

“Policing and the Rule of Law in Mozambique”

Bruce Baker

ABSTRACT

Policing concerns a central issue of democracy, namely the rule of law. It is the rule of law that determines the degree to which political and human rights are enjoyed equally. Unlike the established democracies, Mozambique is trying to establish the rule of law after it has introduced democracy. The paper examines how successful it has been in the area of democratic policing. Not surprisingly, given the legacy of the civil war and one party state, plus the limited resources, the exercise is faltering. At present the conduct of the police is not consistently subject to the rule of law, nor are they adequately accountable, accessible, impartial, representative or transparent. It will be very difficult to achieve backwards democratisation in this area unless resources are channelled into strengthening police capacity and unless there is the political will to impose change.

KEY WORDS: MOZAMBIQUE POLICE; DEMOCRACY; RULE OF LAW;
QUALITY OF POLICING

POLICING AND THE RULE OF LAW IN MOZAMBIQUE

The rule of law and democracy have always been closely associated and assumed to be mutually supportive and yet the situation now exists of many states, which profess to be democratic, where the rule of law is only partially in force. Is this an unsustainable contradiction? This paper addresses two questions that revolve around this ambiguity. First, can democracy survive without the rule of law or more particularly, what sort of democracy is there without the rule of law? Second, if the rule of law is weak, what are the problems and prospects of introducing it after democratisation has begun, that is, in the reverse of the historic order? Following a theoretical consideration of the questions, the paper examines them in the context of policing in Mozambique. It considers what it means for Mozambique's democracy when the police act outside the law, or apply the law partially.

THE RELATIONSHIP BETWEEN THE RULE OF LAW AND DEMOCRACY

Questions concerning whether democracy can survive without the rule of law or what sort of democracy survives without it, beg the question of what is understood by the rule of law. The argument has often been made that the rule of law is more than the restraint of government and that the substance of the law is as important as its supremacy (Hayek, 1976; Mathews, 1986; Michelman, 1998). This 'rights view' of the rule of law is seen as necessary for liberty from those who pursue self interest at the expense of others and from a state with powers of coercion (Bienart, 1962; Walker, 1988; Rawls, 1971). It is a view that has much in common with the political

ideals of democracy (see figure 1). Most importantly is the commitment of both to equality. Because every single person is viewed as having personal autonomy, they must be accorded the same worth and the same rights. In terms of the rule of law, this translates into equality before the law and the insistence that no one is above the law or entitled to special treatment. In terms of political democracy, the equality principle translates into equal political rights. In other words it is impossible to separate a citizen's right to decide what the law should be (or at least who the lawmakers should be) from the right to enjoy the protection and benefits of the law.

There is similarity, too, in the insistence of both the rule of law and democracy that the government is not 'above' the people. In terms of the rule of law this means that the government is not above the law, but accountable to it. For democracy it means that they are not above the citizens, but accountable to them. There is also agreement on the significance of popular support. The rule of law requires not just a body of law, but its obedience. It requires a community culture that in general holds to obeying the law and in particular legitimates the specific laws. Some go so far as to argue that it is not rules that cause agreement over conduct, but rather the agreement that permits it to be said that there are rules. Rule can be promulgated by parliament, but what actually determines compliance is when there is reiterated human action, both in responding to the rule and in observing others respond (Radin, 1989). Likewise democracy anticipates law as having that popular support through a general consensus on accepting majority rule and because of the nature in which law is made through public debate and the legislation of elected representatives.

Both the rule of law and democracy disdain anarchy, require binding community laws and require those laws to maintain libertarian values. Democracy, of course, goes

Figure 1. The parallels between the rule of law and democracy

Rule of law	Democracy	
Equality	Equality before the law	Equal political rights
Accountability	Government not above the law, but accountable to it	Government not above citizens, but accountable to them
Popular support	Law upheld and largely obeyed by community	Majority decisions accepted as binding after public debate
Libertarian values	(In the case of ‘rights-view’) Law maintains libertarian values	State authorises libertarian values

further than the rule of law in its concern not just that law exists, but with how those laws are arrived at. It is concerned with equality in the process of determining the law as well as in the nature of the laws themselves. Democratic republicanism in particular has argued that the rule of law and limited government are not enough to secure negative liberty. Governments can deprive individuals of their liberty and estates legally. Only when the government is accountable to the people can the people be sure that the rule of law guarantees liberty (Skinner, 1998).

Yet although democracy may go beyond the rule of law, it is evident that there is considerable overlap between the two and, more than that, that democracy demands the rule of law as the guarantor of political and civil rights. Political and civil rights are promoted by state discourse, but ultimately they are worthless unless the rule of law is first made to prevail. Democracy could not offer a political system of equality without including equal standing before the law in respect of civic obligations and of individual and communal protection. A democracy's legal system will uphold both the political rights and the civil rights of the whole population, and it will create systems of responsibility and accountability for state agents and private citizens (O'Donnell, 1999: 318). The rule of law is the measure of equality and the guarantor of it. But if the democratic state demands the rule of law that maintains libertarian values, it is also true that the rule of law demands the democratic state that authorises libertarian values. In addition, a democratic state is the source of legitimacy for the justice system; supplies the forces of coercion that detain and punish lawbreakers; and it is the guarantee of non-interference.

Can there be democracy without the rule of law? Can those countries where the rule of law appears to be very weak really be called democracies? To pose this question is to assume a dichotomy of democracy/no democracy where the cut off point is fixed. However, democracy does not lend itself to being treated as a single entity. It is better to conceptualise democracy as a continuum over many distinct levels on which all regimes are at best incomplete approximations of the ideal. In this way the real life inconsistencies are accommodated. It is not only possible, but likely, that movement along the continuum for any level will not be uni-directional. What may be regarded as progress in one area of political life may have to be set in the context of regression in another area (Merkel, 1998). In Africa, for instance, it is not uncommon to find in a single regime a strong opposition press, elections that are relatively free and fair, a moderate to poor level of government accountability and a very deficient record as regards the rule of law. In such a mixed situation one is forced to speak in terms of an incomplete democracy. Only the particular combination together with the direction of those variable achievements enables any conclusions to be reached as to the likelihood of democracy being sustained. There are logically only three outcomes that are possible. The levels where achievement has been poor could be improved so as to complete democratisation. Alternatively, the situation might deteriorate still further to the point where the regime can no longer be termed a democracy, even with qualifications. There is a third possible outcome of stagnation at the status quo or what Rose and Shin call 'a low level equilibrium trap' in which the inadequacies of elites are matched by low popular demands and expectations (Rose and Shin, 2001: 350-51).

