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[HALF TITLE PAGE]

POLICING TO PROTECT HUMAN RIGHTS
**A survey of police practice in countries of the Southern African
Development Community, 1997-2002**

Amnesty International

Cover photograph: [Photo No. 2 (Riot police, Zimbabwe) - see photo captions list below]

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it seeks the release of all prisoners of conscience. These are people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status — who have not used or advocated violence;

it works for fair and prompt trials for all political prisoners;

it opposes without reservation the death penalty, torture and other cruel, inhuman or degrading treatment or punishment;

it campaigns for an end to political killings and "disappearances";

it calls on governments to refrain from unlawful killings in armed conflict;

it calls on armed political groups to end abuses such as the detention of prisoners of conscience, hostage-taking, torture and unlawful killings;

it opposes abuses by non-state actors where the state has failed to fulfil its obligations to provide effective protection;

it campaigns for perpetrators of human rights abuses to be brought to justice;

it seeks to assist asylum-seekers who are at risk of being returned to a country where they might suffer serious abuses of their human rights;

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AI's national sections and local volunteer groups are primarily responsible for funding the movement. No funds are sought or accepted from governments for AI's work investigating and campaigning against human rights violations.

[TITLE PAGE]

POLICING TO PROTECT HUMAN RIGHTS

A survey of police practice in countries of the Southern African Development Community, 1997-2002

Amnesty International Publications

Please note that readers may find some of the photographs and case histories contained in this report disturbing.

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[BACK COVER TEXT]

Human rights are under attack every day in countries in southern and eastern Africa. Under pressure to deal harshly with rising levels of crime or through political manipulation, police inflict torture and ill-treat criminal suspects and political activists. Excessive and unjustified lethal force is used to suppress peaceful protest. Government opponents are arbitrarily detained.

Despite endeavours by some governments to raise standards of policing, others flagrantly misuse the police to hold on to power. In many countries officials and officers responsible for abuses are accountable to no one.

At the same time law enforcement agencies are often denied necessary personnel, basic equipment and training, and face risks to their own lives. Yet providing police with professional skills, appropriate equipment and adequate resources are among the most effective ways to tackle crime and, in turn, to respond to the needs of victims of crime. Law-breaking by the police does not secure victims' rights.

In **Amnesty International's** view, protecting and promoting human rights are not incompatible with effective policing. Although the report notes failures, it also documents initiatives to make policing more effective and responsive to communities' needs. Recommendations to governments and structures of the Southern African Development Community (SADC) encourage them to implement and promote measures to develop policing services that are lawful, impartial, humane and that can deal effectively with the legitimate demands of communities for safety and security. The international community has a role to play in this region, which has suffered years of armed and civil conflict and pressures on its economic resources, by increasing its efforts to assist this transformation process.

[END BACK COVER TEXT]

INTRODUCTION

“[E]thical standards, in particular human rights norms, are an important tool in the professionalization of police forces/services everywhere and in SARPCCO member countries.”

(Preamble to the Code of Conduct for Police Officials, Southern African Regional Police Chiefs Co-operation Organization, August 2001)

“About 10 members of the PIR [Rapid Intervention Police]...asked us to lie on our stomachs... I refused because I am pregnant. They then started beating me and they hit my head... [The following day] I went to the Command of the PIR to lodge a complaint. I was told that the PIR was only doing its job.”

(Testimony of Amelia Matsimbe, Maputo, December 2001)

The aspirations articulated by the police leadership in the Southern African region and the violence experienced at the hands of the police by a citizen of one of its countries are both part of the reality of policing explored by Amnesty International in its report, *Policing to protect human rights*. The report reviews some of the problems, as well as efforts to transform national police forces, in countries of the Southern African Development Community (SADC) in the past four years.ⁱ It is part of a series of Amnesty International activities to promote international human rights standards for policing in this region of Africa in 2002.

The countries of the region have recognized that cooperation is the basis for development in the region, including improved security for its citizens. Such development in turn depends on good governance, the promotion and protection of human rights for all without distinction, and respect for the rule of law. The establishment of the Southern African Regional Police Chiefs Co-operation Organization (SARPCCO) provides evidence of the region’s recognition of the necessity for cooperation on law enforcement. SARPCCO has explicitly acknowledged the importance of respect for human rights in the professionalization of police services. It has taken steps in the last few years to give leadership to regional police forces by publicly emphasizing the importance of human rights standards in professional policing and encouraging training initiatives at the national level. Amnesty International, in publishing this report, aims to show the persistence of major human rights problems in the SADC region and to encourage the further development of national and regional policies that will enhance the effectiveness of democratic policing. International human rights principles require “[t]hat, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole.”ⁱⁱ

The current report returns to some of the same themes of Amnesty International’s earlier report in 1997, *Policing and Human Rights in the Southern African Development Community*, which briefly reviewed the predominant patterns of human rights violations in the region.ⁱⁱⁱ In that report, Amnesty International noted the frequent use of excessive force during arrests, the widespread torture of suspects in criminal investigations and the misuse of police by governments to repress political opposition. It found that human rights violations were facilitated or encouraged by poorly framed laws, inadequate and inappropriate training for the police and the absence of effective oversight and accountability. Amnesty International raised these concerns and its recommendations for reform with

ⁱ The countries included in this report are Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe, all members of the intergovernmental organization, SADC.

ⁱⁱ UN General Assembly Resolution 34/169 of 17 December 1979, adopting the Code of Conduct for Law Enforcement Officials, sub-para.(a) (www.un.org/documents/ga/res/34/a34res169.pdf)

ⁱⁱⁱ AI Index: AFR 03/002/1997. See Amnesty International documents at AI Online (www.amnesty.org).

national governments, police officials and with regional organizations including SADC and SARPCCO.

In *Policing to protect human rights*, Amnesty International has undertaken a similar survey in the period since 1997 but with a wider lens. The report seeks to capture the interrelated factors which affect the ability and capacity of the police to operate in a manner consistent with professional and human rights standards. The report:

- documents patterns of human rights violations in the context of law enforcement and the ways in which the police are used for political purposes (chapters 1 and 2);
- X examines aspects of national laws and constitutions which are in breach of international human rights standards (chapter 3);
- X surveys a range of national institutions which attempt to entrench accountability for police misconduct and to provide redress for the victims of human rights violations (chapter 4);
- X reviews the nature of the training in human rights provided by national and international agencies to police forces in the region (chapter 5); and
- X examines the impact of civil society initiatives to make the police more responsive to demands for community safety (chapter 6).

The report concludes with a number of recommendations, both general and specific to certain countries, which Amnesty International believes will help prevent human rights abuses and promote standards of professional police conduct.

The effective deployment of a policing service in a manner that respects human rights is one of the key means through which a sovereign state can fulfil both its international obligations and its obligations towards its own citizens. “Police agencies that operate effectively, lawfully and humanely are essential elements in securing a social order for all human rights to be realized.”^{iv} In many SADC member countries, public concern about high levels of violent crime and robbery have placed pressure on governments and the police to respond swiftly and to stamp out crime by “all means necessary”. At the same time, increased circulation of small arms in the region has compounded the normal risks inherent in police work. In **South Africa**, for example, more than 200 police officers are killed every year, the highest global rate for such deaths according to a recent study.^v Such a high level of killings must have a profound impact on morale and on feelings of safety and security among other officers.

[Photo no. 3, close to text]

These conditions underlie one of the main contexts in which human rights violations by police occur: in the investigation and combating of ordinary crime. As shown in chapter 1, the police have sometimes responded to these challenges with violence, inflicting torture and ill-treatment on arrested suspects or carrying out summary executions.

A further context for human rights abuses is the police failure to conduct their duties in an impartial manner. Law enforcement officials are obliged to maintain and uphold the human rights of all people without distinction. Yet, as noted in chapter 1, socially or ethnically marginalized groups have been targeted for arbitrary arrests or violence by police, sometimes at the instigation of the political authorities. Many victims of rape or domestic violence have met indifference or insensitivity when they have complained to the police. Another pattern, documented in chapter 2, is the failure by

^{iv}. Ralph Crawshaw and Leif Holmström, editors, *Essential Texts on Human Rights for the Police: A Compilation of International Instruments*, Kluwer Law International, The Hague, 2001, p. 3

^v. Anthony Minnaar, “An analysis of attacks on and murder of members of the South African Police Service: Searching for preventative and protective strategies”, Paper presented to the Xth International Symposium on Victimology, Montreal, Canada, 6-11 August 2000, pp. 4-7

police in some countries to “protect and serve” all members of society, irrespective of their political beliefs. Although this is a persistent problem in countries such as **Swaziland** and **Tanzania**, the undermining of professional and impartial policing has taken an extreme form in **Zimbabwe** in the past two years, with direct consequences for dissenting police officers as well as for government opponents and critics.

Although in these cases law enforcement officials have been the direct perpetrators of human rights violations, it is governments that are legally bound to ensure adherence to international human rights standards. They bear the responsibility for creating an enabling environment in which policing can be conducted in a manner consistent with human rights and professional standards. However, as described in chapter 3, some governments have failed to ensure that their constitutional provisions, national laws and subordinate regulations create a clear framework to guide and legally underpin police conduct to prevent human rights abuses. At the level of international human rights treaty law, under which states publicly commit themselves to adhere to certain standards, four SADC countries – **Angola**, **Swaziland**, **Tanzania** and **Zimbabwe** – have failed to sign or ratify the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).^{vi} Of those that have, only a few, such as **South Africa** and **Lesotho**, have taken steps towards implementing their obligations under the treaty.

Some countries – such as **Mozambique**, **Angola** and **Mauritius** – still permit incommunicado detention, which can encourage torture and ill-treatment. In others, gaps or vague provisions in national laws can result in the admissibility in court of confessions obtained under duress, including torture. In nearly all SADC countries, laws and regulations governing police use of force and firearms fail to meet the international human rights standards of proportionality and necessity. In **Zimbabwe**, **Swaziland**, **Malawi** and **Mauritius**, statutory law criminalizes or may be interpreted to criminalize non-violent political activities, placing the police in conflict with communities and creating the circumstances for violations of human rights.

Torture, unjustified use of lethal force and other serious human rights violations gravely undermine the professionalism of the police and represent a breach of trust with the community and victims which the state must heal. Governments and police are obliged to ensure that such incidents are investigated thoroughly, independently and impartially, that the victims obtain redress and that the perpetrators are brought to justice through appropriate criminal and other sanctions. However, as analysed in chapter 4, most governments are failing to fulfil these obligations. Internal police disciplinary or investigation units for the most part are not sufficiently responsive to complainants. The offices of the Director of Public Prosecutions or Procurator General are often under-resourced and can lack the will or authority to pursue cases against senior officials. Civilian oversight bodies such as national human rights commissions and Ombudsman institutions have to varying degrees attempted to investigate human rights violations by police, but suffer from a lack of resources and the failure of the political authorities, such as in **Zambia**, to act on their recommendations.

As a result, for most victims or their relatives, seeking redress or compensation under the civil law is effectively the only remedy available. Even here there are limitations, since few complainants have the means to take action in the courts or can obtain legal aid. Despite this generally negative picture, some governments, such as in **South Africa** since 1997 and more recently in **Lesotho**, have begun to facilitate the development of institutions and practices aimed at ending the culture of impunity and making accountability an inherent feature of a professional police service.

^{vi}. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly 1984, entered into force 1987. Texts of this and other international human rights treaties and standards are available on the website of the Office of the UN High Commissioner for Human Rights (www.unhchr.ch/html/intlinst.htm).

Also central to improving the conduct of the police is the provision of comprehensive and effective training in human rights standards and core skills essential to policing functions. As documented in chapter 5, governments in the region, sometimes in conjunction with international agencies or donor governments, have embarked on a wide range of initiatives. These include an attempt in **South Africa** to extend human rights training to all serving police officers; the overhaul of police training in **Mozambique** with the support of the governments of the Netherlands and Spain; the promotion of different teaching methodologies in **Swaziland**, **Botswana** and **Malawi**; and the involvement of human rights organizations in **Tanzania** in developing curriculum material. SARPPCO itself has promoted international human rights standards and associated training programs at regional and national levels in cooperation with international bodies such as the Office of the UN High Commissioner for Human Rights.

There are weaknesses in some of the programs currently in operation, including the failure to integrate human rights into the training in operational skills, the lack of monitoring systems to enable long-term evaluation of the training, and the need to develop a pool of skilled trainers. Ultimately, to be effective, training in operational skills and in human rights standards has to be embedded in an environment in which standing orders and day-to-day instructions from senior officers reflect these professional and human rights standards. The training must form part of a broader strategy for police reform which includes law reform, re-equipping the police with necessary skills and resources, and establishing comprehensive oversight. In most countries in the region this would not seem to be the case.

Institutional reforms can take many months, if not years, to produce sustainable, long-term effects. In the meantime local communities, which may have no access to police or may feel alienated or distrustful of them, have taken the law into their own hands. As documented in chapter 6, anti-crime vigilante groups have emerged in a number of countries, including **Malawi**, **Tanzania**, **Zambia** and **South Africa**, and have inflicted brutal punishments on suspected criminals. Poorly regulated private security services have also grown rapidly – primarily to the benefit of private businesses and wealthy residential areas – where there is under-resourcing of formal police services or lack of faith in their capacity.

Despite these trends, which in different ways are inimical to the development of publicly accountable law enforcement, there have also been positive initiatives towards an effective, community-oriented policing service. Some “community policing” experiments in **South Africa**, **Malawi** and **Botswana** have successfully demonstrated that local communities and police can cooperate in developing and implementing crime reduction plans based on careful intelligence and lawful methods. Cooperative measures have also been taken to improve services for victims of crime, particularly of rape and domestic violence. In **South Africa**, government departments, non-governmental organizations (NGOs) and the Law Commission have been developing a “charter of victims’ rights”. NGOs have played a vital role, contributing expertise, training and commitment to supporting the victims.

The positive impact of such initiatives, in terms of restoring local legitimacy and accountability to policing, can be undermined by the use of the police for political repression, or by impunity for human rights violations and other serious misconduct by police. It is the responsibility of governments – with the assistance of the international community particularly for resource-poor countries – to ensure that respect for human rights is a guiding principle for accountable government policies and that measures to improve the efficiency of the police are also measures which promote respect for human rights. At the conclusion of this report, Amnesty International has sought to make concrete and constructive recommendations towards accomplishing these goals.

CHAPTER 1: PATTERNS OF HUMAN RIGHTS VIOLATIONS

Across the SADC region, there are three broad contexts in which the police commit human rights violations: during the investigation of crime and the arrest, detention and interrogation of suspects; when dealing with vulnerable social groups, such as women, refugees, street children, ethnic or other minorities; and in the policing of activities essential to participation in the political life of the country. It is not always possible to make a clear distinction between these categories, which may overlap in terms of the identity of the victim or motive of the perpetrator. This chapter provides an overview of the types of human rights violations, including torture and the use of excessive force, committed in circumstances falling within the first two of these categories. Chapter 2 examines incidents involving the misuse of the police for political purposes.

Arbitrary arrest and unlawful detention Law enforcement officials are provided under law with the power to arrest and detain suspects in the course of investigating crime. The exercise of this power affects a number of fundamental human rights, including the rights to liberty and to a fair trial. These rights are protected under international and regional human rights treaties and standards, in particular the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter).^{vii} These treaties and related international standards contain a series of protective measures both to ensure that individuals are not deprived of their liberty unlawfully or arbitrarily and to prevent other abuses. In many countries in the region, these rights are also protected by national laws and constitutions.

However, arbitrary arrest and illegal detention are abuses common to almost the whole region. Police often arrest people before they have built up any evidence. They evade obligations under national laws to bring detainees before a court of law within a specified period of time. They may conceal the whereabouts of a detainee from family and lawyers. The arrested suspect is then at risk of a “confession-oriented” investigation in which the police seek the information they need, sometimes simply in order to conclude their “investigation” and often by torturing the suspect. Compounding the problem is the weakness of police procedures, including proper record-keeping at police stations, to guard against these abuses.

There are examples of such abuses from across the region. In **Mauritius** the 1986 Dangerous Drugs Act allows incommunicado detention for 36 hours. However, police also hold people incommunicado unlawfully.

[Photo no. 6, close to text (Mauritius, death of Kaya)]

In **Mozambique**, arbitrary arrest is routinely used as a deterrent to crime. One police officer told Amnesty International that the police arrest people who look as if they might commit a crime. The “suspect” is detained overnight and then released, apparently to “discourage” criminals. Local human rights observers believe arbitrary arrests are increasing. Another significant problem is the failure to record detentions. With no record of an arrest, people can be detained for long periods at the discretion of the police and without the judicial review prescribed by law.

In **Zambia**, to put pressure on a suspect to surrender themselves, police officers illegally detain their relatives. The practice is locally referred to as “kidnapping”. The Women and Law in Southern Africa project in Lusaka note that the victims are often women and children.

^{vii} ICCPR (Articles 9 and 14), adopted by the UN General Assembly 1966, entered into force 1976; African Charter (Article 6), adopted by the Organization of African Unity 1981, entered into force 1986.

Police powers of arrest and detention are also abused for personal gain. The arbitrary arrest of people solely in order to extract a bribe has been reported in **Angola, Mozambique, South Africa and Tanzania**. Police in Angola are reported to demand cash from street vendors and prostitutes, and to beat them if they do not comply.

[BOX]

In **South Africa** a Zimbabwean citizen, Thabani Ndlodlo, was awarded damages in 1999 after the state conceded that two police officers had unlawfully assaulted him and shot him in the legs following an attempt to extract a bribe from him as a suspected illegal immigrant. They had also maliciously prosecuted him on criminal charges and wrongfully detained him for 446 days.

[END BOX]

Torture

All SADC member states are party to the African Charter, which prohibits torture (Article 5). As previously noted, with the exception of **Angola, Swaziland, Tanzania and Zimbabwe**, all are also party to the UN Convention against Torture. The prohibition against torture may never be suspended under any circumstances. Indeed, no circumstances, however exceptional, such as war, political instability or other public emergency, or orders from superior officers or public authorities, can be invoked as a justification for torture. Universal jurisdiction is applicable to the crime of torture, which is regarded as so serious that it amounts to an offence against the whole of humanity and therefore all states have a responsibility to bring the perpetrators to justice.^{viii}

Yet across the region torture and ill-treatment are the most frequently reported human rights violations committed by the police. They occur predominantly in the context of criminal investigations but are also used to terrorize political opponents. In **Lesotho, Mozambique, Swaziland and Zambia**, torture and ill-treatment appear to be routine and accepted methods of interrogation, reflecting the lack of basic investigative skills and resources available to police and a general tolerance of violence in the society. Torture is also used as a form of punishment. In the absence of the presumption of innocence, even when the main purpose of ill-treatment or torture is to obtain a confession or information, the suspect is seen as “deserving” the treatment by virtue of being a criminal. This perception can extend beyond the police to society in general, even to the victims themselves, and may deter the reporting of torture.

Evidence of institutionalized torture is found in several countries where torture sessions appear to occur at specific times and in special places.

[BOX]

In **Lesotho** detainees held at Morija police station told a newly-arrested Motlamisi Kalaka that the police did their torturing at 8.00pm. At approximately 8.00pm on two nights in June 2001, the 24-year-old detainee was taken from his cell to a room where he was allegedly beaten and suffocated with the wet inner tube of a tyre. Police officers demanded that he confess to a theft and he was released only when his family told police they would get a lawyer. He was not subsequently charged.

In February 2000, a 25-year-old farmer, Kamungwe Ngondo, was arrested by paramilitary police in northern **Namibia** for failing to present an identity document on request. He was held at the paramilitary police base for two weeks and allegedly sjambokked (whipped) repeatedly. On his release he described to human rights workers how prisoners were routinely beaten in the mornings before they tidied their sleeping area.

viii. Crawshaw and Holmström, *Essential Texts on Human Rights for the Police*, pp.10-11; Amnesty International, *End impunity – Justice for the victims of torture* (AI Index: ACT 40/024/2001), November 2001, chapters 5 and 6; Preamble of the Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (www.un.org/law/icc/statute/romefra.htm).

