

# 'LOCKING UP MY RIGHTS'

ARBITRARY ARREST, DETENTION AND TREATMENT OF  
DETAINEES IN MOZAMBIQUE

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The Mozambique Human Rights League is a non-profit and non-partisan organization of Mozambican civil society, founded in 1993, which aims to promote and defend human rights and democratic values. The organization's vision is of a vibrant civil society committed to human rights culture based on equality, justice and human dignity.

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*Cover photo:* The maximum security area of Machava Central Prison, one of 81 prisons in Mozambique.

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# INTRODUCTION

**“I know I have committed a crime. I was desperate and have to pay for it, but I also know that I am a human being with rights. All I want is to be treated humanely and with dignity.”**

Anonymous inmate speaking to the delegation in February 2012

**“My only problem is that I’ve been here for a very long time. I don’t know if I’ve been convicted. I don’t know anything. It would be better to go to court.”**

Detainee awaiting trial in the Maputo Civil Prison for 15 months at the time of interview on 15 February 2012

**Anyone arrested or detained on a criminal charge shall be ... entitled to trial within a reasonable time or to release.**

Article 9(3) of the International Covenant on Civil and Political Rights

## **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 Capatine 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 (Policia da República de Moçambique - PRM) while selling sculptures on the side of the road 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 Capatine 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 Capatine 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 Capatine 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>1</sup> However, it does not appear that José Capatine Cossa received any compensation for the 12 years of imprisonment without charge or trial.

Although the case of José Capatine Cossa is an extreme example of the ineffectiveness and failures of the Mozambique criminal justice system with regard to length of detention without trial, it is by no means the only case of prolonged detention which the delegation found.

## **ANTÓNIO DANIEL MACUACUA AND ABEL ANTÓNIO NGOAMBI**

On 14 November 2009 António Daniel Macuacua (27 years old) and Abel António Ngoambi (20 years old) were arrested in Maputo city on suspicion of having stolen a bag. Their detention was not authorised until 11 December 2009 – almost a month after their arrest. António Daniel Macuacua and Abel António Ngoambi were then transferred to the Maputo Civil Prison where they remained awaiting trial. Two years and three months later, on 15 February 2012, Amnesty International and the Mozambique Human Rights League delegates visited the prison and found them still in the prison awaiting trial. They had no information on when they would be going to court.

In March 2012 the Human Rights League wrote to the Attorney General highlighting this and other cases. In September 2012, in his response to Amnesty International's August 2012 memorandum, the Attorney General stated that António Daniel Macuacua and Abel António Ngoambi had been released in April 2012 due to "irregularities in their detention". They had spent two years and five months in arbitrary detention.

In February 2012 a joint delegation of Amnesty International and the Mozambique Human Rights League (henceforth the delegation) visited three prisons in Maputo and two in the northern province of Nampula, as well as other detention facilities where they found hundreds of cases of prolonged detention without trial. Many of the stories which the delegation heard from detainees revealed instances of arbitrary arrest; lack of information regarding their rights, reasons for their detention and the progress of their case; lack of legal assistance and information on free legal representation; being forced to sign documents the content of which they did not know or understand; and inability to obtain conditional release pending trial even for minor offences. Some of the detainees alleged that they had been subjected to torture or other ill-treatment by police at the time of arrest. The delegation was permitted to visit police cells and the cells in prisons where they found overcrowded and insanitary conditions, children often detained alongside adults, and those detained pending trial held alongside convicted prisoners. They were further told of ill-treatment by prison officials and other inmates and poor medical care. The vast majority of the detainees and prisoners further complained about the unvaried and inadequate food they received.

National law<sup>2</sup> and International<sup>3</sup> human rights law prohibit arbitrary arrest and detention. In addition, they require that all persons deprived of their liberty be treated with humanity and dignity. The criminal justice system is a means to ensure that those who have committed recognizably criminal offences are held accountable, but in doing so it must respect and ensure the rights of those suspected of committing offences. It is the duty of the Mozambique authorities to ensure that all individuals within its jurisdiction, and specifically those who come into contact with the criminal justice system, are treated with humanity and dignity and in accordance with the presumption of innocence – that is, that those accused of a criminal offence are presumed innocent until and unless proved guilty according to the law after a fair trial. However, the information obtained by the delegation indicates that the

authorities have failed to adequately carry out this duty, particularly with regard to those who are economically disadvantaged.

This joint report between Amnesty International and the Mozambique Human Rights League looks at shortcomings of the Mozambique criminal justice system, with a focus on arbitrary arrest and detention. It shows how the justice system commonly operates to the disadvantage of those from poor social groups, who are often the targets of arbitrary arrest and subjected to ill-treatment by police officers. All too often they end up in prolonged unlawful detention. In the majority of cases, people from these groups who are arbitrarily arrested are not informed of their rights in a language they can understand, and often not at all. As they cannot afford a lawyer, they are almost invariably represented by unqualified individuals or poorly qualified lawyers; and are rarely granted release pending trial. They spend months, sometimes years, detained in insanitary, overcrowded conditions without nutritionally adequate food. This report calls on the Mozambique authorities to bring an end to arbitrary arrests and detentions in the country and to improve conditions of detention for both detainees and prisoners.

# TERMINOLOGY AND METHODOLOGY

## TERMINOLOGY

In this report the term “detainee” is used to refer to pre-trial detainees, and the terms “imprisoned person” or “prisoner” are used to refer to those who are imprisoned after conviction for a criminal offence. This is in line with the usage in the UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (henceforth the Body of Principles)<sup>4</sup> which uses “detained person” to mean a “person deprived of personal liberty *except as a result of conviction for an offence*” and “imprisoned person” to mean a “person deprived of personal liberty *as a result of conviction for an offence*”, with the corresponding terms “detention” and “imprisonment” used accordingly. When the term “inmates” is used, it refers to both detainees and prisoners.

## METHODOLOGY

Between 23 September and 31 October 2011, Amnesty International delegates visited Mozambique to carry out research, including into issues related to the criminal justice system. The delegates visited the provinces of Maputo, Nampula, Cabo Delgado and Inhambane. During the first two weeks of this mission Amnesty International’s delegates were accompanied by a representative of the Mozambique Human Rights League. In February 2012 Amnesty International delegates returned to the country and, together with the Human Rights League, carried out visits to the Maputo Civil Prison, mainly for male and female detainees; Machava Maximum Security Prison (*Brigada Operativa - B.O*) in Maputo province, mainly for male convicts; the Ndlhavela Women’s Prison in Maputo, mainly for female convicts; the Nampula Provincial Prison, mainly for male detainees; and the Industrial Penitentiary in Nampula for male convicts. They also visited detention facilities at the 1<sup>st</sup> Police Station in Maputo, the Provincial Police Command in Nampula and the 1<sup>st</sup> Police Station in Nampula.

During these visits the delegates spoke to staff in relevant ministries; the Attorney General and other members of his staff as well as to representatives of the Attorney General’s Office in the provinces visited; representatives of the national and provincial Institute for Legal Representation and Assistance (*Instituto de Patrocínio e Assistência Jurídica – IPAJ*); representatives of the Bar Association (*Ordem dos Advogados de Moçambique*); various non-governmental organizations (NGOs) providing free legal assistance; academic institutions; court officials; police and prison officials; detainees and prisoners at the various prisons visited; family and friends of those arrested; as well as other members of civil society and victims of human rights violations. The information contained in this report is based on information obtained from these sources during these visits; as well as through telephone interviews, the news media, the internet and other sources. In addition, the report uses information obtained by the Human Rights League in their daily human rights work in the country.

In July 2012, Amnesty International prepared and sent memorandums to the Minister of the Interior, Attorney General, Minister of Justice and the Director of the National Prisons Services regarding the findings of the 2011 and February 2012 missions. In these memorandums Amnesty International highlighted the findings and human rights concerns encountered by the organization during the missions, which are also reflected in this report, and requested feedback from the various authorities. The Minister of the Interior, Minister of Justice and Attorney General responded to these memorandums and information obtained from these responses has also been included in this report.

# LEGAL FRAMEWORK PROHIBITING ARBITRARY ARRESTS AND DETENTIONS

## INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS PROHIBITING ARBITRARY ARRESTS AND DETENTIONS

### **No one should be subjected to arbitrary arrest, detention or exile**

Article 9 of the Universal Declaration of Human Rights (UDHR)

Article 9 of the International Covenant on Civil and Political Rights (ICCPR);<sup>5</sup> Article 37(b) of the Convention on the Rights of the Child (CRC);<sup>6</sup> and Article 6 of the African Charter on Human and Peoples' Rights (ACHPR)<sup>7</sup> all prohibit arbitrary arrest and detention and state that no one may be deprived of liberty except on grounds and in procedures established by law. Mozambique is a party to all these international treaties and therefore has an obligation to ensure that arbitrary arrests and detentions do not occur within its jurisdiction; and that, if they do take place, law enforcement officials are held accountable and the victims receive compensation. In addition to these general human rights treaties, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>8</sup> to which Mozambique is party, sets out states' obligations with regard to measures authorities must take to prevent torture and/or ill-treatment of all persons, including detained persons, and to bring perpetrators to justice.

There are also a number of international standards focusing specifically on law enforcement and detention, which set out measures for ensuring that arrests and detentions are lawful and not arbitrary. They further contain provisions on the treatment of detainees and prisoners. These international standards include:

- the UN Code of Conduct for Law Enforcement Officials (the UN Code of Conduct);<sup>9</sup>
- the UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (the Body of Principles);<sup>10</sup>
- the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules);<sup>11</sup>
- the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");<sup>12</sup>
- the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);<sup>13</sup>

- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines);
- the African Commission Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (the African Commission Principles on the Right to a Fair Trial);<sup>14</sup>
- the African Commission Resolution on the Right to Recourse Procedure and Fair Trial (the African Commission Resolution on Fair Trial)<sup>15</sup>; and
- the Southern African Regional Police Chiefs Cooperation Organisation Code of Conduct for Police Officers.<sup>16</sup>

Under international law, no one may be subjected to arbitrary arrest or detention or deprived of liberty except on grounds and according to procedures established by law.<sup>17</sup> The grounds and procedures for arrest and detention must conform not only to national law, but also to international law and standards. Arrests and detentions are arbitrary where they do not comply with grounds and procedures required under national law. Even where national law and procedures are followed, an arrest or detention may still be considered arbitrary if the national law or procedures do not comply with international human rights law and standards, for example if the law under which the person is detained is vague, excessively broad, or if they are detained in violation of human rights such as the right to freedom of expression.

The UN Human Rights Committee - the body of independent experts established under the ICCPR to monitor States' compliance with their obligations under that treaty - has stated, "...'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law."<sup>18</sup> The UN Working Group on Arbitrary Detention (WGAD) - the body of independent experts established by the UN Commission on Human Rights<sup>19</sup> to investigate cases of arbitrary arrest and detention - has identified three categories of arbitrary detention: (i) where it is clearly impossible to invoke any legal basis justifying the deprivation of liberty; (ii) where the arrest and detention results from the exercise of certain rights and freedoms guaranteed by the UDHR and ICCPR; and (iii) where there have been grave violations of the right to fair trial.<sup>20</sup>

Furthermore, international human rights standards require that all arrested and detained individuals must:

- be informed of the reason for their arrest at the time of their arrest and promptly of the charges against them;<sup>21</sup>
- have the right to legal assistance, which should be free of charge if they do not have the means to pay;<sup>22</sup>
- be presumed innocent until proven guilty after a fair trial;<sup>23</sup>
- not to be compelled to testify against themselves or to confess guilt;<sup>24</sup>
- be entitled to conditional release pending trial, unless a judicial authority determines

that it is necessary in the interests of the administration of justice to detain them;<sup>25</sup>

- be tried within a reasonable time or released pending trial;<sup>26</sup>
- not be detained with convicted prisoners, except in exceptional circumstances, and to be given separate treatment appropriate to their status as unconvicted persons;<sup>27</sup>
- not, if they are children, be detained with adults and be taken to court as speedily as possible for adjudication of their case;<sup>28</sup>
- be treated with humanity and respect for the inherent dignity of the human person;<sup>29</sup>
- be able to claim compensation for unlawful arrest and detention.<sup>30</sup>

## THE NATIONAL CONTEXT

The criminal justice system consists of all state institutions and organs involved in the investigation, arrest, detention, prosecution, defence, and trial of those suspected of crimes, and the sentencing and imprisonment of those who are convicted. The aim of the criminal justice system should be to ensure that justice is done - which includes ensuring that those who have not committed a crime are not unlawfully detained. In Mozambique the organs of the criminal justice system include:

- i) The **Police of the Republic of Mozambique** (PRM) which is headed by a Commander-General.<sup>31</sup> The two branches of the police that are key to the criminal justice system are the Public Order and Safety Police and the Criminal Investigation Police. The former are responsible for the prevention and detection of crime and it is officers from this branch who carry out arrests in the majority of cases. The Criminal Investigation Police are responsible for investigating crimes, although they often carry out arrests. The police are regulated by the Constitution of the Republic of Mozambique (henceforth the Constitution),<sup>32</sup> the Police Statute,<sup>33</sup> the Organic Law of the Police,<sup>34</sup> and the Mozambique Police Disciplinary Regulations.<sup>35</sup> However in September 2012 the Constitutional Council ruled that the continued use of the Police Disciplinary Regulations was unconstitutional as these regulations had come into force during the time of the Mozambique Popular Police (PPM) when Mozambique was a one-party state. In 1992 the PPM was replaced with the Mozambique Republic Police (PRM) by Law 19/92 of 31 December.<sup>36</sup>
- ii) The **Public Prosecution Service**, which is headed by the Attorney General and is responsible for, among other things, representing and defending the interests of the State, ensuring lawfulness of detentions and the observance of legal timeframes for such detentions, as well as inspecting the conditions of detention in places of detention. It is also responsible for instituting criminal proceedings and works with the police to this effect. In addition, the Public Prosecution Service has the responsibility of ensuring the “legal defence of

minors” in conflict with the law as well as “absent or incapacitated persons”.<sup>37</sup> The Public Prosecution Service is regulated by the Constitution<sup>38</sup> and the Law of the Public Prosecution Service.<sup>39</sup>

- iii) The **Juiz de Instrução Criminal**, which 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.<sup>40</sup> These functions include determining whether detention complies with the law and deciding whether it should continue or whether to grant conditional release.<sup>41</sup>
- iv) **Lawyers** (including IPAJ) play an important role in defending those who have been accused or are suspected of having committed a crime. It is the attorney’s role to assist individuals in manoeuvring through the criminal justice system. Under international law everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their choice to protect their rights and to assist in their defence. This includes providing assistance in all stages before trial. Lawyers in Mozambique belong to the Mozambique Bar Association which is regulated by the Statute of the Mozambique Bar Association.<sup>42</sup> IPAJ was set up by Decree n° 54/95 of 13 December 1995 to provide legal assistance to economically disadvantaged persons.<sup>43</sup>
- v) The **Courts** and more specifically judges have the responsibility of determining the innocence or guilt of individuals accused of crimes and brought before the court for adjudication. The courts are regulated by the Constitution<sup>44</sup> and the Law on Judicial Organization (Law n° 24/2007 of 20 August 2007),
- vi) The **National Prisons Services** oversees the various prisons in the country, both those for detainees awaiting trial and for those who have been convicted. It is regulated by the National Prison Service Decree 7/2006, of 17 May 2006<sup>45</sup> and is under the Ministry of Justice.

The Mozambique Penal Code sets out the offences which can lead to arrest. The Criminal Procedure Code sets out the national procedure for arrests and detentions and determines when an arrest and/or detention may be considered arbitrary. The most important piece of legislation within the national framework is the Constitution, which in terms of Article 2(4), “prevail[s] over all other rules of the legal order.” Articles 59 to 65 of the Constitution enshrine the rights of all arrested, detained, accused and imprisoned persons; these rights are essentially the same as those set out in international human rights law and standards. In addition, Article 66 of the Constitution sets out the right to submit a writ of habeas corpus in the case of unlawful detention or imprisonment and Articles 62 and 70 set out the right of access to court. Article 18 of the Constitution states that ratified international treaties are binding on Mozambique, despite the fact that the Constitution is not clear about rights such as the right of detainees to be tried within a reasonable time or released; to await trial in liberty subject to adequate guarantees to appear for trial; not to be held with convicted persons; and for minors not to be detained with adults. National laws therefore must be applied in conformity with the Constitution along with international human rights treaties binding on Mozambique, including the human rights provided in these treaties.

An effectively functioning criminal justice system should ensure that arbitrary arrests and detentions do not occur, and that if they do, they are detected and resolved speedily. In Mozambique this would mean that the police would only carry out arrests on grounds and in accordance with procedures provided for by the law, would not arrest people unless there is sufficient evidence to form a basis for a reasonable suspicion that they have committed an offence, and would release any detainee if there is not sufficient evidence to continue to hold them. Police and prosecutors would ensure detainees were taken promptly to the *Juiz de Instrução* who would ensure the release of anyone who had been arbitrarily arrested and detained, including those against whom there was insufficient evidence to justify their detention. The *Juiz de Instrução* would further ensure that as a general rule detainees were released pending trial, unless it was found necessary to detain an individual to prevent them from fleeing, from interfering with witnesses or evidence, or from committing further offences, or because they pose a clear and serious risk to others or to themselves which cannot be contained by less restrictive means. In addition all arrested, detained and accused persons would receive legal assistance regardless of their financial situation.

