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INTRODUCTION

‘The public is more afraid of the police than they are of criminals.’

Custódio Duma of the Mozambique Human Rights League

On the morning of Sunday 8 January 2006, 21-year-old Julêncio Gove witnessed six police officers in Maputo Province beating a young woman. He tried to intervene and urged police officers to stop, but was warned not to interfere. Stepping away from the police, he continued urging them to stop beating the woman. One of the officers fired a shot at him, and when he fell to the ground the police officers kicked him to death. The officer that shot Julêncio Gove was eventually arrested and charged with murder but to date has not been tried. The other police officers involved have not been charged.

Julêncio Gove is one of many cases reported to Amnesty International highlighting human rights violations by police in Mozambique. Violations include the use of torture and other cruel, inhuman or degrading treatment or punishment; extrajudicial executions; and excessive and disproportionate use of force, sometimes resulting in death. The cases reveal a systematic pattern of human rights violations by the police and police impunity.

Amnesty International has brought such cases to the attention of the relevant authorities, seeking clarification and inquiring into what has been done to investigate alleged incidences of violations and bring the suspected perpetrators to justice. Almost invariably, the authorities' response has been that an investigation was being carried out or that a criminal proceeding had been instituted. Yet, despite the many reported cases, many of which amount to crimes under Mozambican law, few police officers have been prosecuted and brought to justice.

Since the end of the civil war in 1992, a number of steps have been taken to improve police operation and conduct. Measures include a United Nations Development Program (UNDP) co-ordinated training project (1997 and 2004), the adoption of a Strategic Plan in 2004, which emphasized increasing protection for human rights, and the integration of human rights into the police-training curriculum. Yet these measures will not be effective until police are made accountable for their actions.

Lack of accountability for violations not only entrenches impunity within the police force, but also sends out the message that police methods that violate human rights are acceptable. This impunity is a result of weak police accountability systems manifested in the failure of those in command to instigate disciplinary procedures and, where appropriate, bring suspected perpetrators to justice.

In this report, Amnesty International brings to light inadequacies of the police accountability system and makes recommendations for its improvement in order to reduce the incidence of human rights violations by the police.

The report is based on information obtained during Amnesty International visits to Mozambique in April 2004 and September 2007 and a memorandum on policing sent to police authorities in September 2004.

THE MOZAMBIQUE POLICING SYSTEM

THE NATIONAL CONTEXT

The peace agreement that ended the 15 year civil war in 1992, committed the government of Mozambique to restructure and retrain the police, this included public order management, investigative techniques and human rights. In 1997, a two-phase project to train the police started under the co-ordination of the UNDP. Between 1997 and 2004, when the project ended, members of the Spanish Civil Guard trained police instructors who retrained other officers in the country. A third phase of the project, between 2004 and 2007, aimed to assist the Policia de República de Moçambique (PRM) in improving police accountability and transparency.¹

On 31 May 2004, the Ministry of the Interior adopted a Strategic Plan for the Police of the Republic of Mozambique (*Plano Estratégico da Polícia da República de Moçambique – PEPRM*). This plan placed an emphasis on increasing protection for human rights in Mozambique.

In addition, human rights are now an integral part of the police-training curriculum. Training is carried out by organizations such as the Mozambican Human Rights League (*Liga Moçambicana de Direitos Humanos* – commonly known as the *Liga*), which also prepare human rights material for the police.

In an attempt to stem increased crime rates, the police introduced community policing councils at the beginning of 2000. The councils are non-statutory bodies comprising of people chosen from the community, and are intended to help reduce crime by providing police with information about criminals. The councils also aim to persuade individuals to change their behaviour through the use of mediation techniques for example, in resolving domestic violence cases.

Members of community policing councils may arrest people caught in the act of committing a crime under the ordinary powers of “citizens’ arrest”. However, Amnesty International has received reports of human rights abuses by members of the community policing councils, including unlawful arrests, detentions and physical assaults. Hardly any of the perpetrators have been held accountable for these abuses.

The Mozambique police force, the PRM, is headed by a Commander General, and falls under the jurisdiction of the Ministry of the Interior. The PRM has three main departments; the Order and Public Safety Directorate; Criminal Investigation Police (*Policia de Investigacao Criminal*, PIC); and the Special and Reserve Forces (which includes the Rapid Intervention Force (*Força da Intervenção Rápida*, FIR)).

The police face numerous challenges stemming from high crime rates and a backlog of criminal cases in the judiciary system. There have also been reports of criminals killing police officers. Police officers have responded to these challenges by using excessive force, including extrajudicial executions of suspects. Following the killing of three men in a football field in the area of Costa do Sol in April 2007,² the Liga denounced the existence of police “death squads” responsible for the killing of suspects. The Procurator General of the Republic reportedly confirmed the existence of these death squads in May 2007,³ but to date no official action has been taken.

