

# 'I CAN'T BELIEVE IN JUSTICE ANY MORE'

OBSTACLES TO JUSTICE FOR UNLAWFUL KILLINGS BY POLICE IN MOZAMBIQUE

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#### INTERNATIONAL HUMAN RIGHTS TREATIES AND STANDARDS

- Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on 10 December 1948
- International Covenant on Civil and Political Rights (ICCPR), General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976
- African Charter on Human and Peoples' Rights (African Charter), adopted 27 June 1981, entry into force 21 October 1986
- UN Code of Conduct for Law Enforcement Officials, UNGA A/RES/34/169 (1979)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Principles of justice for victims), UNGA A/RES/40/34(1985)
- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions (Principles on extra-legal, arbitrary and summary executions), ESC Res 1989/65 of 24 May 1989
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic principles on the use of force), 1990
- Southern African Regional Police Chiefs Cooperation Organisation Code of Conduct for Police Officers, Harare Res (2001)
- Declaration of Principles on Freedom of Expression in Africa, adopted by resolution of the African Commission on Human and Peoples' Rights, Banjul, October 2002
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA A/RES/60/147 (2005)
- African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, DOC/OS (xxx) 247 (2001)
- UN Updated Set of Principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1 (2006)
- African Commission on Human and Peoples' Rights resolution of 2006 on Police reform, accountability and civilian police oversight in Africa, Banjul, November 2006

#### NATIONAL LAWS AND REGULATIONS

- Constitution of the Republic of Mozambique (CRM)
- Mozambican Criminal Code
- Mozambican Criminal Procedures Code
- Organic Law of the Police (A Lei Orgânica da Policia) Decree 27/99 of 24 May 1999
- Mozambique Police Disciplinary Regulations (Regulamento Disciplinar da Polícia de Moçambique, Ordem de Serviço) No. 5/GMI/87 of 10 March 1987
- Law of the Public Prosecution Service (Lei de Ministério público) 22/2007
- Police Statute (Estatuto da Polícia) Decree 28/99 of 24 May 1999
- Statute of the Mozambique Bar Association (Estatuto da Ordem dos Advogados de Moçambique), Law 7/94 of 14 September 1994
- Law of the Justice Ombudsman (Lei de Provedor da Justiça), Law 7/2006
- Draft law of the National Human Rights Commission of 2006
- Bill establishing the National Human Rights Commission (Proposta de lei que cria Comissão Nacional de Direitos Humanos) of 7 December 2007

## ABBREVIATIONS

- African Charter – African Charter on Human and Peoples’ Rights
- CRM - Constitution of the Republic of Mozambique
- FIR - Rapid Intervention Force (Força de Intervenção Rápida), responsible for controlling mass gatherings, riot police
- ICCPR - International Covenant on Civil and Political Rights
- IPAJ - The Institute for Legal Representation and Assistance (Instituto de Patrocínio e Assistência Judicial)
- NHRC - National Human Rights Commission
- OAM - The Mozambique Bar Association (Ordem dos Advogados de Moçambique)
- PIC - Criminal Investigation Police (Polícia de Investigação Criminal)
- PRM - Police of the Republic of Mozambique (Polícia da República de Moçambique), includes the various branches of the police in Mozambique such as the PIC and FIR
- SARPCCO - The Southern African Regional Police Chiefs Cooperation Organization
- SICRIM - Criminal Investigation Service (Serviço de Investigação Criminal), a body currently being set up to replace the PIC
- UDHR - Universal Declaration of Human Rights
- UN - United Nations

# 'I CAN'T BELIEVE IN JUSTICE ANY MORE'

## OBSTACLES TO JUSTICE FOR UNLAWFUL KILLINGS BY POLICE IN MOZAMBIQUE

*"I can't believe in justice anymore. I am not informed. There is no respect... They just want us to forget. If you do not have money to pay nothing happens... "*

Chimène Costa, partner of Augusto Cuvilas who was shot and killed by the police in December 2007<sup>1</sup>

**The right to life ... is the supreme right from which no derogation is permitted even in time of public emergency ... The protection against arbitrary deprivation of life.... is of paramount importance. ... States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.**

Human Rights Committee, General Comment No. 6, the right to life

## INTRODUCTION

In the early hours of the morning of 8 November 2007, Julião Naftal Macule was asleep in a hotel room in Massinga, Inhambane, when police from the Rapid Intervention Force (FIR) suddenly pushed open the door and shot him. The police said they had been told that a wanted criminal -- "public enemy number one" -- was in the hotel room and when they burst into Julião's room they immediately shot and killed him. Soon after his death police authorities announced they had captured and killed Agostinho Chauque, "the most wanted criminal in the country". It was only after journalists asked to see the body that the police said they had not actually caught Agostinho Chauque, but had nevertheless caught and killed "a dangerous criminal".

Augusto Cuivlas, a dancer and choreographer, was killed on 22 December 2007 by the police in his home in Bairro Triunfo. He was at home with his partner, 10 year old son and the boy's nanny when they heard some noises and noticed strangers outside the house. Suspecting they were robbers, Augusto phoned the police who said they did not have transport to get to his house. He then called his ex-wife and mother of his son, who drove the police to his

house. When the police arrived they started shooting indiscriminately, killing Augusto and his guard. His partner, who was two months pregnant, suffered a miscarriage. Two officers were reportedly arrested in connection with the killing of Augusto Cuvilas, but one was later released apparently because he did not fire the fatal shot. No action appears to have been taken against any officer in connection with the killing of the guard.

These two unlawful killings by police are, sadly, only two examples among many. The police officers responsible for the killings in these two cases have still not been brought to justice. Since January 2006, scores of people have been unlawfully killed by the police in Mozambique (see Annexes 1 to 5 for further details of cases) and in most of these cases the families of the victims have still not received any justice for the killing of their loved ones.

The right to life is enshrined in the Universal Declaration of Human Rights and numerous international human rights treaties. Under the International Covenant on Civil and Political Rights<sup>2</sup> and the African Charter on Human and Peoples' Rights,<sup>3</sup> every human being has the inherent right to life and arbitrary deprivation of life is prohibited; no limitations to or derogations from this right are permitted. The obligation to protect the right to life by law and the prohibition against arbitrary deprivation of life places an obligation on states to ensure that unlawful killings are investigated and that perpetrators are brought to justice.

Unlawful killings, which include deaths resulting from the excessive or arbitrary use of force by the police as well as extrajudicial executions, are a violation of the right to life. Extrajudicial executions are unlawful and deliberate killings carried out by order of the state or with its complicity or acquiescence. Governments have an obligation to ensure that unlawful killings by the police are recognized under national criminal laws as offences punishable by appropriate penalties which take into account their gravity. Governments are further obliged to ensure that there are thorough, prompt and impartial investigations into all cases where the use of force by the police results in death; and that where these cases are found to amount to unlawful killings, those who have perpetrated them are brought to justice. This obligation does not depend on the families of victims participating in criminal proceedings.

However, the Mozambican authorities have failed to carry out adequate investigations into many suspected cases of unlawful killings by the police that have occurred, and have failed to hold police officers involved in human rights violations to account. Furthermore, the government appears to have permitted and encouraged a number of obstacles to be placed in the way of victims' families seeking justice in such cases.

The obstacles families face when seeking justice for relatives unlawfully killed by police include:

- Lack of or inadequate investigations by the Criminal Investigation Police;
- Insulting, obstructive and intimidating behaviour and harassment by the police towards victims' families;
- Lack of information about the progress of investigations and actions against police officers;
- Legal and other costs.

The families of victims face almost insurmountable challenges and only the most persistent and relatively well-off have been able to exercise their right to justice. Many others, however, faced with such obstacles are left without a remedy for the unlawful killing of a family member by police.

In April 2008 Amnesty International published a report, *Licence to Kill: Police Accountability in Mozambique*.<sup>4</sup> The report documented cases of human rights violations by the police and highlighted the inadequacies of the police accountability system, which result in failure to prosecute police officers who commit human rights violations, and in turn contributes to perpetuating impunity within the police.

In the 14 months after that report was published, a few police officers were brought to justice for human rights violations including two cases of extrajudicial execution. The Mozambican authorities say that police officers have been held to account in all cases of human rights violations, including unlawful killings, but have not made information on measures taken against police officers publicly accessible. This lack of transparency contributes significantly to the perception that police are not held accountable for extrajudicial executions and other human rights violations. It also deters families seeking to exercise their right to a remedy and reparation by reinforcing the belief that the justice system in the country does not work.

This report, first and foremost, renews Amnesty International's call on the Mozambican authorities to ensure that there are thorough, prompt and impartial investigations into all cases of use of force by the police resulting in death; that the officers responsible for unlawful killings are brought to justice in fair trials; and that families of those killed receive adequate reparation. It highlights the obstacles to accessing justice for families of victims of unlawful killings by the police and calls on the authorities to remove these obstacles.

## METHODOLOGY

The information contained in this report is based on information obtained by Amnesty International during visits to Mozambique in 2007, 2008 and 2009, as well as information obtained through telephone interviews, the news media, the internet and other sources.

This report uses individual cases to illustrate the obstacles faced by the families of victims of unlawful killings by the police when seeking justice. It focuses in particular on three cases: those of Abranches Afonso Penicelo, Augusto Cuivlas and Julião Naftal Macule.

On 14 August 2007 at about 3pm, Abranches Afonso Penicelo was lured by telephone to a roadside meeting where he was kidnapped by at least eight police officers. They beat him, gave him a toxic injection, shot him and set fire to his body. They left him for dead in a secluded area in Xhinavane, some 120 km north of Maputo. Abranches survived long enough to be taken to the Maputo Central Hospital and tell his story to his family and several police officers, before dying of his injuries on 15 August.

In the case of Abranches Penicelo, a senior police officer, Alexandre Balate, was convicted of his murder on 11 June 2009. However, none of the other police officers suspected of involvement have been charged.

The families of Julião Naftal Macule and Augusto Cuvilas are still fighting for justice – no one has been tried in connection with their killings. And no action at all appears to have been taken in connection with the killing of Augusto Cuvilas' guard.

Further details of these three cases are in Annexes 1, 2 and 3 and a list of other police killings between 2006 and 2009, most of which were unlawful, and some of which are suspected extrajudicial executions, is in Annexe 5. Annexe 4 is the case of Pedro Mulaudzi which is mentioned in this report, but is not in Annexe 5 as it occurred prior to 2006.

In this report the term “unlawful killing” refers both to cases where the arbitrary or excessive use of force by the police resulted in death, as well as cases of extrajudicial execution.

## THE HUMAN RIGHTS FRAMEWORK

### EXTRAJUDICIAL EXECUTIONS AND EXCESSIVE USE OF FORCE

**Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences...**

**Such executions shall not be carried out under any circumstances including, but not limited to, ... excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person... This prohibition shall prevail over decrees issued by governmental authority.**

UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Extrajudicial executions are a violation of the right to life, as guaranteed by Article 6 of the ICCPR and Article 4 of the African Charter, as well as a crime under international law. They can be carried out by regular military or police forces, by special units created to function without normal supervision, or by civil agents working with government forces or with their complicity. Such killings also breach Special Provisions 9, 13 and 14 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In addition, they are a violation of the right to life set out in Article 40 of the Constitution of the Republic of Mozambique (CRM), and amount to crimes against the security of a person as contained in the Mozambican Criminal Code.<sup>5</sup>

Under international law, the obligation to respect and protect the right to life means that the intentional lethal use of firearms by police is lawful only when it is strictly unavoidable in order to protect life. Deliberate killings by police outside these strict constraints are an arbitrary deprivation of life and a violation of international law. When such killings are part of an official policy or where the government orders, condones or acquiesces in them, which may be evidenced by a consistent failure by the authorities to condemn and to investigate and prosecute such killings, they are extrajudicial executions.

International law requires that any use of force by police must comply strictly with principles of necessity and proportionality. These principles are set out in Article 3 of the UN Code of Conduct for Law Enforcement Officials and elaborated in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. While these standards are not in themselves legally binding, their core provisions on the use of force are an elaboration of legal rules applicable to states by way of their treaty obligations or obligations under customary international law.

Police must, as far as possible, apply non-violent means before resorting to the use of force and firearms, which they may use only if other means remain ineffective or without any promise of achieving the intended result.<sup>6</sup> If the lawful use of force and firearms is unavoidable, police must exercise restraint in their use and act in proportion to the seriousness of the offence and the legitimate objective. Police must ensure that they minimize damage and injury, and respect and preserve human life. They should further ensure assistance and medical aid at the earliest possible moment for anyone injured or affected.<sup>7</sup>

The principles applicable specifically to the use of firearms are set out as follows: “Law enforcement officials shall not use firearms against persons except in self-defence or 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, and only when less extreme means are insufficient to achieve these objectives”.<sup>8</sup> In these circumstances, police must give a clear prior warning of their intent to use firearms unless that would place them at undue risk or create a risk of death or serious harm to others, or would clearly be pointless in the circumstances.<sup>9</sup> Arbitrary and/or excessive use of force such as in the case of Augusto Cuvilas where the police arrived on the scene of a suspected burglary and started firing a volley of shots without warning using AKM rifles are clearly contrary to international human rights standards. Principle 9 of the Basic principles on the use of force concludes: “In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”. It is therefore a violation of international law if police intentionally use lethal force to prevent the commission of a crime by, or the escape of, a suspect unless that person presents an imminent threat to the life of others.