IPAJ would ensure such legal assistance for economically disadvantaged people and legal representatives would act on behalf of their clients to ensure that those who were unlawfully detained could obtain release including through filing a petition for a writ of habeas corpus. They would also ensure the protection of their clients' other rights in the criminal justice process, including in the preparation of their defence and their rights at trial. The prosecution and the courts would ensure that detainees were tried promptly, and that if detained pending trial they were not held for longer than the period stipulated by law. All arrested, detained and accused persons would be presumed and treated as innocent until and unless they were convicted according to law in fair proceedings, and would be acquitted and released if the prosecution could not adequately prove the charge. The National Prison Service in turn would ensure that detainees were treated with humanity and respect for their dignity, that their human rights were respected, and ensure the immediate release of those acquitted by a court. Furthermore the Public Prosecution Service would also carry out regular inspections of places of detention to check that detainees were detained lawfully, and to ensure that none had slipped through the other safeguards against arbitrary detentions; as well as to ensure that conditions of detention complied with the obligation to ensure that detainees were treated humanely and with respect for their dignity.

This report shows that the justice system in Mozambique does not function effectively and efficiently, there are unlawful and arbitrary arrests and detentions, and inmates are not treated with humanity and respect for the inherent dignity of the human person.

## INITIATIVES TO IMPROVE THE CRIMINAL JUSTICE SYSTEM

The functioning of the criminal justice system in Mozambique has been a concern of a number of national and international organizations and institutions in the country for many years. In 2002, the Government adopted the Integrated Strategic Plan for the Justice Sector, which set out the country's strategic vision for this sector. The first Integrated Strategic Plan for the justice sector (*Plano Estratégico Integrado da Justiça I – PEI I*) ran from 2002 to 2006 and was followed by the PEI II, which started in 2009 and is due to run until 2014.

Within this framework a number of initiatives have been and continue to be carried out to improve access to justice by, among others, the Danish International Development Agency (Danida), the European Union (EU) and the United Nations Development Program (UNDP). These initiatives have concentrated on different institutions of the Mozambique criminal justice system and have included human rights training to the police, strengthening of IPAJ, bringing justice closer to people through public awareness campaigns regarding justice and the creation of Justice Palaces, which are buildings containing all relevant organs of justice. In their response to Amnesty International, the Minister of Interior and the Attorney General also highlighted the construction of a modern prison complex in Maputo with a capacity for 3,000 inmates. The Attorney General further stated that similar complexes would be built in the central and northern regions of the country in a second phase of the project. The Ministry of Justice referred to the construction of new prisons and rehabilitation of old ones, and stated that discussions were being carried out regarding alternatives to prison sentences.

On 14 March 2012 the Ministry of Justice and the Human Rights League held the first National Conference on Access to Justice.<sup>46</sup> This brought together state institutions of the justice system, development partners, and national and international experts in human rights, as well as other members of civil society. Discussions covered issues related to access to justice including the problem of backlogs in the courts, access to lawyers and overcrowding in prisons. Since then the Minister of Justice has on a number of occasions referred to problems with the criminal justice system. Amnesty International and the Human Rights League welcome the recognition by the Mozambique authorities of the problems in accessing justice. However, there is concern that not enough is being done to improve the situation.

Amnesty International and the Human Rights League are aware that there are recognizable financial and other challenges to the effective running of the justice system in Mozambique. Nevertheless, the right not to be subject to arbitrary arrest and detention, to a fair and prompt trial, and to humane treatment in detention, cannot be dependent on resources available. In any event, as this report shows, the organs of justice in the country have allowed a pervasive pattern of human rights violations, including arbitrary arrests and detentions, to occur which could have been prevented without the need for extra resources.

# VIOLATIONS OF THE RIGHTS OF THOSE ARRESTED AND DETAINED IN MOZAMBIQUE

## ARBITRARY ARRESTS

### ARRESTS WITHOUT A LEGAL BASIS

Any arrest or detention must have a basis in law. The African Commission on Human and Peoples' Rights has stated that there should be a reasonable suspicion or probable cause that a crime has been committed by the person being arrested.<sup>47</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. Police officers cannot arrest individuals on criminal charges where there is insufficient evidence that the person has committed a crime. In spite of these safeguards in the law, lawyers and civil society members told Amnesty International that in practice the police frequently arrest individuals without having sufficient evidence, and investigate later. During the visit to places of detention in February 2012, the delegation found at least three cases where police officers did not appear to have sufficient evidence 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. She was arrested for the murder of her mother even though there was apparently nothing to indicate a suspicious death, or that Ana Silvia\* had been involved. Amnesty International was informed that no autopsy was carried out at any point on the body to determine the cause of death.

In addition, the majority of detainees in the pre-trial detention facilities that the delegation visited were young, unemployed or informally employed men who told delegation members that they had been arrested on suspicion of theft. Many of them stated that they were told that the police were still investigating the case against them. Some had been in detention for over nine months while investigations were underway, indicating that the police had not had sufficient grounds at the time of arrest.

An arrest and detention is arbitrary where there is no legal basis, including where there is insufficient evidence to form a basis for a reasonable suspicion that the individual has committed a particular crime. The *Juiz de Instrução* should ensure that any detainee who is held without a legal basis, including where there is insufficient evidence, is released. However, in some cases such individuals are not even taken before the *Juiz de Instrução*. It is the responsibility of the police and prosecutors to ensure this is done.

## ANA SILVIA\*<sup>48</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 2<sup>nd</sup> 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 Ndihavela 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.

### ARRESTS NOT IN COMPLIANCE WITH NATIONAL PROCEDURES

Even when there is a reasonable suspicion that the person being arrested has committed a crime, an arrest is arbitrary if it does not comply with procedures set out in law. Procedures for arrest are set out in the Criminal Procedure Code and include the serving of an arrest warrant.

According to the Mozambique Criminal Procedure Code, 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.<sup>49</sup> 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>50</sup> However, during the visit to places of detention in February 2012, the delegation documented at least 10 cases where Mozambique police without an arrest warrant had detained individuals who were not caught in *flagrante delicto*. 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. The police subsequently detained these individuals at the stations without an arrest warrant on suspicion of having committed a crime.

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>51</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. 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. The case of the members of the Mozambique War Veterans Forum (*Fórum dos Desmobilizados de Guerra*), is such an example. Three members of the Forum stated that they were arrested without warrants. Nevertheless the *Juíz de Instrução* approved their arrest and allowed the detention to continue.<sup>52</sup>

Amnesty International has also documented cases where the police carried out arrests and detentions that were not procedurally compliant with national and/or international law because they failed to inform those being arrested and detained of their rights. 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. These cases and the international and national law and standards related to such cases are discussed in more detail in sections below.

#### PROLONGED PRE-TRIAL DETENTION

Anyone detained on a criminal charge has the right to trial within a reasonable time or to be released pending trial.<sup>53</sup> The UN Human Rights Committee has stated that "pre-trial detention should be an exception and as short as possible."<sup>54</sup> This requirement follows from the presumption of innocence and the right to personal liberty. The right to trial within a reasonable time applies to anyone who is charged with a criminal offence, whether or not they are detained, but in cases where the accused person is detained, greater speed may be required in proceeding with the trial. The Human Rights Committee has stated that in such cases people "must be tried as expeditiously as possible."<sup>55</sup> The longer an accused is kept in pre-trial detention, the more likely it is that the state is violating the right to presumption of innocence.<sup>56</sup>

Under the Mozambique Criminal Procedure Code an individual may not be detained without charge for longer than three months and in general cannot be in detention for longer than seven months in total.<sup>57</sup> However, there are two exceptions to this rule: a) Article 309 of the Criminal Procedure Code states that in exceptional circumstances a judge can order a further two months' detention and that once the timeframes have expired, the detainee should be conditionally released pending trial; and b) the same Article provides that in the exceptional

cases, where it is not possible to conditionally release a detainee at this point, a date for the trial should be set within 60 days. This means that the length of pre-trial detention is seven months in general, nine months in exceptional circumstances and 11 months in very exceptional circumstances. The maximum period for pre-trial detention, therefore, is 11 months.

In the prisons visited, the delegation found many cases of prolonged pre-trial detention in excess of, and in some cases far in excess of, the time limits set out in Mozambique law. In the Maputo Civil Prison the delegation was given a list of 29 men who had been in detention for more than 12 months; in the Nampula Central Prison at least 34 detainees indicated to the delegation that they had been detained for more than 12 months, three for more than 24 months. In the Ndlhavela Women's Prison, delegation members were told of at least four women who had been detained for more than 24 months. In response to Amnesty International's memorandum, the Attorney General specifically responded to 27 cases involving the prolonged and arbitrary detention of 35 individuals. Of these 35 individuals, the Attorney General disputed the alleged prolonged detention of only three indicating that these had been convicted at the time of the delegation's visit, including one whom the prison authorities had indicated was in prolonged detention. In other words, the Attorney General confirmed the existence of at least 32 individuals in prolonged and arbitrary detention, mainly in the Maputo Civil Prison, at the time of the delegation's visit in February 2012. As the legal timeframes had expired, these detentions had effectively become unlimited, indefinite and unlawful and in violation of both Mozambique law and the international prohibition on unlawful detention. The Constitution states, "Penalties and security measures that deprive or restrict freedom in perpetuity or for an unlimited or indefinite period shall be prohibited."<sup>58</sup> Furthermore, such prolonged and unlawful detention – and indeed the excessive use of pre-trial detention more generally - exacerbates the problems of overcrowding in detention facilities documented later in this report.

## **VÍCTOR FLÁVIO XAVIER NOMBORO AND JANUÁRIO MATSHINE**

On 16 February 2012 the delegates interviewed Víctor Flávio Xavier Nomboro and Januário Matshine in the Machava Maximum Security (B.O) Prison. From the information they gave the delegation, it appeared that they had both been in detention awaiting trial for about 27 months.

Januário Matshine said that he was arrested at the Police Post in Mavalane, Maputo city, on 13 December 2009 following an argument with a neighbour who then took him to the Police Post. He stayed there until 15 December when he was transferred to the city's 7<sup>th</sup> Police Station. He said that once there, six police officers beat him on his head and body. He showed the scars which he said had resulted from his beatings. He further said the police accused him of assault and questioned him about his connection to Víctor Flávio Xavier Nomboro, as well as about money and weapons. He told the police that Víctor Flávio Xavier Nomboro was not a friend of his, just another neighbour.

On 17 December 2009 at about 13:00 hours, police arrested Víctor Flávio Xavier Nomboro at the home of his estranged wife where he was visiting his child. The police accused him of being part of Januário Matshine's group and took him to the 7<sup>th</sup> Police Station. Víctor Flávio Xavier Nomboro also said that five police officers beat him at the 7<sup>th</sup> Police Station.

At about 07:00 hours the following day they were both taken to the Criminal Investigation Police for questioning in connection with an alleged assault and then transferred to the Maximum Security Prison. Both stated that the police had refused to give their families any information about the alleged assault. Víctor Flávio Xavier Nomboro said that the police did not know who the offended party was and had not received any complaint but had told him that it was not necessary for the offended party to come forward. He further stated that he was only arrested after the police beat Januário Matshine to force him to implicate him in the alleged assault.

In July 2012 Amnesty International spoke to their lawyer who confirmed that neither of them had yet been tried. By this time they had been in detention for over 31 months. In his response to Amnesty International's memorandum, the Attorney General stated that the case of Víctor Flávio Xavier Nomboro and Januário Matshine had been transferred to the District Court of Kampfumo municipality on 5 September 2012, however the trial had not started. Their lawyer informed Amnesty International on 14 September 2012 that no date had as yet been set for the trial. By this time they had been in prolonged pre-trial detention for almost three years.

It is the duty of the Public Prosecution Service to ensure that there are no cases of prolonged detention beyond the limits set out in law. The Public Prosecution Service is legally obliged to carry out regular inspections of places of detention and in the process verify that detentions are within the law.<sup>59</sup>

Individuals who can afford lawyers are not usually held pending trial as their lawyers are able to ensure that they are given conditional release. Even in the few cases where they are detained, they rarely face prolonged detention as their lawyers file a petition for a writ of habeas corpus to ensure their release once the legal time period for their detention has expired. Those who are economically disadvantaged are often unable to exercise the same rights in this respect because they cannot afford to pay for lawyers, and those from IPAJ do not represent them effectively.

The delegation was informed that part of the reason why detainees are held in prolonged detention is because the courts have a backlog which prevents cases coming to court in time. The President of the Supreme Court told Amnesty International delegates during a meeting on 26 October 2011 that for minor offences there is an immediate trial and that the courts are slow in other cases because of the problem of locating witnesses and because they have to follow legislation. The delegation however found people held on suspicion of minor offences, such as theft, who had been detained for months and had not had an immediate trial. Furthermore, as pointed out there are many cases of detainees who have still not been taken to court for trial as prescribed by legislation. In March 2012, the President of the Supreme Court publicly stated during the National Conference on Access to Justice that the country had an insufficient number of trained judges to deal with the growing pressure on the courts. He acknowledged that efficiency of the courts is essential to ensuring access to justice for all under acceptable conditions and stated that court rulings should not only be fair, but should be "taken in a reasonable time".<sup>60</sup>

#### CONTINUED DETENTION AFTER THE EXPIRY OF SENTENCES

According to the WGAD, detention is arbitrary if there is no legal basis for it – for example when people are detained beyond expiry of their sentence. Accordingly, a lawful

imprisonment following sentence by a court becomes arbitrary detention if a person continues to be detained after the completion of their sentence. Members of the delegation were informed by detainees in one prison that the authorities there often refuse to release those who have completed their sentence unless they receive money. If true, the allegation of the continued detention of individuals even after the expiry of their sentence is an indication of the failure of the Public Prosecution Service to effectively carry out its duties to ensure that detention is lawful and to inspect places of detention. It is also an indication of abuse of power by prison authorities. Such continued detentions after completion of sentences are more likely to happen to those who cannot afford a lawyer to represent them and ensure their release.

#### ARRESTS AND DETENTIONS RESULTING FROM THE EXERCISE OF HUMAN RIGHTS

The WGAD has also stated that an arrest is arbitrary if it results from the exercise of human rights, including the rights to freedom of expression and peaceful assembly. It is also arbitrary if it does not comply with the equality of all persons before the law or is discriminatory on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>61</sup> Amnesty International has received reports of the arrest of members of the Mozambique War Veterans Forum, which appear to be politically motivated and aimed solely at suppressing their rights to freedom of expression and assembly. Over the last two years the president of the Forum, Hermínio dos Santos, and the spokesperson, Jossias Matsena, have been arrested on a number of occasions, including in February 2012. In February 2012 police also arrested members of the Forum in Nampula, reportedly without arrest warrants and for what appeared to be politically motivated reasons.

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

On 15 February 2012, three members of the Nampula branch of the Mozambique War Veterans Forum, Rodrigues Mocinho, Ernesto Mihirihai and João Juma Manuel, were arrested and detained when they attempted to organize a demonstration in support of their demands for better pensions. On 13 February they informed the police of their intention to hold a demonstration in Nampula the following day to coincide with a demonstration to be held by the members of the national Mozambique War Veterans Forum. That evening the police summoned six members of the Forum in writing to report to the police station but they did not attend as it was already late.

In the morning of 14 February, the day of the planned demonstration, the three men received information from the national president of the Forum that the protest would no longer be held. By this time, however, members of the Nampula branch had already started to gather at the provincial office, the appointed meeting place, and others were on their way. At least 10 officers of the Public Order and Rapid Intervention Force arrived and according to members of the Forum pushed people and beat some with rubber batons and told them they could not demonstrate. Everyone dispersed within an hour.

The next day, 15 February, at about 07:30 hours, police arrested João Juma Manuel at his place of work without an arrest warrant. Later that day, at around 14:30 hours, three uniformed police officers and some in plain clothes arrested Ernesto Mihirihai. Half an hour later, they arrested Rodrigues Mocinho. Both were arrested at their respective homes without arrest warrants. The three were among the six who had been summoned to the police station on the evening of 13 February. They were taken to the Provincial Police Command where they

were held for two days without access to family. They were not at any point informed of their rights.

On 17 February they were taken before a judicial authority, who authorised their detention despite the irregularities in the arrest and detention procedures. Subsequently, they were transferred to the Nampula Central Prison. At the prison they were put into an extremely overcrowded cell, without enough room for everyone to lie down to sleep. The *Chefe de cela*, an inmate in charge of the cell, made them pay 600Mt each (A kilo of rice costs between 25Mt and 35Mt) so they could get space to lie down and sleep.

On 20 February they were taken to court and tried. They did not have a lawyer. When asked by the delegation if they were given an ad hoc legal representative they said they had not. Upon further questioning they responded, *"If we were appointed such a person we do not know who he was. We were not informed of nor introduced to such a person."* The judge told them that they had made a mistake in organising a demonstration because the document in their possession authorising the demonstration was not valid. He convicted them and ordered them to pay a fine of 2,066.50 Mt. They were not aware what crime they had been charged with and convicted of. Amnesty International delegates were shown a document by the members ordering them to pay the fine but it did not specify the crime they were convicted of. The fact that they were not represented by a lawyer made it even more difficult for the members of the Forum to ascertain the specific crime they had been charged with and convicted of, as this was never made clear to them by the Court.

Following their court case they were returned to the Nampula Central Prison and only released the following day.

