



REPORT ON HUMAN RIGHTS AND HUMAN RIGHTS DEFENDERS FOR THE FIRST HALF OF 2020 IN MOZAMBIQUE

Celebrating the International Day
of Democracy

Maputo, September 15th, 2020

I. BACKGROUND

Mozambique is a Democratic State based on the Rule of Law, as well as social justice, founded on the respect and guarantee of the fundamental rights and freedoms of citizens, as laid down in the Constitution of the Republic, in which the Public Administration has a legal obligation to pursue the public interest, the defence and promotion of human rights. In this context, the Mozambican State has signed several international commitments which bind it to respect, promote, protect and fulfil human rights.

However, several practices contrary to human rights, the principle of equality before the law and the most essential democratic and good governance principles relevant to the safeguarding of human rights are notorious.

The first half of 2020 was no exception in relation to practices that violate human rights of various kinds, such as classic civil and political rights, with emphasis on the repressive action of the Police of the Republic of Mozambique (PRM), the issue of the right to public security and the barriers to the exercise of the right to information, freedom of expression and demonstration.

On the other hand, the case of economic, social and cultural rights, with emphasis on the activities of the Government of the day regarding the management of the public good to balance social inequalities and offer better opportunities to citizens for the realisation of the right to development and social justice from easy access to health services, education, decent housing, employment, water and food security.

No less important are the so-called diffuse and collective human rights, such as the right to the environment and consumer rights, given that citizens have been victims of a precarious public service, especially as regards access to public transport, water and electricity.

The group of the above-mentioned human rights should also be considered in the con-

text of the State of Emergency declaration for the prevention of the COVID-19 pandemic, as well as in the context of the terrorist attacks in Cabo Delgado Province and the armed attacks in Manica and Sofala. These factors have highlighted the problem of protection of human rights and access to justice in Mozambique as a priority in the public governance agenda.

The Centre for Democracy and Development (CDD) has advocated, since its inception, the promotion and defence of human rights in an advocacy perspective around the development and application of democratic principles in Mozambique. Therefore, the drafting of the half-year human rights report as a practical test case for the most robust and detailed annual report for the year 2020 is essential to assess and make known to the general public, both the range of activities carried out in favour of human rights and the level of their promotion and protection in Mozambique.

This report also considered the actions and reactions of public authorities and their relations with companies whose activities have a major impact on the human rights of local communities affected by extractive industry projects, particularly with regard to land rights and the direct benefits of major investments in the exploitation of natural resources.

Thus, the preparation of the Report on Human Rights and Human Rights Defenders for the First Half of 2020 aims to analyse the political, legal and institutional landscape that facilitates and/or hinders the promotion, respect and protection of human rights in Mozambique, based on the rationale of the classification and contextualisation of the thematic human rights indicated above.

For each part, the approach aims at identifying the currently problematic human rights as well as the existing actions and mechanisms for their promotion and protection.

II. METHODOLOGY

The main methodology for achieving the objectives of the report was based on research, information gathering, identification and documentation of violations, analysis and interpretation of relevant laws and norms on the

dimensions of respect, promotion, protection and realization of human rights, with a particular focus on institutional practices and/or behaviours in relation to the issue of human rights.

III. STRUCTURE OF THE REPORT

Based on the selected methodology, in addition to the general introductory notes and the executive summary, the report is structured as follows: a part on the assessment of the legal framework and public policies on human rights in Mozambique; followed by the assessment of

the institutional framework on human rights, as well as a part on the analytical description of the cases of violations that occurred in the first half of 2020 and their respective responsibilities; and finally the presentation of the conclusions, main challenges and recommendations.

IV. OBJECTIVES

- Reflect on the action of the institutions of justice in safeguarding human rights in Mozambique and draw attention to the institutionalisation of a human rights state in the country.
- Denounce human rights violations and demand accountability through correct application of the law in accordance with the rules of Democratic Rule of Law.
- Reflect on specific reforms of legislation, public policies and institutional behaviour with regard to human rights, in particular on the question of existing and effective remedies for damages.
- Discuss effective ways of promoting the credibility of the justice system, particularly as regards the readiness of justice institutions to protect and promote human rights.

LEGAL AND INSTITUTIONAL FRAMEWORK

The human rights issues presented in this report are based on the Constitution of the Republic, the relevant infra-constitutional legislation on human rights, as well as the public policies that promote their respect. The international human rights instruments to which Mozambique is a part of are also analysed in this report.

Regarding the institutional framework, it must be said that in Mozambique the main institutions for the promotion and protection of hu-

man rights are the Executive, Legislative and Judicial Powers. The institutional framework also includes other relevant public institutions, such as the Public Prosecutor's Office (PGR), the National Commission on Human Rights (CNDH), the Ombudsman, the Mozambican Bar Association (OAM) and the PRM. The action and intervention of each institution in the promotion, respect, protection and realisation of human rights during the first semester will be analysed in this report.

EXERCISE OF THE RIGHT TO INFORMATION

The fundamental right to information is enshrined in Article 48 of the Constitution of the Republic and is essentially regulated by Law 34/2014, of 31 December - Law on the Right to Information, and the respective Regulation-Decree 35/2015, of 31 December. Likewise, the right to information is regulated in various relevant legislation on the functioning of the Public Administration and in different instruments for the protection of human rights, such as the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.

However, the national press and civil society have shown that Mozambique is deeply characterised by serious obstacles to the exercise of the right to information, such as the lack of openness of the authorities to discuss the exercise of democracy and access to information in an exempt manner. Public authorities have a tendency to perpetuate the culture of secrecy and unfounded denial of information of public interest.

One of the fundamental objectives of the State, as is clear from article 11(f) of the Constitution of the Republic, is “the *strengthening of democracy, freedom, social stability and social and individual harmony*.” The materialisation of this objective depends on the removal of obstacles to the correct exercise of the right to information, in accordance with the norms and principles that regulate it, whether of an internal or international nature. Information is power for those who hold it and is a fundamental element in the democratization of the State, inasmuch as it allows conscious and informed public participation in the decision-making process in matters of public interest.

It is in these terms that citizens must be fully informed about the investment and development processes underway in the country, about major legal and public policy reforms, about the structure and functioning of public and private institutions carrying out activities of public interest, the electoral processes, the use of public goods and services and the mecha-

nisms put in place to make democracy effective and achieve human rights.

In essence, democracy cannot function without full respect for fundamental rights and freedoms, which include the right to information, which in turn lies at the heart of democratic governance and enables other related human rights, such as freedom of expression, to be realised.

In Mozambique, the culture of secrecy and denial of information of public interest, especially on sensitive matters or on the so-called “hot cases”, is institutionally rooted and even seems to be a practice reiterated with a conviction of obligation; see, for instance, the following:

- ***Constitutional Council and the protection of the right to information***

The Ombudsman accepted the request, submitted the case to the Constitutional Council and, through Decision or Judgement no. 5/CC/2020, of 30 March, relating to Case no. 08/CC/2018, decided not to declare the unconstitutionality of the norm contained in no.1 of article 4 of Law no. 12/79, of 12 December (Law on State Secrecy), allegedly because it does not violate the provisions of no. 1 and 6 of article 48 and no. 3 of article 56, both of the Constitution of the Republic.

This Ruling no. 5/CC/2020, of 30 March, resulted from an action, brought forward for the consideration of the unconstitutionality interposed by the Ombudsman against the rule contained in no. 1 of article 4 of the Law on State Secrecy, which establishes the following:

Art. 4 - Documents are divided into two groups:

- 1) *Classified documents:*

“They are those containing data and information of a military, political, economic, commercial, scientific, technical or any other nature the disclosure of which would undermine the security of the State and the

people and the national economy”.

