuesday 19 March 2013, at about 22:00 hours, he was manoeuvring his minibus, which was empty at the time, near a local market when police in a car ordered him to stop. When he failed to do so, two police officers opened fire on his minibus with AK-47 rifles killing him instantly.

According to press reports, the day after the killing over 100 residents of the T3 neighbourhood went to the local police station to protest the killing of Alfredo Tivane and demand the removal of the police station from the area which they felt did not protect them. The police reportedly tried to convince the crowd to leave through talks, but failed. The crowd then started throwing stones at the police station, which the police responded to by firing rubber bullets in the crowd first and then live ammunition into the air to disperse the crowd.

On 26 March several local newspapers quoted the National Police spokesperson as saying that the police officers responsible for the killing of Alfredo Tivane had been arrested and that they had acted without the consent of their superiors. No information was provided regarding the excessive use of force during the demonstrations and no further information has been provided regarding investigations into the killing of Alfredo Tivane.

## **PROHIBITION AGAINST TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ART 7)**

Mozambique is state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1999. Article 40 of the Constitution<sup>4</sup> prohibits torture, as well as cruel or inhuman treatment. However, although Article 67 of the Constitution refers to degrading treatment in the context of extradition requests, Article 40 does not specifically prohibit degrading treatment. Furthermore, the Constitution only refers to treatment and does not prohibit such cruel, inhuman or degrading punishment.

The Police Disciplinary Regulations of 1987 prohibit torture by police<sup>5</sup> and torture

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<sup>4</sup> See Article 40, *supra* footnote 2.

<sup>5</sup> Article 4(3) (h) and (i) of the Disciplinary Regulations of the Police of Mozambique of 1987. In September 2012 the Mozambique Constitutional Court ruled that the Police Disciplinary Regulations had been revoked as these regulations had come into force during the time of the Mozambique Popular

constitutes an aggravating circumstance for crimes in terms of the Penal Code.<sup>6</sup> Although the Mozambique Constitutional Court ruled, in September 2012, that the Police Disciplinary Regulations had been revoked as these regulations had come into force when Mozambique was a one-party state, torture by police remains prohibited.

Despite the legal prohibition of torture, there have been reports of torture and other ill-treatment by police in the country. During visits by Amnesty International to places of detention in 2012 and 2013, many of the inmates interviewed by the delegates said they had been beaten or threatened with beatings by police while held at police stations. They specifically mentioned the 7th and the 16th Police Stations in Maputo city; the 2nd Police Station in Moamba, Maputo Province; the 2nd Police Station in Nampula city; and the Police Post at Faina, Nampula Province. Other forms of ill-treatment by the police were also mentioned. One man told the delegates how police had taken him to a beach, after having beaten him, and held a gun to his head threatening to shoot him if he did not confess to having committed the crime for which he was accused. On another occasion, a female detainee told a delegation member that at the 7th Police Station in Maputo she had been kept for seven days alone in a dark cell without food or [sufficient] water, and had to sleep on the floor. She said she had cried for help but was ignored. She also said at one point she was sexually assaulted by four male police officers. She had lost consciousness and when she came round she was naked and four police officers were touching her body. She told them to stop and they laughed.

There were also complaints of ill-treatment by prison guards particularly in the Ndhlavela Women's Prison in Maputo. In November 2012, Amnesty International received information of repeated complaints of ill-treatment by a female prison guard at this prison and yet the same prison guard continued in service at the prison. In May 2013, Amnesty International delegates found the same prison guard at the prison and it did not appear that any investigation had been carried out into complaints of alleged ill-treatment by her.

## **SECURITY OF PERSON AND PROTECTION AGAINST ARBITRARY ARREST (ART. 9)**

The right to security of person and not to be arbitrarily arrested is enshrined in Mozambique law. Article 59 (1) of the Constitution states that no one can be deprived of their liberty

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Police (PPM) when Mozambique was a one-party state.

<sup>6</sup> Article 331 and 351 of the Penal Code of August 2006.



except in accordance with the law<sup>7</sup> and Article 61 prohibits the unlimited or indefinite deprivation of liberty as a penalty or security measure.<sup>8</sup> In terms of Criminal Procedure Code, no one may be arrested unless there is a strong suspicion that they have committed a crime and there is sufficient proof that that crime took place.<sup>9</sup> The Criminal Procedure Code also states that a person must be arrested with an arrest warrant unless they were caught in *flagrante delicto*<sup>10</sup> and the Police Disciplinary Regulation states that the police have a duty to abstain from carrying out arbitrary arrests and detentions.<sup>11</sup> National law is therefore very clear that arbitrary arrests and detentions are prohibited. However, Amnesty International has received reports of individuals being arrested without a legal basis; arrests carried out in a manner which does not comply with national laws and international standards; prolonged pre-trial detention in violation of these laws; politically-motivated arrests, as well as continued detentions after expiry of sentences all of which amount to arbitrary arrests and detentions.

