

Mozambique

Amnesty International submission to the UN Universal Periodic Review

Tenth session of the UPR Working Group, January 2011

B. Normative and institutional framework of the State

The Constitution of the Republic of Mozambique of 1990, as amended in 2005, states that 'the Republic of Mozambique is a State governed by the rule of law, based on [...] the respect for and guarantee of fundamental human rights and freedoms'.¹ It further states that constitutional rules prevail over all other rules of the legal order.² These constitutional rules 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.³

To further protect human rights in the country the post of Justice Ombudsman was established in 2006 in accordance with the Constitution.⁴ However, a Justice Ombudsman has yet to be elected. In addition, in May 2009, Mozambique Parliament approved a bill creating a National Human Rights Commission. However, this too has yet to be established.

According to the Constitution, validly approved and ratified international treaties enter into force in Mozambique once they have been officially published. Mozambique has ratified a number of treaties, but has still not ratified a number of others, including the International Covenant on Economic, Social and Cultural Rights or its Optional Protocol and the Optional Protocol to the UN Convention against Torture. Furthermore, it is yet to enact legislation to domesticate some of the provisions of the international treaties to which it is a party.

C. Promotion and protection of human rights on the ground

Introduction

According to the Constitution the police must ensure respect for democratic rule of law and strict observance of fundamental rights and freedoms.⁵ However, the police in Mozambique have been responsible for a number of human rights violations, including extrajudicial executions, excessive use of force sometimes resulting in death, arbitrary arrests and detentions, as well as torture and other cruel, inhuman and degrading treatment and deaths in custody. In the majority of cases no investigations have been carried out, police officers responsible have not been disciplined in accordance with disciplinary procedures, nor have they been brought to justice. Furthermore victims and/or their families have received no information regarding the progress of investigations into their cases and have been left without remedies or justice.

In addition, the justice system is weak and there is a lack of access to justice for the majority of people in the country. A number of obstacles to accessing justice exist, not just for victims of human rights violations by the police, but for victims of crimes committed by members of the general public as well.

Extrajudicial executions

Between January 2006 and June 2009, Amnesty International documented over 26 incidents in Mozambique of police shooting at people whom they alleged to be criminals. At least 46 people died at the hands of the police during this period. In some of these cases the police's use of force amounted to extrajudicial executions. The Mozambique

¹ Constitution of the Republic of Mozambique, Article 3

² Ibid, Article 2

³ Article 40 guarantees the right to life and not to be subjected to torture, while article 59 guarantees the right not to be arbitrarily deprived of one's liberty

⁴ Ibid, Article 256

⁵ Ibid, Article 254

authorities have failed to ensure thorough, prompt, impartial and adequate investigations into the majority of such deaths. In a number of cases the authorities alleged that those killed by the police were criminals attempting to run away. However, some of these cases have been shown after further investigations to be extrajudicial executions. For example, in the Costa do Sol area of Maputo in March 2007, three police officers shot dead three suspects. Initially the police alleged that the three men had been shot while trying to escape. However, an autopsy carried out after pressure from the public and the media revealed that the three had actually been shot at close range in the back of the neck.⁶

The three police officers were convicted and each sentenced to 21 years imprisonment in July 2008. However, very few police officers have been brought to justice for extrajudicial executions in the country. Out of the 26 cases of death at the hands of the police received by Amnesty International, police officers have only been brought to justice in three cases.⁷

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

Excessive use of force

Police have used excessive force not only to allegedly prevent suspects escaping, but also in public order management.⁸ Some of these incidents resulted in death. The Mozambique Police Statutes state that 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".⁹ However, Amnesty International has received numerous reports of the excessive use of force by police which show that the police did not act in accordance with these principles.

The authorities have generally stated that police officers in such circumstances were acting in self-defence and few investigations have been carried out into the circumstances surrounding the use of force. In a few cases the authorities have stated that a commission of inquiry had been set up to look into the circumstances of a shooting and that the findings would be made public.¹⁰ However, to date none of these commissions have made their findings public. In fact, in almost all the cases of excessive use of force - many of which resulted in death and some of which amounted to extrajudicial executions - reported by the media between 2005 and June 2009, practically no information has been made publicly available concerning the results of the investigations or any criminal proceedings instituted against police officers, either by the police or the Public Prosecution Service. Indeed, very few police officers have been brought to justice for such excessive use of force.¹¹

Torture and other ill-treatment

The Police Disciplinary Regulations set out the duty of the police, which include the duty to abstain from torturing any individual or ill-treating detainees.¹² Torture is also prohibited by the Constitution¹³ and constitutes an

