

# MOZAMBIQUE

## ARBITRARY ARREST AND DETENTION, TORTURE AND ILL- TREATMENT, AND IMPUNITY FOR POLICE KILLINGS

*Amnesty International Submission to  
the UN Universal Periodic Review,  
January - February 2016*

**AMNESTY  
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## EXECUTIVE SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Mozambique taking place in January – February 2016. In it, Amnesty International evaluates the implementation of recommendations accepted by Mozambique in its previous UPR, noting that many of the issues raised in the last review have yet to be addressed.

Amnesty International is concerned that the situation of human rights in Mozambique has not substantively improved since its last review in 2011. Arbitrary arrests and detention continue to occur regularly in violation of national and international law. Allegations also persist of excessive use of force, extrajudicial executions, and torture and ill-treatment by members of the police and prison guards, and Amnesty International is gravely concerned at the pattern of impunity for these abuses. Moreover, the government uses criminal defamation laws, the State Security Law, and the Press Law to limit the right to freedom of expression.

## FOLLOW UP TO THE PREVIOUS REVIEW

Of the 169 recommendations made by other member states during its first UPR in 2011, Mozambique accepted 161 recommendations and rejected eight.<sup>1</sup>

While Mozambique has taken some steps to strengthen its human rights framework, such as ratifying the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and enacting a new Penal Code and the Access to Information Bill, many of the issues raised in the last review have yet to be addressed.

Mozambique accepted recommendations to ensure prompt, thorough and impartial investigations into cases of arbitrary detention, excessive use of force, extrajudicial executions, torture and ill-treatment by the police, and those responsible brought to justice.<sup>2</sup> Despite this, there have been reports of killings, and torture and other ill-treatment by police, and in the majority of cases the government has failed to bring the perpetrators to justice.

Amnesty International welcomes the ratification by Mozambique of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 1 July 2014, as committed to during its first UPR.<sup>3</sup> Mozambique further agreed to ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, and the First

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<sup>1</sup> Human Rights Council, *Report of the Human Rights Council on its seventeenth session*, 24 May 2012, A/HRC/17/2.

<sup>2</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Mozambique*, 28 March 2011, A/HRC/17/16, recommendations 89.53 (Canada), 89.54 (Austria), 89.55 (Netherlands), 89.56 (Slovakia), 89.57 (Ecuador), 89.58 (Germany), 89.59 (Hungary), 89.60 (Sweden), 89.62 (Switzerland), 89.63 (Slovakia), 89.64 (Italia) and 90.20 (Switzerland).

<sup>3</sup> A/HRC/17/16, recommendations 90.1 (France), 90.3 (United Kingdom), 90.4 (Argentina), 90.5 (Portugal) and 90.7 (Ecuador).

Optional Protocol to the International Covenant on Civil and Political Rights.<sup>4</sup> Amnesty International is disappointed to note, however, that Mozambique has still not signed these treaties, let alone ratified and implemented them.

Mozambique also accepted recommendations with regard to issuing a standing invitation to the Special Procedures of the Human Rights Council;<sup>5</sup> these recommendations are also yet to be implemented.

In addition, although Mozambique accepted several recommendations to respond positively to the request for a visit, made in 2008, by the Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>6</sup>, the government is yet to reply to this request.

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### ARBITRARY ARREST AND DETENTION

Mozambique's Constitution<sup>7</sup> and Criminal Procedure Code<sup>8</sup> clearly prohibit arbitrary arrest and detention. However, as revealed in a report published by Amnesty International in November 2012, arbitrary arrests and detentions occur regularly.<sup>9</sup>

Despite safeguards in the law, police frequently arrest individuals without sufficient evidence. These arrests are not procedurally compliant with national or international law. During visits to places of detention, Amnesty International came across several cases where police officers did not appear to have sufficient grounds to suggest that a crime had been committed, let alone that it was committed by the person detained.

Amnesty International's research also found that police often arrest individuals without an arrest warrant in situations where a warrant is legally required.<sup>10</sup> It has

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<sup>4</sup> A/HRC/17/16, recommendations 88.1 (Algeria), 88.2 (Nigeria), 88.3 (Spain), 88.4 (Argentina), 88.5 (Portugal), 88.6 (Austria), 88.7 (Slovakia) and 88.8 (Australia), 90.2 (Spain), 90.5 (Portugal) and 90.6 (Slovakia).