The legal regime on State secrecy enshrined in the Law on State Secrecy is a paradigmatic example of laws or rules that go against the right for information, insofar as it presents indeterminate, insufficient and unintelligible concepts, when it states that the legal regime on state secrecy includes documents containing data and information of a military, political, economic, commercial, scientific, technical or any other nature the disclosure of which damages the security of the State and the people and the national economy.

Under the terms of the legal provision on State secrecy, it is stated that the exercise of the right to information depends on the will and initiative of those who hold information of public interest. That is, under the terms of the Law on State Secrecy all information may be considered secret, which is in contradiction with the Constitution of the Republic.

According to Article 56(3) of the Constitution of the Republic, “the law may limit rights, freedoms and guarantees only in cases expressly provided for in the Constitution”. In turn, Law 34/2014 of 31 December (Law on the Right to Information) establishes the principle of prohibition of unlimited exceptions - Article 4(2)(g) of the Constitution. Likewise, Article 11 of the Law on the Right to Information states: “the non-disclosure or refusal to make information available shall always be based on the regime of legal exceptions and restrictions”.

The Law on State Secrecy does not clearly and unequivocally define the secret of the State, nor does it otherwise expressly refer to its meaning, nor does it unequivocally determine under what circumstances such information is to be understood as classified.

Legal restrictions on fundamental rights and freedoms are only admissible in the cases expressly provided for in the Constitution, under which any rule or infra-constitutional law must enshrine restrictions expressly and clearly. This means that the formulation of limitations to the fundamental right to information through

indeterminate concepts, as in the Law on State Secrecy, must be declared unconstitutional.

The Constitutional Council upholds its decision in Ruling No. 5/CC/2020 of 30 March, saying: *“In the Mozambican legal system, State secrecy constitutes an authorisation to legally restrict the right to information and is one of the means of ensuring the containment of access to or disclosure of matters which should not be in the public domain”.* It adds: *“The existence of a legal regime on State secrecy is clearly admissible in the Democratic Rule of Law that Mozambique is pursuing”.*

Curiously, this is neither the problem nor the central discussion raised in the action of unconstitutionality brought by the Ombudsman, but that the restrictions to the right to information should not be enshrined on the basis of indeterminate and unintelligible concepts, as the norm contained in no. 1 of article 4 of the Law on State Secrecy does. This provision is in contradiction not only with Article 56(3) of the Constitution but also with Article 11 of the Right to Information Law, so much so that the Constitutional Council recognizes this contradiction when it states, in the aforementioned Ruling No. 5/CC/2020 of 30 March, that this law provides in a different manner from the State Secrecy Law.

It is interesting and controversial that the Constitutional Council expressly recognises in its ruling *“that the historical evolution of the Mozambican State leads to the need for reflection on the revision of the Law on State Secrecy, with a view to adapting it to the spirit and values of a Democratic Rule of Law that Mozambique has embraced and materializes”.* With this argument of the Constitutional Council, there is no doubt that Article 4.1 of the State Secret Law is in contradiction with the Constitution of the Republic and the Law on the Right to Information.

The Constitutional Council avoided discussing the terms of the unconstitutionality of the rule on State Secrecy, implying that the definition of State secrecy and its limits are better enshrined

in the Law on the Right to Information, which can be used by the Law on State Secrecy, when, strictly speaking, the rule in Article 4(1) of the Law on State Secrecy is in contradiction with the Law on the Right to Information.

The State secrecy regime is important and must apply under the rule of law. However, it must be in harmony with the Constitution, the Law on the Right to Information and international human rights instruments such as the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.

Therefore, the Constitutional Council decided to perpetuate the prevalence of a law that violates the exercise of the right to information by not declaring the unconstitutionality of that provision contained in article 4(1) of the Law on State Secrecy that is contrary to the Constitution of the Republic. Ruling no. 5/CC/2020, of 30 March, thus functions as a judicial authorisation to violate the right to information, issued by the sovereign body which is especially responsible for administering justice in matters of a legal-constitutional nature.

- **Right to information during the State of Emergency**

Following the declaration of the State of Emergency through Presidential Decree no. 11/2020 of 30 March, ratified by the Parliament, through Law no. 1/2020 of 31 March, the Council of Ministers approved Decree no.12/2020 of 2 April on administrative implementation measures for the prevention and containment of the COVID-19 pandemic, to be in force during the State of Emergency.

The rule set out in Article 27(5) of Decree No. 12/2020 of 2 April, stipulated the following: *“During the duration of the State of Emergency, the media that broadcast information on COVID-19 contrary to the official ones are sanctioned”*.

This rule was repealed/eliminated by the Council of Ministers by means of Decree 14/2020

of 9 April, following contestation by civil society and the media which denounced the illegal limitation of the right to information and freedom of the press. The rule contained in Article 27(5) of Decree No 12/2020 of 2 April was not reflected in either Law No 1/2020 of 31 March, which ratifies Presidential Decree No 11/2020 of 30 March, or in the Law on the Right to Information and, above all, in the Constitution of the Republic.

Although the above-mentioned rule was repealed/eliminated by Decree 14/2020 of 9 April, the same decree established a dubious limitation of the right to information and, above all, with an intimidating content, by means of its article 37, which determined the following: *“Without prejudice to civil and disciplinary sanctions, the dissemination of false information on COVID-19 and failure to comply with the restrictive measures in the cases provided for in this Decree are punishable under the terms of the applicable legislation”*.

Therefore, it was notorious, the institutional effort, through the decrees of the Council of Ministers, to regulate and limit the exercise of the right to information during the State of Emergency declared in the framework of the prevention of the COVID-19 pandemic.

Poor provision of information on the payment of tuition fees in private educational establishments during the State of Emergency

Following the declaration of the State of Emergency and the consequent closure of public and private educational establishments, a dispute arose over the payment of tuition fees in private schools during the suspension of classes. Parents and guardians contested the collection of tuition fees during the period when there were no classes.

The Government of Mozambique, through the Ministry of Education and Human Development (MINEDH), has not provided concrete and enlightening information on this matter of high public interest. The case reached the courts as a result of the arbitrariness in the collection of

fees by private educational institutions.

At one point, MINEDH “washed its hands” on the matter of tuition fees, allegedly because this is an eminently private matter which should be settled between the parties involved (parents/guardians and private educational establishments), without interference from the State or the Government.

Education is primarily a State responsibility and the Government must regulate, guide and supervise the terms of action in the National Education System.

Therefore, the attitude of the Government in not providing clear and concrete information on the collection of fees in private educational establishments constitutes an unfounded denial of information and, thus, a violation of the fundamental right to information in the context of the right to education.

Lack of information on the funds allocated for the prevention of COVID-19 and on social protection during the State of Emergency

The Government received specific funds to finance the activities and actions within the scope of the COVID-19 Pandemic Response Strategy. However, citizens, especially the most vulnerable groups and small businesses, have been complaining that they are not benefiting from these funds and are not being properly informed about the exact criteria for accessing them.

According to Article 6 of the Law on the Right to Information: “the public and private entities covered by this Law have the duty to make available the information of public interest in their possession, publishing it through the various legally permitted means, which may make it increasingly accessible to the citizen, without prejudice to the exceptions expressly provided for in this law and other applicable legislation.”

Therefore, the failure to provide information of public interest concerning the funds channelled to contain COVID-19 and ensure the social pro-

tection of citizens constitutes a violation of the fundamental right to information.

- ***Right to information on the Reintegration Allowance for Members of the Assembly of the Republic (the Parliament) provided for in the Parliament budget for the year 2020***

In April 2020, the Parliament adopted its budget for the year 2020, which provides for a monetary amount for the payment of the Member of Parliament’s (MP’s) Reintegration Allowance, allegedly in the light of article 45 of Law 31/2014 of 30 December, which approves the MP’s Statute.