THE SEQUENCING OF THE RULE OF LAW AND DEMOCRACY

Though the rule of law and democracy have much in common, it is noteworthy that historically speaking the regular sequence of events has been that the rule of law has preceded democracy. Theoretically at least, liberty begins with the protection of life secured by law. Says Kriegel:

Without the rule of law, there are no human rights. It is, indeed, only in those states committed to the rule of law that liberal democracy has taken root, for a people can choose its own destiny, enjoy political liberties and civil rights, only if it is composed of free human beings (Kriegel, 1995: 50).

In the first wave of democracy (1826-1926 in Europe and the Americas) the rule of law was to a large degree established before serious attempts began to enlarge the franchise. In the second wave (1946-1965 associated with decolonisation in Asia and Africa) elements of the rule of law were left as part of the colonial inheritance. However, for third wave democracies (since 1974, including S. Europe, Latin America, E. Europe, parts of Asia, and sub-Saharan Africa) there was often only a very limited level of the rule of law in place. These states were faced with having to introduce it *after* the first competitive elections. This reversal of the historic order of establishing the basic institutions of the modern state before competitive elections are called has been termed 'democratising backwards' (Rose and Shin, 2001).

What are the problems and prospects of introducing the rule of law in the reverse of the historic order? The degree of difficulty in democratising backwards largely

depends on the nature of the pre-democratic regime, whether it was authoritarian or totalitarian. Non-democratic regimes styled authoritarian may exclude the general population from political participation, but are typically satisfied with passive compliance with the requirements of the regime. It is rare for the police to go beyond the law, even though the laws themselves are often oppressive. Regimes styled totalitarian, however, seek to extend their power over all aspects of society. They regulate every aspect of life according to their ideological goals. In such a context the laws are disregarded by the police with impunity and even at the instigation of the political leadership. Authoritarian regimes, then, have a measure of the rule of law, whereas in totalitarian regimes the rule of law is systematically undermined. Rose and Shin make the point that a totalitarian background makes the introduction of the rule of law after democratic transition much more problematic (Rose and Shin, 2001).

The nature of the pre-democratic regime, however, may be less important than what took place between the breakdown of the non-democratic system and the conclusion of the first democratic national elections. Some transitional periods were characterised by a negotiated settlement, for example, South Africa and Nigeria. Others entailed a gradual transformation and loosening of the ruling elite's grip, for example, Kenya and Zambia. Still others saw sudden and sometimes violent regime breakdown, for example Ethiopia and Uganda. It is plausible that a smooth transition with an absence of civil disorder and violent unrest provides the best opportunity for then proceeding with issues of the rule of law (Harbeson, 1999; Joseph, 1999). A background of peace and civilian control over the entire country is much more favourable than a situation of internal or external war with a legacy of social

antagonism between the opposing sides, an infra-structure that is in ruins and a state whose penetration has ceased to reach beyond the main cities.

The third wave democracies are also out of line with the historic order as regards the development of economic prosperity prior to democracy. This has provided in the past a base to resource the structures that maintain the rule of law and has generated wealth that has promoted pressure for civil and political rights and the protection of property. Scholars may disagree over whether a rising middle class or an increasingly organised working class was the main pressure on the elite to share power, but all agree that concessions from the dominant classes were secured only piecemeal as the discourse of political and civil rights for all classes grew under industrialisation and wealth generation (Moore, 1966; Rueschemeyer, Stephens and Stephens, 1992). The new democracies on the other hand, almost without exception, have faced stagnant or declining economies that were already weak and so lack the same degree of popular pressure from below for the rule of law (Bates, 1999).

POLICING IN THE NEW DEMOCRACIES

A particularly problematic area of the rule of law for those democratising backwards concerns law enforcement. In a democracy law is meant to preserve and maximise individual freedom. A legal system, however, that is powerful enough to restrain the most powerful necessitates a state monopoly of violence. This is a formidable power and those who exercise it on behalf of the law have a grave responsibility not to misuse the instruments of coercion or to abuse the powers of discretion granted them

(On the relationship between policing and democracy see Loader, 1994; Jones, Newburn and Smith, 1994; Bayley and Shearing, 1996). The principle of the rule of law is meant to restrain policing from behaviour that is partial, arbitrary or unnecessarily violent, whilst democratic principles seek to ensure that policing is fully accountable to its citizens as regards who does it and how (Shaw, 2001; Loader, 2000; Dixon, 2000). In practice it is very hard to keep policing in check. The power to arrest and charge lawbreakers is a temptation to frame, harass and extort. The power to carry arms and other means of coercion easily translates into the power to intimidate, extort, or even kill. This is especially so under conditions where police lives are at risk from continuing rebellion and where the quality of evidence required to secure a successful prosecution is not readily obtainable with the resources and training available in new democracies. In the light of widespread reports of human rights abuses and corruption by the police continuing after the introduction of democracy, it is apparent that controlling law enforcement is complex (For Africa see Amnesty International, 1998, 2000a, 2000b, 2000c, 2002; Association of Human Rights and Development, 2001; U.S. State Department, 2002; Baker, 2002b, 2000c; Hills, 2000).