## ARRESTS WITHOUT A LEGAL BASIS

In spite of safeguards in the law, police frequently arrest individuals without having sufficient evidence, and investigate later. Amnesty International has come across several cases where police officers did not appear to have sufficient grounds to suggest that a crime had been committed, let alone that there were grounds for suspicion that it was committed by the detained person. The case of 15-year-old Ana Silvia (not her real name) below is a relevant example. There have also been cases where the police have arrested individuals for theft without grounds to suggest that a theft had been committed, simply because they have been in possession of property, such as a mobile phone, which the police believed they could not have possibly obtained legally.

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<sup>7</sup> Article 59(1) In the Republic of Mozambique everyone has the right to security and nobody shall be detained and put on trial except in accordance with the law.

<sup>8</sup> Article 61 (1)Penalties and security measures that deprive or restrict freedom in perpetuity or for an unlimited or indefinite period shall be prohibited. (2) Penalties are not transmissible. (3) No penalty shall deprive persons of any of their civil, professional or political rights, nor shall any penalty deprive a convicted person of his or her fundamental rights, except insofar as the restrictions are inherent to the conviction and are specifically necessary for the execution of the sentence.

<sup>9</sup> 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.

<sup>10</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>11</sup> Article 4(3) (g) of the Disciplinary Regulations

## **ANA SILVIA\*<sup>12</sup>**

On 11 November 2010, following the funeral of her mother, police went to the house of 15-year-old Ana Silvia\* and told her to report on 16 November to the 2nd Police Station in Moamba district, Maputo Province. Accompanied by her father on the day, she was questioned by police officers in the presence of the Chefe de Quarteirão (a person with responsibility over a block of houses). She was accused of having murdered her mother who was found dead at home on 9 November 2010 even though there were no obvious signs of a suspicious death, no sign of Ana Silvia\*'s involvement, and no autopsy having been carried out. Apparently the accusation against Ana Silvia\* was based on information provided by the Chefe de Quarteirão who stated that Ana Silvia\* had argued with her mother some days prior to her death.

According to Ana Silvia\*, her mother had left home early on the morning of 9 November 2010 and had returned during the night, after Ana Silvia\* had gone to bed. The next day Ana Silvia\* found her mother's body. She told the delegation member that she had not seen any signs of injury on the body, but was later told by others that liquid had been coming out of her mother's mouth. She said that after the police accused her of killing her mother, they asked her father whether they should beat her to make her tell the truth, but her father refused to allow them to do so. She was detained at the police station that night and said she was then transferred to the district prison in Moamba around 19:00 hours the following day, where she was held for over three months. On 27 February 2011, she was transferred to the Maputo Civil Prison where she stayed for almost five months before being transferred to the Ndhlavela Women's Prison on 18 July 2011. When the delegation visited Ana Silvia\* on 17 February 2012, 15 months after her arrest, she was being held in a cell with adult women and had still not been tried.

Her lawyer informed Amnesty International on 20 March 2012 that, despite having filed a petition for a writ of habeas corpus on her behalf, she remained in detention and he had received no response from the court. Amnesty International was informed that on 9 July 2012, after almost 20 months in pre-trial detention and despite the lack of any obvious signs of a suspicious death or an autopsy, she was convicted of murder and sentenced to one year in prison. Having already served over a year and a half, she was immediately released. The Attorney General, however, in his response to Amnesty International did not respond to allegations that no autopsy was carried out on her mother's body, but stated that Ana Silvia\* was found guilty of strangling her mother to death and sentenced to two years. He stated that as she had already spent over half of her sentence in detention, she was granted conditional release.

When a person is arrested, the police or prosecutors must ensure such a person is taken before the Juíz de Instrução<sup>13</sup> or other competent judge who then reviews the legality of the detention. The judge or Juíz de Instrução must ensure that any detainee held without a legal basis, including where there is insufficient admissible evidence, is released. However, in some cases they are not taken before the Juiz de Instrução by the police and even when they are, judges often confirm detentions that violate national and international laws.

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<sup>12</sup> \*Not her real name.

<sup>13</sup> The *Juiz de Instrução Criminal*, is a special type of judicial authority created in terms of Law 2/93 of 24 June 1993 to carry out the judicial functions that are necessary during the initial phase of a criminal process. These functions include determining whether detention complies with the law and deciding whether it should continue or whether to grant conditional release.

## ARRESTS NOT IN COMPLIANCE WITH NATIONAL PROCEDURES

Mozambique law requires that all arrested and detained people are taken before the Juíz de Instrução, or other competent judge where there is no Juíz de Instrução, within 48 hours of arrest.<sup>14</sup> It is the responsibility of the Juíz de Instrução to verify that arrests and detentions have been carried out according to national law and comply with procedures in the Criminal Procedure Code. This includes whether an arrest warrant was issued if required. However, there have been cases where the Juíz de Instrução has approved arrests and detentions even where the police did not comply with the national procedures. For instance, members of the Mozambique War Veterans Forum (Fórum dos Desmobilizados de Guerra) have been arrested on several occasions without an arrest warrant and in some of these cases their arrest and detention was approved by the judge reviewing their detention.<sup>15</sup> During Amnesty International visits to places of detentions in 2012 and 2013, a number of detainees told the delegates that police had appeared at their homes without a warrant and told them to either go with them to a police station or report to a station at a later date. They were subsequently detained at the stations without an arrest warrant on suspicion of having committed a crime.

