

£ MOZAMBIQUE

@Monitoring human rights - the task of UN police observers

In January 1994 the United Nations (UN), which is monitoring the General Peace Agreement between the Government of the Republic of Mozambique and the *Resistência Nacional Moçambicana* (RENAMO), Mozambique National Resistance, decided to send over 1,000 UN civilian police observers to Mozambique to increase protection for human rights during the run-up to the country's first multi-party elections scheduled for October 1994. The General Peace Agreement, which entered into force in October 1992, called for civil and political rights to be respected but did not set up adequate systems to ensure that any violations would be investigated and their perpetrators brought to justice. Recognizing the need for increased protection, UN Secretary-General Boutros Boutros-Ghali proposed in December 1992 that the *Operação das Nações Unidas em Moçambique* (ONUMOZ), United Nations Operation in Mozambique, should include civilian police who would monitor the neutrality of Mozambican police and "inspire confidence that human rights violations will be avoided"¹. In August 1993 the government and RENAMO agreed to the proposal and the first UN police observers arrived in Mozambique in November 1993. In January 1994 their mandate was expanded to include monitoring "respect of rights and civil liberties of Mozambican citizens throughout the country"², including during the election campaign.

Amnesty International welcomes any measures that will increase human rights monitoring and protection in Mozambique. The aim of this report is to increase awareness in Mozambique and within the international community of the deployment of UN police monitors and the tasks that face them. The report outlines the human rights provisions in the General Peace Agreement and describes some of the human rights violations which have taken place to date. It focuses on the roles of the Mozambican police, whose duty is to protect the civilian population, of the national commissions set up under the agreement to monitor the behaviour of the police, and of the ONUMOZ police component. UN police monitors are required to verify that all police activities in the country are consistent with the General Peace Agreement as well as internationally recognized human rights standards.

¹ Report of the Secretary-General on the United Nations Operation in Mozambique (ONUMOZ) (S/24892) of 3 December 1992.

² Report of the Secretary-General on the United Nations Operation in Mozambique (S/1994/89 Add.1) of 28 January 1994.

Amnesty International hopes that the present report will be of practical use to UN police monitors: attached to it are two check-lists, one summarizing the human rights provisions within the agreement and the other listing international human rights standards governing the behaviour of law enforcement officials. Also attached is Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations.

The General Peace Agreement and its human rights provisions

The General Peace Agreement originally set out a 12-month timetable for the peace process. In this period, following a cease-fire, the government and RENAMO's soldiers were to be confined to assembly areas, disarmed and demobilized; various paramilitary groups were to be disbanded; and 30,000 soldiers, half from each side, were to form a unified army, the *Forças Armadas de Defesa de Moçambique* (FADM), Mozambique Defence Force. Presidential and parliamentary elections were to be held in October 1993. However, owing to long delays in the deployment of UN peace-keeping troops, in the demobilization of Mozambican soldiers and in other steps in the peace process, the elections were postponed for a year and are now scheduled for 27 and 28 October 1994.

So far the cease-fire has been maintained but the situation is unstable. Thousands of returning refugees and demobilized soldiers are entering an economy devastated by over 15 years of civil war; crime and armed banditry are increasing and recently there have been reports of a new armed opposition movement. The government and RENAMO have each alleged that the other has troops in reserve which it could use if it lost the elections. Demobilization should have been completed by April 1993 but did not start until November 1993. It now appears unlikely that the new army will be fully formed before October 1994. The UN Secretary-General, in his report to the Security Council of 3 December 1993, reiterated three times the importance of the full implementation of the military aspects of the agreement as a pre-condition for successful elections³. However, more recently the UN Security Council has reiterated the importance it attaches to elections taking place in October 1994⁴. The comparison with a similar peace agreement in Angola is inevitable. There, the military requirements of the agreement had not been fulfilled prior to elections and, when the results of the elections were disputed, both sides were able to reconstitute their armies.

³ Report of the Secretary-General on the United Nations Operation in Mozambique (ONUMOZ) (S/24892) of 3 December 1992, paragraphs 19, 30, and 49.

⁴ Security Council Resolution 898 of 23 February 1994.

There have been positive aspects to the peace process. President Joaquim Chissano and RENAMO leader Afonso Dhlakama have repeatedly affirmed their commitment to the General Peace Agreement despite the delays and disputes. Of course there is still a gulf of mistrust between the two sides but it is clear that there is a deep desire for peace in Mozambique. This has been shown most clearly by ordinary people and rank and file troops. Immediately after the cease-fire civilians from both RENAMO and government-controlled areas began to return to their homes to rebuild houses and plant crops. Thousands of refugees returned spontaneously from neighbouring countries. In some areas government and RENAMO soldiers and officials met for discussions or simply on a social basis. It is probably the general desire for peace that has done more to uphold the peace agreement and minimize human rights violations than any provisions within the agreement itself.