Between January 2006 and June 2009, Amnesty International documented over 26 incidents of police in Mozambique shooting at people they alleged to be criminals, with at least 46 people dying at the hands of the police. Annexe 5 lists only the cases that resulted in death that are known to Amnesty International. Many of these cases were not adequately investigated and in most of the cases, no police officer was brought to justice for the killings.

## OBLIGATION TO INVESTIGATE AND PROSECUTE

Under international standards, any incident where the police have used force or firearms leading to death or serious injury must be promptly reported in detail to the competent administrative or prosecutorial bodies with jurisdiction over the matter.<sup>10</sup> Anyone affected, including dependants of those who have been killed, must have access to an independent process, including a judicial process.<sup>11</sup> Arbitrary or abusive use of force and firearms by police must be punished as a criminal offence.<sup>12</sup> Superior officers should be held responsible if they knew or should have known that their subordinates used force or firearms unlawfully, if they did not take all measures in their power to prevent, suppress or report it.<sup>13</sup>

These principles are also reflected in the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Extrajudicial executions must be treated as criminal offences punishable by appropriate penalties which take into account their seriousness.<sup>14</sup> There must be thorough, prompt and impartial investigation of all suspected cases of such executions by investigative offices with the necessary authority, powers, resources and expertise.<sup>15</sup> Anyone identified by the investigation as having participated in extrajudicial executions should be brought to justice.<sup>16</sup>

Families of those who have been killed and their legal representatives must be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and are entitled to present evidence in relation to the investigation or the hearing.<sup>17</sup> The ICCPR places an obligation on governments to ensure that anyone who has been a victim of human rights violations has a right to an effective remedy.<sup>18</sup> This right is elaborated in more detail in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The right of victims, including dependants and family members where the direct victim has been killed, to an effective remedy includes effective access to justice; adequate and effective reparation, including fair and adequate compensation within a reasonable time, and the right to know the truth about the human rights violations in question.<sup>19</sup> Articles 14 and 29 of the Mozambican Criminal Code also provide for the right of families of the deceased to access justice and redress.

However, despite their obligations under international human rights law and clear provisions of national law, the authorities in Mozambique have failed to bring police officers to justice in the majority of cases of unlawful killing and families are rarely able to obtain an effective remedy.

## OBSTACLES TO JUSTICE

The families of victims of unlawful police killings have to overcome a number of obstacles if they are to persist in their attempts to obtain justice. The authorities have either turned a

blind eye to these obstacles or have facilitated them.

Amnesty International has identified the following barriers facing families of those killed by police in Mozambique:

- Lack of or inadequate investigations by the Criminal Investigation Police;
- Insulting, obstructive and intimidating behaviour and harassment by the police towards victims' families;
- Lack of information about the progress of investigations and actions against police officers;
- Failure to give the families of victims any information;
- Legal and other costs.

#### FAILURE TO INVESTIGATE ADEQUATELY

**The fundamental principles of any viable investigation into the causes of death are competence, thoroughness, promptness and impartiality of the investigation ... One of the most important aspects of a thorough and impartial investigation of an extra-legal, arbitrary and summary execution is the collection and analysis of evidence. It is essential to recover and preserve physical evidence, and to interview potential witnesses so that the circumstances surrounding a suspicious death can be clarified.**

UN Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions ("Minnesota Protocol")

Mozambique's obligations under international law to respect and protect the right to life mean that in all cases of death at the hands of the police there must be a thorough investigation.<sup>20</sup> If the investigation reveals arbitrary or abusive use of force<sup>21</sup> or a suspected extrajudicial execution<sup>22</sup> those responsible must be prosecuted. However, in most instances in Mozambique, there appear to be no investigations at all. If investigations are initiated, they often fail at an early stage when those responsible cannot easily be identified.

The resources for forensic investigations are inadequate. In addition, police officers alleged to have been involved in killings are often investigated by police bodies without effective independent supervision, and the police have reportedly tended to protect each other.

#### FAILURE TO INITIATE INVESTIGATIONS

Amnesty International has repeatedly asked for information about investigations into cases of police killings, both in writing and during visits to Mozambique since 2006. Despite this, the authorities have provided very little information on whether any investigations were carried out. In some instances, Amnesty International has been told that investigations have not been carried out into particular killings, apparently because of a presumption that the killing was not unlawful. During a visit to Mozambique in May 2009 Amnesty International delegates met various officials charged with carrying out or ordering investigations and asked about some specific cases. These included a case of four alleged robbers killed in January 2009 in the Baixa area of Maputo. In the same area in February 2008, police shot and killed three other alleged robbers. In both cases police officials claimed that they had prior

knowledge of a planned robbery. Nevertheless, they failed to apprehend the suspects without resort to lethal use of force.

When Amnesty International asked about investigations into the use of force in these cases, two officials stated on separate occasions that there had been no need for an investigation as the police had been shot at and had acted in self-defence. When asked by Amnesty International delegates whether an investigation had been carried out into another case involving the killing of four men in Maxaquene, Maputo province in 2006, the authorities also replied that the police had acted in self-defence.

Samuel Nhambe, Aquilas Nguila, Candido Chirindza and Francisco Chirindza were killed by the police in Maxaquene, Maputo province, during an alleged shoot-out. According to a police spokesman, the four men had escaped from Maputo security prison two days before their deaths. On 17 March 2006, they reportedly hijacked a minibus containing a driver and three passengers. The police found the minibus and apprehended the four men in the neighbourhood of Marracuene. Police officers reportedly searched the vehicle for weapons, but claimed they found none. The men were then made to drive the minibus to Maputo under police escort. However, the police claimed the men opened fire with weapons they had hidden in the minibus and tried to escape. The police returned fire, killing the four.

Some cases in which police officers alleged that they had been acting in self-defence or trying to prevent suspects escaping have been shown, after further investigations, to be extrajudicial executions. For example, in the Costa do Sol area of Maputo in March 2007, three police officers shot dead three suspects. Initially the police alleged that the three men had been shot while trying to escape. However, an autopsy carried out after pressure from the public and the media revealed that the three had actually been shot at close range in the back of the neck.

In any event, international human rights standards require an effective investigation to be carried out in all cases of death or serious injury as a result of the use of force or firearms by the police.<sup>23</sup> Such an investigation must, among other things, seek out and interview witnesses and examine forensic evidence with a view to establishing all relevant facts. This includes a rigorous examination of any claim by police that they were acting in self-defence, and specifically whether or not the use of force was strictly unavoidable to protect life. If there is sufficient evidence indicating that such a killing may have been a result of excessive or arbitrary use of force or an extrajudicial execution, those responsible should be prosecuted.<sup>24</sup> Officers suspected of responsibility for extrajudicial executions should be suspended from active duty during the investigation.

Police authorities have also used the inability of complainants to identify individual officers as an excuse not to carry out an investigation. To ensure that police officers can be identified, all officers should wear identity badges, showing either their name and rank or a unique identifying number. The Organic Law of the Police<sup>25</sup> states that police officials should wear their identification in a visible place<sup>26</sup> and should also use an identity card.<sup>27</sup> Police officers are required to identify themselves whenever they have to use their police powers.<sup>28</sup>

Amnesty International delegates were informed by national police authorities that all police officers had badges and were expected to wear them. A government official stated that those who did not wear them were simply attempting to evade identification; however it is common to see police officers in Maputo patrolling the streets without badges. During visits to other provinces Amnesty International delegates also noticed that even superior officers did not wear badges. Without visible identification it is difficult for victims and witnesses of human rights violations by the police to identify the offending officer or officers.

Nevertheless, even without identity badges, internal police accountability mechanisms should enable senior officers to identify those officers accused of having committed human rights violations. Such mechanisms, however, do not appear to be used effectively in Mozambique.

In September 2008 the Mozambican Human Rights League<sup>29</sup> reported that the bodies of three men had been found in the district of Moamba in Maputo province in late July that year. The three had reportedly been taken from a police cell in the Maputo city police command and, according to the Human Rights League, had been “summarily executed”. Summary execution is the term that the Human Rights League uses to refer to extrajudicial executions. According to a member of the Human Rights League, investigations by the Criminal Investigation Police<sup>30</sup> into the case were hampered as the authorities at the Maputo city police command claimed they were unable to identify the police officers who had removed the detainees from their cell or any officer responsible for the killings.

In March 2008 Celsio Daimon was shot above the knee by police officers and then beaten by members of the Rapid Intervention Force.<sup>31</sup> Although he survived the shooting, he lost his leg as a result. In this case, too, the police authorities used the victim’s inability to identify police officers as an excuse not to hold officers accountable. Although three police officers were later arrested, tried and sentenced to four years’ imprisonment for shooting him, no action was taken against any of the FIR officers who beat Celsio Daimon. In 2009 Amnesty International delegates asked the Attorney General about this omission and were informed that no member of the FIR had been held accountable as it was difficult to identify which of the FIR members had carried out the beating.

Celsio João Daimon, a student at the Universidade Pedagógica in Beira, was shot in the leg by police at his residence in Beira. At about 9.45pm on 14 March 2008 Celsio was in a friend’s room, watching television, when an escaped prisoner appeared on the roof. Celsio went to close the door to his room which he had left open and encountered police officers who were chasing the fugitive. Although he immediately put his hands up and identified himself, the police, who were reportedly drunk, shot him with AKM rifles at close range. He was hit in the left thigh by at least one bullet. When the officers realized he was not the man they were looking for, they took his phone and left him lying on the ground. Celsio João Daimon’s brother took him to the police station to report the incident and left him while he went to find someone to report the incident to. Members of the FIR arrived and started beating Celsio, apparently believing him to be the fugitive. When they realized he was not, they took him to hospital, where he had to have his leg amputated. Although three police officers were held accountable for his shooting, no charges were brought against members of the Rapid Intervention Force for beating Celsio as he lay on the ground at the police station.

The failure of superior officers to identify police officers in such cases is an indication either that the police accountability mechanism is ineffective, or, possibly, that superior officers are unwilling to pursue these cases. It is also an indication of a growing culture of police impunity.

International standards are clear about chain-of-command control. Superior officers should be held responsible for human rights violations if they knew, or should have known, that officers under their command resorted to the unlawful use of force and firearms and the commanding officers did not take all measures in their power to prevent, suppress or report such use.<sup>32</sup> This requires commanding officers to take all reasonable steps to ensure that they are informed about the actions of officers under their command, that those officers do not commit human rights violations, and, if such violations do occur, that appropriate criminal or disciplinary action is taken.

International human rights standards require the establishment of effective reporting procedures whenever police use firearms in the performance of their duty,<sup>33</sup> as well as when the use of force and firearms causes injury or death.<sup>34</sup> In addition, the Mozambique Police Disciplinary Regulations require police officers to give an account of their work to their superiors.<sup>35</sup> Proper reporting procedures facilitate investigations by making it easier for superiors to identify officers suspected of having committed a human rights violation. In the Moamba case, adequate reporting procedures would have enabled the station commander to identify which officers had removed the detainees from the cell before they were killed and to ensure that those officers were at least made to give an account of what happened to the detainees after they left their cell. Adequate reporting procedures would have also enabled the authorities to identify which FIR unit had been responsible for the beating of Celso Daimon.

#### INADEQUACY OF INVESTIGATIONS

Criminal investigations in Mozambique are carried out by the Criminal Investigation Police (Polícia da Investigação Criminal – PIC). The PIC is a specialized branch of the Police of the Republic of Mozambique (Polícia da República de Moçambique – PRM) headed by a National Director of Criminal Investigation. It is responsible for, among other things, the prevention and investigation of crime and other activities related to the initiation of criminal proceedings.<sup>36</sup> The PIC is also expected to carry out tasks requested of it by judicial authorities and the Public Prosecution Service (Ministério Público).<sup>37</sup> The Public Prosecution Service is headed by the Attorney General (Procurador Geral) and is responsible for, among other things, monitoring the procedural acts of the PIC and the launching of criminal proceedings, including guiding criminal investigations.<sup>38</sup>

In May 2009 Amnesty International delegates were informed by the Attorney General that a Bill regulating the functioning of the PIC had been approved by the Council of Ministers and was awaiting approval by the National Assembly (parliament). Under this Bill the PIC would be replaced by the Criminal Investigation Service (Serviço de Investigação Criminal - SICRIM) and would no longer be a part of the PRM but report directly to the Interior Minister. The Attorney General informed Amnesty International delegates that the reform would guarantee the autonomy of the new SICRIM, and would lead to better and more efficient action allowing

for speedier processes and greater protection of human rights. However, until these proposed reforms are enacted and implemented, criminal investigations, including those into crimes allegedly committed by the police, are carried out by the PIC.