Amnesty International has also documented cases where the police carried out arrests and detentions that were not procedurally compliant with national or international law because they failed to inform those being arrested of their rights. Other breaches included violating detainees' right to see a lawyer; forcing detainees to sign documents; beating or ill-treating detainees to force them to confess; and failing to promptly take those detained before the Juíz de Instrução to have the legality of their detention determined.

## CONTINUED DETENTIONS AFTER EXPIRY OF SENTENCES

In some cases convicted individuals are held in detention even after the expiry of their sentences. Prison authorities said this is due to the lack of necessary paperwork, without which they could not release prisoners. Amnesty International delegates were however informed by detainees and prisoners in one prison that the authorities there often refuse to release those who have completed their sentence unless they receive money.

## **GASPAR MAGALHÃES**

Gaspar Magalhães was sentenced to 4 months in prison by the First Section of the City Court in Nampula on 5 December 2012 after being convicted of theft. He completed his sentence on 5 April 2013. However, he was still imprisoned in the Nampula Central Prison at the time of Amnesty International's visit to the prison on 6 June 2013. Amnesty International has received no further information regarding this case to date.

## LACK OF EFFECTIVE REMEDIES FOR UNLAWFUL DETENTIONS

Article 58 of the Constitution provides for the right of individuals to claim compensation for damages caused by the violation of their rights. It also provides that the state is responsible for harm caused by its agents in the exercise of their functions.<sup>16</sup> Those arbitrarily arrested

<sup>14</sup> Article 311 of the Criminal Procedure Code

<sup>15</sup> See section on freedom of expression and assembly for more information.

<sup>16</sup> Article 58(1) Everyone shall have the right to claim compensation in accordance with the law, for damages caused by a violation of their fundamental rights.(2) The State shall be responsible for damages

and detained can therefore claim compensation from the state; however the majority do not seek compensation. Most are unaware that they have a right to do so and do not have a lawyer to assist them even if they are aware of this right. Furthermore, after spending many months in prolonged detention most do not have faith in the justice system and do not believe justice will be served if they try to seek effective remedies, including obtaining compensation.

## TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY (ART. 10)

### INHUMAN TREATMENT AND VIOLATIONS OF THE INHERENT DIGNITY OF THE HUMAN PERSON (ART 10 (1))

One of Amnesty International's major concerns regarding the treatment of persons deprived of their liberty in Mozambique is the appalling conditions in which they are held. Most of the prisons are overcrowded and conditions often insanitary. In the Nampula Provincial Prison, for example, the cells are generally so overcrowded that there is not even enough room for the detainees to sleep and they sometimes have to take turns to lie down or sleep with their knees bent, lean on other inmates' knees. During Amnesty International's visit to this prison in February 2012, there were 365 inmates and yet the prison only has a capacity for 90 inmates. The situation had slightly improved in June 2013, but there were still 220 inmates - more than double the number for the capacity of the prison. The situation of overcrowding is not unique to the Nampula Provincial Prison. The Machava Central Prison also had a population of double its capacity in June 2012 and the other prisons visited by Amnesty International in 2012 and 2013 were overcrowded, although not as overcrowded. Conditions were particularly severe at Quelimane Prison which has capacity for 270 but in June 2013 was housing 606 inmates, dozens of whom had to sleep on the floor in corridors or in classrooms and the chapel.

According to a statement made by the Minister of Justice during a meeting on prisons in June 2012, Mozambique has a total prison population of 16,881. The International Centre for Prison Studies states that the actual capacity of the prison system in Mozambique is 6,654, giving the prisons in Mozambique a population rate of 245 per cent of their capacity.<sup>17</sup>

The inhuman and undignified conditions of overcrowding are aggravated by insanitary

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caused by the unlawful acts of its agents, in the performance of their functions, without prejudice to rights of recourse available under the law.

<sup>17</sup> International Centre for Prison Studies. World Prison Brief. Mozambique. Available at: [http://www.prisonstudies.org/info/worldbrief/wpb\\_country.php?country=35](http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=35)

conditions. Most of the prisons visited in February 2012 had toilets which were strongly malodorous and in some cases even filled with excrement. Most did not have running water and in some places inmates stated they did not have cleaning products and only cleaned the toilets with water. Most of the prisons have toilets separate from the sleeping areas, but in some prisons the toilets are in the same room as the cells and separated by a wall. Conditions had improved in some of the prisons during the visit in 2013 where toilets were cleaner and less malodorous. In the Machava Maximum Security Prison (B.O) a large ablution facility was being built which should improve the conditions of sanitation. In addition, few inmates have beds or bedding. Between February 2012 and June 2013 conditions in this regard had improved in at least one of the prisons. The Maputo Civil Prison, where most inmates had a bed or at least a mattress.

