

February 11, 1991

MOZAMBIQUE

New constitution protects basic rights But political prisoners still suffer unfair trials

With a new constitution which entered into force at midnight on November 30, 1990, Mozambique has set up the institutional framework to guarantee its citizens due process under the law. However, research carried out by Africa Watch into the actual conduct of security trials in recent months shows that procedures still fall short of internationally-accepted norms for a fair hearing.

The new constitution, which was passed after several months' debate in Mozambique's Popular Assembly, establishes a multi-party political system and the unfettered right to own private property. These elements, which have been widely reported, are intended in part to end the country's 15-year-old war between the government of the Mozambique Liberation Front (FRELIMO) and the Mozambique National Resistance (RENAMO) rebel movement.

However, the constitution is also the culmination of a two-year process of reform of the judicial system, in the face of a severe shortage of lawyers and other trained personnel necessary for the effective administration of justice. Enshrined in the new constitution are an independent judiciary and procuracy, the abolition of the death penalty, guarantee of the right to *habeas corpus* and the presumption of innocence in criminal cases. The result has been a radical change from the first decade of independence, which saw the routine practice of torture, "reeducation camps" and execution of prisoners convicted and sentenced in camera by a Revolutionary Military Tribunal. The old constitution assumed FRELIMO to be the sole legal party. Any threat to FRELIMO, logically, was a threat to the state.

Under the new constitution, which envisages a multi-party system and periodic elections for the presidency and the legislature with universal suffrage by secret ballot, sovereignty resides in the people. Article 96 says "individual rights and freedoms shall be guaranteed by the state and must be exercised within the framework of the Constitution and the law."

The legal system

The new Supreme Court is independent of the government. Its President and Vice-President are nominated by the President of the Republic, subject to ratification by the legislature, the Assembly of the Republic. The President also appoints the Procurator-General, the President of the Administrative Court, and the President of the Constitutional Council, which has the power to decide the legality of legislative and statutory acts of state organs. The two latter are subject to the ratification of the Assembly.

However, the continuation of the war and Mozambique's severe shortage of lawyers and lack of trained personnel in the police forces mean that it will take years to transform Mozambique's new legal system into reality. In 1975, at independence from Portugal, the country had fewer than ten trained lawyers. Most of the Portuguese judges and lawyers had fled with the collapse of colonial rule and education of Mozambicans had been severely restricted. Today Mozambique, one of the world's poorest countries, has an estimated 100-200 lawyers, nearly all of them in the capital, Maputo. In a meeting with Africa Watch in October 1990, Minister of Justice Ussumane Aly Dauto estimated that at least 1,000 lawyers were needed. Further there are only 50 public prosecutors in the entire country and only two in the Procurator-General's office in Maputo.

The situation is particularly critical outside the capital where there are only a handful of trained judges and virtually no lawyers. The judge at the Provincial Tribunal of Zambezia, the country's most populous province with three million people, has only a bachelor of law degree. In the capital, defendants usually have access to lawyers provided by the National Institute of Legal Aid (INAJ). Outside Maputo, defence counsel are usually court clerks, appointed the same day by the trial judge. For example, in the central city of Beira there is one lawyer. The provincial capital of Tete has only a few paralegal workers, as does the northern provincial capital of Nampula. The majority of 14 convicted security prisoners recently interviewed by Africa Watch said they met their legal counsel only a few days before their court hearing, at the trial itself, or they did not recall meeting them at all. Minister Dauto said that the People's National Security Police (SNASP), which since 1989 has supposed to work under the procuracy, had the responsibility of informing detainees of their legal rights before questioning. This responsibility is overseen by the procuracy. Interviews with 43 prisoners and detainees indicated that SNASP has failed to meet that responsibility.

In 1978, three years after independence, the government set up a new court system consisting of local, provincial and Supreme People's Tribunals. Sitting on the courts were professional judges accompanied by lay judges elected by local, provincial and national legislatures from lists submitted by FRELIMO. Students from Eduardo Mondlane University went to provincial courts as judges and prosecutors.

In February 1979, the government set up the Revolutionary Military Tribunal (RMT) to deal

with a wide range of offenses, from high treason and armed rebellion to "agitation" and insulting FRELIMO. Although its jurisdiction was mainly exercised over civilians, the five members of the RMT were all serving military personnel, making it a clearly partial body which did not meet international standards for an independent court. Those accused before the RMT had little opportunity to prepare a defence and had their cases heard in secret. There was no right of appeal against conviction or sentence. The first ten convicted prisoners sentenced on March 31, 1979, were executed by firing squad that same afternoon.

