

The law on popular action will allow communities access to justice and direct participation in democracy

- The Constitution of the Republic of Mozambique (CRM) enshrines, in Article 81, the right to popular action. It is a viable mechanism for the judicial protection of human rights and the public interest, as well as the defense and promotion of legality and the rule of law. However, there is still much discussion regarding the application of the right to popular action, which is why citizens and civil society organizations have not yet made due use of this litigation tool in the competent courts, allegedly because there is still no specific ordinary law regulating the right of popular action in the Mozambican legal system.



Although the rule on the right to popular action does not depend on ordinary law to be applied, there is a consensus that this tool will better clarify the procedural specificities that must be obeyed in order to defend human rights and the public interest, and in what circumstances popular action should be used. It is within this context that CDD, with the support of the IGUAL Program, organized last week (Thursday, August 11) a workshop on advocacy for the drafting of the law on popular action and safeguarding the right to peaceful demonstration.

In addition to human rights activists and representatives of public institutions, the event was attended by representatives of various

interest groups, with emphasis on the sellers of the old Fish Market, transporters, agricultural associations of Magude and Manhiça. These are, in fact, groups that in the last two years have been receiving assistance from the CDD in their struggles for access to justice.

“A little bit all over the country we are receiving letters and complaints from communities that are losing their land and are seeing six rights violated in the context of resettlements. They want to organize themselves to defend their rights through popular action, an instrument foreseen in our Constitution. But popular action needs to be regulated by an ordinary law, so that it can be used by communities to defend their rights,” explai-

ned Prof. Adriano Nuvunga, Executive Director of the CDD.

Last year, CDD filed a popular action in the Administrative Court against the illegal tolls implemented on the Maputo Circular Road. “The institute we used was disapproved by the Administrative Court for lack of framework. It was in this context that we decided to work on creating a popular action law proposal. We are not the first to do this kind of work. I remember the retired Judge Counselor João Trinda-de who in 2001 worked for Mozambique to adopt an ordinary law for popular action. The MASC Foundation and the Citizenship Observatory in Mozambique have also worked on a proposal for a popular action law”.



Prof Domingos do Rosário



Almeida Ngovene



João Nhampossa

The CDD Executive Director stressed that the advocacy work for the drafting of a popular action law and safeguarding the right to demonstrate aims to allow communities to have access to justice. “Laws are not for the elites. Laws have to allow communities access to justice. Our meeting today is about questioning the architecture of our laws, about the extent to which our laws provide access to justice for communities. We are here to improve these tools so that our communities have access to justice. Every day Mozambicans come together to demonstrate peacefully, but this right is always repressed by the authorities.

The Director of the IGUAL Program, Prof. Domingos do Rosário, criticized the abuses and violations of human rights and the progressive degradation of civic space in Mozambique, especially in the areas affected by conflicts in recent years. The degradation of civic space is manifested through the closing of the space for dialogue, the invalidation



Ferosa Zacarias,



Prof Adriano Nuvunga

of basic rights, and the violation of people's freedom to express themselves freely.

Although the Constitution of the Republic defends the protection of human rights and the exercise of the right to public demonstration, Prof. Domingos do Rosário speaks of violation of that constitutional principle by state institutions. "The lack of a legal instrument - a law safeguarding the right to public demonstration - makes it easy for many discretionary decisions to reject and repress any initiative or exposure of citizens to demonstrate freely."

Therefore, the Director of the IGUAL Program congratulated the CDD for bringing together civil society organizations, legislators, and public institutions that look after human rights to discuss the ways to draft a law for popular action and safeguarding the right to demonstrate. "It is a noble principle to care for the principles that rescue democracy as a way of collective coexistence."

The Office of the Ombudsman was represented by Dr. Almeida Ngovene, who also congratulated the CDD for the advocacy ini-

tiative for the drafting of a law for popular action and safeguarding the right to demonstrate. "This is the privileged place for all of us, as the Office of the Ombudsman, civil society, and different organs of the State, to raise our awareness about the new challenges that reality presents us with on a daily basis in order to achieve the full exercise of the right to citizenship. We will take advantage of the event to once again debate the problems that plague Mozambican citizens with exemption, partiality, and responsibility."