For all the close links theoretically between the rule of law and democracy, the reality has seen the new democracies associated with alarming rises in lawlessness. The apparent rise of crime in periods of political transition has been noted not just in the states of Africa (Tshwete, 2000; Jemibewon, 2000; Pelsner, Louw and Ntuli, 2000; Shaw, 1996; Brogden and Shearing, 1993), but those of Latin America (Rodriguez and Winchester, 1996; Neto, 2000) and Eastern-Central Europe as well (Zhdanov, 2000; Kvashis and Babaev, 2000). Ironically this could be due, *inter alia*, to the

changes brought about by democracy. Some have suggested that the police effectiveness has fallen since their hands are now more tied by human rights considerations. There has certainly been a greater freedom of movement of nationals and foreign crime networks that has facilitated crime, and at the same time democracy has encouraged greater levels of crime reporting in the expectation of greater likelihood of justice. Also associated with democratic transition, though not identical with it, has been economic restructuring that has enhanced opportunities for acquisition by a minority who provide obvious targets and motivation for those who have been impoverished by the same process. Perhaps most significantly, new democracies have seen a breakdown of community and/or state structures that inhibit crime, whether as a result of the collapse of state authoritarian practices, or the deep seated contempt for state law and the violent responses to the state that those practices provoked (Scharf, 2001; Shaw, 2001; Van der Spuy, 2000).

This period of widespread social upheaval, economic hardship and rising crime is, of course, the very time that the new democracies are seeking to reorganise the state police. Apart from the removal of some senior commanders, the governments have been too fearful of a collapse of the rule of law to totally dissolve their police forces, discredited though they have been for their past human rights abuses. Their policy has normally been to talk up changes in police command, police rules, human rights training, and stricter accountability to ministers in an effort to create legitimacy in the eyes of the public (Marenin, 1996; Malan, 1999). However, the public still measures legitimacy more by anti-crime results and perceived security than by political rhetoric (Humphries, 2000). The evidence for politicians is stark: 'There is as yet no clear

case of any society in transition being able to build a legitimate police agency in the post-conflict phase' (Shaw, 2000: 11).

The only route past citizen concern for police effectiveness as the basis for police legitimacy may be local accountability. It may be that the public would accept only slow progress in the police adopting new standards of behaviour and new levels of skill, if it felt that the police were responsive to their needs and were required to give an account to them for their misconduct. Yet this is a direction that the governments of the new democracies have shown a remarkable reluctance to follow. In seeking to establish control over their fragile and unconsolidated new democratic regimes, they have eschewed giving any space for local opposition to have influence over policing. It is hard to see how a politically necessitated policy of strong centralisation of policing can meet the needs for local accountability and the promotion of that local support that leads to enhanced effectiveness in policing (Shaw, 2001). The same policy of wanting to keep a tight grip on the forces of coercion, police or other security agencies, also means that governments of new democracies are wary of lending support to local initiatives in policing type organisations. A popular view is that policing must be done by the state police with some help from commercial security, but that community anti-crime groups are vigilantes and undemocratic. This may well be a mistake, for if crime is related not just to the effectiveness of the state police, but also to the degree of strength of community and social control, certain community policing groups may be precisely the sort of options that governments should be considering co-opting to supplement their own limited state police force (Bayley and Shearing 2001; Baker 2002a; Schonteich, 1999; Scharf and Nina, 2001).

The inability of the state police to tackle all the problems of social ordering and protection seems sadly inevitable. Sooner or later it is likely that the new democracies may be tempted to revert to a more militarised approach, which is driven by the need for results and short-cuts the hard won battles for respect for human rights, transparency and accountability in policing (Shaw, 2001).

It is in this context of appreciating the close harmony of the concepts of the rule of law and democracy, and yet of observing the grave difficulties of creating democratic policing, that the following case study of Mozambique is presented. To what extent has its authoritarian regime background or the conditions of the post-conflict settlement shaped its police behaviour? How inevitable are problems with democratic policing in Mozambique when pay and conditions are poor and supervision is minimal? To what degree does Mozambique illustrate the practical difficulties of inserting the rule of law and, in particular, democratic policing, after the democratic transition has taken place? And to what extent does the weakness of the rule of law and democratic policing impede the growth and deepening of democracy in Mozambique?

THE CONTEXT FOR DEMOCRACY AND POLICING IN MOZAMBIQUE

Like many other third wave democracies, Mozambique did not have the rule of law in place before it introduced a democratic system of government. Its background was a one party state that was more authoritarian than totalitarian and a civil war that reduced the country to economic ruin. It had no tradition of democratic politics, and

neither its middle class nor its organised working class was substantial enough to act as a counter-balance to the state. The majority of its population had little consciousness of human and civil rights.

The civil war had debilitated Mozambique from the time of independence in 1975. As the conflict wore on between the one party state led by Frelimo and the Rhodesian/South African backed destabilisation movement RENAMO, a million died, three million were internally displaced, the nation's infrastructure was shattered and an already weak state capacity was decimated (on the civil war see Cabrita, 2001; Chan and Venncio, 1998; Synge, 1997; Vines, 1996). By 1990, the two sides had finally reached exhaustion and stalemate. Serious peace negotiations began and in 1992 a peace agreement was signed that included a commitment to multi-party democracy.

Post-conflict situations in the developing world present very considerable problems for establishing democracy. For Mozambique, not only did democracy have to be built from scratch, but so did the state, along with the new framework of a market economy (on reconstruction see Hanlon, 1996; Alden, 2001; Young and Hall, 1997; Pitcher, 2002). In addition they had to completely reorganise their policing in an attempt to establish the rule of law. The police were understandably under-resourced compared with the military during the conflict years. During the civil war state policing simply ceased to exist over large areas and, where it did continue, the police imagined that they had a licence to act with brutality against enemies of the state and to use torture to secure information that would preserve state security (Hanlon, 1991; Amnesty International, 1998). Their paramilitary nature during the conflict meant

that they were not well equipped for civilian duties after it ceased, or familiar with the procedures of evidence-based investigations as opposed to confession-based methods (Scharf, 2001). Perhaps above all, they were unfamiliar with the concept of being accountable to the public rather than to the state. Under the one party state they had been, and to some extent continue to be, the Frelimo police.

In addition to this historical legacy, the police had to face working in a very different social context. It was one where there was a surfeit of weapons left over from the conflict and where relaxed international border controls allowed a sudden growth in organised crime (Scharf, 2001; Mondelane, 2000). As regards the public, not only did it have very high expectations of the state that it would quickly restore security and order, but at the same time it had a wariness of the police born of years of police abuse. Further, the fact that the police had fought alongside the military on the Frelimo side reduced their credibility in areas of RENAMO support in the centre and north of the country. At the outset of the new democratic regime, therefore, the need for improved civil policing in Mozambique was a national priority and one where the state looked to the UN for outside assistance (Woods, undated; Synge, 1997).

