

@BASIC RULES OF LAW ENFORCEMENT

prepared by AMNESTY INTERNATIONAL
for Mozambican police
and ONUMOZ civilian police monitors

June 1994

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Fully respect the following basic rules under all circumstances:

1. Protect all persons against criminal acts, and especially against violence or threat.
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 and 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.

COMMENTARY ON
BASIC RULES OF LAW ENFORCEMENT

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General introduction

This booklet is designed to accompany pocket-sized cards prepared by Amnesty International which contain 10 basic rules of law enforcement for Mozambican police and ONUMOZ civilian police monitors. These rules are based on international human rights standards. The rules and this Commentary are intended as a handy reference and not as a full explanation of all the rules of law enforcement.

Amnesty International is a worldwide organization that works to prevent some of the gravest violations of the human rights set out in the **Universal Declaration of Human Rights** (UDHR), adopted by the United Nations in 1948.

The main focus of Amnesty International's campaigning is:

- To seek the unconditional release of all prisoners of conscience
- To ensure fair and prompt trials for all political prisoners
- To abolish the death penalty, torture and other cruel, inhuman and degrading treatment or punishment of all prisoners
- to end extrajudicial executions and 'disappearances'.

Amnesty International is independent and impartial. It has consultative status with the United Nations and is an observer with the African Commission on Human and Peoples' Rights.

The Basic Rules of Law Enforcement aim to contribute to the protection and promotion of human rights by Mozambican police and the monitoring of this protection and promotion by ONUMOZ civilian police monitors. The Basic Rules are standards for action and monitoring.

The Basic Rules focus on the following fundamental human rights:

- The right to life, liberty and security of person (article 3 UDHR)
- The right to be free from torture and ill-treatment (article 5 UDHR)
- The right to be free from arbitrary arrest and detention (article 9 UDHR).

The Basic Rules of Law Enforcement are derived from generally accepted standards laid down in several human rights instruments of the United Nations, such as the **International Covenant on Civil and Political Rights**, to which Mozambique is a party, and in the **Mozambican Constitution** of 1990. **These standards supercede any contrary laws, regulations or instructions.**

Direct sources for these Basic Rules are 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 on the Use of Force and Firearms by Law Enforcement Officials
- Standard Minimum Rules for the Treatment of Prisoners (hereafter referred to as Standard Minimum Rules)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter referred to as Body of Principles)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

The Basic Rules for Law Enforcement should be fully respected under all circumstances. Exceptional circumstances such as political instability or any other public emergency do not justify any departure from the Basic Rules.

Basic Rule 1:

**Protect all persons against criminal acts,
and especially against violence or threat.
Be especially vigilant with vulnerable groups
such as children, women, or the elderly.**

For the implementation of Basic Rule 1 it is of great importance that police officers at all times fulfil the duty imposed on them by law, by serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. They must promote and protect human dignity and maintain and uphold the human rights of all persons, among which are the following:

- Everyone has the right to liberty and security of the person
- Everyone has the right to freedom of movement
- Everyone has the right to peaceful assembly
- Everyone has the right to freedom of expression
- All persons deprived of their liberty shall be treated humanely.

Special attention should be given to the protection of human rights of members of vulnerable groups, such as children, women and the elderly.

Basic Rule 2:

**Treat all victims of crime with compassion and respect.
In particular protect their safety and privacy.**

Victims are people who have suffered harm, including mental and physical injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal law.

For the implementation of Basic Rule 2, police officers must

- Ensure that, if needed, measures are taken to ensure the protection and safety of victims from intimidation and retaliation
- Inform victims without delay of the availability of health and social services and other relevant assistance
- Give attention to victims who have special needs because of the nature of the harm inflicted on them or because of factors such as gender, age, disability, ethnic or social origin, or cultural beliefs or practices.

Basic Rule 3:

**Do not use force or firearms
except when strictly necessary
and to the minimum extent required under the circumstances.**

The implementation of Basic Rule 3 involves, among other things:

- Police officers, in carrying out their duty, must apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Basic Rule 3 must be implemented in accordance with Basic Rules 4 and 5

- Whenever the lawful use of force and firearms is unavoidable, police officers must:
 - Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved
 - Minimize damage and injury, and respect and preserve human life
- Ensure that all possible assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment
- Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment

- Where injury or death is caused by the use of force and firearms by police officers, they shall report the incident promptly to their superiors, who should ensure that proper investigations of all such incidents are carried out.

Basic Rule 4:

**Do not use force or firearms when dispersing unlawful but non-violent assemblies.
When dispersing violent assemblies use minimum force.**

Everyone is allowed to participate in peaceful assemblies, whether political or non-political subject only to certain restrictions imposed in conformity with the law and which are necessary in a democratic society. The police must not interfere with lawful and peaceful assemblies, otherwise than for the protection of persons participating in such an assembly or others.