“Popular action law will allow direct citizen participation in democracy,” Judge Hermenegildo Chambal

The judge of law and human rights activist, Hermenegildo Chambal, was speaker of the theme on "Approval of a specific law of popular action as a mechanism for the protection of human rights and the public interest." In his speech, Hermenegildo Chambal argued that a popular action law will allow direct citizen participation in democratic life. "A popular action law will allow Mozambicans to start thinking about democracy not as an abstract thing. More than 20 years have passed since the drafting of the popular action law, but nothing has been done."

Judge Hermenegildo Chambal believes that Mozambique has very ineffective mechanisms for public intervention. Examples of these are petitions to sovereign bodies and public consultation. These are mechanisms that exist in law and result from the Constitution itself, but they are not very effective in protecting the rights and interests of the community.

A popular action law will also serve to fill the void that many Administrative Court rulings used to invalidate claims for the protection of collective interests. "We have already seen many cases of collective interest protection being rejected for lack of a law that defines procedures for the exercise of popular action. It is a questionable argument. The understanding of some counselor judges of the Administrative Court is that the right of



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popular action has a programmatic nature and, because of this, is not directly applicable and is not immediately binding for the authorities."

Another aspect that Judge Hermenegildo Chambal highlighted has to do with the fact that the traditional conception of the individual lawsuit is not sufficient to regulate the procedural regime of the popular action. "The legislator should keep in mind that he is inaugurating something that in our Mozambican procedural system does not exist, which is the collective process. I think it would be important for the legislator to reserve a part where he would indicate the principles that inform the collective process, so that the applier understands what the postulates and ideology of the popular action are."

Legitimacy in popular action is another issue that deserved emphasis from the speaker, who highlighted a progressive decision of the Administrative Court that recognized passive legitimacy of the State whenever the violation of fundamental rights was at stake. "Unfortunately, we are not used to having court decisions that recognize the protection of fundamental rights. The Administrative Court's decision was very important and has to bind the legislature, since it recognizes the State as a subject capable of appearing in the passive pole of the legal-procedural relationship."

“The problem is not in the law, but in the intolerance of thought that is not favorable to the government,” lawyer Vicente Majante

“Which ways to safeguard the right to peaceful demonstration and its materialization” was the second theme of the workshop and had as speaker the lawyer Vicente Majante. In his intervention, he began by stating that one of the main barriers to the exercise of the right to demonstrate has been the idea that this freedom to demonstrate must be authorized. “There is a misapplication of the law here, because there is no legal provision in our legal framework that conditions the demonstration to authorization of any kind. This administrative conditioning is in itself an illegality.”

In addition to criticizing the prohibition and repression of peaceful demonstrations organized by civil society, lawyer Vicente Majante stressed that the only demonstrations that are allowed in recent years are of social organizations affiliated with the ruling party, namely OJM and OMM. “These are demonstrations to salute the President of the Republic and the Government. These demonstrations do not need authorization. We are turning and normalizing greeting demonstrations as a rule, a norm. Probably the first challenge would be to invite civil society organizations to promote a manifestation of



Vicente Majante.

“We have bodies and institutions that guard the exercise of rights. For example, how have the Public Prosecutor’s Office or the Ombudsman positioned themselves in the face of these violations of the right to demonstrate

greeting to the President of the Republic so that we can verify if this manifestation will be allowed or not.

Lawyer Vicente Majante has no doubt that the problem is not in the law of demonstrations, but in the intolerance of thought that is not favorable to the government. “When the demonstrations are not aimed at greeting or supporting the Government they are prohibited or violently repressed, although the law of demonstrations establishes that all citizens can, peacefully and freely, exercise their right to assemble and demonstrate without dependence on any authorization. What is requested are formalities for monitoring to avoid violence and protection of the demonstrators.”

In addition to peaceful resistance, the speaker pointed to the challenge of the order limiting the exercise of the right to demonstrate as another device to which citizens can appeal. “We have bodies and institutions that guard the exercise of rights. For example, how have the Public Prosecutor’s Office or the Ombudsman positioned themselves in the face of these violations of the right to demonstrate?”





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