<sup>5</sup> A/HRC/17/16, recommendations 90.11 (Brazil), 90.12 (Latvia), 90.13 (Portugal), 90.14 (Spain), 90.15 (Ecuador), 90.16 (United Kingdom), 90.17 (Denmark) and 90.18 (Hungary).

<sup>6</sup> A/HRC/17/16, recommendations 88.16 (Brazil), 88.17 (Norway), 88.18 (Germany), 88.19 (Italy), 88.20 (Netherlands) and 88.21 (Spain).

<sup>7</sup> The right to security of person and not to be arbitrarily arrested is enshrined in Mozambique law. Article 59 of the Constitution states that no one can be deprived of their liberty except in accordance with the law and Article 61 prohibits the unlimited or indefinite deprivation of liberty as a penalty or security measure.

<sup>8</sup> Article 251 of the Mozambique Criminal Procedure Code defines an arrested person as "one on whom there is a strong suspicion of having committed a crime, the existence of which is sufficiently proven." This indicates that a person cannot be arrested unless there is a strong suspicion that they have committed a crime and there is sufficient proof that that crime took place.

<sup>9</sup> Amnesty International, *Mozambique: 'Locking up my rights': Arbitrary arrest, detention and treatment of detainees in Mozambique* (Index: AFR 41/001/2012).

<sup>10</sup> According to Articles 287 and 288, an arrest may be carried out by any individual when a

also documented cases where the police has carried out arrests and detentions without informing those arrested of their rights.

## EXTRAJUDICIAL EXECUTIONS AND UNLAWFUL KILLINGS

Police authorities have assured Amnesty International on numerous occasions that extrajudicial executions and excessive use of force by police are merely the acts of “over-zealous” police officers. However, incidents of extrajudicial executions by the police continue and in the majority of such killings the government has failed to carry out a thorough, prompt, impartial and adequate investigation and to bring the suspected perpetrators to justice. As such, the authorities fail to send a clear message to all police officers that those found responsible for such violations will be held to account.<sup>11</sup>

In 2014, police reportedly used firearms unlawfully in Maputo, Gaza and Nampula provinces, resulting in at least four deaths. No investigations appear to have been carried out to determine the lawfulness of the use of firearms by the police.

- In January 2014, police shot and killed 26-year old Ribeiro João Nhassengo and another unnamed person. A police spokesperson claimed that police responded to an anonymous call regarding an incident outside a shop in the Triunfo neighbourhood of Maputo in the early hours of 29 January. At the scene, they found a group of men in two cars with a victim they appeared to have kidnapped. According to the police spokesperson, the suspects let the victim go. However, in a subsequent shoot-out Ribeiro João Nhassengo and the unnamed individual were reportedly shot. However, footage of the incident shows that Ribeiro João Nhassengo was shot and killed while inside the car with the windows closed. No investigation has been carried out into the circumstances surrounding the deaths to determine the lawfulness of the use of firearms by police and no one has been held to account for the killings.

## FREEDOM OF EXPRESSION

In December 2014, the Access to Information Bill came into effect. Despite this step forward, the right to freedom of expression has been regularly suppressed in recent years. The government uses criminal defamation laws, the State Security Law, and the Press Law to restrict the right to freedom of expression.

- In May 2014, economist Carlos Nuno Castel-Branco was called before the Public Prosecutor's office in Maputo to answer questions related to charges against him for defamation of the Head of State. The charges emanated from an open letter posted on his Facebook page in November 2013, questioning the governance of the country by former President Guebuza. The letter was subsequently published by a couple of newspapers, including

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

<sup>11</sup> For further information see: Amnesty International, *Mozambique: Submission to the African Commission on Human and People's Rights: 54<sup>th</sup> Ordinary Session of the African Commission on Human and People's Rights, 22 October – 5 November 2013* (Index: AFR 41/007/2013).

“Mediafax”.<sup>12</sup> The case should have been dropped under the Amnesty Law that was passed by Parliament in August 2014.<sup>13</sup> However, on 2 June 2015 Fernando Mbanze, the editor of “Mediafax”, was also summoned to the Public Prosecutor's office and told that he was now an accused person; however, he was not informed under which law he was charged. On 19 June 2015, Carlos Nuno Castel-Branco was formally accused of defaming the former Head of State of Mozambique and was charged under article 22 of the State Security Law (Law 19/91).<sup>14</sup> The charge against Carlos Nuno Castel-Branco is termed as a crime against the security of the state and carries a penalty of up to two years in prison and a corresponding fine. Fernando Mbanze was charged with abusing freedom of the press under article 42 of Press Law (Law 18/91) in conjunction with the State Security Law. Their trial has been set for 31 August.