Civil society organisations and the press have warned society that this is too high an amount, illegally channelled, unreasonable and out of all proportion to the living conditions and income of most Mozambicans, especially in the context of the economic crisis caused by the COVID-19 pandemic.

Curiously, the Parliament, in face of widespread opposition from citizens to the MPs’ allowance, sought at all costs to conceal the documents containing the full content of the reintegration allowance. This issue has now been dealt with in secret, despite being a matter of unclassified public interest. In addition, the document approving the Member’s Reintegration Allowance is a resolution of the Parliament which, according to article 181 of the Constitution of the Republic, must be published in the Republic’s Official Gazette, for the general public. By not making available to the general public information on the MPs’ reintegration allowance, the Parliament is in gross violation of the Law on the Right to Information.

It should be noted that the Parliament is the author of both the Constitution of the Republic and the Law on the Right to Information, in the sense that it was the body that approved it. This behaviour by Parliament of denying information of public interest is worrying and frightening, bearing in mind that the issue raised has to do with limiting the exercise of the right to

information with an impact on various spheres of the citizen's life, in addition to calling into question transparency in the actions of the so-called "House of the People", whose example of respect for the laws it has approved should come from it.

- **Failure to provide information on the actions of the Police of the Republic of Mozambique (PRM's) and their accountability**

In the first half of the year, and especially in the context of the State of Emergency, there was much opposition from citizens and civil society organisations to the PRM's action on citizens' rights, with emphasis on the right to life, physical integrity and the right to liberty.

However, the Ministry of Interior did not provide information on the number of (disciplinary and criminal) cases brought against PRM officers who, during the first half of 2020, especially the State of Emergency period, were involved in committing illegal acts. These acts translate into arbitrary arrest, assault, excessive zeal, shooting and murder of defenceless citizens suspected of committing crimes as well as violations of the State of Emergency measures. It should be recalled that PRM detained up to 50 children in Nampula City for alleged violation of the State of Emergency measures, but never clarified the circumstances of this arbitrary detention. The society experienced moments of terror due to the actions of the PRM during the five months of the State of Emergency, where fear for the notorious Mahindra brand police car stood out.

Even under pressure from civil society organisations and the media, the PRM has never provides information to the public regarding the arbitrariness committed by its agents.

- **Right to information and the attacks in Cabo Delgado**

In addition to the COVID-19 pandemic, the first half of 2020 was marked by intensified terrorist attacks in the districts of central and northern Cabo Delgado, with the district headquarters of Quissanga, Macomia, Muidumbe (Namacandé) and Mocímboa da Praia being invaded. The military insurgency that began in October 2017 has already caused the death of more than 1,000 people and the displacement of more than 350,000, in addition to the destruction of houses and cultures of the population, hospitals, schools and other public and private infrastructure.

In face of escalating armed violence, civil society organisations, the media, academics and society at large have pressed the government to provide relevant and public interest information on what is happening in Cabo Delgado, including the strategy for ensuring public security, protecting the human rights of the population and assisting displaced persons.

In the meantime, the government has had several difficulties in providing information under the law, a situation which has left the population in a state of distress¹. Moreover, it was the government itself that created obstacles so that the right to information in the context of the attacks in Cabo Delgado was not properly exercised. Silence, intimidation and a ban on press coverage of the war were the main obstacles put in place by the government to prevent the right to information from being exercised.

In April, the government hired South African mercenary company Dyck Advisory Group (DAG) to support the Defence and Security Forces (FDS) in the air combat against the terrorists who are carrying out attacks in Cabo Delgado.

¹ <https://cddmoz.org/ataques-armados-em-cabo-delgado-a-guerra-silenciosa-e-silenciada-que-deixa-milhares-de-pessoas-desesperadas/>

Before DAG's arrival, Russian mercenaries were involved in the operational theatre of Cabo Delgado, but were never able to contain the terrorists' advance. Once again, several voices, including civil society organisations, requested detailed information on hiring private military companies and criticised the option of using mercenaries, a practice discouraged by the African Union (through the OAU Convention on the Elimination of Mercenarism in Africa)² and the United Nations (through the International Convention against the Recruitment, Use, Financing and Training of Mercenaries)³.

But the government has never spoken out on the hiring of private military companies and the involvement of mercenaries in the operational theatre of Cabo Delgado, a practice that poses a serious threat to the independence, sover-

eignty and territorial integrity and harmonious development of the state⁴.

Still in the context of the fight against terrorism, the government has never commented on complaints and allegations of human rights violations by the FDS. In addition to press reports, last April, 17 national and international civil society organisations wrote a letter to the President of the Republic, Filipe Nyusi, in which they expressed their concern about the increase in police violence against defenceless civilians in Cabo Delgado, which is attributed to members of the Rapid Intervention Unit (UIR) and the Special Operations Group (GOE). The organisations also denounce the "harassment and intimidation" of civil society groups and journalists working in that province ravaged by terrorist attacks since October 2017⁵.

DENIAL OF THE RIGHT TO DEVELOPMENT OF CITIZENS AND LOCAL COMMUNITIES

The Constitution of the Republic and the African Charter on Human and Peoples' Rights prescribe norms that promote and safeguard the right to development and the right not to be poor.

As Article 22 of the African Charter on Human and Peoples' Rights states,

1. *All peoples have the right to their economic, social and cultural development, with strict respect for their freedom and their identity, and to the equal enjoyment of the common heritage of humanity.*
2. *States have a duty, separately or in cooperation, to ensure the exercise of the right to development.*

From the point of view of the Constitution of the Republic, the right to development and the right not to be poor as a human right result from the systematic interpretation of the

rules on fundamental rights and freedoms, especially the rules on economic, social and cultural rights. Particular attention should be paid hereto the fundamental objectives of the State, namely: *"the building up of a society of social justice and the creation of the material and spiritual well-being and quality of life of its citizens; the defence and promotion of human rights and equality of citizens before the law"* - enshrined in article 11 c) and e) of the Constitution of the Republic, respectively. These constitutional norms justify the safeguarding and guarantee of the right to development, whose obstacles to its materialisation must be removed.

Mozambican citizens in general, with particular attention to vulnerable groups and local communities affected by the exploitation of natural resources, have been victims of denial of the right to development and dragged into forced impoverishment, in a clear violation of the hu-

² <https://cddmoz.org/?s=UNI%C3%83O+AFRICANA+%C3%89+CONTRA+O+USO+DE+MERCEN%C3%81RIOS+>

³ <https://cddmoz.org/?s=USO+DE+MERCEN%C3%81RIOS+IN+CONFLICT+ARMADO>

⁴ <https://cddmoz.org/perante-o-silencio-do-governo-as-novidades-sobre-a-guerra-contra-o-terrorismo-que-chegam-aos-mocambicanos-atraves-dos-mercenarios/>

⁵ <https://cddmoz.org/17-organizacoes-nacionais-e-internacionais-escrevem-ao-presidente-da-republica-sobre-a-violencia-policial-em-cabo-delgado/>

man right not to be poor. This situation is due to the barriers imposed on them in order not to benefit, according to the law, from investments in the exploration of natural resources that they also own, such as social funds that are often excessively allocated to leaders to the detriment of the people.

The right to development and the action of the Maputo City Council in the context of the reorganisation of the city - "TXUNA MAPUTO"

The Maputo City Council (CMM) decided to reorganise and carry out the clean-up of the city, essentially in the context of the "TXUNA MAPUTO" project, a key promise in the electoral manifesto of the current Mayor, Eneas Comiche.

At the beginning of 2020, especially with the declaration of the State of Emergency, the project to reorganise the country's capital gained in strength as city dwellers were banned from taking to the streets in clusters to protest against any decision by municipal authorities.

