

The role of the Judicial Court of the Province of Gaza and of the Public Prosecutor in the pursuit of the public interest and the achievement of justice in the case of Anastácio Matavele



Contextualization

Anastácio Matavele was murdered on 07 October 2019, in broad daylight, on a public road in Xai-Xai City, Gaza Province, by state agents, police officers of the Republic of Mozambique (PRM), specifically officers of the Special Operations Group (GOE) of the Rapid Intervention Force (FIR), the riot squad of the PRM, one week before the general elections of 15 October.

A few weeks after the prosecution's indictment, the officers involved in Anastácio Matavele's murder were promoted; a decision which the police department later considered to be flawed and consequently revoked it, but the department did not demonstrate to society at large how this decision was flawed, and they corrected it only after several criticisms from various organizations, including



the Mozambican Bar Association, through its Ex. Bastonary Flávio Menete at the opening of the judicial year of 2020, when he said:

“Although the Commander General of PRM has come forward to say that there had been a blunder in the promotion process, what is certain is that the perception remains that there are death squads and that their members rise in the career according to their per-

formance in the implementation of barbaric missions, which is unacceptable. Citizens need to trust their police officers.” “In view of the circumstances under which the events occurred, the onus is on the PRM to prove that it was a mistake that the PRM agents who murdered the activist Matavele were promoted. And they (police department) should know that they’re under everyone’s scrutiny.”

Some notes on the court’s decision

The Court sentenced six PRM officers to between three and 24 years in prison, namely Tudelo Guirruço, Edson Silica and Alfredo Macuácuá to 24 years in prison; Euclídio Mapulasse to 23 years in prison; Januário Rungo and Justino Muchanga to three and two years in prison.

The sentence does not explore in a transparent, exhaustive manner the reasons for Matavele’s murder, nor does it demonstrate the investigation carried out to identify the moral authors of this murder, although there

are strong signs in the file that the material agents of this crime would have been ordered to kill Matavele.

An example of the weak investigation into the identification of the moral perpetrators of the murder is the fact that the court avoided investigating the phone calls and exchanges of phone messages that the defendants made on the days before and after the murder, taking into account the personal, state, and private relations revealed in the case, with particular attention to the contacts of

the fugitive defendant, Agapito Matavel.

As a means of exculpating the State, the Court alleges that the material perpetrators of the murder of Matavele acted at their own risk and on their own account, but does not indicate the premises that led it to this conclusion and, strangely enough, the Court completely ignores the analysis of the premises in the file regarding the relationship of the perpetrators of the crime with the State, the circumstances of time, space and manner in which the crime was committed, the ownership of the instruments of crime and their mode of requisition and return after the crime was committed, the electoral context and the nature of the activist's work in the electoral process in Gaza Province and its impact due to irregularities in the electoral process in Gaza. The Court also ignores the fact that the material agents of this crime did not manifest any other behaviour on the day of the facts than to murder the activist Matavele, without giving any indication of any motive other than the electoral context in Gaza due to the nature of the work that Matavele was carrying out. Matavel was murdered in that context.

It is also important to note that the Court ignores the analysis of the agents' statements that they intended to rob or steal money from the activist Matavele, when in the criminal act nothing was done that could feed that alleged justification of theft, robbery or something similar.

An important aspect to consider that reveals some protection for the convicted defendants is the fact that the court has arbitrated the derisory compensation amount totalling 1,500,000.00Mt one million five hundred thousand meticaís that the defendants must pay, jointly and severally, to the family of Anastácio Matavele, as if it were a sign of gratitude or forgiveness from the State to the defendants for having murdered

Matavele. This argument of the protection of the accused by the State becomes stronger when the accused are not the target of disciplinary proceedings and/or administrative liability, and they fully enjoy the office of the state police, with rights arising therefrom.

With regard to compensation, even if it is compensation for one's life, death falls into the category of non-pecuniary damages that cannot be assessed in monetary terms. However, the law allows the payment of a certain compensation amount as a form of "reparation" for damages. Therefore, it is not clear what legal criteria the court used to fix that derisory compensation amount, considering

that life in this case is the legal asset, and the fact that the defence of Anastácio's family had requested compensation in a much higher amount than that arbitrated by the Court.