Four years later the list of crimes carrying the death sentence was extended to include armed robbery and black marketeering. In March 1983 the nation's legislature, then known as the People's Assembly, introduced flogging for use by all courts and closed the Law Faculty at Eduardo Mondlane University after the late President Samora Machel accused lawyers of defending the interests of the rich. "A revolution that does not know how to defend itself is not a revolution," Machel said at the time. Flogging was abolished in 1989 and the death penalty has not been applied since 1986.

The Law Faculty was reopened in 1988, but its first class of 60-70 will graduate only in 1992. The rhetorical justification for the closure was to bring justice within the reach of the masses. But ironically the dearth of trained lawyers will make it much more difficult for the ordinary Mozambican to hire a lawyer - a right which is enshrined in Article 100 of the new constitution:

The state shall guarantee the access of citizens to the courts. It shall guarantee to persons charged with an offence the right to defence and right to legal counsel....The state shall make provision to ensure that justice may not be denied for lack of resources.

In March 1989 the government abolished the Revolutionary Military Tribunals and brought all security cases under the jurisdiction of the civilian court system. Announcing this reform, President Joaquim Chissano described an independent judiciary as "a decisive condition for the protection of human rights." There continues to be a distinction between security and ordinary criminal cases in that prisoners are held in different prisons before trial and are under investigation by different bodies - SNASP for security prisoners and the police for ordinary criminal suspects. However, in both types of case investigations are supposed to be conducted under the supervision of an independent procuracy.

The new constitution marks a further step on the road to reform. Article 161 states:

It shall be the function of the courts to guarantee and strengthen the rule of law as an instrument of legal stability, to guarantee respect for the laws, to safeguard the rights and freedoms of citizens, as well as the judicial interests of various organs and entities with legal capacity.

The Supreme Court is the country's highest judicial body, the ultimate guarantor of "the uniform application of the law, at the service of the interests of the Mozambican people" (Article 168). Consisting of both professional judges, appointed by the government and ratified by the national legislature, the Assembly of the Republic, and lay judges, elected by the Assembly, the Supreme Court will act both as the final court of appeal and as a trial court in certain cases. Below the Supreme Court are provincial courts, which have the power to hear security as well as criminal cases, and district courts, which can impose sentences of no more than two years. Any sentence above eight years may be appealed to the Supreme Court, but this is not automatic and leave to appeal must be granted. Interviews carried out by Africa Watch found that many security prisoners were unaware of the possibility of appeal.

An independent Procurator-General's office is to "supervise and control legality, shall promote compliance with the law, and shall participate in defending the law of the land." The Mozambican legal system is modelled on the Portuguese civil law system, whereby an independent procuracy is responsible for all investigations and prosecutions. It is to present its annual report to the national legislature, the Assembly of the Republic.

The treatment of political and security prisoners

At a meeting with Africa Watch in November 1990, President Chissano said the key to ending human rights abuses in Mozambique was to establish a proper legal framework and to educate the police and public on their rights and duties.

Africa Watch recently interviewed 43 prisoners held in security jails, out of an estimated 500-600 nationwide. Our findings suggest that in most cases the accused are ignorant of their rights to counsel and appeal and that many are held in long-term detention partly on the basis of confessions that were extracted under torture.

For the past two years, the government has allowed the International Committee of the Red Cross (ICRC) to visit convicted security prisoners as well as SNASP detainees. SNASP, a secret police force under the Ministry of Security, was created in October 1975 with powers to detain anyone suspected of anti-state activities. In October 1990, the government gave the ICRC access to detainees six days after they had been jailed. The Defence Ministry had not yet allowed similar access to detainees held by its Military Counterintelligence (CIM), where treatment of prisoners appears to be significantly worse (see below). Nevertheless, ICRC officials say that Mozambique is unusual in allowing it to carry out almost 100 per cent of its humanitarian work. The ICRC sponsors radio programs to educate security force personnel on their humanitarian responsibilities and runs classes for army officers at military schools in Beira and Nampula on the need for humane treatment of prisoners.

