

SOUTHERN AFRICA: Policing and Human Rights in the Southern African Development Community (SADC)

"SADC and its Member States shall act in accordance with the following principles [of] ...human rights, democracy and the rule of law" -- Article 4, SADC Treaty

Introduction

Crime is now a common concern to the people who live in the countries of southern Africa, where the poorest members of society often suffer disproportionately as victims of crime. But the human rights of people suspected of committing crimes, who should be presumed innocent until tried by courts and found guilty or acquitted, often become a casualty to this understandable concern to combat crime effectively.

Public concern about the perceived rise in crime in most of the 12 member states of the Southern African Development Community (SADC) has prompted many authorities to call for a "shoot to kill" policy by police, a "gloves off" approach to fighting crime, and massive police search operations of cars and homes. Citizens innocent of any wrong-going have had their rights violated in the name of fighting crime. A large part of the public appears to condone the violation of the human rights of anyone who is arrested as a criminal suspect, even though all people -- even those who are ultimately found guilty of a crime -- are entitled to certain fundamental human rights. In some countries, frustration with the inability of the police to deal with crime has led to mob killings.

Amnesty International has documented patterns of human rights violations by police and security forces in almost every country across southern Africa. In Angola, the overriding problem is the sense of impunity, deeply entrenched in the Angolan security forces, that stems from a lack of investigation of human rights violations. In Botswana, the military carry out civilian policing though apparently not trained to do so, resulting in allegations that suspects are tortured during interrogations. Prominent incidents in Lesotho reveal complete failure of the law, regulations or training to constrain the police from violating human rights. Old laws governing how police

operate in Malawi, inconsistent with its constitutional guarantees, allow police to retain broad powers open to abuse. In Mozambique, a human rights non-governmental organization (NGO) successfully intervened with police to insist that a suspect, allegedly tortured by officers, be taken to hospital and that the incident be thoroughly investigated.

In other patterns of human rights abuse, overcrowded jail conditions in Namibia create unhygienic conditions for prisoners, who lack access to toilets, shower or medical treatment, which in some cases amounts to cruel, inhuman or degrading treatment. In South Africa, police have relied for decades on a “confession oriented” approach to investigations and public pressure on police to fight against crime “by all means necessary” encourages them to fall back on old habits, leading to continuing incidents of torture. Rather than create an independent police complaints body, the Zambian authorities have formed a human rights commission whose members are ultimately appointed by government authorities and so cannot be viewed as entirely independent. In Zimbabwe and Swaziland, the police are used in a political manner to suppress peaceful, non-violent public assemblies of students, striking unionists and other protestors.

Amnesty International believes that both individual governments and regional bodies, above all SADC, should take concrete steps to address these concerns about torture; impunity and the lack of investigation into human rights abuse and subsequent prosecution of those responsible; the need for proper laws, regulations and training of police and security forces; the political use of the police; poor conditions of custody; and the lack of oversight and accountability, including barriers to the scrutiny of police and security force activities by civil society.

The framework for addressing these concerns lies in the international human rights treaties and standards that have been established during the past three decades. The requirement for governments to conduct prompt, thorough and impartial investigation into allegations of torture or ill-treatment can be found in United Nations (UN) treaties, standards and declarations, including Articles 8 and 9 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture); Articles 12 and 13 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture); and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). With respect to possible extrajudicial executions, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions set

forth basic standards for effective investigations which are useful models for any investigation.¹

Torture

The problem of crime in southern Africa has led some governmental authorities implicitly to condone torture of criminal suspects, which is reported to be a widespread practice in several southern African countries. Professional police do not need to use such methods to fight crime successfully. In Malawi and several other southern African countries, existing policing procedures and police operating orders do not reflect a prohibition of torture.

In Botswana, Lesotho and Zambia, Amnesty International has noted a pattern of alleged torture. Numerous complaints of torture and arbitrary arrest have been lodged against Mozambique's "Lightning Battalion" police unit whose main task was to stop trafficking in stolen vehicles. Often allegations of torture are investigated internally by police, without the conclusions released to the public, such as in Zimbabwe, where the government Ombudsman is prohibited from examining police or military misconduct.