The existence of specific torture rooms has been reported in **Mozambique, South Africa and Zambia**. The *Polícia de Investigação Criminal* (PIC), Criminal Investigation Police, in Nampula, Mozambique, allegedly had a torture room within their offices until 2001. Consistent accounts from survivors of torture by members of the Brixton Serious and Violent Crimes Investigation Unit in South Africa indicate that interrogators have used a toilet at the Unit's headquarters where victims have been tied up, naked and hooded, and subjected to electric shock torture. Similarly, torture survivors in Zambia have referred consistently to a Criminal Investigation Division torture room at Lusaka Central Police Station, known as C5. Special places in the countryside, where police officers take suspects to be tortured, have been reported in **Malawi**. Taking arrested suspects to such "informal" interrogation locations forms another disturbing pattern, sometimes associated with failure to register their custody at any police station.

[END BOX]

Certain forms of torture are associated with certain countries. Suffocation with the inner tube of a tyre or a plastic bag has been reported in **Lesotho, South Africa, Swaziland** and, less frequently, **Botswana**. It is hard to detect medically in survivors. In **Zambia**, *kampelwa* or the "swing" is reportedly a common torture method. Victims have their hands tied or handcuffed behind their back and their feet tied together. They are then suspended from a metal bar by their bound hands and feet, and beaten as they "swing". A similar method of torture, referred to as the "helicopter", was once notorious among members of the former Security Branch in apartheid South Africa and has also been reported in **Swaziland**. This similarity of methods across different countries raises the troubling issue of how police officers learn torture techniques.

Excessive use of force

A primary function of policing is to maintain or restore social order. The state relies on the police, or the military in extreme cases, to suppress civil disturbance which threatens life, property or national security. It is the state's responsibility to ensure that the police response to civil disorder, including criminality, is conducted within the parameters of international and regional human rights standards.

As law enforcement agents, the police have the statutory right to use force, including deadly force. The circumstances under which deadly force is permitted are sometimes specified more widely in national legislation than under international human rights law. The fundamental human rights principles are that, whenever the use of force and firearms is unavoidable, law enforcement officials must "exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved," and that the "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" and "only if other means remain ineffective".^{ix} By misusing lethal force or using excessive force in a manner that violates the principles of necessity and proportionality, the police can pose a threat to the right to life and the prohibition against "arbitrary deprivation" of life.^x

Use of force in conducting arrests

Police have been reported to use excessive force both to arrest suspects and to prevent suspects escaping from custody. In **Mauritius, Mozambique and Zambia**, excessive use of force in the course of arrest has resulted in injury and death.

[BOX]

On 21 January 2000, police in **Mauritius** shot dead Rajen Sabathapee while he was trying to escape arrest on charges of corruption. He was shot in the back. Four police officers have since been charged with murder.

^{ix}. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 5 and 9), adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 1990.

^x. ICCPR (Article 6); African Charter (Article 4).

[END BOX]

Use of excessive force can come to be seen as part of police procedure. In **Mozambique** police officers, who often have to operate without handcuffs or other restraint equipment, regard the use of force during arrest as a necessary substitute for proper methods of physical restraint. Newspaper and NGO reports from **Zambia** indicate that the shooting of criminal suspects in an effort to apprehend them was a regular occurrence in 2001. In several cases the suspects were unarmed.

Public order policing

There is a similar pattern in the policing of illegal – and sometimes legal – demonstrations and public gatherings. Ill-defined powers under the law, inadequate training in minimum force techniques and inappropriate equipment for public order policing – all encourage the use of excessive, and often lethal, force. In all SADC countries, unarmed and often peaceful civilians have been injured or killed as a result of police actions during public demonstrations.

[BOX]

In **Angola**, armed officers of the paramilitary *Polícia de Intervenção Rápida* (PIR), Rapid Intervention Police, with the regular police and army, surrounded and entered the Boavista neighbourhood of Luanda in July 2001. Their aim was to evict the residents, to relocate them to a suburb more than 50km away and to demolish their homes. On 1 July they fired into a crowd of protesters, killing two people and injuring others. On 8 July several more people were wounded. Cândida da Silva was injured by a stray bullet while washing dishes in the yard of her home. The police alleged that some Boavista residents were armed but failed to provide evidence in support of this claim. The Luanda authorities promised an investigation but at the time of writing none was known to have been carried out.

[END BOX]

[Photo no. 5, close to box (two photos, Cândida da Silva, António Samuel)]

The conduct of police officers responding to public demonstrations in **Malawi** led to public anger about at least two incidents in which police reportedly used live ammunition to break up protests and demonstrators died. In May 2001, there were reports that an 18-year-old man was shot dead, a young girl died after being tear gassed and several people were injured when police forcibly dispersed demonstrators protesting about the condition of a road in the northwestern district of Chitipa. The police did not make public the findings of an internal police investigation and there was no independent inquiry.

[Photo no. 10, close to text (Evison Matafale, Malawi, demo killing)]

Human rights violations have also resulted from the abuse of equipment employed for public order policing. International standards require governments to equip law enforcement agencies appropriately.^{xi} Yet, with the possible exception of the South African Police Service, few police forces in the region provide either the type of equipment which enables the police to operate on the basis of minimum force or adequate training in public order policing techniques. The misuse of tear gas during the policing of demonstrations is common.

[BOX]

Police in Zanzibar, **Tanzania**, fired tear gas into the home of a pregnant woman following political demonstrations in January 2001. She described to Amnesty International how her children screamed in pain from the tear gas and how police officers then raped her and her teenage daughters. On 30 August 2000 police in **Zambia** fired tear gas into student accommodation at the University of Zambia following protests about rising fees. One student sustained serious injuries when she jumped

^{xi} Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 2)

from a window to avoid the gas and the police. Despite a public outcry, the Minister for Home Affairs issued a statement in support of the police action.

[END BOX]

Human rights violations by paramilitary police

In almost all countries in the region the policing of public gatherings involves special police units. Many of these are paramilitary units, whose officers receive different training and have a separate command structure from regular police officers – although they are usually answerable to the head of police. Where political misuse of the police occurs, these units are frequently implicated. Paramilitary police have used excessive force in **Angola**, **Botswana**, **Mozambique**, **Namibia**, **Tanzania** and **Zambia**.

Paramilitary police who undertake regular police duties often do so without adequate or appropriate training. In **Malawi**, paramilitary police have been co-opted into regular police duties in an effort to combat crime. The Police Mobile Force has set up road blocks and conducted searches of persons and vehicles without warrants. It has also unlawfully detained people without charge. In **Mozambique**, PIR officers do not normally undertake regular police duties but, when they do, their excessive use of force and summary punishment of suspected criminals suggest they are unaware of the law or disregard it.

In **Namibia**, the paramilitary Special Field Forces (SFF) have routinely been implicated in arbitrary arrests, excessive use of force, including unjustified lethal force, beatings and “disappearances”. They currently represent over 50 per cent of a force of approximately 10,000. Many SFF members were combatants in the armed conflict prior to Namibia’s independence in 1990. Thousands of these combatants were recruited into the police force in the 1990s when unemployment and disaffection among former soldiers threatened national security.

Most abuses by the SFF have occurred in the politically and ethnically tense northeast of Namibia where there was a secessionist uprising in August 1999 and Angola forces subsequently launched attacks into Angola against the forces of UNITA (*União Nacional para a Independência Total de Angola*, National Union for the Total Independence of Angola). Members of the minority Mafwe and Khwe ethnic groups and people suspected of supporting the armed opposition in Angola have been targeted, not only by the SFF but also by the Namibian – and sometimes the Angolan – armed forces operating along the border. SFF officers are placed in a policing role although their training emphasizes operational issues rather than law enforcement duties and responsibilities. They are required to bring any suspect to the nearest police station for detention and investigation but this procedure is not always followed.

After the August 1999 uprising, the regular police, the SFF and the military reportedly tortured more than 100 people arrested under state of emergency powers. Released detainees told Amnesty International that the police referred to their ethnicity when arresting them or during interrogations.

[Photo no. 11, close to text (Oscar, Namibia)]

Deaths in police custody

Deaths in police custody are disturbingly common in some countries in the region. Some of those who died have been in formal police custody. Others have not been registered as detainees in police station records. Some deaths have occurred as a result of torture or culpable negligence. In others, arrested suspects appear to have been deliberately killed.

Both human rights organizations and the public have expressed concern over the high number of deaths in police custody in **Mauritius, Mozambique, South Africa and Zambia**. In **Mauritius**, with a population of only 1.2 million, 41 people have died in suspicious circumstances in police custody since 1979. In three out of the four deaths reported in 2001, the official version of events – that the detainee committed suicide or died as a result of illness – has been challenged. The deaths are currently under investigation by the Police Complaints Bureau and the National Human Rights Commission of Mauritius.

A number of summary executions by police officers have been reported in **Mozambique** since late 2000. Crime suspects are alleged to have been taken from their place of detention and shot. Amir Ali Mahomed was arrested on 6 January 2002 in connection with the theft of a car. On 14 January three police officers took him to the Mavalane suburb of Maputo, Mozambique, where they reportedly shot and wounded him. He was taken to hospital by his family. The same day, his wife and three family members were reportedly arrested at the hospital and detained overnight by the police. He was treated in hospital for a week before being returned to prison.

[BOX]

In November 2000, 83 people died in just one night in November 2000 in a police cell in Montepuez, **Mozambique**. They had been arrested after violent opposition demonstrations in which 41 people died, including seven police officers. Packed into a cell measuring only 7m x 3m, most suffocated.

Annually, there are several hundred deaths in police custody or “as a result of police action” in **South Africa**. NGO inquiries and mandatory investigations by the Independent Complaints Directorate (ICD) have shown that the majority of these deaths have resulted from the use of force by police, mostly at the time of arrest.^{xii} Some of these incidents have involved summary executions of criminal suspects. In a few cases the deaths have resulted from torture.

[BOX]

In **South Africa**, Zakhele Mabhida was fatally shot by police on 23 April 2001 in the offices of the Durban Murder and Robbery Unit. Several hours earlier, he had handed himself over, unarmed, to the police in connection with an investigation into the killing of two police officers. Forensic medical evidence indicated that he had multiple gunshot injuries and had been shot at close range in the chest.

On 6 October 2001 Japet Lunga was shot by police outside his home in Zambia. Officers investigating the theft of a vehicle reportedly tied Japet to his brother Jairos and debated which one they would kill before fatally shooting Japet. Jairos was detained for almost three weeks without charge and allegedly tortured. In January 2002 an inquest was ordered; at the time of writing it had not been held.

[END BOX]

Equal protection before the law

Equality is a fundamental principle of human rights. Article 7 of the Universal Declaration of Human Rights states: “All are equal before the law and are entitled without any discrimination to equal protection of the law.”^{xiii} The African Charter prohibits any discrimination in the enjoyment of human rights (Article 2) and provides for equality before the law (Article 3).

Although several governments in the SADC region speak of the “democratization” of policing, discrimination and differential treatment by the police based on ethnicity, sexual identity,

^{xii} Reports of the ICD (www.icd.gov.za): ICD and the Centre for the Study of Violence and Reconciliation (CSV), Report on the workshop, “The prevention of deaths as a result of police action and in police custody”, Pretoria, 14 April 2000.

^{xiii} Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948

political affiliation, gender, age and social status have been reported in almost all SADC countries. Victims of crime sometimes later become victims of police discrimination.

Many of the human rights violations committed by the police reflect discriminatory attitudes that also manifest themselves in police failure to take action against human rights abuses committed by others. In such circumstances, governments are failing to meet their obligations to ensure the human rights of all their citizens. A grave example lies in the pattern of biased policing observable in **Zimbabwe** during the past two years, a subject which is dealt with in chapter 2. Women victims of rape and domestic violence regularly experience insensitivity and discriminatory treatment by the police in many SADC countries. There are reports that police often refuse to investigate these crimes, claiming they are family or community matters. Very few police services provide adequate training to their officers on how to deal with and investigate such cases.

[Photo no. 9, close to text (South Africa, Sergeant Nozipho Ntoni)]

Socially marginalized groups frequently have their human rights violated by the police – street children in **Mozambique**, prostitutes in **Angola**, women from the Kxoe San ethnic group in Namibia. In **Mozambique**, children under 16 years of age cannot be held criminally liable but street children are particularly vulnerable to beatings by police as a form of punishment for real or perceived offences.

Discrimination based on gender may be exacerbated by discrimination based on ethnicity. The Working Group on Indigenous Minorities in Southern Africa has reported that Kxoe San women in **Namibia** experience great difficulty in reporting rape. Police do not take their allegations seriously and complainants are often intimidated. In **Mauritius**, half of the detainees who died in custody in suspicious circumstances between 1979 and 2001 were from the Creole minority which constitutes less than 25 per cent of the population. Protests and unrest within the Creole community in February 1999 highlighted allegations of biased policing by predominantly Hindu officers against a community perceived as poor, illiterate and potentially criminal. In **Zambia**, the Catholic Commission for Justice and Peace has expressed concern that police abuse of the poor and uneducated – who are easily intimidated and perceived as unable to complain – often goes unreported.

[Photo no. 36, close to text (food riots, Mufakose, Zimbabwe)]

Lesbians and gay men, and groups campaigning for their rights, have been targets for police harassment in **Namibia** and **Zimbabwe**. In September 2000 the Namibian Minister for Home Affairs, Jerry Ekandjo, told police recruits at Ondangwa not to tolerate gays. Namibian President Sam Nujoma, addressing university students in March 2001, said police would arrest, imprison and deport homosexuals. Such statements constitute a direct incitement to the police to commit human rights violations. In May 2001, SFF officers detained and assaulted men suspected of being gay.

[Photo no. 8, close to text (gay rights march)]

Among the factors contributing to human rights abuses by police in many SADC states are a lack of professional skills and training, weak legal safeguards and a shortage of effective mechanisms for ensuring accountability. There can also be a lack of will to address these problems. Chapter 2 documents human rights violations in countries in which attempts to raise standards of policing are thwarted by political interference and in which the professionalism of the police is under threat from the political ambitions of governments.

CHAPTER 2: POLITICAL MISUSE OF THE POLICE

Political manipulation of the police subverts the rule of law and undermines the professionalism of officers, deterring the best recruits and reducing police capacity to combat crime effectively. The abuse of police powers – in countries which in the 1970s and 1980s faced destabilization by apartheid South Africa – carries echoes of past practices. The South African police force was previously an intrinsic part of the state apparatus of repression, with officers involved in widespread and systematic human rights violations.

Now, other governments across the SADC region are using tactics resembling those of the apartheid era, in politically misusing the police to suppress public meetings, demonstrations or campaigning by opposition parties and government critics. In the majority of countries in the region, police harass, disrupt or discourage the activities of opposition leaders, trade union officials, youth activists, human rights monitors and journalists. This political misuse of the police violates international human rights guarantees and standards for policing. Evidence of such misuse can be seen in statements of political allegiance made by police officials and in reprisals against officers who carry out their duties in a fair and impartial manner.

Several international human rights standards oblige law enforcement officials to carry out their duties fairly and impartially. As we have seen in chapter 1, international standards and treaties entitle everyone to the equal protection of the law, without discrimination. The UN International Code of Conduct for Public Officials states that public officials have a duty to act in the public interest: “Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.”^{xiv} The public interest lies in policing being conducted fairly and impartially, without regard to political affiliation.

The UN Code of Conduct for Law Enforcement Officials not only prohibits law enforcement officials from committing acts of corruption but also mandates them to oppose and combat all such acts. The Commentary to the Code defines corruption as “the commission or omission of an act in the performance of or in connection with one’s duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.”^{xv} Police corruption may generally be perceived as the demand for or acceptance of a bribe, to release a criminal suspect or to ignore a road traffic offence for example. Yet there are more serious implications for human rights in the political corruption of a police commander who passes down an order from the police commissioner for the detention of an opposition politician, with the implicit or explicit promise of promotion or job security. This can create the public perception that the entire police service is politically biased.

Biased statements and actions

In SADC states, most national legislation governing police operations require police officers to discharge their duties in a politically non-partisan manner, showing no bias or favouritism towards any political party or ethnic group. In **Mozambique**, for example, there is a statutory duty to act with neutrality and impartiality, not to discriminate against someone because of their political affiliation and not to show support for any political party. There are clear promotion procedures and criteria that aim to avoid political favouritism. The reality, on the other hand, is that the police have

^{xiv}: International Code of Conduct for Public Officials (Article 1) (www.un.org/documents/ga/res/51/a51r059.htm), adopted by UN General Assembly resolution 51/59 of 12 December 1996

^{xv}: Code of Conduct for Law Enforcement Officials (www.unhcr.ch/html/menu3/b/h_comp42.htm), adopted by UN General Assembly resolution 34/169 of 17 December 1979.

been used for political ends to disperse demonstrations by the opposition and to promote the ruling party.

In **Angola**, the police have often been used in a political manner, despite attempts in peace accords to redefine an apolitical role for a unified police force. Officially, governing legislation and regulations define the role of the police as the defence of the wider community and the protection of the State. An important element of the 1991 peace agreement signed in Bicesse, Portugal, was the de-politicization and unification of police forces. When war broke out in 1992 after UNITA rejected national election results, the government deployed PIR (Rapid Intervention Police) officers, who reportedly carried out thousands of extrajudicial executions of UNITA members in Luanda and other cities. The Lusaka Protocol, signed by the government and UNITA in 1994, gave human rights more prominence and sought to define more clearly a new role for the police.

Political misuse of the police, once a major problem in **Lesotho** in the pre-democratic period before 1993, has lessened. However, the Counter Crime Unit (CCU), established in 1999 to recover illegal weapons after the 1998 post-election civil disturbances and comprising both army and police personnel, was seen by opposition supporters as a government enforcement body to stamp out political opposition. The CCU's involvement in beatings and torture caused concerns, even within the police. Although nominally under the direction of the commissioner of police, a high-level security committee headed by the Minister for Foreign Affairs has controlled its operations. In 2001, the army component was removed from the CCU.

Throughout the region there persists an unspoken “common knowledge” that promotion is based on an official's political affiliation. In **Mozambique**, Spanish Civil Guard trainers, who have held police refresher courses since 1998, noted that officers openly wore T-shirts of the ruling party and included the issue of impartiality in their program. In **Zimbabwe**, the Police Act has been interpreted to demand political obedience from officers and to purge those who support opposition parties or who demonstrate political impartiality in their work. Although Police Commissioner Augustine Chihuri promised in June 2000 that police officers would provide “fair policing to various political persuasions”, he also said that “[n]ot supporting the Government of the day is tantamount to rebelling, which is a punishable offence.” It is a violation of international human rights standards to deny anyone, including police officers, the right to exercise their own right to freedom of thought, including holding and expressing political beliefs.^{xvi} The Police Act does not allow officers to align themselves to any political organization in a public manner, yet police officials who discharged their duties in a non-partisan manner have been purged from the ranks in recent years.

[BOX]

In a widely publicized case in **Zimbabwe**, senior assistant commissioners Solomon Ncube, who was heading the Criminal Investigations Department, and Emmanuel Chimwanda, who was officer commanding Harare Province, were transferred in October 2000. They and an estimated 20 other purged officers were reportedly relegated, without duties, desk or command, to what is known as the “Commissioner's Pool” at police headquarters, a holding status mainly used for officers suspected of opposition sympathies. In their place, officers who have demonstrated loyalty to the ruling party – by detaining opposition activists on the basis of insufficient evidence or failing to investigate human rights abuses and other criminal acts by government supporters – have been put in command.

[END BOX]

Elections

Several governments in the SADC region have used the police to suppress political opposition. In **Tanzania**, scores of opposition political activists were arrested and ill-treated before, during and after elections in Zanzibar in October 2000. The Commonwealth Observer Group noted that the armed riot police, the Field Force Unit, was present at some polling stations and expressed concern that “the

^{xvi} ICCPR (Articles 18 and 19)

behaviour of elements of the police force prior to the elections themselves often fell far short of international standards; we are particularly concerned with the use of live rounds against unarmed demonstrators and the use of beatings.”^{xvii} The Group noted reports of intimidation by the police acting in a partisan manner. Others reported ballot boxes being removed by police officers before counting had ended.

