

## Corruption in the Administrative Court: An old problem that nobody wants to solve

- The recent complaint made by officials of the Administrative Court (AC) about the sale of audit processes is further evidence that documents the problem of corruption that affects that sovereign body. This is a problem that the highest hierarchy of the Court is aware of, but which has done nothing to restore dignity to that body with the constitutional mandate to control public funds.



With a view to guiding the strategic and institutional development in the period 2022 – 2025, the AC developed a diagnosis that appears in the Corporate Plan (PLACOR IV). According to the document, the results of the AC for society are still questioned due to the low speed, especially in relation to the analysis of accounts, conclusion of audits and respective judgments, as well as the low publication of decisions, which has negative implications for the relevance of the body in society, and in the intended changes in the conduct of the public manager.

The AC recognizes, in the diagnosis, that it does not have a defined, and monitored indicator to evaluate its results, and the preventive effect of its action in society is not clear. Therefore, the general perception is that public managers, and society have not yet felt the effectiveness of this body. A judge consulted in the scope of the elaboration of the Corporate Plan clearly stated that “Today we pretend to control; there is no effective control”. Consequently, there is still little concern on the part of the Government with the proper use of public funds and society does not perceive the result or the added value of the AC’s action, especially in the inspection of public accounts.

The sale of audit processes, in a scheme led by the General Accountant of Accounting and Auditing, Jeremias Zuande, is unequivocal proof that the AC is not exercising its constitutional mandate and corroborates the statement of the Judge Counselor who declared that the organ pretended to control, but there was no effective control. One of the examples of the sale of audit processes involved another sovereign body, namely the Assembly of the Republic.

According to the complaint cited by the Charter of Mozambique, in 2016 the AC carried out an audit of the accounts of the Assembly of the Republic. “The technicians assigned to audit Parliament’s accounts found several management irregularities, which were not reported by order of Jeremias Zuande. The General Accountant of Accounting and Auditing instructed his team to delete the Preliminary Audit Report, all because he allegedly promised to be promoted to the position of Counselor Judge (of the AC), a pact that was never fulfilled”<sup>1</sup>.

In the diagnosis made in 2021 for the elaboration of the Corporate Plan, the Public Accounts Section detected the slowness in completing the audits and the lack of judgment of the irregularities found in the audits. For example, between 2017 and 2019, AC received 4,621 Management Accounts, an average of 1,540 Accounts per year. During



Lúcia Maximiano do Amaral, President of the Administrative Court

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this period, only 405 Accounts were legally terminated (9% of the total received) and 135 Accounts were judged (3% of the total received). The balance of Accounts not administratively ready doubled from 2,594 at the beginning of 2016 to around 6,603 at the end of 2019 (and more than 7,700 at the end of 2020).

The AC justified the poor performance of the Accounting and Auditing Department with the lack of technical capacity: Between 2016 and 2019 the number of auditors in the Accounting and Auditing Department, still insufficient for needs, had decreased from 127 to 123. The 2nd Subsection remained with three judges (one being borrowed from the 2nd Section) when, by law, the number of judges assigned to the 2nd Subsection should have tripled to nine in at least 10 years.

In addition to the small number of auditors indicated in the diagnosis, corruption is another problem that affects the performance of the Public Accounts Section of the AC, especially the Accounting for Accounts and Audits. The sale of audit processes contributes to the poor performance of this section, a problem recognized by the AC itself: “The effectiveness of the external control of the Public Accounts Section in relation to the external verification of Management Accounts is questionable. Hence, one can also question the extent to which the AC is fulfilling its constitutional mandate and being a relevant institution in terms of its contribution to the good use of public funds, bringing visible results to society”, reads the diagnosis from AC.