NATIONAL LAWS AND INTERNATIONAL HUMAN RIGHTS STANDARDS

The laws governing the Mozambique police include:

- The Constitution of the Republic of Mozambique of 1990, as amended in 2005 – which requires the police to ensure respect for the democratic rule of law and strict observance of fundamental rights and freedoms of citizens.⁴ These rights include the right to life; the right not to be arbitrarily deprived of one’s liberty; and the right not to be subjected to torture or to cruel or inhuman treatment.⁵ The Constitution further provides that provisions of international instruments ratified by Mozambique should be applied in a court of law;
- The Law Creating the Mozambique Republican Police – PRM, Law 19/92 of 31 December (Lei 19/99) – parts of which have been revoked by Law 27/99;
- The Organic Statute of the Police, Decree 27/99 of 24 May – which regulates the structure of the police;
- The Police Statute, Decree 28/99 of 24 May – which regulates police ranks, training and assessment, promotion, as well as rights and duties of the police; and
- The Disciplinary Regulation for Police 5/87 of 10 March – which sets out the expected behaviour of the police and the disciplinary procedure to be followed when a police officer infringes the provisions of the regulation.

INTERNATIONAL HUMAN RIGHTS STANDARDS

Mozambique is a state party to a number of international and regional treaties that contain human rights standards relevant to policing. These include the African Charter on Human and Peoples' Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR); and the UN Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Mozambique is also a member of the Southern African Regional Police Chiefs' Cooperation Organisation (SARPPCO), which adopted a Code of Conduct for Police Officers in August 2001. The Code of Conduct contains 13 articles that are seen as a "minimum standard" for policing in the region. These include standards on the respect for human rights; non-discrimination; proportional use of force; prohibition of torture and other cruel, inhuman or degrading treatment or punishment; protection of people in custody; and compassionate treatment of victims of crime.

In addition, Mozambique is a member state of the United Nations (UN) and as such, has a responsibility to implement the following standards relating to policing that have been adopted by the UN. These standards include:

- Code of Conduct for Law Enforcement Officials (Code of Conduct);
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles);
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules);
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles);
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;
- UN Rules for the Protection of Juveniles Deprived of their Liberty;
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Declaration of Basic Principles of Justice).

These standards, if fully and effectively implemented, will greatly reduce the incidence of human rights violations by the police, and the failure to bring perpetrators to justice. Amnesty International therefore recommends that the government of Mozambique ensure the human rights standards articulated in the above instruments are respected and implemented fully by the police.

HUMAN RIGHTS VIOLATIONS AND POLICE ACCOUNTABILITY

Between 2004 and 2007, Amnesty International received numerous reports of human rights violations by the police in Mozambique. Many of these cases refer to extrajudicial executions. In almost all cases no disciplinary action was carried out against the police responsible for the violations nor have they been prosecuted, creating the impression that the police have a licence to kill.

Failure to prosecute officers is largely due to a lack of effective internal and external accountability systems. An effective accountability system should ensure that police officers are held accountable for human rights violations and reduce impunity, thus greatly contributing to a reduction in future violations by acting as a deterrent. Police accountability ensures that human rights violations are prevented, or detected when they occur, and police are held accountable to the police structure, the government and the public.

Amnesty International believes that human rights violations by police continue to occur in Mozambique largely as a result of a weak police accountability system, which does not fully conform to international human rights standards.

This part of the report looks at the police accountability system in Mozambique and identifies the inadequacies that facilitate human rights violations by the police.

PEDRO MULAUDZI

In 2005, Pedro Mulaudzi was shot dead by police on the grounds of the unit for preventive detention in the Niassa Province. The police alleged he had been asked to carry food to other detainees in the cells and attempted to escape while doing this. According to the police, they first shot into the air then, when he did not stop running, they shot at him to immobilize him. However, an autopsy revealed that he had been shot from the front in the heart. A criminal process was instituted against the police officer who reportedly gave the order to shoot and the two officers who fired the shots and the Provincial Procurator requested that the police carry out an investigation. Despite the autopsy result, the police investigation concluded that the officers involved were not culpable as they had shot to immobilise, not to kill. No further action is known to have been taken.

INADEQUATE INTERNAL ACCOUNTABILITY MECHANISMS

The internal police accountability system in Mozambique consists of:

- the chain-of-command control and supervision;
- reporting procedures;
- Disciplinary Procedures contained in the Disciplinary Regulation;⁶
- rules of conduct contained in the Police Statute of 1999 ⁷ and other laws relating to the police;
- operational procedures (sometimes called standing orders or codes of practice);
- systems for receiving complaints from the public.

The chain-of-command control should ensure that police act in accordance with the rules provided by the Disciplinary Regulation and the rules of conduct, which in turn should include principles of international human rights standards related to policing. Where these rules are infringed, the chain of command control should ensure disciplinary proceedings are instituted to hold the offending police officer to account. As the police should also be accountable to the public, the systems for receiving complaints should provide members of the public a means of lodging complaints against the police and information on what has been done to hold the police to account.