National police officials in Maputo informed Amnesty International delegates that there is a special brigade to investigate crimes committed by police. This brigade is not regulated by a specific law, but was created under the Organic Law of the Police, which allows for the creation of various specialized brigades. The Brigade for the Investigation of Crimes Committed by the Police<sup>39</sup> is apparently responsible for investigations relating to disciplinary and criminal cases against police officers. National officials stated that these brigades exist in all the provinces. However, some provincial police officials were unaware of the existence of such brigades and stated that investigations relating to police officers are carried out by ordinary PIC members appointed for the specific investigation. Police officials in other provinces told Amnesty International delegates that each branch of the police investigates its own members. The delegates were also informed by the Attorney General that where the PIC fails to carry out investigations, the Attorney General may appoint a prosecutor to carry out the investigation. Such a situation occurred in the Costa do Sol case, where three suspects were shot dead in March 2007. The initial police investigation was contradicted by the findings of an investigation ordered by the Attorney General, under public pressure, and police officers were prosecuted. However, in practice, situations where the Attorney General orders an investigation are rare and the Attorney General appears to accept the findings of the police investigations in most cases.

The lack of technical resources is another factor which stands in the way of effective investigations. There are only three forensic laboratories in the whole country: one in Maputo, another in Sofala and a third in Nampula, to serve the Southern, Central and Northern regions of the country respectively. The laboratories therefore face a heavy workload, carrying out forensic examinations for all ten of the country's provinces. Amnesty International delegates were also told by officials in both Maputo and Nampula that the forensic laboratories are not functioning well and are poorly equipped. There is also a shortage of forensic doctors and technical specialists. In addition, investigations are constrained by a lack of two-way radios and vehicles.

Despite these challenges, investigations are still possible and complex forensic methods are not required for all cases. In many cases all that is lacking for an effective investigation is the will of the police.

Lawyers, journalists and human rights organizations have all stated that the police tend to "protect their own" and that this is one of the main obstacles to bringing police officers to justice. An example of this occurred in the Costa do Sol case in 2007, when police officers refused to carry out an arrest warrant issued by the Public Attorney of Maputo city<sup>40</sup> for the arrest of three police officers suspected of having murdered three men (see Annexe 5).

Chimène Costa, the partner of Augusto Cuvilas stated that the police who took down her statement altered what she had said and attempted to get her to sign a statement with their version of events. Her statement was that Augusto Cuvilas' shooting had not been a mistake, but the officer taking down her statement altered it to state that the police had accidentally shot Augusto. At the time the statement was taken down, Chimène Costa was visibly

distraught as Augusto had just died.

The family of Abranches Penicelo encountered a number of obstacles in their pursuit of justice. In the hours before he died, on 15 August 2007, Abranches related what had happened to him and identified some of the police officers responsible. He also stated that one of the officers, Alexandre Balate, had sustained burns on his right arm when he set fire to Abranches. Alexandre Balate did have burn injuries on his arm, but he claimed he had burned himself while working on the radiator of his car. Police officers suspected of extrajudicial executions should be suspended from active duty during an official investigation. However, despite the deathbed testimony of Abranches and the probable corroborating evidence of Alexandre Balate's burnt arm, none of the officers were suspended from service or charged. It was not until January 2009 that Alexandre Balate was arrested, charged and detained for the crime on the basis of an order issued by the Public Prosecution Service in Matola city on 22 December 2008. He was convicted of the killing of Abranches Penicelo in June 2009. However, no other officer had been charged by September 2009.

The apparent unwillingness of police authorities to carry out effective investigations into all cases of use of force and firearm resulting in death, the failure of superior officers to identify police suspected of serious human rights violations, and the apparent tendency among the police to protect other officers all contribute to a pattern of impunity for human rights violations which are crimes in international as well as national law. These failures are also a breach of the duty of the police authorities under Mozambican law to be uncompromising in ending indiscipline and ensuring that those who infringe the regulations are brought to justice.<sup>41</sup>

## INSULTS, INTIMIDATION AND HARASSMENT

*"There is no respect ... They just want us to forget."*

Chimène Costa, partner of Augusto Cuvilas who was shot and killed by the police in December 2007<sup>42</sup>

The UN Code of Conduct for Law Enforcement Officials requires police officers to serve the community and to protect all people from illegal acts.<sup>43</sup> It also requires them to respect and protect human dignity and the human rights of all.<sup>44</sup> However, in Mozambique families have complained of insulting, obstructive and sometimes intimidating behaviour and harassment by the police which appeared to be aimed at preventing them from pursuing cases against certain police officers.

Chimène Costa for example, complained that the police at the station treated her with disrespect when she went to report Augusto's killing. She had just come from the hospital where he had been pronounced dead on arrival and was in tears. Chimène said that one of the officers rudely told her to move from where she was sitting and she was left waiting and crying for a long time before her statement was taken.

In the case of Julião Naftal Macule, a source told Amnesty International that two days after his killing, the Inhambane provincial police commander called Julião's wife and asked her to go to the provincial police command for a meeting. Julião's wife reportedly went accompanied by other members of her family. They met with the provincial commander, the

provincial director of the PIC and another officer who informed them that Julião had been killed in a confusion involving the police and that the police had mistaken him for Agostinho Chauque. The family questioned the actions of the police asking whether Agostinho Chauque would not have had the right to a fair trial as well rather than being shot while asleep. According to the source, the police responded by saying that Julião Naftal “was not a saint” and told the family to take the body for burial. When the family requested an autopsy, the police tried to discourage them by saying that there were no facilities to carry out autopsies in Inhambane and that this could only be done in Maputo. However, the family insisted and an autopsy was carried out a few days later, at which time the body was in a state of decomposition.

In the case of Abranches Penicelo, the police reportedly accused the family publicly of being involved in criminal activities, and subjected the family to other forms of intimidation and harassment. Police in Inhambane had apparently been told by police in Maputo that some members of the family were “dangerous criminals” who carried weapons, and had been asked to arrest them during the funeral. According to the family members, the police and FIR surrounded the area where the funeral was taking place and fired two shots into the air. The day after the burial, Silvano Afonso Penicelo was arrested, handcuffed and briefly detained by the police, on suspicion of carrying firearms in his car. He was released the same day after the police searched the vehicles, found no weapons and reportedly received orders from the General Command to release him.

During the trial of Alexandre Balate, the officer charged with killing Abranches Penicelo, the lawyer who was representing the family received threats telling him to cease representing them. He initially decided to step down and let another lawyer take over the case, but in the end remained until the verdict.

Such harassment and intimidation by police, and indeed any conduct which obstructs people seeking a remedy for human rights violations, is inconsistent with the requirements of international human rights standards and national law. According to international human rights standards, witnesses, investigators and families should be protected from violence, threats of violence and any other form of intimidation.<sup>45</sup> Appropriate measures should be taken to ensure the safety, physical and psychological well-being and privacy of victims’ families and care should be taken not to re-traumatize them in the course of legal and administrative proceedings.<sup>46</sup> In addition, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that victims should be treated with compassion and respect for their dignity<sup>47</sup> and that police officers should receive training to sensitize them towards the needs of victims.<sup>48</sup> Victims should not be discouraged from exercising their rights by unresponsive officials, but should be informed of their rights in seeking redress and of the mechanisms available for this.<sup>49</sup> The Mozambique Police Statute states that police officers should act with integrity and dignity and abstain from acts which cast doubts on the ethics required for their functions.<sup>50</sup> The Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) Code of Conduct for Police Officers also states that police officers should behave in a manner that does not undercut public confidence in the police.<sup>51</sup>

## LACK OF TRANSPARENCY

The right of access to information is enshrined in the ICCPR,<sup>52</sup> the African Charter and the

CRM.<sup>53</sup> The Special Rapporteur on the promotion and protection of freedom of opinion and expression has stated that the right to seek and receive information is not simply a converse of the right to freedom of opinion and expression but a right on its own.<sup>54</sup> It is a right which imposes a positive obligation on states to ensure access to information, particularly with regard to information held by government. The right to access information held by the government must be the rule rather than the exception. Furthermore, the government has the responsibility to facilitate access to information which is already in the public domain.<sup>55</sup>

The African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa require all information regarding judicial proceedings to be made accessible to the public and all judicial decisions to be published and available to everyone throughout the country.<sup>56</sup> In addition, the Commission's Declaration of Principles on Freedom of Expression in Africa states: "public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest".<sup>57</sup> The Mozambican public clearly has a significant interest in action taken against police officers for unlawful killings, including the progress of criminal trials. Publishing such information will serve to ensure that justice is seen to be done and thus increase public confidence in the justice system.

The media in Mozambique have reported cases of extrajudicial execution and other killings by the police, but there have hardly been any reports on criminal proceedings against police officers. After reported killings by the police, the authorities have often been cited in the press saying that criminal investigations or disciplinary proceedings would be taken against the officers concerned. On at least three occasions, including after the shooting of Julião Naftal, police officials stated in the press that a commission of inquiry had been instituted and would publicly report its findings within a given number of days. In the case of Julião Naftal, the commission was given 10 days. However, to date none of these commissions has made its findings public. In fact, in almost all the cases reported by the media between 2005 and June 2009, no information has been made publicly available concerning the results of the investigations or any criminal proceedings instituted against police officers, either by the police or the Public Prosecution Service. The Costa do Sol and Penicelo cases seem to be the exceptions.

There is a Public Relations Department within the police. Its functions are to:

- Ensure necessary information is provided to the public concerning criminality and actions to maintain public order and security;
- Develop educational programmes to raise public participation in preventing and combating crime;
- Establish strong links with the media;
- Promote the organized participation of the population in combating and preventing crime; and
- Coordinate international cooperation in these areas.<sup>58</sup>

The national, provincial and city police commands each have a police spokesperson charged with liaising with the public and the media. The national police spokesperson holds weekly briefings for members of the press. The Maputo provincial police spokesperson also reportedly gives briefings. However, briefings do not appear to happen in other provinces, although the spokespersons are in theory available for questions. The information provided in

the weekly meetings by the national police spokesperson usually consists of the number of people arrested and the types of crime for which they were arrested. At times the number of police officers disciplined for breaching disciplinary regulations, usually in cases of corruption, is given. Rarely is any information provided on actions taken against police officers for unlawful killings or other human rights violations. The Costa do Sol and Abranches Penicelo cases were exceptions, with information provided about the trials and sentences handed down. Journalists attended the trial of Alexandre Balate, charged with killing Abranches Penicelo, and it was extensively covered in the media.

During a visit to Mozambique in May 2009, Amnesty International delegates were informed by police officials that since 2005 a total of 356 police officers had been disciplined for breaching disciplinary regulations. About 108 of these had been expelled from the police force and 37 had been convicted of criminal offences. However, it was unclear how many of these criminal cases related to unlawful killings or other human rights violations and how many related to corruption. It appears that the police do not have, or are unwilling to provide, disaggregated data which would clarify the type of offences for which police were disciplined or the type of proceedings against police officers. In particular, information about proceedings against police officers suspected of unlawful killings is not available in an accessible form to the public.

Any police officer prosecuted for an unlawful killing must have a fair and public trial.<sup>59</sup> The right to a public hearing is an essential safeguard of the fairness and independence of the judicial process. Not only the parties to the case but also the general public (including the press) have a right to be present. The public has a right to know how justice is administered and what decisions are reached by the judicial system.<sup>60</sup> Accordingly, where prosecutions take place, the process of a fair and public trial plays a key part in establishing the facts of what happened in the particular case and placing it on the public record. However, and particularly because agents of the state have a specific obligation to respect and protect the right to life, it is important that information on cases against the police for unlawful killings is recorded and published by the authorities responsible for the administration of justice.

The Public Prosecution Service is responsible for instituting criminal cases. The Attorney General presents an Annual Report to parliament giving details of the number of prosecutions handled. However, the document rarely contains information on prosecutions against police officers for extrajudicial executions. The 2008 and 2009 reports of the Attorney General do not mention the Julião Naftal or Augusto Cuvilas cases for example and the Abranches Penicelo case is only mentioned in the 2009 report; even though these three incidents were highly publicised when they occurred. When the report does refer to cases in which police officers were prosecuted for unlawful killings by the police, the details of the case are vague making it difficult to identify which incident the report refers to and it often omits to mention that those convicted were police officers. For example, the report for 2008 referred to the prosecution of three individuals for the killing of three others in the Costa do Sol area. It did not mention that the three convicted men were police officers at the time of the killing. On the other hand, when police officers are prosecuted for extortion or other similar crimes, the Attorney General's report does mention that those prosecuted were police officers. Amnesty International delegates raised this omission with the Attorney General, who stated that this was because the officers prosecuted for unlawful killings were tried as civilians and not as police officers. However, in order to increase public confidence in the police accountability

mechanisms and justice system, such information should be provided to the public. Failure to do so creates the impression that police are immune from prosecution and discourages victims from seeking justice.

In most cases of unlawful killings by the police in Mozambique, suspected perpetrators are not prosecuted and brought to trial and so the facts are not brought to light and examined in a public hearing. International human rights standards require that in all cases of suspected extrajudicial execution the authorities publish written reports within a reasonable period of time concerning the methods and findings of investigations. These should include information on the scope of the inquiry, the procedures and methods used to evaluate evidence, a detailed description of specific events found to have occurred and the evidence upon which such findings were based, the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection,<sup>61</sup> and conclusions and recommendations based on findings of fact and on applicable law. When a case proceeds to a public trial, such information is normally brought into the public domain, and the right of the accused to a fair trial would normally preclude its being published before the trial. However, in any case where a decision is made not to prosecute, the timely publication of such a report is essential in order to enable that decision to be effectively challenged in court by the families or any other body or individual with a legitimate interest.