The General Peace Agreement, which consists of seven separate protocols and four related documents, specifically provides for the protection of basic human rights and fundamental freedoms. These include:

- freedom from acts of violence against the civilian population;
- freedom of expression, including freedom of the press and access to the media;
- freedom of association, including freedom to form or join a political party; and
- freedom of movement and residence.

The General Peace Agreement also states, in Protocol III, that Mozambican law prevails during the period covered by the agreement. Mozambican law includes the Mozambican Constitution which protects fundamental rights and freedoms. The General Peace Agreement itself was adopted as a legal instrument by the Assembly of the Republic (Mozambique's parliament) in October 1992. In addition, Mozambique has become a party to important human rights treaties: it ratified the African Charter on Human and Peoples' Rights in 1990 and both the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1993.

The *Comissão de Supervisão e Controlo* (CSC), Supervisory and Monitoring Commission, is responsible for implementing the General Peace Agreement and is ultimately responsible for ensuring that violations of the General Peace Agreement are investigated and remedied. However, the CSC operates on the basis of consensus which allows either side to obstruct any action which it considers might be detrimental to its interests or reputation, including investigations into human rights violations. In practice, investigations into some reports of human rights violations have been carried out by the *Comissão de Cesar Fogo* (CCF), Cease-Fire Commission, the commission set up to monitor the cease-fire. The UN Secretary-General's Special Representative for Mozambique, Aldo Ajello, has also taken direct action in certain cases.

The peace agreement recognized the need for monitoring the neutrality of the Mozambican police whose duty it is to maintain law and order and protect civilians and property. It called for the establishment of two commissions, the *Comissão Nacional de Informação* (COMINFO), National Information Commission, to monitor the *Serviço de Informação e Segurança do Estado* (SISE), State Information and Security Service, and the *Comissão Nacional de Assuntos Policiais* (COMPOL), National Police Affairs Commission. COMPOL is to "verify that the actions of the *Polícia da República de Moçambique* (PRM), Police of the Republic of Mozambique, do not violate the legal order or result in violation of the political rights of citizens"⁵.

The General Peace Agreement stipulated that both commissions were to be composed of 21 citizens, six nominated by each party and nine by members of other parties and by eminent citizens. All were to have personal qualities which would guarantee balance, effectiveness and independence. The commissions were given the powers respectively to investigate any matters relating to the security or ordinary police. They were to inform the State authorities of any irregularities they detected and to submit reports to the CSC⁶. COMINFO and COMPOL should have been set up in October 1992 but they were not established until November 1993. The members, including political activists, members of various professions and representatives of religious groups, could only devote a limited amount of time to their work in the Commissions. COMPOL did not have the use of a vehicle until May 1994 and it has not yet been able to set up adequate facilities in the provinces.

COMPOL has set up two divisions, one to receive, analyze and investigate complaints about violations of civil rights or other human rights by the police and the other to examine complaints about violations of political rights. If it decides that a violation has taken place, COMPOL can take various types of action: it can request the Supervisory and Control Commission to give specific orders or recommendations, or it can refer the matter to the Ministry of the Interior and request the arrest of anyone suspected of committing a human rights violation. COMPOL has appealed publicly for anyone who knows of violations of these rights to inform the commission. As yet, people are not well aware of COMPOL or how to submit cases. However, COMPOL has received some reports of abuses which it is investigating.

⁵ The General Peace Agreement, Protocol IV, Part V.7.

⁶ The CSC decided in February 1994 that COMPOL and COMINFO should submit monthly written reports to the CSC. If CSC members require clarification on any matter reported, the chairperson of the relevant commission would be summoned to a CSC meetings to discuss the matter concerned.

Reports of human rights violations

There have been numerous violations of the peace agreement, including troop movements which threatened but did not de-rail the peace process. The Cease-Fire Commission investigated these violations and several allegations of human rights violations by both sides including arrests and ill-treatment of suspected opponents and illegal executions. In most cases the alleged perpetrators were soldiers but there were also reports of some violations of the agreement carried out by government police.

There were several reports of government soldiers arresting and sometimes killing RENAMO members, particularly in late 1992 and early 1993 in the context of disputes over control of territory. There were also frequent disturbances by government soldiers protesting about non-payment of salaries and poor conditions: some involved alleged human rights violations. Unofficial sources said that in March 1993, following a violent protest by soldiers of the Presidential Guard, commandos entered the barracks in Magoanine near Maputo shooting randomly, killing some of the guards and arresting others. Some were reportedly ill-treated in custody and at least one was feared to have "disappeared". Government officials subsequently said that there was no evidence to support the claims that anyone had been killed or had "disappeared". In one case, in January 1994, over 1,000 soldiers left their assembly camp near Massinga in Inhambane province and blocked the main road to the north. A civilian who tried to drive through the blockade was beaten to death.