Impunity and investigations

¹ Other international standards of the United Nations relevant to policing activities include:

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- Standard Minimum Rules for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

When past and present abuses are not investigated promptly and independently, and the perpetrators brought to justice, those committing human rights violations develop a sense of impunity. At times of crisis in Angola, for example, such as the return to war in November 1992 when the government army was depleted and weak, little was done to prevent police killings of hundreds of supporters of the *União Nacional para a Independência Total de Angola* (UNITA). No investigations or prosecutions for those killings have taken place.

Adding to the problem of impunity is the lack of political will by governments to stop human rights violations by empowering independent inquiries. Despite five years' correspondence between human rights activists and the Zambian government, for example, no investigation has yet been undertaken into a fatal shooting by police of an unarmed bystander at a 1992 demonstration. In Zimbabwe, despite numerous out of court civil settlements, police continue to enjoy a sense of impunity in committing human rights violations because many allegations do not lead to prosecutions or convictions.

Prompt and independent investigations are vital in maintaining the accountability of the police and security forces, as required by the United Nations Code of Conduct for Law Enforcement Officers, which states that, "like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole..."

It is also important that the police themselves accept the importance of having complaints against them investigated independently of the police, with the results of such inquiries made public. Despite examples of government-sponsored commissions and inquiries across southern Africa, they often do not publish their subsequent findings or result in prosecutions or other disciplinary measures being taken.

Conditions in custody

Suspects, after being arrested, often face detention in police custody under cruel, inhuman and degrading conditions. In Malawi, for example, overcrowded conditions led to 17 prisoners suffocating to death in a single night in March 1996, when police crammed more than 70 suspects into a holding cell at Lilongwe Police Station. In Namibia, overcrowding has led to unhygienic conditions with lack of toilets and showers.

Leg irons and chains, which are prohibited by Rule 33 of the UN Standard Minimum Rules for the Treatment of Prisoners, have been used on prisoners in Namibia in 1995 who allegedly tried to escape from custody.

Use of force

Across the region, Amnesty International is concerned that police often use excessive and disproportionate force to break up demonstrations or to arrest suspects, which facilitates ill-treatment or leads to the killing of people. In Mozambique, for example, during the May 1996 student strike, police beat students after breaking into the campus when students were peacefully preparing their breakfast. In Zimbabwe, student demonstrations during the past three years have been met with riot police, using batons to club students -- including bystanders -- and shooting teargas canisters into enclosed areas, such as classrooms and dormitories.

This ill-treatment or killing is in disregard of the fundamental principle in Rule 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which prohibits the intentional use of lethal force except when strictly unavoidable to protect life. In Zimbabwe, for example, there has been a persistent pattern of police shootings, in which bystanders have been killed, when police tried to stop unarmed suspects fleeing arrest by opening fire with their weapons.

A similar pattern in Zambia has resulted in more than a dozen fatal police shootings of criminal suspects each year since 1992, when the then-home affairs minister announced a police "shoot to kill" policy to deal with crime. The circumstances of many of these incidents suggest that they are extrajudicial executions by police and security forces. The lack of any effective investigation into many of these shootings, contrary to the UN Basic Principles on the Use of Force and Firearms, reflects an absence of political will to stop such killings from taking place in the future.

In Lesotho, there has been a long history of police reliance upon force, often lethal and without justification, against demonstrators and persons taken into their custody. In December 1994, for instance, heavily armed police surrounded the Maseru house of a criminal suspect, subjected the house to approximately eight hours of gunfire and killed six occupants, including a 16-year-old youth. The suspect who was arrested the following day, died, apparently as a result of torture, within 24 hours. One aspect revealed by such an incident is the lack of training for Lesotho

police officers in how to comply with international standards regarding the use of lethal force and firearms. Another aspect is the lack effective command and control over police deployed in these operations.

Training

Training is vital for police and security forces to understand their obligations in respect to the human rights of individuals in their custody or within communities, and how to respect those rights during arrest, the holding of suspects in custody and when interrogating them. Moreover, not providing such training is a violation of the treaty obligations of those states that have ratified the Convention Against Torture.