⁶ For further information see "I can't believe in justice any more": *Obstacles to justice for unlawful killings by the police in Mozambique* (AFR 41/004/2009); *Briefing to the Parliament (Assembly) of Mozambique* (AFR 41/002/2009); and *Licence to Kill: Police accountability in Mozambique* (AFR 41/001/2008)

⁷ See "I can't believe in justice any more": *Obstacles to justice for unlawful killings by the police in Mozambique* (AFR 41/004/2009)

⁸ See *Licence to Kill: Police accountability in Mozambique* (AFR 41/001/2008); *Amnesty International Report 2010, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2009); and *Amnesty International Report 2009, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2008)

⁹ Article 73 of the Police Statute

¹⁰ See "I can't believe in justice any more": *Obstacles to justice for unlawful killings by the police in Mozambique* (AFR 41/004/2009)

¹¹ See "I can't believe in justice any more": *Obstacles to justice for unlawful killings by the police in Mozambique* (AFR 41/004/2009)

¹² Article 4(3) (h) and (i) of the Disciplinary Regulations of the Police of Mozambique of 1987

¹³ Article 40 of the Constitution of the Republic of Mozambique

aggravating circumstance for crimes in the Penal Code;¹⁴ however, there have been reports of torture and other ill-treatment particularly in places of detention. Some of these cases of cruel or degrading treatment or punishment in detention centres have resulted in the deaths of detainees.¹⁵ In March 2009, 13 people died of asphyxiation in an overcrowded police cell in Mongicual. Two officers were convicted of manslaughter in relation to this case in August the same year.¹⁶

In addition to torture and other ill-treatment of detainees in police custody, prisoners have also been subjected to torture and other ill-treatment by prison personnel. In April 2010, there were reports of prisoners being subjected to torture and other forms of ill-treatment in the Brigada Operational maximum security prison in Maputo. The Director and other officials of the prison were suspended and a criminal case was reportedly instituted. However, no investigations have as yet been carried out regarding allegations of torture and other ill-treatment; including allegations of torture of prisoners at the Maputo Central prison in May 2006 following an attempted escape by inmates.¹⁷

Arbitrary arrest and detention

The Mozambique Police Disciplinary Regulation states that the police have a duty to abstain from carrying out arbitrary arrests and detentions.¹⁸ Failure to honour this duty constitutes an infringement of the Regulation, for which a disciplinary process should be instituted by superior officers, as well as a human rights violation.¹⁹ However, disciplinary processes appear to be rarely instituted for arbitrary arrests and detentions. Amnesty International has been informed that police officers responsible for arbitrary arrests or other human rights violations are often transferred to other police stations. No police officer is known to have been brought to justice for carrying out an arbitrary arrest or detention and victims practically never receive compensation for such violations.

Obstacles to accessing justice

A number of obstacles exist to accessing justice in Mozambique; not only for victims of human rights violations by the police, but for victims of crimes committed by members of the general public as well. These obstacles include the failure of police to institute investigations or inadequate investigations into complaints, rude and insulting behaviour by police officers, lack of transparency and information given to complainants regarding the progress of investigations, as well as legal and other costs. In addition, the justice system is weak with an insufficient number of qualified judges which contributes to the back-log of cases in the courts. The situation is aggravated with regards to human rights violations which also constitute crimes as the law does not permit victims to institute claims for compensation in civil proceedings independent of the criminal proceedings. Victims in such cases must become party to the criminal proceedings and have a lawyer in order to enable them to pursue their personal interests in the case, including claims for compensation.²⁰

Article 62 of the Constitution provides that the state should guarantee access to courts for all. The article enshrines an accused person's right to legal aid, but does not cover the right of victims to legal aid. The Institute for Legal

¹⁴ Article 331 and 351 of the Penal Code of August 2006

¹⁵ See *Licence to Kill: Police accountability in Mozambique* (AFR 41/001/2008); *Amnesty International Report 2010, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2009); *Amnesty International Report 2009, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2008); *Amnesty International Report 2008, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2007); *Amnesty International Report 2007, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2006); and *Amnesty International Report 2006, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2005)

¹⁶ See *Thirteen die in Mozambican police cell*, 20 March 2009 and *Amnesty International Report 2010, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2009)

¹⁷ See *Licence to Kill: Police accountability in Mozambique* (AFR 41/001/2008) and *Amnesty International Report 2009, State of the World's Human Rights*, Human Rights in the Republic of Mozambique (POL 10/001/2008)