Conditions in police cells are generally worse than those in prisons. Cells are dark with poor ventilation, very little natural light and in many police cells there are no electric lights in the cells. There is no running water inside the cells and detainees have to fetch water from taps outside. None of the cells had beds and only a couple of detainees had mattresses or sleeping mats. The toilets in the police cells, like those in many prisons, were filled with excrement and strongly malodorous.

The conditions of overcrowding coupled with the poor sanitation in places of detention are of great concern. In such conditions illnesses are common and the likelihood of the spread of contagious diseases is increased. In fact, many inmates complained of diarrhoea.

#### **NON-SEGREGATION OF ACCUSED AND CONVICTED PERSONS (ART 10(2) (A))**

In all the prisons visited by Amnesty International there was mixing of accused persons who were being held on remand awaiting trial and convicted individuals in the same block and even in the same cells. Most of the prison officials are aware that accused persons should be kept separately from convicted persons, but stated that it was not always possible to ensure this separation mainly because of the overcrowded conditions. In the Maputo Civil Prison, authorities stated in February 2012 that the mixing of accused and convicted in the same cell was a choice of the individuals concerned as there are no doors to the cells and inmates are free to move about in the block. They stated that even when they assign convicted persons separate cells from the accused, the two groups often end up voluntarily moving to share cells. They further stated that there was not enough room to put all convicted in one block separate from the accused.

#### **NON-SEPARATION OF CHILDREN AND ADULTS (ART 10(2)(B))**

Mozambique authorities have put into place some measures to ensure the separation of children from adults. These steps include the creation of a juvenile section in the Nampula Industrial Penitentiary for accused and convicted children, and a juvenile prison establishment in Boane, Maputo Province, with a capacity for 200 inmates between the ages of 16 and 21 years of age. However, the mixing of children and adults in the same cells continues to be a problem as children are often only sent to juvenile detention centres once they have been convicted. Accused children are sent to the same places of detention as accused adults and are held in the same cells as adults. In some cases, this includes the detention of accused children younger than 16 years, the age of criminal responsibility in

Mozambique, with convicted adults.<sup>18</sup>

## RIGHT TO A FAIR TRIAL AND ACCESS TO JUSTICE (ART. 14)

### COERCIVE PRACTICES IN BREACH OF THE PRESUMPTION OF INNOCENCE (ART. 14 (2))

It appears that many detainees in Mozambique have their first interrogation without a lawyer being present. This leads to a violation of their rights including the right to presumption of innocence. Some detainees have told Amnesty International that they were beaten, or threatened with beatings, to force them to incriminate themselves and others. Some stated they were forced to sign documents the content of which they did not know. This is a particular concern where the majority of detainees are illiterate or do not adequately understand Portuguese, or for other reasons are not able to understand official documents.

### FAILURE TO INFORM OF RIGHTS AND PROGRESS OF CASE (ART. 14 (3)(A))

Although most detainees in Mozambique tend to know the crime for which they are detained, very few are able to give information on the specific and factual reasons for their detention. Amnesty International has spoken to a number of detainees who have been in detention for over 9 months without receiving any information regarding when they would appear before a court or the progress of their case. Detainees have complained of lack of information regarding their rights, reasons for their detention and lack of information on free legal representation via the Institute for Legal Representation and Assistance (Instituto de Patrocínio e Assistência Jurídica, IPAJ), which aims to provide economically disadvantaged citizens with free legal representation and assistance.

International and national laws require that an individual be informed of the charges against them and in a language they understand. This is an important right for not only foreign nationals detained in Mozambique, but also for the majority of Mozambicans as it is believed that only 40 per cent of the population speak Portuguese, the official language.<sup>19</sup> Furthermore, not all those who speak it understand it well enough to understand a criminal proceeding. Article 98(3) of the Mozambique Criminal Procedure Code states that the failure to provide an interpreter for an accused who does not speak or understand Portuguese is a cause for the nullification of a criminal process.

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<sup>18</sup> See also, Committee on the Rights of the Child, Concluding Observations, CRC/C/MOZ/CO/2, 4 November 2009, para. 89(c).

<sup>19</sup> Paragraph 53 of the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/17/30/Add.2 Mission to Mozambique\*, 21 April 2011

Although the authorities told Amnesty International delegates that interpreters are provided for those who do not speak Portuguese, some lawyers and court officials told the delegates that in many cases if a person is able to answer personal questions about themselves in Portuguese, it is assumed that they speak and understand the language sufficiently enough to follow procedures and therefore no interpreter is provided. Furthermore, a Spanish-speaking prisoner told Amnesty International delegates that she did not have an interpreter at her trial. Another Spanish-speaking detainee told delegates that when he was brought before the Juíz de Instrucção he requested an interpreter but his request was turned down by the judge who claimed to understand Spanish.