Overall, police in southern Africa are not effectively trained to respect human rights of communities. Spain, for example, trained and equipped the Angolan police which subsequently participated in killings in late 1992 and early 1993. The presence of British military and police advisors in Lesotho for many years appears to have had little impact on the capacity of these forces to respect the human rights of the country's citizens.

When police officers do get human rights training, it is often apparently isolated from other aspects of police training and not integrated into their daily operations. The separate training programs for paramilitary police and ordinary recruits in Zambia, for example, do not sufficiently emphasize human rights. More positively, new police officers in Malawi learn about human rights as a subject integrated into recruits' first two years of training, not a separate class. It has not yet been possible, however, to evaluate the effectiveness of this and other training programs for recruits, nor to determine the impact and extent of training of current members of the police force. Malawi's prosecutors and mid-level investigators remain untrained in human rights.

Some SADC governments and the NGOs that work with them have initiated training programs for police. Human rights awareness programs for police officers have been initiated by NGOs in Zimbabwe. An example of a promising initiative in police training lies in South Africa, where a three-year human rights training program is being developed for integration into the formal training of police. However, the program's success will ultimately depend upon the extent to which its message and implications for police procedures and practice can be implemented at all levels within the police service and embraced as an integral part of professional conduct. This will require intensive re-training of current members of the police force.

Unfortunately, foreign governments, the United Nations and other inter-governmental organizations such as the European Union and the Commonwealth, have not critically assessed their assistance to ensure that human rights are an effective part of police training. Such training is expensive, however, and governments must have the political will not only to initiate reform but to finance it as well. In some SADC countries, reform-minded policing authorities do not have the capacity to finance such training. Amnesty International sees a role for outside foreign assistance to encourage the establishment of professional, effective human rights training in southern Africa.

Political use of the police

The need for professionalization can be clearly seen in several southern African countries, where the police and security forces have been used in a political or discriminatory manner by governments to detain, ill-treat or kill members of opposition political parties, human rights activists, members of trade unions or journalists and to suppress their peaceful non-violent public assemblies. Since 1991 peace accords in Angola, politically motivated arrests, ill-treatment or killings by police have declined but still occur. Under Zambia's Public Order Act, police have arrested trade unionists, civic activists and opposition politicians for holding peaceful, non-violent rallies without police permission. In September 1996, Lesotho police shot dead at least five striking workers, firing shots at others who fled the scene. Police then arrested and assaulted the driver of an ambulance that attempted to pick up injured workers. And in Swaziland in October 1996, police detained and tortured high school students protesting the lack of political rights in their country.

In other cases, without clear instructions, police officers take it upon themselves to play a partisan role in society. In Malawi, for example, police detained opposition party members involved in clashes during a 1996 parliamentary by-election, but often failed to arrest ruling party members involved in the same incidents.

Laws, regulations and practice

Amnesty International notes that across southern Africa, the laws, regulations and practices related to policing are often unclear, and are sometimes at odds with country's constitution and human rights guarantees, as well as international standards.

In virtually every country in the region, reform is needed of policing laws, regulations and operating orders. In Malawi, for example, the existing police standing orders reportedly still refers to Nyasaland, indicating they have remained unchanged since independence in 1964.

Oversight bodies, whether government or civilian, could indicate areas where reform is needed in laws, regulations and police standing orders to bring them into conformity with international standards² governing the behaviour of law enforcement officials, as previously mentioned. Amnesty International believes that the international community should provide appropriate support or expertise to encourage such reforms.

Oversight

The lack of effective oversight of the police and the security forces can also contribute to their lack of accountability. When law enforcement officials are not answerable to independent police complaints investigation mechanisms, this also can contribute to a feeling of impunity. In Angola, for example, the national constitution and national laws contain provisions for protecting human rights, but they have not been incorporated into national law or practice, so as to enable people to claim their rights. Where internal disciplinary procedures for dealing with breaches of regulations exist, such as in Mozambique, complaints by members of the public to the police are often ignored. In Swaziland, public complaints arising from police use of excessive or lethal force are almost invariably investigated internally and rarely result in public reports or visible steps against those officers responsible for civilian deaths and injuries.