- In March 2015, Gilles Cistac, professor of constitutional law at Eduardo Mondlane University in Maputo, was shot dead by four gunmen in downtown Maputo. Before his killing, Gilles Cistac had made statements in support of the opposition political party *Renamo*, calling for greater autonomy for the provinces in Mozambique.<sup>15</sup> No investigation into his killing appears to have been carried out and at the time of writing those responsible for his death have not been identified by authorities, let alone brought to justice.

## DETENTION WITHOUT TRIAL

In 2012 and 2013, in at least three prisons in Maputo and two in Nampula, hundreds of people were held without trial, some without charge, for longer than the time legally allowed.<sup>16</sup> Thousands of people remain similarly detained throughout the country.<sup>17</sup>

- On 16 February 2012, a joint delegation from Amnesty International and the Mozambique Human Rights League found José Capitine Cossa detained

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<sup>12</sup> For further information see Amnesty International 2014/2015 report at:

<https://www.amnesty.org/en/countries/africa/mozambique/report-mozambique/>

<sup>13</sup> The Amnesty Law applies to all security offences committed between March 2012 and August 2014.

<sup>14</sup> Article 22 of the Law No. 19/91, of 16 August (Law of crimes against the security of the state).

<sup>15</sup> For further information see: Amnesty International, *Mozambique: Authorities must promptly investigate the killing of a lawyer* (Index: AFR 41/1137/2015).

<sup>16</sup> Under Article 308 of the 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. 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.

<sup>17</sup> For further information see: Amnesty International, *Mozambique: 'Locking up my rights': Arbitrary arrest, detention and treatment of detainees in Mozambique* (Index: AFR 41/001/2012).

without charge or trial in Machava Maximum Security Prison. He had been held for over 12 years. The authorities claimed they did not know why he was there. In September 2012, the Attorney General informed Amnesty International that following an investigation, José Capitine Cossa had been released on 4 September 2012 as his detention had been found to be irregular.<sup>18</sup> However, by June 2015 no one had been held responsible for his unlawful arrest and detention and he had not received any compensation.

## TORTURE AND OTHER ILL-TREATMENT

During visits by Amnesty International to places of detention in Mozambique in 2012 and 2013, many of the inmates told the organization that they had been beaten or threatened with beatings by the police while held at police stations. They specifically mentioned the 7th and the 16th Police Stations in Maputo City, the 2nd Police Station in Moamba, Maputo Province, the 2nd Police Station in Nampula city, and the Police Post at Faina, Nampula Province.

Other forms of ill-treatment by the police were also mentioned by the inmates. One female detainee told Amnesty International that she had been held for seven days at the 7th Police Station in Maputo City, alone in a dark cell without food or sufficient water and forced to sleep on the floor. She said her cries for help had been ignored. 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 had told them to stop, but they just laughed.

Amnesty International has also received complaints of ill-treatment by prison guards in the Ndhlavela Women's Prison in Maputo, including, a complaint of ill-treatment by a female prison guard in November 2012. In May 2013, Amnesty International delegates found that prison guard still at the prison and it appeared that no investigation had been carried out into complaints of ill-treatment committed by her.<sup>19</sup>

# RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

## Amnesty International calls on the government of Mozambique to:

### *Ratification of human rights treaties*

- Ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, and the First Optional Protocol to the International Covenant on Civil and Political Rights, in line with recommendations accepted during the previous review;<sup>20</sup>

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<sup>18</sup> For further information see Amnesty International 2013 report, *The state of the world's human rights*, at <https://www.amnesty.org/en/documents/pol10/001/2013/ne/>

<sup>19</sup> For further information see: Amnesty International, *Mozambique: 'Locking up my rights': Arbitrary arrest, detention and treatment of detainees in Mozambique* (Index: AFR 41/001/2012).

<sup>20</sup> A/HRC/17/16, recommendations 88.1 (Algeria), 88.2 (Nigeria), 88.3 (Spain), 88.4 (Argentina), 88.5 (Portugal), 88.6 (Austria), 88.7 (Slovakia) and 88.8 (Australia), 90.2

- Ensure that the provisions of all international human rights treaties, to which Mozambique is a party, are incorporated into domestic law;
- Ensure 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.