RENAMO detained some 50 people in June and July 1993 and accused them of hunting or cutting wood in RENAMO-controlled areas without obtaining permission. They included about 20 people held in Salamanga, south of the capital, Maputo. They were released in August after the UN Secretary-General's Special Representative for Mozambique, who had been out of the country, returned and demanded their release. In May 1993 the family of Tiago Salgado, a former government soldier who had joined RENAMO in 1991, accused RENAMO members of executing him earlier in 1993. In July RENAMO confirmed the death: it said that Tiago Salgado had been arrested on suspicion of spying for the government and was killed when trying to escape. In September 1993, in the Cavalo area of Sofala province, RENAMO members arrested and ill-treated a judge, Cipriano Mussá Jacob, who had entered the area on official duty. He had been carrying a weapon, which the government later said he normally carried for self-protection. The UN learned of the case in November and the Cease-Fire Commission arranged for the judge to be transferred to a hospital. In December 1993, when Afonso Dhlakama was visiting Nampula, RENAMO officials arrested a plain-clothes policeman who had been carrying a pistol and a radio telephone and accused him of plotting to kill the RENAMO leader. The policeman was beaten at the time of his arrest and, two days later, after the UN secured his release, he was taken to hospital for treatment.

With the exception of the incidents concerning the Presidential Guard in March 1993 and the killing of Tiago Salgado, these incidents were investigated by the Cease-Fire Commission. The Cease-Fire Commission can only act if it receives a complaint from one of the parties within two weeks of an incident. A formal meeting is held within 48 hours in order to try to reach a friendly agreement within 72 hours. A commission made up of representatives of both parties and UN observers investigates the incident and then presents a report and recommendations to the chairman of the Cease-Fire Commission, who is a UN military observer.

Some of the incidents investigated by the Cease-Fire Commission have apparently not been brought to a satisfactory conclusion. A government soldier was detained at a RENAMO base in Milange, Zambézia province, after he shot dead two people on 29 October 1993. The parties agreed that the soldier should be transferred to government custody but before the transfer could take place the soldier was reported to have fled. The case was then dismissed. In another case UN military observers interviewed Sebastião Martins Mulawa at Salamanga, south of Maputo, in November 1993. RENAMO had detained him and accused him of being a government spy. At a Cease-Fire Commission meeting on 29 December 1993, RENAMO agreed to release him and to allow UN personnel to monitor the release. However, before he could be released Sebastião Martins Mulawa was reported to have fled. It is disturbing that no further action appears to have been taken to establish the former detainees' whereabouts or to investigate how those entrusted with their safe-keeping allowed them to go missing. Amnesty International has no evidence to suggest that they did not escape. However, so long as these two former prisoners are listed as missing the question of what actually happened to them must remain open.

Human rights violations by police

Amnesty International has, both in the past and recently, received many reports of human rights violations by Mozambican police personnel. These range from beatings of suspects to extrajudicial executions. In addition there are general reports of a failure to protect civilians and the excessive use of force.

The Mozambican police services include the ordinary police, the *Policia da República de Moçambique* (PRM), Police of the Republic of Mozambique, and the *Policia de Investigação Criminal* (PIC), Criminal Investigation Police. There is also a *Serviço de Informação e Segurança do Estado* (SISE), State Information and Security Service (which does not have powers to arrest or detain suspects). Another force, the *Força de Intervenção Rápida* (FIR), Rapid Intervention Force, was set up to carry out protection or crowd control duties during important public events or in response to crises but in practice FIR members have also intervened in situations requiring normal policing. According to a UN survey the strength of the PRM is about 18,000 while FIR numbers several thousand members,

predominantly former soldiers. There are also government and non-government militia groups which ONUMOZ is disbanding under the terms of the peace agreement.

Mozambican police face a difficult task. The crime rate is already very high: according to a UN report⁷ the number of reported crimes between May and September 1993 included, among other violent crimes, 167 homicides and 726 armed robberies. Armed banditry is rife: over a million unregistered weapons are estimated to be in the hands of civilians. In the last few years the police have faced new problems. They have had to deal with demonstrations and strikes in the wake of the 1990 constitutional amendment which introduced a multi-party political system and increased political rights. Since the cease-fire came into effect in October 1992 they have also had to try to extend policing to areas which were previously zones of conflict and under military authority.

Recognition of these difficulties must not, however, obscure fundamental problems in the organization of the police such as poor selection procedures, training and discipline, which give rise to human rights violations.

Many reports concern ill-treatment by police officers. These suggest that at some police stations suspects are, as a matter of routine, severely kicked, beaten or flogged with a whip known as a *chamboco*. One of the measures which should offer some protection against torture or ill-treatment is the requirement that suspects should be promptly handed over to the criminal investigation branch of the PRM and brought before a judge within 48 hours. The procedures are frequently disregarded. For example, Calisto Person was detained in Sofala province on 25 November 1993 but it was not until 6 December, 12 days later, that he was handed over to the criminal investigation department in Beira, the provincial capital. There he was beaten and tortured and partially lost the use of his right arm. The Cease-Fire Commission investigated this incident. The rapid intervention force (FIR), who are not adequately trained for normal police work, are also reported to carry out assaults. The FIR was reportedly called out on 5 December 1993 after youths fought each other in a Maputo suburb. According to reports, members of the FIR entered the home of Virginia Lopes whose son had been involved in the brawl, beat her and broke her arm. Another example of ill-treatment by the ordinary police occurred in January 1994. José António Magalhães, the owner of pharmacy in Nacala, Nampula province, was reportedly arrested after a quarrel with an off-duty policeman, taken to a police station and repeatedly beaten.

