

## Presidential pardon for alleged terrorists constitutes a serious violation of the principle of separation of powers

- Since the emergence of violent extremists in Cabo Delgado in October 2017, the Government of Mozambique has adopted various ways of dealing with the phenomenon. In the first months, the government played down the attacks, labeling them as mere acts of banditry.



Subsequently, the authorities invested in the Police of the Republic of Mozambique (PRM), especially in the special units – Rapid Intervention Unit and Special Operations Group, to respond to the onslaught of violent extremists. The presence of personnel from the Armed Forces for the Defense of Mozambique (FADM), responsible for defending sovereignty and territorial integrity, was residual, in addition to the fact that operational command was in the hands of the PRM.

But in March 2020 the authorities bet on private military companies, having hired the Russian Wagner Group and the South African DAG. The latter managed to renew contracts until March 2021, even so it was not able to contain the advance of violent extremists who for a year managed to rob and occupy several district villages, especially Mocímboa da Praia, Namacande (Muidumbe district), Quissanga, Macomia and Palma, including the entire northern coast of Cabo Delgado.

The bet on private military companies proved ineffective and the government began to open to accept foreign military intervention. This is how, in July 2021, troops and police from Rwanda began to land in Cabo Delgado, with a clear mission: to “liberate” the districts of Palma and Mocímboa da Praia and guarantee security within the perimeter that includes the LNG projects and all the logistics chain as a way of attracting the return of French oil company TotalEnergies, which in April last year suspended its US\$20 billion project due to insecurity.

In addition to the Rwandan troops, troops from several countries in the region landed in Cabo Delgado as part of the SADC Mission designed to help Mozambique in the fight against violent extremism. But international experiences show that reliance on military solutions alone is not enough to end violent extremists. The military front – very important to guarantee security – must be combined with other fronts, namely development, humanitarian, and negotiation.

It is within this logic that the President of the

Republic, Filipe Nyusi, has recently appeared at popular rallies accompanied by alleged violent extremists to whom he grants them a “pardon” and encourages the population to integrate them into communities.

This recurrent act of the Head of State constitutes a serious violation of the principle of separation of powers, since under the terms of the Constitution of the Republic of Mozambique (CRM) the President of the Republic is responsible for pardoning and commuting sentences<sup>1</sup> and the Assembly of the Republic is responsible for granting amnesty and pardoning<sup>2</sup>.

There is a conceptual difference between amnesty and pardon. Amnesty is a form of termination of criminal proceedings; the pardon is a form of total or partial extinction of the sentence (when the extinction is partial, it is called commutation of the sentence). Amnesty addresses the crime, erases it, makes it fall into oblivion, eliminates the legal effects of the offence, eliminates incrimination.

The pardon is addressed to the penalty. The pardon presupposes the commission of the offence, does not eliminate, or extinguish it, erases, in whole or in part, the criminal effects of the offence, but does not erase the crime itself that triggered those effects. Forgiveness does not make the crime fall into oblivion, contrary to amnesty.

Amnesty is seen as a generic pardon and is distinguished from individual or private pardon (pardon or commutation), because amnesty is addressed to a generality of offenders; it is a general act within the competence of the Assembly of the Republic, as explained above, while individual or private pardons, which are pardon and commutation, are the responsibility of the President of the Republic. The first is aimed at crime while the latter are only aimed at the penalties applied in concrete.

It follows that, given that the alleged terrorists pardoned by the President of the Republic were not tried and convicted, the President of the Republic is not competent to pardon them, as the presidential pardon (pardon or commutation) can only occur af-

ter the offender has been convicted in seat of the Court.

Only the Assembly of the Republic can, by means of a pardon, forgive crimes, even before there has been a conviction, as has already happened on several occasions in our history, with particular emphasis on pardoning RENAMO guerrillas, in the efforts to achieve peace, and reconciliation.

Even if the President of the Republic had the power to pardon alleged violent extremists, such action could never be decided and applied based on a mere speech given at popular rallies, this because the normative acts of the Head of State take the form of a Presidential Decree and Dispatch and are published in the Republic Bulletin<sup>3</sup>.

This is the case with all decisions made by the Head of State, from the appointment, and dismissal of members of the Government to the calling of elections.

In fact, perhaps it is because he is aware that he is not empowered to pardon alleged terrorists that the President of the Republic never had presidential decrees written and published pardoning alleged terrorists.

This conduct by the Head of State constitutes a serious violation of the constitutional principle of separation of powers,<sup>4</sup> since by forgiving the alleged terrorists in the way he does, he intrudes on the powers of the Assembly of the Republic.

More serious still, the Head of State interferes with the judiciary, because in a way he administers justice to those individuals, arbitrarily deciding that they must be received in peace by the communities, preventing the organs of justice administration from being able, within its powers, carry out the competent criminal action and prosecute alleged terrorists.

The conduct of the Head of State embodies the crime of excess of power foreseen and punished under the terms of subparagraphs a) and d) of article 421 of the Penal Code, since he assumed attributions that belong exclusively to the Assembly of the Republic and, likewise, through his pardon orders, he prevents the exercise of Judicial power.

<sup>1</sup> Line k) of article 158 of the Constitution of the Republic

<sup>2</sup> Line v) of number 2 of article 178 of the Constitution of the Republic

<sup>3</sup> Number 1 of article 156 of the Constitution of the Republic

<sup>4</sup> Article 134 of the Constitution of the Republic



#### EDITORIAL INFORMATION

**Property:** CDD – Centro para Democracia e Desenvolvimento  
**Director:** Prof. Adriano Nuvunga  
**Editor:** Emídio Beula  
**Author:** David Ferreira  
**Team:** Emídio Beula, Dimas Sinoa, Américo Maluana  
**Layout:** CDD

**Address:**  
Rua de Dar-Es-Salaam Nº 279, Bairro da Sommerschild, Cidade de Maputo.  
Telephone: +258 21 085 797

CDD\_moz  
**E-mail:** [info@cddmoz.org](mailto:info@cddmoz.org)  
**Website:** <http://www.cddmoz.org>

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