*Cooperation with the Special Procedures*

- Extend a standing invitation to the Special Procedures to visit Mozambique, as committed to in the previous review.<sup>21</sup>

*Arbitrary arrest and detention*

- Carry out prompt, thorough, impartial and independent investigations into cases of arbitrary arrest and detention and ensure that all police officers found responsible for human rights violations are subjected to disciplinary and criminal proceedings as appropriate, in line with accepted recommendations from the previous review;<sup>22</sup>
- Ensure full reparations, including fair and adequate compensation, for victims of arbitrary arrest and detention;
- Ensure that those detained pending trial, are brought to trial within a reasonable time or released pending trial;
- Ensure the release of those who have been detained for a period commensurate with the length of the normal sentence for the offence.

*Extrajudicial executions and unlawful killings*

- Carry out prompt, impartial and thorough investigations into all allegations of extrajudicial executions or unlawful killings by the security forces and ensure that the perpetrators are brought to justice, in line with accepted recommendations from the previous review;<sup>23</sup>
- Ensure full reparations, including fair and adequate compensation, to the relatives of the victims of extrajudicial executions or unlawful killings by the police;
- Extend an invitation to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in accordance with his request of April 2008, and in line with accepted recommendations from the previous review.<sup>24</sup>

*Freedom of expression*

- To respect, protect and promote the right to freedom of expression, in particular with regard to the well-established international human rights principle that public officials should tolerate more, rather than less criticism than private individuals;

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(Spain), 90.5 (Portugal) and 90.6 (Slovakia).

<sup>21</sup> A/HRC/17/16, recommendations 90.11 (Brazil), 90.12 (Latvia), 90.13 (Portugal), 90.14 (Spain), 90.15 (Ecuador), 90.16 (United Kingdom), 90.17 (Denmark) and 90.18 (Hungary).

<sup>22</sup> A/HRC/17/16, recommendations 89.53 (Canada) and 90.20 (Switzerland).

<sup>23</sup> A/HRC/17/16, recommendations 89.53 (Canada), 89.55 (Netherlands), 89.56 (Slovakia), 89.58 (Germany), 89.59 (Hungary) and 90.20 (Switzerland).

<sup>24</sup> A/HRC/17/16, recommendations 88.16 (Brazil), 88.17 (Norway), 88.18 (Germany), 88.19 (Italy), 88.20 (Netherlands) and 88.21 (Spain).



- Repeal criminal defamation laws, particularly those providing special punishment for alleged defamation of the head of state or other public officials.

*Torture and other ill-treatment*

- Ensure that prompt, impartial and thorough investigations are carried out into all suspected cases of torture and other ill-treatment by the police and ensure that the perpetrators of such violations are brought to justice, in line with accepted recommendations from the previous review;<sup>25</sup>
- Ensure that all police officers and prison guards are made fully aware of their responsibilities to protect detainees and understand that acts of torture or other ill-treatment will not be tolerated and that such acts constitute criminal offences in national law and international treaties to which Mozambique is party;
- Ensure that victims of torture or other ill-treatment are able to claim full reparations, including fair and adequate compensation, as accepted in the previous review.<sup>26</sup>

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<sup>25</sup> A/HRC/17/16, recommendations 89.58 (Germany), 89.59 (Hungary), 89.60 (Sweden), 89.62 (Switzerland), 89.63 (Slovakia) and 89.64 (Italy).

<sup>26</sup> A/HRC/17/16, recommendation 89.62 (Switzerland).

## **ANNEX**

### **AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>27</sup>**

Two men facing trial for Facebook post (Index: AFR 41/2136/2015).

Authorities must promptly investigate the killing of a lawyer (Index: AFR 41/1137/2015).

Statement on prison conditions to the African Commission on Human and Peoples' Rights (Index: AFR 01/008/2014).

New Criminal Code puts women's rights at risk (Index: AFR 41/001/2014).

Submission to the 51<sup>st</sup> session of the United Nations Committee against Torture (Index: AFR 41/006/2013).

Submission to the 54<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (Index: AFR 41/007/2013).

Submission to the 109<sup>th</sup> session of the United Nations Human Rights Committee (Index: AFR 41/005/2013).

Amnesty International's comments on the draft Constitution of Mozambique (Index: AFR 41/003/2013).

'Locking up my Rights': arbitrary arrest, detention and treatment of detainees in Mozambique (Index: AFR 41/001/2012).

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<sup>27</sup> All of these documents are available on Amnesty International's website:  
<https://www.amnesty.org/en/countries/africa/mozambique/>