One of the main targets of the CMM for the reorganization and cleaning of the city are the informal markets and the so-called street vendors, generally made up of poor people who depend on informal business for their own survival. The strategy of the CMM is to prohibit the sale of products on the street and in unorganized informal markets, as well as to close the famous stalls, especially those selling alcohol on the pavements, for violation of the municipal posture and regulations, which is salutary. However, the CMM's action was not and has not so far been accompanied by a strategy of creating alternative sources of income in the short and medium term to ensure the survival, with minimum dignity, of the families of street vendors and informal markets covered by the "TXUNA MAPUTO" project. In other words, the CMM has not created the conditions for families whose survival depends on informal trade to enjoy the most elementary economic and social rights such as food, education and health. It is important to remember here that many of these victims have been carrying out informal

trade activities on the streets for years under the unwavering gaze of the municipal authorities, which have often issued permits for the shacks, now destroyed, to operate and pay fees to the coffers of the CMM.

Strangely and curiously, the officers of the Municipal Police, as a way of guaranteeing the materialisation of the order prohibiting informal trade, have been guided by the arbitrary seizure of the products of street vendors. However, the seizure of products and other articles from street vendors constitutes a looting of the people, as this practice is not understandable, besides being abusive and without any kind of registration for identification purposes in case of complaint. In many situations, these goods are seized with force and the vendors are subject to humiliation.

Strictly speaking, the logic of seizure is not understood and much less the destination of the seized products is known, there being strong suspicions that the beneficiary is the CMM's own and/or the City Police officers individually considered, in a context of sharing of other people's assets.

Curiously, this practice tends to be passed on to other municipalities in the country, especially in provincial capitals. After all, more than reorganising municipalities, it is an easy way to acquire the assets of the poor using public force, that is, public authority.

Although it is legitimate and legal to ban informal trade on the streets and pavements of the City of Maputo, the sanction or method of seizure of the assets of the poor who violate this ban has been arbitrary, unjust, unreasonable and not proportional to the safeguarding of human dignity, nor to the fundamental objectives of the Mozambican State, which are reflected in the following: "the building up of a society of social justice and the creation of the material and spiritual well-being and quality of life of its citizens; the defence and promotion of human rights and equality of citizens before the law" - enshrined in article 11, paragraphs c) and e) of the Constitution of the Republic, respectively.

Therefore, the CMM's action on informal vendors in the context of the reorganisation and cleanliness of the city calls into question the right to development of several families who see their opportunities to have an honest source of income for their own sustenance and to enjoy the right not to be poor in a Democratic Rule of Law and social justice.

The right to development of communities affected by the exploitation of natural resources

The Mozambican state has signed several contracts with companies for the exploitation of natural resources, on the grounds that investments in this area will guarantee the economic and social development of Mozambique and its citizens, with particular attention to the communities affected or directly affected by extractive industry projects.

Investments for the exploitation of natural resources in Mozambique put a lot of pressure on the land. In recent years, Mozambique has been the scene of transactions or transfers of land extensions to large companies, mostly multinationals. This process involves the expropriation and loss of land from local communities living in the areas where the resources are being exploited. A worrying fact is that the loss of land rights by affected communities has not been accompanied by proper compensation, fair compensation or resettlement, even though these local communities are also the owners of the natural resources being exploited.⁶

The exercise and enjoyment of the right to use and benefit from land (DUAT), whether for housing or economic purposes, represents for citizens a form and source of development and achievement of social welfare, an objective that results from the preamble of the Land Law, Law no. 19/97 of 1 October and, above all, the Constitution of the Republic.⁷ Thus, one of the

main challenges for the socio-economic survival of Mozambicans, especially young people, women and local communities, is the struggle for the acquisition of a piece of land that will allow them to build an adequate house and/or carry out basic economic activities in order to have a life with a minimum of dignity and quality.⁸

Land rights in the Mozambican legal system are not yet seen or treated from a human rights perspective, despite the fact that they are extremely important for safeguarding human dignity. Moreover, their unfounded limitation or violation implies the deprivation of the enjoyment of other human rights and fundamental freedoms, such as the right to decent housing, provided for under article 91 of the Constitution of the Republic.

The rights to decent housing and property are clear examples of certain fundamental human rights that are intrinsically linked to the DUAT, whose unfounded limitation also implies the deprivation of the subject's capacity for self-determination and self-fulfilment and the possibility of developing his or her own potential.

The unjust or illegal limitation of the enjoyment of the DUAT by its holders, especially when intended for housing and economic activities, leads many families to marginalisation and social exclusion, as it hinders access to housing and nullifies the possibilities of enjoying a life with the minimum of dignity.

During the first half of 2020, the CDD received various information and complaints from communities that are still experiencing the drama not only of the violation of their rights over land, but also of the failure to pay in full the indemnities and compensations to which they are entitled, the failure to materialize the right to direct benefits from the venture in question

⁶ It is the example of the resettled community in Cateme and 25 de Setembro in Moatize, Tete Province in 2009, due to coal mining by mining company Vale Mozambique.

⁷ Cf. Article 109(3) of the Constitution of the Republic of Mozambique (CRM).

⁸ It is important to remember here that a considerable part of citizens at national level find their source of income and survival through the machambas and the informal market, through the practice of trading various products and services in their small shops, the so-called informal stalls and stalls in certain markets, along the streets and other places on the public highway.

and its socio-economic impacts resulting from the exploitation of natural resources.

It is in this context that local communities complain that they are not benefiting from the 2.75% percentage of revenues generated by both mining and oil extraction that should be earmarked for community development programmes in the areas where the respective projects are located, under Article 20 of the Mining Law and Article 48 of the Petroleum Law.

The communities also complain about the lack of fair resettlement and of living in precarious conditions and without alternative sources of income for their survival, especially the communities affected by the coal mining projects in the districts of Moatize and Marara, in Tete Province.

In Mozambique, at least until the first half of 2020, there are no examples of improved living conditions for local communities, due to the exploitation of natural resources. The government's speech continues to stress that communities must wait patiently for the benefits, but no one says how long they should wait.

However, in the light of Article 5 of Decree No. 31/2012 of 8 August, which approves the Regulation on the Resettlement Process Resulting from Economic Activities, "the resettlement aims to boost the socio-economic development of the country and ensure that the population affected has a better quality of life, social equity, taking into account the sustainability of physical, environmental, social and economic spaces".

The CDD learned through press releases published by the Mozambique Bar Association

(OAM) that this body of the administration of justice has initiated legal proceedings in the context of public interest litigation in defence of the rights of communities affected by the coal mining activities of the Brazilian mining company Vale Moçambique and the Indian mining company, JINDAL, as well as in defence of communities affected by the investment in natural gas in Palma - initially by the now extinct US oil company, Anadarko and now by the French, Total.

In these cases, where the administrative court ruled in the first half of 2020, the problems of land conflicts, unfair resettlement, lack of fair indemnity and compensation, and lack of direct benefits from the undertakings in question in favour of the communities, such as the question of the percentage of the 2.75% to which the communities are entitled to, by virtue of the revenue generated from mining and oil extraction, are notorious.

Therefore, the rulings, handed down in the first half of 2020⁹, in the context of the public interest litigation brought by the OAM, reveal the existence of violations of a range of human rights and social and economic conditions relevant to the realization of the right to development of communities affected by the exploitation of natural resources.