The Constitution requires individuals deprived of their liberty to be informed not only in a language they understand but also “in a way they understand”. This is particularly important if they are children. For example, in 2012 Amnesty International delegates spoke to a minor detained in the 1st Police Station in Nampula, who said he was 15 years old and appeared to have a hearing impairment. He did not know the reason for his detention and was unable to respond to the questions put to him. It was a man held in the same cell who had been detained together with the youth who provided the delegates with the information. Another youth met by the delegation at the Nampula Provincial Prison on 21 February 2012, who stated he was 14 years old at the time of his arrest, did not appear to understand what had happened to him and did not even know whether he had been convicted. He stated that he had been taken to court twice but had left without being tried. He did not have a lawyer.

#### **FAILURE TO TRY WITHOUT UNDUE DELAY (ART 14(3)(C))**

Under the Mozambique Criminal Procedure Code no one can be held without trial for longer than seven months in general. The Criminal Procedure Code provides for the extension of this period for up to nine months in exceptional circumstances and in very exceptional circumstances up to 11 months.<sup>20</sup> However, individuals are often held without trial for over a year and sometimes even longer. In February 2012, Amnesty International found an extreme case of an individual, José Capitine Cossa, held for over 12 years without charge or trial in the Machava Maximum Security Prison (BO). The delegates also found scores of people in this and other prisons, held for longer than 12 months and some for longer than 24 months. In May 2013, the delegates once again visited prisons in Mozambique and, although the length of pre-trial detention in some prisons had decreased, they still found cases of individuals in pre-trial detention for longer than 12 months. Among these was Armando António Manhiça, who had been held without charge for over 5 years in the Machava Maximum Security Prison (BO).

#### **JOSÉ CAPITINE COSSA (ALSO KNOWN AS ZECA CAPETINHO COSSA)**

On 16 February 2012, an Amnesty International and the Mozambique Human Rights League (Liga Moçambicana de Direitos Humanos) joint delegation spoke to José Capitine Cossa in the Machava Maximum Security Prison (BO). He had been in the prison ever since he was arrested by officers from the Mozambique Republic Police (Polícia da República de Moçambique - PRM) while selling sculptures on the side of the road

<sup>20</sup> Article 308 and 309.

in Maputo city. He had not been convicted of any crime, nor had he had any kind of court hearing. In fact, it did not appear that he had even been charged with any offence. José Capitine Cossa told the delegation that despite never having been convicted, he had been detained in the Maximum Security Prison for over 12 years. He did not remember the exact date of his arrest and detention, but other detainees who had been held since 2001 and 2003 told the delegation that he was there when they arrived and that he had not left since. He had no lawyer and had not been informed of the reason for his continued detention without trial or when he would be brought to court to defend himself.

José Capitine Cossa remained in detention until his release on 4 September 2012 following separate, written interventions from the Human Rights League and Amnesty International on 9 March and 9 August 2012 respectively. In a response to a memorandum sent by Amnesty International, the Attorney General stated that José Capitine Cossa's release had been ordered as, "there were signs that his detention had been irregular." He stated that an investigation was being carried out into the situation.<sup>21</sup> However, it does not appear that José Capitine Cossa received any reparations for the 12 years of imprisonment without charge or trial.

## ARMANDO ANTÓNIO MANHIÇA

Armando António Manhiça was arrested on 19 December 2007 and accused of murder but had not yet been officially accused at the time of Amnesty International's visit on 30 May 2013. He did not remember much of what had happened or when it happened. He remembered that he had had an altercation with a friend which resulted in the friend throwing a rock at his mouth. He does not remember what happened after that. The next thing he remembers was waking up in hospital where he stayed for 10 days. His friend was also admitted to hospital and later died there. From the hospital he was taken to the 2nd Police Station in Maputo and then to the Criminal Investigation Police where he was told of his friend's death. Then he was taken to a police station which he referred to as the mounted brigade (brigada Montada) police station and from there to the Maputo Maximum Security Prison (BO) where he arrived in early 2008. On 25 Feb 2011 the prison wrote to the City Procurator raising this case, but they have received no response to this letter to date.

## ACCESS TO LEGAL ASSISTANCE (ART. 14 (3)(D))

IPAJ was created in 1994 under the Ministry of Justice, with the aim to provide economically disadvantaged citizens with legal representation and assistance.<sup>22</sup> It succeeded the National Institute of Legal Assistance (*Instituto Nacional de Assistência Jurídica*, INAJ), which had been created in 1986.<sup>23</sup> In terms of Article 8 of the Statute of IPAJ, "the legal representation and assistance given by IPAJ is free." However, during Amnesty International's visit to Mozambique in 2011, the delegates were informed by a number of individuals, including members of IPAJ, that in some cases IPAJ lawyers charge a fee for their services.

In a number of cases, including those where individuals are accused of serious crimes and

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<sup>21</sup> Response from the Attorney General to Memorandum to the Attorney General of Mozambique Regarding Findings of Amnesty International's Mission to Mozambique, received by Amnesty International on 10 September 2012.

<sup>22</sup> Art 1 of the Organic Statute of IPAJ.