In **Zimbabwe**, elections in the last two years have been characterized by violence perpetrated for the most part by government supporters, by the complicity of the police in that violence – demonstrated by their failure to take action against it or to investigate or arrest suspected perpetrators – and by human rights violations committed by police officers themselves. In parliamentary by-elections in 2001, opposition Movement for Democratic Change (MDC) campaigners described being detained and tortured by police officers. There were also cases in which officers and commanders, despite the pressures on them, applied the law professionally and fairly, arresting activists from the ruling party who had committed criminal acts. Some of these officers, however, were subsequently transferred or threatened with removal from their posts.

[Photo no. 15, close to text (Stephen, Zimbabwe)]

In the run-up to the March 2002 presidential elections in Zimbabwe, the police refused to comply with court orders to prevent violent attacks and the forced displacement of thousands of farm workers by government supporters. Torture by both police and state-sponsored militia was widely reported, and members of parliament were arrested on murder charges based on confessions extracted under torture by police. Journalists were arbitrarily detained. In many cases, the police did not take action to prevent or investigate killings of opposition supporters by state-sponsored militia. In its assessment of the presidential elections, the SADC Parliamentary Forum observer mission – made up of parliamentarians from 11 countries in the region – noted the partisan policing evident during the election. They said, “The use of riot squads to disperse potential voters in some Harare constituencies raised questions about the impartiality of the police.”^{xviii} The Commonwealth Observer Group, in its preliminary report, found that, “...very often, the police did not take action to investigate reported cases of violence and intimidation, especially against known or suspected supporters of the MDC. Indeed, they appeared to be high-handed in dealing with the MDC and lenient towards supporters of the ZANU-PF [Zimbabwe African National Union-Patriotic Front, the ruling party]. This failure to impartially enforce the law seriously calls into question the application of the rule of law in Zimbabwe.”^{xix}

[BOX]

Opposition activist Laban Chiweta died in hospital from burns and head injuries after National Youth Service members allegedly attacked him and others in the town of Trojan Mine near Bindura, **Zimbabwe**, on 6 December 2001. The attacks were reportedly carried out in the presence of police officers who neither intervened nor arrested the assailants. In late 2001, hundreds of government supporters reportedly received military training at youth training camps and were subsequently involved in a series of attacks on opposition party members. In January 2002, in the Harare suburb of Kuwadzana, police reportedly stood by while about 100 youth militia members from the Border Gezi Training Facility in Bindura assaulted and harassed residents. Similar attacks in the town of Marondera in February 2002 went unchallenged by police.

[END BOX]

^{xvii}. “The elections in Zanzibar, United Republic of Tanzania, 29 October 2000”, The Report of the Commonwealth Observer Group

^{xviii}. Statement by the SADC Parliamentary Forum Election Observer Mission to the Zimbabwe Presidential Elections, 13 March 2002.

^{xix}. Preliminary Report of the Commonwealth Observer Group to the Presidential Election in Zimbabwe, 14 March 2002

Demonstrations

The political misuse of the police is often seen in the selective denial of the rights of public assembly and association to political opponents and government critics. The organizers of peaceful political demonstrations have been routinely denied permission to march or assemble in almost every SADC country. International human rights standards allow restrictions on the rights of peaceful assembly and freedom of association only within the law and when “necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”^{xx} Failure to obtain permission for demonstrations cannot be used as a justification for policing methods that fail to meet international standards. However, the violent suppression of demonstrations has been justified on the grounds that the protestors lacked authorization.

For many years in **Zimbabwe**, public demonstrations by students, trade unionists, civic activists and the political opposition have been routinely suppressed by police under the Law and Order Maintenance Act, designed by the former white minority government to suppress African nationalism. In December 2001, the government-dominated parliament pushed through an even more draconian law, the Public Order and Security Act. Under the Act, failure to provide prior notification to the police of all gatherings of seven or more people is punishable by heavy fines and prison sentences. Even diplomatic meetings are not exempted: police cut short a meeting in March 2002 between some 30 foreign diplomats and MDC presidential candidate Morgan Tsvangirai with threats of his arrest under the Act.

Acting alongside ruling party militants, police forcibly broke up peaceful opposition rallies during the run-up to the March 2002 presidential elections in **Zimbabwe**. They repeatedly allowed youth supporters of the ZANU-PF party to brutally stop opposition supporters from attending rallies.

[BOX]

On 19 January 2002, ZANU-PF youths disrupted an MDC rally at White City Stadium in Bulawayo, **Zimbabwe**, despite police pledges of security to the organizers. The youths assaulted MDC supporters, 18 of whom were said to have subsequently required hospital treatment, and forcibly held seven MDC supporters at the stadium for several hours. They were also alleged to have tortured Mthokozisi Neube in front of police officers at the stadium. He reportedly died of his injuries on 26 January.

In another case, on 26 January 2002, 150 armed ZANU-PF youths forcibly prevented opposition rallies taking place in the township of Chitungwiza near Harare and the suburb of Greendale, for example by assaulting participants as they arrived. Officers of the Police Support Unit beat people as they dispersed a crowd of several hundred. The police wrongly insisted that police *permission* for the rally was required in addition to notification and, whether or not such permission was required, the beatings almost certainly contravened international standards on the dispersal of public gatherings.^{xxi}

After the elections, the police continued to interpret the Public Order and Security Act as a justification for excessive use of force and to deter government critics from holding public rallies and demonstrations. In March 2002 police arrested and beat three University of Zimbabwe students for helping to plan a mass stay-away called by the trade unions to protest at the worsening economic situation.

[END BOX]

In **Mozambique**, the police became used to a political role during the 16-year internal armed conflict that ended in 1992. Today, even though there have been major changes within the police, there are still vestiges of that politicization in police behaviour and structures.

^{xx}. ICCPR (Articles 21 and 22)

^{xxi}. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 13 and 14)

[BOX]

In November 2000 the opposition *Resistência Nacional Moçambicana* (RENAMO), National Mozambican Resistance, organized nationwide demonstrations in **Mozambique**, to press demands including a recount of the 1999 election votes. Some of the demonstrations were violent: nationwide, 41 people died, including seven police officers. In Chimoio, Manica Province, police hit protesters with rifle butts outside the RENAMO office before the march had begun, and in Nampula Province they reportedly fired without provocation and indiscriminately, shooting dead one person as the crowd dispersed.

[END BOX]

[BOX]

Meetings by civil society opponents of government policies have been targeted for police action in **Namibia**. In June 1997, after a spate of demonstrations by unemployed ex-combatants, President Nujoma declared that he was banning all demonstrations which had not been authorized by the police, on the basis of a 1989 apartheid-era public order law.^{xxii} A month later, armed police broke up a meeting between a traditional ruler of the Himba community, Chief Kapika, 70 members of his community and their lawyers. The police claimed that the meeting – to discuss opposition to the construction of a dam – was illegal, as authorization for the gathering had not been sought or given. Following a legal challenge by the Himba community, the government agreed not to enforce the 1989 provision; however, it has not yet been repealed.

[END BOX]

In **Tanzania**, members of opposition groups have been repeatedly arrested, beaten or killed before and during planned demonstrations.

[BOX]

In October 2000 scores were injured when police fired live ammunition, tear gas and rubber bullets on demonstrators in Zanzibar, **Tanzania**, protesting against irregularities in the presidential elections. On 27 January 2001 armed police unlawfully shot dead at least 22 demonstrators on Pemba island, Zanzibar. The Zanzibar police had reportedly been reinforced by a special riot police unit from the mainland, the Field Force Unit (FFU), and by the military armed with pistols, rifles and sub-machine guns. Some people were reported to have been fired on from a police helicopter.

[END BOX]

[Photo no. 33, close to box (woman, vehicle, Tanzania)]

The lead-up to both the 1996 and 2001 elections in **Zambia** saw the government clamp down on freedom of expression and assembly. The police have routinely abused their powers under the 1996 Public Order (Amendment) Act to deny the right of assembly to opposition groups and government critics, although government-backed rallies do not seem bound by its requirements, including advance notification of public gatherings. The police suppressed large-scale protests at the results of the December 2001 presidential elections and new President Levy Mwanawasa said police would deal with demonstrators who alleged that the ballot had been rigged “as they deemed fit”.^{xxiii}

[BOX]

In **Swaziland**, trade unionists have been subject to police raids, arbitrary arrests, torture and ill-treatment because of their trade union activities. They have also suffered severe restrictions on their freedom of expression, assembly and association. Reports of police brutality during protests and nationwide strikes in October and November 2000 were widespread. A teachers’ union official, Bonginhlanhla Gama, was shot and wounded by the police and required treatment in hospital. On 23

^{xxii}. The Proclamation of Provision for the Protection of Public Peace and Order at Public Gatherings, No. AG 23 of 1989

^{xxiii}. *The Post* (Lusaka), 3 January 2002

October 2000 soldiers and police reportedly tear gassed trade unionists, students and workers who were attempting to deliver a petition to the King, and beat them with batons. On 7 November officials of the Swaziland Federation of Trade Unions (SFTU) were briefly held at a security force roadblock outside Mbabane to prevent them joining protestors seeking to submit a petition calling for political reforms to the Prime Minister. During a two-day strike by SFTU-affiliated unions in November 2000, Musa Dlamini, Secretary General of the National Association of Teachers, was arrested by police and reportedly subjected to suffocation torture at Manzini police station. In 2001 he and five other trade union leaders were acquitted of charges of contempt of court in connection with the strike.

[END BOX]

[Photo no. 12, close to box (Sandile, Swaziland)]

Journalists

The use of the police to harass the media is common practice in many parts of the region, including **Malawi, Namibia, Swaziland, Zambia** and **Zimbabwe**. Journalists across the region have been subjected to arrests, detentions, searches and seizures of notes and files, as police have attempted to suppress the publication of articles critical of governments.

Journalists in **Malawi** have been arrested on a variety of charges, including sedition, and “publishing false news likely to cause public fear or alarm.”

[BOX]

In July 2000 armed officers of **Malawi**’s Police Mobile Force threatened to shoot Pushpa Jamieson, a reporter for *The Chronicle* weekly newspaper, and confiscated her camera. She had been taking photographs of clashes between riot police and hundreds of people who could not be accommodated in a stadium for independence day celebrations. Even newspaper vendors in Malawi have been subject to police harassment. In May 2001 police officers led by a police public relations officer arrested vendor Austin Machewere in Lilongwe, seized copies of the *Dispatch* newspaper and charged him with creating public fear or alarm before releasing him on bail to await trial.

[END BOX]

The police have assisted in harassing the media in **Swaziland**, where the government closed newspapers such as the state-owned *Swazi Observer*, the *Guardian* and *The Nation* in 2000 and 2001.

[BOX]

On 19 October 2001 armed police broke up a news conference organized by members and affiliates of the **Swaziland** Democratic Alliance to protest against the detention of opposition leader Mario Masuku and other grievances. A second attempt to convene the news conference was again forcibly disrupted, this time by the police backed by heavily armed paramilitary police – reportedly the Operational Support Services Unit. One journalist, Thulasizwe Mkhabela from *The Times*, was hit with a baton by a senior police officer. The Minister of Foreign Affairs and Trade later said that it was within the jurisdiction of the police to impose the law as they deemed fit and that there was nothing wrong with their disrupting the press conference.^{xxiv}

[END BOX]

In **Tanzania**, journalists were harassed by police in the period leading up to and following the October 2000 elections. Police arrested BBC correspondent and human rights activist Ally Saleh and brought charges against him of kidnapping two women. The charges were apparently false and were later withdrawn. He had persistently reported on human rights abuses in Zanzibar.

[BOX]

^{xxiv}. *Guardian* (Swaziland), 25 October 2001

Over the past decade, police in **Zambia** have arrested Fred M'membe, editor in chief of the privately owned newspaper, *The Post*, on a variety of charges including espionage and defamation. In August 2001 he was arrested and charged with defamation of the President, a specific offence under Zambia's Penal Code punishable by up to three years' imprisonment. The newspaper had published an allegation that the then President, Frederick Chiluba, had committed theft. After Fred M'membe was released on bail, the police shot the lock off his gate and beat security guards at his home in an unsuccessful attempt to re-arrest him. When he later reported to the police, he was not taken into custody. His trial, with three others charged with the same offence, began in late April 2002. [END BOX]

Despite endeavours by some governments to raise standards of policing, others flagrantly misuse the police to hold on to power. In such states, officials and officers responsible for abuses are accountable to no one. Yet, to varying degrees all SADC countries have made commitments under both international law and their own constitutions and national laws to uphold and protect human rights. In chapter 3, we look at the aspects of these which fail to meet international standards.

CHAPTER 3: HUMAN RIGHTS STANDARDS AND LAWS

Respect for human rights is an integral part of professional policing. In **Angola**, the statute regulating the police states, “The National Police is a militarized force whose fundamental duty is to respect the exercise of fundamental rights and liberties” [trans. *A Policia Nacional é uma força militarizada competindo-lhe fundamentalmente o respeito pelo regular exercício dos direitos e liberdades fundamentais do cidadão.*]^{xxv} This principle can be found in laws on policing throughout SADC member states. However, to ensure that it is observed, laws giving power to the police to combat and prevent crime must be set within a human rights framework. Without proper guidance from the law, police officers cannot be sure what conduct is required of them in the discharge of their duties. It is the duty of states to ensure that the laws are clear and that they conform with international human rights standards.

Police conduct is regulated by international and regional human rights standards, and by states’ constitutions, laws and regulations. In SADC countries, some national provisions governing the police fall short of international human rights standards and thereby facilitate abuses. Although the implementation of human rights standards cannot depend solely on laws, it is important that gaps in the legal framework should not facilitate human rights abuses or provide powers that conflict with fundamental rights. There needs to be a strong legislative basis for the development of policing that respects human rights.

[BOX]

International human rights standards

The most important international and regional human rights instruments with provisions applicable to law enforcement officials are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and the African Charter on Human and Peoples’ Rights (African Charter).

With the exception of **Swaziland**, all SADC countries have ratified the ICCPR. All are parties to the African Charter. Only **Angola**, **Swaziland**, **Tanzania** and **Zimbabwe** have not signed or ratified the Convention against Torture.

The exercise of lawful police powers affects a number of fundamental human rights protected under these human rights instruments. These include in particular the rights to liberty and fair trial and the prohibition of arbitrary arrest and detention; the right to privacy; freedom of association and freedom of assembly; and, in exceptional circumstances, the right to life.^{xxvi} Unlawful police action infringes these fundamental rights, as well as the rights to equality before the law, to be considered innocent until proven guilty and not to be subjected to torture.^{xxvii}

In order to assist the implementation of international obligations in national law, the UN has developed guidelines, principles and recommendations. Those particularly applicable to the work of police officers include:

^{xxv}. National Police Statute (Article 1), Angola, Decree 20/93, 11 June 1993 [trans. *Artigo 1º. do Estatuto Orgânico da Policia Nacional, Decreto 20/93, 11 Junho de 1993*]

^{xxvi}. The rights to liberty and fair trial, and the prohibition of arbitrary arrest and detention – UDHR (Articles 3, 9, 10), African Charter (Articles 6, 7), ICCPR (Article 9); the right to privacy – UDHR (Article 12), ICCPR (Article 17); freedom of association – UDHR (Article 20), African Charter (Article 10), ICCPR (Article 22); freedom of assembly – UDHR (Article 20), African Charter (Article 11), ICCPR (Article 21); the right to life – UDHR (Article 3); African Charter (Article 4); ICCPR (Article 6).

^{xxvii}. The right to be considered innocent until proven guilty – UDHR (Article 11), African Charter (Article 7), ICCPR (Article 14); the right to equality before the law – UDHR (Article 7), African Charter (Article 3), ICCPR (Article 14); prohibition of torture – UDHR (Article 5), African Charter (Article 5), ICCPR (Article 7), Convention against Torture.

the Standard Minimum Rules for the Treatment of Prisoners,
 the Code of Conduct for Law Enforcement Officials,
 the Body of Principles for the Protection of All Persons under Any Form of Detention or
 Imprisonment, and
 the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,
 the Basic Principles for the Treatment of Prisoners.^{xxviii}

They do not have the binding force of treaties but UN member states are expected to conform with them.

[END BOX]

Application of international human rights treaties in national jurisdictions

States' constitutions often provide the method through which international human rights treaties can have the force of law in national jurisdictions. Some constitutions allow direct application upon ratification by states, while others may require incorporation through national legislation. In the former case, states' international obligations may be directly enforceable in national courts from the moment they are ratified. The constitutions of **South Africa**, **Namibia** and **Angola** allow national courts to apply international law directly in their rulings. In other countries, legislation may need to be passed to give international obligations the force of law, which can result in delays in applying international standards and may hamper international scrutiny of states' conduct. Under the **Zimbabwean** constitution, an Act of Parliament is required to incorporate international standards into national law.

When a state becomes party to an international treaty, it undertakes commitments which will ensure compliance. Under both the ICCPR and the Convention against Torture, states are required to take all necessary steps to give effect to the rights provided. Under the Convention against Torture, every state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture (Article 2).

According to the Committee against Torture, the body which monitors compliance with the Convention against Torture, **Mauritius**, **Namibia** and **Zambia** have failed to introduce effective legislative measures.^{xxix} **Lesotho** and **South Africa**, on the other hand, have taken steps towards bringing their domestic legislation and procedures into compliance. In late 1998, the South African Police Service adopted a Policy on the Prevention of Torture and the Treatment of Persons in Custody. This policy regulates the detention and interrogation of criminal suspects in custody at police stations and provides safeguards in areas such as record-keeping and medical care. In Lesotho, which ratified the Convention against Torture in 2001, the government has established an Inter-Ministerial Committee to oversee its implementation – the first time in Lesotho such a treaty-monitoring body has been established. It is convened by the Ministry of Foreign Affairs and includes representatives of the police and prison services, the National Security Service and armed forces, and the Ministries of Defence and of Justice. It plans to translate the Convention against Torture into the Sesotho language, to criminalize torture, to examine laws in need of amendment and to study other countries' experiences.

States that ratify human rights treaties also make a commitment to submit reports to the relevant international treaty-monitoring body on measures adopted to give effect to the treaty. The body in charge of evaluating such reports, and the period for their submission, varies depending on

^{xxviii} Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, 1955; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly resolution 43/173 of 9 December 1988; Basic Principles for the Treatment of Prisoners, adopted by UN General Assembly resolution 45/111 of 14 December 1990.

^{xxix} Concluding Observations of the Committee against Torture: Mauritius, 5 May 1999, A/54/44 paras.118-123; Namibia, 6 May 1997, A/52/44 paras.227-252; Zambia, 23 November 2001, CAT/C/XXVII/Concl.4.

the human rights treaty.^{xxx} Under UN procedures, non-governmental organizations often participate in the process of examination of states' reports, providing "shadow" reports and participating in discussions.

Many countries submit reports after a considerable delay or have failed to submit any reports at all. Among SADC countries for example, by the beginning of 2002 **Angola** and **Namibia** each had 10 reports overdue under different UN treaties. Neither has submitted initial or second periodic reports under the ICCPR: Angola's reports were due by December 1997 and April 1998 respectively, Namibia's by February 1996 and February 2001.

National laws relating to torture and ill-treatment

States that are party to the Convention against Torture should enact or amend national legislation so as to criminalize torture and to provide appropriate penalties that take into account the grave nature of torture (Article 4).^{xxxi}

Almost every country in the SADC region prohibits torture and cruel, inhuman or degrading treatment in its constitution. The constitution of **Malawi** prohibits "torture of any kind" and that of **Namibia** "torture or cruel, inhuman or degrading treatment or punishment", while the constitutions of **Mauritius** and **Zimbabwe** state that "no person shall be subject to torture or to inhuman or degrading punishment or other such treatment." **Swaziland** is the exception. The government suspended its 1968 constitution in 1973 and has since operated without written definitions of its powers and functions or constitutional guarantees of fundamental rights and freedoms.