The Mozambique Government has given Africa Watch permission to interview security prisoners. These interviews have been conducted in conditions of total privacy, similar to those enjoyed by the ICRC. Of the 43 prisoners so far interviewed in Quelimane and the main security prison in the Maputo suburb of Machava, 18 complained of torture by security police, including beatings with rubber hoses ("sjamboks") sometimes filled with sand, submersion in water, deprivation of food and sleep and long-term isolation. In Quelimane only three of 17 prisoners interviewed reported such abuses, which they said took place exclusively during their detention by CIM. At Machava, the alleged abuses were said to have occurred at a building commonly known as *Casa Branca*, or the White House. However, these testimonies suggest that the use of torture has declined sharply since 1988, and that prison conditions have improved over the same period. One prisoner convicted on state security charges last year and held at Machava said, "Compared to 1985, this place is not a jail; it is a hotel." Detainees at Machava complained that prison guards, known as *machinga* or "little chiefs," still beat prisoners, though far less frequently than in the past and apparently without authorization.

One ex-detainee, released unconditionally after being held without charge in a security jail in the southern province of Gaza, also blamed prison guards for most abuses:

They used to handcuff people by their hands and feet to the window bars and then let them hang there. The person would lose all sense of feeling. The guards asked me to help them take one guy down who had completely lost his feeling. They beat one 13-year-old boy into unconsciousness. He had many injuries. The thing is, no one controls what happens in the jail. They do not know what is going on in there. The Red Cross visits, but just once when I was there. The guards threatened people not to talk. They said "Don't tell them what is going on in here, because they will be leaving, and then we will take care of you."

Government officials, lawyers, journalists and detainees are particularly critical of the military personnel and the militia for overstepping the bounds of legality. While the militia has no powers of arrest, its members detain people routinely. Several prisoners interviewed by Africa Watch said their incarceration on suspicion of being RENAMO members stemmed from detention by militiamen who destroyed their identification papers, robbed them of money and clothes and handed them over to the police after accusing them of being armed insurgents. One detainee at Machava prison reported:

I used to go watch television at the *grupo dinamizador* [dynamizing group] office on Eduardo Mondlane Avenue. I went to watch TV there every day. One night the militia hanging around the GD building asked me for my documents. They were very drunk. I presented my *guia da marcha* [travel document] and my receipt [for his ID, which was being renewed]. The militia tore up the documents and said they were made illegally by the Mafia. "You are a *bandido armado* [armed bandit]," they shouted. They broke four of my back teeth. I could not eat for three weeks after

that. They took me to the [police station].

The prisoner said at the time of the interview in December 1990 that he had been detained for 30 months with no charge. He had not seen a lawyer. One lawyer in Maputo said he knew of cases of people being tortured in the northern province of Nampula for not carrying identification documents. The *Diario de Mocambique* newspaper reported in July 1990 that militiamen at a communal village outside the city of Xai Xai, provincial capital of Gaza, had buried alive a suspected RENAMO guerrilla after he was taken to a cemetery and told to dig his own grave.

On February 3 the Sunday newspaper *Domingo* published across its center pages the results of an investigation into murders carried out by government soldiers late last year at a control post on the bridge over the Matola river, ten miles outside the capital. One of the victims, Fernando Fumo, was reportedly shot dead at the bridge in December while returning from Swaziland. The paper quoted someone who claimed to be a witness to the killing. "We saw troops, five, six or seven beating a man and dragging him on the asphalt. It seems the subject tried to defend himself. One of the soldiers fired a burst at point blank range, mortally wounding him with three bullets. Afterwards they [the soldiers] disappeared as if nothing had happened."

Domingo quoted another resident as saying, "At the control post, whoever does not show a *guia da marcha* [travel document] will suffer severe punishment. They are ordered to sweep up, fetch water or cook for the soldiers. Other people were put into mud or muddy water. Girls were forced to have sexual relations with the chiefs. This is still going on. Whoever comes from South Africa or Swaziland and is able to pass through the patrol without problems ought to thank God." Another resident of the area was quoted as saying, "We did not know whether we should flee from our soldiers or from RENAMO."

The army's security arm, CIM, has no powers of arrest of civilians. But interviews with detainees, especially those apprehended in war zones, indicated that CIM routinely detains civilians and waits weeks, sometimes months before handing them over to SNASP. One 17-year-old captured RENAMO guerilla in Quelimane told Africa Watch:

For one year I was under the control of CIM. CIM beat up people. Some detainees were taken away and sjamboked last year. The officials said they were not talking well enough. The beatings began to stop when the Red Cross started visiting. The food gets much better when the Red Cross delegate is about to arrive.