Independent or official oversight bodies --- such as police review boards or police monitoring programs --- can counteract this impunity if they have adequate resources and operate in conformity with international standards for such institutions, such as the UN Principles relating to the status of national institutions, annexed to the UN Commission on Human Rights Resolution 1992/54, adopted on 3 March 1992.

² Other standards of the United Nations that are relevant to such oversight bodies include:

- Basic Principles on the Independence of the Judiciary
- Guidelines on the Role of Prosecutors
- Basic Principles on the Role of Lawyers

In South Africa, for example, there is a potential for improvements in investigation of police abuses through the Independent Complaints Directorate (ICD), scheduled to begin functioning in April 1997. This statutory body is provided for under South Africa's new Constitution. It is obliged to, for instance, investigate any death in police custody or as a result of police action. Until April 1998, however, the ICD is being funded from within the budget of the South African Police Service. This current arrangement has provided scope for obstruction and delay, as there is hostility amongst the police towards the idea of an independent complaints body. They take the view that the police can "clean up themselves". Amnesty International, however, believes such mechanisms could play a vital role in helping raise public confidence in the police and, in the long run, help to ensure a high standard of effectiveness, professionalism and respect for human rights within the police service.

Where oversight mechanisms have been created in southern Africa, police often do not cooperate with them. These existing mechanisms sometimes lack the independence or the mandate to investigate allegations of police abuse of human rights or compel police cooperation. For example, the Zimbabwean Ombudsman is currently blocked by law from investigating the police or military. In Zambia, the government rejected its own commission's recommendation to create an independent police complaints board, proposing instead to establish a human rights commission whose members would be appointed by government authorities.

The membership of such oversight mechanisms, where they do exist, often does not include or involve members of civil society, including NGOs. Furthermore, NGOs and other independent observers are often prevented from scrutinizing police actions. Amnesty International is convinced that, by removing the barriers to scrutiny by civil society, the climate of trust between police and local communities can be improved, so reducing opportunities for human rights abuse. Through this process of police accountability, the police may in fact be able to deal with crime more effectively. In South Africa, for example, some provincial-level ministers of safety and security have taken steps to fund and support community police forums, as provided for under the Constitution. When they have been established successfully in South Africa, these forums have helped to educate both police and residents about their respective rights and obligations.

Finding solutions

Public faith in police across southern Africa is shaken when law enforcement agencies fail to protect people adequately from crime. Some police forces lack needed equipment, transport and personnel to effectively fight crime. Corruption is reportedly widespread within the ranks of the region's police forces, possibly due to low pay and poor conditions of service. Political changes in a number of countries have sometimes been marked by a decrease in the number of police and security force personnel, creating the conditions for a rise in crime. In both Angola and Mozambique, for example, some demobilized security personnel who failed to find work turned to crime.

Solutions

While Amnesty International has pointed to concerns about the activities of the police and security forces of southern Africa, it also can identify ways in which improvements can be initiated. One of the means to promote professionalism and an associated respect for human rights is through regional cooperation. Amnesty International believes SADC member states should work together to promote police reforms and training in human rights, using the positive experiences that exist in southern African as examples of how police and security forces can effectively fight crime, in accordance with the rule of law, while remaining accountable for their actions.

In Amnesty International's view, the SADC Organ on Politics, Defence and Security could use existing initiatives in reforms in the conduct of policing and training, for example, by holding a symposium for regional police and security forces and NGOs, as a means of promoting region-wide models to promote police and security forces' awareness of human rights, responsiveness to communities' needs, professionalism in conduct and greater accountability.