The prohibition of torture is recognized under international law as a non-derogable right – a right which may never be suspended under any circumstances, including a state of emergency.^{xxxii} However, in **Angola**, the State of Emergency Law [trans. *Lei sobre o Estado de Sítio e Estado de Emergência*] does not include the prohibition of torture among other non-derogable rights. Yet Angola is a party to the African Charter and the ICCPR, which do not allow any derogation from the prohibition of torture.

In most SADC countries, torture is not specifically identified as a crime. Under the criminal laws of, for example, **Mauritius**, **Mozambique**, **Zambia** and **Zimbabwe**, other terminology may be used, such as "assault with the intent of committing grievous bodily harm." In **Namibia**, however, acts of torture or cruel, inhuman or degrading treatment or punishment are not regulated by statutory law but are considered common law offences. The courts have the discretion to sentence a person convicted of torture to a term of imprisonment or a fine. A prison sentence was imposed in one notable High Court case in 1992 in which the accused, a police officer, was convicted of torturing a suspect to death.^{xxxiii}

In countries around the world, the absence of key safeguards in areas of law enforcement has been shown to facilitate torture and ill-treatment. Amnesty International has identified safeguards

^{xxx.} Under the ICCPR, states should submit reports to the Human Rights Committee, the initial report one year after the entry into force of the Covenant and thereafter as the Committee requests (Article 40). Under the Convention against Torture, the initial report to the Committee against Torture should be submitted one year after the entry into force of the Convention and subsequently every four years (Article 19). Under the African Charter, states should report to the African Commission on Human and Peoples' Rights every two years (Article 62).

^{xxxi.} See also Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 7); Standard Minimum Rules for the Treatment of Prisoners, paras. 31-33.

^{xxxii.} ICCPR (Article 4); Convention against Torture (Article 2).

^{xxxiii.} *The State v. Michael Matroos*, High Court of Namibia, 1992

which can help to protect people against torture in custody.^{xxxiv} These include placing limits on incommunicado detention, providing safeguards during interrogation and custody, and excluding evidence obtained under torture from legal proceedings.

Arbitrary and incommunicado detention

Torture often takes place during the first few hours or days of detention, and is facilitated if the detainee is held incommunicado. International standards and human rights bodies hold that restrictions and delays in granting detainees access to the outside world are permitted only in exceptional circumstances and for short periods. International standards require detainees to be able to contact relatives, lawyers and chosen medical practitioners.^{xxxv} UN human rights bodies have also repudiated incommunicado detention as a practice which can facilitate torture and ill-treatment, and have recommended that it be made illegal and that people held incommunicado be released without delay.^{xxxvi}

Some SADC countries allow for incommunicado detention of suspects in police stations. Under the Criminal Procedure Codes of **Mozambique** and **Angola**, a detainee may be held incommunicado – in Mozambique for up to 48 hours until the detainee’s appearance before a judicial authority. In Angola, detainees are held incommunicado until their first interrogation by a prosecuting magistrate in the presence of an official from the Office of the Procurator General and a defence lawyer. The prosecuting magistrate may authorize detention incommunicado for up to a maximum of five or 10 days in cases of crimes against the security of the state. In Angola, the provision for incommunicado detention was retained in the 1992 Law of Pre-Trial Detention [trans. *Lei da prisão preventiva em instrução preparatória. Lei 18-A/92 of 7 July 1992*] which amended part of the Criminal Procedure Code. In Mozambique, it remained in the draft revised Criminal Procedure Code that was submitted to the Council of Ministers in 2001 and that has not yet passed into law.

In other SADC countries, access is limited to detainees held under specific legislation related to serious crime and terrorism or which provides for states of emergency is limited. In **Mauritius**, both the 1986 Dangerous Drugs Act and the 2002 Prevention of Terrorism Act allow a police officer of the rank of superintendent to order the incommunicado detention of a suspect for up to 36 hours. The constitution was specifically amended in 2002 to restrict the release of “terrorist” suspects on bail and to remove the right of access to a lawyer. Under both laws, the only access is to a government medical officer. In **Botswana**, the constitution allows incommunicado detention for at least five days under a declared state of emergency.

In most SADC countries, the detained person should be brought before the court within 48 hours – in **Zambia**, 24 hours – a legal requirement that is commonly violated. In **Swaziland**, the Non-Bailable Offences Order of 1993, as amended, obliges courts to refuse the release on bail of any person charged with a number of scheduled offences. The police do not have to demonstrate that they have a *prima facie* case against the accused. In June 2001 the Swaziland Court of Appeal ruled that the Order was a “draconian law...inconsistent with the presumption of innocence and an invasion of the liberty of the subject.”

Recording detentions and interrogations

One safeguard against torture or ill-treatment in custody or under interrogation is the formal recording of information about the detention and interrogation. According to international guidelines, there

^{xxxiv}. See *A 12-Point Program for the Prevention of Torture by Agents of the State* in Amnesty International’s *Take a step to stamp out torture* (AI Index: ACT 40/013/2000).

^{xxxv}. Standard Minimum Rules for the Treatment of Prisoners (Rules 91 and 92); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 18 and 19); ICCPR (Article 14).

^{xxxvi}. Commission on Human Rights Resolution 2001/62, para. 10; Human Rights Committee, General Comment 20, para.11; UN General Assembly, Question of torture and other cruel, inhuman or degrading treatment or punishment, Note by the Secretary-General, Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/56/156, para. 39.

should be a proper record of a person's detention that includes the reasons for arrest and the identity of the police officer who effected the arrest.^{xxxvii} The time and place of all interrogations should be recorded, together with the names of all those present, and this information should be available for the purposes of judicial or administrative proceedings.^{xxxviii}

South Africa's 1998 Policy on the Prevention of Torture and the Treatment of Persons in Custody seeks to conform with these international guidelines. Under this policy a custody register should be kept at each police station. Every action taken by a police officer with regard to a suspect should be recorded in the register or in the Occurrence Book. Any injury suffered by a suspect before, during or after arrest should be recorded, as well as visits by medical practitioners, the duration of interrogations and persons present during interrogations. The South African Law Commission has recommended that the Policy be strengthened by incorporating it into police regulations.

The absence of legal counsel during police interrogations can give rise to abuses. The UN Special Rapporteur on torture has recommended that the suspect's lawyer should be present and their presence recorded.^{xxxix} In **Botswana**, for example, there is no specific provision allowing a lawyer to be present during interrogation.

The video recording of interrogation sessions may be an effective safeguard against abuses. The use of this technology has been recommended by the Special Rapporteur on torture.^{xl} In **Mauritius**, the 1986 Dangerous Drugs Act, as amended in 1995, requires the detainee to be video-recorded throughout the 36 hours of incommunicado detention allowed. However, video recording has reportedly been impeded by lack of resources. Similar provision under **South Africa's** Policy on the Prevention of Torture and the Treatment of Persons in Custody was made dependant on the availability of the necessary equipment. Police forces in most SADC countries often lack the most basic resources and it is unlikely that video recording will be widely used in the near future.

Evidence obtained under torture

International human rights standards stipulate that evidence obtained through torture or ill-treatment should not be admissible as evidence in law, except when used in evidence against those accused of having obtained confessions by unlawful means.^{xli} This is an important guarantee to ensure that torture and ill-treatment are not accepted as legitimate methods of investigation and that police do not rely on torture to obtain admissions. International standards require that, where allegations of torture or ill-treatment are made by a defendant, the authorities conduct an inquiry to establish the truth of the allegations. They also require that the burden of proof be shifted to the prosecution to prove that the evidence was not obtained by unlawful means, including by torture or ill-treatment.^{xlii}

In **South Africa**, the Constitutional Court considered unconstitutional a provision in the Criminal Procedure Act which imposed the burden of proof on the accused to show that a confession had not been made voluntarily when it had been confirmed in writing in the presence of a magistrate.^{xliii} In **Namibia**, under common law, a statement made involuntarily may not be admitted as evidence, except against a person accused of eliciting the statement through any form of duress,

^{xxxvii.} Standard Minimum Rules for the Treatment of Prisoners (Rule 7); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 12).

^{xxxviii.} Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 23).

^{xxxix.} Report on the Mission of the Special Rapporteur on torture to the United Kingdom, UN Doc. E/CN.4/1998/39/add.4, para. 47, 5 March 1998

^{xl.} See Report of the Special Rapporteur on torture, UN Doc. E/CN.4/2001/66, paras 1,307-1,316; A/56/156, para. 34.

^{xli.} Convention against Torture (Article 15); Human Rights Committee, General Comment 20, para. 12.

^{xlii.} Convention against Torture (Article 12)

^{xliii.} *S v. Zuma and others 1995 (2) SA 642 (CC)*

including torture. This common law rule has been buttressed by a constitutional provision which provides that evidence obtained through torture shall not be admitted in court.

In other countries in the region, for example in **Mozambique**, there are no statutory provisions that statements obtained through torture are inadmissible. In **Zambia** and **Botswana**, although an involuntary confession may be ruled inadmissible, criminal procedure law allows evidence found as a result of the involuntary confession to be admissible provided it is relevant. The Zambian government committed itself to examining further this issue of derivative evidence in its report submitted to the Committee against Torture in 2001.^{xliv} In **Malawi**, according to the Criminal Procedure and Evidence Act (Section 176), evidence can be admitted as long as it is relevant, including where there are allegations that it has not been freely and voluntarily obtained. Thus the law in Malawi seems to go beyond the admissibility of derivative evidence from unlawfully obtained confessions to the admissibility of the confession itself, if the court is satisfied that the confession's contents are materially true. The Law Commission of Malawi, which is currently reviewing the Act, is expected to address provisions that contravene internationally recognized standards and facilitate abuses by the police.

Regulations on the use of force and firearms

As we have seen in chapter 1, international human rights standards on the conduct of law enforcement officials uphold the principle that the use of force is an exception and that the police may use force only when strictly necessary and to the extent required for the performance of their duties.^{xlv} These standards are based on a balance between the right to life and security of the person and the need to prevent crime and to bring criminals to justice. All rights emanate from the supreme right to life, and no state may derogate from the right to life even at a time of public emergency. If a police officer kills a fleeing suspect who is presumed innocent until proved guilty beyond reasonable doubt in a court of law, the determination of guilt or innocence will never be made.

In many SADC countries, it is left to the courts to interpret how far provisions allowing for the use of force meet international standards on the balance between the principles of necessity and proportionality. In **Lesotho**, force may be used to “such extent as is necessary” to effect a lawful arrest or prevent a detainee from escaping. In **Botswana**, **South Africa**, **Zambia** and **Zimbabwe**, “reasonably necessary” force may be used to make an arrest or prevent escape. In **Angola** and **Mozambique**, force is permitted if “indispensable” to prevent the escape of a suspect or to overcome resistance. In **Tanzania**, under the Penal Code “all means necessary” may be used to arrest a suspect who resists or attempts to evade arrest. A more restrictive standard appears to operate under Tanzania's Code of Criminal Procedure, which allows the use of a degree of force that is likely to cause the death of a suspect only when the police officer reasonably believes it necessary to protect life or to prevent serious injury.

Under international standards, the use of firearms by law enforcement officers is restricted to situations where it is strictly necessary for self-defence or the defence of others against the imminent threat of death or serious injury; to prevent the perpetration of a serious crime involving grave threat to life; and to arrest a person presenting such a danger and resisting authority or to prevent their escape.

The majority of SADC countries allow the use of lethal force for the sole purpose of effecting an arrest, including where no life is under threat. For example, killings committed while effecting a

^{xliv}. Conclusions and Recommendations of the Committee against Torture: Zambia, 23 November 2001, CAT/C/XXVII/Concl.4

^{xlv}. Code of Conduct for Law Enforcement Officials (Article 3); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 5 and 9).

lawful arrest or preventing the escape of a lawfully detained person are considered exceptions to the right to life guaranteed in the constitutions of **Botswana, Lesotho, Zambia and Zimbabwe**.

In **South Africa** and **Zimbabwe**, lethal force can only be used against people suspected of specified offences, but these include non-violent offences such as theft. In **South Africa**, a 1998 amendment to the Criminal Procedure Act, allowing the use of lethal force only where there was a risk to life or of serious injury, was not enacted into law because of concerns raised by the police, including that it would increase risks for police officers. A ruling by the Constitutional Court on the constitutionality of the un-amended provision was still pending in March 2002.^{xlvi}

In some countries, the legal limits on the use of lethal force conform with international law. In **Namibia**, police standing orders require force to be used only in life-threatening situations. The Namibian High Court has asked the Law Reform and Development Commission to repeal the provision of the Criminal Procedure Act which does not conform with these standing orders or with international standards.

Freedoms of assembly and association

In some SADC countries, the ambiguous wording of some offences can leave too broad a discretion to the police to interpret when conduct is criminal and may be used to violate the rights of peaceful assembly and freedom of association. Some offences defined under the Prevention of Terrorism Act in **Mauritius** and the draft Anti-Terrorism Bill in **South Africa** could include activities that amount to the peaceful exercise of the right to freedom of expression. In **Swaziland**, under the 1987 Sedition and Subversive Activities (Amendment) Decree, to excite disaffection against the King may also incur a prison sentence.

As we have seen in chapter 2, in **Zimbabwe**, the Public Order and Security Act gives the police broad powers to prohibit a public gathering or to prohibit all public gatherings in an area for up to three months. It allows activities that amount to the peaceful exercise of the right to freedom of expression to be punished with severe sentences, including imprisonment. There is no right of appeal to an independent or judicial authority against police prohibitions of demonstrations.

Most governments in the SADC region are failing to fulfil their obligations in terms of international human rights law. Even when they have acceded to international human rights treaties and passed laws prohibiting human rights violations, these are frequently not observed by the police. As well as accountability to international treaty-monitoring bodies, states need to ensure that oversight mechanisms exist at the national level to supervise and monitor the activities of law enforcement agencies.

^{xlvi.} *Walters v. State*, CCT 2801, November 2001

CHAPTER 4: OVERSIGHT AND INVESTIGATION

Human rights violations by police represent a breach of trust with the community and victims which the state must heal. Torture, unjustified lethal force and other serious violations gravely undermine the professionalism of the police. The government and police are obliged to ensure that instances are investigated thoroughly, independently and impartially, the victims offered redress and the perpetrators brought to justice. Failure to do so sends a signal that these crimes are tolerated or even viewed as justified, and can only encourage their repetition.

The legal requirement to investigate

Under international human rights law, states must investigate such human rights violations as torture and the deprivation of life by unjustified lethal force. Where serious human rights violations are disclosed, the investigations must lead to disciplinary or criminal proceedings that ensure effective accountability both by perpetrators and by officials implicated in perpetrating or covering-up violations.

[Photo no. 21, close to text about Convention against Torture (Zambian detainees, beaten)]

The UN General Assembly has stressed that “all allegations of torture or other cruel, inhuman or degrading treatment or punishment should be promptly and impartially examined by the competent national authority.”^{xlvii} The Convention against Torture makes a similar requirement (Article 13). States must establish an “effective remedy” and entrench in domestic law the right of victims to lodge complaints of torture or ill-treatment.^{xlviii} International and regional human rights bodies have clarified the essential components of an effective remedy, which include:

promptness, in examining allegations initially and the pace of the full investigation, to protect the victim and to minimize loss of evidence;
impartiality, to ensure due weight is given to all evidence, from complainant, accused and witnesses;
independence, to ensure no conflict of interest, concealment of evidence or unfair procedure;
protection of complainants and witnesses, to ensure no reprisals against complainants, witnesses and others involved in the investigation;
thoroughness, to ensure consideration of all relevant information for proving or disproving a complaint.^{xlix}

Police suspected of torture or ill-treatment should be suspended from active duty during an official investigation without prejudice to the outcome of the investigation.¹

In response to complaints of misuse of lethal force or excessive use of force, states’ obligations are similar. Killings resulting from excessive or illegal use of force by public officials

^{xlvii}. Resolution 56/143 of 19 December 2001, para 2

^{xlviii}. *Hugo Rodriguez v. Uruguay*, 19 July 1994, para.12.3; Human Rights Committee, General Comment 20, para.14

^{xlix}. For example, the Human Rights Committee, established to monitor states parties’ compliance with the ICCPR, has stated that “the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction” (General Comment 3: 29/07/91) (www.unhchr.ch/tbs/doc.nsf).

¹. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly, Resolution 56/143 of 19 December 2001, para. 3.

should be made punishable as criminal offences and, when they occur, governments are required to institute thorough, prompt and impartial investigations.^{li}

In any deployment of force, governments and police have clearly defined and differing responsibilities in preventing the unlawful use of force or firearms.^{liii} These include:

- to establish effective reporting and review procedures for all incidents involving the use of firearms and for all incidents where injury or death is caused by the use of force or firearms, and provide for independent investigations in the event of death, serious injury or other grave consequences;
- to punish arbitrary or abusive use of force or firearms as a criminal offence under national law;
- to take measures to prevent, monitor and report on unlawful use of force or firearms;
- to ensure that obedience to superior orders is not permitted as a justification for human rights violations;
- to ensure that no sanction is imposed on anyone who refuses, in compliance with international standards, to carry out an order to use force and firearms.

Oversight mechanisms

Effective oversight mechanisms enhance public confidence in the police, which is indispensable to effective policing. Different types of investigations by public bodies and officials can help the government and the police fulfil their obligations and ensure an accountable and professional police service. They include:

- internal investigations by the police with a view to possible disciplinary sanctions or referral to the prosecuting authorities;
- investigations by the prosecuting authorities;
- judicial inquiries or coroner's inquests into deaths, which may make findings on culpability and referrals to the prosecuting authorities;
- judicial commissions of inquiry into a specific pattern of abuse or major incident which could make general or specific recommendations;
- investigations by national human rights commissions^{liii} and Ombudsman offices aimed at obtaining redress for victims or formulating general recommendations;
- specialized complaints investigation bodies responsible for directly investigating police abuses or supervising internal investigations.

Each investigating body can illuminate the facts, assist victims to obtain redress or protect potential victims. Each needs the necessary qualifications, powers and resources to be effective. These bodies should also report publicly on their activities. Failure by the authorities to respond to findings and implement valid recommendations will discredit the investigating body and send a signal that the state condones human rights violations. Where the findings reveal *prima facie* evidence of a crime, then a criminal investigation must follow.

In each jurisdiction there is a place for independent investigative mechanisms such as an Ombudsman office or an independent police complaints authority. These bodies should have a mandate that ensures their independence and impartiality. Investigative complaints mechanisms

^{li} UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, recommended by ECOSOC Resolution 1989/65 of 24 May 1989

^{lii} Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Code of Conduct for Law Enforcement Officials.

^{liii} See *National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights* (AI Index: IOR 40/007/2001)

should also be sensitive to the particular needs of vulnerable groups, such as women and children, victims of sexual assault and members of minority ethnic communities.

The following sections describe some of the oversight mechanisms in SADC countries, which include examples of both sound and flawed practice.

Internal police investigations

Most countries in the region have some form of internal investigation system provided under the regulations governing the police. Strong internal systems are crucial in helping to entrench a culture of accountability. However, in general such systems fail to meet the needs of victims of human rights violations in ensuring the confidentiality of their complaints and providing security against reprisals. They do not inspire trust in the people they are meant to serve. They are not transparent and there is little public awareness of the procedures for making complaints.

In **Angola**, police officers may be disciplined for violating duties listed in the 1996 Disciplinary Regulations or a person's rights under law. Senior officers conducting disciplinary inquiries have discretion in applying sanctions that include a reprimand, imprisonment without trial or expulsion from the force. The Regulations are unclear about how a criminal justice process can be invoked when the disciplinary inquiry reveals a crime and about who can bring a complaint and how to do so. Despite a general willingness to discipline police officers, these shortcomings, combined with the authorities' reluctance to inform complainants of the outcome of proceedings against offending officers, make reliance on this form of investigation alone unsatisfactory.