In Mozambique, the internal accountability mechanisms are largely ineffective and do not fully conform to international human rights standards. Amnesty International has identified a number of inadequacies in the internal accountability mechanisms.

FAILURE TO EXERCISE CHAIN-OF-COMMAND CONTROL

Chain-of-command control is a vital component of internal accountability. It extends responsibility for human rights violations by a police officer to that officer's superiors if they were aware of or should have been aware of, or could reasonably have been expected to have been aware of, or failed to stop the violation.

The principle of chain-of-command responsibility ensures that commanding officers take all reasonable steps to prevent human rights violations and institute disciplinary proceedings when they occur. A failure to observe and enforce the chain-of-command structure allows police officers to break the regulations with impunity.

Within Mozambique, the chain-of-command control is encompassed in the Disciplinary Regulation for the Mozambique Police which states that police officers have a duty to give account of their work to their superiors.⁸ The Disciplinary Regulation also states that superiors must be uncompromising in ending indiscipline and ensuring those who infringe the Regulations are justly punished.⁹ However, this does not always happen as illustrated by the following case.

ACCUSED POLICE OFFICER RELEASED

On 23 December 2005, police officers in Maputo released a fellow police officer accused of killing his wife despite the fact that under Mozambican law, he was not entitled to bail. The accused police officer had been arrested and was awaiting trial in the Judicial Court of Maputo City when his colleagues released him. He was apparently re-captured and returned to custody, on the orders of the Criminal Investigation Police, but released once again by his colleagues against the order.

Failure to adequately exercise chain-of-command control allows police officers to continually contravene provisions in national law and international human rights law, without fear of censure.

FAILURE TO IMPLEMENT DISCIPLINARY REGULATIONS

The Disciplinary Regulation sets out the duties of police officers and the procedure to be followed when there is an infringement of its provisions. It contains some human rights principles, including the duty to abstain from carrying out arbitrary arrests and detentions, and the torture and other ill-treatment of prisoners.

Under the Disciplinary Regulation, a complaint against a police officer can be instituted by any member of the police or any individual who knows of the alleged infraction of the Disciplinary Regulation.¹⁰ When a police officer is accused of an infringement of the regulation a disciplinary process should be ordered by their superior officer.¹¹ The Disciplinary Regulation states that the complaints procedure should be carried out in a manner allowing for the truth to come out rapidly.¹² The results of the disciplinary hearing are to be communicated to the provincial or national commands as appropriate and may be appealed against. Sanctions for infringement of the disciplinary regulations range through reprimands, disciplinary imprisonment of up to 20 days and expulsion from the police.

In many of the cases received by Amnesty International, disciplinary proceedings did not appear to have been carried out against police officers. Although there are some media reports of police officers being dismissed for infringing the law or police regulations, the disciplinary process is not open or transparent. The police do not publish systematic and detailed statistical information on the number of officers found to have committed disciplinary or criminal offences and the nature of these offences. This lack of information undermines the Mozambican public's trust in the police. Furthermore, members of human rights organizations commented to Amnesty International that they are, at times, informed that police officers responsible for human rights violations have been disciplined, but there is no means to verify whether disciplinary measures have actually been carried out following a complaint.

THE INTERNAL CODES OF PRACTICE

The internal codes of practice regulate the methodologies and techniques used in police operations. They include, but are not limited to, rules of conduct. In Mozambique the rules of conduct are contained in the Disciplinary Regulation, as well as the Police Statute of 1999.¹³ Under the Police Statute the police are required to act with the strictest respect for the Constitution and laws of the country. This includes the human rights provisions contained in the Constitution. Police officers should also ensure they act with impartiality and integrity. It is imperative that the internal codes of practice conform to international human rights standards and that they are rigorously implemented in practice.

FAILURE TO ADEQUATELY REGULATE THE USE OF FORCE

The Police Statute includes provisions on the use of force and the treatment of detainees. An officer “may only use force and firearms in situations where there is a reasonably serious risk to the officer’s life or physical integrity, or those of third persons, or in circumstances in which it may be supposed that there is a serious risk to public security, and in conformity with the principles [of opportunity, appropriateness and proportionality].”¹⁴ In accordance with the UN Code of Conduct¹⁵ and the Basic Principles,¹⁶ police may use force only when strictly necessary and only to the extent required for the performance of their duty. Firearms should not be used except to defend people against imminent threat of death or serious injury or to prevent a grave threat to life, and only when less extreme means are insufficient. Lethal force should not be used except when strictly unavoidable in order to protect life.

Amnesty International has received numerous reports of the excessive use of force by police in Mozambique, particularly in public order management, which show that the police did not act in accordance with these principles.