The Organ, launched at a special June 1996 SADC Heads of State Summit in Botswana, is chaired by Zimbabwe's President Robert Mugabe. It focuses on mediation and peace-keeping to preserve the region's security, but one of its declared objectives is to *"promote and enhance the development of democratic institutions and practices within member states, and to encourage the observance of universal human rights as provided for in the Charters and Conventions of the OAU and the United Nations."*

Thus far, the Organ has not been used to support positive initiatives in protecting and promoting human rights, such as promulgating reforms in the conduct of policing and training as a means of enhancing regional security. Instead, the Organ

has so far been oriented to addressing conflict resolution through high-level preventive diplomacy, such as the heads of state summit meeting convened in Angola under the auspices of the Organ in October 1996.

Amnesty International recommends that the Organ or its constituent institution, the SADC Inter-State Defence and Security Committee, could act as an initial forum for exchanging ideas on effective means to ensure uniform training in the protection of fundamental rights within the sub-region. If peace-keeping activities are foreseen by the Organ, human rights training should be developed for any troops or police participating in such actions.

Other means for reform

The Southern African Regional Police Chiefs Co-operation Organization (SARPCO) is another possible forum for building respect for human rights in police and security forces through training. SARPCO already committed itself in a November 1996 meeting to promoting regional police training among the police forces of southern Africa. Thus far, however, the organization has concentrated on a joint operation to combat cross-border trafficking in stolen cars in Mozambique, South Africa, Zambia and Zimbabwe.

Possible regional initiatives in police and security forces reform could draw upon the experience of the UN Crime Prevention and Criminal Justice Division and the Centre for Human Rights. Both these organizations could play a useful advisory role in organizing symposia, exchanges and developing needed training materials.

Finally, Amnesty International urges southern African governments to take a positive step in promoting police accountability by enacting into domestic law the international principles that govern policing activities. All the member states of SADC have ratified the African Charter on Human and Peoples' Rights and all member states, with the exception of Swaziland, Botswana and South Africa, have ratified the ICCPR, but only Malawi, Mauritius and Namibia have ratified the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).

In summary, Amnesty International is making a series of recommendations elaborated below to the governments of southern Africa, to the SADC community as a body, and to those foreign governments that provide technical and financial assistance to the region's police and security forces which, if implemented, would enhance respect and protection for human rights across the SADC region.

A program for building respect for human rights among police and security forces:

Recommendations to governments

1. Torture should not be tolerated

Notwithstanding the intense pressures on police to deliver results in the fight against crime, the torture and ill-treatment of suspects in criminal investigations should never be tolerated. The highest authorities of every country should demonstrate their total opposition to torture and condemn it whenever cases arise. Authorities should undertake prompt and impartial investigation of alleged acts of torture, taking appropriate criminal and disciplinary measures against any police officers implicated in inflicting, instigating or acquiescing in torture or other cruel, inhuman or degrading treatment. While many national laws or constitutions prohibit torture and forced confessions, the prohibition of torture and ill-treatment should be officially incorporated into policing procedures and police standing orders.

2. Investigate and bring to justice perpetrators of human rights violations

To prevent a climate of impunity among the security forces which could increase the likelihood of further abuses, it is vital that the authorities take effective measures to investigate allegations of human rights violations promptly, impartially and independently, in accordance with strict international standards for such investigations. Independent medical examinations of all cases of bodily injury or suspicious deaths are essential and should be conducted in accordance with international standards. Authorities should investigate both past and present allegations, with officers suspected of perpetrating abuses suspended from active duty during investigations, and those found to be responsible brought to justice. The victims of human rights violations by police should be entitled to obtain fair and adequate redress from the state. Compensation should include appropriate medical care, financial compensation and rehabilitation.

3. Improve conditions in police cells that amount to ill-treatment

Authorities should end cruel, inhuman and degrading conditions in police cells, where reported instances of overcrowding, unhygienic conditions and lack of medical

treatment are in violation of the UN standards. In particular, the use of leg irons should be expressly prohibited by national law.

4. Use of force in public order policing and arrests should conform to international standards

Police and security forces should only use the minimum force necessary in carrying out arrests and maintaining public order to avoid unnecessary injuries or death. They should receive training on the international standards regarding the use of force, including lethal force, and the proper use of firearms.