This is not the only example of such arbitrary arrest and detention apparently solely for exercising human rights. In 2009 more than 700 families from the Cateme Community, Tete Province, were resettled by the multinational company Vale Mozambique jointly with the Mozambique government to make way for a project to exploit coal in the Province of Tete, Moatize District. On 10 January 2012, after several attempts at dialogue with the company and the government, the families took to the streets to peacefully protest the poor housing conditions and to highlight the serious difficulties they experienced in accessing land for agriculture, drinking water, adequate food and electricity following the resettlement. The police, including the Rapid Intervention Force, beat some of the protesters and detained 14 men. Four of these were seriously injured. Five were released the same day and the other nine two days later, on 12 January 2012, after the Public Prosecution ordered their release. This followed pressure from the media and several civil society organizations, including the Human Rights League that was providing legal assistance to the victims.

## FAILURE TO INFORM OF RIGHTS AND PROGRESS OF CASES

**"I know I have rights. I asked for my rights several times but was never told."**

Detainee speaking to the delegation in February 2012

**Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.**

Principle 13 Body of Principles

**In the determination of any criminal charge against him, everyone shall be entitled to be informed... promptly and in detail in a language which he understands of the nature and cause of the charge against him.**

Article 14(3) (a) ICCPR

The ICCPR provides that individuals must be told why they are being arrested at the time of their arrest<sup>62</sup> and must be informed promptly of the charges against them.<sup>63</sup> Principle 13 of the Body of Principles states that at the moment of or promptly after the moment of arrest or the commencement of detention, a person must be given information on and an explanation of their rights and how to exercise them. This information must be provided in a language the person understands.<sup>64</sup> Article 64(3) of the Constitution states: "Everyone deprived of their liberty shall be informed promptly and in a way that they understand of the reasons for their imprisonment or detention and of their rights". This requirement provides arrested and detained persons with information needed to challenge the lawfulness of their detention and enables them to begin preparation of their defence.<sup>65</sup> Therefore the reasons given must be specific and must include a clear explanation of the legal and factual basis for the arrest and detention.<sup>66</sup> Although many of the detainees knew the crime for which they were detained, very few could give the delegation members information on the specific and factual reasons for their detention. The right to be informed is not limited to reasons for the detention. Detainees must be continually updated regarding the progress of their case. However, many of the people the delegates spoke to had been in detention for over nine months and had not received any information regarding when they would appear before a court or the progress of their case.

### **SEBASTIÃO MANUEL \*67**

At the time of the interview with a delegation member in February 2012, 17-year-old Sebastião Manuel\* had been in detention for over 19 months. He was arrested on 27 June 2010 in Matador neighbourhood in Nampula city. He said that he had been arrested in a market at about 19:00 hours by a police officer who accused him of having stolen uniforms of the *Calamidades* team (the civil protection team dealing with emergencies) from a warehouse. He did not have any uniforms with him when arrested and told the officer that he had not been near the warehouse. He was taken to the 1<sup>st</sup> Police Station in Nampula where he was held until 26 August 2010 when he was transferred to the Central Prison in Nampula. He told the delegates he did not have any information about the case against him – not even a process number. Despite the existence of an office of IPAJ at the Prison, he did not have a lawyer. Amnesty International raised this case with the Attorney General in the memorandum, but received no information about this case in the Attorney General's response.

International and national laws not only require that an individual be informed of the charges against them, but that they be informed 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. In fact, 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.

In her report on Mozambique, the UN Special Rapporteur on the Independence of Judges and Lawyers expressed her concern “about the lack of cultural sensitivity and language assistance to ensure the right of access to courts”, pointing out that the country has 18 national languages and at least 60 other derived languages. Although the official language in Mozambique is Portuguese, only 40 per cent of the population speak it.<sup>68</sup> Furthermore, not all those who speak it understand it well enough to understand a criminal proceeding. Authorities told the delegates that where an individual does not speak Portuguese an interpreter is used.

However, 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; they are then spoken to in Portuguese even if they do not sufficiently understand it. The Human Rights League has provided legal assistance in court to many people who were not able to understand Portuguese adequately and the trial went on without an interpreter as the court assumed they spoke and understood Portuguese on the basis of their response to simple questions about their identity. Furthermore, as the Special Rapporteur pointed out, even when an interpreter is provided it is usually an ad hoc interpreter provided through informal arrangements.<sup>69</sup>

The Constitution requires individuals deprived of their liberty to be informed “in a way they understand”. Even when detainees are informed in a language they understand, it is possible that they are spoken to in a manner which they do not understand, particularly if they are children. The delegation spoke to several under-18s who did not appear to understand the reason for their detention. In the 1<sup>st</sup> Police Station in Nampula the delegation found a particularly disturbing case of a youth who said he was 15 years old and appeared to have a hearing problem. He did not know the reason for his detention and was unable to respond to the questions put to him. A man held in the same cell informed the delegation that he had been detained together with the youth in the 4<sup>th</sup> Police Station for a month before the youth was transferred to the 3<sup>rd</sup> Police Station and finally the 1<sup>st</sup> Police Station. 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.

In addition to being informed of the reasons for their arrest and charges against them, detainees must be told of all their rights.<sup>70</sup> Principle 13 of the Body of Principles places this responsibility on the “authority responsible for [the] arrest, detention or imprisonment, respectively” and states that they should also explain these “rights and how to avail [themselves] of such rights.”

International human rights standards require that detainees be informed of their right to a lawyer at the time of their arrest.<sup>71</sup> One detainee however, told a member of the delegation that they had asked for an explanation of their rights several times after their arrest but had not been given any such explanation and did not know about free legal assistance from IPAJ. In the response to the memorandum sent by Amnesty International,<sup>72</sup> the Ministry of Justice stated that all detainees are asked whether they have a lawyer when they first enter a prison and those who do not are told about IPAJ. However, many detainees told the delegation that they were unaware of this right, including in the Nampula Provincial Prison, despite the existence there of an IPAJ office. The Prison Director there alleged that the detainees preferred not to use the services of IPAJ despite having information about it and that they appeared to believe they could defend themselves better. However, when asked by the delegation, many of the detainees stated that they did not know about IPAJ and did not have a lawyer.

## ACCESS TO LAWYERS

**“If we were appointed [a legal representative] we do not know who he was. We were not informed of nor introduced to such a person.”**

Members of the Mozambique War Veterans Forum after their conviction without a lawyer

**In the determination of any criminal charge against him, everyone shall be entitled to... be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him...**

Article 14(3) (d) ICCPR

All detainees have the right to a lawyer of their choice. They are entitled to have one assigned to them whenever the interests of justice require it, free of charge if they cannot afford to pay.<sup>73</sup> The interests of justice are determined by taking into account the seriousness of the offence and the severity of the sentence.<sup>74</sup> The African Principles on the Right to a Fair Trial requires all states to put in place efficient procedures and mechanisms to ensure access to lawyers for all.<sup>75</sup> In Mozambique, IPAJ was created in 1994 under the Ministry of Justice, with the aim to provide economically disadvantaged citizens with legal representation and assistance.<sup>76</sup> It succeeded the National Institute of Legal Assistance (*Instituto Nacional de Assistência Jurídica*, INAJ), which had been created in 1986.<sup>77</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.

During a meeting in Maputo on 27 September 2011, national IPAJ representatives told

Amnesty International delegates that IPAJ faces a number of challenges including with regard to human and financial resources. They stated that there was a need for more qualified staff as not all the lawyers working for IPAJ were duly qualified. They stated that some were students or recent graduates on training contracts. Furthermore, they stated that although IPAJ had increased its territorial coverage in the past couple of years, there was still need for further territorial expansion and for more trained lawyers to work in these areas.

According to the response from the Ministry of Justice, there are IPAJ offices in all provinces and in 122 of the 128 districts in Mozambique. In some places, such as Nampula, there is an IPAJ office or representative based at places of detention. In February 2012 the delegation spoke to a number of detainees in prisons and other detention centres in Maputo and Nampula, many of whom did not have a lawyer. Despite the existence of an IPAJ office at the Nampula Central Prison, many of the detainees said they did not have a lawyer and did not know they had the right to legal assistance. Some did not even know about the existence of an IPAJ office in the prison and its function. The delegation was concerned upon hearing a prison authority, when told by a detainee of his dissatisfaction regarding the lack of information on IPAJ, abdicate responsibility for providing this information to detainees by stating that the detainee should inform others about IPAJ just as he had heard from other people.

On 24 October 2011, Amnesty International delegates met with the Minister of Justice who highlighted the work of the ministry with regard to providing legal assistance for all. This included through IPAJ and via memorandums of understanding with NGOs to provide legal assistance. The Statute of the Mozambique Bar Association also provides for the provision of free legal assistance<sup>78</sup> and other human rights organisations such as the Human Rights League, Mozambique Association of Women in Juridical Careers (*Associação Moçambicana das Mulheres da Carreira Jurídica* -AMMCJ) and Women, Law and Development (*Mulher, Lei e Desenvolvimento* -MULEIDE) also provide legal assistance, although the latter two organizations rarely work with detainees.

In a number of cases, including those where individuals are accused of serious crimes and 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. It should be recognized that these institutions have carried out vital work in this area and that, as the African Commission Fair Trial Principles point out, “given the fact that in many States the number of qualified lawyers is low, States should recognize the role that paralegals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance.” At the same time the Principles also state that where a lawyer is assigned by the court to a case, they must “be qualified to represent” their client and “have the necessary training and experience corresponding to the nature and seriousness of the matter.”<sup>79</sup> Accordingly, where students do not have the experience, qualifications or competence, they should not be used to provide legal representation, particularly for individuals charged with serious criminal offences. Instead, the Court must ensure that a competent lawyer is assigned to such cases. Even in less serious cases, the

Court must still ensure that there is equality of arms between the parties, so the Court may still need to address the issue of the competence of counsel even where counsel is not assigned by the Court, for example where the defendant is not being adequately or effectively represented.

Lawyers sometimes experience difficulties in getting access to their clients. For instance, lawyers from the Human Rights League have often experienced such difficulties in police stations and have even been threatened by officers. During a mission to Mozambique in 2007, Amnesty International delegates spoke to a lawyer who had been beaten and shot at by police when visiting his client at the Machava police station in Maputo Province in July 2007. Police at different police stations in Maputo have often threatened Human Rights League lawyers with a similar fate. Police officers at 12<sup>th</sup> Police Station in Maputo told the delegation that lawyers are not allowed to talk with detainees at the station because it is not their place of work. The officers made it clear that they thought that the place of work for lawyers is at the courts and not the police station.

The right of access to a lawyer “is an important safeguard against torture, ill-treatment, coerced confessions and other abuses.” Access to a lawyer must be granted promptly after arrest or detention.<sup>80</sup> A detainee has the right to legal assistance at all stages of the criminal proceedings. However, the delegation spoke to a number of detainees who had appeared before a court without ever having seen a lawyer prior to their court appearance. 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. “*He did not talk to me. He did not introduce himself. I had never seen him before and I did not see him again after I was convicted,*” one prisoner told a member of the delegation.

The ACHPR contains a similar provision to ICCPR Article 14(3) at Article 7(1)(c) where it provides for the “right [of an accused] to be defended by counsel of his choice.” Furthermore, under international standards, legal representation must not only be carried out by a qualified and competent person, but must be effective, and their experience and competence commensurate with the nature of the offence assigned to them.<sup>81</sup> The African Commission Principles on the Right to a Fair Trial state further that when legal assistance is provided by a judicial body, the compensation given to the appointed lawyer should be sufficient to be an incentive for adequate and effective representation.<sup>82</sup> In addition, in order for such representation to be effective a detainee must have sufficient time and facilities to communicate with his lawyer.<sup>83</sup> Clearly, this requires that court-appointed legal representatives make sure that they clearly identify themselves and their role to any individual they are representing. 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. The Human Rights League lawyers have attended court sessions where, especially in the case of people from economically disadvantaged groups, court officials and clerks, and sometimes security guards

in the court, were appointed by the judge to legally represent them as ad hoc legal representative, even though they had not spoken to the detainees and had not had contact with the legal files and in some cases had minimal or no legal knowledge, experience or qualifications. In the experience of the Human Rights League, in most cases the only thing these ad hoc legal representative say during the trial is, "*I demand justice is done meritissimo*" (Portuguese court term equivalent to "Your Honour") or "*I beg for justice meritissimo*". Such appointments appear to be done as a formality to prevent annulment of the criminal process under Article 98(4) of the Criminal Procedure Code, which states that failure to appoint legal representative will result in annulment of the proceedings.

## COERCIVE PRACTICES IN BREACH OF THE PRESUMPTION OF INNOCENCE

**In the determination of any criminal charge against him, everyone shall be entitled ... not to be compelled to testify against himself or to confess guilt.**

Article 14(3) (g) ICCPR

As stated above, access to a lawyer is necessary not only at the trial itself but throughout the pre-trial period and particularly during interrogation. This is a key safeguard to protect the rights of accused or detained persons.

Many of the detainees the delegation met did not have a lawyer and of those who did, many had been detained for long periods before receiving legal assistance. This meant that the majority of them had had their first interrogation without a lawyer being present. Some, like Januário Matshine mentioned above, reported that they had been beaten to force them to incriminate themselves (and, in his case, others). Others, like the teenage girl, Ana Silvia\*, told the delegation that they were threatened with beatings during interrogation to make them confess.

Such beatings or threats of beatings are not only a violation of the right not to be subjected to torture or other ill-treatment,<sup>84</sup> but they are also a violation of the presumption of innocence and the right not to be compelled to testify against oneself or to confess guilt.<sup>85</sup> A violation of the latter right may also occur in more subtle ways without the detainee even realising that they have admitted guilt. Some detainees told the delegation how officials had either tried to or forced them to sign a document without informing them of the contents. 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.

International law and standards prohibit the use of any form of coercion to extract confessions or other information from detainees. Any statement made as a result of torture or other ill-treatment must not be invoked in any proceedings, except against a person accused of torture or other ill-treatment as evidence that the statement was made.<sup>86</sup> Principle 21 of the Body of Principles states, "It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement." In terms of Mozambique Law, Article 65(3)

of the Constitution states that all evidence obtained through the use of coercion, torture, or the threat thereof must be rendered invalid.

The presence of a lawyer during interrogation is a key safeguard to protect those under interrogation, as recommended by the UN Special Rapporteur on the Independence of Judges and Lawyers.<sup>87</sup> The UN Special Rapporteur on Torture has recommended that "No statement of confession made by a person deprived of liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court".<sup>88</sup>

## FAILURE TO PROMPTLY PRESENT DETAINEES BEFORE A COMPETENT AUTHORITY

**Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.**

Article 9(3) ICCPR

The UN Human Rights Committee has stated that "pre-trial detention should be an exception and as short as possible."<sup>89</sup> It should not be the general rule that people awaiting trial are held in custody. In order to facilitate release pending trial, Article 9 of the ICCPR requires an arrested person to be taken before a competent authority promptly after arrest so that the authority can determine whether they should be released. A competent authority in this case means a judge or a person exercising judicial power who is independent of the parties. The Body of Principles stipulates that anyone detained must be given an effective opportunity to be heard promptly by a judicial or similar authority with the power to review as appropriate the continuance of detention.<sup>90</sup>

In terms of Mozambique law the competent authority is the *Juíz de Instrução*.<sup>91</sup> Police must take detainees to the *Juíz de Instrução* within the timeframe set out by law and a prosecutor affiliated to the police station where the detainee is initially held has the responsibility of ensuring this has been done. The prosecutor also has the authority to order the release of detainees where there are irregularities, without waiting for the detainee to be taken to the *Juíz de Instrução*, as it is the duty of prosecutors to ensure lawfulness of detentions and the observance of legal timeframes for such detentions.<sup>92</sup> Although the prosecutor who determines the lawfulness of the detention is not always the one who eventually prosecutes the case against the detainee, Amnesty International is concerned about the independence of prosecutors monitoring the legality of detention. All prosecutors, whether they are exercising the function of determining the lawfulness of detentions or prosecuting cases, are not institutionally independent, and so cannot be expected to be functionally independent of the Public Prosecution Service which carries out prosecutions on behalf of the State against those suspected of having committed criminal offences.

Under Mozambique law, a detainee must be taken before the *Juíz de Instrução* to have the lawfulness of their detention determined within 48 hours of arrest.<sup>93</sup> However, the delegation obtained information indicating that frequently police do not present people to the *Juíz de Instrução* or other competent judicial authority within that period. In the response to Amnesty International's memorandum, the Minister of Interior acknowledged that this was the right

procedure, but stated that at times “difficulties and other anomalous situations and of varying order may result in this legal presupposition not being fully observed.” He stated that lack of transport was a challenge to ensuring that detainees are taken before the *Juiz de Instrução* within 48 hours. This problem is being alleviated by judicial authorities travelling to the places of detention for this purpose. He further stated that there are prosecutors or magistrates of the Public Prosecution Service in all police stations and police units who carry out daily inspections of the cells and are responsible for ensuring that those who are arbitrarily detained are released. The delegation found however that in many cases these prosecutors do not adequately carry out this function. Some detainees told delegation members that they had been detained for up to a week and some for almost a month, before being brought before the *Juiz de Instrução*. For example, at the 1<sup>st</sup> Police Station in Maputo, at the time of the visit on 14 February 2012, the delegation spoke with detainees who had been waiting for more than six days to be taken before a judicial authority to have their detention reviewed. At the 1<sup>st</sup> Police Station in Nampula on 20 February 2012, the delegation saw 54 male detainees in one cell and was told by the police authorities at that station that of these only 19 had been taken before the *Juiz de Instrução*. The other 35 had not. The police authorities told the delegation that eight of the detainees in the cell had arrived in the past day or two. On the basis of this information it appeared that 46 of the detainees had been there for longer than 48 hours and of these only 19 at most had had their detention authorised by the *Juiz de Instrução*, with at least 24 in detention for longer than 48 hours without having been taken before any competent authority to have the lawfulness of their detention determined. António Daniel Macuacua and Abel António Ngoambi, mentioned at the beginning of this report, told the delegation that they were not taken to have the legality of their detention determined for almost a month after their arrest. Furthermore, despite having had their detention authorised on 11 December 2009, they remained in unlawful detention and what the Attorney General later called “irregular detention”<sup>94</sup> until April 2012 when they were released following the intervention of the Human Rights League.