TRANSPORT PRICE DEMONSTRATIONS

On 5 February 2008, police shot at demonstrators in the city of Maputo killing at least three people and injuring 30 with stray bullets.¹⁷ The demonstrators, who were protesting against an increase in transport fares, took to the streets of Maputo, blocking traffic from about 10:00 hours until 20:00 hours and causing damage to property, including police vehicles. The police reportedly fired bullets into the air in a bid to disperse the crowds, but were not successful.¹⁸ They then started firing what they claimed were rubber bullets at the crowd. However, at least three people were killed and 30 were injured by stray, live ammunition. A further 68 people received other injuries during the demonstrations. A week later, the police spokesperson stated that those injured during the demonstrations were receiving medical treatment at the Maputo Central Hospital.¹⁹ Related demonstrations occurred in the provinces of Inhambane and Gaza on 11 February. In Gaza, live ammunition was once again used against demonstrators. The police spokesperson stated that live ammunition was used because some officers were caught by surprise by the rioters.

There have been many cases where excessive use of force by police resulted in death. In 2006 and 2007, Amnesty International received reports of at least 13 cases where police shot and killed individual suspects and gangs while they were allegedly attempting to flee from custody. Amnesty International believes that in some of these cases the police use of lethal force amounted to extrajudicial executions. Extrajudicial executions are unlawful and deliberate killings carried out at the order of the government, or with its complicity or acquiescence. They are carried out by the military or police or agents working with the government or with its complicity.

ESCAPE FROM MAPUTO CENTRAL PRISON

In May 2006, members of the police shot dead at least two prisoners as they tried to escape from Maputo Central Prison by climbing over the prison walls. According to reports, eye-witnesses claimed that police officers clubbed and shot at the escaping prisoners and killed some after they were recaptured. However, the Minister of Justice said the police killed two prisoners and wounded eight others as they attempted to break out of the prison. According to the Minister, no one was killed after being recaptured. Following the escape, the Maputo Central Prison temporarily banned visits from relatives and human rights organizations. However, the Liga was eventually given access to the prison and they stated that three prisoners were killed during the break-out and at least 10 seriously injured. Those who were captured immediately after the attempted break-out were reportedly put in disciplinary cells and tortured. As far as Amnesty International is aware, no investigation was carried out into the killings to establish whether the force used was justified. Nor was any investigation carried out into the alleged torture.

ABRANTES AFONSO PENICELA

Abrantes Afonso Penicela died in Maputo Central Hospital on 15 August 2007. Before he died he told police and his family how he had been left for dead by members of the police. He related that on 14 August 2007 at about 15:00 hours a group of at least five police officers drove to his home with a person known to him. One of the police officers used this person's mobile phone to call Abrantes Penicela. Abrantes Penicela left his home and went into the street to speak to him and was unexpectedly grabbed and pushed into one of the cars by the police. The other person was in the other car with the police. He said that the officers then gave him a toxic injection and drove him to a secluded area in the district of Xhinavane in Maputo province, where they beat him until he fainted. The police officers then shot him in the back of the neck and set fire to him before leaving the area thinking that Abrantes Penicela was dead. However, he survived and managed to crawl to a nearby road where he was found by people from the Xhinavane area. He was able to give details of his family to those that found him and was taken to Xhinavane Hospital.

At about 21:00 hours that night his family arrived at the hospital and he told them his story. About two hours later he was transferred to the Maputo Central Hospital. The family reported the case to police at the 5th Police Station and an officer from the station went to the hospital to hear his testimony. The Penicela family recorded this testimony in the presence of the police. Abrantes Penicela died of his injuries later that day. The family approached the Liga for assistance with this case and the Liga was informed by police officials that the case was being investigated. The investigation has not yet concluded and no police officer has so far been arrested for the killing of Abrantes Afonso Penicela.

COSTA DO SOL

On the evening of 4 April 2007, three police officers took three detainees, Sousa Carlos Cossa, Mustafa Assane Momedé and Francisco Nhantumbo, from a police station in Laulane, Maputo, to a sports field in the Costa do Sol neighbourhood, outside Maputo. At the sports field the police officers shot and killed the men. The Liga received information about these killings from residents in the neighbourhood of Costa do Sol and used media sources to highlight the case and put pressure on authorities to take action. An investigation into the incident was then carried out by police and according to the findings of the investigation the three had been shot while trying to escape. Police officials stated that the men were all arrested on the night of 4 April 2007 as they allegedly attempted to break into a shop in the Maputo neighbourhood of Alto-Mae. The men were then reportedly taken into custody and later agreed to show the police the location of other criminals. Three police officers then took the men to the Costa do Sol area where the police claim they attempted to flee and were shot in the process.

However, an inquiry by the Procurator General revealed a different story. Based on autopsy results, the three had been shot in the back of the neck at close range. The Procurator's report found that they had been "summarily executed" by the police. The report stated that the findings of the autopsy were incompatible with the account of events given by the police.

The officers were suspended from duty but, initially, the police refused to arrest them, despite an arrest warrant issued by the office of the Procurator of Maputo city. It was not until 15 May that the Commander General of Police finally confirmed that the three police officers had been arrested.

Their trial was set for the end of 2007, but was later postponed. An alternative trial date had not yet been set at the time of writing this report.