The implementation of Basic Rule 4 involves, among other things:

- In the dispersal of assemblies that are unlawful but non-violent, police officers must avoid the use of force. If coercion is indispensable, they must restrict such coercion to the minimum extent necessary and in compliance with the other provisions in Basic Rule 3
- Firearms shall not be used in the dispersal of non-violent assemblies. The use of firearms is strictly limited to the objectives mentioned in Basic Rule 5
- In the dispersal of violent assemblies police officers may use force only if other means remain ineffective or without any promise of achieving the intended result. When using force police officers must comply with the provisions in Basic Rule 3
- In the dispersal of violent assemblies police officers may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary to achieve one of the objectives mentioned in Basic Rule 5 and in accordance with the provisions in Basic Rule 3 and Basic Rule 5.

Basic Rule 5:

**Lethal force should not be used
except when strictly unavoidable
in order to protect your life or the lives of others.**

The use of firearms must be strictly regulated because of the risk of death or serious injury involved. The implementation of Basic Rule 5 involves, among other things:

- Police officers must not use firearms except for the following objectives and only when less extreme means are insufficient to achieve these objectives:
- In self-defence or in defence of others against the imminent threat of death or serious injury
- To prevent the perpetration of a particularly serious crime involving grave threat to life
- To arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape

- In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life

- Police officers must identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the officers at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident

- Rules and regulations on the use of firearms by police officers must include guidelines that:
- Specify the circumstances under which police officers are authorized to carry firearms and prescribe the types of firearms and ammunition permitted
 - Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm
- Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk
 - Regulate the control, storage and issuing of firearms, including procedures for ensuring that police officers are accountable for the firearms and ammunition issued to them
 - Provide for warnings to be given, if appropriate, when firearms are to be discharged
 - Provide for a system of reporting and investigation whenever police officers use firearms in the performance of their duty.

Basic Rule 6:

Arrest no person unless there are legal grounds to arrest that person.

To make sure that an arrest is lawful it is important that the reasons for the arrest and the powers and identity of arresting officers are known. Therefore the implementation of Basic Rule 6 involves, among other things:

- Arrest or detention shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose
- The authorities which arrest a person shall exercise only the powers granted to them under the law
- Anyone arrested must be informed at the time of arrest of the reasons for the arrest
- The time of the arrest, the reasons for the arrest and the identity of the law enforcement officials concerned must be recorded, and the records must be communicated to the detained person or to his or her lawyer
- Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event
- Police officers and other officials who make arrests should wear name tags or numbers so that they can be clearly identified. Other identifying markings such as the insignia of soldiers' battalions or detachments are also to be recommended
- Police and military vehicles should be clearly identified as such. They should carry number plates at all times.

Basic Rule 7:

Ensure all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance.

The implementation of Basic Rule 7 involves, among other things:

- The authorities must ensure that all prisoners are fully able in practice to avail themselves of the right to notify family members or others immediately of their whereabouts. All prisoners should be informed of this right. If they do not have the financial or technical means to send word to their relatives, the authorities must be ready to communicate the message for them
- The authorities must ensure that accurate information on the arrest, place of detention, transfer and release of prisoners is available promptly in a place where relatives and others concerned can obtain it. They must ensure that relatives are not obstructed from obtaining this information, and that they know or are able to find out where the information can be obtained
- Relatives and others should be able to visit a prisoner promptly after he or she is taken into custody, and preferably as soon as possible. This is important because it is often in the first hours or days of detention that prisoners are at greatest risk of being ill-treated, tortured, made to "disappear", or killed
- Relatives and others should be able to make further visits regularly, and preferably whenever they request, to verify the prisoner's continued well-being
- Not only relatives, but lawyers and independent doctors should be able to visit without delay: lawyers, to ensure that a prisoner's rights are respected and to help prepare the prisoner's defence; doctors, to ascertain that the prisoner is healthy and not suffering from torture or ill-treatment.

Basic Rule 8:

**All detainees must be treated humanely.
Protect all detainees against torture and ill-treatment
including whipping and beating.**

Accurate record-keeping is an essential element of the proper administration of places of detention. The existence of official records which are open for consultation helps to protect prisoners from being tortured or otherwise ill-treated. Therefore the implementation of Basic Rule 8 involves, among other things:

- Registers of prisoners should be kept in all places of detention including police stations and military bases. Registers should consist of a bound book with numbered pages which cannot be tampered with. Information to be entered in them should include:
 - The name and identity of each person detained
 - The reasons for his or her arrest or detention
 - The names and identities of the officials who arrested the prisoner or brought him or her in
 - The date and time of the arrest and of the taking of the arrested person to a place of detention
 - The time, place and duration of each interrogation and the name of the person or persons conducting it
 - The time of the prisoner's first appearance before a judicial authority
 - Precise information concerning the place of custody
 - The date, time and circumstances of the prisoner's release or transfer to another place of detention.