<sup>23</sup> Ratified by: Popular Assembly Resolution 4/86 of 25 July 1986.



potentially face long sentences, lawyers either have not been assigned to cases or, if assigned, they do not effectively represent their clients, often failing to communicate with them for long periods or to follow their case. Often, as a result of these failures, students from academic institutions, such as the Legal Practice Centre (*Centro de Prática Jurídica*) at Eduardo Mondlane University in Maputo and the Unit for Legal Assistance (*Unidade de Assistência Jurídica – UAJ*) at the Catholic University in Nampula, have represented accused persons. However these students are undertrained and underqualified.

The Minister of Justice told Amnesty International delegates during their meeting in October 2011 that it is impossible for anyone to be tried without legal representation as all individuals are provided with an *ad hoc* legal representative if they appear in court without a lawyer. As described above, however, members of the delegation spoke to prisoners in February 2012 who believed that they had been convicted without legal representation. It was only after further questioning that it transpired that they had been given a court appointed official to represent them but had not known the individual was their legal representative. Article 25 of the Mozambique Criminal Procedure Code allows *ad hoc* legal representatives appointed by the court to request time to consult with their client; however, based on the information the delegation received from the prisoners they spoke to, many *ad hoc* legal representatives fail to do this.

## **FREEDOM OF OPINION, EXPRESSION, ASSEMBLY AND ASSOCIATION (ARTS. 19, 21 AND 22)**

The rights to freedom of opinion and expression, assembly and peaceful demonstration, as well as association are all guaranteed by articles 48, 51 and 52 respectively of the Constitution.<sup>24</sup> However, there have been a number of arrests and detention of individuals

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<sup>24</sup> Article 48 (1) All citizens shall have the right to freedom of expression and to freedom of the press, as well as the right to information. (2) The exercise of freedom of expression, which consists of the ability to impart one's opinions by all lawful means, and the exercise of the right to information shall not be restricted by censorship. (3) Freedom of the press shall include, in particular, the freedom of journalistic expression and creativity, access to sources of information, protection of independence and professional secrecy, and the right to establish newspapers, publications and other means of dissemination. (4) In the public sector media, the expression and confrontation of ideas from all currents of opinion shall be guaranteed.

Article 51 All citizens shall have the right to freedom of assembly and demonstration, within the terms of the law.

Article 52 (1) All citizens shall enjoy freedom of association. (2) Social organisations and associations shall have the right to pursue their aims, to create institutions designed to achieve their specific

which appear to be aimed solely at suppressing these rights. Such arrests have particularly targeted those carrying out or known to organise peaceful demonstrations such as members of the Mozambique War Veterans Forum (Fórum dos Desmobilizados de Guerra) and striking members of the Mozambique Medics Association (Associação Médica de Moçambique – AMM).<sup>25</sup>

## **THE MOZAMBIQUE WAR VETERANS FORUM (FÓRUM DOS DESMOBILIZADOS DE GUERRA)**

Police have arbitrarily arrested members of the Fórum dos Desmobilizados de Guerra (the Fórum) on a number of occasions since mid-2010. For example, between 14 November 2011 and 14 February 2012 the Forum's spokesperson, Jossias Alfredo Matsena, was arrested four times. The president of the Fórum, Hermínio dos Santos, has also been arrested a number of times since 2010. The most recent incident of his arrest happened on 13 February 2013, when he was arrested without a warrant at his home in Bairro da Machava, Matola municipal at about 06:00 by at least four police officers. The arrest took place the day after the Fórum had held a demonstration calling for better pensions. Police reportedly dragged him from his bed, handcuffed him and took him to a car while hitting him with the butt of their guns. He was apparently hit at least six times on the head and was threatened with death. The police first took him to the 1st Police station where he was detained until about 11:00 hours, before being taken to a cell in the Ka Mpfuno Judicial Tribunal in Maputo. At about 16:00 hours he was reportedly transferred to a cell at the Machava Central Prison where he stayed for two days before being taken back to the Ka Mpfuno Judicial Tribunal for a summary trial on 15 March. The judge reportedly stated there were no grounds on which to hold him and he was released. During subsequent weekly demonstrations held by the Forum, all of which were reportedly peaceful, some demonstrators were arrested and detained for up to three days before being released without charge.

During these demonstrations, the police used teargas, water canons, rubber bullets and batons against the demonstrators. On 26 February, police reportedly also beat and used water canons against journalists covering the event and a disabled member of the Fórum and a woman were injured hurt by police and one person was arrested. According to the Mozambique Press Agency reports, on 12 March four women and six men were badly beaten and nine people were arrested.

In other instances the police have used intimidation tactics to prevent peaceful demonstrations from taking place. This is what happened with students from the Eduardo Mondlane University (UEM) who tried to organize a peaceful demonstration in February 2013.