A member of the public in **Botswana** can lodge a complaint with a senior officer at the police station where the offending officer is based, a procedure that is likely to be intimidating for complainants and lacks safeguards regarding confidentiality. There is little clarity about the process or right to feedback for complainants. It is not clear, for example, by what process or for what alleged offences 40 officers were suspended from duty in 2001. However, the government and the police have adopted "performance management systems" in an attempt to introduce greater overall accountability into the police service.

Complaints or disciplinary matters in **Lesotho** can be investigated by the Police Complaints and Discipline Office. In the year ending March 2001, it had received 66 complaints. However there seemed to be no public reporting of the results of its investigations and consequently minimal public awareness of this office and its function. In addition, it has no district representation outside the capital. In 1998 the Directorate of Policing was established under a new Police Act in an attempt to place the management of the police under greater civilian control and to provide advice to the government on policy and performance standards. Until recently however, political tensions prevented the Directorate from fulfilling basic functions and developing new ways of working. Directorate staff received complaints of human rights violations against the police but had no capacity or authority to undertake investigations.

In **Mauritius**, the authorities established a Complaints Investigation Bureau (CIB) in 1999 as a separate unit within the police service to investigate complaints sent directly by the public or lodged at police stations. Responsible to the Commissioner of Police, it can "listen to both parties, gather... evidence or documents so as to forward a complete enquiry to the Director of Public Prosecutions."^{liv} The criteria for referring complaints to the CIB are not clear, nor the rights of complainants to be informed of the investigation's progress. Potentially important is the provision requiring the CIB to report within 48 hours the receipt of an investigation case to the new National Human Rights Commission (see page [X]) and to be subject to its directives and oversight.

The problems are different in **Mozambique**, where police commanders have responsibility under a 1987 regulation to institute an inquiry and a disciplinary process after a complaint has been

^{liv}. From the Mauritius police website (<http://ncb.intnet.mu/pmo/police/divisions/units/cib/index.html>)

lodged against an officer. Complainants experience delays, receive misleading information and in general have little trust in the process. Police officers fail to wear identifying badges or may be transferred to another police station to evade identification by the complainant.

[Photo no. 7, close to text (Mozambique, Amelia)]

A Police Inspectorate has been established in **Namibia** to improve the administration of the police, the efficiency of their operations and their performance levels. Complaints and Discipline Units (CDU) are based in all the regions and investigate complaints lodged at police stations. They can initiate criminal investigations as well as internal disciplinary proceedings. Local NGOs, however, have found little evidence that CDUs take action on complaints of human rights violations.

The police service in **South Africa** has a variety of internal systems for monitoring standards and handling complaints from the public. These include a Complaints Investigation section and an inspectorate at the Office of the National Commissioner of Police. The inspectorate consists of evaluation teams that can inspect police stations and specialized police units where there is a high volume of complaints. The Complaints Investigation section receives about 2,000 complaints a year – including directly from members of the public and NGOs – and monitors the quality and results of investigations by police at provincial level. They can order the case to be referred to the Director of Public Prosecutions for criminal prosecution, or to the Legal Services Division for disciplinary proceedings, or to the civilian oversight bodies for further investigation.

In **Zambia** internal investigation processes appear to move slowly and yield few results. In the country's first report to the UN Committee against Torture in December 2000, it noted that, “[d]uring the period under review (18 months) the Zambian Police Service recorded a total of 32 cases in which acts of torture were alleged to have been committed by police officers. These cases have yet to be concluded by the relevant authorities.”^{lv} In **Swaziland** there appears to be an internal police complaints and discipline unit, but there is no public information about whether it handles complaints of human rights violations.

[BOX]

Such was the level of public outcry at the deaths in police custody of two young men, Edison Makhanya and Sibusiso Jele, within hours of their arrest on 20 March 2001, that the Prime Minister of **Swaziland** ordered a coroner's inquest. Police told family members that they had committed suicide by swallowing “weevil tablets” normally used for pest control. Although the coroner conducted his hearing in an impartial manner, it was hampered by the poor quality of the earlier police investigation, police obstruction of an independent forensic pathologist representing the families and the police failure to provide the inquest with the results from toxicology tests. As of March 2002, the inquest had been unable to deliver conclusive findings.

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The role of the prosecutor

In both **Angola** and **Mozambique**, the Procurator General (prosecutor) can play a direct and accessible role in precipitating a complaints process against a police officer. They can receive complaints directly or through trial proceedings if a defendant alleges that a confession statement was extracted under duress. In Angola, an additional possibility has arisen through the recent placement of procurators at police stations to enable them to fulfil more rapidly their obligation to legalize the detention of suspects. If they learn of alleged abuses, they must report them to the office of the Procurator General.

In **Mozambique**, if a complaint of torture is raised in the course of a criminal trial, it is unusual for judges to order an investigation into the allegations, and procedures are not in place for

^{lv}. UN Committee against Torture, CAT/C/47/ADD.2

ensuring a full inquiry by the courts. Victims of human rights violations by the police have turned to NGOs such as the *Liga Moçambicana de Direitos Humanos*, Mozambican Human Rights League, for support in raising their cases with the authorities, including with the prosecuting authorities. Prosecutions of serving police officers are rare.

Although police officers have been prosecuted for their involvement in human rights violations in some SADC countries, concerns remain about the thoroughness of internal police investigations and the difficulty of ensuring accountability at the highest levels of responsibility.

[BOX]

Following the death of 83 people in a police cell in Montepuez, **Mozambique**, in November 2000 (see chapter 1, page [X]), the government ordered a forensic medical investigation. Expert doctors from South Africa were also involved; they did not report publicly on their findings but directly to the two governments concerned. Two low-ranking police officers were convicted of murder; three were acquitted. There were concerns that they had been acting on the instructions or with the knowledge of at least one senior officer but that no other officer was held accountable.

[END BOX]

[Photo no. 18, close to text (South Africa police dogs case)]

Commissions and Ombudsman offices

In a number of countries the civilian oversight body of the Ombudsman represents the only source of potentially independent investigation of complaints. In **Angola**, the intention to establish an independent Ombudsman-like body, the *Provedor de Justiça*, which would respond to human rights violations, including by the police, has not materialized.

The Ombudsman's office in **Botswana** is prohibited under the 1995 Ombudsman Act from investigating any action which relates to the security of the state or the investigation of crime. It is also precluded from investigating orders or directions given to the police or defence forces. As noted by a legal expert, this bars redress for members of the public who may be unable to pursue a civil claim for damages through the courts, and also allows no avenue for complaint by officers against the actions of their superiors.^{lvi}

The Permanent Human Rights Commission in **Zambia** has powers to investigate allegations of human rights violations by police but its staff of six investigators is insufficient and has little capacity to serve rural areas. The Commission's effectiveness has been undermined by government inaction. No official steps were taken, for instance, in response to the Commission's documentation of 45 cases of human rights violations by police between 1995 and 1998. The Attorney-General appears reluctant to prosecute the police and the Commission cannot represent complainants in civil court cases.

[BOX]

In 1998/9 a judicial commission of inquiry in **Zambia** found that 21 police and security officers had tortured suspects in an alleged coup plot in 1997. It recommended the retirement of three police officers against whom there was serious evidence. The government, however, has failed to act on the report's recommendations. Recommending retirement rather than prosecution in a case in which there was serious evidence discredits the investigative mechanism, and the government's failure to act on such a recommendation discredits the whole process.

[END BOX]

^{lvi} Professor Daniel Nsereko, "The Botswana Constitutional Law" in *International Encyclopaedia of Laws*, Kluwer Law International, The Hague, 2001, p.249

In **Mauritius** and **Tanzania**, new human rights commissions have been established with potential roles in investigating human rights violations by the police. In **Mauritius**, the National Human Rights Commission established in April 2001 can oversee internal investigations into complaints against the police. It has the power to refer disciplinary cases to the Disciplined Forces Service Commission, and human rights violations or criminal offences to the Director of Public Prosecutions. It is required to try initially to resolve complaints through conciliation. It can visit police stations or other places of detention. In both countries, *ad hoc* commissions of inquiry have examined issues of police conduct after major incidents of public unrest and disproportionate police response. In Mauritius, the commission of inquiry into the policing of the February 1999 riots in protest at deaths in custody criticized the “excessively high” use of tear gas but did not conclude that the police had used lethal force unlawfully. Three people had been shot dead during the riots, at least one by the police. In **Tanzania**, the commission of inquiry investigating human rights violations by the security forces during demonstrations on 27 January 2001 was due to present its findings before June 2002.

The Office of the Ombudsman in **Namibia** receives annually about 120 complaints against the police from members of the public. It appears to do only preliminary investigations to verify broadly that complaints are well-founded and to refer them to the Complaints and Discipline Units (CDUs) for actual investigations. The lack of feedback or action by the CDUs, and the poor quality of their investigations, leaves most complainants having to resort to civil law remedies. The government admitted in its 1996 report to the UN Committee against Torture that the Office of the Ombudsman was “under-resourced and understaffed”.

In **Zimbabwe**, where the police and criminal justice system have become increasingly politicized during the past two years, the Office of the Ombudsman could investigate complaints against the police under its powers, which include powers to subpoena and examine witnesses and to require documents or other evidence.^{lvii} However, the Ombudsman’s independence is undermined by the requirement that the appointment is made by the President of Zimbabwe, with the Judicial Services Commission giving only advice. There are restrictions on the Office’s handling of certain state papers relating to security matters and no requirement to report publicly on the results of an investigation. Possibly as a result of limited public access, with offices only in Harare and Bulawayo, staff shortages and an insufficient budget, the Ombudsman appears to focus mainly on administrative issues in the area of socio-economic rights.

Complaints bodies

The most developed independent oversight and investigation body in the SADC region operates in **South Africa**. The Independent Complaints Directorate (ICD) was established in 1997.^{lviii} Positive elements in the legislation include:

[Photo no. 20, close to text about ICD (police firing on Muslim demonstrators)]

- the requirement to establish the ICD at both national and provincial levels;
- the obligation on “all organs of the state” to provide “such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the directorate”;
- the obligation for the ICD to investigate on its own initiative or on receipt of a complaint “any death in police custody or as a result of police action” and the accompanying obligation for the police authorities to notify the ICD of all such cases;
- the conferral of some police powers, such as of arrest (in relation to police officers suspected of offences), on ICD investigation staff;

^{lvii} Under section 11(1) of Act 16 of 1982 as amended by Act 1 of 1989

^{lviii} Under the South African Police Service Act, No. 68 of 1995

the power to refer cases to a Director of Public Prosecutions for decision on prosecution or to make other recommendations; and
the obligation to submit regular reports which must be tabled in parliament.

Nonetheless important weaknesses have undermined the independence and effectiveness of the ICD. The Minister of Safety and Security, who is responsible for the police, appoints its Executive Director and its budget is derived from the allocation made to the Ministry of Safety and Security. Civil society organizations have called for the ICD to be established on a separate legislative basis as a statutory body answerable directly to parliament, to reduce any potential conflict of interest.

In addition, the police are not obliged to notify the ICD in cases of alleged torture. The ICD is dependent on NGO-supported access to independent forensic medical and ballistics experts. The authorities are not obliged to implement its recommendations. Possibly the ICD's most difficult problem is the high workload carried by just over 30 investigators, each carrying 40 or more current cases while monitoring scores of investigations already referred back to the police. Between April and September 2001 the ICD received over 1,400 complaints falling within its mandate, including 91 deaths in police custody and 175 deaths as a result of police action. More recently it has acquired additional responsibilities, to investigate complaints against the new metropolitan police services and in connection with police obligations under the Domestic Violence Act, No. 116 of December 1998, without a commensurate increase in investigative staff. The nine provincial offices have had difficulties at times in gaining cooperation over access to police records or with the provincial offices of the Director of Public Prosecutions.

[BOX]

A significant number of ICD investigations have led to arrests and convictions in cases of torture, domestic violence and suspected extrajudicial executions. In June 1998 journalist Thabo Mabaso was beaten so severely by police from Gugulethu police station that he permanently lost the sight in his left eye. Three police officers were subsequently convicted of assault and sentenced to terms of imprisonment, notwithstanding earlier attempts by police to obstruct the ICD investigations. In 2001 he was awarded financial compensation in an out-of-court settlement with the police authorities.

In another case, four police officers were charged with murder in connection with the suspected extrajudicial execution of African National Congress parliamentarian Bheki Mkhize in July 2000. He had been shot dead after a dozen members of the Public Order Police Unit based at Ulundi raided his home, apparently searching for weapons. An attempt was made by a police officer to rearrange the crime scene to support a claim that the police had fired in self-defence. However, the ICD investigations, and the results from independent forensic medical examination and ballistics tests, confirmed that the victim was unarmed and had been shot intentionally at close range by the police.

[END BOX]

In **Lesotho** the 1998 Police Act provided for a Police Complaints Authority (PCA) but implementation was delayed by political tensions. Four senior staff posts will be appointed by the Minister of Home Affairs and it will investigate and report to the Minister on any complaint referred to it by the Police Authority or the Commissioner of Police. The complaints may originate from members of the public but there is no provision for direct access of the public to the PCA. This initiative will improve access to independent investigations into human rights violations, but the PCA's impartiality may be negatively affected by a number of factors. Although the PCA has the power to issue summons and to compel the disclosure of documents, the Commissioner of Police and the Police Authority can prevent a summons being issued if disclosure of the information sought is deemed not in the "public interest or would jeopardize the safety of any person." Although there are limitations in their skills, the most likely source of investigators will be the police. Also, without ancillary offices, its reach will not extend to the rural highlands.

In **Zambia**, the Police Act of 1999 provided for a Police Public Complaints Authority, with the power to investigate wrongdoings by police officers and to make recommendations. However little progress has been made in establishing this body.

Civil law remedies

Where national institutions have failed complainants, some have resorted to civil litigation to seek compensation from the police. However, in general such civil law remedies do not result in more than financial compensation for the victim, particularly where the matter is settled out of court. Where, less frequently, civil cases do end up in a trial on the merits, there may be important public disclosures of the alleged human rights violations. However, important aspects of reparations are frequently outside the bounds of civil remedies. These should include rehabilitation, including medical and psychological care as well as legal and social services; cessation of the violations and guarantees of non-repetition; verification of the facts and full and public disclosure of the truth; acceptance of responsibility and apology by the perpetrators. Also, civil remedies do not meet the requirement of international standards that perpetrators of human rights abuses be brought to justice. It is a measure of the state's failure to fulfil its obligations if civil law remedies are the main recourse for victims of human rights abuses.

In **Botswana** several NGOs, including the University of Botswana Legal Assistance Centre, provide free legal services which can enable a complainant to pursue civil legal remedies, although it is rare for the police to be sued in the courts for torture or similar violations. Civil litigation has been one of the few remedies available in **Lesotho**. Occasionally a complainant or surviving relative will win damages against the police for an unlawful killing or an act of torture.

In **Mozambique**, victims of human rights violations by the police can make claims under civil law, but the draft revised Criminal Procedure Code provides for compensation by the person who committed the abuse *or* the State, which might allow the State to transfer responsibility to individual, impecunious police officers. Civil law remedies continue to be sought in **South Africa**, primarily through legal aid clinics connected with the universities, sometimes in conjunction with investigations by the ICD.

In **Swaziland**, where the government has in general failed to prosecute or otherwise discipline police officers for human rights violations, no independent body has the authority to investigate and publicly report on police abuses. Complainants have had to rely on instituting civil damages suits but officials in the Attorney-General's department and the police are slow in responding to summons and invariably deny liability. Inefficiency and indifference is compounded by the lack of court resources which create further delays, and the lack of legal aid places civil litigation out of reach for many complainants.

[BOX]

In a case illustrating the difficulties in achieving accountability and reparations for victims of human rights abuses in **Swaziland**, Constable Roman Musa Tshabalala was shot dead while on duty at Lobamba police station on 30 July 1997. His family were told that he had committed suicide with his own service rifle. The report of the post-mortem examination, performed by the police pathologist without prior notice to the family, was withheld from the family, and the inquest required by law was not opened. When the family received the body for burial, they noticed gunshot injuries which suggested that he had been shot twice in the back. After months in which the authorities failed to initiate any investigation or provide the report, the family applied to the High Court in July 1998 and eventually obtained it. The report showed that the direction of the path of the bullets was "from back to front, above downwards", confirming their suspicion that he had been murdered. After several more years of litigation, the state reached an out-of-court settlement with the family.

[END BOX]

In **Zambia** complainants turn to NGOs such as the Catholic Commission for Justice and Peace after the Permanent Human Rights Commission's recommendations have not been acted on by the Attorney General's office. The Legal Resources Foundation and the Law Association of Zambia

provide legal aid in civil damages cases against the police, which in many instances result in settlements for the victim, mostly out-of-court. In **Zimbabwe** the large amounts being paid out in civil damages to victims of police human rights violations (US\$ 150,000 in 1998) appeared to have promoted moves to implement human rights training for the police, although the results of this approach have been undermined in the past two years.

In many of the countries in the SADC region, the prospects are minimal for independent and impartial investigations of complaints of human rights violations by the police and for compensation to victims of such violations. However a few governments are beginning to allow and facilitate the development of institutions and practices which can help end the culture of impunity within the police and entrench an acceptance of accountability for their actions as an inherent feature of a professional police service.

CHAPTER 5: POLICE TRAINING AND HUMAN RIGHTS

Effective training of all police officers is vital to ensure that the conduct of policing conforms to international human rights standards. “To be effective training should be aimed at improving knowledge, skills and attitudes in order to contribute to the appropriate professional behaviour.”^{lix} Human rights should be taught as an intrinsic part of the role and functions of the police, not as an optional adjunct. It is also important that officers receive appropriate, high-quality skills training, particularly in criminal investigation, interview techniques and public order policing. Human rights training for police can only be fully effective if recruitment policies demand the attainment of an adequate standard of education and ensure that police are representative of the community as a whole, including minority groups. In countries where there has been conflict, for example **Angola**, former combatants have been incorporated into the police. In most cases, their military training and experience, and inadequate standards of education, make them unqualified for policing in a democratic society.

Police training programs in many SADC countries were restructured during the 1990s as part of police reform initiatives. In most cases the new programs reflect a shift in emphasis from a militaristic style of policing to an approach based on “community policing” and respect for human rights. This chapter looks at how training on human rights has been incorporated into training programs for the police. The first section reviews the status of human rights training within police training programs across the region, particularly whether it is a permanent and fully integrated component or an *ad hoc* initiative. The second part considers the main elements of effective human rights training, including planning, content and teaching methods, and monitoring, evaluation and follow-up.^{lx} The third part looks at initiatives aimed at improving essential policing skills.

Human rights in police training programs

Human rights should be a component of all basic training for new recruits. Human rights training should also be included in all relevant in-service courses, such as refresher courses and training in crime investigation skills and public order policing. States that have ratified the Convention against Torture are obliged to “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel” (Article 10).^{lxi}

Most police services in the SADC region provide some form of human rights training but only in a few cases does the training reach all ranks. The impact of such training for new recruits is likely to be substantially diminished if they serve alongside officers who have not received any human rights training or are exposed to existing practices in an organization in which human rights training has previously been minimal.

Human rights training should be a permanent component of police training, reflected in long-term training plans and resource allocation. One-off, occasional training events have limited

^{lix}. Office of the UN High Commissioner for Human Rights, *Manual on Human Rights Training Methodology* (ISSN 1020-16888) (www.unhchr.ch/html/menu6/2/train)

^{lx}. This section draws on the Office of the UN High Commissioner for Human Rights, *Professional Training Series No. 5, Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police* (ISBN 92-1-154105-0) (www.unhchr.ch/html/menu6/2/train); Cees de Rover, *To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces*, International Committee of the Red Cross, Geneva, 1998; Amnesty International, *A 12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials* (AI Index: ACT 30/001/1998).

^{lxi}. See also Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 20).

impact because they do not involve the overview of training necessary to ensure that all serving officers are appropriately trained. They are often dependent on specific personnel, so that a change in staff can derail training initiatives, and officers sent for such training may be those that can be spared at the time and not those who would most benefit.