The post-conflict period was a particularly difficult time for policing since Mozambique, and particularly the capital Maputo, was caught up in a crime wave that the police seemed unable to control (Mondelane, 2000). Several factors may have contributed to the increased crime rate. First, there was economic liberalisation. This had increased the amount of consumer goods in shops but had done nothing to increase the public's purchasing power. Second, 18,000 migrant workers from Germany had lost their jobs following unification and returned to Mozambique.

Third, the 93,000 demobilised soldiers quickly ran out of de-mobilisation pay and the only skill they had to secure a living was the use of the army gun most had kept (Monteiro, 1999: 31-2). Fourth, the remaining armed forces were increasingly impoverished and undisciplined. Fifth, arms caches that had not been declared to UNOMOZ (the UN Mission to Mozambique) and its CIVPOL (UN Police Force) at the end of the war began supplying criminals. Finally, it has been argued that social constraints on criminal behaviour had been breaking down during the civil war (Woods, undated), though there are those who take a less negative view of war, seeing multiple consequences some of which are positive and long term (Chingono, 1996). The result of all these factors was that violent crime soared and public confidence in the police, which was already low, was virtually destroyed.

The forces currently responsible for internal security under the Ministry of Interior are the Mozambican National Police (PRM), the Criminal Investigation Police (PIC), and the para-military Rapid Reaction Police (PIR). Many of them came from the army or the former police force, which had histories of serious violations of human rights ranging from deaths of detainees to attempted assassination and mass killings of protestors. The PRM consists of 18,500 personnel, as against a projected need of 40,000, with no more than 200 stations and posts across the country. This is far below the required minimum and indeed police are rarely seen in much of the countryside or the urban townships. Exacerbating the problem is the desperate shortage of resources. Thus, for instance, according to the Association of Human Rights and Development (DHD) Human Rights report for 1999/2000, even in the police headquarters in Maputo, desks were often shared by two or three officers; the operation room had only one typewriter, a television and an unreliable telephone; the

criminal department had no resources for chemical or ballistics testing; and there were only two vehicles to cover the city. Throughout Mozambique officers attended the scene of crimes and accidents either 'on foot or using public transport paying from their pocket or using the victims' car' (Association of Human Rights and Development, 2000).

Despite some success in seizing weapons and arresting armed gangs, popular confidence in the police is low because of their inefficiency, bribe seeking, corruption, suspected complicity with criminals and their human rights abuses. Police have regularly disregarded the law and constitution, and there are constant complaints from the public of police maltreatment of detainees or the release of suspects upon payment of bribes. Since 1995 some 1,000 police have been expelled from the force for unethical conduct, including 'using firearms unduly', 'selling and renting guns' and 'homicide'. As regards gun running, the police appear to be one of the main actors. According to one former Attorney-General, Sinai Nhatitima, many of the guns used by criminals come from the police: 'Guns are stolen or "disappear" from the arsenals and are lent out, rented or sold to be used in criminal activities.' Likewise Artur Canana, the Governor of Manica province, admitted that weapons have been sold out of police stations: 'There is nothing we can do about indiscipline of certain officers, which is making the problem worse' (Vines, 2000).

With human rights training for police officers extending to serving officers and all trainees in the new police academy, there is a widespread expectation that in time things will improve in this area.¹ Nevertheless for the present there are still occurrences of serious abuses. The next section looks in more detail at the quality of

policing. In the course of fieldwork conducted in June 2002, the relationship between the rule of law and policing in Mozambique was explored. In particular, the research considered the extent to which the police are subject to the rule of law and to police regulations; the effectiveness of political control of the police; the degree of public accountability for police actions; the quality of access to police services; the extent to which the police maintain impartiality; the degree to which the composition of the police reflects society as a whole; the amount of freedom of information granted those investigating the police; and the level of public confidence in the police.²

THE QUALITY OF POLICING IN MOZAMBIQUE

Police Lawfulness

In an ideal world law enforcers are and should be law keepers in their own conduct. However, the accounts by the League of Human Rights (LDH), Human Rights and Development Association (DHD), Amnesty International and US State Department Human Rights Reports, all document frequent *lawless* conduct by the police since democratisation.

According to Mozambican law, no one may be detained for more than 48 hours without their case being reviewed by a judge. After this period, a further 60 days detention is allowed while the case is investigated by the PIC. In cases of a very serious crime, a person may be detained for up to 84 days without being charged formally and, if a court approves, for a further two periods of 84 days while the police complete the investigation. If the prescribed period for investigation has been completed and no charges have been brought, the detainee must be released. In many

cases, however, the police are either unaware of, or indifferent to, these regulations and in addition ignore a detainee's constitutional right to see a lawyer or to contact relatives or friends (US Department of State, 2000, 2001, 2002). The National Directorate of Prisons reported in 2000 that, of an estimated 6,422 persons in prison, 4,632 had not been charged (US Department of State, 2001). There are also innumerable complaints that police detain people for spurious reasons, such as acting suspiciously or not carrying identification documents, whereas, according to the Penal Code, only those caught in the act of committing a crime can be held in detention (Amnesty International, 2002). However, as part of an operation to reduce street crime in 2001, police in Maputo detained numerous persons for anything up to 14 days before releasing them (US Department of State, 2002).

Extra judicial killing may be rare, but there have been cases every year for at least the last five years where the police have allegedly been responsible for unexplained disappearances of persons arrested, deaths in custody due to brutality, and shooting dead civilians. In March 2000 Tomas Paulo Nhacumba and Gildo Joaquim Bata were arrested in Maputo for possession of an illegal firearm. The next day police took them in handcuffs to their families and demanded \$750 for their release. The families were unable to pay. They were found some time later in a mortuary, listed under false names, with bullet wounds to their foreheads. A police inquiry later reported that they had been shot trying to escape (Amnesty International, 2000b).