In the Costa do Sol case, police alleged that they were simply carrying out orders. Although the Disciplinary Regulation provides that police should collaborate with authorities when requested,²⁰ the Police Statute requires police to carry out only orders that are lawful.²¹ Unlike international human rights standards however, Mozambican law does not mention the duty to report acts or orders that are unlawful.²²

During visits to Mozambique in 2004, the police informed Amnesty International that a new regulation containing a code of police conduct had been drafted. Three years on, during a visit in 2007, the drafting process had still not been completed. Those responsible for drafting the new regulation should ensure that the deficiencies of the current regulation and code of conduct are rectified and that they are brought in line with international human rights standards. In particular, the regulations should be amended to expressly state that no criminal or disciplinary action shall be taken against a police officer who has refused to carry out an unlawful order. In addition, it should clearly state that no sanctions will be implemented against any officer reporting an apparently unlawful order.

FAILURE TO RESPOND TO COMPLAINTS AND PROVIDE INFORMATION

In Mozambique, complaints against the police from members of the public are often submitted either to the commander of the district or station or to the officers responsible for public relations. Complainants may also lodge a complaint via a telephone hotline to the Procurator's Office or via complaints boxes²³ placed outside police buildings. However, Amnesty International has been informed that members of the public have very little faith that these complaints boxes are actually opened and their complaints investigated. Furthermore, there is no specific system for recording complaints and the action taken or for communicating with complainants as to the status of their complaint. Although a police official informed Amnesty International that the complainant is notified in writing of steps taken to resolve the complaint, in practice this appears to rarely happen.

The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials²⁴ state that particular provisions should be made for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions should be made known to the public. A clear, accessible and well-publicized system for receiving and dealing with complaints from members of the public would increase public trust in the police. Many of the complainants are illiterate, so the system should include a genuinely accessible complaints office where people can make complaints in person. Complainants should receive a clear explanation of how the system works; how, and by when, their complaint will be dealt with; how they will learn of the outcome and options to appeal against the outcome if the complainant is not satisfied.

INADEQUATE EXTERNAL ACCOUNTABILITY MECHANISMS

External accountability systems include state structures formally set up to carry out police oversight functions, as well as non-state structures like the media and human rights non-governmental organizations (NGOs) which provide information to the public. Effective external accountability should complement and supplement internal accountability. In Mozambique external accountability is exercised officially through the Ministry of the Interior, the National Assembly and its commission,²⁵ the Procurator General's Office, and the Judiciary.

THE MINISTRY OF THE INTERIOR

The Mozambique police fall under the jurisdiction of the Ministry of the Interior. The Minister of the Interior is accountable to the National Assembly regarding police activities. The police are therefore accountable to the Ministry of the Interior. It is vital that this Ministry ensures that human rights violations are not institutionalized and that the Minister takes action to correct the situation when violations occur.

THE PROCURATOR GENERAL'S OFFICE – FAILURE TO INVESTIGATE AND PROSECUTE

The Office of the Procurator General is responsible for the supervision of all police investigations. It is the Procurator's Office that must ensure investigations are carried out into human rights violations by the police. It must further ensure that cases against police perpetrators are taken before a court of law. This does not always happen, reinforcing the perception that police commit human rights violations with impunity.

KILLING OF A GANG OF FOUR

On 17 March 2006, Samuel Nhambe, Aquilas Nguila, Candido Chirindza, and Francisco Chirindza were shot dead by the police in Maxaquene, Maputo province, during an alleged shoot-out. According to a police spokesman, the four men had escaped from Maputo security prison two days earlier. On 17 March, they reportedly hijacked a minibus with a driver and three passengers in the vehicle. When the police found the minibus and apprehended the four men in the neighbourhood of Marracuene they reportedly searched for weapons inside the vehicle, but claimed they found none. The police allowed the men to drive the minibus to Maputo under police escort. However, they claimed the men opened fire with weapons they had hidden in the minibus and tried to escape. The men were subsequently shot in the alleged shoot-out that ensued. No investigation is known to have been carried out into this incident to confirm or establish what actually happened.

The Mozambican authorities have an obligation to respect the right to life. This right is enshrined in the Constitution and numerous human rights treaties. In accordance with this obligation, states are required to investigate all suspected violations of the right to life to establish the truth of what happened, prosecute suspected perpetrators and provide reparation for the families.²⁶ A prompt, independent investigation must be carried out in all cases of death at the hands of the police, and for all other human rights violations by the police. Amnesty International is concerned that investigations are rarely carried out and are often inadequate when they are.