One year appears to be an exceptionally long time in CIM custody, but a number of prisoners reported being held for three months before being transferred to SNASP custody. Some reported being beaten by government soldiers detained with them.

The new constitution says detention and preventive imprisonment should be fixed by law. Article 101 states:

Preventive imprisonment shall only be allowed in cases provided for by law, which shall limit the duration of such imprisonment. Citizens in preventive imprisonment must be brought to court within the period fixed by law. Only judicial authorities shall have the power to decide on the validity and continuation of imprisonment.

In criminal cases, the detention time varies from 48 hours to six months, according to the Procurator-General's office. At the end of this detention period the case must be passed to the procurator, who decides whether the prosecution should go ahead.

While SNASP appears still to have the power of indefinite detention, it must bring the accused to court within 35-40 days, or in a very serious case 90 days, to confirm the detention. A recent reform is the introduction of the right of *habeas corpus*, which allows a prisoner to challenge the legality of his or her detention before the courts if these time limits are overstepped. Lawyers indicated to Africa Watch that this remedy was effective in some cases. However, interviews with security detainees also revealed many prisoners held for more than a year who said they had not been to a court. One case of particular concern is that of Tomas Antonio Maia Magunge, who was originally detained in Maputo in July 1984, released in January 1985 and was redetained in May 1985 on suspicion of being a RENAMO guerrilla. Magunge told Africa Watch that he has not received a charge sheet and has not been presented to court. Prison guards told him that the paperwork on his case has been lost by SNASP.

Over the past year many prisoners who were previously detained without charge have been brought to trial, in an apparent effort to end the use of detention without charge. Hence there was a discernible pattern in the cases of many of those prisoners interviewed by Africa Watch, who had been detained for months or years before being finally brought to trial. However, despite the improved formal guarantees under the new judicial system, Africa Watch found that in a number of respects the trial procedures still did not conform to international standards for a fair trial. For example, many prisoners reported that they had been represented by court-appointed lawyers who failed to put their case adequately. In a number of cases they also claimed that no witnesses were called; the evidence against them consisted only of documents submitted by SNASP. Sometimes the accused were convicted on the basis of confessions extracted under threat or as a result of torture, even though such statements are inadmissible. Indeed, Mozambican law does not allow conviction on the basis of uncorroborated confessions. Also prisoners were often not informed of their right to appeal or, at a later stage, of their right to remission.

The following excerpts are typical of the testimonies gathered by Africa Watch:

I was taken to court on January 20, where my charge sheet was read. I met my lawyer... for about two minutes. Then I was taken to court again on February 20. The judge said my declarations were not valid, that he had no evidence "yet." I entered the court at 8.30 am and then left for lack of evidence. I then was called in

again at 15.30, but was sent out a few minutes later. At 16.00 I was called in again. This happened often. In all I went to the court four times. My lawyer came the first time, but after that I did not see him again.

The charges were based on a statement made by my wife, saying that I was working for BOSS [the former South African intelligence service] and smoked *suruma* [marijuana]. There were no witnesses at the trial. My wife had returned to South Africa in April 1987. She never testified against me.

According to another prisoner:

On August 24, 1989, they called me and said I was getting out. I was on a list of prisoners to be amnestied. I signed three documents. They were documents for my release. Then I returned to the pavilions [in the security wing of Machava prison]. Three of us were then taken off the lists. The others were called and they signed some other documents. They left the next day. I was told that our problem would be taken care of. Then came the accusation paper. I never met a lawyer. I was condemned for being a *bandido* on June 12, 1990, and sentenced to 20 years. The judge gave me 11 years off, leaving nine years. I told the judge of my treatment and he said that he too would have confessed. The judge said there might be an amnesty.

An illiterate fisherman, convicted in 1990 of working with saboteurs and sentenced to eight years' imprisonment, described the circumstances in which he confessed:

They sjamboked me. They put a foot on my neck and beat me. "You are going to sign this document," [the SNASP] interrogator said. Then they put rocks on the floor and said that I had to crawl across them. I said I could not do that, that I would sign the document. Then they sent me back to Pavilion 9 in isolation. They would not let me go to the bathroom. I had to urinate in the tea cup and shit on my dinner plate.

He showed scars on the right side of his back and buttocks which could have been consistent with his account of beating.