The UN Human Rights Committee has stated that the term “promptly” means that “delays should not exceed a few days.”<sup>95</sup> It has determined that a delay of one week from the time of arrest till the time the detainee was brought before a competent authority was a violation of Article 9 of the ICCPR.<sup>96</sup>

## FAILURE TO PROVIDE RELEASE PENDING TRIAL

**Anyone arrested or detained on a criminal charge shall be ... entitled to trial within a reasonable time or release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, [and] at any other stage of the judicial proceedings...**

Article 9(3) ICCPR

**Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.**

Principle 39, Body of Principles

If the competent authority determines that the arrest was unlawful the detainee must be released. Even where it is decided that the arrest was not unlawful the *Juiz de Instrução* must give serious consideration to releasing the detainee pending trial, subject to guarantee to appear before trial.<sup>97</sup> In Mozambique such guarantees include the payment of bail or the requirement to report regularly to a police station or judicial officer.<sup>98</sup> The law however states that conditional release pending trial can be refused where there is strong risk of flight by the accused; that the course of justice will be obstructed; or that the person will disturb public order or continue to carry out criminal activities.<sup>99</sup> International human rights law and standards recognize that there are certain circumstances in which release pending trial may not be in the best interest of justice<sup>100</sup> and the Human Rights Committee has recognized that pre-trial detention is permissible if it can be shown to be necessary in all the circumstances of the case, for example, to prevent flight, interference with evidence or the recurrence of crime.<sup>101</sup>

Amnesty International and the Human Rights League are, however, concerned about the numbers of pre-trial detainees held for long periods seemingly without the opportunity of being granted conditional release. Especially concerning is what appears to be a general policy of the authorities not to grant conditional release, particularly to young, mainly unemployed or informally employed, men, many of whom are detained for petty crimes such as theft. It appears that there is a presumption that these men do not have a place of habitual residence or enough money to pay bail and will not appear for trial. Such a policy, applied without consideration on a case-by-case basis of whether detention is necessary in all circumstances of the case, is discriminatory and deprives people in these groups of their right of equality before the law. While the organizations recognize that there may sometimes be a need to hold individuals pending trial, the organizations are concerned that opportunities for conditional release are heavily weighted in favour of economically advantaged people and discriminate against the poor. Conditional release options such as the use of a surety/guarantor and reporting requirements do not seem to be considered generally, and particularly not for young men.

## ARREST AND DETENTION OF CHILDREN

### Accused juvenile persons shall be ... brought as speedily as possible for adjudication.

Article 10(2) (b) ICCPR

In Mozambique children between the ages of 16 and 18 may be detained and brought before a court of law.<sup>102</sup> The delegation was informed that there were no children below the age of 16 in the places of detention they visited; however during their visit to detention centres they came across several youths who claimed they were, and appeared to be, younger than 16 years old. A few others, including Ana Silvia\* whose case is detailed above, stated that they had been younger than 16 years at the time of their arrest. According to the response received from the Ministry of Justice 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, they are released. The Minister stated that this however takes a long time. Prison authorities though, did not appear to know the requirements for a medical examination to be carried out in case of doubt. When questioned about the detention of those who alleged and appeared to be younger than 16 years, they stated that the burden of proof was on the detainees to prove their age. However, many of these young detainees did not have any form of identification or a birth certificate and in some cases it would be difficult, if not impossible, for them to obtain such documents. They therefore had no way of proving their age. 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>103</sup> it is not reasonable to expect individuals to have documented proof of age. In any event, as the Committee on the Rights of the Child- the body of independent experts established under the CRC to monitor states' compliance with its provisions - has stated, "if there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt."<sup>104</sup>

### HÉLDER XAVIER\*<sup>105</sup>

Hélder Xavier\*, detained in the Maputo Civil Prison, told members of the delegation on 15 February 2012 that he did not know his exact date of birth, but was 16 years of age. He had been arrested on 7 August 2011 in Maputo following the capture of an individual by a group of people on suspicion of theft. He said he saw the commotion and went to see what was happening. Someone accused him of being an accomplice and he was arrested by the police. He and the other individual were both taken to the 4<sup>th</sup> Police Station and he was formally charged while he was in the cell. However, he said the police did not give him an opportunity to defend himself or respond to the accusation. He said he was accused of theft but did not know what he had stolen. On 12 August 2011 he was transferred to the Maputo Civil Prison and believes the other person was released on the same day. He spoke to the *Juiz de Instrução* at the prison who told him to wait for his trial. He had had no further information regarding his case and was not taken to the Juvenile Court. Members of the delegation were able to see two official documents related to his case which showed clear inconsistencies: one stated that he was 14 years of age, while another said 18 years of age even though the documents were produced no more than six months apart. Amnesty International raised this case in the memorandum to the Attorney General, but did not receive any information in the Attorney General's response.

Article 37(b) of the CRC, binding on Mozambique, states that arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time.<sup>106</sup>

Children in conflict with the law have the same rights as adults including the presumption of innocence, the right to challenge the legality of detention, the right to be heard, effective participation in proceedings, prompt and direct information of the charges, legal or other appropriate assistance, and the right not to be forced to testify against themselves.<sup>107</sup> However, the implementation of these guarantees for children does have some specific aspects, including that they be treated in a manner which takes into account their age and the desirability of promoting their reintegration and their assuming a constructive role in society. In all such decisions the primary consideration must be the best interests of the child.<sup>108</sup> The Committee on the Rights of the Child has stressed that every person under the age of 18 at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.<sup>109</sup>

The requirement that the detention of children must only be as a last resort and for the shortest appropriate period of time means that juvenile courts and investigative bodies must give the highest priority to the most expeditious processing of such cases.<sup>110</sup> The Committee on the Rights of the Child has noted that children languishing in pre-trial detention for months or years constitutes a grave violation of Article 37(b) of the CRC.<sup>111</sup> It has recommended that every child arrested and deprived of their liberty should be brought before a competent authority within 24 hours to examine the lawfulness of the detention, and if detention is used it should be limited by law and reviewed regularly, preferably every two weeks.<sup>112</sup> If conditional release of the child is not possible they should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body. This should be no later than 30 days after their pre-trial detention takes effect, with a final decision on the charges no later than six months after they have been presented before the court.<sup>113</sup>

Amnesty International and the Human Rights League are concerned about the number of children the delegation found in the places of detention and the length of time they are kept there. Many of them did not have a lawyer and had been in detention for longer than the legally prescribed period; in some cases for much longer than permitted under Mozambique law,<sup>114</sup> and in clear contravention of Articles 14(3) and 9 of the ICCPR, Articles 6 and 7 of the ACHPR, the CRC, and other international standards on juvenile justice.

It is the responsibility of the Public Prosecution Service in Mozambique to ensure legal defence of those the State has a special duty to protect and this includes minors.<sup>115</sup> However, the Public Prosecution Service does not appear to be adequately carrying out this function. In the Nampula Provincial Prison the delegation found five 16-year-olds in one cell who did not have legal representation. There were similar cases in the same prison and elsewhere.

## **PEDRO SOUSA\*<sup>116</sup>**

Pedro Sousa\* told members of the delegation that he was 16 years old. Based on what he told the delegation he had been arrested at the age of 14. When asked what age was put on his court process, he said he had told the police he was 14 years old but did not know what age they had put down. It was not easy to get information from him as he did not appear to understand much about what had happened to him since his arrest or what it signified. He said he had been arrested for stealing an iPod on 26 October 2010 and taken to the 1<sup>st</sup> Police Station in Nampula where he saw his accuser. He was then transferred to the Nampula Provincial Prison. He was taken to court on two occasions but not tried. He could not remember the dates he had gone to court. According to him, the first time he was kept in a waiting room before being informed by the judge that the alleged offended party had not arrived. He was told to return three days later. He returned as instructed, but once again the alleged offended party did not turn up. He told the delegation members that he had not returned to court since then or spoken to anyone about his case. He said his family lived in Nacala, almost 200 km from Nampula city, and did not know that he was in prison. He did not have a lawyer and did not know where IPAJ office was despite it being at the prison. At the time of the interview on 21 February 2012, he had been in detention for almost 16 months for a crime which, if found guilty, would have been likely to result in a sentence of no more than 12 months' imprisonment.

In response to concerns raised about this case in the memorandum to the Attorney General, the Attorney General stated that Pedro Sousa\* was actually 16 years old at the time of his arrest. He further said Pedro Sousa\* was initially to have been tried in a summary process, but at the time of the trial it was found he had committed a more serious crime requiring a different type of trial known as *querela*.<sup>117</sup> Due to this, his case had to be sent back to the Criminal Investigation Police for further investigation. The Attorney General stated that he was awaiting trial. At the time of receipt of the Attorney General's response on 11 September 2012, Pedro Sousa\* had been in trial without detention for almost two years.

## **FELIX MARQUES\*<sup>118</sup>**

On 15 February 2012, members of the delegation also spoke to Felix Marques\* in Maputo Civil Prison. At the time of the meeting he was 16 years old and had been in detention for over a year. Felix Marques\* was arrested in January 2011 when he was aged 15 and taken to a police station before being transferred to the Maputo Civil Prison. According to the files seen by the delegation, he was accused of petty theft. He told the delegation that since his detention was authorized he had not heard from any judicial authority, lawyer or prosecutor regarding his case. At the time of the interview he was held in the same cell as four adults and was the head of the cell as he had been there longer than the others. When the delegation spoke to him, he had been in detention for longer than 12 months for a crime which, if found guilty, would have been likely to result in a sentence of no more than 12 months' imprisonment. His name was on the list of detainees in prolonged detention given to the delegation, which Amnesty International shared with the Attorney General. Although the Attorney General provided information regarding some of the cases on the list, no information was given regarding the prolonged detention on Felix Marques\* in the response.

## LACK OF JUSTICE/COMPENSATION FOR UNLAWFUL DETENTIONS

**Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.**

Article 9(5) ICCPR

According to the ICCPR, all victims of human rights violations have the right to a remedy.<sup>119</sup> The ICCPR specifically provides in Article 9(4) that anyone who is deprived of liberty by arrest or detention shall be able to take proceedings before a court, in order that the court may decide without delay on the lawfulness of detention and order release if it is not lawful. Under the Constitution, where a person has been unlawfully imprisoned or detained they may file a petition for a writ of habeas corpus to obtain release and the court must respond to this within eight days.<sup>120</sup>

In addition, the ICCPR specifically provides that states ensure that anyone who has been a victim of unlawful arrest and detention has an enforceable right to compensation.<sup>121</sup> The right of victims to an effective remedy includes effective access to the mechanisms of justice and to prompt redress.<sup>122</sup> Article 58 of the Mozambique Constitution also 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. Although Mozambique law does not require a lawyer to file a petition for a writ of habeas corpus, it has become the practice that such petitions are filled by lawyers as the knowledge and expertise of a lawyer is generally required to effectively file such a petition. In the same way, in order to obtain compensation for arbitrary arrest and detention, it is always preferable to have a lawyer.

In Mozambique, the majority of those arbitrarily arrested and detained do not file habeas corpus petitions or seek compensation. Most are unaware that they have a right to do so and do not have a lawyer to assist them. 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 obtain compensation.

# CONDITIONS OF DETENTION

## **“The moment you enter a prison you lose your rights”**

Inmate in the Maputo Maximum Security Prison on 16 February 2012

According to a statement made by the Minister of Justice during a meeting on prisons in June 2012, there are 81 prisons across the country, of which 64 are district jails, with a total prison population of 16,881. Of these, 6,415 - about 38 per cent of the total - are awaiting trial.<sup>123</sup> 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>124</sup>

The prison system in Mozambique dates back to 1936 and is a relic of the colonial past. In former times there was a dual system of prison management: the Ministry of the Justice was in charge of central, provincial and district prisons, a women's prison, penitentiary prisons, and open prisons; and the Ministry of Interior was in charge of civil prisons, maximum security prisons and police stations. Detainees who had not been charged were held in a prison under the Ministry of the Interior, and charged detainees in a prison under either Ministry, depending on the type of charge.<sup>125</sup> In 2007 all prisons were unified under the Ministry of Justice and are now directly managed by the National Prisons Services (*Serviço Nacional das Prisões* – SNAPRI) which was created by decree 7/2006 of 17 May 2006.

Arrested individuals are usually detained in a cell at a police station until their detention has been formalised; then they are transferred to prisons for pre-trial detention. Once they are convicted they are usually transferred to a prison for convicted individuals. The exception to this appears to be the cells at the General Police Command in Maputo. The Human Rights League has observed that in practice some individuals are held in these cells throughout the period prior to trial and then serve their sentence in the same cells which are under the control of the Ministry of the Interior through the General Police Commander. There is no legal basis for such prisoners to be held in facilities controlled by the Ministry of Interior and therefore such imprisonments are unlawful in terms of national law and unconstitutional. Police authorities have alleged that these detention facilities are for the most dangerous criminals, but those arrested for less serious crimes have been known to be held there.

Information obtained from individuals who have been eventually released or transferred from the General Police Command indicates that conditions in the cells are inhumane and that inmates are subjected to ill-treatment. Amnesty International requested permission to visit these cells in February 2012 and although they were initially verbally given permission, this was later retracted. The Maputo City Police Commander said that a visit was not possible due to police operations being carried out at the time. In response to concerns raised about this in the memorandum, the Ministry of the Interior stated that there must have been some misunderstanding as the visits to the police stations had been authorized. The Human Rights League has also asked to visit these cells on a number of occasions but has not yet received permission. On 10 August 2012 the Human Rights League and the Bar Association

requested access to these cells for the period between 13 and 17 August, but had still not received a response by 14 September. In addition, the Human Rights League finds it extremely difficult for their lawyers to obtain access to their clients detained in these cells.

Although unable to obtain access to the cells in the Police Command in Maputo, in February 2012 the delegation visited cells at 1<sup>st</sup> Police Station in Maputo, the Provincial Police Command in Nampula and the 1<sup>st</sup> Police Station in Nampula. They also visited two prisons for detainees, two prisons for convicted individuals and a women's prison for both detainees and convicted women.<sup>126</sup> Of the prisons visited by the delegation, the Nampula Provincial Prison, which holds only men, and the Maputo Civil Prison, which holds both men and women, are both prisons for detainees; while the Machava (B.O) Prison and the Nampula Industrial Penitentiary are prisons for convicted individuals. However, there are often detainees in the prisons for convicted individuals and prisoners in the prisons for detainees.

As the ministry with overall responsibility for prisons, the Ministry of Justice has a duty to ensure that conditions meet international standards, including the requirements of humanity and dignity. The Ministry should further ensure detainees are not ill-treated. As already stated, the Public Prosecution Service also has this responsibility.

## OVERCROWDING AND INSANITARY CONDITIONS

**"All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."**

Rule 10 UN Standard Minimum Rules for the Treatment of Prisoners

Amnesty International and the Human Rights League found overcrowding and insanitary conditions both in police cells and in the prisons visited.

At the 1<sup>st</sup> Police Station in Maputo the two cells are small, with no windows. The only source of natural light is six openings of about one square metre each near the top of the cell on one wall. These provide very little natural light and there were no electric lights in the cells at the time of the visit on 14 February 2012. The cells are very hot and have a toilet inside with no provision for privacy. On the day of the visit, the toilets were filled with excrement. There is no running water inside the cells and detainees have to fetch water from taps outside. The authorities at the police station themselves recognized that the conditions in the two cells are "inhumane" and told the delegation they were built in the context of colonisation for the black population; they said, however, that they had no other facility in which to hold detainees. In the 1<sup>st</sup> Police Station in Nampula and the cells at the Nampula Provincial Police Command, the cells seen by the delegation were dark with poor ventilation and poor sanitation. Toilets and showers in these two places are outside the cells. At the time of the visit on 21 February 2012, the toilets were also filled with excrement and strongly malodorous. None of the cells had beds and only a couple of detainees had mattresses or sleeping mats. In his response, the Attorney General stated that the cells at the police station are meant to be transitory and were not designed for detention of longer than 48 hours.



The First Police Station in Maputo City.

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In all the prisons visited by the joint delegation there was overcrowding and insanitary conditions, although some were clearly worse than others.

The **Maputo Civil Prison** is a very old building serving Maputo city and the provincial area, and housing both male and female pre-trial detainees. The prison authorities told the delegation that because of the neighbouring buildings, rehabilitation of the building was not possible and that another area had been identified as the location for a new prison.

Authorities in the prison told the delegation that the prison has a capacity for 250 people but is often overcrowded. They said work was being done to reduce overcrowding, including by working with IPAJ to identify those unlawfully detained and to speed up determination of the lawfulness of detention. After conviction female detainees are generally transferred to the Ndlha-vela Women's Prison and male detainees to the Machava (B.O) Prison or the Machava Central Prison, the latter of which the delegation did not visit. The authorities told the delegation that in April 2011 there had been approximately 470 detainees and that the prison had been receiving 20 – 30 detainees a day. At the time of the delegation's visit on 15 February 2012, the number had gone down to between 120 and 140 detainees and of these 16 were women. This reduction was in great part caused by the fact that detainees were being kept for longer at the police stations during the police investigation. This had helped reduce the overcrowding problem in the prison, but had caused an increase in those held in police stations.