Citizens' right to development and the question of reintegration subsidies for major state leaders

Law 31/2014 of 30 December, which approves the Statute of the Member of Parliament, establishes the Member of Parliament's reintegration allowance in the following terms:

1. *A Member of Parliament shall be entitled, when his or her term of office*

⁹ In Ruling No 91/2019, concerning Case No 58/2018 - 1st, the First Chamber of the Administrative Court decided to dismiss the application by the OAM for a declaration of nullity of the DUAT unlawfully attributed to the exclusive exploitation by Anadarko without acceptable grounds. By Ruling No 02/TAPT/20 of 4 March, the Administrative Court of Tete Province decided to uphold the OAM's request and ordered the mining company JINDAL Mozambique Minerals, Lda to resettle the seventy (70) new families who emerged during the implementation of the project, to resettle the families affected by the Cassoca Community mining project, within (6) months, pursuant to Article 144 of Law 7/2017 of 28 February, in conjunction with Articles 2 and 5 of the Regulation on the Resettlement Process Resulting from Economic Activities, approved by Decree No.31/2012, of 8 August. Ruling 163/2019, of 31 December, relating to Case 152/2018 - 1st, which ends this case at first instance.

ends and the reason for the termination is not disciplinary or criminal, to a reintegration allowance of 75% of the basic salary for each year of the exercise of his or her mandate.

2. *The payment of the reintegration allowance does not require any contributions.*
3. *Reintegration allowance is paid in a single tranche.*

On the basis of the above legal provisions, the Parliament adopted in April 2020 its budget for the year 2020, in which large monetary amounts are foreseen for the payment of the Member of Parliament's reintegration allowance, estimated at around 4,000,000.00MT (four million meticaís) for each of the 250.

The reason why Members of Parliament must be reintegrated, with recourse to a cash allowance, after the end of their term of office has no legal basis in Law 31/2014 of 30 December, so that article 45(2) of the law in question determines that the payment of the reintegration allowance does not presuppose any contributions, so that the legal basis for the origin of the said amount in the State coffers is not understood.

Strictly speaking, under Law 31/2014 of 30 December it is not possible to know the basis for calculating the reintegration allowance at 75% of the basic salary for each year of the exercise of the mandate, nor why it should be paid in a single tranche.

There can therefore be no doubt that this is a situation of unjust enrichment on the part of Members of Parliament. It is therefore an enrichment at the expense of the impoverishment of the people they represent, especially the most vulnerable groups with difficult access to the most basic rights such as health, education, water, adequate food, housing and employment. In fact, it is an institutionalised theft, in this case, by the highest legislative body of the country, with the status of representative of

the sovereignty that resides in the people. The authorisation of payment of this expenditure by the competent authority, in this case the Ministry of Economy and Finance, constitutes an act of confirmation of institutionalised theft.

But it is not only the Members of Parliament who in the first half of this year acted to undermine citizens' right to development. This practice also followed the implementation of the legislative package on decentralisation adopted in the context of the general elections held in October 2019.

Large sums of money have been channelled into ensuring the organisation and functioning of the State representative bodies in the province. This process consisted in the effective constitution of the State Secretariats in all the provinces and the implementation of their operation, with a luxury structure, from the support team, renting of premises, salaries and significant subsidies for a function much contested by society, especially when compared to those of the Governors of the Provinces, due to the similarities and overlaps of activities and competencies between them and the Secretaries of State.

The cost of organising, running and maintaining Secretaries of State, including the high subsidies that are given to Secretaries of State and their more direct collaborators or advisors, constitutes a theft from the pocket of the citizen who finds him/herself increasingly poorer to enrich their leaders.

Citizens' right to development in the context of the demolition of people's homes in Ricatla, Marracuene District

In April 2020, in the middle of the State of Emergency, the Marracuene District Administration carried out a process of demolition of some 130 houses and works under construction by several family households in the Ricatla area of Marracuene District, allegedly because they were erected on a plot whose DUAT belongs to the Mozambique Agrarian Research Institute (IIAM)¹⁰.

¹⁰ <https://cddmoz.org/nao-a-demolicao-de-casas-no-distrito-de-marracuene-2/>

However, the families affected were not properly informed about the demolition process in accordance with the applicable law. Furthermore, the families affected have never been shown the DUAT allegedly attributed to IIAM over the plot of land in question, in order to confirm that it is the legitimate holder of the DUAT over that space. More seriously, the Marracuene Administration carried out the demolition of the houses and works under construction during the State of Emergency, which, by law, does not allow people or families to be displaced in such circumstances. Furthermore, there was no urgency to demolish the houses but to support or guarantee a roof for the families, due to the situation of a State of Emergency that characterised the country at that time and whose greatest command was “Stay at home”.

Some of the affected families claim to be native to that land in Ricatla and some had occupied that plot for many years, so the fact that the

Marracuene Administration has not demonstrated the existence of a DUAT legally allocated in favour of the IIAM raises strong suspicions of land seizure of the families affected by the demolition of houses.

It has never been demonstrated that the DUAT and its certificate (land tenure), by the way, attributed to IIAM on the same parcel of land as the demolished houses in Ricatla, is lawful. Similarly, the legality of the process on the demolition of some 130 houses and works under construction in Ricatla has never been demonstrated. The families affected are currently marginalized, homeless, landless and with members scattered in search of shelter.

Therefore, rather than a situation of land theft, illegal eviction and violation of the fundamental right to adequate housing, we are faced with a blatant denial of the right to development of those families who have been thrown into extreme poverty.

PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF PRM'S ACTIONS

From the point of view of the Constitution of the Republic, the primary function of the PRM is to guarantee law and order, to safeguard the security of persons and property, public tranquillity, respect for the democratic rule of law and strict observance of the fundamental rights and freedoms of citizens, one of which is the right to life, physical integrity, liberty and security, as set out in articles 253, 40 and 59 of the Constitution of the Republic. These fundamental rights and freedoms are also protected by the African Charter on Human and Peoples' Rights, as well as by the International Covenant on Civil and Political Rights to which Mozambique is part of. According to Article 4 of the African Charter, *“the human person is inviolable. Every human being has the right to respect for his life and the physical and moral integrity of his person. No one may be arbitrarily deprived of this right”*. Article 6, § 1 of the International Covenant on Civil and Political Rights states: *“The right to life is inherent in human person. This right must be protected by law. No one*

may be arbitrarily deprived of his life.”

Furthermore, all the infra-constitutional internal legislation that regulates the activity of PRM confers on this Public Administration body the responsibility to guarantee public order and tranquillity, based on respect for citizens' rights and freedoms.

Moreover, the Constitution of the Republic, as a means of strengthening the rights, freedoms and guarantees of citizens, states in Article 5(2) that *“The State shall be liable for any damage caused by the unlawful acts of its servants in the performance of their duties, without prejudice to the right of return under the law.”*

Contrary to what the legal principles and norms establish on the criteria for the action of the PRM, this body of the Public Administration has been guided, over and over again, by arbitrary acts and abuse of authority which result in the violation of human rights.