In April 2008 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions requested a visit to Mozambique. However, the government has not agreed to this request, a further indication of its lack of transparency in its handling of cases of unlawful killings by police.

#### THE ROLE OF THE MEDIA

The media in Mozambique have played an important role in highlighting cases of extrajudicial executions and other unlawful killings by the police. Most cases have come to the attention of the public via the media. For example, it was the investigative work of the *O Pais* weekly newspaper that raised national and international concern about the Costa do Sol killings and contributed towards the prosecution of three police officers. The Penicelo family has also used the media to highlight the killing of Abranches and put pressure on the authorities to hold police officers accountable.

While the Mozambican media have reported numerous cases of unlawful killings, very little information has been published about trials of police officers, apart from the Costa do Sol case and Penicelo cases, which were widely covered in the media. While official statements about the establishment of commissions of inquiry have been reported, journalists have not often followed these up or questioned the subsequent silence. Many of the journalists who spoke to Amnesty International cited a lack of time, resources and culture of investigative journalism for this failure, admitting that they did not try to follow up such cases. Although Amnesty International recognizes that there is no legal duty on the media to investigate the actions of police authorities, the media nevertheless has a key role in facilitating the exercise of the right to information.

The public has a right to information about how the government is fulfilling its obligation to

ensure there is no impunity for human rights violations. The authorities claim that the police do not enjoy impunity and that they are held responsible for their crimes. If this is the case, the authorities should give the media information on actions taken against police officers for unlawful killings. If such information were more widely reported in the media, it would contribute towards developing a climate of public accountability and encourage the families of victims to seek justice.

However, while the authorities should ensure that they make information available to the media about such cases, it is important also that the media do not act as an uncritical mouthpiece for transmitting the authorities' version of events. For example the media has reported on numerous occasions that police had shot and killed robbers, bandits or dangerous criminals, in violation of the victims' presumption of innocence since in many of these cases the alleged criminals had never been charged with any offence, let alone convicted. There can be a risk that reporting in such terms could serve to implicitly excuse the killing of individuals by the police on the basis that those killed were "criminals".

#### LACK OF INFORMATION FOR FAMILIES OF VICTIMS

*"They have not told us anything. We do not know whether the police officers have been arrested. We are not told anything"*

Relative of Julião Naftal<sup>62</sup>

The families of those killed by the police and their legal representatives must be informed of and have access to any hearings as well as all information relevant to the investigation, according to the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions.<sup>63</sup> The African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa state that the right to an effective remedy includes access to factual information concerning the human rights violation.<sup>64</sup> The UN Basic Principles of Justice for Victims state that judicial and administrative mechanisms set up to enable victims to obtain justice should be responsive to their needs. Responsiveness includes informing victims – or their families in the case of extrajudicial executions – of the progress and disposition of their cases, especially when they have requested such information.<sup>65</sup> Families should be provided with information that will help them in pursuing justice and in finding out the truth about the death of their relative. This is underlined in the UN Updated Set of Principles for the protection and promotion of human rights through action to combat impunity,<sup>66</sup> which states that "Victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place".

In 2005, Pedro Mulaudzi was shot dead by police at the preventive detention unit (Unidade de Prisão Preventiva) in Niassa Province. The police claimed that when he was carrying food to other detainees in the cells, he attempted to escape. According to the police, they first shot into the air then, when he did not stop running, they shot at him to immobilize him. However, an autopsy revealed that he had been shot from the front in the heart. A criminal process was instituted against the police officer who reportedly gave the order to shoot and the two officers who fired the shots. The Provincial Public Attorney (Procurador Provincial) asked the

police to carry out an investigation. Despite the autopsy result, the police investigation concluded that the officers involved were not culpable as they had shot to immobilize, not to kill. Amnesty International has been informed that the parents of Pedro Mulaudzi have since passed away. The organization has been told that the case is in the courts, but has not yet been tried.

Families of victims of police killings have found it difficult to obtain information on the progress of their cases. The family of Pedro Mulaudzi, shot dead by police in Niassa in 2005, have received no information concerning the progress of their case four years after his killing. The Human Rights League have followed this case closely and made numerous inquiries to the Provincial Public Attorney,<sup>67</sup> but have only been told that there is an on-going investigation. Amnesty International delegates were informed by the Attorney General that a case was instituted against the police officers in 2005, but has yet to come to trial.

Failure to provide information concerning the progress of investigations into alleged unlawful killings to family members within a reasonable time discourages them from pursuing justice and is a violation of their rights.

## LEGAL AND OTHER COSTS

*"If you are poor in Mozambique your case dies."*

Father of a man who died moments after police severely beat him.<sup>68</sup>

The Public Prosecution Service is responsible for the institution of legal proceedings in cases of public crimes. Public crimes are those for which a complaint from an offended party is not necessary and include all those committed by a public authority. Unlawful killings are public crimes and therefore the Public Prosecution Service has the obligation to initiate criminal proceedings in such cases as soon as it becomes aware of them. The police also have an obligation to transmit such cases to the Public Prosecution Service.<sup>69</sup> The Criminal Procedures Code allows for families of those killed by the police to become party to the criminal proceedings in order to enable them to pursue their personal interests in the case, including claims for compensation. Families must have a lawyer to represent them if they are to be party to the criminal case.<sup>70</sup> The few cases of unlawful killings where police officers have been held accountable have involved the active participation of families of the deceased. It appears that without their participation or huge public interest in a case, police officers are unlikely to be convicted. Furthermore, as there are no civil proceedings independent of the criminal proceedings for families to claim compensation in such cases, families may not receive any compensation if they do not become a legal party to the proceeding or if there is no criminal proceeding.

However for families to participate, they need to meet expenses which are beyond the means of some. On a number of occasions families of victims of unlawful killings have said to Amnesty International delegates that without money nothing comes of cases. Expenses may include:

- Costs of hiring a lawyer;
- Other legal fees such as court fees;

- Transport costs for visits to the lawyer or to attend the trial;
- Costs of accommodation to attend trials or meet the lawyer;
- Loss of earnings due to time off work.

Article 62 of the CRM provides that the state should guarantee access to courts for all. Although the article only enshrines the right of the accused to legal aid, the Institute for Legal Representation and Assistance (Instituto de Patrocínio e Assistência Judicial – IPAJ) was set up to provide legal assistance to all free of charge. The Statute of the Mozambique Bar Association (Ordem dos Advogados de Moçambique – OAM) also provides for the provision of free legal assistance<sup>71</sup> and, the Human Rights League has provided legal aid to families of victims of unlawful killings.

Nevertheless, the provision of legal aid in Mozambique is insufficient. The Human Rights League has a broad mandate which includes activities for the promotion and protection of all human rights. It therefore does not have the capacity to provide legal aid in all cases of human rights violations. The IPAJ has been criticized as not functioning properly and its members apparently still charge fees for their services.<sup>72</sup> Amnesty International delegates were informed by the head of the OAM that the association does not have adequate funding to provide free legal assistance, but that arrangements are being made to strengthen its capacity to do so.

As well as lawyers' fees, families incur other costs such as court fees. Both the families of Julião Naftal and Augusto Cuvilas have paid procedural costs to the court, although nothing has as yet become of their cases. Furthermore, in some cases, families have to travel long distances to consult lawyers and to attend court hearings. They have to pay for transport and sometimes for accommodation. In addition, they have to take time off work, resulting in loss of income. In a country where an estimated 54 per cent of the population lives below the poverty line,<sup>73</sup> many people cannot afford such costs. Most victims of unlawful killings in Mozambique are male, and they are often the breadwinner in the family. Some families are therefore left with hardly enough money to survive, let alone pursue justice.

International human rights standards require that victims be provided with proper assistance throughout the legal process and that measures be taken to minimize inconvenience to victims.<sup>74</sup> The government should ensure that measures are taken to support victims' families financially. Such measures should include steps to ensure that free legal assistance is indeed free. The African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa state that when legal assistance is provided, the compensation given to the appointed lawyer should be sufficient to be an incentive for adequate and effective representation.<sup>75</sup> The principles also require states to ensure that: "access to judicial services is not impeded including by the distance to the location of judicial institutions, the lack of information about the judicial system, the imposition of unaffordable or excessive court fees and the lack of assistance to understand the procedures and to complete formalities".

# LACK OF EFFECTIVE EXTERNAL POLICE OVERSIGHT

**Concerned that in many of the African states, there exist no independent policing oversight mechanisms, to which members of the public may report police misconduct and abuse of their powers for redress and that where they do, they are directly under police authorities, “Recognising, that police forces in African states, which do not have oversight mechanisms require reform in order to become effective instruments of security, safety, and justice and respect for human and peoples rights across the continent,**

...

**Noting that accountability and the oversight mechanisms for policing forms the core of democratic governance and is crucial to enhancing rule of law and assisting in restoring public confidence in police; to develop a culture of human rights, integrity and transparency within the police forces; and to promote a good working relationship between the police and the public at large...**

Preamble to the African Commission on Human and Peoples' Rights resolution of 2006 on Police reform, accountability and civilian police oversight in Africa<sup>76</sup>

**State Parties to the African Charter [must] establish independent civilian police oversight mechanism where they do not exist which shall include civilian participation.**

Article 3 of the African Commission on Human and Peoples' Rights resolution of 2006 on Police reform, accountability and civilian police oversight in Africa

Effective accountability and oversight mechanisms external to the police are important to ensure that, when the internal police accountability mechanisms fail to prevent human rights violations, perpetrators will be held accountable even if police authorities fail to carry out their duty in this regard. If the police investigate the police, doubts arise as to the impartiality of the investigative process and the risk of impunity for perpetrators increases. The UN Rapporteur on torture has stated that “independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement”.<sup>77</sup> The African Commission has also called on member states of the African Charter to adopt independent police oversight mechanisms in its resolution on Police reform, accountability and civilian police oversight in Africa.<sup>78</sup>

In Mozambique the Judicial Affairs, Legality and Human Rights Commission of parliament and the Attorney General are bodies external to the police with police oversight functions. Parliamentarians and the parliamentary commission can raise questions and make recommendations related to the behaviour and activities of the police. However, neither the parliamentarians nor the commission have powers to carry out actual investigations, which undermines the effectiveness of their oversight functions, particularly when the police do not cooperate.

The Attorney General, on the other hand, has powers to order investigations into cases of human rights violations by police. The Attorney General may also request the PIC to carry out investigations and to provide information necessary for the prosecution of criminal cases.<sup>79</sup> In terms of national law, the Provincial Public Attorney's Office may carry out investigations<sup>80</sup> and Amnesty International delegates were informed by a government official that the Attorney General may appoint prosecutors to investigate cases of suspected human rights violations by the police. Despite these powers, the Attorney General has not ordered investigations into the majority of cases of unlawful killings by police where the police themselves have not carried out investigations. This breaches the requirement of international human rights standards that all such cases should be investigated, and means that the Attorney General has failed to exercise effectively the police oversight functions.

## JUSTICE OMBUDSMAN

In 2006 the post of the Justice Ombudsman was established in accordance with article 256 of the CRM. The Law of the Justice Ombudsman<sup>81</sup> defines its function as guaranteeing the rights of all citizens and defending legality and justice.<sup>82</sup> However, a Justice Ombudsman has yet to be elected. It will be the function of the Ombudsman to examine complaints brought by individuals or groups concerning acts or omissions by public bodies and make recommendations to the competent body to take preventive or corrective action.<sup>83</sup> The Ombudsman will also be able to take up cases without a complaint if they amount to serious violations of human rights by members of the public administration. The Ombudsman will have the competence to carry out investigations into situations surrounding complaints and to institute proceedings relative to these complaints.<sup>84</sup> Where the Ombudsman's recommendations are not executed, the Ombudsman will be able to call upon the relevant authority to execute these recommendations and will have authority to set a timeframe for compliance.<sup>85</sup> This means that members of the public will be able to complain to the Ombudsman, who may either call on the police to carry out an investigation or investigate the facts alone. The Ombudsman may then call upon the Attorney General to institute a criminal proceeding. The Ombudsman is to function independently and impartially<sup>86</sup> and give an annual report of activities to parliament.<sup>87</sup>

The establishment of this office, if effectively implemented and executed, will go a long way towards advancing and protecting human rights, as well as ensuring accountability of the public administration.

## NATIONAL HUMAN RIGHTS COMMISSION

In May 2009 parliament approved a Bill establishing a National Human Rights Commission (NHRC). It has yet to be established.

The NHRC will be composed of a president, three members of civil society, three members connected to the education sector, three individuals with recognized knowledge or experience of human rights and a representative of the OAM.<sup>88</sup> As such, the NHRC will meet the requirement of civilian participation set out by the African Commission.<sup>89</sup> According to the Bill, the aim of the NHRC is to strengthen the national system for the promotion and

protection of human rights; to improve civic education regarding human rights; and to consolidate the culture of peace in the country.

The functions of the NHRC appear to be mainly related to raising civic awareness of human rights and cooperating with national and international bodies to promote human rights.<sup>90</sup> However, it will also have powers to receive complaints of human rights violations from individuals, to collect evidence about complaints and to forward information to the Attorney General. Like the Ombudsman, the NHRC will also be able to initiate cases even without a complaint.<sup>91</sup> The Justice Ombudsman may raise cases without a complaint if there are allegations of serious human rights violations by public officials, but the president of the NHRC may take up cases of serious or systematic violations of human rights in general.<sup>92</sup> As unlawful killings are serious human rights violations by public officials, both bodies can initiate inquiries into these even without a complaint.