Another prisoner, sentenced to 14 years for sabotage, said that he did not bother to appeal because he lacked confidence in the judicial system:

The judge said we could appeal if we wanted to, but knowing the situation and how the case was conducted, I decided it was not worth it. There were no witnesses at the trial. It lasted 20 minutes. What we signed, that's what the court based its case on.

One man interviewed by Africa Watch admitted recruiting members for RENAMO and spying on strategic targets, but denied being involved in acts of sabotage as alleged at his trial. He said that he had joined RENAMO after his son had been taken to a "re-education camp" and "disappeared" in 1976. He only saw his lawyer the day before his trial:

The judge asked me why I had joined RENAMO and I started to sing. I told the whole story. Why doesn't the government tell me where my son is? The same system is still in place. Nobody said anything. The so-called lawyer said nothing. Then the lawyer said: "I have no doubt that he was a [RENAMO] member." There were no witnesses in court, only the statements from security. On April 20 I went to court for sentencing and then again on April 24. They read the same charge sheet. I got eight years in jail and a fine of 303,614 meticaais [about \$300]. I paid that.

There are a lot of people here who are not RENAMO. They are deported back from South Africa and forced to say that they are RENAMO. Security just writes up a statement, they read it back, and they are forced to sign it. In my trial there were no witnesses. My lawyer just said: "No objection, your honour." They are all part of the same system.

I was never told I had the right to an appeal. We don't know about the possibility of going to the Supreme Court.

Summary and Recommendations: international standards for a fair trial

Standards for the conduct of trials are laid down in the African Charter on Human and Peoples' Rights (to which Mozambique is a party) and the International Covenant on Civil and Political Rights (to which Mozambique is not party, but which in any event provides a guide to the interpretation of the fair trial provisions of the African Charter). In law Mozambique now largely conforms to these internationally-accepted standards, but its practice still falls short.

- * *the right to a public trial before an independent and impartial tribunal*: this right has been guaranteed by law since the abolition of the revolutionary Military Tribunals.
- * *the right to be presumed innocent until proved guilty*: this right exists in law and is enshrined in the new constitution. But in practice the prosecution evidence presented at security trials has been sketchy and the burden of proof in practice has been with the accused, not the accuser.
- * *the right to be tried without delay*: many of those recently brought to trial have been held for some years without charge, although there is clearly a genuine attempt by the Mozambican

authorities to resolve this problem.

- * *the right to have legal counsel of one's choice and to have adequate time to prepare a defence:* the accused are usually defended, if at all, by counsel selected by the court. This is permitted in some circumstances by international standards. However, some prisoners appeared unaware of their right to legal counsel and none had adequate time to consult a lawyer and prepare a defence.
- * *the right not to be compelled to testify or confess guilt:* in many cases prosecution evidence has rested on a statement which the accused subsequently alleged was extracted under torture or under threat.
- * *the right of appeal:* this is not automatic and in any event convicted prisoners allege in some cases that they have not been informed of the possibility of appeal against conviction or sentence.

Africa Watch recognizes that some of these problems are caused by acute material shortages and a lack of trained personnel which are not easily remedied. However, what is particularly disturbing is that a disproportionately high number of prisoners so far interviewed by Africa Watch have been in Maputo, where lawyers are more readily available and it would be expected that proper procedures would be more closely adhered to. Thus the problem cannot be reduced to one of resources. Members of the law enforcement agencies, the procuracy and the judiciary need to be educated in the rights and safeguards guaranteed under both international law and the new constitution, as well as in the standards of evidence required in criminal cases. The transition from the Revolutionary Military Tribunal model to an independent judicial system which guarantees the rights of the accused is not just a matter of restructuring institutions, but requires a thorough reeducation of all those involved and a constant monitoring of their adherence to the new standards.

Africa Watch is a non-governmental organization created in May 1988 to monitor human rights practices in Africa and to promote respect for internationally recognized standards. Its Executive Director is Rakiya Omaar; its Research Director is Richard Carver; Alex de Waal is Research Consultant; Janet Fleischman and Karen Sorensen are Research Associates; and Ben Penglase and Jo Graham are Associates.

Africa Watch is part of Human Rights Watch, an organization that also comprises Americas Watch, Asia Watch, Helsinki Watch and Middle East Watch. The Chairman of Human Rights Watch is Robert L. Bernstein and the Vice-Chairman is Adrian DeWind. Aryeh Neier is Executive Director of Human Rights Watch, the Deputy Director is Kenneth Roth, Holly Burkhalter is Washington Director and Susan Osnos is Press Director.