There have also been reports of extrajudicial executions. Ossufo Buanamassare was reportedly beaten to death by three police in Ilha de Moçambique, Nampula province, on 26 June 1993. Apparently he was arrested for not having an identity card. RENAMO claimed that he was targeted because he was a RENAMO member. The Cease-Fire

⁷ Report of the Secretary-General on the United Nations Operation in Mozambique (S/1994/89) of 28 January 1994.

Commission investigated the incident and it was reported that the case would be archived until such time as COMPOL was established when it would be submitted to that commission. In May 1994, almost a year later, COMPOL informed Amnesty International that it had not yet received the dossier.

In some cases police who have committed human rights violations have been brought to justice: in April 1993 a Maputo policeman was sentenced to 16 years' imprisonment for killing 17-year-old Fausto Macdonaldo and wounding his brother, 15-year-old Faizal Macdonaldo. The boys had failed to produce valid identity documents and the policeman made them stand in the street for two hours. When they decided to walk away the policeman fired at them.

There have reports of excessive use of force and fire-arms. In Maputo in November 1993 police reportedly assaulted demonstrators protesting - violently in some cases - against an increase in taxi fares. Police then threatened to beat journalists who were investigating reports of the assaults. On 13 December 1993 there was a demonstration in Ressano Garcia, near the border with South Africa, demanding an explanation of the death of a youth shot by police at a music festival. Police fired to disperse demonstrators, wounding some.

Corruption in the police is said to extend through all levels and there have been reports of corrupt police using violence to prevent disclosure. Police are also reported to extort money by stopping people in the streets and asking to see their identity and other documents: victims have complained that they are unable to report the incidents as police do not wear identification numbers. However, in May 1994 the Minister of Interior informed COMPOL that the police were to be given identification numbers as soon as possible.

The deployment, mandate and powers of UN civilian police observers

The first UN police observers (CIVPOLs) arrived in November 1993, nearly a year after the UN Secretary-General first proposed their deployment. The government had been reluctant to agree to the proposal as it considered that COMPOL and COMINFO were a sufficient guarantee of police neutrality. It was not until early September 1993, after President Chissano and Afonso Dhlakama held a series of meetings, that both parties agreed formally to the initial proposal⁸ to send a contingent of 128 CIVPOLs to Mozambique. In February 1994 the UN Security Council agreed to increase the ONUMOZ police contingent to 1,144⁹.

⁸ Their agreement was set out in a document dated 3 September which was circulated as a UN document (S/26432 of 13 September 1993).

⁹ UN Security Council Resolution 898 of 23 February 1994.

By February 1994 there were 160 CIVPOLs in Mozambique. They came from Bangladesh, Brazil, Egypt, Guinea-Bissau, Hungary, Malaysia, Portugal, Spain and Sweden. By mid-May, there were 440, including CIVPOLs from Australia, Botswana, Finland, Ireland, Jordan, Norway, Sri Lanka and Uruguay. Up to 70 per cent of CIVPOLs are to be deployed during the voter registration process from April to June 1994. The remainder are to be in place before the beginning of August, ready for the election campaign which is due to start on 1 September.

The ONUMOZ police contingent is expected to play an important role in ensuring protection for human rights in the period leading to elections. Their mandate includes monitoring all police activity in the country, monitoring respect for citizens' rights and freedoms, and providing technical support to COMPOL. The government and RENAMO have also agreed that the UN police should monitor the security of the RENAMO leadership - the bodyguards of leading RENAMO officials were given police status under the General Peace Agreement. The UN police are also to verify that the operations of private protection and security companies comply with the peace agreement. During the pre-election period UN police are to monitor voter registration, attend political meetings and rallies and verify that the political rights of individuals, groups and political organizations are respected. The government undertook to supply all relevant information about the police including details of police weapons and where these were located. The government also undertook to request support from the international community for reorganizing, retraining and re-equipping the FIR in accordance with internationally acceptable standards while the UN police observers are to oversee the reorganization.

