

Out-of-step legislation and illegal police interference limit the exercise of the right to freedom of assembly and demonstration

- The Constitution of the Republic of Mozambique (CRM) states that sovereignty resides in the people ¹, Therefore, the Republic of Mozambique is a Democratic State under the Rule of Law, based on pluralism of expression, organization, democratic politics, respect and guarantee of the citizen's rights and fundamental freedoms².



Credits: DW

¹ Numero 1 do artigo 2 da Constituição da República
² Artigo 3 da Constituição da República

With the emergence of democracy, the right to freedom of assembly was enshrined in the constitutional text of 1990³, and has remained in the constitutional text, despite its successive revisions.

The right to freedom of assembly and demonstration corresponds to the expression of ideas, protest, political and social claims in public space. Its exercise is characterized by the face-to-face exteriorization of a message addressed to third parties, organized with a common conscience and will, among all those who are taking part in it, and with a specific objective.

It is through the exercise of the right to demonstrate that citizens can freely express their opinions, namely criticize the actions of those who govern, make demands, or raise their voices against any injustice and against the tyranny of those who exercise power.

Furthermore, the right to demonstrate is a tool through which society can communicate in a global way, thus emerging as a legal conductor of the exteriorization of public opinion, of its convictions, its wishes, and its messages, that is, a form of collective expression with a constitutional guarantee.

The right to freedom of assembly and demonstration is foreseen in article 51 of the CRM and its regulatory framework is established by Law no. 9/91, of July 18, and Law no. 7/2001, of July 7.

The right to freedom of assembly and demonstration is given the legal force of direct applicability⁴ and binds all public and private entities. As with other fundamental rights, the right to freedom of assembly and demonstration may be limited on the grounds of safeguarding other rights or interests protected by the Constitution⁵. However, taking advantage of this idea, the different organs of the State have indiscriminately curtailed this right.

Innumerable times, whenever there is the possibility of a demonstration, the State does everything it can to prevent it from taking place, either through the various organs of public administration that reject outright all requests to that effect, or through the use of police force to frighten and prevent, illegally and arbitrarily, citizens who participate or intend to participate in it.

In Mozambique there are two factors that militate against the full exercise of the right to freedom of assembly and demonstration, namely the legal framework regulating the



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right to demonstrate, which is out of step with constitutional reality, and the illegal and arbitrary interference of the police forces in the exercise of that right.

The legal framework regulating the right to freedom of assembly and demonstration was established in 1991, through Law no. 9/91, of July 18, and later amended in 2001 by Law no. 7/2001, of July 7. As can be easily noted, this legal framework predates the current CRM, which was approved in 2004 and revised occasionally in 2018.

The aforementioned legislation contains norms that have very ambiguous content and can, to some extent, be used as a subterfuge to restrict the right to freedom of assembly and demonstration. Article 6 of Law 9/91, of July 18, establishes that parades and processions may only take place on Saturdays, Sundays and holidays, and on all other days after 5:00 PM and until 12:30 AM.

This provision unjustifiably limits the citizens' right to freedom of demonstration, since it establishes non-working hours and days as the time frame for demonstrations.

Now, if the intention of those who demonstrate is to make their voices heard by those entitled to do so, how can such a claim be realized when at the time the demonstration can be held the entities targeted are not in operation. And more: the law⁶ gives the authorities the power to, at their discretion, interrupt meetings and demonstrations because they believe that their initial purpose has been altered.

It is not reasonable that in a democratic rule

of law like Mozambique the right to freedom of assembly and demonstration of citizens is subordinated to the discretion of public authorities, who are almost always the targets of these demonstrations.

The police forces, making use of the fact that they are one of the arms of the manifestation of the State's monopoly on violence, carry out acts of violence against any citizen who intends to express their dissatisfaction with the injustices practiced by the government of the day, by means of arbitrary arrests and physical aggression. And they act this way in the conviction that they will not be held responsible for their actions because they are following the already known superior orders.

As an example, during the demonstration last Thursday, July 14, the police arrested 16 citizens in an unclear manner, alleging only that they had participated in acts of vandalism. However, it was unable to state what subsequent steps were to be taken in the treatment of those detained individuals.

The fundamental right to the presumption of innocence⁷ is ignored by the police when they categorically identify such individuals as guilty of the acts of vandalism and disorder and do not indicate the circumstances of time and place where such situations specifically occurred. Furthermore, any individual arrested by police authorities must be summarily brought to trial or before the competent judge for first judicial questioning within 48 hours⁸.

However, what has been verified is the

³ Artigo 75 da Constituição da República de 1990

⁴ Número 1 do artigo 56 da Constituição da República

⁵ Artigo 7 da Lei no 9/91, de 18 de Julho

⁶ Número 2 do artigo 59 da Constituição da República

⁷ Número 2 do artigo 59 da Constituição da República

⁸ Alínea a) do número 1 do artigo 297 do Código de Processo Penal

non-compliance with the law and the maintenance of people detained for long periods of time in the various police stations and units, when it is known that the freedom of people can only be limited, totally or partially, depending on the procedural requirements of a precautionary nature, by the coercion measures provided by law⁹.

Similarly, although detainees have the right to be escorted by a legal counsel¹⁰ at all stages of the process, from the police to the court, this prerogative is not given to them because their first and only contact with the lawyer/defender is when they are presented to the judge, and it is certain that this defender does not even know all the details of their detention, which does not allow him/her to fully exercise the ample defense of these citizens.

This situation largely undermines the fundamental right to defense¹¹, since these citizens are not given the right to freely choose their defense counsel, but are instead forced to be defended by legal experts from the In-

stitute for Sponsorship and Legal Assistance (IPAJ) who, by not having followed the case from the beginning, are not capable of defending these citizens.

The right to a defense cannot be seen as something merely cosmetic that is effective only with the presence of someone considered to be a defender on the day of the trial, it should rather be seen as a human right¹², where the accused, through his counsel, should have the right to participate effectively in the development of the various procedural acts, collaborating and contributing to the proper administration of justice.

This is why the failure to observe the adversarial procedure constitutes a serious omission, representing a procedural nullity whenever this omission is likely to influence the examination or decision of the case. In addition to all of this, there are the various scenes of violence and police brutality against citizens whenever they legitimately attempt to assert their rights.

The lack of awareness about the value and

importance of human rights on the part of the police forces has caused much pain and suffering among Mozambican families, who often see their relatives shot, beaten, and tortured by police officers.

There is an urgent need for a paradigm shift in the actions of the police forces, so that they become aware that superior orders cannot override the CRM and the laws. This will only be possible if all police officers who act contrary to the Constitution and the law are exemplarily punished disciplinarily and criminally.

The legal diplomas that regulate the exercise of the right to freedom of assembly and demonstration must be urgently revised as they have proven to be inadequate for the current reality. They should contemplate other aspects and improve those already foreseen, particularly in relation to the limitations, prohibitions, and accountability of those who attempt against the full exercise of the fundamental right to freedom of assembly and demonstration.

⁹ Número 1 do artigo 232 do Código de Processo Penal

¹⁰ Artigo 7 do Código de Processo Penal

¹¹ Número 2 do artigo 62 do Código de Processo Penal


¹² Número 1 do artigo 11 da Declaração Universal dos Direitos Humanos



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