Since 1995, **South Africa** has put in place one of the most comprehensive programs of human rights training in the region. Aimed at the 102,000 serving police officers, including new recruits, by the end of 2001 approximately 29,000 officers had been trained. The program includes “training of trainers”, development of training materials and three-day workshops at the provincial level. The same three-day training is provided as part of basic training in all police colleges. The program has received substantial donor support from the Swedish International Development Cooperation Agency (SIDA), the US Agency for International Development (USAID) and the European Union, as well as from a range of South African businesses.

Several other countries have made efforts to incorporate human rights into training programs that reach all ranks. **Lesotho**’s new training curriculum, in place since 2000, includes human rights in basic training and in almost all in-service courses. However, the first 200 new recruits trained under the curriculum spent several months in operational roles before they entered the police training college, and this practice is expected to continue. There is also no system in place to monitor the progress of recruits and the impact on the incidence of human rights violations after training.

A full-scale overhaul of police training in **Mozambique** began in 1998 with a training for trainers project. The project is managed by the government of Mozambique and the UN Development Program (UNDP) and funded by the governments of Spain and the Netherlands. Technical assistance is provided by the Spanish Civil Guard. The project includes new recruit training, refresher courses for serving officers, and special skills training courses. Recruits receive some basic human rights education as part of training on ethics, discipline and constitutional law, and will also attend seminars on human rights at the end of their training. Nonetheless, the absence of specific training on human rights within the curriculum for new recruits is to be regretted. Although the refresher course developed by the UNDP project included training on human rights, fewer than one third of all police officers had received refresher training before this project component was suspended for lack of funds.

Despite the development of a comprehensive human rights training manual, human rights has not been well integrated into the training of the police force in **Namibia**. The manual, developed by a local NGO, the Legal Assistance Centre (LAC), and funded by the Commission of the European Communities, covers all the main aspects of police work as well as UN standards and the treatment of vulnerable groups. It is used by LAC trainers in the training they provide to the police twice a year, but not by police trainers. Also, LAC is not permitted to train new recruits or the paramilitary SFF.

Prior to 1997, police training in **Malawi** included little about human rights. However, new recruit training was redesigned in 1996/97, with technical assistance provided by the Surrey Police as part of a wider United Kingdom (UK) Department for International Development (DfID) police reform program in Malawi. The new training reflected a move from didactic to facilitative methods of teaching and an increased emphasis on human rights issues. In 2001 an NGO, the Danish Centre for Human Rights, assisted the Malawi police in the development of a human rights training manual for officers.

[Photo no. 23, close to Malawi para (Malawi training manual)]

In **Zambia**, human rights training is incorporated into training for new recruits at the main police training college and at two special facilities for training paramilitary police. The Permanent Human Rights Commission conducts some human rights training at the main training

college but does not teach the paramilitary police. The Commission has also made commendable efforts to reach police officers throughout the country with education on human rights. However, in its 2000 report to the Committee against Torture, Zambia acknowledged that the number of law enforcement officers trained in human rights was “quite negligible” and that training materials and qualified personnel were lacking.

Human rights has been a component of police training in **Botswana** for a number of years; the police college teaching faculty includes several experienced human rights trainers. The police training curriculum was re-designed in 2002 with assistance from the UK National Police Training College, Bramshill. Human rights is included throughout the new curriculum, which also emphasizes participatory teaching methodologies.

In **Zimbabwe**, a local NGO, the Legal Resources Foundation, conducted human rights training for approximately 1,500 serving police officers from 1989 to 1997. In 1998 another NGO, the Human Rights Trust of Southern Africa (SAHRIT), began working with the police to develop human rights training materials and to train police trainers. Human rights training provided by police trainers has been included in the curriculum at the Zimbabwe Police College since 2001. Workshops have also been conducted for police commanders to ensure acceptance of the new human rights training. However, this initiative was suspended in mid-2001. Funding for the SAHRIT training has been provided by SIDA (workshops for police commanders) and DANIDA, the Danish Development Agency (training of police trainers).

Promising human rights training initiatives have been established in several countries, but their relative newness makes the value of these initiatives difficult to assess. The **Swaziland** police have recently established a Training Planning Unit to review and re-design police training programs. This Unit should focus attention on the inclusion of human rights in police training and the review of new recruit training. At present, however, drill forms a significant part of training and recruits are used in operational roles during their training. In **Tanzania**, the Legal and Human Rights Centre, a local NGO, has provided human rights training to police officers in Dar es Salaam and Arusha, as well as to Police District Criminal Investigation Officers, since 1998. It has also published a police training manual. Since 2001 human rights has been included in the permanent curriculum of the police college in Dar es Salaam; however, it is not part of the curriculum at the training college in Moshi, where most new recruit training is done.

A number of organizations, including local and international NGOs and UN agencies, have provided occasional seminars on human rights for the police in **Angola**. However, no comprehensive plan is in place to reach all serving police officers. In 2000 the International Committee of the Red Cross (ICRC) provided training in international humanitarian law. This subject is now included in the training given to junior police officers but not to other ranks. Its provision for new recruits is left to the discretion of the individual trainer.

Police officers in the SADC region also benefit from regional training initiatives, some of which include human rights training. Since 1998 the Training for Peace Project at the Institute for Security Studies (ISS) in South Africa has organized yearly training programs for police officers wishing to serve in UN peacekeeping missions. They are conducted under the auspices of the Southern African Police Chiefs Co-operation Organization (SARPCCO). Human rights standards are well covered and expert trainers have been drawn from the regional office of the UN High Commissioner for Human Rights, the ICRC and regional NGOs. The aim of the course is to ensure that SADC police officers meet the selection criteria for service on UN peacekeeping missions. However, these criteria do *not* include knowledge of human rights, which tends to undermine the importance of human rights in policing.

Several *ad hoc* human rights training of trainers programs have been organized by SARPCCO at the regional level since the late 1990s, including one in **Botswana** in 1999 and one in

South Africa in 2000. In 2002 SARPCCO, in cooperation with SAHRIT, will begin a comprehensive program of human rights training for police trainers in the SADC region.

Essential elements of human rights training

Human rights training alone is not sufficient to ensure that police officers understand human rights and apply human rights principles in their work. To be effective, training needs to be well planned – with a well-designed syllabus, appropriate teaching methods and knowledgeable instructors – and to be monitored, evaluated and followed up, including with refresher courses.

Assessment of the human rights environment

Human rights training should be tailored to the specific problems of the country concerned. It should be based on prior assessment, by both police and civil society groups, of prevalent patterns of human rights violations by police officers. Several of the training programs developed as part of police reform processes have been based on needs assessments, which have included some assessment of human rights concerns. However, very few have specifically looked at human rights problems.

The **Botswana** Police Service made a serious effort to reflect civil society concerns and perspectives in their new training program. NGOs were invited to participate in discussions on police training and the police carried out public opinion surveys on some of their services. In **South Africa**, the police also sought input from civil society organizations when developing the human rights training course and materials.

Without an assessment of the types of abuses committed by officers, training may fail to target problem areas. For example, in the current five-year strategic development plan for the **Zambian** Police Service, the Human Rights Objectives focus on reducing illegal detention but no mention is made of torture, despite evidence of its widespread use.

Assessment of the human rights situation can also highlight special training needs, for example in how to respond to groups which are particularly vulnerable to human rights violations by the police. Officers in many countries have difficulty dealing with crimes such as rape, often because they lack appropriate training. Training has increased – often provided by NGOs and UN agencies such as the UN Children’s Fund (UNICEF) – on gender issues, the policing of groups such as street children and in dealing with rape and domestic violence. Special training on law enforcement issues relating to women and children has been introduced in **Zambia** and **South Africa**, where victim support units have been established in some police stations, and in **Malawi**, **Botswana** and **Namibia**, among others. However, the training is often of limited duration and rarely involves development of practical skills through role play and other participatory methodologies.

Planned and practical programs

The aim of human rights training should be to enable police officers to apply human rights standards to their day-to-day work. In **Mozambique**, the human rights component of the police refresher course has been criticized for its overly theoretical nature and lack of relevance to local requirements or practical policing matters such as arrests and investigations.

In many countries, limited education and illiteracy is a significant concern, for example in the **South African** police and the SFF in **Namibia**. Literacy training should be developed to overcome such difficulties and can be used as an effective vehicle for learning about human rights. Lack of human rights expertise among police trainers also inhibits the development of human rights training for all officers. While training of trainers initiatives by NGOs and donor organizations has helped counter this, the redeployment of skilled trainers away from teaching posts after they have been trained has significantly reduced the benefits of several police training programs.

International human rights standards and targeting

International human rights treaties and standards should be the basis for developing human rights training programs, including standards with particular relevance to policing.^{lxii} Training should emphasize the role of police as upholders and protectors of human rights, and efforts should be made to combat the prevalent view that human rights protection and effective crime control are mutually exclusive goals. The protection of human rights is for the benefit of all those with whom the police come into contact, who include the victims of crime and not only criminal suspects and detainees as is sometimes mistakenly believed.

Whether human rights training is incorporated into all aspects of police training or is treated as a separate subject, it should demonstrate how human rights principles are applied in routine police work and practice. The core of practical training should be the relationship between law enforcement powers and human rights protection, including:

- the obligation to serve and protect all members of the community impartially;
- the requirements for a lawful arrest and the prohibition of arbitrary arrest;
- the principles of legality, necessity and proportionality in the use of force and firearms;
- the legal rights of a detainee, including the right to be presumed innocent;
- the total prohibition of torture, including the right of a police officer to refuse to obey an order to torture anyone;
- the disciplinary and criminal penalties for violations of human rights.

Human rights training should not be contradicted by training given in any other part of police training programs. Police skills training and human rights training should complement each other. For example, in order to operate on the basis of minimum and proportionate use of force, police must be taught effective restraint and crowd control techniques (discussed further below).

Knowledgeable trainers and participatory techniques

SARPCCO, recognizing some of the limitations of knowledge amongst trainers, has organized regional training of trainers initiatives, to date on an *ad hoc* basis. Special training of human rights trainers has been included in human rights training programs in **Malawi**, **South Africa**, and **Zimbabwe**, among others.

Several police training colleges in the SADC region have introduced modern, facilitative and participatory teaching methodologies. These are generally recognized as more effective at building skills and changing behaviour than lectures, which aim at transferring knowledge.

However, training of trainers tends not to be a permanent component of police reform programs – a particular problem when skilled trainers are subsequently redeployed. Surrey Police noted this during a review of **Malawi**'s training program for new recruits in 1998. More than 50 police trainers had been trained as part of a DfID supported program in 1996/7, but in 1998 less than half were still teaching in the police colleges. The review also found that class sizes were sometimes too large for participatory teaching methods.

Partners in police training

Local and international NGOs, universities and civil society groups provide expert input to human rights training programs, contributing to the development of training materials, the training of trainers and direct training of police officers. Many partnerships involve innovative training approaches. In **Angola**, a project to use theatrical performances related to police work began in late 2001 after the actors had received human rights training. The “National Police Serving the Citizens Project” is a joint initiative of the police in Luanda province, the UN mission in Angola and an Angolan cultural

^{lxii} Such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

group. The use of drama in human rights education is not new, but it has not been used with the police before.

Partnerships with outside experts also play an important role in police training on issues of special concern for human rights, such as juvenile justice, and the treatment of women and children and vulnerable groups such as refugees. However, partner organizations are rarely included in the monitoring and evaluation of training programs.

Several police training programs rely heavily on direct training of police officers by non-police trainers. These include in-service training in **Zambia** which relies on the Permanent Human Rights Commission and other bodies, and in-service training provided by a local NGO in **Namibia**.

Yet NGOs and civil society groups may be unable to provide direct training regularly or in the long-term because of changes in personnel or priorities. Ideally, human rights expertise should be located in police training facilities so as to institutionalize human rights training for the police.

Monitoring and evaluation

The most neglected areas of human rights training – and indeed other police training – are follow-up, monitoring and evaluation. These provide the vital link between training and practice that ensures training is not forgotten or discarded in favour of established habits. Follow-up may be particularly important for new recruits, as they take new ideas into a traditional police environment often hostile to human rights.

In **Mozambique** some attempt was made by the Spanish Civil Guard to follow up on training by providing technical assistance in police stations where officers had undergone the refresher course. This has been effective in ensuring training is implemented, even though Civil Guard officers were posted to only nine police stations because of financial constraints. Arbitrary arrests and illegal detentions at those stations are now almost non-existent. In other SADC countries, there is little evidence of follow-up on training or support for new recruits.

Monitoring and evaluation – of both training programs and their impact – are essential to ensure that training is effective and resources not wasted. Lessons learned should be fed back into the training program. NGOs and civil society groups can play an important role in this area, yet very few human rights training programs in the region include monitoring and evaluation. Several donor organizations have evaluated training programs that they have funded but these evaluations are usually based on the donor's criteria and requirements for information and do not necessarily benefit the police services being evaluated.

Policing skills and human rights

Police officers, police oversight bodies, prosecutors and human rights organizations across the region cite inadequate policing skills as a factor in arbitrary arrests, ill-treatment and torture of suspects. There is widespread evidence of poor investigative and interview skills and an over-reliance on extracting confessions from suspects, requiring both human rights training and high-quality skills training to raise levels of professionalism.

The policing of public gatherings is another area where police skills and training provision are deficient. Officers should be equipped with practical skills in the use of force and firearms which would allow them to respect the principles of minimum and proportionate use of force. No police officer should carry a firearm unless trained and regularly re-examined in its use.

Several donor-funded training initiatives have included training in criminal investigation, particularly as part of police reform programs. Between 1998 and 2001 Spanish Civil

Guard trainers ran 11 investigative skills courses for 454 police officers in **Mozambique**. Skills training has also been a major component of UK assistance to police forces in Southern Africa.

[Photo no. 24, close to text (Spanish civil guard trainer, Mozambique)]

However, the sustainability of such training has been questioned in independent evaluation.^{lxiii} Its benefits have rarely been widespread enough to have a long-term impact because of the temporary nature of training programs, the small number of officers trained and the subsequent redeployment of many of them into posts where their training was not used.

South Africa has introduced several training initiatives aimed at improving policing skills. Staff of the recently established Directorate of Special Operations receive special training in crime investigation skills under a cooperation agreement with the UK Police Training College at Hendon and Metropolitan Police. The Directorate was established, under the Ministry of Justice, to investigate “organized crime” and other crimes identified as national priorities. It represents an attempt to build a skilled investigative force whose methods completely break with past practices. The staff are largely university graduates with no background in law enforcement. Training components include crime scene management, the gathering and documenting of evidence, taking statements, interview techniques and human rights standards.

In an effort to address the human rights violations associated with public order policing, the Public Order Police in South Africa have shifted emphasis from crowd control to crowd management. Training stresses the minimum use of force and a gradual response, beginning with negotiation and moving to offensive manoeuvres only when other approaches have failed. The police have also recently introduced training in “soft” skills, such as conflict resolution and mediation. However, the training program in South Africa is the exception rather than the rule. In several SADC countries, public order policing is the responsibility of paramilitary units whose training does not include human rights or principles on minimum use of force.

Maintaining trainers qualified in the full range of policing skills on a permanent basis is beyond some countries’ resources. One solution is to draw upon regional centres of expertise, for example, the use made of experts from **South Africa** by the **Swaziland** police.

Independent organizations may also provide specialist skills training. The Independent Medico-Legal Unit in **South Africa** provides training on the expert collection and interpretation of forensic medical data in crime investigation, and members of police investigation units and the ICD have participated in these courses. It is currently providing a course on the investigation of crimes against women and children for law enforcement, justice and medical personnel.

A potentially positive development in the region has been the recent establishment of an International Law Enforcement Academy in **Botswana**. Under a cooperative agreement between the US and Botswana governments, it offers a range of specialist skill courses for police officers in the SADC region. Those planned in 2002 include a course for law enforcement managers and trainers in training officers responsible for the investigation of sexual offences.

Advanced police training offers senior police officers the opportunity to improve policing skills and contribute to organizational development. Few countries in the region offer such training. The **South African** Technikon SA offers a four-year Police Practice Degree. In **Mozambique** the recently established *Academia de Ciências Policiais*, the Academy of Police Science, offers a Diploma aimed at building the skills of senior police officers, but human rights is

^{lxiii} Keith Biddle, Ian Clegg and Jim Whetton, *Evaluation of ODA/DfID Support to the Police in Developing Countries: A Synthesis Study*, Centre for Development Studies, University of Wales, Swansea

only covered in the final year of the four-year course. Since 1999, the European Union has funded a university level training program in **Mauritius** that covers a wide range of police skills and includes a human rights component. With assistance from the UK National Police Training College, the **Botswana** Police Service is currently developing a strategic command course that will be open to police officers from other SADC countries.

Training alone will not achieve policing based on human rights principles. It must be linked to the changes in the environment in which police officers work. Training should be reflected in police standing orders and in the day-to-day instructions received from supervisors. Human rights and skills training for the police should be part of a broader strategy for police reform which includes law reform and comprehensive oversight.

CHAPTER 6: POLICING AND THE COMMUNITY

Lack of respect for the police threatens the rule of law in southern and eastern Africa. The alienation felt by many local communities and civil society organizations has starved police of information necessary to develop accurate criminal intelligence and denied them the civil cooperation needed to prevent and detect crime. Instead, police abuse is ignored, traditional systems of justice are used, vigilante groups take the law into their own hands and those who can afford it pay for private security.

However, where local police have been reformed and have established a reputation for respecting the rights of communities, police officers have built the public confidence and civic cooperation necessary to prevent and detect crime. Such cooperation is being created in many areas through neighbourhood watch schemes, victim support projects, community-based crime prevention programs, lay visitor schemes and other civil society partnerships with the police. Unfortunately, such partnerships can be, and in some cases have been, undermined by the use of the police for political repression, by a militaristic training culture, by impunity for abusive police officers, and by public and political pressure to respond to rampant violent crime by “all means necessary”.

Local ‘community policing’ initiatives

In several SADC countries, attempts have been made to establish local bodies in which police and community representatives can cooperate in preventing and detecting crime. These efforts have been described as forming the basis of “community policing”, although the concept is often not well defined. In several countries these initiatives have been poorly prepared, and sometimes they have even resulted in human rights abuses by those involved.

In **Swaziland**, the term “community policing” has been used since the mid-1990s to describe civilians who undertake certain duties in policing local crime. Civilian community police have been criticized for treating suspects brutally. Although some civilian community police have been arrested and charged as a result, their units have not been disbanded. These units’ status, mandate and powers are unclear and they do not appear to have received any proper training. They seem to be linked to the regular Swazi police force through crime prevention officers stationed at both headquarters and regional level. These officers are trained in community policing techniques and some police trainers have been trained in the UK.

In **Zambia**, a national neighbourhood watch scheme started in 1989 as part of a police reform process. Community policing was piloted in Lusaka with some 30 police officers trained in Canada during the 1990s. Under the Police Act of 1999, which established community policing in law, any community may establish a crime prevention and control association with the power to arrest suspects. The neighbourhood watch scheme seems to have declined in many areas but remains active in some parts of the country. Opinions on its efficacy vary: some see it as a positive contribution to crime reduction while others express concerns about mob justice. Although this is a problem, particularly in rural areas, it has not been associated with neighbourhood watch committees.

[Photo no. 31, close to text (Danistan, Zamiba)]

In an effort to put police officers in closer touch with the community, the Zambian police established police posts in some rural areas and in Lusaka under the jurisdiction of a police station. While this initiative sounds positive, police posts have sometimes been associated with human rights violations by police. Often junior officers staff the police posts, there have been reports of drunk and abusive officers, and oversight is limited.

Community policing was adopted by **Namibia** as part of its policing at independence in 1990. Police and public relations committees were encouraged in many communities to provide a forum where the public and the police could share information and discuss appropriate policing methods for the area. However, in 1996 they were reviewed because of flagging public interest. The police also devised a “20 house neighbourhood watch scheme” in 1994 to 1995 to promote dialogue between police and members of the local community. This scheme was implemented mainly in Windhoek, where the police claim it has been effective.