## **EDUARDO MONDLANE UNIVERSITY MEDICAL STUDENTS**

On 1 March 2013, the *Expresso Digital* reported that medical students from the Eduardo Mondlane University (UEM) had been prevented from carrying out a peaceful demonstration by the Maputo Police City Command. According to the report, the students had made a request in writing on 25 February to carry out a

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objectives and to own assets in order to carry out their activities, in accordance with the law. (3) Armed associations of a military or paramilitary nature, as well as associations that promote violence, racism, xenophobia or pursue aims that are against the law, shall be prohibited.

<sup>25</sup> For further information please see section on freedom of expression and assembly below.

demonstration in solidarity with their colleagues who had received a fail grade by the UEM directors for taking part in a strike by medical doctors earlier in the year. Although the Maputo City Council responded favourably to the request, the police refused to grant them permission. No explanation was given for this refusal. However, according to the news paper report at 10:25 hours on the morning of the planned demonstration, the Maputo City Police Commander reportedly sent a text message to one of the organisers of the demonstration saying: "They will kill you with a stray bullet. Be careful, that's how things work in this country." The demonstration which was due to start at 13:00 hours, did not take place.

## **PROTECTION OF CHILDREN, SECURITY OF PERSON AND PROTECTION AGAINST ARBITRARY ARREST (ARTS. 24 AND 9)**

Children in conflict with the law in Mozambique face the same violations of their rights as adults. The violation of their rights is aggravated by the fact that they are not afforded the measures of protection required in accordance with article 24 of the ICCPR.

In Mozambique the age of majority is 18 years of age while the age of criminal responsibility is set at 16 years of age. Mozambique recognises that the State has a special duty to protect children, including those in conflict with the law and places the responsibility of ensuring that they are legally represented on the Public Prosecution Service.<sup>26</sup> However, during visits to places of detention in 2012 and 2013, Amnesty International delegates came across scores of children between the ages of 16 and 18 years who did not have lawyers and were apparently not being assisted by the Public Prosecution Service. Very often children between 16 and 18 years old are arrested and detained with little or no evidence that they have committed a crime. Once arrested, they remain in pre-trial detention for months, often for longer than the legally prescribed period, and receive little information of the cases against them or their rights. In many cases their detention is not reviewed regularly, as required by international human rights laws and standards<sup>27</sup> and they are rarely offered provisional release while awaiting trial even for petty crimes.

Furthermore, it is not only children between the ages of 16 and 18 years who are subjected to violation of their right to liberty and security of person. Many under 16 years are arrested, detained and have their detention confirmed by the Public Prosecution Service, even though

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<sup>26</sup> Article 236 of the Constitution and Article 4(d) of Law of the Public Prosecution Service.

<sup>27</sup> Committee on the Rights of the Child, General Comment 10, paras. 81 and 83. See also, Committee on the Rights of the Child, Concluding Observations, CRC/C/MOZ/CO/2, 4 November 2009, para. 89 (b) and (f).

they are not criminally liable. During visits to places of detention in Mozambique, Amnesty International delegates have come across several youths who claimed to be, and appeared to be, younger than 16 years old. Some of these children stated that the police had written 18 years on their charge sheet even though they had said they were younger, or in some cases, did not know their age. They went on to spend prolonged periods in prison in pre-trial detention. The delegates also came across some children with birth certificates as proof of their age but these were ignored by the police and the courts.

It is the duty of the police in the first instance to ascertain the age of a person being arrested and release them if found to be under 16. By failing to do so, the police are thus violating the law and the rights of children by arresting those under 16 years of age.

Officials in Mozambique have informed Amnesty International on several occasions that where there is doubt as to the age of a detainee, such detainee undergoes a medical examination to determine their age and if the examination shows that the detainee is indeed younger than 16 years, a petition is made to a court for their release. In some prisons this is indeed carried out, but it is by no means carried out consistently by all places of detention.

Police and some prison officials seem to believe the burden of proof is on the minor to prove that they are younger than 16 years. However, in a country where less than 6 per cent of children under the age of five, and even fewer adults, had a birth certificate in 2004,<sup>28</sup> it is not reasonable to expect individuals to have documented proof of age. Furthermore, even where the children do have this proof they do not usually have it on them at the time of arrest and are not always given the opportunity to deliver it to the relevant authority. In one of the prisons visited by Amnesty International, the authorities seemed to be making an effort to either contact the next of kin of the children requesting this document or travel with the children to their homes to obtain it, but in the majority of places of detention this is not done.

### **JOÃO MIGUEL \*<sup>29</sup>**

Amnesty International delegates spoke to João Miguel\* at the Machava Central Prison on 31 May 2013. He had been at the prison since 15 March 2013, serving a six months sentence for stealing a bicycle. He looked younger than 16 years old, but could not answer the delegates question about his age as he has a speech impediment and did not seem to understand. However, a neighbour who was also in the prison told the delegates that João Miguel was about the same age as his son who was 12 years of age. João Miguel's brother, who was also in prison for an unrelated offence, said that João Miguel was 13 years of age.