Other measures that can contribute to the proper treatment of detainees are:

- Authorities should allow ONUMOZ civilian police monitors (CIVPOLs) to visit any police station and facilities, including detention centres, without restriction
- CIVPOLs must be able to make unannounced visits
- CIVPOLs must have access to all parts of each place of detention and all detainees and be able to interview them freely and without witnesses
- CIVPOLs must be able to make return visits whenever they wish
- CIVPOLs must be able to make recommendations to the authorities concerning the treatment of prisoners
- Prisoners should be promptly told of their rights, including the right to lodge complaints about their treatment
- The treatment of prisoners should conform as a minimum to the standards laid down in the UN Standard Minimum Rules and the Body of Principles.

Basic Rule 9:

Protect all persons against unlawful, arbitrary or summary execution.

There are several important elements in the concept of unlawful, arbitrary or summary executions:

- An unlawful, arbitrary or summary execution is deliberate, not accidental
- An unlawful, arbitrary or summary execution violates national laws such as those which prohibit murder, and/or international standards forbidding the arbitrary deprivation of life.
Its unlawfulness distinguishes an unlawful, arbitrary or summary execution from:
 - Justifiable killings in self-defence
 - Deaths resulting from the use of force by law enforcement officials which is consistent with international standards
- An unlawful, arbitrary or summary execution is carried out by order of someone at some level of government, whether national, state or local, or with his acquiescence. This distinguishes unlawful, arbitrary or summary executions from killings for private reasons.

To implement Basic Rule 9 it is important that the use of force and firearms by the police strictly comply with Basic Rule 3, Basic Rule 4 and Basic Rule 5.

Any case or report of a suspected unlawful, arbitrary or summary execution should be investigated fully and promptly in accordance with Basic Rule 10. In addition, CIVPOLs should report any deliberate and arbitrary killings by any armed opposition group.

Basic Rule 10:

**Report all breaches of these basic rules to your senior officer
or to ONUMOS civilian police monitors.
Ensure steps are taken to investigate these breaches.**

All violations of human rights by the police or other law enforcement personnel, including any breaches of these Basic Rules, should be investigated fully, promptly and independently, for instance by the National Police Affairs Commission (COMPOL) or by CIVPOLs. The main objective of these investigations is to establish the facts:

- Has a violation of human rights or a breach of the Basic Rules been perpetrated? If so, by whom?
- If a public official has committed a crime or breach of regulations, was he acting under orders or with the acquiescence of other officials?

To enable the investigating body to carry out its task properly, police and CIVPOLs should promptly report any possible unlawful, arbitrary or summary execution by law enforcement personnel. The reports, which must be forwarded to the investigating body, must include:

- The full name of the victim, or if the victim's identity is not known, a physical description in as much detail as possible, with a photograph if available, as well as other information through which the victim's identity may be established, such as clothing or jewelry worn
- A record of the sequence and location of events. Times should be specified as precisely as possible. The record should indicate the probable cause of death
- Information on the identity of the person or persons believed to have carried out the violation including physical characteristics, clothing and vehicles used, as well as descriptions of others present at the scene
- Names and details of any witnesses to the incident (if necessary, witnesses must be protected from possible reprisals)
- Any other evidence indicating that the victim was unlawfully and deliberately killed by a police officer or other person, on official orders or with official acquiescence
- If possible, written reports should be supplemented by photographs of the actual events or of the scene of the events. Dead bodies also should be photographed for purposes of forensic investigation and the bodies should be safeguarded until an independent autopsy can be performed. Photographs should preferably be in colour, as colour photography records details which do not show up in black-and-white photographs. A ruler should be placed alongside bodies or objects when they are being photographed so as to give an indication of scale.

A report of an alleged case of ill-treatment or torture should contain:

- The identity of the victim
- A record of the sequence and location of events. Times and places should be specified as precisely as possible, as should be the description of the acts of torture or other ill-treatment
- Information on the identity of the person or people believed to have carried out the acts of torture, as well as descriptions of others present at the scene
- Names and details of any witnesses, for example other people in detention
- Any other evidence, for example indicating that the victim was arrested arbitrarily or kept in prolonged incommunicado detention
- If possible, written reports of torture should be supplemented by photographs of physical marks of torture for purposes of forensic investigation. Photographs should preferably be in colour, as colour photography records details which do not show up in black-and-white photographs.

This document may also be obtained from
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