¹⁸ Article 4(3) (g) of the Disciplinary Regulations

¹⁹ Article 9 of the International Covenant on Civil and Political Rights

²⁰ Article 20 of the Criminal Procedure Act and Article 4 of Decree 35007

Representation and Assistance (*Instituto de Patrocínio e Assistência Judicial – IPAJ*), the Mozambique Bar Association (*Ordem dos Advogados de Moçambique – OAM*) and the Human Rights League (*A Liga Moçambicana de Direitos Humanos*) all aim to provide legal assistance, including to victims of human rights violations who require a lawyer to represent them. However, these organizations do not have the capacity and/or will to provide such free assistance for all. Furthermore, in addition to lawyers' fees, individuals have to pay court fees and in some cases transport and accommodation costs in order to travel long distances to consult lawyers and attend court hearings. In some cases, they also have to take time off work, resulting in loss of income.²¹

²¹ For further information see "I can't believe in justice any more": Obstacles to justice for unlawful killings by the police in Mozambique (AFR 41/004/2009)

Appendix 1: Recommendations for action by the State under review

Amnesty International calls on the government of Mozambique to:

Ratification of human rights treaties

- Ratify all outstanding human rights treaties, in particular the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the First Optional Protocol to the International Covenant on Civil and Political Rights, as well as the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ensure that the provisions of all international human rights treaties, once ratified, 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.

Extrajudicial executions

- Ensure that prompt, thorough and impartial investigations are carried out into all cases of suspected extrajudicial executions and other use of force or firearms by police resulting in death or serious injury;
- Ensure that all perpetrators of unlawful killings, including those with command responsibility, are brought to justice in proceedings which meet international standards of fairness, even if there is no pressure from the public or families of the victims to try suspects;
- Extend an invitation to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in accordance with his request of April 2008.

Excessive use force

- Ensure that steps are taken to prevent excessive or arbitrary use of force, including by ensuring that police have access to alternative means to deal with potentially violent situations so that force used is proportional.

Torture and other ill-treatment

- Investigate all reports of torture and other ill-treatment in places of detention, with a view to bringing to justice those officers suspected of responsibility for acts of torture and other ill-treatment, in accordance with international standards for fair trials;
- Ensure reparation, including fair and adequate compensation, for victims of torture and other ill-treatment inflicted by state agents.

Arbitrary arrests and detentions

- Ensure that arrests are carried out in accordance with the law by law enforcement officials and that officers found responsible for arbitrary arrests are brought to justice and not simply transferred to another police station;
- Ensure that detainees are brought before a court to have their detention legalised by a judge within 48 hours, in accordance with law, or released.

Access to justice

- Ensure that victims of human rights violations are not prevented from claiming reparations because they cannot afford to pursue their claim, including by carrying out an evaluation of the existing systems for legal assistance to ascertain what changes can be made to improve services and ensure that free legal assistance is indeed free;

- Ensure that the Justice Ombudsman is elected and the National Human Rights Commission is set up without further delay.

Appendix 2: Amnesty International documents for further reference²²

- Amnesty International Report 2010, State of the World's Human Rights. Human Rights in the Republic of Mozambique (AI Index POL 10/001/2009)
- "I can't believe in justice any more": Obstacles to justice for unlawful killings by the police in Mozambique (AI Index AFR 41/004/2009)
- Briefing to the Parliament (Assembly) of Mozambique (AI Index AFR 41/002/2009)
- Amnesty International Report 2009, State of the World's Human Rights. Human Rights in the Republic of Mozambique (AI Index POL 10/001/2009)
- Press Release: Thirteen die in Mozambican police cell, 20 March 2009 [indicate if it is a press release]
- Licence to Kill: Police accountability in Mozambique (AI Index AFR 41/001/2008)
- Abranches Afonso Penicelo in Worldwide Appeals November 2008, (NWS 22/003/2008), 1 November 2008
- Amnesty International Report 2008, State of the World's Human Rights. Human Rights in the Republic of Mozambique (AI Index POL 10/001/2008)
- Amnesty International Report 2007, State of the World's Human Rights. Human Rights in the Republic of Mozambique (AI Index POL 10/001/2007)
- Amnesty International Report 2006, State of the World's Human Rights. Human Rights in the Republic of Mozambique (AI Index POL 10/001/2006)
- Amnesty International Report 2005, State of the World's Human Rights. Human Rights in the Republic of Mozambique (AI Index POL 10/001/2005)

²² All these materials can be found at <http://www.amnesty.org/en/region/Mozambique>