THE PROCURATOR GENERAL'S OFFICE – FAILURE TO PROVIDE INFORMATION

Amnesty International has made enquiries to procurators in various provinces concerning cases against police officers and has almost invariably been told that the case was "in the process". No further information has been given. Many victims, including the Abrantes Penicela case described previously,²⁷ have received a similar response from procurators. International human rights standards require that judicial and administrative processes should be responsive to the needs of victims; this includes informing them of the progress of the proceedings.²⁸ Furthermore, the findings of inquiries, especially into death, should be made available on request.²⁹ The failure to provide information, especially concerning highly publicised cases of human rights violations by police reinforces public perception that police officers are not held accountable for their actions. It is important that such information is made public so that justice is not only done, but also seen to be done.

THE JUDICIARY – FAILURE TO HOLD TRIALS

The judiciary is responsible for the adjudication of cases against people accused of committing crimes, including human rights violations, in accordance with international fair trial standards. According to Mozambican Disciplinary Regulations, even when there has been a disciplinary proceeding against a police officer, if the offence also constitutes a crime, a parallel criminal investigation should be carried out by the Criminal Investigation Police and the police officer should be tried if suspected of having committed the crime. Although there have been many reported cases of human rights violations by police which amounted to crimes, there have been few reports of trials of police officers. One of the exceptions is the trial of at least 16 police officers in 2006 for the extrajudicial execution of suspects and convicts in the Manica province from 2000. This was an extreme case in which one of the police officers attempted to shoot the procurator during questioning.

In many instances, like in the following cases, police have said that a criminal process had been instituted against police officers, but no information was provided concerning the outcome of these criminal proceedings and no trial has been held to date.

GERALDO CELESTINO JOÃO

On 3 March 2004, 26-year-old Geraldo Celestino João died after being beaten and shot by police, reportedly from the 4th Police Station in the Manica province. He and two other men were arrested without a warrant at his home. After Geraldo João asked why they were being arrested, one of the officers reportedly opened fire in his direction, but hit another officer in the right tibia. The other two officers then reportedly threw Geraldo João face-down on the floor and shot him twice with a pistol. One shot entered the outside of his right thigh and exited through the groin. The other entered the inside of his left thigh and exited through the other side. The officer was taken to hospital, but Geraldo João was reportedly left for 30 minutes during which time a police officer beat and kicked him. He was then taken to hospital where he died. The family reportedly saw the body labelled as an “unknown” person. An autopsy was carried out on 10 March at the request of the Liga. The results of the investigation are not yet known and no trial has been held to date.

JULÊNCIO GOVE

On the morning of Sunday 8 January 2006, 21-year-old Julêncio Gove witnessed six police officers from the 7th Police station, in Matola, Maputo Province beating a young woman. He tried to intervene to help her but was warned not to interfere and threatened with a gun by one of the officers. He stepped back, but continued urging the police to stop beating the woman. One of the officers then fired a shot at him. When he fell to the ground the police officers began kicking him until they realized he was dead. The killing prompted demonstrations by hundreds of locals over the next week protesting against repeated police violence. The officer that shot Julêncio Gove was eventually arrested and charged with murder. He was suspected of being under the influence of alcohol at the time of the shooting.³⁰ The Station Commander said that the six members in question would be the target of “corrective measures”. However, the other police officers involved were not charged and the police officer who was arrested has not been tried to date.

THE LEGISLATURE

The National Assembly establishes the legal framework in which the police operate. The police have a duty to respond to questions put to them by the National Assembly. This is usually done by the Minister of the Interior on behalf of the police. The Judicial Affairs, Human Rights and Legality Commission of the National Assembly also has a measure of external control over the police. It is empowered to investigate complaints against institutions that administer justice, including the police, and make recommendations for improvements to the work of these institutions and the protection of human rights.

In addition, the National Assembly has the power to elect an Ombudsman – although this has not yet been done – and in November 2007 it passed the first reading of a Bill to establish a Human Rights Commission. However, in January 2007 Amnesty International was informed that the Council of Ministers had lodged an application to retract the Bill. It is not certain whether or not the Human Rights Commission will actually be established.

THE NEED FOR AN INDEPENDENT OVERSIGHT MECHANISM

While there are various state structures that can provide some oversight on police operations and investigate incidents of human rights violations by the police, complaints against the police should be investigated by an independent body. 'Police investigating the police' is an issue that generally raises doubts as to the impartiality of the investigating body, and increases the risk of impunity for perpetrators. A law creating a Justice Ombudsman's Office was passed in 2007.³¹ According to this law, the function of the Justice Ombudsman is to uphold legality and justice in the actions of public administration including peace and security forces.³² The Ombudsman's Office will be able to investigate complaints of human rights violations and make recommendations to appropriate offices to correct or prevent violations.³³ In the case of non-execution of decisions made, either by the Ombudsman or a judicial authority, the Ombudsman may also require relevant authorities to carry out the decision and specify a time frame in which this must be done.³⁴ The Ombudsman will also be able to take the initiative to investigate cases of human rights violations even without a complaint from the public.³⁵ As this mandate is very broad and covers a number of state agencies it is likely that only the most serious cases of human rights violations will be considered. If so, this will not provide the police with the comprehensive independent scrutiny required. In recognition of the need for thorough and continuous independent scrutiny, many countries have established an independent complaints body specifically to deal with complaints against the police. Such a body will help the police raise standards and increase public confidence.