Although the Constitution prohibits all forms of cruel or inhuman treatment, the police occasionally practise torture, beatings, sexual abuse of women, death threats and physical and mental abuse. It is even claimed that there existed in the PIC offices

in Nampula a specific torture room until 2001 (Amnesty International, 2002). Between 1999 and 2000 the League of Human Rights received 137 complaints of torture, including the mistreatment of women, beatings and death threats. It claimed that at least 30 people were tortured or killed by the police in 2000.³ When it sent a team of lawyers to inspect prisons in 2001 they reported, *inter alia*, that the police showed, 'absolute disrespect for human dignity' and noted that the practice of beating and torture by the police had led to the hospitalisation of some suspects.⁴ For example, Macelino Mutolo and Luciano Hom were arrested by the PIR in January 2000 and taken to police cells, where they were handcuffed to pillars and left all night. The next day they were whipped and threatened with death if they did not confess to robbing a vehicle. Marcelino was taken to Maputo and forced to withdraw money from his bank account to pay the police. The two were finally released after Marcelino Mutolo agreed to obtain more money, although instead he filed a complaint against the police (Amnesty International, 2000c).

Regrettably, there is substantial evidence pointing to criminal complicity amongst the police. In July 1996, Domingos Maita, the Head of the Maputo branch of the PIC, publicly admitted that organised crime had infiltrated the police (although later the Interior Minister said that Maita had meant to say that organised crime was *trying* to infiltrate the police) (Seleti, 2000: 362). To Maita it was almost inevitable in a crime-ridden state:

With state bodies riddled with people forging any and every document, with the crying lack of resources that the police suffers, with miserable wages that are offered, the police run the risk of being commanded by the barons of

crime, commanded by outside, through the creation of mafia type conditions, and commanded on the inside by a fifth column that cannot resist the seduction of money (quoted in Seleti, 2000: 362).

As regards police involvement in large scale crime, there are reports that the police are often the main sources of illegal weapons, either renting out their guns to criminals, being actively involved in the arms trade themselves, or turning a blind eye to the trafficking.⁵ There is also increasing circumstantial evidence that the police are involved with international drug trafficking. Joseph Hanlon, believes that ‘the value of illegal drugs passing through Mozambique is probably more than all legal foreign trade combined’ and is in no doubt that the one tonne of cocaine and heroin that are estimated to be passing through Mozambique each month, could only do so ‘with the agreement of the Mozambican police and very senior Mozambican officials.’⁶

Political control of the Police

There is political control of the police, but it tends to be of a partisan kind. Many jurists hold that with both investigation and prosecution under the Minister of Interior, the Frelimo government plays a ‘critical influence’ in decisions concerning prosecutions of senior government officials. The problem with this close identification is that a discredited police will lead to a discredited government and possibly one stage further to a discredited state and its democratic regime. Significantly a survey that revealed that 50 percent of the population thought the police had no interest in eradicating corruption, also found that 42 percent thought the government had no interest in tackling it either (Ethics Mozambique, 2000). Frelimo

deputy, Teodato Hunguana, one of the members of the Legal and Human Rights Commission of the Mozambican Parliament investigating police corruption, remarked in 1996 that it was obvious to him that human rights violations were not official policy, but:

That is not the point. For when citizens' rights are violated all over the country, then the public inevitably harbour suspicions about the institutions that ought to protect them. If the problem is not solved, the legitimacy of our institutions is weakened (quoted in Seleti, 2000: 362).

The same point was made by President Chissano four years later, in the shadow of the death of 83 detainees asphyxiated in a police cell. He said that the state must act to avoid any repetition of the abuse: 'we have to realise that Mozambicans have died...The state has been tarnished.' Chissano added that the state's behaviour must be guided by the constitutional principle that 'the state is responsible for illegal acts committed by its agents.'⁷

Accountability of the Police

There is still a considerable degree of police immunity from prosecution. It is police commanders who have the responsibility for instituting an investigation after a complaint; there is no independent complaints commission. The General Commander of Police claims that 'we encourage citizen criticism, both of individual police officers and the system',⁸ but the reality is that though some individual officers have been successfully prosecuted, it is widely held that many others are protected. In the case of the death of the 83 people by asphyxiation in a police cell, however, despite

discontent among the Montepuez police, action was taken. The Montepuez district police commander, Dahalili Sumail, and 10 other police, were arrested. And for disregarding orders to avoid overcrowding in the cells the Cabo Delgado provincial Director of the Criminal Investigation Police and Juma Macequesse were suspended from duties. Eventually Mithale, the police officer on duty and Nhoca, who was in charge of the cell, were found guilty of homicide, sentenced to 17 and 18 years respectively, and were each ordered to pay 20 million meticaís (\$952) to the family of each person who died. It is to be hoped that it marks a step forward in tackling police abuse and in establishing confidence in the criminal justice system. At the same time, however, other police officers implicated in the case appear to be escaping prosecution. Also worrying is the fact that the Government continues to defend the police actions in breaking up nationwide RENAMO demonstrations in 2000 as legal, even though their policy of shooting to kill left at least 21 dead in Nampula and Balama, Cabo Delgado. The Government's argument is it was an appropriate and lawful response to the threat to life posed by the RENAMO supporters, a claim that was supported by several provincial courts.

Other encouraging signs of a change in police accountability came in 2002 when the two most senior officers, the General Commander and the Chief of Staff were sacked by President Chissano in January. In the same month the police commander in the district of Caia, in Sofala province was suspended from duty, following allegations of abuse of authority. Later in June the Provincial Commander of Manica Province was arrested on corruption charges.

Overall there is still a serious problem. The widespread ignorance on human rights and legal provision means that abuses are rarely challenged in the rural areas. Inevitably many victims believe that if they went to the police they would be confronted with demands for bribes or indifference. The comments of the leading writer, Mia Couto, regarding the murder of newspaper editor Carlos Cardoso, capture the mood of many. He argued that the murder would not be investigated thoroughly as 'many more crimes' would be uncovered. 'Cardoso's murder is part of the wider murder of Mozambique and this is something that cannot be investigated.'⁹

Equal access

Speaking of the general criminal justice system in August 1999 Supreme Court Chief Justice, Mario Mangaze, complained that only 25 per cent of citizens had access to it. What is true of the whole system is true of the police. Outside of central Maputo there are very few police stations and police officers available to handle the needs of citizens. In Maputo, which has a population of just over one million, there are only 22 police posts in the 40-50 *bairro*, and as a result of AIDs and expulsions the 5,000 police officers of 5 years ago are now just 3,000.¹⁰ Likewise, given that the population of Mozambique is 19.4 million and the land area 784,000 sq km (bigger than Norway and Sweden combined) the 18, 500 members of the PRM is nowhere near adequate to provide even a semblance of equality of service.