Despite this reduction in numbers some of the cells were still crowded. The situation could have been alleviated if one of the three blocks in the men's section of the prison had not been temporarily closed by the authorities, who explained this was because there were now fewer inmates in the prison.

The Maputo Civil Prison is divided into a men's section and a small women's section. The men's section consists of three blocks (or *alas*) running off a central, covered courtyard. Each block contains 14 cells. The cells in the men's section of the prison, which have a dimension of about 4 m long x 3 m wide x 5 m high, each contained between two and five detainees. Prison authorities at this prison themselves acknowledged that the conditions in the cells were poor. They stated that they lack facilities such as beds; the delegation's own observations confirmed this. A few cells had beds which the authorities stated were provided by the prison. This was contradicted by detainees, however, who said their families brought mattresses, beds and bedding for them. Although the blocks have doors, the cells do not. Curtains are used at the opening of the cells to provide some privacy. The cells run off a dark corridor but all cells have windows which allow for some natural light. They also have electric lights but these were not working in a few cells. All the cells had a number of plastic bottles filled with water as there is no running water in the cells and water has to be collected everyday from taps outside.

Every block has toilets and washing facilities at one end. There is also a room at the end of the blocks where brooms and other cleaning utensils are kept. The facilities included: four shower cubicles, with one being used for washing clothes and keeping general cleaning material; four urinals; a water tank; four hand-washing basins; and four squat toilets with a flush system which, although clean at the time of the visit, were strongly malodorous. There was no toilet paper visible. Prison authorities stated that hygiene and sanitation is inadequate and that one of the main problems is that the septic tanks are often full.

Conditions in the women's section of the prison are considerably better. There are fewer detainees in this block, which has female guards, and the cells are bigger with about four detainees per cell. These cells also mainly had mats and no beds or mattresses. Each cell is equipped with a shower room containing a conventional toilet, sink and shower. All appeared to be working, though the space at the time of the visit was filled with water bottles and other personal items. At least one cell had toilet paper but members of the delegation were told it was brought in by visitors. The cells lead out into an open area and the women are allowed to stay outside their cells all day.

In the **Nampula Provincial Prison**, which the delegation visited on 21 February 2012, the situation was worse than in the other places visited. The prison is a pre-trial detention centre for the whole province of Nampula. According to the authorities in this prison, its capacity is 90 inmates, but at the time of the visit there were 22 prisoners and 365 detainees -- more than 400 per cent capacity. Only men are detained in this prison with women being held at a separate facility known as the Rex Female Prison, which the delegation did not visit. Prison authorities stated that the cells were overcrowded with not even enough room for the detainees to sleep. The delegation's own observations verified the extreme overcrowding.

The detention area consisted of five cells of varying sizes facing onto a courtyard. Cells 2, 4 and 5 were severely overcrowded. Cell 2 was about 4m x 4m and had 27 people at the time of the visit. Cell 4 is about 10m x 5m wide and had 133 people at the time of the visit. Cell 5 is about 14m x 6m and contained 196 people. All three cells were about 5m high. At the time of the visit all the detainees were inside the cells sitting with their shoulders touching and their legs bent at the knees as this was the only way they could all fit in the room. There was barely enough room for the prison guards and the delegation members to enter the cells. All the cells have small windows and although these and the doors were open, the cells were stifling and there was an overpowering smell of perspiration. As far as the delegation could see, there were no beds and only a few mats and bedding were visible. Detainees told the delegation that they have to sleep sitting with their knees bent or take it in turns to sleep. They stated that some inmates have to sleep in the toilet area as there is not enough space in the cell. Each cell has a toilet separated by a wall but no doors. The toilet area is also used as the bathing area. Everyone in the cell uses the one toilet. The delegation was informed that the cells are cleaned daily, but without any cleaning products.

Cell 3 was also overcrowded, although less so than the others. It has a dimension of 5m x 6m and at the time of the visit contained 26 people. The delegation was informed that this was the cell for sick inmates. It had mattresses, bedding and a few mosquito nets over some of the beds. Those in the cell told the delegation they had hypertension and asthma and one person said he had tuberculosis (TB).

Cell 1 was the disciplinary cell and contained two inmates at the time of the visit. It is a dark cell of about 2.5m x 2.5m with only small holes for ventilation. There is a toilet and the smell from it was overpowering. One of the delegation members was later told that the drainage in the toilet was blocked. The use of a dark cell as a disciplinary measure contravenes the Standard Minimum Rules, which explicitly prohibit the use of confinement in a dark cell as a disciplinary punishment.<sup>127</sup>

Inmates in this prison complained that the roof sometimes leaked, that the cells were hot and that the doors were kept closed for most of the day. They also said they were only allowed out of the cells for an hour a day. On 11 March 2012 inmates in the prison rioted in protest at, among other things, the poor hygiene and overcrowded conditions in the prison, as well as only being permitted outside their cells for an hour a day. The Mozambique News Agency (*Agência de Informação de Moçambique – AIM*) reported that at the time of the riot there were 400 inmates in five cells. According to AIM, measures were taken to reduce overcrowding following the riot by moving some inmates to the Nampula Industrial Penitentiary.<sup>128</sup>

The **Machava Maximum Security Prison (B.O)** is for male inmates and although mainly for convicted persons also houses a number of pre-trial detainees. The delegation was informed that the prison has a capacity of 600, but at the time of the visit on 16 February 2012 there were 757 inmates, of whom 308 were detainees, about 40 per cent of the total. The delegation visited block 3, for detainees; block 7 which had inmates who were police and paramilitary officers accused of or convicted of crimes; and block 9, for convicted prisoners. Block 3 has 37 cells, which is more than the other blocks, but the conditions were similar to those of the others. Each cell has a dimension of about 2.5m x 2m and was about 3m high. On average they contained three people per cell, although a few had four. Some cells had one

or two beds but most had mats or thin mattresses. Each cell has windows and electric lights. At the entrance of the block is a washroom for clothes and for cleaning food utensils. At the end of the block is a bathroom with three squat toilets, showers and hand-washing basins. However, the showers were not working at the time and the delegation was told that the basins only have running water when there is sufficient pressure in the system. Most of the time water has to be fetched from taps outside the blocks. Drinking water also has to be fetched from outside and is stored in plastic bottles in the cells.

The **Ndlhavela Women's Prison** has two blocks with a total of six cells, all of which the delegation saw. Four of them measured about 12m x 10m and all the cells were about 4.5m high. The other two were about 9m x 10m. All cells were bright with plenty of natural light and ventilation. At the time of the visit on 17 February 2012, all cells had large single beds and some bunk beds, and all beds had mosquito nets. The prison has a capacity of 300 women and at the time of the visit there were 155 women, of whom 101 were convicted and the remaining 54 in pre-trial detention. Each cell had between 25 and 35 women, except cell 5, for pregnant women and women held with their young children, which housed 15 women, including three who were pregnant, and 12 children. Although the prison was not at its maximum capacity, the delegation found that conditions in the cells appeared to be slightly overcrowded, in that there was not much room to move between the beds and detainees and prisoners had to store personal possessions under the beds as there was no storage space.

The prison has washrooms which are large, airy and light with between five and eight conventional toilets and about five showers, as well as hand washing basins all with running water. Four of the cells had a washroom shared between two cells while the cell for women with young children and another cell had its own. One of the shower cubicles in each washroom was often used to store cleaning materials and inmates were expected to clean the bathrooms in accordance with a weekly rota. The cells are guarded by a female guard most of the time with a male guard taking over when she is away.



A cell in the Ndhlavela Women's Prison; one of the few prisons visited by the delegates with beds.

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The provisions of the Standard Minimum Rules on accommodation, personal hygiene and sanitation make clear that it is the responsibility of the authorities to provide accommodation with adequate floor space, lighting, heating, ventilation and separate beds.<sup>129</sup> Rules 12 and 13 require “sanitary installations” that a detainee can use in a “clean and decent manner” and “adequate bathing and shower installations”. Rule 19 provides that “every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.” Amnesty International is concerned that the conditions in prisons in Mozambique frequently do not meet these requirements. As the authority with overall responsibility, the Ministry of Justice has a duty to ensure that prison conditions meet the requirements of the Standard Minimum Rules, including that inmates are treated with respect for their humanity and dignity.

The conditions of overcrowding coupled with the poor sanitation in the prisons are of great concern. Many detainees complained of diarrhoea and a few said they had been diagnosed with tuberculosis. Yet, they were kept all together in overcrowded cells. In such conditions illnesses are common and the likelihood of the spread of contagious diseases is increased.

Amnesty International and the Human Rights League believe that the conditions in places of detention in a hot country like Mozambique, particularly in those where toilets are in the same room as the sleeping area and/or where there is excessive overcrowding, do not meet the requirement in the Standard Minimum Rules that sleeping accommodation should meet the requirements of health, bearing in mind climatic conditions. Furthermore, placing individuals in small, hot, cramped spaces of such overcrowding is inhumane and degrading and a violation of Article 10 of the ICCPR and Article 40 of the Constitution. There have

been a number of cases where conditions of detention such as those described above have led the UN Human Rights Committee to find a violation of states' obligation of humane treatment of detainees. For example, in a case in Trinidad and Tobago the Committee concluded that placing five people in a room of about 6 square metres and providing them with only a single slop pail to share constituted overcrowding inconsistent with the "requirement that prisoners be treated with humanity and with respect for the inherent dignity of the human person."<sup>130</sup>

The problem of overcrowding in Mozambique prisons was one which was identified during the March 2012 National Conference on Access to Justice. During this conference the Director General of Prisons stated that one of the reasons for the overcrowding was the conversion of court fees into custodial sentences for those people who cannot pay the cost. This leads to people who have served their sentences often remaining in prison longer due to their inability to pay the costs.<sup>131</sup> In July 2012 the Minister of Justice also identified causes of overcrowding which included detention of individuals for longer than the legally prescribed periods and imprisonment of individuals who could be sentenced to non-custodial measures. Stating that 90 per cent of the budget of the National Prison Services is spent on these inmates, she recognized that reduction of overcrowding in the prisons would relieve budget constraints.<sup>132</sup>

The Human Rights Committee has also consistently called on states to adopt effective measures towards ending prison overcrowding by taking steps to reduce the prison population and to ensure the right of detainees to be treated with humanity and dignity; and ensuring that they live in healthy conditions and otherwise ensure that conditions of detention in the country's prisons are compatible with the UN Standard Minimum Rules.<sup>133</sup>

In 2001, the UN General Assembly adopted the Vienna Declaration on Crime and Justice which committed member states to "containing the growth and overcrowding of pre-trial and [convicted] prison populations, as appropriate, by promoting safe and effective alternatives to incarceration."<sup>134</sup> In recent years the Ministry of Justice has begun discussions regarding methods of decreasing the overcrowding problem in the country along these lines. Amnesty International and the Human Rights League welcome this move. The plan of action to achieve this goal adopted by the members of the UN Commission on Crime Prevention and Criminal Justice includes "such actions as the adoption of effective measures to reduce pre-trial detention as far as possible; the introduction of appropriate alternatives to imprisonment; preferring non-custodial measures to imprisonment where possible; dealing with minor offences using options such as ... mediation between concerned parties or the payment of civil reparations or compensation; and conducting public awareness and education campaigns on alternatives to imprisonment and how they work".<sup>135</sup> If, in line with the recommendations in the Vienna Declaration and the Plan of Action, bail or other conditional release options were applied more often in Mozambique, overcrowding in prisons would be greatly reduced.

## INADEQUATE DIET

**“Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”**

Rule 20 UN Standard Minimum Rules for the Treatment of Prisoners

One of the main complaints the delegation heard from inmates concerned food. The delegation found that, apart from those in the Provincial Police Command in Nampula, detainees in the police cells they visited were not given meals and had to depend on food brought in by family or the generosity of other detainees if they have no family or friends to bring them food. Police officers at the stations the delegation visited did not appear to understand that access to food for detainees is a human right and responded to the delegation’s question about food by stating: “We police officers ourselves are not given meals at work, what more the detainees?”<sup>136</sup> None of them seemed concerned by the lack of food to the detainees stating they never went hungry as they shared food that was brought in from outside. They said that even outside visiting times family could bring food to detainees and leave it with the guards to hand over to them.

In the response to Amnesty International’s memorandum, the Minister of the Interior acknowledged that food had to be provided to detainees regardless of the economic condition of a country. He went on to say, however, that the police have to operate within a determined budget to ensure public order and security to all citizens. He stated that the police had made an effort to provide food to detainees to the best of its abilities and therefore it was not in all places of detention where food was not provided. He further stated “food from outside the places of detention was permitted to supplement the basic food conditions of the detainees.”

All prison inmates receive food from the State. Families and charities can also bring cooked food. Those in the disciplinary cells, however, only receive the food provided by the prison. From the information received during the visit, it would appear that the main meal provided by prison authorities to inmates in the prisons consists of beans and *shima* (a traditional dish made from ground maize flour and cooked with water to a dough-like consistency). Rice and fish may also be provided on a weekly or fortnightly basis and sometimes, on an even rarer basis, chicken. Some prisoners said that when they did receive chicken it was often parts that did not have much meat on them, such as the feet. There appeared to be very few vegetables, if any, in their diet. In the Maputo Civil Prisons and Nampula Penitentiary, officials informed the delegation that inmates sometimes received cabbage. Authorities at the Ndlhavela Women’s Prison pointed out that the women grow vegetables at the prison which they also eat. Prisoners in the Industrial Penitentiary said that they may sometimes receive an orange to supplement their diet.

Breakfast varies between institutions and sometimes from day to day in the same institution. In the Nampula Provincial Prison and Ndlhavela Women’s Prison the delegation was told breakfast consisted of maize porridge or sweet potatoes at times. At Ndlhavela Women’s Prison they also sometimes get bread and tea for breakfast. In the Machava (B.O) Prison inmates are given porridge or bread and tea. However, detainees in the Maputo Civil Prison and Machava (B.O) said that they do not always get breakfast and have to depend on food from family. In the Nampula Penitentiary authorities stated that the prisoner should receive

three meals a day but they had not been able to provide all of these in the weeks preceding the delegation's visit due to budget constraints.

In most of the prisons, food is cooked by the inmates. In the Nampula Provincial Prison and the Ndlhavela Women's Prison authorities stated there are cooks at the prison but the inmates are sometimes asked to assist. In most cases lunch and dinner are prepared and given out at the same time. Inmates are expected to conserve whatever they do not eat at lunch in their cells to eat for dinner. The majority of the inmates stated that there was no problem with the quantity of food, but with the quality of cooking and the lack of variety with the food. They also complained that the heat in the cells and lack of facilities for keeping leftover food led to it being unsuitable for consumption later in the evening. According to AIM, the lack of a varied diet was one of the reasons for the riot at the Nampula Provincial Prison on 13 March 2012.<sup>137</sup> Voice of America (VOA) Portuguese Service further reported that the inmates were unhappy as food from relatives had been prohibited in the prison.<sup>138</sup>

When the authorities hold someone in detention they have an obligation to ensure those basic needs which they cannot readily obtain for themselves. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), provides for the right to adequate food. While Mozambique is not party to ICESCR, it is bound by the ACHPR. The African Commission has recognized that the right to food is implicit in the ACHPR. In its decision in *The Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria*, the African Commission stated, "The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation."<sup>139</sup> The provision of food at places of detention in Mozambique currently does not meet the requirement that the authorities provide every prisoner with food at the usual hour and with the nutritional value adequate for health and strength.<sup>140</sup> Furthermore, the state must ensure adequate facilities for the consumption and storage of food.<sup>141</sup> Facilities for the storage of food are particularly important in the context of Mozambique where inmates are expected to keep leftover food from lunch in their hot cells for consumption in the evening. These obligations are binding irrespective of the material resources of the State.<sup>142</sup>

## MEDICAL CARE

**"The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed."**

Rule 25(1) UN Standard Minimum Rules for the Treatment of Prisoners

Early medical examination of detainees is an important form of protection. It is, moreover, important for assuring the health of the prisoner. The Body of Principles recommends at Principle 24 that "a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment". Detainees do not receive a medical examination upon arrival at police stations. Some of those interviewed by the delegation stated that they had not received medical treatment despite obvious injuries sustained at the time of their arrest. One detainee

told a delegation member that he had been hit in the head by a group of people who suspected him of having stolen a phone and 400Mt prior to being taken to the police. He said his head was bleeding when he got to the police station, but the police put him in the cell without any medical attention. He stayed in the police station for a week and received no medical attention during that time.

At the 1<sup>st</sup> Police Station in Nampula the delegation found a detainee who had bloody bandages on his forehead, cheek and foot. He had apparently been beaten by the family of a man he had reportedly caught having an affair with his wife and whom he had threatened to beat. This family had then taken him to the police station. The man's bandages were soiled, bloody and needed changing. He was also clearly in pain. Police officials stated that he had been given a painkiller and would be given another dosage later.