The sentence reveals that the Judicial Court of Gaza Province made a titanic effort outside the law, both to not identify the moral authors of this crime, and to ensure that the State, through its PRM, was not tainted, taking, from factual and legal viewpoints, the unsustainable position that the

accused acted at their own risk and on their own behalf, despite being State officers.

The Judicial Court of Gaza Province did not respect the principle of a fair trial by demonstrating many weaknesses of judicial investigation and a highly biased attitude towards protecting the State at all costs for the criminal actions of its agents, as well as doing little to hold the moral perpetrators of the murder accountable, thus frustrating the much desired justice. The trial did not discuss in depth and exhaustively the reasons that led the defendants to commit this murder crime against Anastácio Matavele, in clear disregard for the principle of material truth that also guides the criminal process.

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ximum prison sentences on the one hand in an attempt to comfort the victim's family and citizens in general when, on the other hand, it undermines the whole logic of achieving justice in this case in the following terms:

- a) Non liability of the State, though there are objective elements to this end;
- b) Failure to carry out the necessary investigation to identify the moral authors of this crime, though they knew that there are enough elements in the file to indicate the existence of moral authors;

- c) Failure to discuss in depth and exhaustively the real reasons that led the defendants to commit this crime of homicide, when there are elements in the records to better exploit this discussion as a judicial investigation;
- d) Failure to arbitrate reasonable compensation based on legal criteria that takes into account the legal good (life), the position of the defendants as agents of the State, that have a legal obligation to protect citizens and guarantee public order, and the circumstances of time, place and manner in which the crime was committed.

The issue of State crime by officers on duty

The instruments of crime, in this case the weapons used, are from PRM and were returned to the UIR warehouse and received by the person responsible for the arsenal, without being handed over to the criminal investigation and without any questioning about their use, despite the fact that the criminal fact was reported in a comprehensive and worrying manner given the fact that the defendants were involved in a traffic accident and were caught red-handed.

The circumstances in which the crime was committed and what is on the record of the criminal case reveal that the defendants acted as state agents and in accordance with the orders of their superiors. On these facts, the judge should have carried out a better judicial investigation and demonstrated the extent to which these elements are not sufficient to

characterise the criminal act as an illegal act by State agents in the exercise of their functions or to what extent they are classified as such, in order to dispel any doubts on the decision they made regarding the State's responsibility.

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The fact that the defendants' lawyers in the case were appointed by the General Command of the PRM is further curious evidence that the crime was committed by orders of the corporation, because, if it had been at their own risk, as PRM and the Public Prosecutor's Office have always defended, why should the PRM be

so sympathetic to the defendants as to offer them a lawyer? The Judicial Court of Gaza Province also ignored this fact to the detriment of the effective realization of justice, with the aim of protecting the mandates of this crime of murder of Anastácio Matavele.

The Judicial Court of Gaza Province and the Jurisdictional function

Mozambique is a state of democratic law and social justice as enshrined in the Constitution of the Republic, in which the judicial function is to guarantee and strengthen legality as a factor of legal stability; to guarantee respect for the laws, ensure the rights and freedoms of citizens, as well as the legal interests of the different bodies and entities with legal existence, as provided for in Article 211(1) of the Constitution of the Republic. "The courts shall penalise violations of legality and shall adjudicate lawsuits in accordance with the provisions of the law." This is provided for in paragraph 2 of the same Article above.

More than that, according to the provisions of Article 212 of the Constitution of the Republic: "The courts shall educate the citizens

and the public administration in the voluntary and conscious observance of the laws, establishing a just and harmonious social coexistence."

The constitutional provisions above lead one to reflect on the extent to which the Judicial Court of Gaza Province has observed and fully complied with those constitutional commands in conducting the trial in the Anastácio Matavele murder case.

It should be noted that the manner in which the trial was conducted and the sentence handed down also leads to the need for careful reflection on the issue of the independence of the judiciary and its commitment to the protection of human rights and respect for the rule of law, to prevent and penalise abuse of power and violations of rights and law.