An evaluation of the involvement of the UK’s Department for International Development (DfID) with the police in Namibia between 1990 and 1995 noted that community policing, while originally embraced by the police, came to be regarded as “soft” policing, particularly in the face of rising levels of crime. The Namibian police conducted another review of community policing in 2000/2001, but the results are not yet available.

The **Zimbabwe** police has had at least one Community Liaison Officer at each police station since the 1980s. However, since the Zimbabwe government encouraged militias – composed of “war veterans”, ruling party supporters and unemployed youths – to try to solve land issues, the relationship between the police and community has sharply deteriorated. Police inaction in the face of state-sponsored militia violence in rural areas, and excessive use of force by police against urban protesters, have led to fear and mistrust. In 2000, police barred white Zimbabweans from participating in neighbourhood watch programs. Community consultation has weakened and community meetings with the police are avoided by many for fear of being targeted on grounds of political affiliation.

In **Mozambique**, a pilot project in a poor neighbourhood in Maputo started at the end of 2001. Residents formed a “vigilant group” to patrol the area on foot; if someone is found disturbing the peace, they are to be taken to the neighbourhood council. The council can deal with minor problems through reconciliation, but for serious crimes must take the person to the police station. This pilot project is based on the FRELIMO structure of neighbourhood leaders, and there are allegations that the police are distributing arms to FRELIMO supporters as part of the project and that only FRELIMO sympathizers are being recruited.

The democratic opening of **South Africa** in 1994 led to attempts to develop a consensus style of policing rooted in local community partnerships. The police were required to establish community consultation at all local police stations, and consultation mechanisms at the provincial level. A working definition of community policing was produced in 1996: “Community Policing aims to establish an active and equal partnership between the police and the public through which crime and community safety issues can be jointly determined and solutions designed and implemented.”^{lxiv} Training manuals for police were developed and community policing techniques were included in the curriculum at police colleges.

[Photo no. 25, close to text (training manual, South Africa)]

Community Policing Forums (CPFs) were set up, bringing together representatives of the local community and the local police to work out crime prevention and crime detection priorities. However, local efforts to create CPFs were often hindered by political factionalism and deep-rooted distrust of the police, as well as the lack of resources, training and experience of many police officers.

DfID provided financial and expert assistance in implementing CPFs in some provinces. For example, a community-based policing project in the Eastern Cape involving three local NGOs began in 1998. It delivered basic training to 198 police stations consisting of a five-day workshop for police,

lxiv. Government of the Republic of South Africa, National Secretariat of Safety and Security (1996), Guidelines on Community Policing, p. 4.

one day for communities and a further one day for police and communities. The number of CPFs expanded considerably, and a second project began in May 2001 in which 40 police stations and communities were to devise and implement crime reduction plans.

Many other local initiatives were established, such as an apparently successful community policing strategy at Cato Manor, a poor township of Durban. Some projects in the Kwazulu Natal region designed to curb armed crime made significant progress, as did a project in the Belito Bay rural district sponsored by urban businesses and large farmers under the authority of the local council. This catered for poor as well as rich communities, using well-trained civilian street patrols under police supervision and outreach through the churches and schools.

Lesotho's 1998-2003 Police Development Plan emphasizes community policing and improving relations between the police and the community. As well as training, the plan focuses on expanding community Crime Prevention Committees (CPCs). Civilian members of CPCs are allowed to undertake some policing work, including patrols, and although they are not supposed to confront suspects without a police officer, they generally lack supervision.

In an attempt to encourage a different model, DfID funded a Safety and Security Project which started in June 2001. Four pilot sites were selected where police liaise with community committees but retain control of police duties. These committees will discuss community priorities and crime prevention with the police, but will not do police work of any sort.

In **Botswana**, too, the Police Corporate Development Plan emphasizes community policing and performance improvement. In 2000, the government established toll free telephone numbers to facilitate the reporting of rape and violent crime against women. According to a senior police official, community crime prevention committees and neighbourhood watch schemes have been set up in many parts of the country. There are also business crime prevention forums and schemes that involve different sectors, such as farmers. The police run crime prevention seminars and workshops with members of the community.

In **Malawi** community policing was introduced as part of a police reform process in 1997 and has been supported by DfID following models developed primarily in South Africa. New district-level (or sometimes sub-district) Community Police Forums (CPFes) were formed, with police and community representatives, to discuss policing priorities and air complaints. Several victim support and lay visitor schemes were also set up. In some CPF areas, police reported a decrease in crime. For example, a 1999 appraisal found that in Kanengo, Lilongwe, the local community reported a significant decrease in rape of women and violent crime.

[Photo no. 27, close to text (police officer, Malawi)]

In 2000, the Malawi police, DfID and two local NGOs produced a handbook in three languages to help the CPFes. They developed training curricula and held eight regional workshops for hundreds of leading CPF members and local police officers. Radio and television programs were produced to encourage the proper formation of CPFes, prevent violent crime, curb illegal firearms and stem vigilantism.

In June 2000 there were more than 350 CPFes with thousands of associated Crime Prevention Panels at the group-village level and Crime Prevention Committees at the village level. The functions of panels and committees varied, but most centred on public education. However, in rural areas with no police officers within a reasonable distance, some panels and committees have formed their own patrols and have carried out arrests, sometimes reportedly accompanied by beatings.

NGO initiatives

Monitoring

The level of human rights monitoring by NGOs in SADC countries varies greatly. Most is carried out at the local level, sometimes in liaison with national bodies such as human rights commissions and Ombudsman's offices (see chapter 4). Although providing an important service and generating information invaluable to the assessment of the effectiveness of training programs for the police, NGO human rights monitoring tends to be poorly funded and often with little reach into the more remote rural areas. In **Lesotho**, for instance, monitoring of the police in the highlands is very difficult. Travel is difficult, few lawyers are available outside the capital, and the planned police complaints authority will only be accessible in Maseru. Most of the rural population cannot afford to travel to Maseru to initiate action, even if they are aware of the possibility and of their right to complain.

Few NGOs have district-level operations and a decline in donor aid has left many underfunded. In **Zambia**, AFRONET (the Inter-African Network for Human Rights and Development), the Catholic Commission for Justice and Peace and the Legal Resources Foundation, all of whom are involved in the monitoring and documentation of human rights abuses, have expressed concern about the lack of capacity to monitor developments in rural areas where abuses are feared to be prevalent.

The National Society for Human Rights in **Namibia**, however, does attempt to systematically monitor human rights developments in the northern Caprivi area. In **Malawi**, logistical problems occur because of the shortage of police and NGO resources, especially in the rainy season when roads are impassable. Nevertheless, paralegal workers of the Blantyre-based NGO Malawi CARER (Centre for Advice, Research and Education on Rights) help monitor certain districts, as do workers from the Lilongwe-based Centre for Human Rights and Rehabilitation (CHRR). Cases of mistreatment by police are taken up with senior police officers and the Ombudsman's office since there is no police complaints procedure. The CHRR has reported that senior police respond, but rarely discipline or charge offending police officers.

NGO legal aid clinics attached to universities and public interest law firms in a number of countries, including **South Africa**, have documented human rights abuses in the context of litigation against the police and government authorities. Such legal cases can have an impact on public policy and police practice as a result of court rulings. Human rights organizations in **Zimbabwe**, through their systematic monitoring of patterns of human rights abuses in the past two years, have documented the increasing politicization of the police in Zimbabwe. These organizations, including the University of Zimbabwe Legal Aid and Advice Scheme, have provided support to victims of militia and police abuses.

[Photo no. 22, close to Zimbabwe text (march for Patrick, Zimbabwe)]

In **Mauritius**, members of civil society, including private lawyers and NGOs, have been active in condemning incidents of police brutality. The opposition *Parti Lalit*, Lalit Party, monitors deaths in police custody and allegations of torture and ill-treatment during arrests and interrogations by police. It provides psychological and legal support to victims of police brutality, and has organized campaigns against laws allowing incommunicado detention.

Victim support

According to an Assistant Commissioner of the **Botswana** police, local NGOs are very vocal on human rights and gender issues and the police have responded to their concerns. For example, after NGOs raised the issue of domestic violence and the police response to it in 1997, a task force was appointed and a policy developed to arrest and apprehend suspects, not just to mediate. Similarly, in **South Africa** the services provided to rape survivors and victims of domestic violence have improved in certain parts of the country as a consequence of intense NGO lobbying of the police and the departments of health and justice. NGOs have also been actively involved in providing training to the

police and criminal justice officials, and in making inputs on draft legislation and monitoring implementation of the new Domestic Violence Act.

Rape is an under-reported crime in **Lesotho**, as in all SADC countries, but the expertise of local NGOs is under-utilized. The Women and Law in Southern Africa project (WLSA) have reported that the police service deal insensitively with women victims of sexual violence. Police officers have interviewed rape victims at a public desk and have asked them to justify why they were at the site of the crime. The police have had little training in victim support in relation to sexual and domestic crimes.^{lxv} On gender issues the Federation of Women Lawyers (FIDA) gives lectures to the police at the Police Training College and the WLSA also provides some training. Similar initiatives have been undertaken in **Swaziland** by the local chapter of WLSA and the Swaziland Action Group Against Abuse (SWAGAA), which also provides services to rape survivors.

The YWCA (Young Women's Christian Association) and UNICEF helped to establish **Zambia's** Victim Support Unit in 1996. Victim support officers are now available in many parts of the country and NGOs feel that the Unit has been the one noticeable result of the Zambian police reform process.

Following the inability of the police in **Tanzania** to halt killings of elderly women suspected of witchcraft or to bring the suspects to justice, in June 2000 the Tanzania Media Women's Association launched a video to raise awareness about the issue of witchcraft killings.

Outreach to schools and youth

Juvenile crime is on the increase in most SADC countries. The police have few specialized skills to deal with juveniles and often hold them together with adults in police cells. Many suspected juvenile offenders and children in custody are street children or AIDS orphans, and some civil society projects have been developed to help them.

In **South Africa**, where a comprehensive reform of juvenile justice is under way, some NGOs and local authorities have developed projects to encourage school safety. Parents, teachers, pupils and police engage in raising the level of understanding about violence, crime and policing and are encouraged to report on threats to pupils, staff, school buildings and materials.

In **Zambia**, police officers of the Schools Liaison Unit visit schools to talk about crime and safety. They have visited most schools in Lusaka and are planning to go to other parts of the country. The head of the unit admitted that during their early visits, children tried to escape through classroom windows because they were so afraid.

Illegal firearms

In **South Africa**, many community policing initiatives have been undermined by the level of gun violence. In 1999 about 25,000 people were murdered, well over half with firearms. Some of the victims were police officers. Most police are authorized to carry firearms despite a lack of in-service training. In addition, many tens of thousands of civilians own firearms legally. The South African parliament began to consider tightening gun controls, but the problem of gun violence is well entrenched.

In 1999 the government began "Operation Ventilation" to curb armed crime in KwaMashu, a township in Durban plagued by unemployment, high levels of violence and with a history of poor policing. While criminal gangs were well-armed, local police were few in number and badly equipped. Operation Ventilation included house-to-house sweeps by heavily armed police in

^{lxv}. Confirmed to Amnesty International by the Police Complaints and Discipline Office during a discussion on treatment of victims, December 2001.

armoured vehicles and little cooperation with the existing local police. Few firearms were recovered, gang violence continued and police morale remained low.

In contrast, a Police Task Force sent into Edendale in Pietermaritzburg adopted a community policing strategy in cooperation with local community groups to develop an intelligence-led anti-firearms program. Edendale is another large, low-income township with an ineffectual local police force that has been heavily affected by high levels of armed violence. The task force contained highly trained officers and local police members identified as trustworthy by community leaders, and it obtained valuable information which led to a large number of arrests. Although blockages in the judicial process led to unwarranted delays in prosecutions, the task force was effective and apparently well respected.

In largely rural **Malawi**, a Community Safety and Firearms Control Project was established in 1999 by two local NGOs to promote professional policing and civil society cooperation. The pilot phase worked with civilian representatives of CPFs and the Malawi community policing division. There have since been reports of communities helping the police recover illegal firearms and according to official data the incidence of gun-crime has levelled off. The Christian Council of **Mozambique** has encouraged the surrender of firearms and other small arms left over from the war in exchange for tools and equipment which can be used to earn a living, such as farm tools, sewing machines and bicycles.

Business initiatives

In **Namibia**, the police's commercial crime investigation unit takes a community policing approach by holding talks with different business groups. However, these efforts are restricted by the lack of success in the overall community policing program.

An NGO coalition in **Malawi** has tried to encourage the two largest business associations, the Chamber of Commerce and the Tobacco Association, to support their efforts to improve community safety. Both associations have expressed concern about gun violence and are worried that violent crime may lead to decreasing investment. Although local businesses have contributed to the work of district CPFs, large companies are reluctant to give funds to the police until there is better accountability.

South African businesses have been significant supporters of community policing initiatives. "Business Against Crime", was set up in 1995 by large companies to improve police station facilities and reduce crime in city business districts, for example by purchasing video surveillance cameras in the hotel district of Durban and in the central business district of Johannesburg.^{lxvi}

Public awareness projects

Public awareness programs in SADC countries are sporadic and uncoordinated. In **Angola**, a few NGOs are involved in holding meetings and seminars examining issues related to policing, but it is difficult to ascertain their impact.

In **Malawi**, drama techniques have been used to promote understanding of policing, human rights and the rule of law. For example, a play was performed in the rural Mchinji District about mob justice, showing an innocent person killed. In Kanengo, Lilongwe, a drama group performed a play about rape and how to treat victims. The NGOs involved in Malawi's Community Safety and Firearms Control Project have helped produce radio discussions and phone-in programs on

^{lxvi} See "Practical Guide to Partnership Policing", Institute of Security Studies, Pick 'n Pay and South African Police Service, 1996 and revised thereafter.

community policing and a video on community safety.^{lxvii} Thirty-nine short educational television programs are planned for broadcast by TV-Malawi during 2002 and 2003.

[Photo no. 27, close to text (video, Malawi)]

Private security

These various efforts at transformation can be undermined or sidelined by the increasing reliance by the state and private sectors in the SADC region on the services of private security companies. This occurs in a context of rising levels of crime, wide disparities of income and wealth, and a lack of effective police services. Many countries also have thousands of demobilized regular and irregular combatants. Private security services have grown rapidly, and are increasingly performing functions that used to be the preserve of the police such as guarding company premises, patrolling streets and advising on crime prevention. While the police are supposed to protect the public at large, the private security industry operates on a profit motive and is accountable to its clients only.

[Photo no. 28, close to text (security guards, Malawi)]

A study in **South Africa** in 1999 concluded that: “The private security industry is one of the fastest growing economic sectors in South Africa... It is estimated that there are more than four private security guards for every uniformed member of the SAPS [South African Police Service] engaged in visible policing work. The public are therefore more likely to come into contact with private security guards than with police officers.”^{lxviii} Training standards for private security officers across the SADC region are low. According to the regulatory board in South Africa, nearly 100,000 of the 350,000 registered security officers were not trained for the level of work undertaken. Three-quarters of all security officers only had the lowest grade qualifications, which meant they could be armed after only five hours’ firearms training and then deployed without further training. Moreover, there are no statutory regulatory standards applied to in-house security guards (of whom there were an estimated 60,000 in 1999). Official liaison structures with the police are minimal and violent abuses by private security guards have been reported.

South African private security companies have expanded their operations into other SADC countries where regulatory systems are weak or non-existent. For example, **Malawi** has no statutory regulation of private security companies although they are used by many high-income householders and most sizable businesses. In **Mozambique** in early 2002 the Minister of the Interior called for private security companies to cooperate with the police, including by requesting security guards to act as police officers in the fight against crime and by sharing their vehicles in an emergency since the police often have no transport.

Where the efforts to transform policing or make police services more accessible falter or fail, some communities have attempted to resolve the problems of community safety and security by taking the law into their own hands. A wide range of such responses have emerged in SADC countries. In the **Lesotho** highlands, villagers who patrol at night armed with traditional sticks and whips have assaulted suspected animal livestock thieves. In **Mozambique, Zambia, Tanzania, Malawi** and **South Africa**, organized groups have beaten or killed suspected criminals. Sometimes such killings occur after police have failed to arrest suspects or after the release on bail of suspects charged with serious crimes. The extent of the counter-violence by some of these groups – such as People Against Gangsterism and Drugs (PAGAD) in **South Africa**, the *Banyamalenga* in **Malawi** and the *Sungusungu* in **Tanzania** – have compelled governments to pay urgent attention to the crisis

^{lxvii}. *Protecting our lives – Community policing in Malawi*, a 35-minute video, produced by Jenny Morgan in 2000 and sponsored by the Canon Collins Educational Trust for Southern Africa.

^{lxviii}. Jenny Irish, "Policing For Profit", Institute of Security Studies, Pretoria, August 1999

in the policing of crime.^{lxi} President Benjamin Mkapa called on people to stop taking the law into their own hands, stating that mobs had killed 78 people between January and April 2001. His comment, that “[t]here are some of us who want to become people or institutions that are more powerful than the police, courts and our prisons...”,^{lxx} received an angry retort from one resident who challenged him to “...purge dishonest law enforcers, particularly in the police force and in courts. These are the ones who fail the president, making members of the public resort to these wanton killings.”^{lxxi}

[Photo no. 30, close to text (Neighbourhood Watch, South Africa)]

These violent responses obviously cannot provide a solution to the legitimate needs of communities seeking improved security as well as justice for the victims of crimes. In contrast, it is to be hoped that the initiatives referred to earlier in this and the preceding two chapters – together with reforms in the administration of justice, such as **South Africa** has attempted, for instance, in the last few years – can enable governments to provide community safety in a lawful, humane and effective manner.

lxi. *Fear in the City, Urban Terrorism in South Africa*, Institute for Security Studies Monograph No. 63, September 2001

lxx. Excerpt from a speech by President Benjamin Mkapa on Tanzanian radio on 27 April 2001

lxxi. "Police cause of lynching, Dar residents claim", *The Guardian*, Dar es Salaam, 1 May 2001

RECOMMENDATIONS

Recommendations to governments and police authorities in the SADC region

Amnesty International believes that both individual governments and the Southern African Development Community (SADC) as a whole, need to take action urgently to address human rights violations by the police and to encourage further the transformation of police services in a manner consistent with human rights standards and standards of professional conduct.

The following recommendations, based on the findings of this report, are primarily addressed to governments and police authorities in the SADC member states. Amnesty International also calls on regional intergovernmental organizations – in particular SADC and the Southern African Regional Police Chiefs Co-operation Organization (SARPCCO) – and those governments with political, economic or other interests in the SADC region to do everything in their power to support the political and police authorities in the SADC member states in implementing these recommendations.

Set standards

- Develop a culture of respect for international and regional human rights standards by incorporating and giving full effect to those standards in national jurisdictions;
- Ensure the public are aware of their rights and the means of enforcing them;
- ensure complete judicial independence, as well as independence of the legal profession, and be willing to respect the judgments of the courts and the rule of law;
- Make clear publicly that human rights violations by the police will not be tolerated under any circumstances and that the need to investigate crime or deal with public disorder can never be used as a justification for human rights violations;
- Ensure that the criteria for career advancement within the police service include police conduct which is professional and conforms to international and regional human rights standards;
- Where necessary, reform laws, regulations and police operating procedures to bring them in line with international human rights standards;
- Ensure that strict guidelines govern the use of firearms, tear gas and other security equipment and that the use of such equipment is carefully monitored;
- Provide all “community policing” bodies (community policing forums, neighbourhood watch schemes, crime prevention committees, etc) with a meaningful legal and regulatory framework in national law which defines the roles and responsibilities of members and officers. Such rules should ensure that all law enforcement activities are carried out in accordance with human rights standards. These rules should be widely disseminated and publicized;
- Make private security companies subject to national regulations ensuring strict accountability and rigorous training of their personnel. Training should include a comprehensive component concerning human rights standards. The roles and responsibilities of private security officers should not undermine those of the national police and law enforcement agencies.