In the first half of the year, particularly in the period of the State of Emergency, the PRM committed several human rights atrocities with impunity, ranging from arbitrary arrests, assaults of various kinds, shootings and even the murder of defenceless citizens suspected of committing crimes or disobeying the measures of the State of Emergency:

- On the afternoon of 11 February 2020, in the middle of the public highway, PRM agents, in this case, the Protection Police, shot dead a young man named Zaqueu Filmão Ubisse, about 24 years old, in a district of Matola City, Maputo Province, allegedly because, when questioned by the authorities, he had refused to show his driving licence. PRM's attitude was violent, contrary to the law and completely disproportionate to immobilise the victim, even if it was true that he had run away for not showing his driving licence. In fact, it does not fit in the duties of the Protection Police the tasks of road traffic management and control. Therefore, there was a violation by the PRM of the maximum human right, which is life, protected by law, as demonstrated above. Subsequently, criminal proceedings were initiated in the 5th Section of the Judicial Court of Maputo Province, with reference to: *Case no. 40/2020*. However, the same has not yet known its outcome.
- At the end of April 2020, the national press, including international¹¹ television, reported that PRM agents had beaten to death a 44-year-old citizen named Abdul Razak. The victim was allegedly assaulted because he intervened in a confrontation between police officers and a group of teenagers who were playing football on a field in the suburban area of Munhava, in Beira City. After the autopsy, the medical report revealed that Abdul Razak died from blunt force trauma. According to witnesses and the victim's family, two PRM

agents were involved in the murder. It is alleged that the aggression which resulted in the death of the victim was due to non-compliance with the State of Emergency, specifically the agglomeration of people without wearing a mask. The family reported that the victim was a family member of some adolescents who were being assaulted by the police allegedly because they were violating the social distancing measures imposed by the State of Emergency. In fact, the police, before shooting at point-blank range at a defenceless citizen, disproportionately assaulted the said adolescents who were playing ball. They were then arrested and the real outcome of the case for their accountability under the law was not yet known. In response, the PRM General Command repudiated and condemned the criminal act of the agents in question, claiming that it was a flagrant disregard for the law and the professional ethics of the corporation. In connection with this case of police brutality, the Mozambique Democratic Movement (MDM) party called for justice and denounced other similar atrocities in other parts of Sofala Province, such as the case registered in Nhamatanda District, where from 9pm, all citizens were banned from exercising their freedom of movement, under the risk of being attacked by PRM agents. The CDD knows that this practice of illegal curfews has also taken place in several districts of Maputo City.

- In early June 2020, PRM agents shot four citizens suspected of committing a crime in Maputo City. This took place in the lower part of the city, on Avenida 10 de Novembro, and therefore stopped traffic and created panic among the citizens. Immediately, PRM called the press and informed that these were criminals preparing to commit another criminal act which was aborted by the

¹¹ DW

prompt intervention of the authorities. The PRM also informed that the alleged criminals, when intercepted in the car in which they were being transported, opened fire on the police officers, and they responded with more than 20 shots. In fact, the victims' car was completely sifted with bullets. However, from the images displayed by the press, only marks of the PRM shots were seen on the victims who were in the car with the windows closed. This situation generated a lot of mistrust, as there was no sign of gun shots being fired at the vehicle carrying the police officers. This was in fact another case of disproportionate use of police force that culminated in the death of supposedly defenceless citizens. From what is in the public domain, no investigation has been carried out to clarify the facts in question.

- Still in the first half of the year and in the context of monitoring compliance with the measures imposed to prevent the spread of COVID-19, the PRM, in a further act of arbitrariness and abuse of power, detained about 50 children in the city of Nampula for alleged violation of the State of Emergency. The attitude of the police was widely condemned by society and the children were returned to freedom. However, it was never clear why the PRM acted in violation of the law and children's rights. The best interests of the child constitutionally enshrined and established in both the African Charter on the Rights and Welfare of the Child and the Universal Charter on the Right of the Child were not respected by PRM. In this flagrant case of violation of the human rights of children, nothing appears in the public domain about any investigation that has been carried out for the accountability of the PRM agents involved in the detention of children.

- The PRM is the public administration body that committed the most human rights abuses in the first half of the year, particularly in the period when the State of Emergency was in force¹¹. During that time, the PRM assaulted, murdered and detained thousands of citizens all over the country. In fact, several citizens who asked for anonymity denounced to the CDD that they had to pay between 1,000,00Mt and 5,000,00Mt (one thousand meticais and five thousand meticais) to be released. In fact, in many of the arrests, more than to ensure respect for the measures of the State of Emergency, the aim was to extort the citizens. One proof that the arrests were arbitrary is that several citizens who failed to pay the bribe for their release, once presented to the Court for trial, were released for insufficient evidence. PRM agents arrested and assaulted citizens for not wearing masks, even when found on public roads in situations where they are not crowded, such as consuming alcoholic beverages outside the shops in small groups of two or three people. In fact, there was never a legal rule during the State of Emergency prohibiting the consumption of alcoholic beverages outside of establishments and agglomerations, so it is not clear which law the PRM was applying.

For the above reasons, the PRM's action raises some questions: What kind of human rights training do PRM agents receive? Why do they go unpunished in face of the atrocities they commit? Why does the PRM brutalize citizens instead of respecting their constitutional function of guaranteeing public order and tranquillity, strict respect for the law and the fundamental rights and freedoms of citizens?

The PRM as a Public Administration body must respect the Constitution of the Republic, which states in its Article 248 that

¹¹ <https://cddmoz.org/cdd-condena-o-assassinato-de-dois-cidadaos-por-agentes-da-policia-na-cidade-de-lichinga-e-exige-responsabilizacao/>

1. *“The Public Administration serves the public interest and in its actions, it respects the fundamental rights and freedoms of citizens”.*
2. *“Public Administration bodies shall obey the Constitution and the law and act with respect for the principles of equality, impartiality, ethics and justice”.*

In the same sense, the PRM must respect the specific ordinary legislation that governs it, including the rules of procedures. The purpose of the law establishing the PRM is to safeguard citizens’ rights and freedoms by ensuring public peace and order.

Not least, it is the duty of the PRM to respect the African Charter on the Values and Principles of Public Service and Administration, ratified by the Mozambican State through Resolution 67/2012. In article 3, this instrument enshrines principles of public administration action relevant to the case at hand, namely: impartiality, fairness and due process in public service delivery, professionalism and ethics in public service and administration; protection and promotion of the rights of users and agents of the public service; institutionalisation of a culture of accountability, integrity and transparency in the public service; effective, efficient and accountable use of resources - (see respectively article 3, paragraphs 3, 6, 7, 8 and 9 of the African Charter on the Values and Principles of the Public Service and Administration).

The African Charter on the Values and Principles of Public Service and Administration has the particular importance of imposing certain behaviours and principles that should be carried out by the Public Administration, which includes the PRM, with regard to compliance with the principles of legality and human rights.

The PRM is a public body and paramilitary force, integrated in the Ministry of Interior, constituted only by Mozambicans who meet the requirements of the legislation. According to the Constitution of the Republic, the PRM’s function is to guarantee law and order, to safeguard the security of people and property, public tranquillity, respect for the democratic rule of law and strict observance of the fundamental rights and freedoms of citizens, one of them being the right to life.

In the exercise of its functions, the PRM is entitled to the possession and use of individual and collective weapons and other means appropriate to the performance of its task. In face of any illegitimate resistance, or in the event of disturbance of public order and tranquillity, its members are allowed to use the force strictly necessary, if other means of persuasion are not sufficient.

However, the use of force and means must be rational and proportionate to the seriousness of the danger. And, in accordance with the Police Regulations, the PRM member, in the exercise of his/her duties, must act in accordance with the principles of expediency, congruence and proportionality in the use of the means at their disposal; and will only use force and firearms in situations where there is a rationally serious risk to his life or that of third parties, or in those circumstances where he may objectively presuppose a serious risk to security in accordance with the aforementioned principles.

The members of PRM are personally and directly responsible for acts that, in their professional actions, infringe the legal and regulatory rules governing police activity and the principles set out therein, without prejudice to the State’s responsibility under the law.

EXERCISE OF FREEDOM OF THE PRESS AND FREEDOM OF EXPRESSION

The Constitution of the Republic enshrines the right to freedom of the press and freedom of expression in Article 48, partly as interconnected fundamental freedoms and corollary to the right to information. Freedom of the press and freedom of expression are also legally enshrined in international human rights instruments, the guiding principles of which served as a source of inspiration for the drafting of the Constitution of the Republic, as can be seen from article 9 of the African Charter on Human and Peoples' Rights and article 19 of the International Covenant on Civil and Political Rights. Moreover, article 43 of the Constitution of the Republic states: *"The constitutional precepts relating to fundamental rights shall be interpreted and integrated in accordance with the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights"*.