In addition to all these tasks CIVPOLs are expected to encourage the Mozambican police to improve the way they protect citizens and property. They are also required, where necessary, to familiarize Mozambican police with the international concepts of rights, civil liberties and fundamental freedoms¹⁰. However, it cannot be taken for granted that UN police monitors will have the capacity to carry out their tasks thoroughly and in accordance with international standards governing police behaviour: the standards of human rights training for police differ widely from country to country. CIVPOLs are selected by their national police authorities from among officers with eight years' satisfactory police service. They are also required to hold a driving licence and to speak English, the language of communication of the ONUMOZ CIVPOLs. CIVPOLs have been receiving a short briefing on human rights during a five-day induction course on arrival in Mozambique. However, in late June and early July 1994 the UN Centre for Human Rights will be conducting the first ever on-site CIVPOL training course which specifically deals with human

¹⁰ The Secretary General's report to the Security Council on the UN Operation in Mozambique (ONUMOZ) (S/1994/89 of 28 January 1994).

rights. They will train some 40 trainers who will then run human rights courses for their colleagues at provincial level.

ONUMOZ CIVPOLs have the duty to investigate any incidents which come to their attention through their contacts with the Mozambican police, or through press reports or from any other source of information. In particular, individuals and organizations may submit complaints to them. They have the power to monitor the way the Mozambican police carry out investigations and they can conduct their own independent investigations. They have the right to enter, without restriction, any police station or other police installations, including detention centres, and to question the police, interview detainees and check for signs of ill-treatment. They also accompany Mozambican police on patrols, though they use their own vehicles to maintain their independence. By mid January 1994, UN police observers had visited about 12 police stations in Maputo alone. They reported that they had been given free access to the police facilities but that Mozambican police had been reluctant to answer their questions. However, the Mozambican Chief of Police Chief issued instructions that Mozambican police should respond fully to UN police observers' inquiries.

The ONUMOZ CIVPOLs are under the command of a Chief Police Observer of the rank of Brigadier General, who reports directly to the UN Secretary-General's Special Representative for Mozambique. There are three Regional Chief Police Observers, who coordinate activities in the 11 provinces within the three regions - northern, central and southern. UN police observers are to be deployed in towns and villages throughout the country, covering about 200 Mozambican police stations or posts.

COMPOL is also expected to establish offices in each province. CIVPOLs are required to liaise with COMPOL and its provincial committees to provide technical support. The UN police observers are also required to pass their reports to COMPOL which is to decide if a human rights violation has taken place.

What can be done to promote human rights during the election period?

ONUMOZ civilian police observers have a vital human rights monitoring role. The way they carry out their duties could make a major contribution to the protection of human rights during the election period and to the success of the peace process as a whole. However CIVPOLs cannot, on their own, ensure that the election period will be free from human rights violations. The following all have a part to play:-

COMPOL's role is an important one for the protection of human rights both during the present period and in the future: if it is given the necessary support and if it

fulfils its mandate it could set a good precedent for some form of ombudsman's office¹¹ or civilian police complaints commission in Mozambique.

Non-governmental organizations (including churches, human rights and development organizations, drama groups who are presenting shows to increase civic awareness, and political parties) and concerned citizens in Mozambique can contribute to the work of COMPOL and the UN police observers by submitting cases of human rights violations and pressing for thorough investigations and remedial action.

The media, too, can assist by informing people of their rights and how to complain if their rights are violated. They can explain the work of COMPOL and the UN civilian police component and they can report on cases of human rights violations, the promptness of investigations and what remedial or preventive action the authorities take.

Aid agencies and governments are assisting with the resettlement of displaced persons and providing assistance to former soldiers so that they can return to civilian life. They are also funding activities to promote awareness of civil and political rights. This is an area which requires much more work, particularly during the next few months.

Amnesty International is providing documents to the ONUMOZ police component which it believes may help them in their work. In addition to the present document it is sending them packs of international human rights standards relevant to their work. It is offering each UN police observer a pocket card containing 10 main rules (see box) which were distilled from these standards. The rules will be written in English on one side of the card and Portuguese on the other. This is so that UN police observers who do not speak Portuguese will have at least this minimum way of communicating with their Mozambican colleagues. The cards will be accompanied by a small booklet explaining the rules in a little more detail.

¹¹ An ombudsman, or ombudsman's office, is an independent official or body with power to investigate, on behalf of the public, abuses by government authorities and to make recommendations for remedying the abuses.

BASIC RULES OF LAW ENFORCEMENT

prepared by AMNESTY INTERNATIONAL
for Mozambique law enforcement officials
and ONUMOZ civilian police monitors
June 1994

1. Protect all persons against criminal acts, and especially against violence or threats. Be especially vigilant with vulnerable groups such as children, women, or the elderly.
2. Treat all victims of crime with compassion and respect. In particular protect their safety and privacy.
3. Do not use force or firearms except when strictly necessary and to the minimum extent required under the circumstances.
4. Do not use force or firearms when dispersing unlawful but non-violent assemblies. When dispersing violent assemblies use minimum force.
5. Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others.
6. Arrest no person unless there are legal grounds to arrest that person.
7. Ensure all detainees have access promptly after arrest to their family, legal representative and to any necessary medical assistance.
8. All detainees must be treated humanely. Protect all detainees against torture and ill-treatment including whipping and beating.
9. Protect all persons against unlawful, arbitrary or summary execution.
10. Report all breaches of these basic rules to your senior officer or to ONUMOZ civilian police monitors. Ensure steps are taken to investigate these breaches.