Police Impartiality

Unfortunately, the evidence suggests that the weaker elements of society are the most susceptible to police abuse. Police regularly extort money from street vendors, sometimes beating the women and sometimes stealing their merchandise. They also

abuse prostitutes and street children (Amnesty International, 2002). Save the Children – Norway reports serious concern over the treatment of children – not only that young offenders are jailed for lack of alternative punishment regimes, but that children accused of crimes are beaten in police stations and are not given proper access to defence. Generally police are ignorant of children's rights and they have no Police Child Protection Unit to assist them.¹¹

The most serious case of police partiality in recent years occurred in November 2000 following protests by RENAMO supporters against what they called the 'rigged' presidential elections of December 1999. Though supposed to be peaceful demonstrations, 15 of them took the form of violent assaults against district administration offices and police stations, with the police in several instances using live ammunition, in what they claimed was self-defence. Police detained 457 RENAMO supporters during more than 60 rallies, with reports that police beat and tortured detainees. Three reportedly died of asphyxiation in custody in Beira. In one northern town, Montepuez, clashes between the police and RENAMO demonstrators on 9 November 2000 left 25 people dead, including 7 policemen. The police arrested 162 and, presumably in revenge, placed them in two police cells, each measuring only 7x3 metres. On 18 November an official from the General Command of the PRM ordered the prisoners to be moved to a civilian jail to relieve the overcrowding. The Provincial director of PIC, however, ignored the order. Over the next three days 83 prisoners died of asphyxiation. Seven of the original 162 died on 18 November, whereupon they did move 112 prisoners out of the cells. Yet on 21 November, the district Police Commander entered the cell waving a pistol and told the prisoners: 'I'm going to kill all of you, because you came to Montepuez to kill me...Nobody is

going to leave here alive.’ He then authorised the entry of 42 other detainees into the crowded cell. As a result, a further 76 died that night.¹² Such partisan behaviour only heightens the difficulties the police have in securing legitimacy in the central and northern strongholds of RENAMO.

Composition of the police

Figures for the police as a whole are difficult to come by, but police recruitment at the new police academy shows a strong bias in favour of males and those from the south. The regional distortion partly reflects applications (more than half of the 1,250 candidates for the 35 places are from Maputo) but this in turn reflects the lack of educational provision in the north.¹³ There are very few women in the existing force, and only 20 per cent of those currently on the academy’s basic training course are women. These recruitment inequalities account for the perception that the police are a Frelimo, that is a southern, force and that accusations of violence against women, domestic and otherwise, will not be treated seriously.

Effectiveness of Investigations into Police Conduct

Freed from censorship laws and given independence under the new democratic regime, the media have seized the opportunity to mount a prolonged and effective campaign criticising police conduct and calling for real change in operational control and prosecution of offenders in the force.

The media took on a new role as advocate for the new democratic dispensation. Mozambican journalists worked hard to expose corruption and

many other abuses that they considered to be inimical to democracy (Seleti, 2000: 358).

1995 was a particularly effective year for the press campaign. Throughout the year they focused on exposing the ineffectiveness and corruption of the police and calling for the resignation of the Interior Minister. So successful were they that the Minister of the Interior was indeed removed, the prosecution of police officers for torture took place, and the Legal Affairs and Human Rights Commission of Parliament was stirred into investigating police corruption itself.

Seleti argues persuasively that it was this challenge by the media and human rights groups that has brought about changes in coercive policing methods more than reform from above. It has also made the police culture more willing to countenance surrendering accused colleagues for prosecution. However, despite these successes, police lawlessness is too often unchallenged since human rights organisations, lawyers interested in human rights and journalists are not numerically strong and largely confined to Maputo¹⁴, and elsewhere the public has no access to an independent complaints commission.

Freedom to Investigate Police Abuses

It is to the credit of the Government that it has not attempted to manage the media and journalists through press laws. Human rights violations receive extensive coverage in both Government and independent media and from human rights groups, one of which (DHD) now publishes an annual report on human rights conditions in the

country: *O Relatorio Sobre os direitos humanos em Moçambique*. Nor are there any legal obstacles to the formation of local human rights groups.

As regards the police authorities, however, there is a much greater sensitivity, if not clear anger, to public criticism, especially as it has grown in boldness. There are many examples of the police themselves using violence and detention to intimidate persons from reporting abuses (Amnesty International, 1998, 2000c; US Department of State, 2000, 2001). The radio playwright, Sweleke, who wrote a satire in 1994 about the police, was told when in detention by a police inspector, 'All you journalists will end up here.' Only a few weeks later, the Nampala Police Commander was quoted as having said, 'If you journalists want war with the police, then let's go ahead. Now I'll arrest all of you' (Seleti, 2000: 359). In 1998 the radio journalist, Fernando Quinova, was detained without charge, after reporting on Radio Mozambique that a prisoner, Cabral Manica, had died while in police custody. Quinova escaped from prison, but was rearrested in March 1999 and charged with slandering the police and illegally leaking documents, though neither of these charges actually exists in the Penal Code. After the media publicised his plight, he was quickly freed. The sequel to the story is that in May, the Cabo Delgado provincial court convicted a Police Commander of illegally detaining Quinova, whilst another officer was convicted the following month for the death in custody of Cabral Manica (US Department of State, 2000). Equally serious is the report that, according to the Chairwoman of the League of Human Rights, a police contact warned her of police threats on her life following her appearance in 2000 in a televised debate during which she criticised the PIC.