5. Ensure training in human rights

Authorities should ensure that current police officers, as well as recruits, are properly trained to respect the human rights of the communities they serve so that they carry out their duties effectively and professionally, in accordance with internationally-accepted human rights standards governing the conduct of the police. This training, which should include practice in actual policing situations, should aim to make human rights a part of daily police practice, ingrained in officers' personal ethics and the culture of policing. This training should be fully integrated into training programs that are provided to all ranks, and not treated as an additional class separated from the full curriculum of training. Other sectors of the criminal justice system, including members of the prosecution service, should also receive training in the principles and standards relevant to their work.

6. End the political use of police

Governments should cease to use the police and security forces for political purposes, including the suppression of peaceful, non-violent public assemblies and to persecute opposition parties, non-governmental organizations and minorities, including gays and lesbians. All police officers should receive clear, explicit instructions to respect the human rights of all, irrespective of a person's political beliefs, sexual orientation, religion, ethnic origin, sex, colour or language.

7. Reform laws, regulations and police operating procedures

Where necessary, the laws, regulations and practices regulating police activities should be revised to be compatible with human rights guarantees of international human rights standards and to those national constitutions which make reference to human rights.

8. Ensure oversight and accountability

Governments should set up effective, adequately resourced and independent police complaints investigation mechanisms, which should operate in accordance with international standards, and be capable of detecting and investigating serious allegations of human rights violations, as well as be able to take the initiative in shaping the process of reforming police practices and procedures. Police officials should ensure full co-operation of all police officers with these mechanisms, the membership of which should include members of civil society, including non-governmental human rights organizations.

9. Remove barriers to scrutiny by civil society

Accountability can also be promoted by ensuring that no obstructions exist to independent monitors --- including non-governmental organizations (NGOs) --- scrutinizing conditions in police cells and monitoring police activities. By involving civil society, including religious figures and representatives of non-governmental human rights organizations as lay inspection teams to monitor conditions in prison and police cells, the observance of policing regulations and respect for human rights can be promoted.

Recommendations to SADC:

1. Declare SADC's commitment to human rights

The Heads of State of SADC governments should make a declaration at their annual Summit in August 1997 affirming their commitment to human rights and to taking steps to ensure human rights training for police and security officers, facilitate effective oversight and accountability, remove barriers to scrutiny of police conduct by civil society and ratify international human rights standards.

2. Promote reform through the Organ on Politics, Defence and Security

The Organ or other subsidiary institutions, such as the SADC Inter-State Defence and Security Committee, should contribute to building respect for human rights among police and security forces by supporting positive initiatives in police reforms and training programs that exist in some SADC countries and facilitating the sharing of examples of good policing practice among members states.

3. Ensure that the Organ's peace-keeping activities protect human rights

The Organ should ensure that those same region-wide human rights standards for policing should be observed in the conduct of personnel involved in regional peace-keeping actions.

4. Encourage SADC member states to ratify and uphold key international human rights treaties

Botswana, South Africa and Swaziland should ratify the ICCPR and its two Optional Protocols. Those governments that have ratified the ICCPR should ensure that they uphold their country's obligations under the treaty, including making sure the conduct of police and security forces conform with these standards. Angola, Botswana, Lesotho, Mozambique, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe should ratify the UN Convention against Torture, and make declarations under Articles 21 and 22 that provide for individual and inter-state complaints.

Recommendations to the donor community:

1. Critically assess the human rights aspect of all military and police assistance

The international community, including those donor governments and international bodies involved in providing development assistance to SADC countries, should assess the effectiveness of the human rights component of the present police training programs in recipient countries. Such an assessment would be carried out to ensure that international treaties and standards, such as the UN Code of Conduct for Law

Enforcement Officials and the UN Principles on the Use of Force and Firearms by Law Enforcement Officials, are properly understood and observed by members of the police and security forces.

2. Provide assistance for training, review and reform

The international community should support their southern African partner governments in efforts to incorporate human rights standards into national policing efforts, and should include such training in any police training programs they sponsor. The international community should also support the government's review and, where necessary, the amendment of national laws and police regulations to ensure they are brought into conformity with international human rights standards.