CHECK-LIST I

Human rights provisions in the General Peace Agreement and in Mozambican law

This check-list is designed to help those who are reporting on human rights abuses. It will enable them to state exactly what provision of the General Peace Agreement or what article of the Mozambican Constitution or of the human rights treaties to which Mozambique is a party have been violated.

The check-list is divided into five parts dealing with the following rights:

- The right to be equal before the law;
- The right to freedom of expression and freedom of the media;
- The rights to freedom of association and assembly and to engage in political activity;
- The right to freedom of movement and residence;
- The right to life and the rights not to be arbitrarily detained and not to be tortured or subjected to ill-treatment.

The General Peace Agreement, which consists of seven separate protocols and four annexes, contains various provisions concerning human rights. The human rights protected by the agreement are summarized below, together with a reference to the protocols in which they appear. The General Peace Agreement should be consulted for full details.

Reference is also made to the Mozambican Constitution. Protocol III states that Mozambican law prevails during the period covered by the agreement. Mozambican law includes the Mozambican Constitution which protects fundamental rights. It also includes the General Peace Agreement which was adopted as a legal instrument by the Assembly of the Republic in October 1992. The Government and RENAMO have specifically undertaken to guarantee that the laws and legislative provisions of the Republic of Mozambique, as well as the civil and political rights of citizens and human rights and fundamental freedoms, shall be respected and guaranteed in all parts of the national territory. (Protocol V, iii, 9c).

Reference is made too to the human rights treaties to which Mozambique is a party. These include the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The right to be equal before the law

The General Peace Agreement does not specifically mention equality before the law. However throughout the protocols there are references to democratic principles which include the principle of equality before the law.

The Mozambican Constitution (Articles 66-68), and the international human rights treaties to which Mozambique is a party (International Covenant on Civil and Political Rights, Art. 26), provide for equality before the law regardless of factors such as colour, race, sex, ethnic origin, place of birth, and religion. Article 67 of the Constitution specifically states that "Men and women shall be equal before the law in all spheres of political, economic, social and cultural life."

The right to freedom of expression and freedom of the media

The General Peace Agreement states:

- All citizens shall have the right to freedom of expression, association, assembly, demonstration and political communication ... These rights shall not extend to the activities of unlawful private paramilitary groups or groups which promote violence in any form or terrorism, racism or separatism. (Protocol III, ii, a)
- Specific guarantees shall be provided (to political parties) with respect to access to the mass media, sources of public funding and public facilities ... (Protocol II, 3, c)
- All citizens shall enjoy the right of freedom of the press and freedom of information ... (Protocol III, i, a)
- Freedom of the press shall also include freedom of expression and creation for journalists and the protection of their independence and professional secrecy (Protocol III, i, c)

The Mozambican Constitution, Article 74, states that:

- (All) have the right to freedom of expression and to freedom of the press as well as the right to information;
- the exercise of freedom of expression ... shall not be limited by censorship;
- freedom of the press shall include .. access to sources of information, protection of professional independence and confidentiality..

The African Charter on Human and Peoples' Rights states that

- Every individual shall have the right to receive information (and) the right to express and disseminate his opinions within the law (Article 9).

The International Covenant on Civil and Political Rights states:

- everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds ... (Article 19);
- any propaganda for war shall be prohibited by law (Article 20);
- any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law (Article 20).

The rights to freedoms of association and assembly and to engage in political activity

The General Peace Agreement

- Joining a political party must be a voluntary act reflecting the freedom of citizens to associate with others who share the same political outlook (Protocol II, 2, g).
- Every party shall have the right freely and publicly to propound its policies (Protocol II, 3, b).
- No citizen shall be persecuted or discriminated against because of membership in a political party or political opinion (Protocol II, 3, e).
- Freedom of association, expression and political communication shall encompass access, without discrimination, to the use of public places and facilities. Such use shall be conditional on submission of an application to the competent administrative authorities who must give a decision within 48 hours after the submission of the application. Applications may be rejected only for reasons of public order or for organizational considerations (Protocol III, ii, b).
- Mozambican citizens 18 years of age and over shall have the right to vote, with the exception of individuals suffering from certified mental incapacity or insanity (Protocol III, v, 3, a).
- With the aim of promoting the broadest possible participation in the elections, the parties agree to encourage all Mozambican citizens 18 years of age and over to register and to exercise their right to vote (Protocol III, v, 2, d).

The Mozambican Constitution:

Part I Chapter 3 *Participation in the Political Life of the State:*

- provides for universal, direct and secret suffrage and for the formation of political parties (Articles 30 and 31);
- places on political parties the duty to contribute, through the political and civic education of citizens, towards the peace and stability of the country and prohibits them from advocating or resorting to violence (Articles 32 and 33);

Part II Chapter 2 *Rights, Duties and Freedoms* states:

- All citizens shall enjoy freedom of assembly within the terms of the law (Article 75).