### **FERNANDO MAISSE\* AND ALFONSO RAFAEL\***

Fernando Maise\* and Alfonso Rafael\* were arrested on 9 October 2012, in Namarroi district, Quliemane

<sup>28</sup> Unicef, [http://www.unicef.org/mozambique/protection\\_4904.html](http://www.unicef.org/mozambique/protection_4904.html) accessed 25/06/12 .

<sup>29</sup> \*Not his real name.

province on suspicion of having stolen a mobile phone and then sent to the Civil Prison in Quelimane. They had been in detention for 8 months by the time of Amnesty International's visit to the prison. Both are students and had documents with them confirming they had been born in 1998 and 1997 respectively, which the delegates were able to see. In spite of this, the police said that they were 17 and 18 respectively at the time of their arrest in 2012. On 22 December 2012, the Provincial Public Prosecution Service sent a request for their conditional release to the court, in view of, what it called the dispute over their age, the low nature of their crime, the fact that it was their first offence and that they were both students. The court failed to respond to this request. However, on 25 April 2013 the Zambezia Provincial Court accepted the case to proceed to trial. On 15 August, Amnesty International was informed by his father that he had been released. However he was unable to provide information on the circumstances of his release.

## RECOMMENDATIONS

Amnesty International calls on the government of Mozambique to:

### *Right to life - Unlawful Killings and Extrajudicial Executions*

- Ensure that prompt, thorough, impartial and independent investigations are carried out into all cases of suspected extrajudicial executions, as well as all cases of use of force or firearms by police resulting in death or serious injury and bring to justice those found to be responsible;
- ensure that all perpetrators of unlawful killings, including those with command responsibility, are brought to justice in proceedings which meet international standards of fairness;
- ensure that victims of human rights violations by the police, or their families in cases resulting in death, receive full reparations for the violation;
- extend an invitation to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and facilitate his visit to Mozambique in accordance with his request of April 2008.

### *Torture and other cruel, inhuman or degrading-treatment*

- Take all necessary steps to ensure that the police do not commit acts of torture or inflict other cruel, inhuman or degrading treatment on suspects or threaten suspects to force them to admit guilt or implicate others in crimes. All cases of torture and other ill-treatment should be independently and impartially investigated and perpetrators brought to justice in fair trials;
- ensure full reparations, including fair and adequate compensation for victims of torture and other ill-treatment inflicted by state agents.

### *Arbitrary arrests and detentions*

- Ensure that arrests are carried out in accordance with the law, by law enforcement officials and that officers found responsible for arbitrary arrests are brought to justice and not simply transferred to another police station;
- ensure that prompt, thorough, impartial and independent investigations are carried out into cases of arbitrary arrest and detention and ensure that any police officers found responsible for human rights violations are subjected to disciplinary proceedings and criminal proceedings as appropriate;
- ensure that detainees are brought before a court to have their detention legalised by a judge within 48hours, in accordance with law, or released;
- ensure that prosecutors effectively carry out their functions of reviewing the legality of detentions and ensuring that those who are arbitrarily detained are released.

*Treatment of persons deprived of liberty*

- Immediately adopt a plan with concrete and time-bound goals to increasingly improve sanitary and living conditions across all prisons in Mozambique. The conditions in Mozambique's prisons should meet international standards, in particular minimum standards for humane conditions of detention including as set out in the UN Standard Minimum Rules for the Treatment of Prisoners and the Bangkok Rules;
- ensure that, where it is appropriate and lawful in terms of international human rights law to detain children, such children are detained separately from adults and that their detention is considered as a matter of last resort
- ensure that unconvicted persons are held separately from convicted prisoners in all places of detention.

*Fair trial and access to justice*

- Ensure that at the time of arrest and commencement of detention police inform all detainees, in a language and manner that is understood, of their rights, including the right to legal representation free of charge in the event that they cannot afford a lawyer;
- in the case of those detained pending trial, ensure that they are brought to trial within a reasonable time or released pending trial, and in particular ensure the release of anyone who has been detained for a period commensurate with the normal sentence for the offence of which they are accused;
- ensure that detention pending trial is not the general rule but that, unless there are specific reasons for detention pending trial in the interests of the administration of justice, detainees are released pending trial subject where necessary to guarantees to appear for trial or other stages of the judicial proceedings;

- evaluate the existing systems for legal assistance to ascertain what changes need to be made to improve the access, quality, coverage and effectiveness of legal aid provision, and to ensure that free legal assistance is free, competent and effective.

*Freedom of opinion, expression, association and assembly*

- Ensure that individuals are not harassed or arrested merely for the peaceful exercise of their right to freedom of opinion, expression, association and assembly;
- ensure that police do not unlawfully prevent or suppress peaceful demonstrations, including through the use of excessive force or intimidation.

*Protection of children*

- Ensure that all authorities take steps to prevent the detention of children under 16 years of age in accordance with Mozambique law and international human rights standards and ensure that where there is doubt as to the age, necessary medical exams are carried out as a matter of urgency and the child immediately released if found to be less than 16 years of age,
- ensure that all children in conflict with the law have adequate legal representation.

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