The NHRC is empowered to carry out inquiries into alleged violations by public and private bodies, as well as by individuals. Public authorities will be obliged to cooperate with the NHRC and provide all information required, as long as the provision of such information is not prohibited by law. The NHRC will also be able to call upon the Public Prosecution Service to use legal means to compel an individual to answer questions put to them by the NHRC.<sup>93</sup> An important provision for ensuring that justice is not only done but seen to be done is that the NHRC must publish the conclusion of cases of human rights violations which amount to crimes.<sup>94</sup> The NHRC is also required to present an annual report to the President and to parliament on its activities.<sup>95</sup>

## POLITICAL WILL

Although both the Justice Ombudsman and the NHRC have powers to investigate suspected cases of unlawful killings, it remains the duty of the Attorney General to ensure that police officers are brought to justice for these crimes.

Unlawful killings are likely to continue in Mozambique unless there is a clear statement from both the political as well as the police authorities that such behaviour is unacceptable. Such a call would gain strength if it were supported by the establishment of an effective external police oversight body.

Any external body with police oversight functions – be it the Public Prosecution Service, the Office of the Justice Ombudsman, the NHRC or another body specifically charged with police oversight – should ensure that it takes up cases of human rights violations by the police in general and in particular unlawful killings, including extrajudicial executions. Such a body should be able to investigate alleged unlawful killings with or without the participation of the family or a complaint.

The body charged with police oversight should ensure that a thorough investigation is carried out in all cases of death at the hands of police officers, including when the victims are criminal suspects. It should have the power and authority to ensure that police officers are not able to obstruct justice, should be accessible to the public and have sufficient resources. In addition such a body should have the power to either send a case to court directly, or to a

prosecutor, or – in cases of disciplinary offences – to the Commander General of Police. The person receiving the findings of this body should follow its recommendations or explain in writing why it failed to do so. Vigorous efforts will be necessary to inform the public that this body exists and how to contact it.

## CONCLUSIONS

Unlawful killings have been carried out with near impunity in Mozambique. The authorities have failed to carry out their duty to bring perpetrators to justice, except in the few cases where family members have tenaciously pursued justice or public pressure has forced them into action.

In addition, the authorities appear to have allowed or encouraged obstacles to be placed in the way of families pursuing justice. As a result, the majority of Mozambicans whose family members have died at the hands of the police are unable to find out the truth about what has happened, to obtain reparations, or to see those who have committed unlawful killings held accountable. Despite the authorities' insistence that action is taken against police officers for such acts, few of these crimes have been the subject of prosecution and there is a general lack of transparency in the police accountability mechanisms. As a result the public is largely kept in the dark as to actions taken against police officers for unlawful killings.

External police oversight bodies need to speak up and push for justice on behalf of families of victims of unlawful killings by the police. Although parliamentarians and human rights organizations have carried out this function to some extent, these bodies do not have adequate powers to ensure that police officers are brought to justice. Most importantly, what is required to bring an end to unlawful killings by the police is the political will to end the growing culture of police impunity.

The Public Prosecution Service may carry out its own criminal investigations with a view to prosecuting police and therefore has the power to ensure police are held accountable even when police authorities are uncooperative. However, it has failed to exercise these powers in the majority of the cases of unlawful killings. The Justice Ombudsman and the National Human Rights Commission, when operational, will also have the power to carry out investigations and to ask the Public Prosecution Service to prosecute. All three bodies can and should ensure transparency with regards to police accountability.

The establishment of the Justice Ombudsman and National Human Rights Commission does not absolve the authorities of their responsibility to remove all obstacles to the pursuit of justice by families of victims. In addition, the authorities must ensure that all perpetrators are brought to justice for such killings, whether or not the family participates. Unlawful killings and extrajudicial executions in particular, are a violation of Mozambique's obligations under international law. It is essential that the authorities show the necessary political will to

ensure police accountability if there is to be an end to unlawful killings by the police in Mozambique.

## RECOMMENDATIONS

Amnesty International calls upon the highest authorities in Mozambique to demonstrate their total opposition to unlawful killings by police. They should make clear to all members of the police that excessive or arbitrary use of force and extrajudicial executions will not be tolerated. The organization calls on the authorities to bring an end to unlawful killings and to ensure that when they do happen, all perpetrators are brought to justice and families of victims receive compensation for their loss.

**The Interior Minister and the Commander General of Police must ensure that steps are taken to prevent excessive or arbitrary use of force and extrajudicial executions, including by ensuring that:**

- Police have access to alternative means to deal with potentially violent situations so that force used is proportional;
- Police are trained in techniques to lower tensions and their ability to avoid the use of force is one of the criteria upon which their performance is assessed;
- Superior officers who supervise teams that use high levels of lethal force are made to account for these high levels.

**The Attorney General and Director of the Criminal Investigation Police must ensure effective and independent investigations are carried out into all suspected cases of unlawful killings. They should ensure that:**

- Prompt, thorough and impartial investigations are carried out into all cases of suspected extrajudicial executions and other use of force or firearms by police resulting in death or serious injury;
- At the very minimum, the investigations are not carried out by police officers from the same district as the officers suspected of being implicated in the killing;

- Those carrying out investigations have the powers and technical and other resources to obtain and examine all necessary information;
  
- Autopsies are automatically carried out immediately in all cases of death resulting from the use of force or firearms by a police officer;
  
- Thorough investigations are carried out at the scene of an incident as soon as possible following the death of an individual at the hands of the police. Where possible, measures should be taken to cordon off the area before the investigation team arrives at the scene of the incident;
  
- Steps are taken to improve forensic investigation methods in accordance with the procedures set out in the UN Principles and UN Manual (“Minnesota Protocol”) for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
  
- Police officers suspected of responsibility for extrajudicial executions, including those with command responsibility, are suspended from active duty during an official investigation;
  
- Complainants, witnesses, lawyers, judges and others involved in the investigation are protected from intimidation and reprisals.

**The Attorney General must ensure that all perpetrators of unlawful killings, including those with command responsibility, are brought to justice in proceedings which meet international standards of fairness, regardless of whether there is pressure from the public or families of the victims.**

**The Interior Minister and the Commander General of Police must ensure immediate steps are taken to end the culture of police protecting fellow officers from justice, including by:**

- Holding superior officers accountable for human rights violations by those under their command if they were aware of or should have been aware of, or failed to stop the violation;
  
- Holding police officers of whatever rank accountable for obstructing the course of justice;
  
- Ensuring that all police officers of whatever rank are made aware that they will be held accountable if discovered concealing evidence against a fellow police officer or otherwise obstructing the course of justice.

**The Interior Minister, Attorney General and Minister of Justice must ensure that mechanisms for holding police accountable are responsive to the needs of the families of the victims of unlawful killings and the public in general. To achieve this, the authorities must ensure that:**

- Credible mechanisms are established to receive complaints from the public and provide timely and accessible information on the progress of cases;
- Relatives or close friends of those injured, killed or otherwise affected by law enforcement use of force are notified at the earliest possible moment;
- The public, especially families of victims, are aware that they have the right to access justice and redress and what mechanisms are available for this;
- Families of victims are able to lodge complaints without fear of harassment or intimidation on the part of the police or other authorities. The authorities should ensure that victims are treated with compassion and respect for their dignity and that police officers receive training to sensitize them towards the needs of victims;
- The family of the victim have access to information relevant to the investigation, are entitled to appoint their own doctor to carry out or be present at an autopsy, and are entitled to present evidence;
- Where investigations do not lead to prosecution, a detailed report is made public, and specifically made available to the family of the victim. The report should describe in detail specific events that were found to have occurred, the scope of the inquiry, procedures and methods used to evaluate evidence and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection, and the reasons why the officers involved will not be prosecuted;
- Any decision not to proceed with prosecution is open to legal challenge;
- Families and dependants of victims of unlawful killings are entitled to adequate reparations, including compensation, independently of the outcome of a criminal prosecution.

**The Interior Minister and Attorney General must ensure police accountability mechanisms are effective and transparent, including by ensuring that:**

- All information regarding judicial proceedings and decisions relating to cases of use of force and firearms by the police resulting in death or serious injury are published and made accessible to the public;
- A comprehensive system is established to collect data on human rights violations by the police, with disaggregated data showing the types of violations by police officers, the number of police officers held accountable for the various violations, and the action taken against them. This information should be made public;
- Steps are taken to facilitate the public's access to information about cases where police actions caused death or serious injury.

**The Minister of Justice must ensure that families of victims are not prevented from claiming reparations because they cannot afford to pursue their claim. The Minister should take steps including:**

- An evaluation of the existing systems for legal assistance to ascertain what changes can be made to improve services and ensure that free legal assistance is indeed free;
- Ensuring that lawyers assigned to provide free legal assistance are sufficiently compensated so that they have an incentive to provide adequate and effective representation;
- Developing a plan to provide assistance to victims and their families covering transport and other essential costs.

**The Interior Minister must ensure that the laws, regulations and codes of conduct that regulate the functioning of the police are reformed to bring them in line with international human rights standards.**

**The Interior Minister must ensure that human rights standards relating to policing practice are incorporated into the training and education of all police officers and are also included in all their performance evaluations. In particular:**

- Guidelines for the use of force and firearms should conform to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The standards should be reflected in written policies, training manuals and courses, and in operational briefings;

- All police officers should be made aware through the chain of command that excessive or arbitrary use of force or other violations of human rights will result in investigation and corresponding sanctions;
  
- All incidents of use of weapons or firearms, whether intentional or not and whether or not they result in injury, should be immediately recorded and should be subject to scrutiny by an oversight body to ensure that international human rights standards are being adhered to and, if they are not, to identify why and on the basis of the findings to implement any necessary reform;
  
- The prohibition of extrajudicial executions should be reflected in the training of all police officers at every level. All officers should be instructed that they have the right and duty to refuse to obey any order to carry out or participate in an extrajudicial execution, and that an order from a superior officer must never be invoked as a justification for taking part in an extrajudicial execution.

**Parliament must ensure that the Justice Ombudsman is elected and the National Human Rights Commission is set up without delay and that at least one of these bodies has a sufficient mandate and powers to carry out police oversight functions. Such a mechanism must:**

- Have sufficient mandate, authority and resources to carry out investigations into all serious cases of human rights violations by the police, including any use of force or firearms by the police resulting in serious injury or death, on its own initiative;
  
- Be adequately staffed and headed by professionals with expert knowledge of law enforcement practice;
  
- Be widely known by the public and the police. Information concerning its mandate, functions, powers and working mechanisms should be widely publicized including in police stations and through awareness raising campaigns;
  
- Be readily accessible to the public throughout the country, including those in remote areas. It should take steps to promote itself so that the general public is aware of its existence and functions.

**An invitation should be extended to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in accordance with his request of April 2008**

## RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

### **Amnesty International calls upon the international community, including diplomatic missions and international non-governmental organizations, to:**

- Assist the Mozambican authorities in their endeavours to improve the capacity of the Criminal Investigation Police through funding training and acquisition of resources;
  
- Continue to assist in the provision of human rights training for the police;
  
- Assist in the provision of human rights training for journalists, particularly regarding the presumption of innocence and right to a fair trial;
  
- Help to improve the provision of free legal assistance;
  
- Continue to use their influence to encourage the authorities to investigate all cases of use of force and firearms by the police resulting in death or serious injury and other human rights violations by the police and to bring perpetrators to justice;
  
- Cooperate to ensure that those responsible for extrajudicial executions are brought to justice, including where any such person is identified outside Mozambique.

## ANNEXE 1: THE CASE OF AUGUSTO CUVILAS

### **Events surrounding his death**

Augusto Cuvilas was a dancer and choreographer. At the time of his death he was living with his partner in the Triunfo neighbourhood of Maputo city. He was shot by members of the police on 22 December 2007 and died on his way to hospital.

On the day of his shooting, Augusto was at home with his partner, Chimène Costa; his son and the boy's nanny. Augusto heard some suspicious noises coming from outside the house and thought burglars were attempting to break in. He called the police, but the police said they did not have transport to get to the house. Augusto then called other people, including his estranged wife, who is the mother of his son, to see if anyone could give the police a lift to his house. His estranged wife went to the police station and then drove to his house with two police officers.

By the time the police arrived at the house, the people who had been outside the house had left. Chimène Costa later told Amnesty International that they were having a calm conversation in the house and were suddenly surprised by a loud noise coming from outside the house. She realized it was gun shots and thought the would-be burglars had returned. The police had apparently arrived on the scene and started shooting indiscriminately at the house with AKM rifles. They did not announce their presence or make any attempt to communicate with them before they started shooting. Augusto Cuvilas was shot and was bleeding profusely. According to Chimène Costa the police only stopped shooting when they entered the house and saw her bent over him crying. The guard was also hit by bullets and died at the house. Augusto was rushed to the hospital, but was pronounced dead on arrival. Chimène Costa was two months pregnant at the time, but suffered a miscarriage.