Of equal concern are the death threats that are made by anonymous but influential figures in the business and political world. An investigative team from the Committee to Protect Journalists in July 2001 found widespread fear and self-censorship among journalists. They were reticent to cover any stories that involved the corruption of well placed figures, whether in the police, parliament or business.¹⁵ Said one journalist: 'Hot news about the police can't be published unless it is anonymous and then news rooms are susceptible to bribery to reveal the source. If you keep writing stories about crime you will be killed here' since, in his understanding, some police work hand in hand with the criminal gangs and the police can get those gangs to beat journalists up. 'It is fatal to show the authorities that you know too much. Even now anonymous calls are made to newsrooms threatening those who make critical articles about the police and the Government.'¹⁶ Apparently confirming what he said, the editor of the leading independent newspaper, *Savana*, who had been highly critical of the police and Government, was removed by the owner in June 2002 in what looked like pressure from the authorities.

The great personal cost of press investigations was fully exposed with the murder of Carlos Cardoso, the editor of the independent Maputo newssheet, *Metical*. His murder in November 2000 appears to be linked to two investigations he was pursuing into the *Banco Comercial de Moçambique* and related political and business corruption. The first concerned an unaccounted \$110 million, thought to have been given as loans to Frelimo figures. The second was a \$14 million fraud linked with three businessmen who had previously tried to assassinate the investigating attorney for the case. The three had escaped prosecution when vital court papers went missing in the State Attorney's office. The national outcry over his murder demonstrated the

depth of feeling that had arisen across the country concerning the press as the champions of freedom and scourge of corruption. The Portuguese writer Jose Saramago told the *Metical* staff:

I think what Carlos Cardoso was doing was not looking for 'The Truth' with a capital T, because that sort of truth does not exist. What he was looking for were those little truths. Those truths that are necessary in order to build any project that can bring us all together...Above all, we must not let them convince us that this kind of thing (murder) is accidental, that there is some uncontrolled group which for no particular reason resolved to commit murder.¹⁷

The perception in many news rooms is that since the death of Cardoso and the accusations of criminal conduct concerning Chissano's son and stepson, the Government is intent on silencing the press, whether by intimidation or even by co-opting them for diplomatic positions abroad.

Confidence in the Police

There is little confidence in the police or the criminal justice system. An as yet unpublished survey will show that over the country at least 60 percent were dissatisfied.¹⁸ At best the police are widely ridiculed for their ineptness, at worst they are despised and hated as brutal and corrupt. Hanlon was very dismissive of them when he wrote in 1996: 'Corruption extends to an ill-paid police, who must be paid by the victims to investigate a crime and can be paid by a perpetrator to lose the file' (Hanlon, 1996: 5). The contempt of the police is apparent in the popular

representation of them as fools in popular culture, such as radio plays, and in popular nicknaming strategies (Seleti, 2000: 358).

In a poll conducted for *Mediafax*, it was revealed that the overwhelming majority thought the then Interior Minister, Manuel Antonio, should be sacked because of his failure to stop the police corruption and inefficiency. The best the Minister could do in reply to the criticism in 1995, was to answer lamely: 'police are police. I have never seen police who are saints' (quoted in Hills, 2000: 185). Finally, the criticism was such that President Chissano was obliged to sack him in 1996.

A dispute in Aube in May 2000 over the payment of tax in the local marketplace shows how short the fuse of violence is among some as regards the police. Because the person arrested was a RENAMO supporter, the incident was seen in political terms. A group of one hundred, led by senior RENAMO figures in the district, responded by attacking the police station, apparently with the intention of seizing weapons. The police, claiming self-defence, opened fire on the attackers, killing at least four (Human Rights Watch, 2001). A new cycle of political violence had begun and was related to the violent assaults of RENAMO protestors in the November and the equally violent retaliation by the police with the resulting deaths in custody that have already been detailed. Given that the trials of 457 RENAMO protestors were completed within just a month of their arrest, there arose not just the issue of uncontrolled brutality on the part of the police, but of their use for political ends by the ruling Frelimo party. Certainly RENAMO supporters interpret these events as victimisation by the police on the orders of the Government.

Nine years after a democratic constitution was adopted, the police abuse is still so widespread that the Interior Minister, Almerino Manhene, was forced in May 2001 to call upon the police to make profound changes in their attitudes, so that they would in future inspire the confidence and respect of the public.¹⁹ Their conduct is not only undermining trust in them as an institution, but trust in the principle of the rule of law.

CONCLUSION

At present the conduct of the Mozambique police is not consistently subject to the law, nor are they adequately accountable, accessible, impartial, representative or transparent. In a word, they lack legitimacy. Democratisation has brought only minor changes to the force. In this respect they are typical of forces across the region. As Alice Hills concluded after her study of policing in sub-Saharan Africa: 'there are few changes discernable in police systems that can be directly attributable to the political developments of 1990-1996' (Hills, 2000: 186).

The consequence is that Mozambique's democracy is left incomplete. Though relative, if faltering and irregular progress has been made at the level of party formation, the renunciation of political violence, elections, parliamentary debate, press freedom and civil society development, at the level of the rule of law, democracy is particularly weak. It is a serious deficiency since democracy cannot offer a political system of equality without including equal standing before the law in respect of civic obligations and of individual and communal protection.

There is no doubt that the quality of policing does affect other levels of the democratic system. Take for instance fair elections. The last presidential election in 1999 may not have been the electoral fraud that RENAMO claims, but at the very least, in the diplomatic language of the Carter Center, the ‘credibility of the process was undermined by technical problems and a lack of transparency’.²⁰ Some see the answer in terms of revising electoral law and civil service training, but the public will be anxious lest an incompetent and corrupt police are party to the insertion of votes into the counting process on the behalf of Frelimo. A failing police is also damaging to the process of transparent and accountable government since the natural reaction is for abuses to be covered up by a sensitive government conscious of the electoral importance of fighting crime. Then there is the inevitable resort by citizens to their own methods of protection and punishment if the police are perceived to be ineffective in catching and successfully prosecuting criminals. Local vigilantism and plain personal revenge will only continue. There are frequent reports of mob and vigilante killings in both urban and rural areas (US Department of State, 2000, 2001, 2002). There is also the very real possibility that poor policing encourages organised crime to target a nation and to seek to penetrate police and government structures for their own ends. There is certainly widespread scepticism within Mozambique over the political will to root out deeply entrenched networks of crime and corruption. Although, therefore, the rule of law is only one layer of democracy, left unattended it will impede progress at other layers of democracy.