In addition, visits to places of detention by an independent body can also be an effective means to prevent abuse of detainees by law enforcement personnel. The Mozambican government should establish an independent national body that can conduct unrestricted visits to all places of detention, to monitor the treatment of detainees and conditions of detention. Accordingly, the government should give priority to signing and ratifying the Optional Protocol to the UN Convention against Torture, which establishes a system of independent visits to all places of detention by international and national bodies.

HUMAN RIGHTS NGOS AND THE MEDIA

External oversight is also carried out by human rights NGOs and the media. In Mozambique, the Liga plays a major role in ensuring police accountability by monitoring and documenting human rights violations in monthly³⁶ and yearly reports,³⁷ as well as putting pressure on authorities for suspected perpetrators to be brought to justice. The Liga has, on many occasions, expressed concern about the number of cases of human rights violations committed by the police, especially extra-judicial executions. The Liga and the Bar Association (*Ordem dos Advogados Moçambicana*, OAM) also provide legal aid to victims of human rights violations including those whose rights have been violated by the police. In addition, the Liga has access to places of detention. However, the role that civil society can play is limited and it remains necessary to have an independent oversight mechanism.

The media plays an important role in police oversight by bringing cases of human rights violations to the attention of the public. Victims of human rights violations and NGOs have used the media to highlight violations and urge the authorities to take proper action. A highly publicized case of police violence was shown on Television Mozambique (TVM) in 2007 and contributed to the arrest of the police officers involved.

BEATING OF A CYCLIST

In April 2007, a police officer and a member of a community policing council used truncheons and rifle butts to beat a man who rode his bicycle into the grounds of the hospital in Mueda district, Cabo Delgado Province without authorization. A cameraman who happened to be in the area at the time, caught the two on film beating the man in the hospital grounds and as they dragged him to the local police station. The footage was shown on TVM at the end of April. The officers responsible were arrested a few weeks later and reportedly released in September pending trial. As far as Amnesty International is aware, no trial has yet been carried out.

Journalists in Mozambique have commented to Amnesty International that it is difficult to get information from state officials, including the police. They have also faced intimidation from the police while reporting on these violations.

The media has however also reported events in a way that abuse human rights. For example, the provincial commander of police in the province of Niassa presented a group of suspects from the Namacula neighbourhood in Lichinga on TVM in August 2007, violating the rights of suspects to be presumed innocent until proved guilty. The Liga raised this issue with the provincial police commander who responded that the suspects were presented on TVM to “educate the public” and make them aware that they should not break the law. He stated that the intention had not been to violate the rights of the suspects.

MALHAZANE MILITARY ARSENAL CASE

In February 2007, the Malhazane military arsenal in Maputo exploded killing over 100 people and injuring at least 500. Another explosion in March prompted residents to hold a demonstration, demanding the resignation of the Minister of National Defence – demonstrators alleged the explosion in March was the result of negligence on the part of the Minister who had failed to move the munitions following the February explosion. Six demonstrators were arrested and detained at the Alto Mãe Police Station in Maputo and were released without charge the next morning. Journalist Celso Manguana, received information about the arrest and detention of the demonstrators and went to the police station on the morning of their arrest to follow up the reports. While at the police station he was arrested, apparently for calling the police incompetent after they failed to respond to his questions. He was detained at the Alto Mãe Police Station without charge for two days. He was then charged with insulting the authorities and transferred to the Maputo Civil Prison. Three days after his arrest he was released and the charges against him were dropped.

CONCLUSION AND RECOMMENDATIONS

The safeguards and police accountability systems currently in place in Mozambique do not prevent human rights violations by the police. As long as the situation remains as it is, human rights violations committed by the police will continue with impunity. Amnesty International is gravely concerned at the prevalence of excessive use of force, extrajudicial executions and torture and other ill-treatment committed by Mozambican police. In order to bring an end to such violations, disciplinary procedures must be respected and other accountability mechanisms strengthened to make them more effective. Rigorous independent investigations into allegations of violations must be carried out. Any officers suspected of involvement in human rights violations must be held to account and information must be provided to the public concerning actions taken against police officers. Police officers must be made aware that they cannot commit human rights violations with impunity. In particular, those officers suspected of involvement in extrajudicial executions or excessive use of force must be brought to justice. The police do not have a licence to kill.

Amnesty International calls upon the Mozambican authorities to take all necessary steps to end human rights violations by the police in Mozambique. The authorities must ensure:

All suspected perpetrators of human rights violations are held to account. In order for this to happen the authorities must ensure that:

- thorough investigations are carried out into all cases of human rights violation to establish the truth about what really happened;
- law enforcement officials suspected of involvement in violations should be suspended from duty pending the outcome of investigations;
- police officers suspected of involvement in violations should face disciplinary action and, where a crime is suspected, be brought to justice in a trial meeting international standards of fairness;
- victims of human rights violations or, in the case of a violation resulting in death or enforced disappearance, their families, must receive adequate reparation.