### **Events following his death**

That same day Chimène Costa went to the police station to institute a case against the police. She was distraught and crying, but the police at the station kept her waiting for a long time and told her in a rude manner that she could not sit where she was sitting. They finally took down her statement; however the police changed it quoting her as having said his killing had been a mistake. They tried to get her to sign this new statement, but she refused and insisted that they write it as she had said. The police official at the station tried to excuse the actions of the police officers saying that they had acted with 'excessive zeal'.

### **Steps towards obtaining justice**

Chimène Costa approached the Human Rights League for help on the case. The two police officers were arrested, but one was later released apparently because he had not been the one that had fired the lethal shot. After six months not much progress had been made on the case and Chimène Costa approached a private lawyer. It was not until June 2009 that she and Augusto Cuvilas' family, including his estranged wife were summoned to the court to pay procedural costs. The family has been told the case is in the *instrução preparatória* phase, which is the phase where evidence is collected by the Public Prosecution Service and ends when a provisional charge is laid against the suspects.

No information regarding access to justice for the family of the guard, who was also killed by the police during this incident, is available.

## ANNEXE 2: THE CASE OF JULIÃO NAFTAL MACULE

Julião Naftal Macule, aged 47, was originally from Massinga district in Inhambane province. He had been living and working in South Africa for a few years at the time of his death. On 8 November 2007 he was shot and killed by the police, including members of the Rapid Intervention Force (Força de Intervenção Rápida – FIR), while asleep in a room in Massinga.

According to information pieced together from various sources, at the time of his death Julião was on his way to attend his late father's memorial service and had decided to spend the night in Massinga before continuing his journey. He arrived there on the evening of 7 November and went to a hotel where he had stayed on previous occasions. He was told there were no vacant rooms in the hotel, but was offered a room in another building. He was taken to the room by an employee from the hotel who thought he was Agostinho Chauque, a wanted criminal.

This employee apparently contacted the police after leaving Julião in the room and told them that he had seen Agostinho Chauque and gave them his whereabouts. In the early hours of the morning of 8 November 2007, a group of more than 10 police officers arrived at the hotel and a security guard showed them the room where Julião was sleeping. The police forced open the door and shot him while he was in bed then carried his bleeding body out of the room. According to a source, he appeared to still be alive at this point but must have died soon afterwards.

### **After the death**

Julião's wife had spoken to him before he went to sleep and they had agreed to speak in the morning. After numerous unsuccessful attempts to reach him on his mobile phone, at 10am she phoned his brother to say she was unable to contact Julião and asked him to go to the hotel to check on him. Julião's brother went to the hotel and found a lot of people in the area discussing the shooting. He then went to Massinga to get information from the police and was told to return the following Monday. Julião's wife and other members of the family also travelled to Massinga and then to Inhambane where the body had been taken. The police had initially taken his body to the morgue in Massinga, but moved it to Inhambane city morgue, apparently after members of the community who knew Julião organized a demonstration outside Massinga morgue.

The same morning police officials announced they had killed Agostinho Chauque, "public enemy number one". Journalists asked to see the body. It was at this point that the police officials changed their statement and said they had not actually caught Agostinho Chauque, but had nevertheless caught and killed "a dangerous criminal".

According to a source, on 9 November 2007 an officer at the provincial police command in Inhambane city, using Julião's phone, called his wife and asked her to go there. She went to the provincial command accompanied by other members of the family and there they met the provincial police commander, the director of the provincial PIC and another man. They told the family that there had been a confusion between the police and their relative, Julião, resulting in his killing. They further explained that they had mistaken Julião for Agostinho Chauque. The family asked whether Agostinho Chauque would not have been entitled to a

fair trial to which, according to the source, the police responded that Julião had not been a saint either and told them to take the body and bury him. The family requested an autopsy before taking the body and also asked the police to pay for the funeral. However, the police apparently responded that the person responsible for paying such costs was absent and therefore the police would not pay. The police also claimed they had no facilities to carry out autopsies in Inhambane and that this could only be done in Maputo. The family insisted and an autopsy was done a few days later. By this time the body was already in a state of decomposition. The autopsy revealed that Julião had been hit by a bullet in the left thigh which perforated the femoral artery and vein, causing a haemorrhage which resulted in his death.

#### **Steps towards obtaining justice**

On 14 November 2007, the family made a request to the Institute for Legal Representation and Assistance (Instituto de Patrocínio e Assistência Judicial – IPAJ) for a lawyer to assist them with this case and a lawyer based in Maputo was allocated to them. However, as no progress was made, in June 2008 they approached the Human Rights League and one of their lawyers, also based in Maputo, took over the case.

The new lawyer travelled to Inhambane province on 26 June 2008 to find out more about the case and what progress had been made. He went to the hotel where the shooting had occurred and spoke to witnesses. However, he was unable to meet the Provincial Public Prosecutor as he was in meetings the whole day. He did manage to speak to him over the phone and was told that a criminal proceeding (case number 255/07) had been instituted. The family also received a legal document informing them that three police officers had been charged with the murder of Julião and telling them to pay procedural costs to the Massinga District Court where the case would eventually be heard. They were unable to ascertain if the police officers had been arrested or detained pending trial; or suspended pending investigations.

By May 2009, according to the family, the security guard who showed the police to the room had not been interviewed nor had any of the other people who went to the area after the shooting. Furthermore, the attorney had not yet received the results of the ballistic examination and it is likely that one has not been done. In May 2009 Amnesty International delegates were told by the Attorney General that there were actually seven police officers accused in connection with this case and that the case was at the stage when evidence is collected by the Public Prosecution Service (instrução preparatória), which ends with a provisional charge against the suspects.

### ANNEXE 3: THE CASE OF ABRANCHES AFONSO PENICELO

On 14 August 2007 at about 3pm, Abranches Afonso Penicelo (also known as Abranches Afonso Penicela) received a call on his mobile phone, apparently from a person known to him as Octavio. This person suggested that they meet on the National Road 2<sup>96</sup> near Belo Horizonte district to discuss a possible business deal.

Abranches went to meet Octavio, but was confronted by eight police officers in two cars. They were led by Alexandre Balate, who Abranches recognized along with four other officers. Octavio was in a Toyota Corolla with some police officers and there was an Isuzu with more police officers inside. Abranches was seized by the police and forced into the Isuzu. In the car he was injected with a toxic substance as the police drove him away from the area. What happened to Octavio during this time is unknown and he has not been heard from since.

Abranches was driven to Xinavane district, then taken to a secluded area about 10 metres from the road. The police beat him, threw him on the ground and shot him in the back of his neck. Alexandre Balate then took a container of petrol, bought on the way, poured it over Abranches and set him on fire, burning his own right arm in the process. The police left the area thinking he was dead.

However Abranches, who had been unconscious, regained consciousness and at around 7pm managed to drag himself out of the bushes and to the side of the road. A man who happened to be in the area helped him by contacting his family and taking him to Xinavane hospital. There, Abranches told a nurse that he had been attacked by an officer from the Criminal Investigation Police called Balate. His family found him in Xinavane hospital at around 9pm that day. About two hours later, he was transferred to Maputo Central Hospital.

Around the same time, his family went to the 5<sup>th</sup> Police Station, which is located at Maputo Central Hospital, and told the police what had happened. The officer in charge called the Station Commander who went to Abranches' bedside with two other police officers to listen to his testimony. The Station Commander then called his superiors, an officer from the General Command and the Maputo City Command, to the hospital to listen to Abranches' story. The medical team was also present at the time. Abranches' family recorded his testimony on a mobile phone in the presence of the police officers. In this testimony Abranches emphasized that Alexandre Balate had burned his own arm while setting fire to him.

At 5.30pm the following day (15 August 2007) Abranches died of his injuries. The autopsy revealed that the cause of death was second and third degree burns on his body.

#### **After the death**

According to the family, during the vigil at the chapel in Maputo Central Hospital, they publicly related the events leading to the death of Abranches, naming the perpetrators who were in the chapel at the time. These police officers responded angrily, shouting and pointing accusingly at the family, especially at the youngest of the Penicelo brothers, Silvano Afonso Penicelo, who had recorded Abranches' testimony on his phone.

On 16 August, the family took the body of Abranches to his family home in Zavala district, Inhambane province for burial. However, the accused police officers had apparently told the

General Police Command in Maputo and the Gaza and Inhambane provincial police command that the Penicelo family was composed of dangerous, wanted criminals who had assaulted various banks and commercial establishments in Maputo city. They described the model, make and colour of Silvano's car and alleged that he had five firearms in the car. They also told the various police commands the details of the funeral. When the family arrived in the area where the funeral service was to be held, two shots were fired in the air. They did not know where the shots were fired from and did not react to them, but later stated that they were aware that they had been surrounded by members of the police and Rapid Intervention Force.

The following day, on 17 August 2007, Silvano was stopped by the police who took his car, handcuffed him and took him to the Zavala district command in a police car. The family were informed of the detention and immediately drove to the police station in three cars and watched as the police searched Silvano and his car. The police in Inhambane then contacted the General Police Command in Maputo and told them he had no firearms in his possession. The General Police Command in Maputo reportedly told them to check the car and that if everything was in order to let him go as the Maputo police would deal with him in Maputo. According to the Penicelos, the Inhambane police commander gave them this information and told them to be careful. At that point Constantino, Silvano's older brother, contacted the police in Maputo and asked for assurances that nothing would happen to them. Fearing that the events surrounding Silvano's detention were in fact an attempt on his life, the family decided it was best for Silvano to leave the country and live in South Africa.

#### **Before the trial**

Immediately after the killing, the family contacted the Mozambican Human Rights League for legal assistance in this case and also approached the Attorney General directly for further action. A case was instituted in August 2007 in the Provincial Public Attorney's office in Matola (case number 266/2007). On 3 December 2007, having received no further information about the case, the family approached the National Assembly for assistance and was invited by parliamentarians from the main opposition party, Renamo (Mozambique National Resistance, Resistência Nacional Moçambicana), to come to parliament to hear the Attorney General's report in April 2008 and to ask him questions. However, this invitation was later cancelled.

On 3 January 2008 the National Director of the Criminal Investigation Police invited the family to his office to explain the case. Despite the criminal process that had been instituted in August 2007 and despite the fact that the case involved his officers, he reportedly told them he had no idea of the case and asked for the names of those responsible so that he could transfer them to another police area. He also undertook to investigate the matter further and get back to them. However, they received no further information from the National Director.

On 13 April 2008, the family's attorney asked for the officers responsible for the killing of Abranches to be detained in pre-trial detention, but they remained at liberty until January 2009 when only Alexandre Balate was detained.

Amnesty International was informed that, following its report, 'License to Kill: Police

Accountability in Mozambique', published on 29 April 2008, in which this case was mentioned, the spokesperson of the Police General Command publicly stated on STV (a privately-owned television station in Mozambique) that he had no knowledge of the case, although he had previously stated publicly that Abranches had been killed by mistake. The Attorney General's annual report was presented to parliament the same month but there was no mention of this case in it. When a Renamo parliamentarian asked about the omission, the Attorney General stated that as he was new he did not know the case but that he would work on it. The Attorney General, however, acknowledged knowing about another killing which had occurred about four months before that of Abranches.

On 22 December 2008 the Public Prosecution Service ordered the pre-trial detention of Alexandre Balate in connection with the killing of Abranches Penicelo. He was arrested and detained on 13 January 2009. At this time the trial date was set for 14 April 2009. The day before the trial was set to start the privately owned newspaper, *Público*, published a report allegedly quoting the National Director of the Criminal Investigation Police who alleged that Abranches had been a member of a criminal gang. The paper also alleged that Constantino, the eldest Penicelo brother, financed killings. However, at this time the trial date had already been moved to 11 May 2009 at the request of the family. The family later told Amnesty International that the National Director had informed them that he had not made any such allegations to the media.

#### **The trial**

The trial started on 11 May 2009 in the Maputo Provincial Court in Matola city and was attended by numerous people, including diplomatic representatives of other states. Only Alexandre Balate was on trial. Two of the other officers had since died; another had been arrested and detained in connection with another crime; while four others were not charged.

During the trial Alexandre Balate was escorted by plain clothes police officers who on one occasion threatened to break the cameras of journalists who tried to take photos of the accused. On 18 May the lawyer from the Human Rights League assisting the family received threats, warning him to stop working on the case. His family was also told to tell him to stop representing the Penicelo family. The Human Rights League decided that it was best, for the safety of the lawyer, to remove him from the case and find someone else to replace him. However, the lawyer continued with the case and on 11 June 2009 Alexandre Balate was convicted of the murder of Abranches Penicelo and sentenced to 22 years' imprisonment. He was also ordered to pay compensation of 500,000Mtn (about US \$19,000) to Abranches' five children. Alexandre Balate's lawyer has stated that he will appeal against the decision.

#### ANNEXE 4: THE CASE OF PEDRO MULAUDZI

In 2005, Pedro Mulaudzi was shot dead by police in the grounds of the preventive detention unit in Lichinga, Niassa Province. The police alleged that he had attempted to escape while carrying food to other detainees in the cells. According to the police, they first shot into the air then, when he did not stop running, they shot at him to immobilize him. However, an autopsy revealed that he had been shot from the front in the heart.