On the criminal investigation of the judge

It is not easy to find out from the sentence handed down by the Judicial Court of Gaza Province the steps taken under the criminal procedure and in a dispute process such as this one to investigate the identification of the perpetrators of the crime and their responsibility, as well as the effective and efficient collection of evidence of this criminal fact, especially with regard to the relationship of the accused with the State. This should be done by taking into account the evidence in the records on the circumstances of time, place, mode and context in which the crime was committed. The trial judge ignored the strict application of the rules of criminal investigation in this case, including the discussion and trial hearing stage.

According to Article 9 of the Code of Criminal Procedure (CCP) "the judge has the prerogative to order ex officio any steps deemed indispensable to the discovery of the truth, even when the criminal action depends on the particular charge, but without prejudice to the provisions of the preceding articles."

Of course, there is a legal basis for the judge to go further in clarifying the matter of fact with a view to discovering the material truth.

The evidence produced by the Judicial Court of Gaza Province is weakened to the extent that there is no evidence that the defendants acted at their own risk, i.e. not in the capacity of PRM agents. Moreover, it is not clear what means of obtaining evidence have been put in place under the CCP.

Regarding the fact that certain defendants confessed to the crime, the sole paragraph of Article 174 of the CCP states that "Even if the accused has confessed to the crime, the judge shall make every effort to establish the truth and shall investigate, with all available evidence, whether the confession is not true."

The fact that the defendants did not behave as though they were stealing, assaulting, or committing a similar crime against Anastácio Matavele, and the fact that the defendants did not quarrel with the victim was enough for the Court to have focused more on

investigating the reasons for committing this crime of murder, or otherwise asking for medical examinations of a mental or behavioural nature because it is not understandable to any average person that a group of PRM agents organise themselves to murder a person at random. Only a mental disorder can justify such behaviour, which is not the case since the agents in question enjoy good mental health.

The judge has evaded her legal obligation

to investigate and clarify the facts in order to discover the truth of the matter and to have a solid basis for her decision.

Some strong political interference in the magistrate's independence, intimidation or fear of holding the state (her "boss" who guarantees her salary) may explain the judge's lack of investigation in order to exculpate the state and hide the moral authors of this crime.

The sins of the Public Prosecutor in the Anastácio Matavele criminal trial

With regard to the functions of the Public Prosecutor, Article 235 of the Constitution of the Republic states that "The Public Prosecutor's Office shall be responsible for representing the State before the courts and defending the interests determined by law, monitoring the legality, the time limits for arrests, directing the preparatory investigation of criminal proceedings, conducting criminal proceedings and ensuring the legal defence of minors, the absent and the incapacitated."

In turn, Article 233(2) of the Constitution of the Republic states that "In the exercise of their functions, magistrates and public prosecutors shall be subject to the criteria of legality, objectivity, exemption and exclusive submission to the directives and orders provided by law."

However, of the constitutional provisions mentioned above, it is important to analyse the extent to which the Public Prosecutor's Office has observed them in its action in the Matavele murder case, especially with regard to its function of representing the State before the courts and defending the interests determined by law, as well as monitoring legality.

Representing the State and defending the interests that the law determines means fundamentally pursuing the public interest in full respect for the law, the rule of law and the rights and freedoms of citizens, since the public interest and respect for legality are the interests of the State, that is, interests that the State aims for and must pursue in accordance with the law. To represent the interests of the State is to defend the pursuit of the public

interest, if the State through its agents, services or bodies does not respect the pursuit of the public interest should be denounced and prosecuted in order to respect the public interest. In other words, if a body denounces violations committed by the State is, in good faith, representing the interests of the State, it is defending the public interest, which is therefore the interest of the State and of the law.

Thus, the Public Prosecutor's Office in its function of representing the State before the courts must always and unconditionally, in an exempt, objective, impartial and legal manner, defend or safeguard the public interest in accordance with the law and be guided by justice even if to do so it has to denounce illicit, illegal behaviour of the State that damages the public interest or the rights and freedoms of citizens.