- All citizens shall enjoy freedom of association (Article 76).
- All citizens shall have the freedom to form or participate in political parties. ... Party membership shall be voluntary and shall derive from the freedom of citizens to associate on the basis of the same political ideals (Article 77).

The African Charter on Human and Peoples' Rights states:

- Every individual shall have the right to free association provided that he abides by the law ... (Article 10).
- Every individual shall have the right to assemble freely with others (Article 11).
- Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law (Article 13).

The International Covenant on Civil and Political Rights:

- Every citizen shall have the right and the opportunity ... and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) to have access, on general terms of equality, to public service in his country (Article 25).
- Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests (Article 22).
- The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others (Article 21).

The right to freedom of movement and residence

The General Peace Agreement:

- All citizens shall have the right to move about throughout the country without having to obtain administrative authorization. All citizens shall have the right to reside anywhere in the national territory and to leave or return to the country (Protocol III, iii).
- In performing their functions, the Cease-Fire Commission and the United Nations shall enjoy complete freedom of movement throughout the territory of Mozambique (Protocol VI, 5, b).

- (The government and RENAMO undertook) not to restrict or prevent without justification the free movement of persons and property (Protocol VI, 5, b).

The Mozambican Constitution:

- All citizens shall have the right to take up residence in any part of the national territory (and shall be) free to travel inside the national territory and abroad, except those legally deprived of these rights by the courts (Article 83).

The African Charter on Human and Peoples' Rights:

- Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law;
- every individual shall have the right to leave any country including his own and to return to his country ... ;
- every individual shall have the right, when persecuted, to seek and obtain asylum in other countries ... (Article 12).

The International Covenant on Civil and Political Rights:

- Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence (and) everyone shall be free to leave any country, including his own (Article 12).

The right to life and the rights not to be arbitrarily detained and not to be tortured or subjected to ill-treatment

The General Peace Agreement:

The government and RENAMO undertook, after the cease-fire, not to carry out acts of violence against the civilian population (Protocol VI, 5, b).

- The police and security service are bound by the duty to respect the civil and political rights of citizens as well as internationally recognized human rights and fundamental freedoms (Protocol IV, v, 2, b).

The Mozambican Constitution states:

- (1) All citizens shall have the right to life. All shall have the right to physical integrity, and may not be subjected to torture or to cruel or inhuman treatment. (2) In the Republic of Mozambique there shall be no death penalty (Article 70).

The African Charter on Human and Peoples' Rights

- Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right (Article 4).
- ... All forms of exploitation including ..., torture, cruel inhuman or degrading punishment and treatment shall be prohibited (Article 5).
- ... no one may be arbitrarily arrested or detained (Article 6).

The International Covenant on Civil and Political Rights states:

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.... (Article 7).

These rights, and the duties of states and law enforcement personnel in upholding these rights are the subject of a whole treaty, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Mozambique ratified in 1992.

CHECK-LIST II - Human rights standards applicable to law enforcement officials¹²

This check-list is provided for all concerned with ensuring that the police conform to international human rights standards governing the behaviour of law enforcement officials and also that they abide by the relevant provisions of the Mozambican Constitution and the General Peace Agreement.

I. Provisions of the General Peace Agreement which apply to law enforcement officials

The following principles apply to the *Serviço de Informações e Segurança do Estado* (SISE), State Information and Security Service, as well as to the police: both services shall:

- respect the civil and political rights of citizens as well as the internationally recognized human rights and fundamental freedoms (Protocol IV, v, 2, b); and
- act at all times and in all respects in conformity with the terms and spirit of the General Peace Agreement (Protocol IV, v, 2, d).

In addition the police must:

- act at all times with impartiality and independence vis-à-vis all political parties (Protocol IV, v, 2, e).

2. The Mozambican Constitution provides the following guarantees against illegal acts of public officials (including law enforcement officials).

All citizens whose rights have been violated have the rights:

- to present petitions, complaints and claims before the relevant authority to obtain the restoration of rights that have been violated (Article 80.1);
- not to comply with orders that are illegal or which infringe upon their rights (Article 80.2);
- to contest acts that violate their rights, including the right of recourse to the courts (Articles 81 and 82).

Article 97 states:

¹² These principles also apply to RENAMO officials responsible for the immediate personal security of its top leaders who, under the General Peace Agreement, "shall be granted police status".

- the State shall be liable for damages caused by illegal acts of its agents, committed in the exercise of their functions, without prejudice to the right of appeal in accordance with the law.

3. International standards governing the behaviour of law enforcement officials

The standards which the international community generally expects of law enforcement officials are laid down in several human rights instruments of the United Nations, such as the **International Covenant on Civil and Political Rights**. The **Mozambican Constitution** of 1990 reflects these standards.