All the prisons visited, except the Nampula Provincial Prison, have a medical post within the prison walls. There is a medical post next to the Nampula Provincial Prison. Of the prisons visited the best staffed medical post was at the Nampula Penitentiary which had a qualified doctor, medical technician, nurse and a psychologist. Authorities at this prison said there were also 18 prisoners who were first aiders. The medical post at Machava (B.O) Prison was also run by a qualified doctor assisted by a nurse. However, the medical posts at the other prisons did not have a qualified doctor. At the Ndlhavela Women's Prison the delegation was informed that the medical post is run by a nurse and the post at the Maputo Civil Prison is run by a medical technician with the help of an auxiliary. A medical technician is an individual who has received some medical training but is not a qualified doctor.

Authorities in all the prisons stated that they do not admit sick inmates into the prison, but send them to hospital for treatment first. However, none of them appear to give medical examinations to detainees when they enter the prison, so it is not clear how those who are sick can be reliably identified. Most had registers of detainees and stated that they interviewed the inmates and put relevant information in their records when they entered the prison. All the officials in these prisons stated that medical records are kept; however, none of them appeared to have a computerised system of record keeping, although authorities at the Ndlhavela Women's Prison stated that the records were computerized. The delegation was unable to see examples of the computerized records at the Ndlhavela Women's Prison, but examples of records they did see at other prisons consisted of a log book where the name and date of the inmate's visit was recorded together with their complaint and basic treatment given, which usually consisted of bandaging or the administration of a painkiller.

Most of the medical posts were very small with only one or two beds. In almost all the prisons, authorities stated that inmates are transferred to nearby hospitals for treatment if they are seriously ill and that as a result there were no deaths due to illness in the prison. However, in the Nampula Penitentiary the delegation found prisoners who appeared to be very sick, some of whom were sharing beds or lying on the floor. The delegation was informed that some of these had been diagnosed with TB.

The medical posts had limited amounts of medicine. The best stocked one had mainly painkillers and medication to treat malaria, diarrhoea and TB. Inmates in most of the prisons complained about the inadequacy of medical treatment and the lack of medicines. A few complained that they were not feeling well but had not seen a medical officer. Officials,

including police officers, stated this was because they had not requested to see a medical officer or that they were unaware of the health condition of the detainee.

Article 16 of the ACHPR states: "Every individual shall have the right to enjoy the best attainable state of physical and mental health [and] States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick". In order to ensure that people in custody are able to enjoy the right to the highest attainable standard of physical and mental health, states are obliged to provide health care to them, as they cannot readily obtain it for themselves. This includes an obligation to take effective measures to prevent and treat transmissible diseases, including relevant medication and appropriate conditions of detention in terms of fresh air, hygiene and absence of overcrowding and other measures to prevent the transmission of such diseases within the prison. International human rights standards require a medical officer to see and examine every person as soon as possible after their admission into a place of detention, and thereafter as necessary. The purpose of this is to discover physical and mental illnesses in order to ensure the appropriate treatment. International standards also require that those with infectious or contagious conditions such as tuberculosis are kept separate from others until treatment reduces the risk of transmission.<sup>143</sup> The Human Rights Committee has stated that the obligation of states "to treat individuals deprived of their liberty with respect for the inherent dignity of the human person encompasses the provision of adequate medical care during detention."<sup>144</sup>

## MIXING PRE-TRIAL DETAINEES WITH CONVICTED PRISONERS AND CHILDREN WITH ADULTS

**"(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;  
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication."**

Article 10(2) ICCPR

**"The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment."**

Rule 8 UN Standard Minimum Rules for the Treatment of Prisoners

International human rights laws and standards require that in all places of detention: (i) men and women are detained in separate institutions or in entirely separate areas if detained in the same prison; (ii) detainees are kept separately from prisoners; and (iii) children are kept separate from adults.<sup>145</sup> In Mozambique women and men are generally held in separate places of detention. The Maputo Civil Prison has male and female detainees but women are kept in an entirely separate area. Women detained in police cells are also held in separate cells from men and in the 1<sup>st</sup> Police Station in Nampula they are kept in a separate area from men.

However, during their visit to the prisons, the delegation came across many cases of detainees being held in the same cells as convicted prisoners. In the Maputo Civil Prison, the delegation was informed that the mixing of detainees and prisoners in the same cell was a choice of the individuals concerned as there are no doors to the cells and detainees are free to move about in the block. The authorities said that even when they assign prisoners separate cells from the detainees, the two groups often end up voluntarily moving to share cells. Although the authorities stated that there was not enough room to put all prisoners in one block separate from the detainees, at the time of the visit only two blocks were being used as the authorities had decided to temporarily close one. The delegation also found detainees held in the same cell as prisoners in the Nampula Provincial Prison. At the Machava (B.O) Prison, police officers suspected of crimes were held in the same block as police officers and paramilitary officials convicted of crimes. The delegation was informed that this was because they preferred to be held together and that it was also partly for their security to prevent reprisals against them from other detainees or prisoners due to their position as police officers. In the Nampula Police Command the delegation found convicted police officers held in the same cell not only with pre-trial officers, but also with those detained for disciplinary offences.

Authorities at the Ndlhavela Women's Prison told the delegation that they tried to keep detainees separate from convicted prisoners. However, at the time of the delegation's visit the cell for detainees was overcrowded and 16 detainees were put in the same cell as 15 prisoners serving a sentence of between two and eight years. There is also only one cell for pregnant women and women with young children who stay with them in prison, so prisoners are held with detainees.

The Attorney General told Amnesty International in his response to the memorandum that steps were being taken to separate detained minors from adults. He stated that this included the creation of a juvenile section in the Nampula Industrial Penitentiary 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. The delegation however came across cases of children being held with adults in other places of detention. Although the authorities initially told the delegation that everyone in Maputo Civil Prison was over the age of 18, the delegation spoke to a few male teenagers who stated they were under 18. These children were put in the same cell as adults. The authorities stated that previously, the younger detainees were held in Block B, leaving Block C and A for adults. However, as Block C was now closed due to the fewer number of detainees, adults were now being held in Block A as well as Block B with the younger detainees.

At the Nampula Provincial Prison detainees who said they were as young as 14 were detained in the same overcrowded cells as adults. Authorities at this prison recognized that the law requires separation of minors from adults, but stated that there is not enough space. The same situation was evident at the 1<sup>st</sup> Police Station in Nampula and the 1<sup>st</sup> Police Station in Maputo. Prison authorities at the Ndlhavela Women's Prison stated that there were no minors at the prison. However, 17-year-old Ana Silvia\*, who said she had been arrested when she was 15 years old and transferred to the Ndlhavela Women's Prison when she was 16, was being held with adults in the same cell at the time of the delegation's visit.

International law and standards are clear that children in detention should be segregated from adults and afforded treatment appropriate to their age and legal status.<sup>146</sup> The Committee on the Rights of the Child has recommended that separate facilities for children should include distinct, child-centred staff, personnel, policies and practices.<sup>147</sup>

## ILL-TREATMENT BY OFFICIALS AND OTHER PRISONERS

**No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...**

Article 7 ICCPR

**"I know I have committed a crime. I was desperate and have to pay for it, but I also know that I am a human being with rights. All I want is to be treated humanely and with dignity."**

Anonymous inmate speaking to the delegation in February 2012

Many of the inmates interviewed by delegation members both in Maputo and Nampula said they had been beaten or threatened with beatings by police while held at police stations. Specifically mentioned were the 16<sup>th</sup> and 7<sup>th</sup> Police Station in Maputo, 2<sup>nd</sup> Police Station in Moamba, Maputo Province, 2<sup>nd</sup> Police Station in Nampula and the Police Post of Faina, Nampula Province. One female detainee told a delegation member that at the 7<sup>th</sup> 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.

In response to concerns raised about this in the memorandums sent by Amnesty International, the Minister of the Interior stated that where there is proof of ill-treatment or torture against detainees by police officers, punitive measures are taken. He stated that every year police officers are expelled or disciplined for acts that "violate the norms of professional ethics and deontology" and that in the past two years, 36 officers had been dismissed and 49 exonerated. He further stated that cases of ill-treatment and torture by police officers were "*in extremis*" situations and carried out by "over-zealous" officers contrary to the conduct and discipline required of police officers.

In their responses, the Ministry of Justice and the Attorney General also stated that torture and ill-treatment are not part of government policy. Allegations of ill-treatment and torture by prison officials are investigated and those found guilty are brought to justice. The response from the Ministry of Justice further stated that prison officials receive human rights training and inmates themselves reported to the delegation that there were almost no cases of ill-treatment by prison officials. However, upon further questioning it was clear that inmates were exposed to measures that the delegation considered to be ill-treatment even though the detainees did not. For example, some inmates in the Nampula Central Prison and Nampula

Penitentiary said that prison officials beat them as a disciplinary measure and for “small reasons”.<sup>148</sup> Other inmates said the treatment they received from guards was bad, but were unable or unwilling to clarify further what they meant. “*The moment you enter a prison you lose your rights.*” one prisoner said. Another stated, “*All I want is to be treated humanely and with dignity.*” At one of the prisons a detainee complained of ill-treatment, stating:

*“At 9am, I and six to eight others were made to clean the septic tank with our hands and not wearing gloves. Then we were made to sweep the place under a 40 degree temperature. Before that, at 6am we had to go to the machamba (vegetable garden). After four hours I could not feel my body. Newcomers have to do these jobs and if they refuse they are beaten. If we are slow when walking to the machamba the commander beats us. If we don't finish our work in time we are also beaten. I saw the commander beat detainees because [they] were walking more slowly than the others after doing all the nasty tasks.”*

Inmates in the Nampula Provincial Prison also reported that other inmates ill-treated them with the acquiescence of prison officials. They stated that in some cases the *chefe da cela* (an inmate who is the head of the cell) decides on disciplinary measures and this may include beating the person infringing the rules. In addition to beatings, *chefes de cela* are often responsible for other abuses against their cell-mates. After their release, members of the Mozambique War Veterans Forum told Amnesty International delegates that each had been made to pay 600Mt to the *chefe da cela* in order to get space to lie down to sleep in the cell otherwise they would have been made to stand. Detainees in the NdIhavela Women's Prison stated that there were regular fights in the bathrooms between prisoners, and the prison guards sometimes chose to turn a blind eye. A detainee told a delegation member, “*There is difference in treatment. Prisoners with money live like queens and get anything they want. They pay the prison staff... They use the younger girls as their servants and pay them a little... They have to do their work as well as that of the rich prisoners. Those with money can also buy favours from the authorities.*”<sup>149</sup>

Detainees at the Nampula Provincial Prison are also put into a dark cell as a disciplinary measure. Rule 31 of the Standard Minimum Rules states that corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

VOA Portuguese reported that the riot at the Nampula Provincial Prison in March 2012 was reportedly also in protest against torture by prison guards.<sup>150</sup> In response to this riot, prison authorities called the riot police and shots were fired against the inmates.<sup>151</sup>

Torture and other ill-treatment is a violation of Article 7 of the ICCPR, as well as Articles 3 and 16 of CAT. It is also a violation of Article 4 of the ACHPR which provides that “every human being is entitled to respect for... the integrity of his person”. Article 12 of CAT further provides that States must ensure that allegations of torture or other ill-treatment are promptly and impartially investigated wherever there are reasonable grounds for believing the allegations. Article 40 of the Mozambique Constitution provides that, “All citizens shall have the right to life and to physical and moral integrity, and they shall not be subjected to torture or to cruel or inhuman treatment.”

With regard to ill-treatment by other inmates, to permit prisoners any role in disciplinary measures against fellow inmates is a direct contravention of rule 28.1 of the Standard

Minimum Rules which explicitly states that no prisoner shall be employed, in the service of the institution, in any disciplinary capacity. Furthermore, the obligation on states to ensure the human rights of those in detention includes an obligation to ensure their protection from ill-treatment by other prisoners. Where states fail to exercise due diligence to ensure protection of prisoners and detainees from violence at the hands of other inmates, and to deal with such violence if it occurs, the state is in violation of its obligations under international law.

## TRAINING, WORK AND/OR RECREATIONAL ACTIVITIES

**“Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.”**

Rule 78 UN Standard Minimum Rules for the Treatment of Prisoners

Of the prisons visited by the delegation, those intended for convicted prisoners were the ones that offered the most educational, vocational and/or recreational activities. At Nampula Penitentiary the delegation was told by officials that literacy is obligatory and prisoners are expected to have a literacy level of up to 10<sup>th</sup> class (the third year of high school), although classes go up to 12<sup>th</sup>. They also stated that they have two prisoners taking higher education correspondence courses. In addition to the classes, the prison apparently has about 182 prisoners taking professional courses such as carpentry, woodcutting, pottery, bakery, civil construction, hotel and tourism, dressmaking and textiles. Prisoners receive a certificate after completing these courses. The prison further provides a social reintegration programme which works with people from Nampula province who are about to be or have just been released. Prison officials stated that there were not enough funds to extend this project to other provinces. A few prisoners, however, complained of corruption regarding access to training opportunities. One claimed that only those with money to pay the officers for the opportunity are selected for courses. Another said that those who do not participate in any activity are hardly ever allowed to leave their block.

Recreational activities at the prison include football and cultural activities such as singing, poetry reading and theatre. Groups of prisoners practice and perform in front of other inmates and sometimes in other prisons. There are also TVs in the blocks and speakers broadcasting the prisoner-run radio station.



Craftwork made by inmates at the Nampula Penitentiary.

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The Ndlhavela Women's Prison has a school on site which follows the national curriculum and goes up to 8<sup>th</sup> class. The authorities informed the delegation that 52 women were receiving literacy classes, although there were only six women in the class on the day of the visit. The teachers for this school are contracted by the Ministry of Justice in conjunction with the Ministry of Education. They also run technical and professional training classes which are mainly dress making, animal husbandry and other agriculture activities. Once the prisoners have completed the learning phase of their technical and professional course, they do this professionally and sell the product. Some of the money earned goes to the prisoner and some to the prison. The prison keeps the money for the prisoners. For recreation, the prison also has a football pitch and there are cultural activities such as singing and dancing and the women can attend church services. Each cell has a TV set broadcasting the national TV station.

Machava (B.O) Prison has classes for students up to 9<sup>th</sup> class, but no other training or professional courses. Prisoners teach voluntarily at the school, but one of them complained that the school is not taken seriously by the authorities. He stated that there were few tables and chairs in the school and few educational materials. The delegation was shown the library which had very few books and most of them in English, rather than Portuguese. A prisoner at this prison also stated that he had been requesting to be registered onto a university

correspondence course with the fees being paid by his family, but the authorities had been telling him to wait for the past three years. Recreational activities at the prison consist of football and there is a large football pitch. Some prisoners attend church. Some of the blocks have TVs and some prisoners had personal TVs in their cells.

At the prisons mainly for detainees visited by the delegation, there are no learning or training opportunities, although authorities at the Nampula Provincial Prison stated that they had an ethics class. The Prison Director told the delegation that they had tried a programme of taking detainees to work on farms but this had stopped as there had been frequent escapes. Inmates in this prison are kept inside the cells and allowed out for an hour each day. Although the delegation was told that the cells had a TV, they did not see one when they inspected the cells. At least one person in the cell for sick people had a radio. Prison officials also informed the delegation that religious congregations visited the prison at times including singing groups, which the detainees participate in.

At the Maputo Civil Prison detainees participate in cultural activities and are allowed out of the covered area to play football once a week. Authorities said there used to be a TV room at the prison, but it was no longer functioning. They said detainees were allowed to socialise in the covered patio area every day and the delegation noticed a TV in this area.

For convicted prisoners, the goal of rehabilitation of prisoners is articulated in Article 10 of the ICCPR. The Standard Minimum Rules make clear the importance of training and educational activities. In order to encourage “the will to lead law-abiding and self-supporting lives after their release”, Rule 66 calls for all appropriate means to be used including “programmes for rehabilitating convicted offenders and preparing them for reintegration into society”.

Amnesty International and the Human Rights League, however, are concerned about the lack of training opportunities and recreational activities in the prisons for pre-trial detainees. While the organization realizes that the authorities may be unwilling to invest in providing training and educational opportunities in pre-trial detention centres, some detainees, who have not been tried or convicted of a crime, spend over a year in these prisons and they should not be deprived during this time of educational or training opportunities which would be available to them if they were not detained.

Furthermore, the organizations are concerned that in some places of detention inmates are allowed out of their cells for only a short period each day. Recreational opportunities for prisoners should include opportunities for adequate exercise out of doors, as set out in the Standard Minimum Rules, which state that “Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits”.

## WOMEN PRISONERS AND WOMEN HELD IN PRISON WITH THEIR YOUNG CHILDREN

**“In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Where feasible, children should be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.”**

Rule 23(1) UN Standard Minimum Rules for the Treatment of Prisoners

The delegation visited two places of detention where women are held – the Ndlhavela Women’s Prison and the Maputo Civil Prison. From what the delegation saw, the conditions of detention for women are generally better than those of men, but still of concern. There are a number of other issues relating to the detention of women that are of particular concern, including with regard to the detention of pregnant women and women with their children, as well as the provision of hygiene material.

The Ndlhavela Women’s Prison also holds pregnant women and the delegation was told that these women receive pre-natal and post-natal treatment at the medical post but give birth in hospital outside the prison. Their children stay in the prison with them until the age of five. There is a nursery school at the prison, which children from the nearby community also attend. Prison authorities stated that they would ideally prefer to have this school outside the prison so that inmates’ children could leave the prison on a daily basis. They informed the delegation that once the children reach the age of five they are handed over to their family outside the prison or taken to an orphanage. At the time of the delegation’s visit there was a pregnant foreign national whom Amnesty International was subsequently informed had given birth about a month later. At the time of writing this report she remained in the prison with her baby, still awaiting trial.