The exercise of freedom of the press and expression is based on the principle of the democratic rule of law enshrined in article 3 of the Constitution of the Republic, which states: *"The Republic of Mozambique is a Rule of Law, based on pluralism of expression, democratic political organisation, respect for and guarantee of fundamental human rights and freedoms"*.

However, contrary to the standards and principles set out above, in the first half of 2020, the exercise of freedom of the press and freedom of expression was violated strongly and constantly.¹³ These violations occurred in the face of a lack of action on the part of the relevant institutions for the promotion, respect, protection and realisation of freedom of the press and expression, namely the PGR, the Supreme Council of the Media (CSCS), the Information Office (GABINFO), the National Journalist Union (SNJ) and the Parliament.

These institutions have done little or nothing to prevent or resolve the cases of violation of

the freedoms of the press and expression listed below, in particular the PGR which has contributed directly to perpetuating the violations, notwithstanding the fact that these institutions have specific legal responsibility to safeguard the fundamental freedoms in question.

- On 7 April 2020, Ibraimo Abu Mbaruco, a journalist and announcer for Palma Community Radio, disappeared in strange circumstances on his return from another working day and his whereabouts are still unknown. However, since then the press has given indications that this journalist has supposedly been abducted by members of the Defence and Security Forces (FDS) in Palma. In fact, MISA - Mozambique, in its statement on this matter, published on 9 April 2020, said that *"moments before, Ibraimo Mbaruco had sent a short message (SMS) to one of his colleagues, informing that 'he was surrounded by the military'".* He said he had *not answered the calls since then, although his phone was still communicable"*. Furthermore, MISA Mozambique, in its report on the disappearance of journalist Ibraimo Mbaruco in Palma (Cabo Delgado)¹⁴, said that *"a police officer assigned to the District Command of Palma, confided to MISA Mozambique, in anonymity, that "it was, in fact, the Armed Forces of Defence of Mozambique (FADM) that took the journalist"*, and added that he was aware that Ibraimo Mbaruco was taken from Palma to Mueda, where the Armed Forces have an interrogation room.
- In the first half of 2020, the PGR formalised the initiation of criminal proceedings against the journalists Fernando Veloso and Matias Guente, respectively Director and Executive Ed-

¹³ <https://cddmoz.org/dia-mundial-da-liberdade-de-imprensa-violacao-dos-direitos-dos-jornalistas-e-tentativas-de-silenciamento-marcam-as-celebracoes-em-mocambique/>

¹⁴ <https://www.misa.org.mz/index.php/destaques/noticias/77-relatorio-sobre-o-desaparecimento-do-jornalista-ibraimo-abu-mbaruco-em-palma-cabo-delgado>

itor of *Canal de Moçambique*¹⁵. This is case no. 85/11/P/2020, which is taking place in the 7th Section of the Maputo City Prosecutor's Office, in which the two journalists were charged with the crime of violating State secrets, which is provided for and punishable under the Criminal Code in force in Mozambique. More than these journalists, it is the newspaper *Canal de Moçambique*, which is being prosecuted. In fact, the criminal case is related to the publication, in the 11 March edition of this year, of a report on the existence of a confidential agreement/contract signed on 28 February 2019, between the Ministries of National Defence and Interior and the oil companies Anadarko (now Total) and Eni (now Mozambique Rovuma Venture - MRV), which exploit natural gas in the Rovuma basin, in Cabo Delgado. The Mozambique Channel had access to a copy of parts of this confidential contract, which reveals acts of corruption and abuse of power in the actions of the public administration bodies concerned, and published within the framework of the Democratic Rule of Law and the legislation on freedom of the press in force, with emphasis on the Constitution of the Republic, Law 18/91 of 10 August (Press Law) and the Law on the Right to Information. According to the confidential contract in question, the two ministries deploy agents of the Rapid Intervention Unit (UIR) and military personnel of the FADM to protect the operations of oil companies, including their staff and facilities. In return, the multinational companies make monthly payments to the Ministry of National Defence which, in turn, sends the sums, in the form of additional remuneration, to the FDS personnel deployed on the ground to repel attacks by terrorist groups against oil companies' interests. *Canal de Moçambique*

complained that this confidential contract was not approved by the Administrative Court; that the money paid by the oil companies was not being channelled to the Treasury, but to an account opened for that purpose by the Ministry of National Defence; and that the FDS staff deployed were not receiving the additional remuneration promised. In reaction, on 17 May the Ministry of National Defence sent a communication to *Canal de Moçambique* accusing it of releasing a document classified as confidential and of jeopardising the security of the State. Instead of investigating the legality of the confidential contract, as well as the pressing issues of that contract, within the framework of the rules of action of the Public Administration and the oil companies in Mozambique, the PGR decided to criminally prosecute freedom of the press and of expression outside the constitutional norms and principles that guarantee respect for fundamental rights and freedoms.

- On 14 April 2020, Hizdine Achá, a journalist from Stv (the largest private television channel in Mozambique) based in Pemba, was arbitrarily arrested and taken to the police station by members of the UIR and the Special Operations Group (GOE), where he was kept for a few hours, threatened and forced to erase on his mobile phone the images he recorded of police violence against civilians in the Paquitequete neighbourhood, in the capital city of Cabo Delgado, as part of his journalistic and democratic citizenship work.
- The journalist Omardine Omar, of the digital newspaper *Carta de Moçambique*, was arrested in strange circumstances on 25 June by PRM agents allegedly for disobeying the measures imposed by the State of Emergency,

¹⁵ <https://cddmoz.org/nao-a-perseguiçao-de-jornalistas-e-seja-urgentemente-arquivado-o-processo-crime-contra-o-canal-de-mocambique/>

having spent three days in detention, first at the 7th Police Station of PRM in Maputo and then at the Provincial Penitentiary of Maputo (former Central Prison of Maputo)¹⁶. During this period, the journalist was isolated from everything, without being heard and without the right to a lawyer. After his release, due to pressure exerted by *Carta de Moçambique* on the Justice authorities, Omardine Omar was tried in a summary criminal trial with obscure contours and sentenced to be replaced by a fine.

- Also in the first half of 2020, in a clear act of contempt and discrimination against the private press, the PRM General Command, without sufficient legal basis, decided to exclude private and/or independent media from the coverage of some weekly briefings. For the coverage of these weekly briefings, the General Command of PRM decided to convene only *Televisão de Moçambique* (TVM) and *Rádio Moçambique* (RM), two public bodies.
- MISA- Mozambique, in its Half-Year Activity Report for 2020, refers to 14 cases of violation of freedom of the press and expression during the period under review. Most of these violations were perpetrated by PRM, through threats, physical assault and arbitrary arrests.
- It should be noted that during the first

half of the year, journalists were virtually banned by the FDS from covering and investigating the terrorist attacks in Cabo Delgado¹⁷.

The public discourse of the Government of Mozambique, and in particular of the President of the Republic of Mozambique, with regard to freedom of opinion, through the exercise of freedom of the press and expression, represented a dead letter, a purely theoretical political will without practical force at least in the first half of 2020. When he took office for the second term on 15 January 2020, the President of the Republic made a public commitment to do everything possible to ensure respect for human rights and differences of opinion as a value that should be encouraged, because it generates alternatives in the solution of the country's problems.

Freedom of expression and of the press are indispensable conditions for the full development of democratic society and the human person. These freedoms are the cornerstone of any free and democratic society, as they are the condition and the vehicle for the exchange and development of opinions.

Freedom of expression is a necessary condition for the realisation of the principles of transparency and the promotion and protection of human rights. A free, uncensored and unimpeded press is essential in any society to guarantee freedom of opinion and expression and the enjoyment of other citizens' rights and freedoms.