The father of the deceased took the case to the Provincial Public Attorney (Procurador Provincial) and a criminal proceeding (case number 112/2005) was instituted against the police officer who reportedly gave the order to shoot and the two officers who fired the shots. The Provincial Public Attorney asked the police to carry out an investigation into the circumstances surrounding Pedro Mulaudzi's death.

Despite the autopsy result, the police investigation concluded that the officers involved were not culpable as they had shot to immobilize, not to kill. Both of Pedro Mulaudzi's parents died without the case being resolved. The parents are survived by three of their children, the oldest of whom was 28 years old at the time of writing this report. Human Rights League delegates in Lichinga have on a number of occasions requested further information from the Provincial Public Attorney, but have received none other than that the case is awaiting trial. In April 2009 they once again requested further information and were informed by the Provincial Public Attorney that he had no information regarding the case as he was new in office. He then undertook to ascertain what had happened. Amnesty International delegates were informed by the Attorney General during a visit to Mozambique in May 2009 that this case was awaiting trial. No further details were given, nor has any further information been received from the Provincial Public Attorney.

ANNEXE 5: KILLINGS BY POLICE IN MOZAMBIQUE, 2006–2009

Date and name of victim	Place	Details	Status of case
<p>21 Jan 2009</p> <p>At least one unnamed, allegedly one of a group of four robbers</p>	<p>Baixa area, Maputo city, Maputo Province</p>	<p>The PRM apparently received information that a robbery was to take place in the Baixa area of Maputo and plain clothes police officers were sent to the area on the day. A gang of four unnamed men reportedly arrived and attempted to rob Niza, a shop selling electrical appliances. Two of the robbers reportedly went into the shop to steal the day's takings, while one stayed outside in the get-away vehicle and the fourth controlled the entire operation from his mobile phone. The plain clothes police officers opened fire on the robbers as they tried to leave the shop, killing one instantly and injuring another in the leg. The other two criminals reportedly escaped in their vehicle, a stolen Nissan Sintra, which they abandoned a few kilometres away. Authorities told Amnesty International delegates that the police officers acted in self-defence as the alleged robbers shot at them. However, they also stated that it was agents of the private security company, "Nand zu Seguranca", who opened fire.</p>	<p>In May 2009 Amnesty International delegates were informed that (contrary to international human rights standards) no investigation was carried out as, according to the authorities, police acted in self-defence.</p>
<p>8 Jan 2009</p> <p>Luis de Jesus Tomas</p>	<p>Bairro Malhampsene, Matola City, Maputo Province</p>	<p>"Todinho" had been convicted of the 2005 murder of the director of the Maputo Central Prison and escaped from the cells of the Maputo City Police Command on 7 December 2008 together with two</p>	<p>It is not clear from public statements of police authorities whether investigations are</p>

"Todinho"		<p>other convicted criminals. On 5 January 2009 police reportedly intercepted a group of alleged criminals, including Todinho, in Maputo and a shoot-out ensued followed by a car chase with further shooting. The group drove to Matola where they abandoned their car. Three days later, Todinho's body was found near the place where the car had been abandoned. An autopsy showed that he had been hit by five police bullets. The police alleged he had been hit by the bullets during the shoot-out. However, although he had apparently been hit on 5 January, the cause of death was bullets fired a few hours before his body was discovered on 8 January. According to some reports, Todinho was executed by the police, while other reports state that he was killed by his accomplices.</p>	being carried out.
5 Sept 2008  Joaquim Salomão Nhantumbo (aged 33)	Bairro Fomento, Matola city, Maputo Province	<p>Joaquim Salomão Nhantumbo was returning from a warehouse where he had gone to buy drinks for his stall, when four police officers opened fire on the car in which he was travelling in Bairro Fomento at about 8pm. Friends who saw the incident phoned his brother, who arrived to find Joaquim still alive, but he died on the way to the hospital. When his brother arrived, the police had already searched the car. Money, personal documents and two bank cards were missing. According to the <i>Canal de Moçambique</i> newspaper, the police acknowledged that officers had killed Joaquim, but said they had returned fire after being shot at from the car in which Joaquim and three others were travelling. The</p>	<p>According to a report in the <i>Canal de Moçambique</i> newspaper on 9 September 2008, police authorities stated that an investigation would be opened in view of the fact that the family had a different story. No further information is available concerning the case.</p>

		other three apparently fled the scene. The police justified the presence of four police officers carrying firearms by saying that the area was well known for its criminality and that the four officers were suspicious of the car and asked it to stop. Instead of stopping, they said, Joaquim and his companions, opened fire against the police and fled.	
Aug 2008  Three unnamed men	Moamba district,  Maputo	The bodies of three men were found buried in the district of Moamba. Local people from the area stated that they believed the three had been “summarily executed”. The Mozambican Human Rights League alleged that one of the bodies was that of a man who had been held in detention in the Maputo police city command.	An inquiry into the killings was held. In September 2008. Newspapers reported that the results of the inquiry would be made available within a few days. All attempts to obtain information on the results have proved futile. The Attorney General's report for 2009 stated that a case is in the instrução preparatória phase, but no suspects have been identified.
Aug 2008  Unnamed man	District of Matutuine, Maputo province	On or around 21 August 2008 a police officer apparently approached the unnamed man and shot him at close range. The reasons for this action are unknown. The spokesperson of the Maputo Provincial Command stated that an investigation would be carried out and the police officer was arrested pending the investigations.	No further information has been provided.
12 May 2008	Maputo Province	The deceased lived in Maputo and went to Ponta do Ouro to fix a mobile phone. On that day a mobile phone had been stolen in	The police authorities paid 2 900Mtn (about US \$105) for food

Vulai		the area where he went and the police suspected him of having stolen it. The police beat him and demanded an amount of 450Mtn (about US \$16) and R150 (about US \$20) from him. After he had given them the money, they demanded more and sent him to go and collect it. In the evening the police went to where he was staying to collect the money. They were reportedly drunk and beat him again whilst he was in the streets. They then let him go and witnesses said he walked for about 15m before collapsing and dying. The residents of the area went to the police commander to complain because it wasn't the first time the police had been abusive.	during the funeral and 1 500Mtn (about US \$55) for the funeral. One police officer admitted beating him, but the police did not want to take responsibility for his death. No further information is available.
8 May 2008  Abdul and another unnamed alleged robber	Maputo Central	The two men were allegedly attempting to break into a home in Emilia Dausse Avenue in central Maputo when police arrived. The police alleged that one of them pulled out a pistol and started shooting at them. According to the Maputo police spokesperson, the two were killed in a shoot-out.	No further information has been provided.
May 2008  Augusto Teixeira	Maputo	According to a report in the <i>Zambeze</i> newspaper on 15 May 2008, Augusto Teixeira was said to have killed a police officer and seriously injured another a couple of days before he was killed. He was killed by the police, allegedly while they were trying to arrest him.	No investigations appear to have been carried out and no further information is available concerning the case.

April 2008  Isaias	Lichinga, Niassa Province	According to the <i>Diario de Moçambique</i> newspaper of 14 April 2008, a man known only as Isaias was killed by a police officer. Isaias sold car spare parts and electric goods in a market and according to a friend of his, a police officer in civilian clothes wanted an electric wire worth 3,000 meticaïs from him but did not want to pay for it. An argument ensued and the officer reportedly took his gun out and shot Isaias in the head, killing him instantly. Two of Isaias' friends went to report the incident to the 1 <sup>st</sup> Police Station and were apparently told that an investigation would be carried out as the police had a different version of the events. According to the police, the victim and his friends were found in possession of the wire when they were stopped by the police officer. They ran away and the officer fired his gun accidentally killing Isaias.	According to the <i>Diario de Moçambique</i> newspaper, police authorities paid for the funeral costs. No further information is available concerning the case.
April 2008  Calisto Hilario Churame	Maputo	According to reports by the News service, AIM Calisto Hilario Churame was suspected of being an armed robber. Sometime on or around 15 April he was shot in an alleged shoot-out with the police. According to reports a police patrol car came across a suspect vehicle and ordered it to stop. Instead, the car sped away and hit a parked vehicle. One of the car's occupants escaped into a nearby building but Calisto was fatally wounded in the ensuing shoot-out. It appears that the individual who took refuge in the building was later arrested.	No investigation appears to have taken place and no information is available.
13 Feb 2008	Baixa area, Maputo city, Maputo	Police shot and killed three suspected robbers in the Baixa area of Maputo. According to the police, the men were about to rob a	In May 2009 Amnesty International delegates were

Three unnamed alleged robbers	Province	bank and a factory. Police officials alleged that they had prior knowledge of the planned robbery but were unable to apprehend the suspects without resort to lethal use of force.	informed that no investigation was carried out as, according to the authorities, police acted in self-defence.
22 Dec 2007  Augusto Cuvilas and one other unnamed man	Bairro Triunfo, Maputo city, Maputo province	Augusto Cuvilas was a dancer and choreographer who was killed on 22 December 2007 by the police in his home in Bairro Triunfo. He was at home with his partner, son and the boy's nanny when they heard some noises and noticed strangers outside the house. Suspecting they were robbers, Augusto phoned the police who said they did not have transport to get to his house. He then called his estranged wife and mother of his son, who drove the police to his house. When the police arrived they started shooting indiscriminately, killing Augusto and his guard. His partner, who was two months pregnant, suffered a miscarriage. Two officers were reportedly arrested, but one was later released apparently because he did not fire the fatal shot	Two police officers were arrested. In July 2008 one of the officers was released reportedly because the period for his legal preventive detention had expired. The case is apparently in the instrução preparatória phase (the phase where evidence is collected by the Public Prosecution Service).
8 Nov 2007  Julião Naftal Macule	Massinga, Inhambane Province	Julião Naftal Macule was asleep in a hotel room in Massinga, Inhambane, when police from the Rapid Intervention Force pushed open the door and shot him. The police said they had received reports that a wanted criminal was in the hotel room. Soon after his death police authorities announced they had captured and killed Agostinho Chauque, "the most wanted criminal in the country". It was only after journalists asked to see the body that the police said	In May 2009 Amnesty International delegates were told by the Attorney General that that the case was currently in the phase where evidence is collected by the Public Prosecution Service (instrução preparatória), which ends when a

		they had not actually caught Agostinho Chauque, but had nevertheless caught and killed “a dangerous criminal”.	provisional charge is laid against the suspects.
3 Nov 2007  Unnamed man	Pemba, Cabo Delegado Province	An unnamed man was shot dead during a confrontation between the police and a crowd who had besieged the police station demanding the release of a local political figure who was facing charges of assault. The Interior Minister ordered an inquiry into the events surrounding the killing and gave it 15 days to respond.	The results of the inquiry were not made public and attempts by Amnesty International and local human rights organizations to acquire them have so far proved futile.
14 Aug 2007  Abranches Alfonso Penicelo	Xhinavane, Maputo Province	At about 3pm Abranches Penicelo was abducted by a group of eight police officers, given a toxic injection and driven to a secluded area in the district of Xhinavane. He was then beaten, shot in the back of the neck and set on fire by the police who left the area thinking he was dead. However, he survived and before he died he was able to give his testimony, which was recorded on a mobile phone, in front of his family and police officers from the 5 <sup>th</sup> Police Station. He died on 15 August 2007.	On 11 June 2009 Alexandre Balate was convicted of the murder of Abranches Penicelo and sentenced to 22 years’ imprisonment. He was also ordered to pay compensation of 500,000Mtn (about US \$19,000) to Abranches’ five children.  None of the other police officers involved have as yet been charged.
May 2007  Unnamed young man	Chokwe, Gaza Province	According to reports the young man was a prisoner in Chokwe. His body was found in the forest in the Moamba district of Maputo province near where the bodies of four young men were found in the river Movene. Witnesses said he appeared to have been “summarily executed” by the police.	No further information has been provided.

4 April 2007  Sousa Carlos Cossa, Mustafa Assane Momedede and Francisco Nhantumbo	Costa do Sol area, Maputo city, Maputo Province	The three men were shot by police on the evening of 4 April 2007 at a sports field in Costa do Sol. The police said the three were shot while attempting to flee, but an autopsy report revealed that they had been shot at close range in the back of the neck. The police responsible were suspended from duty but, initially, the police refused to arrest them despite an arrest warrant issued by the Public Attorney of Maputo city. It was not until 15 May 2007 that the Commander General of Police finally confirmed that the three police officers had been arrested.	In July 2008, three police officers were sentenced to 21 years' imprisonment for the murders. They were also ordered to pay US\$25,000 compensation to the families of the victims.
9 March 2007  Unnamed nurse	Costa do Sol area, Maputo city, Maputo Province	A nurse was returning from a class at the university and stopped his car at the Triufo market. He met some friends in the area and had a couple of drinks with them. As he was driving away from the area three police officers fired shots at his car, killing him. The police officers, who had been at the market when he arrived and left, later alleged that they believed he was a criminal.	According to a relative a case was instituted against the police officer on 16 September 2008 in the Maputo city court. No further information has been made available.
Feb 2007  Unnamed man	Matola, Maputo Province	The police alleged that he was a criminal and that officers went to his house with the intention of arresting him. According to the police he started shooting at them and was killed in the cross-fire that ensued. It does not appear that any police officer sustained injuries.	According to the Attorney General's annual report of 2008, an investigation is being carried out.
22 Sept 2006  Timoteo,	Matola, Maputo Province	The three men were in a car when police fired shots at it, killing all three. The police alleged that they suspected them of having robbed a bank and a company known as SORADI. However, others claim	No further information is publicly available.