Principle 48 of the Bangkok Rules<sup>152</sup> requires that pregnant or breastfeeding women prisoners receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers. The lack of an adequate balanced diet for women in the prison, and the inadequate facilities for the conservation of food is therefore of great concern. Furthermore, with regard to the decision concerning what happens to children once they turn 5 years old, the CRC requires that in all such decisions the primary consideration must be the best interests of the child.<sup>153</sup>

Another concern regards the provision of hygiene material to the women, particularly sanitary pads. Women at the Maputo Civil Prison stated that such essentials were provided by family and/or charities. Authorities at the Ndlhavela Women’s Prison stated that the prison provides soap, toothpaste, toilet paper and sanitary pads to inmates twice a month. Detainees stated they received sanitary pads, soap, toothpaste and a toothbrush every month but did not receive toilet paper. Another detainee said these essentials were in fact provided by churches and charities. As detailed above, international standards require the authorities to ensure “clean and decent” sanitary conditions, and the Bangkok Rules explicitly require, among

other things, that, “The accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge”. As such, the responsibility lies with the state to ensure that that materials essential for proper hygiene are provided to female detainees and prisoners, rather than relying on charitable institutions or their families.

## DETAINED FOREIGN NATIONALS

**“Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.”**

Rule 38(1) UN Standard Minimum Rules for the Treatment of Prisoners

**“A maximum period of detention must be established by law [for the detention of undocumented migrants] and upon expiry of this period the detainee must be automatically released.”**

The Working Group on Arbitrary Detentions<sup>154</sup>

During the visit to the various places of detention, the delegation encountered a number of detained foreign nationals. These detainees experienced the same problems as Mozambique detainees, as well as additional constraints due to the language barrier. In Maputo the delegation spoke to women from Bolivia, South Africa and Zambia who faced particular challenges as they were unable to understand the prison officials, and faced even more difficulties than prisoners generally in accessing legal assistance. They also did not receive regular visits as they did not know anyone in the country. Without regular visits they did not have access to food to supplement their apparently nutritionally inadequate diet, or hygiene materials where these are not provided by the prison. The Zambian detainees were visited regularly by the Zambian consular service, but the South African women did not receive such visits and neither did those from Bolivia as there is no Bolivian embassy in Mozambique.

The delegation also spoke to seven men from Bangladesh and a man from Guinea detained in the Nampula Provincial Police Command because they did not have necessary documents to be in the country. At the time of the delegation’s visit on 21 February 2012, these men had been held for over two months, having been detained since 13 December 2011. Communication with them was difficult as they did not speak Portuguese and only one spoke some English but not fluently. During the mission to Mozambique in October 2011 Amnesty International delegates also visited the 18<sup>th</sup> Police Station in Maputo where foreign nationals are held solely for the purpose of enforcing their removal from the country. Most of the detainees seen by the delegates in this police station at the time of the visit, on 28 October, did not speak Portuguese but were able to communicate with the delegates in English. The delegates were informed that although undocumented foreign nationals are sometimes held in police stations they fall under the responsibility of the immigration services and are held in the police station until necessary arrangements can be made for their deportation, including the raising of funds for this purpose by relatives of the detainees themselves or third parties. The length of their detention therefore varies greatly. At the time of the delegates’ visit to the 18<sup>th</sup> Police Station, for example, some detainees had been held for three months, and others for more than a year. One individual, known to delegates only as Hassar, had been in detention for over two years.

## HASSAR

Hassar, an undocumented male of unknown nationality, had been detained in the 18<sup>th</sup> Police Station since March 2009. The delegates were informed that when he was initially detained he claimed to be from Mauritius but the Mauritian Consulate in Maputo had reportedly disputed this claim. Hassar's nationality continues to be disputed. Hassar was unable to answer questions put to him by the delegates, and it was other detainees and guards who responded on his behalf. The delegates were told that his mental health had suffered greatly due to his prolonged detention. On 18 September 2012, Amnesty International was informed that he was still in detention. By this time he had been in detention for three and a half years and it appeared likely that his detention was set to continue indefinitely.

The WGAD has recognized that administrative detention of migrants in an irregular situation is not necessarily in contravention of international human rights instruments. However, it has also stated that States should gradually abolish such detention. Where administrative detention is required, the principle of proportionality should be applied, it has said. According to the WGAD, the principle of proportionality requires administrative detention of undocumented migrants to be the last resort and to always have a legitimate aim, and this "would not exist if there were no longer a real and tangible prospect of removal [of an undocumented person]."<sup>155</sup>

A maximum period should be established by law for the detention of immigrants and in no case may detention be unlimited or of excessive length. According to the WGAD the detainee must be automatically released upon expiry of this maximum period. Necessity requires that non-custodial alternatives, such as requiring individuals to report regularly to a police station, be used first with detention only being used when the alternatives do not suffice. Detention cannot be justified simply on grounds of wanting to enforce the expulsion of someone from the state's territory. The authorities must demonstrate that they are taking the necessary steps to ensure the expulsion of the person concerned from their territory, and that there exists a reasonable prospect that the expulsion will take place.

Furthermore, international human rights laws and standards require that individuals have their detention reviewed by a judicial authority, but this does not appear to happen in Mozambique for undocumented foreigners. Detained undocumented migrants also have the same rights as other detainees, including the rights to be informed of the reason for their detention, to challenge the legality of their detention, to be given access to a lawyer and to be informed of their rights in a language they understand.<sup>156</sup>

## CONCLUSION

The criminal justice system, while carrying out its function of ensuring that those suspected of criminal offences are brought to trial and, if convicted, face penalties, must ensure that it respects the rights of all those involved. This includes the right to be presumed innocent until and unless proved guilty after a fair trial, the right to legal assistance throughout the process, and the right not to be subjected to arbitrary arrest or detention.

Arbitrary arrests and detentions are a violation of human rights and are prohibited by national and international human rights law. However, the organs of justice in Mozambique have allowed a pervasive pattern of such arrests and detentions to occur. Police have arrested and detained individuals without sufficient legal grounds and/or contrary to procedures established by law. Even where it has become evident that there are not sufficient grounds to continue holding individuals, Criminal Investigation Police have often opted to keep people in prolonged detention while carrying out the investigation. The Public Prosecution Service and the *Juiz de Instrução* have failed to effectively play their role in limiting the length of pre-trial detention and preventing arbitrary detentions. In fact, in some cases the *Juiz de Instrução* has authorized arrests and detentions that were carried out without legal ground and/or contrary to national procedures thereby prolonging detentions which were arbitrary from the outset.

In many instances it is economically disadvantaged people, particularly young, unemployed or self-employed men, who are subjected to arbitrary arrests and detentions. These individuals cannot afford the services of a lawyer to work on their behalf to ensure their release. IPAJ should provide free legal assistance to such groups, but has failed to effectively discharge its duties in the majority of cases, even at prisons where there is an IPAJ office situated on site. Academic institutions and the court may provide ad hoc legal representatives but in most cases these are either inexperienced, unqualified and/or under-qualified; or do not take time to prepare the case on behalf of their clients resulting in inadequate legal representation of economically disadvantaged people. Furthermore, in most cases it is economically disadvantaged people who are not released pending trial by the *Juiz de Instrução*. In most cases they end up in prolonged detention waiting for the police to complete their investigations or for the courts to hear their case. The Public Prosecution Service for the greater part has failed to effectively execute its duty to ensure detentions are within the legal time periods. For those from economically disadvantaged groups the situation is once again compounded by the fact that they do not have a lawyer to act on their behalf and ensure their release from prolonged detention.

Those held on criminal charges, whether arbitrarily or in accordance with international human rights laws, are detained in conditions which fall short of international human rights standards. Prisons in Mozambique are overcrowded, some more severely than others, with poor sanitation and medical care and very few opportunities for learning or training, to encourage rehabilitation of those who have been convicted. Although inmates receive a sufficient quantity of food, it is often unvaried and sometimes does not have adequate nutritional value, with inmates having to depend on family to provide food to supplement their diet. In addition, in some cases inmates are ill-treated by police or prison authorities and/or other inmates.

The pervasive pattern of arbitrary arrests and detentions must not be allowed to continue. The Mozambique authorities must take immediate steps to ensure that the organs of justice effectively work to prevent these and rectify the situation when they do occur. Furthermore, while Amnesty International and the Human Rights League recognize the positive steps that have been taken to reduce the problem of overcrowding and improve conditions of detention in some prisons, prison conditions and the treatment of inmates remains of grave concern.

# RECOMMENDATIONS

**Amnesty International and the Mozambique Human Rights League call upon the Mozambique authorities to bring an end to arbitrary arrests and detentions and to improve conditions of detention. The organizations further call on the following specific authorities to implement the specified recommendations below**

## TO THE INTERIOR MINISTER

- Ensure that prompt, thorough, impartial and independent investigations are carried out into the cases of arbitrary arrest and detention highlighted in this report and all similar cases and ensure that any police officers found responsible for human rights violations are subjected to disciplinary proceedings and criminal proceedings as appropriate.
- 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.
- Urgently ensure that all detainees in police detention facilities have prompt and regular access to legal representative, professional medical care, adequate food and visits from family members.
- Ensure that at the time of arrest and commencement of detention police inform all detainees of their rights, including the right to legal representation free of charge in the event that they cannot afford a lawyer.
- Ensure that police take all arrested persons before a *Juiz de Instrução* or other competent judge without delay in order to have the legality of their detention determined and to be released if there are not enough grounds to hold them.
- Ensure that arrested or detained children – that is all people under 18 – held at police cells are held separately from adults, and they are treated in accordance with the principles of juvenile justice in a manner that takes account of their age and with the primary consideration being the best interests of the child.
- Ensure that the laws, regulations and codes of conduct that regulate the functioning of the police are reformed to bring them in line with international human rights standards.

## TO THE MINISTER OF JUSTICE

- Evaluate the existing systems for legal assistance to ascertain what changes need to be made to improve the quality, coverage and effectiveness of legal aid provision, and to ensure that free legal assistance is free, competent and effective.
- Review cases of detainees to ensure that it is not the general rule that people are detained, unless it is demonstrably necessary to detain them in the interests of ensuring the administration of justice, but that they are released pending trial, subject where necessary to guarantees to appear for trial or other stages of the judicial proceedings.
- 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.
- As a measure to reduce overcrowding which is an important factor in the failure of the prison system to meet international and national standards for the treatment of prisoners, encourage the use of alternatives to imprisonment including bail and conditional release for pre-trial detainees, parole for convicted prisoners, and, in the case of those who are convicted at trial, non-custodial sentences such as community service, verbal sanctions, and use of fines with payment by instalment if necessary. Account should be taken of the capacity of the offender to pay and economically disadvantaged offenders should not be discriminated against in this regard.
- 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.
- Provide adequate resources, including through seeking international assistance and cooperation if needed, for the National Prisons Services to improve access to health care in Mozambique's prisons.
- Ensure that the National Prison Services immediately ensures all prisons comply with minimum standards for humane conditions of detention including by:
  - Providing food of adequate nutritional value to all prisoners, in a quantity and quality sufficient to satisfy the dietary needs of individuals, including pregnant and breastfeeding women as well as those with health problems, and acceptable within a given culture.
  - Removing barriers to access to healthcare services for all prisoners, including through improved systems of diagnosis and referral and ensuring that prison infirmaries are properly stocked.
  - Ensuring that all prisoners are examined on entry into prison as specified in the

Standard Minimum Rules for the Treatment of Prisoners. This should include confidential voluntary counselling and testing for HIV.

- Ensuring that women's prisons have materials and facilities to meet women's specific hygiene and sanitation needs, including free supplies of feminine hygiene products, in accordance with the Bangkok Rules.
- Ensuring that there are enough opportunities for training and education of prisoners by updating equipment and facilities, and recruiting additional teachers and trainers to meet the goals of rehabilitation as articulated in international law and standards.

## TO THE ATTORNEY GENERAL

- Ensure that prosecutors effectively carry out their functions of reviewing the legality of detentions and ensuring that those who are arbitrarily detained are released.
- Ensure that those detained pending trial 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.
- Ensure that the Criminal Investigation Police carry out their investigations speedily and effectively and do not arrest and detain individuals where there is insufficient evidence.
- Ensure that prompt, thorough, impartial and independent investigations are carried out into the cases of arbitrary arrest and detention, as well as prolonged detention highlighted in this report and all similar cases, and ensure that any police officers found responsible for human rights violations are held accountable, and that victims are released from, and adequately compensated for, arbitrary and unlawful detention.
- Ensure that at the time of arrest and commencement of detention or imprisonment, all accused people are informed of their rights, including the right to legal representation without payment in the event that they cannot afford a lawyer.
- Ensure that police take all arrested and detained persons before a judge or other competent authority without delay.

## TO THE JUDICIARY

The *Juíz de Instrução* and any other judicial authority before whom arrested and detained persons are brought should:

- exercise judicial authority to ensure that those arrested without sufficient legal grounds or contrary to procedures established by law are released;

- exercise judicial authority to ensure that all individuals currently detained without charge are charged promptly with a recognizable criminal offence or otherwise released;
- 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;
- ensure that those who are economically disadvantaged are not discriminated against in the granting of conditional release including through the use of guarantors or reporting procedures.
- Judges hearing cases must:
  - enquire whether a confession has been made under pressure and ensure that any statement made as a result of torture or other ill-treatment will not be used as evidence against the suspect;
  - take a more pro-active role in ensuring defendants are provided with legal representatives and ensuring the legal representatives have sufficient time to prepare their case.

## **TO CIVIL SOCIETY:**

- Organizations carrying out visits to places of detention should, to the extent possible, increase visits to these places and ensure cases of arbitrary detention are brought immediately to the attention of the Attorney General and Minister of Justice. In addition, they should ensure that detainees are aware of their rights, including the right to a lawyer and assist in getting them legal assistance.
- Organizations carrying out visits to places of detention should also inspect conditions of detention to verify whether they meet the requirements set out in international human rights standards and that the rights of inmates are not violated. Such organizations should ensure that where the conditions of detention do not meet these requirements and when they uncover violations of the rights of inmates, they immediately bring this information to the attention of the relevant authorities.
- Organizations providing legal assistance should ensure clients are adequately represented by competent and committed individuals.

## **TO THE INTERNATIONAL COMMUNITY:**

- Assist the Mozambique authorities in their endeavours to improve the capacity of the

Criminal Investigation Police through funding training and acquisition of resources.

- Continue to assist in the provision of human rights training for the police and ensure that prison officials also receive such training.
- Help to improve the provision of free legal assistance.
- Provide technical assistance to the government of Mozambique to improve conditions within prisons.

## ENDNOTES

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<sup>1</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>2</sup> Articles 64 and 65 of the Constitution of the Republic of Mozambique

<sup>3</sup> Article 9 of the International Covenant on Civil and Political Rights (ICCPR); Article 37(b) of the Convention on the Rights of the Child (CRC); Article 6 of the African Charter on Human and People's Rights (ACHPR)

<sup>4</sup> Adopted by UN General Assembly resolution 43/173 of 9 December 1988

<sup>5</sup> UN General Assembly resolution 2200A (XXI) of 16 December 1966. Mozambique acceded to this on 21 July 1993

<sup>6</sup> General Assembly resolution 44/25 of 20 November 1989. Mozambique ratified this on 26 April 1994

<sup>7</sup> Adopted June 27, 1981, [OAU needs to go in full] Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986. Mozambique acceded to this on 22 February 1989

<sup>8</sup> General Assembly resolution 39/46 of 10 December 1984. Mozambique acceded to this on 14 September 1999.

<sup>9</sup> Adopted by General Assembly resolution 34/169 of 17 December 1979

<sup>10</sup> A/RES/43/173

<sup>11</sup> Adopted August. 30, 1995 by the 1<sup>st</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders, UN Doc. A/CONF/611

<sup>12</sup> Adopted by General Assembly resolution 40/33 of 29 November 1985

<sup>13</sup> A/C.3/65/L.5

<sup>14</sup> DOC/OS(XXX) 247

<sup>15</sup> ACHPR /Res.4 (XI) 92: Resolution on the Right to Recourse and Fair Trial (1992).

<sup>16</sup> Harare Res (2001)

<sup>17</sup> Article 9(1) ICCPR

<sup>18</sup> Albert Womah Mukong v. Cameroon CCPR/C/45/D/458/1991

<sup>19</sup> Now reporting to the UN Human Rights Council

<sup>20</sup> UN Fact Sheet No.26 The Working Group on Arbitrary Detention. Annex IV.

<sup>21</sup> Article 9(2) ICCPR, Article 40(2)(ii) of CRC; Principle 10 of the Body of Principles, Principle M 2(a) of Principles and Guidelines on Fair Trial and Legal Assistance in Africa

<sup>22</sup> Article 14(2)(d) ICCPR, Principle 17 of the Body of Principles, Principle H of Principles and Guidelines on Fair Trial and Legal Assistance in Africa,

<sup>23</sup> Art 14(2) ICCPR, Art 7 (1)(b) ACHPR, Art 40(2)(b)(i) CRC, Principle N 6(e) of Principles and Guidelines on Fair Trial and Legal Assistance in Africa,

<sup>24</sup> Article 14(3)(g) ICCPR

<sup>25</sup> Art 9(3) ICCPR, Principle 39 of the Body of Principles, Principle M 1(e) of Principles and Guidelines on Fair Trial and Legal Assistance in Africa, 2(c) of the African Commission Resolution

<sup>26</sup> Art 9(3) ICCPR, Principle 38 of the Body of Principles, Principle M 1(e) of Principles and Guidelines on Fair Trial and Legal Assistance in Africa, 2(c) of the African Commission Resolution

<sup>27</sup> Article 10 ICCPR; Rule 8 of the Standard Minimum Rules

<sup>28</sup> Article 10 ICCPR, Rule 8 of the Standard Minimum Rules

<sup>29</sup> Article 10 ICCPR, Articles 4 and 5 of the ACHPR, Principle 1 of the Body of Principles, Principle M 7 of Principles and Guidelines on Fair Trial and Legal Assistance in Africa,

<sup>30</sup> Article 14(6) ICCPR, Principle 35 of the Body of Principles; Principle M 1(h) of Principles and Guidelines on Fair Trial and Legal Assistance in Africa, Point 1 of the African Commission Resolution on Fair Trial

<sup>31</sup> Article 255(1) of the Constitution

<sup>32</sup> Articles 254 and 255

<sup>33</sup> Decree 28/99 of 24 May 1999

<sup>34</sup> Decree 27/99 of 24 May 1999

<sup>35</sup> No. 5/GMI/87 of 10 March 1987.