The laws, regulations and codes of practice that regulate the functioning of the police are reformed to bring them in line with international human rights standards, including by:

- including a provision in the Police Statute which states that a superior officer will be held responsible for violations by subordinates if they were aware, or should have been aware of, or failed to stop the violation;

- making it clear that police officers should not follow unlawful orders and will not be subject to criminal or disciplinary proceedings for refusing to carry out an unlawful order or reporting such an order;
- including the principles of legality, necessity and subsidiarity with regards to the use of force by law enforcement officials;
- expressly stipulating that arrests and detentions must be carried out in strict accordance with international law.

Accountability mechanisms are responsive to the needs of the public. This can be achieved, among other things, by:

- the establishment of a credible mechanism which will be responsible for receiving reports from the public concerning police behaviour and providing information about the progress of complaints;
- ensuring there are no hindrances to individuals filing a complaint;
- ensuring complainants receive information in an accessible, timely and understandable manner concerning the progress of their complaints and actions taken;
- providing statistical information to the public concerning disciplinary and criminal proceedings against police officers;
- signing and ratifying the Optional Protocol to the UN Convention against Torture, and establishing an independent body to conduct unrestricted visits to all places of detention to monitor the conditions of detention and treatment of detainees.

Human rights standards relating to policing practice are incorporated into all training and ongoing education of police officers and their superiors.

The police work closely, and co-operate, with national NGOs and other civil society actors to ensure that police are responsive to the community.

Authorities must enter into dialogue with relevant state agencies and civil society concerning the establishment of a credible and independent police complaints mechanism to deal specifically with cases of human rights violations by the police. Such a mechanism must have:

- expert knowledge of law enforcement practice;
- powers to instigate and conduct independent investigations;
- adequate resources to carry out its mandate.

Recommendations to the international community

Amnesty International further urges the international community, especially governments with influence on Mozambique, to:

- assist in the provision of human rights training for the police, based on international human rights standards in co-ordination with other organizations providing such training;
- continue to use their influence to encourage the authorities to investigate human rights violations by the police and to bring perpetrators to justice.

ENDNOTES

1. Project description on UNDP Mozambique website, http://www.odamoz.org.mz/reports/rpt_desc.asp?pn=492585 accessed 29 February 2008
2. This case is discussed in more detail on Page 13
3. "PGR confirma esquadrão da morte na Polícia", 6 May 2007 Fim de Semana online
4. Article 254 of the Constitution of the Republic of Mozambique
5. Article 40 guarantees the right to life and not to be subjected to torture, while Article 59 guarantees the right to liberty.
6. Regulamento Disciplinar da Polícia Popular de Moçambique, Ordem de Serviço No. 5/GMI/87
7. Decree 28/99 of 24 May 1999, [Estatuto da Polícia Decreto No. 28/99 de 24 de Maio]
8. Article 4 (3) (a) of the Disciplinary Regulation
9. Article 5 of the Disciplinary Regulation
10. Article 7 of the Disciplinary Regulation
11. Article 42 of the Disciplinary Regulation
12. Article 41 of the Disciplinary Regulation
13. Decree 28/99 of 24 May 1999, [Estatuto da Polícia Decreto No. 28/99 de 24 de Maio]
14. Article 73 of the Police Statute
15. Article 3 of the UN Code of Conduct for Law Enforcement Officials
16. General provisions of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
17. "Balanço final dos tumultos dos "chapas": Quatro mortos e 98 feridos" in Zambézia Online, 12 February 2008
18. "One dead, 63 wounded in Mozambique Protests", in AFP online, 5 February 2008
19. "Balanço final dos tumultos dos "chapas": Quatro mortos e 98 feridos" in Zambézia Online, 12 February 2008
20. Article 4(3) of the Disciplinary Regulation
21. Article 69 of the Police Statute
22. The UN Code of Conduct, Article 8
23. Created in terms of Decree 30/2001
24. The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN Economic and Social Council Resolution 1989/61, 24 May 1989, Paragraph 1.B.4.
25. The Judicial Affairs, Human Rights and Legality Commission
26. Principle 34, Body of Principles; and Article 18 and 20, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.
27. See page 12
28. Declaration of Basic Principles of Justice, principle 6 (a).
29. Principle 34, Body of Principles.
30. Agência de Informação de Moçambique, 20.1.06
31. Law of the Justice Ombudsman, Law 7 of 2006
32. Article 256 of the Constitution of Mozambique and Article 2 of Law 7 of 2007
33. Article 259 of the Constitution
34. Article 16(3) of the Law of the Justice Ombudsman
35. Article 3(2) of Law 7 of 2006
36. Monthly reports include, 'Democracia e Direitos Humanos, Revista informativa mensal de especialidade'
37. 'Relatório Annual sobre Direitos Humanos'



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