Egídio José Chilaule and Francisco Osvaldo		that Timotei had an arrangement with the police commander for police to escort him when he transported money to Swaziland, but the commander was asking for too much money so Timotei used Egídio José Chilaule and Francisco Osvaldo, who were his friends and members of the Rapid Intervention Force (FIR), instead. Police officers then killed the three on the pretence that they were suspected robbers. Witnesses said the car was stationary and the three were surprised by a volley of shots from an AK47. The witnesses said the police shot to kill despite plenty of opportunity to arrest without such force.	
11 Sept 2006  Unnamed individual	Maputo city	This is a case obtained from the Attorney General's report for 2009. The details of this case are not clear. The individual was apparently chased by two police officers and then shot and killed by one.	According to the Attorney General's report one of the police officers was convicted of murder and sentenced to 18 years imprisonment. He was also ordered to pay 600 000. 00 MT (about US\$21, 000) to the family of the deceased.
6 July 2006  Leonel Castro (aged 23)	Nampula Province	Leonel escaped from the police cell in Nampula. He had been sentenced to 20 years in prison in 2003-2004 for crimes including robbery, but escaped from prison. In late 2005 he robbed and killed a man in Nampula and was arrested. He was held by the PIC in 2005-2006 and again escaped. He was recaptured in January 2006 but escaped a third time. Four police officers were arrested on suspicion of having helped him. He	No further information is publicly available.

		was put back in the PIC cells and was strongly guarded. In July 2006 he tried to escape again and was shot as he was about to jump over the wall. He died later in hospital. The officers accused of helping him escape were tried and acquitted in 2006. Local human rights organizations expressed concern that it was likely that some police officers had an interest in keeping him from testifying.	
7 April 2006	Maxaquene, Maputo Province	According to the police spokesperson of Maputo, these four men were armed robbers, three of whom robbed an electrical store, 'Play Video' in Maputo at about 9am. At 6pm all four attempted to rob a commercial establishment in the city centre belonging to Grupo MBS, but were stopped by police. They fled to a neighbourhood near the city centre, but were found by police and a shoot-out allegedly ensued. Three were killed in the alleged shoot-out, but it is not clear how the fourth died. It does not appear that any police officer sustained any injuries during the shoot-out.	No information is available concerning investigations into this case.
Mario Tembe Langa (aged 48), Edrisse Julião Macuacua (aged 37), Armando Manuel Come (aged 28) and Fernando Cuco			
19 Mar 2008	Bairro dos Pescadores, Maputo City, Maputo Province	This is a case obtained from the Attorney General's report for 2009. The details of this case are not clear. The individual was apparently killed by two police officers in his home.	According to the Attorney General's report the two police officers were put in preventive detention and a case was instituted in the Judicial City Court on 22 April 2008. No further information is available.
Unnamed individual			
17 Mar 2006	Maxaquene, Maputo	According to a police spokesman, the four escaped from Maputo security prison on 15 March 2006.	In May 2009 Amnesty International

Aquilas Nguila, Samuel Nhambe, Candido Chirindza, and Francisco Chirindza	Province	They hijacked a minibus with a driver and three passengers. The police apprehended them in the neighbourhood of Marracuene, searched the minibus for weapons, and when they found none allowed the men to drive the vehicle to Maputo under police escort. The police said the men tried to escape and opened fire with weapons they had hidden. In the shoot-out all four men were killed.	delegates were informed that no investigation was carried out as, according to the authorities, police acted in self-defence.
24 June 2006  Abdul Monteiro Daude (aged 25)	Costa do Sol, Maputo Province	Abdul was shot dead by a presidential guard after apparently accidentally damaging a car belonging to the office of the President when he left a beachfront disco in Maputo. He was chased by three presidential guards in the damaged car, who shot at the tyres of his car, bringing it to a halt. According to a witness, he surrendered to the guards. However, they shot him in the leg and beat him and finally killed him. An officer, Joaquim Rafael Mungamela, was subsequently arrested.	A presidential guard was convicted and sentenced to 18 years' imprisonment in 2008. It does not appear that any action was taken against the other guards involved in the incident.
14 Feb 2006  Mario Alfredo (aged 17)	Alto Mae, Maputo Province	Mario Alfredo was shot dead by a police officer in unclear circumstances. The police officer was reportedly trying to stop a fight in the street when he opened fire and shot Mario.	No further information is publicly available
9 Jan 2006  Five unnamed men	Maputo Province	Six alleged members of a gang reportedly robbed a warehouse and were confronted by the police. One escaped but the others were killed by the police in a shoot-out. It does not appear that any police officer was injured during the alleged shoot-out.	No further information is publicly available

<p>8 Jan 2006</p> <p>Julêncio Gove (aged 21)</p>	<p>T3 Matola, Maputo Province</p>	<p>Julêncio Gove was shot and killed by police when he tried to intervene to stop six of them from beating a young woman. He was initially warned not to interfere and stepped away from the police, but continued urging them to stop. One of the officers fired a shot at him, and when he fell to the ground the police officers kicked him to death.</p>	<p>Amnesty International delegates were told in May 2009 that the officer that shot Julêncio was convicted and sentenced to 16 years' imprisonment. No information was given as to when the trial had occurred. No charges were brought against any of the other police officers in connection with the beating of the woman or the kicking of Julêncio after he had been shot and lay on the ground. Six officers from the station, including the station commander were reportedly demoted and transferred to other stations in Maputo.</p>
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## ENDNOTES

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- 1 Statement made during an interview with Amnesty International on 29 September 2009
- 2 Article 6.
- 3 Article 4.
- 4 Index: AFR 41/001/2008.
- 5 Chapter III of the Criminal Code.
- 6 Principle 4 of the Basic principles on the use of force.
- 7 Principle 5 of the Basic principles on the use of force.
- 8 Principle 9 of the Basic principles on the use of force.
- 9 Principle 10 of the Basic principles on the use of force.
- 10 Principle 22 of the Basic principles on the use of force.
- 11 Article 2(3) and 14 of the ICCPR, Principle 23 of the Basic principles on the use of force; and Principle 5 of the Declaration of the Basic principles of justice for victims of crime and abuse of power.
- 12 Principle 7 of the Basic principles on the use of force.
- 13 Principle 24 of the Basic principles on the use of force.
- 14 Principle 1 of the Principles on extra-legal, arbitrary and summary executions.
- 15 Principles 9 and 10 of the Principles on extra-legal, arbitrary and summary executions.
- 16 Principle 18 of the Principles on extra-legal, arbitrary and summary executions.
- 17 Principle 16 of the Principles on extra-legal, arbitrary and summary executions.
- 18 Article 2(3).
- 19 Principles 16, 17 and 20 of the Principles on extra-legal, arbitrary and summary executions; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para 11 and para 24.
- 20 Principle 22 of the Basic principles on the use of force.
- 21 Principle 7 of the Basic principles on the use of force.
- 22 Principle 18 of the Principles on extra-legal, arbitrary and summary executions.
- 23 Principle 22 of the Basic principles on the use of force; and Principles 9 and 10 of the Principles on extra-legal, summary and arbitrary executions.
- 24 Principle 7 of the Basic principles on the use of force, Principle 18 of Principles on extra-legal, summary and arbitrary executions.
- 25 The Organic Law of the Police (A Lei Orgânica da Policia), Decree 27/99 of 24 May 1999.
- 26 Article 77.
- 27 Article 93.
- 28 Article 4(g) of the Disciplinary Regulation for Police, 5/87 of 10 March 1987.
- 29 A Liga Moçambican de Direitos Humanos.
- 30 Polícia de Investigação Criminal – PIC.
- 31 Força de Intervenção Rápida – FIR.
- 32 Principle 24 of the Basic principles on the use of force.
- 33 Principles 11 and 22 of the Basic principles on the use of force.
- 34 Principles 6 and 22 of the Basic principles on the use of force.
- 35 Article 4(3)(b).
- 36 Article 14 of the Organic Law of the Police.
- 37 Article 14 of the Organic Law of the Police.
- 38 Article 4 of the Law of the Public Prosecution Service (Lei de Ministério público) 22/2007.

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39 Brigada da Investigação dos Crimes Cometidos pela Polícia  
40 Procurador da Cidade de Maputo.  
41 Disciplinary Regulation, Article 5 (c).  
42 Statement made to Amnesty International during an interview on 29 September 2009  
43 Article 1.  
44 Article 2.  
45 Principle 15 of the Principles on extra-legal, arbitrary and summary executions.  
46 Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, para 10 and para 12(b).  
47 Article 4; as well as Articles 6 and 11 of SARPCCO Code of Conduct for Police Officers.  
48 Principle 16 of the Principles of justice for victims.  
49 Article 5 of the Principles of justice for victims.  
50 Article 68 of the Police Statute, Decree 28/99 of 24 May 1999.  
51 Article 8.  
52 Article 19.  
53 Article 48.  
54 Promotion and protection of right to freedom of opinion and expression, Report of the Special Rapporteur on the promotion and protection of freedom of opinion and expression, January 1998, UN Doc: E/CN.4/1998/40.  
55 Promotion and protection of right to freedom of opinion and expression, Report of the Special Rapporteur on the promotion and protection of freedom of opinion and expression, January 1998, UN Doc: E/CN.4/1998/40.  
56 DOC/OS (xxx) 247 (2001)  
57 Adopted by resolution of the African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17 to 23 October 2002.  
58 Article 19 of the Organic Law of the Police.  
59 ICCPR, Article 14.  
60 See Amnesty International, Fair Trials Manual, Index: POL/30/02/1998, p84.  
61 Principle 17 of the Principles on extra-legal, arbitrary and summary executions.  
62 In an interview with Amnesty International delegates on 20 May 2009  
63 Principle 16.  
64 Section C.  
65 Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, para 6(a) and para 11 (c).  
66 UN Doc. E/CN.4/2005/102/Add.1.  
67 Procurador Provincial.  
68 In an interview with Amnesty International delegate on 16 May 2008  
69 Article 164 of the Criminal Procedures Code and Article 8 of Decree 35007.  
70 Article 20 of the Criminal Procedure Code and Article 4 of Decree 35007.  
71 Article 61.  
72 Interview with lawyers in Mozambique; UNDP, Poverty Reduction and Access to Justice (Notes on UNDP further support to the Justice Sector in Mozambique); and Mozambique Justice Sector and the Rule of Law, a discussion paper  
73 See Unicef: [www.unicef.org/mozambique/overview.html](http://www.unicef.org/mozambique/overview.html)

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74 Article 12 of the Basic principles and guidelines on the right to a remedy, and Article 6 of the Principles of justice for victims.  
75 Section G.  
76 African Commission on Human and Peoples Rights, 40th session in Banjul, The Gambia, 15-29 November 2006.  
77 UN Doc. E/CN.4/2001/66, para 1310.  
78 Article 3.  
79 Article 4 of the Law of the Public Prosecution Service 22/2007.  
80 Article 43 of Law 22/2007.  
81 Law 7/2006.  
82 Article 1.  
83 Article 3.  
84 Article 16.  
85 Article 16.  
86 Article 7.  
87 Article 12.  
88 Article 7 of the Statute of the NHRC.  
89 Article 3 of the African Commission on Human and Peoples' Rights Resolution of 2006 on Police reform, accountability and civilian oversight in Africa, Banjul, November 2006  
90 Article 4 of the Bill establishing the NHRC and Article 3 of the Statute of the NHRC.  
91 Article 5 of the Statute of the NHRC.  
92 Article 4 of the Statute of the NHRC  
93 Ibid  
94 Ibid  
95 Article 21 of the Statute of the NHRC.  
96 Estrada-Nacional n. 2.



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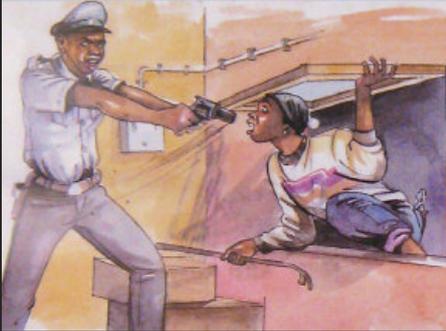
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## **'I CAN'T BELIEVE IN JUSTICE ANY MORE'** **OBSTACLES TO JUSTICE FOR UNLAWFUL KILLINGS** **BY POLICE IN MOZAMBIQUE**

Scores of people have been unlawfully killed by the police in Mozambique since 2006. Some died because the police used unnecessary force. Some were killed by police officers in extrajudicial executions. Only in exceptional cases have the police officers responsible for these human rights violations been prosecuted.



The government of Mozambique has repeatedly failed to bring police officers to justice and has allowed or encouraged obstacles to be placed in the way of victims' families seeking justice. The families of people killed by police face almost insurmountable challenges, including inadequate investigations, harassment by police and lack of information from officials. Only the most persistent and relatively well-off have been able to exercise their right to justice. Many others have been left without a remedy.

Unlawful killings by the police are a violation of the right to life. The government of Mozambique has an obligation to ensure that police officers are brought to justice for unlawful killings and that the families of those unlawfully killed by the police receive adequate reparation.

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