So how feasible is backwards democratisation that seeks to rectify the rule of law and in particular policing after democracy has been introduced? Even supposing that there is reform that embraces policing standards, police monitoring, the establishment

of oversight bodies, the closing of legal loopholes that allow abuse and a rising public awareness of legal rights, two major obstacles remain. First, there is a weakness of institutional capacity. Though a willingness to change is apparent in some sectors of the police, there are not the financial resources available to recruit, thoroughly train and equip the police so that universally they enforce the law in a lawful way and with respect to democratic principles. The police infrastructure is too weak with police so thin on the ground as to be virtually invisible most of the time in most of Mozambique. Further, the corrupt opportunities are so prevalent that it will take more than some short courses on human rights paid for by donors to rectify the problems. For all the talk of a 'new mentality' amongst the graduates of the police academy,²¹ what chance have they of maintaining it when faced with very poor pay, easy opportunities to take bribes from offending (or non-offending) motorists, or to swim against the well established culture of the existing force (and much of society)?

The second obstacle is political will. Hills may be exaggerating when she claims that political elites across Africa before and after democratisation have consistently pursued a policy of deliberately under-resourcing the police. Her argument is that this is the outcome of fearing an effective investigative force that would threaten the regime. Nevertheless it is striking how in Mozambique, as elsewhere in Africa, there has been so little imposition of change from above. Hills is surely nearer the mark when she notes that African elites perceive the primary role of the police in terms of regime support, rather than as providers of the order and protection of the law for citizens. From this perspective the end of securing the arrest of suspected criminals, securing evidence against them, breaking up opposition demonstrations, and keeping the police relatively happy with their remunerative opportunities is more important

than the means by which they may achieve this. If this is so then the question becomes not, can Mozambique democratise backwards, but does it want to? Does it want to significantly extend democracy into levels beyond free elections? Does it want democratic policing that is fair, accountable, accessible and responsive to the needs and desires of its citizens? Does it want the rule of law in the fullest sense? There is more than a suggestion that some of the elite could live with an incomplete democracy and some of the populace are expecting to have to live with it.

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NOTES

1. A police transformation project has been supported by the Spanish, French, Swiss, Dutch and German governments since the mid-1990s. It has focussed on a selective concentrated change-process. It made an assessment that most of the crime was concentrated in Maputo and some other towns and embarked on a 3 months residential retraining of all levels of staff in those priority areas. Within three years all the staff (some 4,500) at the 18 priority stations had been retrained. The post-training assessment indicated that there was a big morale and commitment boost on the part of the staff and a positive effect on the local communities (Scharf, 2001). The new Academy, aided by the Swiss, Spanish and Portuguese governments, opened in 1999 and provides training for new recruits up to graduate level and short term courses for acting officers.
2. The research programme questions were adapted from, D. Beetham, S. Bracking, I. Kearton and S. Weir, *Handbook on Democratic Assessment* by (The Hague: Kluwer Law International, 2002).
3. IRIN, 15 September, 2000.
4. Panafrican News Agency, 7 May, 2001.
5. Reported at Christian Council of Mozambique Conference on, 'The illicit spread of small arms in Mozambique', September, 2001. See also, *Mail&Guardian*, 21 August, 1998; J. Bayart, S. Ellis and B. Hibou, *The Criminalization of the State in Africa* (Oxford: James Currey, 1999), p. 63.
6. Mozambique News Agency – AIM Reports, 210, 29 June, 2001.
7. *Mail&Guardian*, 23 March, 2001.
8. Interview with Miguel dos Santos, General Commander of Police, 19 June, 2002.
9. *Mail&Guardian*, 23 March, 2001.

10. Interview, General Commander of Police, 19 June, 2002. In a *bairro* in Maputo, where organized crime, drug peddling, theft, unemployment, poor housing, inadequate sanitation and an absence of government services meet in a deadly mix, a pilot policing scheme began in 2001. Called Council of Community Police it consists of community representatives chosen by the Maputo Municipality to work with the police in dealing with crime. They deal with minor problems brought to them by local patrols, through reconciliation procedures. More serious matters are handed over to the police. They regularly meet with the police public relations head and a local policeman to discuss not just the problems afflicting this poor community, but possible solutions. They quickly established that the area suffered from significant levels of domestic violence, juvenile delinquency, drug handling and organised crime. They also were not slow to recognise that these were closely related to high levels of unemployment and lack of education. With nothing but moral support from the police, they have set up a project to employ people selling building materials, have started an adult education class for teaching English, and offer counselling to separated couples and to parents whose children are persistently absent from school (offering free teaching if finance is the problem). It is making only the very smallest inroads into the crime problem of the area, but you would not have thought that as the meeting in the small classroom cheered the news of the secretary that five local unemployed youths had been found jobs with a company that week. Nor was the head of public relations for the police simply there out of duty. So enthusiastic is he that he hopes somehow to introduce the scheme nationwide. The outcome of the link can only be to improve police accessibility (Interview, Nataniel Macamo, Head of Public Relations of PRM, 19 June, 2002 and members of the Council of Community Police Committee).

11. Interview, Filipe Furuma, Save the Children Fund – Norway, 20 June, 2002.
12. Panafrican News Agency, 3 December, 2000.
13. Interview, Dr Machatine Munguambe, Rector, Academia de Ciencias Policiais (ACIPOL), 18 June, 2002.
14. Interview with the deputy director of DHD, 20 June, 2002. DHD, the largest human rights organization in the country, has only 20 staff of which just 12 have legal training.
15. CPJ, www.cpj.org, accessed 5 August, 2001.
16. Interview with journalist, Maputo, June 2002. His name has been withheld for his protection.
17. Panafrican News Agency, 30 November, 2000.
18. The report, conducted by the Centro de Formacao Judicial e Judiciaria is to be published by Etica Mocambique late 2002.
19. Panafrican News Agency, 21 May, 2001.
20. Available on www.cartercenter.org.
21. Interview, Director of Education, ACIPOL, 18 June, 2002.