<sup>36</sup> “Conselho Constitucional afirma que o Regulamento da Polícia já havia sido revogado”, <http://www.verdade.co.mz/nacional/30320-regulamento-da-prm-ja-havia-sido-revogado-conselho-constitucional> (accessed 18 September 2012).

<sup>37</sup> Article 236 of the Constitution and Article 4 of Law of the Public Prosecution Service

<sup>38</sup> Articles 234 - 240

<sup>39</sup> Law of the Public Prosecution Service (Lei Orgânica do Ministério público) 22/2007

<sup>40</sup> Article 1 of the Law of *Juiz de Instrução* Law 2/93 of 24 June

<sup>41</sup> Article 2 of Law 2/93 of 24 June

<sup>42</sup> Law of the Mozambique Bar Association Law 28/2009 of 29 September 2009

<sup>43</sup> The law governing IPAJ has been revised several times and in 2011 Amnesty International delegates were informed that a new draft law was being prepared.

<sup>44</sup> Articles 212 - 233

<sup>45</sup> In 2011 Amnesty International delegates were informed that there is a new draft Law on the Organic Statute of Prisons.

<sup>46</sup> LDH e Ministério da Justiça organizaram a 1ª Conferência Nacional sobre acesso à justiça [http://www.Ldh.Org.Mz/Index.Php?Option=Com\\_Content&View=Article&Id=104%3Aldh-E-Ministerio-Da-Justica-Organizaram-1o-Conferencia-Nacional-Sobre-Acesso-A-Justica&catid=4%3Anoticias&Itemid=35&Lang=Pt](http://www.Ldh.Org.Mz/Index.Php?Option=Com_Content&View=Article&Id=104%3Aldh-E-Ministerio-Da-Justica-Organizaram-1o-Conferencia-Nacional-Sobre-Acesso-A-Justica&catid=4%3Anoticias&Itemid=35&Lang=Pt)

<sup>47</sup> African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (AC Principles), DOC/OS (xxx) 247 (2001), Article M (1)(b).

<sup>48</sup> \* not her real name

<sup>49</sup> Art 287 and 288

<sup>50</sup> Art 291

<sup>51</sup> Article 311 of the Criminal Procedure Code

<sup>52</sup> See case on page 22

<sup>53</sup> Article 9(3) of the ICCPR; Principle 38 of the Body of Principles; Principle M(3)(a) of the African Commission Principles on the Right to a Fair Trial

<sup>54</sup> UN Human Rights Committee, General Comment 8, para 3.

<sup>55</sup> Human Rights Committee General Comment 32, para 35

<sup>56</sup> *Cagas et al v the Philippines*, HRC, UN Doc. CCPR/C/73/D/788/1997 (2001) §7.3.

<sup>57</sup> Art 308

<sup>58</sup> Art 61(1)

<sup>59</sup> Article 236 of the Constitution and Article 4 of Law of the Public Prosecution Service

<sup>60</sup> "Mozambique: Supreme Court Insists on Need for More Judges" Agencia de Informação de Moçambique, 14 March 2012 <http://allafrica.com/stories/201203141136.html> (accessed 30/08/12)

<sup>61</sup> Fact Sheet No.26 The UN Working Group on Arbitrary Detentions specify Annex IV

<sup>62</sup> Article 9(2)

<sup>63</sup> Article 14(3)(a)

<sup>64</sup> Body of principles 14, article 14(3)(a) ICCPR

<sup>65</sup> See Amnesty International, *Fair Trials Manual* (1998), 2.3  
<http://www.amnesty.org/en/library/info/POL30/002/1998/en>

<sup>66</sup> Amnesty International, *Fair Trials Manual* (1998), 2.1

<sup>67</sup> \* Not his real name

<sup>68</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 Missions to Mozambique\*, 21 April 2011

<sup>69</sup> Paragraph 53 of the Report of the Special Rapporteur on the independence of judges and lawyers

<sup>70</sup> Article 64(3) of the Constitution, Principle 13 Body of Principles, Principle M 2(b) of the African Principles on the Right to a Fair Trial

<sup>71</sup> Article 14(3)(d) ICCPR, Article 40(2)(b)(ii) CRC, Article 7(1)(c) ACHPR, Principle 17 Body of Principles, Principle H(a) of the African Principles on the Right to a Fair Trial

<sup>72</sup> Response of the Ministry of Justice to Memorandum to the Ministry of Justice of Mozambique Regarding Findings of Amnesty International's Mission to Mozambique, received 12 September 2012

<sup>73</sup> HRC Concluding Observations: Tajikistan, UN Doc. CCPR/CO/84/TJK (2005), §11; see also Slovenia, UN Doc. CCPR/CO/84/SVN (2005) §9; Section H(a) of the AC Fair Trial Principles; Principle 17(2) Body of Principles; Principle 6 of the Basic Principles on the Role of Lawyers.

<sup>74</sup> Principle H (b)(i) AC Fair Trial Principles.

<sup>75</sup> Principle G(a) of the African Principles on the Right to a Fair Trial

<sup>76</sup> Art 1 of the Organic Statute of IPAJ

<sup>77</sup> Ratified by: Popular Assembly Resolution 4/86 of 25 July 1986

<sup>78</sup> Article 61 of the Statute of the Mozambique Bar Association

<sup>79</sup> Principle H(e) of the AC Fair Trial Principles. See also Principle 6 of the Basic Principles on the Role of Lawyers.

<sup>80</sup> Principle 7 of the Basic Principles on the role of lawyers and Human Rights Committee General Comment 32, para 34

<sup>81</sup> Principle 6 of the Basic Principles on the Role of Lawyers; See also Principles H(d) and H(e) of the AC Fair Trial Principles.

<sup>82</sup> Principle H(e) (5).

<sup>83</sup> Article 14(3)(b) ICCPR.

<sup>84</sup> The right is contained in contained in Article 7 of the ICCPR and Article 40 of the Mozambique Constitution and forms the basis of the CAT

<sup>85</sup> Contained in Article 14 of the ICCPR and Article 59 of the Constitution

<sup>86</sup> see, for example, CAT Article 15, and Committee against Torture, General Comment No. 2, CAT/C/GC/2, para 6

<sup>87</sup> Report on mission to the United Kingdom, E/CN.4/1998/39/Add.4 para 47, 5 March 1998

<sup>88</sup> UN Special Rapporteur on Torture, Report to the UN Commission on Human Rights E/CN.4/2003/68 17 December 2002 para 26(e); the same recommendation is made in the report of the Special Rapporteur to the UN General Assembly, A/56/156, 3 July 2001, para 39(d)

<sup>89</sup> Human Rights Committee General Comment 8, paragraph 3

<sup>90</sup> Principle 11 of the Body of Principles

<sup>91</sup> Article 2(a) of Law 2/93 of 24 June

<sup>92</sup> Article 236 of the Constitution and Article 4 of Law of the Public Prosecution Service

<sup>93</sup> Article 311 of the Criminal Procedure Code

<sup>94</sup> This was stated in the Attorney General's response to Memorandum to the Attorney General of Mozambique Regarding Findings of Amnesty International's Mission to Mozambique, 9 August 2012

<sup>95</sup> HRC General Comment 8, paragraph 2

<sup>96</sup> *McLawrence v. Jamaica*, UN Doc. CCPR/C/60/D/702/1996, 29 September 1997, para. 5.6

<sup>97</sup> Art 9(3) ICCPR

<sup>98</sup> Art 269 and 270 of the Criminal Procedure Code

<sup>99</sup> Art 291 of the Criminal Procedure Code

<sup>100</sup> Art 9(3) ICCPR, Principle 39 of the Body of Principles

<sup>101</sup> *Van Alphen v. The Netherlands*, (305/1988), 23 July 1990, Report of the HRC Vol II (A/45/40), 1990 at 115

<sup>102</sup> Article 69 of the Criminal Code

<sup>103</sup> Unicef, [http://www.unicef.org/mozambique/protection\\_4904.html](http://www.unicef.org/mozambique/protection_4904.html) accessed 25/06/12

<sup>104</sup> UN Committee on the Rights of the Child, General Comment 10 (2007), para 39.

<sup>105</sup> \*Not his real name

<sup>106</sup> See also UN Rules for the Protection of Juveniles deprived of their Liberty, Rule 1; UN Standard Minimum Rules for the Administration of juvenile Justice ("Beijing Rules"), Rule 13(1); Committee on the Rights of the Child, General Comment 10, para. 79

<sup>107</sup> Article 37, Article 40, Convention on the Rights of the Child; see also Beijing Rules, Rules 7.1

<sup>108</sup> Article 3 and 40 of the CRC

<sup>109</sup> Committee on the Rights of the Child, General Comment 10, Children's rights in juvenile justice (2007), para. 37; see also UN Rules for the protection of Juveniles deprived of their liberty, Rule 11(a)

<sup>110</sup> Rule 17 of the Beijing Rules

<sup>111</sup> Committee on the Rights of the Child, General Comment 10, para. 80

<sup>112</sup> Committee on the Rights of the Child, General Comment 10, paras. 81, 83

<sup>113</sup> Committee on the Rights of the Child, General Comment 10, para. 83

<sup>114</sup> Articles 308 and 309 of the Criminal Procedure Code sets out the legal periods for detention

<sup>115</sup> Article 236 of the Constitution and Article 4(d) of Law of the Public Prosecution Service

<sup>116</sup> \* Not his real name

<sup>117</sup> This kind of legal process is used for more serious crimes where the maximum sentence may likely be imposed and takes longer than a summary process.

<sup>118</sup> \*Not his real name

<sup>119</sup> Article 2(3).

<sup>120</sup> Article 66

<sup>121</sup> Article 9(5).

<sup>122</sup> UN Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 4; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International

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Human Rights Law and Serious Violations of International Humanitarian Law, Principle 3.

<sup>123</sup> Mozambique: Local prisons holding over 16 000 inmates, <http://allafrica.com/stories/201206210037>

<sup>124</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)

<sup>125</sup> Open society Foundation (2006). *Mozambique. Justice Sector and the Rule of Law*, p. 113-114. South Africa: Open Society Initiative for Southern Africa. Available at: <http://www.afrimap.org/english/images/report/Mozambique%20Justice%20report%20%28Eng%29.pdf>

<sup>126</sup> Ndlhavela Women's Prison in Maputo

<sup>127</sup> Rule 31, Standard Minimum Rules

<sup>128</sup> "Mozambique: Justice Ministry Rebukes Excessive Use of Force" Agencia de Informação de Moçambique, 13 March 2012 <http://allafrica.com/stories/201203131293.html> (accessed 30/08/12)

<sup>129</sup> Rules 9-11 and 19, the Standard Minimum Rules.

<sup>130</sup> Paragraph 7.4, Human Rights Committee, *Henry v. Trinidad and Tobago*, Communication N° 752/1997

<sup>131</sup> "Custas judiciais podem ser entrave ao acesso à justiça para o cidadão" *O País*, 16 March 2012, <http://www.opais.co.mz/index.php/sociedade/45-sociedade/19465-custas-judiciais-podem-ser-entrave-ao-acesso-a-justica-para-o-cidadao.html> (accessed 30/08/12)

<sup>132</sup> "90% do Orçamento das Prisões são consumidos em despesas com reclusos que podiam estar fora das cadeias" *O País*, 27 July 2012 <http://www.opais.co.mz/index.php/sociedade/45-sociedade/20873-90-do-orcamento-das-prisoas-sao-consumidos-em-despesas-com-reclusos-que-podiam-estar-fora-das-cadeias.html> (accessed 30/08/12)

<sup>133</sup> See, for example, Concluding observations on the state report of Botswana, CCPR/C/BWA/CO/1, March 2008, para 17; Tanzania, CCPR/C/TZA/CO/4, July 2009, para 19, Ecuador CCPR/C/ECU/CO/5, Oct 2009, para 17

<sup>134</sup> General Assembly resolution 55/59: Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century

<sup>135</sup> United Nations Commission on Crime Prevention and Criminal Justice, Report on the tenth session (8-17 May and 6 and 7 September 2001). Economic and Social Council Official Records, 2001, Supplement No. 10. See "Plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century." pp. 46-47. E/2001/30/Rev.1; E/CN.15/2001/13/Rev.1

<sup>136</sup> Quote from a police officers at the 1a Esquadra in Maputo City. Similar words were uttered by a police officer at the 12a Esquadra in Maputo City

<sup>137</sup> "Mozambique: Justice Ministry Rebukes Excessive Use of Force" Agencia de Informação de Moçambique, 13 March 2012 <http://allafrica.com/stories/201203131293.html> (accessed 30/08/12)

<sup>138</sup> "Nampula: Familiares dos amotinados criticam serviços prisionais" 12 March 2012 <http://www.voportugues.com/content/nampula-03-12-2012-voanews-142355345/1450464.html>

(accessed 30/08/12)

<sup>139</sup> The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria , Communication No.155/96, para 68, decision adopted at the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001.

<sup>140</sup> Rule 20 UN Standard Minimum Rules for the Treatment of Prisoners; Albert Womah Mukong v. Cameroon CCPR/C/45/D/458/1991, Views, 21 July 1994, para 9.3.

<sup>141</sup> See, for example, UN Special Rapporteur on Food, Mission to Brazil, Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10, E/CN.4/2003/54/Add.1, 3 January 2003, para 45.

<sup>142</sup> UN Human Rights Committee, General Comment 21, para 4; Albert Womah Mukong v. Cameroon CCPR/C/45/D/458/1991, Views, 21 July 1994, para 9.3.

<sup>143</sup> See, for example, Rule 24 Standard Minimum Rules

<sup>144</sup> Pinto v. Trinidad and Tobago CCPR/C/39/D/232/1987, Views, 21 August 1990, para. 12.7.

<sup>145</sup> Article 10 ICCPR, Rule 8 of the Standard Minimum Rules

<sup>146</sup> Article 10(2) of the ICCPR, Article 37(c) of the CRC, Rules 28 and 29 of the UN Principles for the Protection of Juveniles deprived of their liberty, Rule 26(3) of the Beijing Rules.

<sup>147</sup> Committee on the Rights of the Child, General Comment 10, para. 85

<sup>148</sup> Interview with anonymous detainee

<sup>149</sup> Interview with an anonymous detainee

<sup>150</sup> Nampula: Familiares dos amotinados criticam serviços prisionais, 12 March 2012 <http://www.voaportugues.com/content/nampula-03-12-2012-voanews-142355345/1450464.html> (accessed 30/08/12)

<sup>151</sup> "Mozambique: Justice Ministry Rebukes Excessive Use of Force" Agencia de Informação de Moçambique, 13 March 2012 <http://allafrica.com/stories/201203131293.html> (accessed 30/08/12)

<sup>152</sup> The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted by the UN General Assembly resolution 2010/16 in July 2010 as a supplement to the UN Standard Minimum Rules for the Treatment of Prisoners

<sup>153</sup> Article 3 and 40 of the CRC

<sup>154</sup> Report of the Working Group on Arbitrary Detention A/HRC/13/30

<sup>155</sup> Paragraphs 58, 59 and 64 A/HRC/13/30 (18 January 2010).

<sup>156</sup> Paragraphs 54-65 A/HRC/13/30



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## **'LOCKING UP MY RIGHTS'**

### **ARBITRARY ARREST, DETENTION AND TREATMENT OF DETAINEES IN MOZAMBIQUE**

In February 2012, a joint delegation of Amnesty International and the Mozambique Human Rights League visited five prisons in the Mozambique provinces of Maputo and Nampula. They found scores of detainees who have been held for months and even years after arrest and without having been tried before a court. Such arrests and detentions are arbitrary and prohibited by national and international human rights laws.

This joint report looks at shortcomings of the criminal justice system which has allowed this pattern of arrests and detentions to occur. It shows how poor, mostly young, unemployed or self-employed men are particularly disadvantaged. They are often disproportionate targets of arbitrary arrest, and often subjected to ill-treatment by police officers. In the majority of cases, these people are not informed of their rights or are unable to understand them, and cannot afford legal representation; their cases are therefore almost invariably handled by unqualified individuals or poorly qualified lawyers.

Those held on criminal charges are held in particularly inhumane and overcrowded prison conditions, with poor sanitation and medical care and few opportunities for learning or training. Inmates have to depend on family to provide food to supplement their inadequate diet. In addition, in some cases inmates are ill-treated by police or prison authorities or other prisoners.

This report calls on the Mozambique authorities to bring an end to arbitrary arrests and detentions in the country and to improve conditions of detention for both detainees and prisoners.

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