The function of the Public Prosecutor's Office to represent the State before the courts and to defend the interests determined by law does not mean that this body should at all costs defend the State in order to exempt it from liability even when it violates the law, the rights and freedoms of citizens for the conduct of its officers or bodies. This is not the function of the Public Prosecutor's Office under the terms of the Constitution and Law no. 4/2017, of 18 January (Organic Law of the Public Prosecutor's Office and which approves the Statute of Magistrates of the Public Prosecutor's Office.

In the criminal case of the murder of the activist Anastácio Matavele, the Public Prosecutor's Office on behalf of the State did every-

thing and without sufficient legal basis, for the State to be considered illegitimate and without any kind of responsibility in the process, allegedly because the PRM agents, now convicted, for the murder of the activist Matavel acted at their own risk, without, however, objectively demonstrating, in an exempt manner and in accordance with the law, the extent to which the circumstantial elements of the crime contained in the files establishing the link between those agents and the State are not relevant to the accountability of the State or to consider it an illegitimate party in the process. One should note that the context and circumstances of mode, time, place, including the instruments of the crime demonstrate that it is a crime of the State committed by its agents in that capacity.

With regard to the criteria of legality, objectivity, impartiality and exclusive submission to the law to which the Public Prosecutor's Office is subject in the exercise of its functions in accordance with the provisions of Article

11(2) of the Constitution, the Court of Justice shall have the power to determine whether a criminal offence is committed by the State. With regard to the criteria of legality, objectivity, impartiality and the exclusive submission to the law to which the Public Prosecutor's Office is subject in the exercise of its functions in accordance with Article 233(2) of the Constitution of the Republic, there is no doubt that in the criminal proceedings in the case of the murder of Anastácio Matavel, the Public Prosecutor's Office did not comply with these criteria, neither with regard to the investigation for holding the State responsible nor with regard to the criminal investigation for identifying the moral authors of the crime in question, despite being the body that par excellence directs the preparatory investigation of the criminal proceedings and carries out the criminal action. The question is: What public interest has the Public Prosecutor's Office been defending in this criminal case concerning the murder of Anastácio Matavele?

Concluding remarks

From the above, there is ample evidence that both the Judicial Court of Gaza Province and the Public Prosecutor's Office representing the State have not performed their duties in an exempt manner and in compliance with the provisions of the law concerning their powers or functions.

Such biased, subjective conduct contrary to the law, especially with regard to the principle of criminal investigation in this criminal case, may lead to the magistrates concerned being held accountable despite the judges' legal guarantee of irresponsibility. This guarantee is not absolute in the sense that judges are not held responsible even when they act in a partial manner contrary to the law. The limit of this guarantee of legal irresponsibility is the very law that must be complied with, otherwise there is responsibility for the judges' actions.

Considering that the State has not been called to account in the first instance, there is nothing to prevent this issue from being re-examined in the second instance, as a re-

sult of the appeal that has now been lodged against the sentence handed down by the Judicial Court of Gaza Province, because the issue of the legitimacy of the State in this case is a matter of law, the clarification of which is relevant to the achievement of justice in this case.

Furthermore, the appeal against the sentence of the Judicial Court of Gaza Province may open the way for a re-examination of the elements in the file that indicate the existence of moral authors of the crime of the murder of Anastácio Matavele.

The position of the Centre for Democracy and Development (CDD) is that the Judicial Court of Gaza Province has not carried out due justice in this case and has committed essential procedural irregularities in this criminal case as demonstrated above, such irregularities must be examined on appeal.

The conduct of the magistrates denying justice to the Matavele family and society in general in this case should be investigated by the competent bodies for the management

and discipline of the activities of magistrates and prosecutors respectively, the Superior Council of the Judiciary and the Superior Council of the Public Prosecutor's Office.

CDD also believes that the competent criminal investigation and rigorous analysis of the elements in the files that are relevant to the State's responsibility in this process should be carried out at the level of the appeal.

CDD will continue, on the basis of the law, to monitor the actions of the organs of justice in the case of the murder of Matavele, denouncing all irregularities and activating all possible mechanisms to ensure that justice is done with clear demonstration of a rigorous, impartial and objective investigation in full respect for the law, rights and freedoms of citizens.

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