PROTECTION OF HUMAN RIGHTS DEFENDERS

The deterioration of the human rights situation and the democratic rule of law that characterised the first half of 2020 has, of course, extended to the intensification of threats, harassment and violations of the rights of human rights defenders in Mozambique, with particular attention to journalists, activists and civil

society organisations, including independent *media*.

Despite the fact that human rights defenders have their own status and specific protection under the UN instruments and mechanisms for the protection of the rights of human rights de-

¹⁶ <https://cddmoz.org/cdd-condena-detencao-violenta-dojournalista-omardine-omar-e-exige-que-sejaimediatamente-restituido-a-liberdade-2/>

¹⁷ <https://cddmoz.org/bispo-de-pemba-em-discurso-directo-cabo-delgado-vive-uma-situacao-de-isolamento-e-nem-parece-que-fazemos-parte-de-mocambique/>

fenders, as well as at the level of the African Commission on Human and Peoples' Rights, they are subjected to threats, defamation campaigns, arbitrary arrest and ill-treatment. Many are at risk of violent attack and murder by criminal gangs, including at the state organs or entities.

The hate speech against critics of poor governance and human rights defenders was a landmark in the first half of 2020, and it had as protagonists, public figures, some of whom were close to the President of the Republic and had prominent roles in the Public Administration. This is the case of the Chairman of the Board of Directors (CEO) of the National Science and Technology Parks Company, Julião Cumbane, who even advised the government to use "extra-legal" means to silence journalists reporting on terrorism in Cabo Delgado¹⁸.

Social networks, especially Facebook, have been the mechanism most used by these figures, better known as "Digital Militiamen".

Journalist Gustavo Mavie, whose election to the Central Public Ethics Commission has generated protests and a wave of public outrage, has also been marked by strong attacks of the intimidating type against human rights defenders, including civil society organisations. The Centre for Public Integrity (CIP) has been one of its victims.

Furthermore, reference can be made to the historian Egídio Vaz and the lawyer Elísio de Sousa, as figures who in the first half of 2020 stood out in the campaign to incite hatred and violation of the rights of human rights defenders, through advice given to the government to despise and disregard the work of civil society organisations and the independent press. These figures, who have raised funds from the public purse to promote hate campaigns, have even

brought to the attention of the public prosecutor's office the prosecution of some human rights defenders, as well as investigating certain critical civil society organisations in the system of governance.

In fact, during the first half of the year, the government was very intolerant of human rights activists, academics and the independent press. Therefore, the first half of 2020 was characterised by the institutionalisation of a climate of fear regarding social activism and the exercise of freedom of expression, in such a way that citizens either speak anonymously or claim to be afraid to exercise freedom of opinion in order to avoid aggression, especially by the notorious "Death Squads". In Maputo City, one of the fears is to be taken to the "Bairro Chiango", well known as the stage of human rights violations, including torture of social activists, particularly the critics of poor governance or the deficient performance of state institutions.

In mid-January 2020, a then Deputy Minister said in the middle of the restaurant that the matter Adriano Nuvunga (Executive Director of the CDD) could be solved with a bullet, because he was already too much in his interventions! Nuvunga publicly denounced this threat at the event on the launch of the book by the academic Ernesto Nhanale, entitled "*A cobertura dos media sobre a corrupção em Moçambique: um 'contra-poder' abalado?*" or "*Media coverage of corruption in Mozambique: a shaken 'counter-power'?*", which took place on 26 February 2020.

Therefore, the situation of protecting the rights of human rights defenders in Mozambique is precarious in a context where the Government of the Day and the institutions of Justice give room for the spread of hate speech and intimidation to social activists, critics of the system and civil society organisations.

¹⁸ https://cddmoz.org/wp-content/uploads/2020/02/CDD_condena_ameacas_de_silenciamento_de_jornalistas_que_reportam_sobre_os_ataques_armados_em_cabo_delgado.pdf

CONCLUSION

The failure of the State to ensure the effective realisation of human rights and development through democratic institutions is notorious. Communities living in resource-rich areas still live miserable lives and the people live in a climate of fear and terror.

The aspiration to protect the human dignity of all citizens, to improve the quality of life and standard of living, and to enhance well-being is at the heart of the concepts of human rights and development. A person is developed whenever he or she is able to enjoy human rights and fundamental freedoms in a context of strong and accessible institutions dealing with human rights and development issues as a priority. Participation, accountability, transparency, resource allocation, institutional leadership and respect for the rule of law and democracy are of utmost importance for the realisation of human rights.

The enforceability of human rights is increasingly urgent in the country, since violations are so common, despite the fact that the State is

a signatory to numerous declarations, charters and international conventions, and has a Constitution that very well protects human rights.

One of the main human rights obstacles in the first half of 2020 is the abuse of power, especially by the police. From a practical point of view, Mozambique has institutionalised the police state and impunity. Government leaders often try to be 'above' the law and to govern society according to their own interests, using public resources for their own benefit and putting socio-economic stability and peace at risk.

The institutional leadership must invest more in development and human rights in accordance with the Constitution, norms and principles that protect human rights. If the goal of human rights is development, then levels of access to rights such as education, health, the environment, gender equality, housing, water and sanitation must be raised to make human rights a reality. For social justice and stability to be achieved, institutions of justice must be accessible to vulnerable and marginalised people.

CHALLENGES AND RECOMMENDATIONS

State institutions need to introduce greater openness and provide full access to official data and performance indicators within reasonable periods of time. Civil society organizations, the rural community and traditional leaders must be able to monitor and evaluate human rights progress, which is fundamental to building a culture of accountability. It is important to highlight where progress is slow and identify where additional efforts are needed. The promotion of accountability and transparency is one of the main means of achieving human rights and development. Accountability requires the presence of democratic and fair mechanisms.

Most of the institutions dealing with human rights lack clear mechanisms to ensure the effective participation of civil society in the de-

cision-making process. Most citizens, especially vulnerable groups, do not have easy access to the institutions of justice.

For the cases of human rights violations presented in this report, there is a need for the State to train its agents or public servants on the principles of equality and non-discrimination, and this matter should be integrated in an inclusive way, with a view to putting an end to acts of aggression, intolerance and abuse of authority.

It is necessary to promote dialogue and tolerance between social groups, without prejudice or discrimination of any kind, and to take preventive measures to prevent the emergence of new marginalised groups. There is also a need

for human rights education and the implementation of training programmes for civil servants, with particular attention to professionals in the administration of justice and PRM agents.

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Establishing institutional mechanisms to respect the human rights of all citizens and treat them fairly is the first step towards the realisation of the Democratic Rule of Law and contributes to the development process. This requires that the roles, responsibilities and power limitations of different sectors of government be outlined with transparent and clear accountability standards. It also requires that all powers- executive, legislative and judicial- have sufficient resources and a team to function effectively.

The cases of human rights violations in the first half of 2020 demonstrate that democracy, participation, accountability and transparency make no sense without respect for the Democratic Rule of Law.

Strengthening the Rule of Law would be of great importance in ensuring the realisation of human rights and development. In a society that supports democracy, the Rule of Law can-

not be neglected. The Rule of Law is a prerequisite for sound governance and can affect the way policies are formulated and implemented. Institutional structures in Mozambique are weak and highly susceptible to influence and capture by elites and people in bad faith who incite violence and hate speech.

Institutional leadership is one of the main requirements for progress. Leadership should prioritize human rights institutions. They should set benchmarks and encourage a culture of human rights and participation with the same fervour as they display when campaigning.

Instead of creating a large number of complex institutions, the Mozambican State should improve the functions and develop the capacity of existing institutions. A systematic effort is needed to integrate development planning with a human rights framework .

The dissemination of information and open criticism of government action can promote an open and transparent environment, for example by ensuring full access strategies to government-approved investment projects.



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