Direct sources for basic rules governing the behaviour of law enforcement officials include the following United Nations human rights instruments:

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

Amnesty International's 15-Point Program

1. **The political role of the international community.**
2. **No international "silent witnesses".**
3. **Human rights chapters in peace agreements.**
4. **Effective and independent human rights verification.**
5. **Ensuring peace with justice.**
6. **On-site human rights monitoring.**
7. **Frequent and public reporting.**
8. **International civilian police monitors.**
9. **Long-term measures for human rights protection.**
10. **Human rights education and advisory programs.**
11. **The protection of refugees, internally displaced persons and returnees.**
12. **The gender dimension.**
13. **Adherence of international peace-keeping forces to human rights and humanitarian law standards.**
14. **Prosecution of war crimes and attacks on international peace-keeping personnel.**
15. **Continued promotion and protection of human rights in the post-settlement phase.**

Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations

1. The political role of the international community. The UN and its Member States should give early, consistent and vigorous attention to human rights concerns when designing and implementing peace settlements and should plan for a continued human rights program in the post-peace-keeping phase. The international community must be prepared to publicly condemn human rights violations during and after the settlement process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights protection measures should be kept under review, strengthened as necessary and properly evaluated at the end of the operation.

2. No international "silent witnesses". All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported.

3. Human rights chapters in peace agreements. Peace agreements should include a detailed and comprehensive list of international human rights laws and standards to be guaranteed in the transitional and post-settlement phase, as well as providing for specific and effective oversight mechanisms. Peace settlements should require eventual ratification of any human rights treaties and adherence to any international systems of human rights protection to which the state concerned is not yet a party.

4. Effective and independent human rights verification. A specialized international civilian human rights monitoring component should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution-building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards. Human rights components should be explicitly and structurally independent from the political considerations of the operation and on-going negotiations relating to the settlement and their decision-making mechanisms must not be constructed so as to permit parties to the conflict to

obstruct investigations. Effective human rights mechanisms, such as advisers or independent jurists, should also be established in less comprehensive peace settlements and should have an oversight role in matters such as the release of prisoners and the guarantee of rights to freedom of speech and assembly.

5. Ensuring peace with justice. Peace settlements should provide for impartial investigation of past abuses, processes aimed at establishing the truth and measures to ensure that any perpetrators of human rights violations are brought to justice. Individual responsibility for human rights violations, past and present, must be made explicit and sweeping pre-conviction amnesties should not be part of peace settlements.

6. On-site human rights monitoring. Human rights monitors should be mandated out to carry out investigations and verify compliance with human rights obligations and to take corrective action in respect of violations. They should have broad access to all sectors of society and relevant institutions and the full protection of those who are in contact with them must be assured. Peace-building measures, such as institutional and legislative reform and education and training, must complement but never replace the verification role.

7. Frequent and public reporting. To guarantee the effectiveness, security and credibility of international human rights personnel there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.

8. International civilian police monitors. Civilian police monitors should monitor, supervise and train national police and security forces and verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

9. Long-term measures for human rights protection. Human rights components in peace-keeping operations should assist in the establishment of permanent, independent and effective national institutions for the long-term protection of human rights and the reinstatement of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such

mechanisms must be impartial, independent, and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judicial system. While national institutions are being constituted, consideration should be given to establishing an interim relationship with relevant international tribunals.

10. Human rights education and advisory assistance programs.

Public education and training on human rights standards and complaints procedures should be provided to all sectors, particularly the judiciary, lawyers and law enforcement officials. Other technical assistance programs should be provided, including drafting legislation in conformity with international standards and support for national human rights NGOs. Such programs should not be a substitute for human rights verification by a specialized monitoring component.

11. The protection of refugees, internally displaced persons and returnees.

Refugee repatriation programs should include an effective monitoring and protection aspect for as long as necessary. International refugee law and protection standards must be adhered to at all times, including the principles of *non-refoulement*, the right to seek asylum and repatriation only on a voluntary basis with international supervision.

12. The gender dimension. Measures should be taken to guarantee consideration and respect for the particular needs of women in armed conflict situations. Peace-keeping personnel should receive information on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human rights components should include experts in the area of violence against women, including rape and sexual abuse.

13. Adherence of international peace-keeping forces to human rights and humanitarian law standards.

The UN should declare its formal adherence to international humanitarian law and human rights and criminal justice standards, including in relation to the detention of prisoners and the use of force. The UN should ensure all troops participating in international peace-keeping operations are fully trained in those standards and

understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peace-keeping personnel and to ensure that personnel responsible for serious violations are brought to justice in accordance with international standards.

14. Prosecution of war crimes and attacks on international peace-keeping personnel. The investigation and prosecution of violations of humanitarian and human rights law or attacks against international peace-keeping personnel should be undertaken by appropriate national authorities or under international jurisdiction. Any international mechanisms must conform to international fair trial standards and the creation of a permanent institution for the prosecution of international crimes should be encouraged.

15. Continued promotion and protection of human rights in the post-settlement phase. Effective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively. The UN's human rights bodies should develop a more effective and comprehensive role in the post-settlement phase.