Between 2017 and 2019, the AC carried out 740 Audits, with 530 cases being brought to an end by jurisdiction (71% of the total initiated) and of these 185 were by trial (25%

<sup>1</sup> <https://cartamz.com/index.php/politica/item/12901-escandalo-no-tribunal-administrativo-contador-geral-acusado-de-vender-processos-de-auditoria>

of the total initiated). This shows that only a small part of the audit processes initiated are judged or “finished” by another mechanism, under the terms of the law. Considering three advisory judges in the 2nd Subsection of the Accounts Section, each judge “finished”, on average, 59 cases per year, and judged, on average, 20 cases per year.

At the end of 2020, the Section had a bal-

ance of 500 audit processes referring to previous years and not administratively ready. There is also no clear, consolidated, and up-to-date information on which years these processes refer to, as the information provided by the computer system is neither credible nor used for analysis and decision-making. The AC does not measure the speed of the Verification of Management Accounts, the

complete performance of the Audits, and the jurisdictional phase, including the judgment. “However, it is perceived that the completion of the audit processes, which includes the preparation of the final report (after observing the contradictory), is extremely time consuming. Consequently, the audit processes take time to be concluded and presented to the judicial stage in a timely manner”.

## Relevance of the body in society and the intended changes in the conduct of the public manager

Although it does not clearly point to corruption, the AC’s diagnosis says that the poor performance has serious implications, as it questions the relevance of the body in society and the intended changes in the conduct of the public manager. And one of the moments when the AC demonstrated its irrelevance in society was in 2022, when it decided to suspend the precautionary measure submitted by the CDD to stop the start of charging toll fees on the Maputo Circular Road.

At the end of January 2022, the CDD submitted to the AC a precautionary measure suspending the administrative act aimed at suspending the order published through the “Boletim da República” Number 10, Series I, which set the toll rates for Costa do Sol, Zintava, Cumbeza and Matola Gare, on the Maputo Circular Road. The said order was signed by the then Ministers of Public Works, Housing and Water Resources (Osvaldo João Machatine) and of Economy and Finance (Adriano Maleiane).

Days later, the two rulers were summoned by the AC to, if they wished, present their defense. It follows from the administrative litigation law that once the Ministers were formally aware of the process, the order setting the toll rates was automatically suspended until the final decision of the court that will declare the suspension or not, with sufficient grounds in light of the law and of justice.

In effect, the company concessionaire of the Maputo Circular Road, REVIMO – Rede Viária de Moçambique, SA, was prohibited by law from charging toll fees while the aforementioned judicial process was ongoing. Article 138(1) of Law No. 7/2014, of February 28, applicable to the case, determines the following: “The administrative body that has received the summons or notification cannot initiate or continue the execution of the act, being, therefore, attached to the obligation to urgently prevent the competent or interested services from carrying out or continuing to carry out the execution.”



Tribunal Administrativo

Therefore, REVIMO should not start charging toll fees on the Maputo Circular Road on February 1st, while the provisional suspension of the order that fixed the fees was in force. However, on the morning of January 31, 2022, the Government submitted its defense to the AC, requesting an exception from compliance with the rule of automatic provisional suspension of the dispatch that sets toll rates. As a basis, the two Ministers wrote that the suspension of their order would have “serious consequences in the pursuit of the public interest”. In other words, postponing the beginning of the collection of toll fees on the Maputo Circular Road would have serious consequences in the pursuit of the public interest.

In an extraordinary case of procedural speed, the AC issued, on the same day, order S/Nº01/JCC/2022, through which it granted the Gov-

ernment’s request, stating that the terms that lead to the exception of compliance with the rule of automatic temporary suspension. In other words, the AC upheld the Government’s argument according to which postponing the start of payment of toll fees on the Circular Road would have serious consequences in the pursuit of the public interest.

Only in a State where there is no effective separation of powers can a court agree with the argument that citizens would be disadvantaged if toll charges were to be postponed. The AC’s actions clearly showed that it was following the government and acting as a “lawyer” for the executive branch. Therefore, the revelations of corruption described in the denouncement letter from the AC officials are not at all surprising. The AC has long since exempted itself from its responsibilities set out in the Constitution of the Republic.



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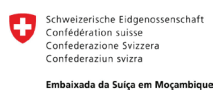
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