Ensure accountability

Investigate and bring to justice suspected perpetrators of human rights violations. It is vital that the authorities take effective measures to investigate allegations of human rights violations promptly, thoroughly, impartially and independently, in accordance with strict international standards for such investigations. Judicial proceedings against perpetrators should be carried out in accordance with international and regional standards for fair trial and without recourse to the death penalty;

Ensure that all reform initiatives are monitored and evaluated. The monitoring of the impact of these initiatives is essential to ensure that objectives are being achieved and that resources are properly allocated.

Guarantee professional and impartial policing

End the political use of the police. Governments should cease to use law enforcement officials for political purposes, including to suppress peaceful, non-violent public assemblies and to persecute opposition parties, non-governmental organizations and minorities, including gays and lesbians. All police officers should receive clear, explicit instructions to respect the human rights of all, irrespective of political beliefs, sexual identity, religion, ethnic origin, sex, colour, language or similar identity;

Take steps to improve police officers' conditions of work and the resources available to police forces to enable them to carry out their work.

Provide effective training

Ensure all police officers receive human rights training which is practical, relevant to police work and based on international and regional human rights standards. Police training in the following areas should always be based on human rights standards and aimed at ensuring the highest standards of professional conduct. Training should pay due attention to the obligation to respect the human rights of vulnerable groups, such as women and children:

Public order policing. Use of force and firearms in public order policing should conform to international standards. Police should be taught skills that enable them to use force and firearms according to the principles of necessity and proportionality. Lethal force should only be used when strictly unavoidable as a last resort to protect life. This component of training should be associated with a program to review equipment at the disposal of law enforcement officials to ensure they are able to undertake policing in accordance with these principles;

Arrest and detention procedures. Police should carry out arrests using the minimum force necessary in a manner that is consistent with the prohibition against torture and ill-treatment. Training should be based on international and regional human rights standards relating to the use of force and to the treatment of detained or imprisoned persons;

The interrogation of criminal suspects. Training on "scene of crime management", the gathering, analysis and preservation of evidence and other aspects of the investigation of alleged crimes, including techniques of interviewing and taking statements from suspects and witnesses, should be designed to develop the capacity of law enforcement officers and the police to build a case in an efficient manner that avoids reliance upon coercion;

Victims of crime. Training should be provided on interviewing complainants reporting human rights abuses, particularly where allegations of rape and domestic violence are involved. This training should be linked to other initiatives intended to raise the standard of medico-legal examinations of survivors;

Ensure effective monitoring and evaluation of training programs. The criteria for evaluating the success of training programs – including the evaluation of trainees' understanding of and commitment to human rights standards – should be established at the start of the training program to ensure that lessons are learned from previous training and that those lessons are incorporated into future training initiatives;

Ensure that police training facilities have reliable and continuing access to skilled trainers. This should include high-quality training of trainers at national or regional level, or sustainable cooperative agreements between police training institutions and other agencies; All training and reform initiatives should be linked to the creation of effective accountability mechanisms.

Build partnerships

All projects involving civil society partnerships with police organizations should be based upon international and regional human rights standards;
 Non-governmental projects and initiatives aimed at promoting community safety consistent with human rights standards should be encouraged and supported by donor agencies;
 Business and company sponsorship of anti-crime initiatives should be encouraged where this contributes to the promotion of human rights standards and does not increase disparities in resources for policing between richer and poorer areas;
 All police services should seek civil society partnerships to ensure better reporting of, and action against, the crimes of rape and domestic violence;
 Governments should acknowledge the expertise and contribution of non-governmental and other civil society groups to police training and should seek ways to strengthen these relationships.

Specific reforms

Amnesty International calls on the governments and police authorities of SADC countries to undertake the following measures:

Legal reforms

Demonstrate their commitment to protecting and promoting human rights for all citizens by ratifying international treaties that contain safeguards against human rights violations;
 Important treaties that have not yet been signed or ratified by some SADC countries include:
 the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) (**Angola, Swaziland, Tanzania and Zimbabwe**);
 the UN International Covenant on Civil and Political Rights (**Swaziland**);
 the Convention on the Elimination of All Forms of Discrimination against Women (**Swaziland**);
 Ensure that torture is defined as a crime in their national laws. This is a clear obligation under Article 4 of the Convention against Torture. Some states parties to this treaty have not yet fulfilled this obligation, including **Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa and Zambia**;
 Repeal or amend laws which allow the use in any proceedings of any statements or evidence obtained as a result of torture or ill-treatment, except as evidence against the person accused of torture or ill-treatment. Countries whose criminal procedure laws allow evidence obtained as a result of torture to be used by the prosecution in criminal cases, or fail to prohibit such evidence being used, include **Botswana, Lesotho, Malawi and Zambia**;
 Repeal or amend laws which allow for incommunicado detention or prolonged detention without trial or remove the jurisdiction of the courts in bail matters. Such laws include:
 The Pre-Trial Detention Law of 1992 (**Angola**);
 The Dangerous Drugs Act of 1986 and the Prevention of Terrorism Act of 2002 (**Mauritius**);
 The Criminal Procedure Code of 1929 (**Mozambique**);
 The 1993 Non-Bailable Offences Order and subsequent amendments (**Swaziland**);
 Ensure provisions relating to police use of lethal force in constitutions, national laws or regulations are in line with international human rights standards. Constitutions which fail to properly limit the use of lethal force include those of **Botswana, Lesotho, Zambia and Zimbabwe**. National legislation in all countries should also be amended where necessary to ensure that the principles of necessity and proportionality in the use of force are reflected in the law;
 Repeal or amend legislation that curtails freedom of conscience and expression and of peaceful assembly and association. Such legislation denies fundamental human rights and can facilitate political use of the police. Legislation limiting these rights is particularly evident in **Swaziland and Zimbabwe**.

Oversight and accountability mechanisms

Set up effective, adequately resourced and independent bodies that are empowered to investigate complaints against the police including complaints of human rights violations perpetrated by the police and of police failure to investigate other human rights abuses. Such bodies should be accessible to all victims of human rights violations and publicly accountable.

Several countries do not have bodies that meet the above criteria, including **Angola**, **Botswana**, **Mauritius**, **Mozambique**, **Swaziland**, **Zambia** and **Zimbabwe**; The Police Public Complaints Authority in **Zambia**, provided for by the 1999 Police Act, and the *Provedor de Justiça* (Ombudsman) in **Angola**, provided for by the constitution, should be established as soon as possible;

The 1998 Police Act in **Lesotho** should be amended or new legislation put in place to allow members of the public direct access to the Police Complaints Authority and to ensure that action is taken as a result of its investigations;

The government of **South Africa** should demonstrate its commitment to the independent oversight of the police by ensuring that the Independent Complaints Directorate (ICD) has adequate resources and all appropriate powers to enable it to operate effectively and credibly in the investigation of allegations of human rights violations by the police and to fulfil its new duties in relation to both the Domestic Violence Act and oversight of the Municipal Police Services. The government and national parliament should support a process of establishing the ICD on a separate legislative basis to enhance its institutional independence;

Put in place measures to facilitate and enable oversight bodies to have access to independent forensic experts when investigating allegations of human rights violations by the police.

Training

Ensure that training on human rights is a permanent component of police training programs provided to all ranks, and that commitment to human rights training is reflected in police plans and budgets.

Angola should review and revise police training programs with a view to incorporating human rights training into all relevant training;

Training on human rights should be fully integrated into the training program for new recruits in **Mozambique** and into all relevant advanced and specialist police training, including training on public order and crowd control and investigation techniques;

Police authorities in **Namibia** should integrate human rights training into all police training programs based on the Namibian Police Human Rights Manual. As a matter of urgency the police should review the training of the paramilitary police, the Special Field Forces, and ensure that all existing officers and all new recruits receive comprehensive human rights training. Adequate financial and staff resources should be allocated to human rights training; The government and police authorities in **South Africa** should ensure that all police officers receive adequate training on their roles and responsibilities in relation to the Domestic Violence Act;

The police authorities in **Swaziland** should ensure the full incorporation of human rights training in the standard police training curriculum;

Police authorities in **Tanzania** should ensure that human rights is fully incorporated into new recruit training;

Zambia should put in place a comprehensive plan to ensure that all serving police officers receive training of sufficient quality and duration on human rights and on the Convention against Torture. The impact and efficacy of such training should be carefully monitored.

[END OF REPORT]

PHOTO CAPTIONS

COVER PHOTO:

Photo no. 2

Riot police blocking off a street to protest marchers, Harare, **Zimbabwe**, February 2001. Journalists and media workers were protesting at the bombing of the *Daily News* printing press in January, days after President Robert Mugabe accused the paper of being a mouthpiece for the opposition. In August 2001 Geoff Nyarota, editor-in-chief of the *Daily News*, and three journalist colleagues were briefly detained over an article alleging police complicity in the looting of commercial farms. Geoff Nyarota was released after a judge ruled that a charge against him of “publishing false news” was unlawful.

©AP/Rob Cooper

INTRODUCTION:

Photo no. 3

A police officer at a prayer service, Protea Police Station, Soweto, **South Africa**, April 2001. More than 200 police officers are killed every year in South Africa.

©AP/Denis Farrell

Photo no. 4

Police action to end student protests over college grants at the University of **Zimbabwe** left one student dead and at least 28 others injured, Harare, April 2001. The police said that Batanai Hadzidzi was trampled to death when students fled as tear gas was fired into their accommodation.

Eyewitnesses said he was beaten to death by riot police using truncheons. No investigation is known to have been carried out into this death or into the wounding of several students the next day when police fired live ammunition to break up a non-violent protest march. Peaceful public gatherings by groups critical of government policy have almost always been broken up by police using tear gas and batons, while state-sponsored militia have demonstrated freely in the downtown streets of Harare.

©Reuters

CHAPTER 1

Photo no. 5

Two people, Cândida da Silva and António Samuel, injured when police forcibly relocated residents and demolished their homes in Boavista, **Angola**, July 2001.

©Rafael Marques and Justin Pearce

Photo no. 6

In January 2002 the Director of Public Prosecutions in **Mauritius** ordered the reopening of the judicial inquest into the death in custody of a prominent local singer, Joseph Reginald Topize, known as Kaya. His death in unexplained circumstances, three days after his arrest in February 1999, had led to largescale public protests. Arrested for allegedly smoking cannabis, he had been detained in a high security police cell and denied access to legal counsel and to his wife. Two independent autopsies revealed signs of beating, contradicting both police claims that his injuries were self-inflicted and an official autopsy which confirmed the police account. At the time of writing no police officer had been suspended or disciplined. In general, there is a concern that lack of due diligence, prompt independent investigations and possibly political will have hampered the office of the Director of Public Prosecutions in pursuing robustly the prosecution of police officers for human rights violations.

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Photo no. 8

A gay rights march, Windhoek, **Namibia**, April 2001. Homosexuality is not a criminal offence in law and homosexual acts were last prosecuted in the late 1980s as an “unnatural sex crime” under common law. However, men suspected of being gay have continued to be assaulted and detained by the security forces, including in May 2001 by officers of the paramilitary Special Field Force.

©AP/Jutta Dobler

Photo no. 9

Sergeant Nozipho Ntoni, a police officer from the Eastern Cape, **South Africa**, injured in an assault by a senior male colleague with whom she had a personal relationship, July 2000. She tried to lay charges at the police station but was again beaten by the same officer in front of junior officers. When officers from another police station tried to arrest him, they were stopped by his brother, also a senior police officer. He was only arrested when the Independent Complaints Directorate investigated the case. He was later brought to trial on charges of assault; the trial had not concluded by April 2002.

©Independent Complaints Directorate

Photo no. 36

Riot police beating a protester in the Harare suburb of Mufakose during street protests over rising food prices, **Zimbabwe**, October 2000.

©Reuters

Photo no. 11

Oscar Lumphalezwi, a former senior policeman with more than 24 years' experience, **Namibia**. He has over 50 scars on his neck and back from the sjamboks (whips) that were used to beat him following his arrest in August 1999. He was among at least 300 people detained and accused of involvement in attacks by an armed political group, the Caprivi Liberation Army. More than 130 of them, subsequently released without charge, filed complaints of torture. Their cases are still pending.

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CHAPTER 2

Photo no. 10

Evison Matafale, a popular rasta musician who died in police custody, **Malawi**, November 2001. His unexplained death occurred three days after police arrested him for writing an allegedly seditious letter to President Bakili Muluzi. It triggered protests in several towns and cities. In December, police used tear gas and live ammunition against unarmed demonstrators in Zomba protesting at his death, fatally shooting Fanikizo Phiri and seriously injuring another demonstrator. In February 2002, the Commission of Inquiry into the death of Fanikizo Phiri is reported to have stated that it was unable to condemn the use of live ammunition against the demonstrators because its mandate did not allow it to do so. In April 2002 a Commission of Inquiry appointed by the government and an inquiry by the governmental Human Rights Commission both concluded that Evison Matafale's arrest was unlawful, that the police were to be censured for transporting him 300 miles while he was ill but that there was no evidence that he had been assaulted. His family expressed dissatisfaction with the inquiries' findings and said they would pursue legal action.

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Photo no. 12

Sandile Bhembe, a member of the Swaziland Democratic Alliance, after being released from police custody, Manzini, **Swaziland**, November 2000.

©AFP

Photo no. 33

Riot police of the Field Force Unit forcing women and children into vehicles during protests in Dar es Salaam, **Tanzania**, February 2002. Women and children were reportedly taken from their homes on suspicion of harbouring demonstrators who had been marking the deaths by police shooting of three Muslim protesters in February 1998. The police confirmed that 17 women and 16 children were held at the Central Police Station before being released without charge in the early hours of the next morning.

©?

Photo no. 15

Stephen Chasara, an organizer for the opposition Movement for Democratic Change in **Zimbabwe**, shows the marks of a beating, November 2001. He said he had been beaten by officers at Harare Central Police Station in November 2001.

©Reuters

CHAPTER 3

Photo no. 16

A police officer pursues a refugee child, Luena, eastern **Angola**, 1998.

© Da Silva Joao/Corbis Sygma)

Photo no. 17

Police officers, **Botswana**. In the past, soldiers often undertook policing duties alongside regular police officers.

© Botswana government website

Photo no. 1

A police officer in **Tanzania**.

©AP/Sayyid Azim

CHAPTER 4

Photo no. 7

Amelia Matsimbe, a bar owner, was beaten by police when they found her bar open after the legal closing time, Maputo, **Mozambique**, December 2001.

“About 10 members of the PIR [Rapid Intervention Police]...waited outside until we came out... [trans. esperaram que saíssemos] They divided themselves into three groups and each group was ‘in charge’ of some of us (myself, the guard and two customers). They asked us to lie on our stomachs so they could beat us with the baton. I refused because I am pregnant. They then started beating me and they hit my head. After they had beaten us they took us in the car and they made us lie on our stomachs partially under the car seats and they trod on us. They then left us in a distant place... [trans. Fomos transportados para um local distante da barraca] I went to the hospital and the examinations showed that I had a broken arm, a big swelling on my forehead and I had some pain in my waist... [The following day] I went to the Command of the PIR to lodge a complaint. [trans. Depois do tratamento dirigi-me a sede da PIR para efeitos de reclamação] I was told that the PIR was only doing its job.” [trans. a resposta que teve é de que a medida adoptada para casos de infração das normas é só bater@]

She had to go to the local police station, the PIR Command, the Ministry of Interior and back again to the local station in her attempt to lodge a complaint against the PIR. After completing forms and handing them to the station commander, she heard nothing further.

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Photo no. 18

In **South Africa**, the government reacted swiftly when secret film footage showing police officers inciting dogs to attack three suspected illegal immigrants was shown on national television in November 2000. Four police dog handlers were convicted in November 2001 of assault with intent to inflict grievous bodily harm. National human rights organizations raised concern that no action was taken against senior officers despite evidence that this “training exercise” was not unusual.

©AFP

Photo no. 19

Textile workers from the Lesotho Clothing and Allied Workers Union, presenting a petition to the government, **Lesotho**, November 1999. Among their appeals was a call for action against police officers involved in the shooting of protesting textile workers in 1998 in which two people were killed

and more than 20 injured. The police in **Lesotho** have used excessive force when policing demonstrations, particularly labour and political demonstrations. A judicial commission of inquiry found that the police had used “unreasonable force” when they shot dead at least five striking construction workers in Butha-Buthe in 1996. More recently, in October 2001 police used whips to disband striking workers on the streets of Maseru.

©Mopheme-The Survivor, Maseru

Photo no. 20

Police firing at Muslim demonstrators, Cape Town, **South Africa**, January 1999. On 8 January 1999 22-year-old Yusuf Jacobs was shot by police who were attempting to disperse a demonstration by Muslim organizations against the visit to Cape Town by the UK Prime Minister. A number of others were injured, including a journalist. Yusuf Jacobs, who was dragged from the scene by the police, died in hospital four days later. The Independent Complaints Directorate conducted an investigation.

©AP/Themba Hadebe

Photo no. 21

Detainees show signs of severe beatings, **Zambia**, November 2000. Four suspects were brought before a Magistrate’s Court in Lusaka to face charges of aggravated robbery with visible marks of beatings on their bodies. They said they had been repeatedly beaten with sjamboks (whips) while held without charge in police custody for two weeks. The police in Zambia routinely torture suspects in criminal cases, sometimes with fatal results. Family members and witnesses are also at risk. Some police stations are reported to have specially adapted rooms where torture of suspects has regularly taken place. Torture is apparently more frequent, but rarely reported, in rural areas. In November 2001, at a meeting of the UN Committee against Torture, the **Zambian** government agreed to incorporate the crime of torture into the Criminal Code and said it had enacted measures to protect and monitor people in custody.

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CHAPTER 5

Photo no. 23

Community safety training manual used by over 300 Community Policing Fora in **Malawi** since 2000. The manual was produced by several local and international non-governmental organizations, with support from the Malawi Police and the Norwegian and UK governments.

© Malawi Community Safety and Firearms Control Project, managed by Saferworld (UK)

Photo no. 24

A Spanish Civil Guard officer meets members of the community in Nampula City, Nampula Province, **Mozambique**, December 2001.

©AI

Photo no. 25

Human Rights and Policing, a police training folder, **South Africa**. Produced by the South African Police Service (SAPS), it contains a training video, a pocket guide to human rights, a pocket-sized copy of the constitution, a laminated card containing the SAPS Code of Conduct, and leaflets on reporting rape and the protection of refugees.

©South African Police Service

Photo no. 26

Human rights training for police officers, **Tanzania**.

©Legal and Human Rights Centre

CHAPTER 6

Photo no. 22

A commemorative march for Patrick Nabanyama, Bulawayo, **Zimbabwe**, July 2001. An opposition party organizer, he was abducted from his home in June 2000 by armed men widely believed to have

been acting for the government, and is feared dead. Government supporters and so-called “war veterans” have committed widespread killings and assaults on opposition supporters with the complicity of the police.

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Photo no. 27

A police officer, **Malawi**. From a video on community safety and firearms control, *Protecting our lives – Community policing in Malawi*, produced by local and international non-governmental organizations involved in the Malawi Community Safety and Firearms Control Project and shown throughout the country since 2001.

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Photo no. 28

Security guards in **Malawi**. Private security firms carry out police work in many African countries.

©Peter Barker/Panos

Photo no. 29

“Police nativity – wish us seasonal greetings by leaving your suggestions here on how to improve our work.” A police suggestion box inviting comments from the community, **Mozambique**.

©AI

Photo no. 30

Neighbourhood Watch, Mitchell’s Plain, **South Africa**, 1999. Companies and communities increasingly employ private security guards and vigilante groups to guard their lives and property. The under-resourced police are perceived as unable to cope with rapidly rising crime levels.

©South Photographs/Guy Tillim

Photo no. 31

Danistan Chisanga, aged 25, one of 11 detainees reportedly assaulted by police officers and members of a community vigilante group, **Zambia**, January 2001. Accused of murder and aggravated robbery, Danistan Chisanga said officers took turns to beat them using sjamboks (whips), electric cable and batons.

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