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**CASE STUDY: QUALITY OF ANALYSIS OF ISSUES  
RELATING TO THE JUDICIAL SECTOR**

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The opinions expressed in this report are not necessarily opinions of USAID

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## CASE STUDY: QUALITY OF ANALYSIS OF ISSUES RELATING TO THE JUDICIAL SECTOR

### **Executive Summary**

This case study focuses on the quality of analysis and the public debate surrounding the issues of Equal Access to Justice, Judicial Independence and Commercial Transactions. USAID requested this study in order to determine how the democratic nature of Mozambique's civil society was evolving. To this end, the consultants conducted a survey and met with sixteen Mozambican professionals in the legal, media and business fields.

Under two of the issues, distinct cases or events are noted. Specifically, in relation to judicial independence, the Muthisse case and the Islamic holiday case are explored. Regarding commercial transactions, the Private Sector Investment Conferences as well as the land topic are investigated.

It is important to note that while conducting the interviews, many respondents spoke more about the issues themselves than they did about the specific cases or events related to each issue. Similarly, respondents spoke more (and knew more) about the merits of each issue than they did about the quality of dialogue. This could be due to the fact that "debating" is relatively new in Mozambique.

In relation to access to justice, interviewees mentioned that there is a lot of debate going on in the rural areas by individuals but at the institutional level, the issue was not debated. It was discovered here that Mozambicans do not have the tradition to publicly debate and that people lack the courage to do so. It was also noted that although people's access to "judicial courts" was limited (for lack of resources), people commonly take advantage of traditional means for resolving conflicts - within the family, through chiefs or with religious leaders. Hence few respondents spoke about it.

Regarding judicial independence - interviewees noted that journalists have little access to information and there is believed to be some kind of hidden censorship by the executive. In relation to the Muthisse case and the Islamic Holiday case, public debate in the media was found to be superficial and sparked by sensationalism. It was pointed out here that media coverage is a good thing but journalists must respect the fundamental rights of the accused when reporting on criminal cases. A majority of those interviewed believe that "money still rules over justice."

Most people agreed that in terms of public debate, Commercial transactions has the richest dialogue. It was found here that the Government really establishes a link with economic associations, but that often journalists are not involved in important meetings, so their coverage in this area tends to be shallow. Although journalists are becoming more professional, they lack training in this area.

## SOME RECOMMENDATIONS

Civic education could be taught as part of the general curriculum in secondary schools. In the United States and Europe many high school students have a civic education class and in Mozambique students used to learn about civic education as well. Public schools are an obvious forum to disseminate information about government and individual responsibilities.

Public forums could be organized for talking or debating about specific judicial issues. FEF, an NGO currently sponsors open monthly discussions about current political topics. The last debate was entitled "Men and Women, Equal or Different?", another topic was on Local Governance. Similar types of discussions about judicial issues could be sponsored by USAID or other NGO's.

## **CASE STUDY: QUALITY OF ANALYSIS ON ISSUES RELATING TO THE JUDICIAL SECTOR IN MOZAMBIQUE**

### **I. Introduction and Statement of Work**

This report reflects the research and observations gathered by independent consultants on the quality of analysis and the public debate surrounding issues relating to the judicial sector in Mozambique. The United States Agency for International Development (USAID) contracted Jose Pinto de Sa, a Mozambican journalist/playwright and Merritt Becker, an American lawyer resident in Maputo to carry out the study. The study was conducted in Maputo and Beira where consultants met with a variety of media, legal, government and business professionals considered to be some of the key players in Mozambique's civil society knowledgeable about issues relating to the judicial sector.

As pointed out in the Statement of Work, USAID's strategic objective(SO) number two states that "Government and Civil Society are Effective Partners in Democratic Governance at Local and National Levels." In order to determine just how the democratic nature of the Mozambique's civil society is evolving and document any changes that may be taking place USAID asked for a case study to be carried out. It was surmised that a case study approach was the most effective way to understand these changes.

The original Statement of Work described the objectives as follows -"Through case study research, to inform USAID/Mozambique's understanding of the quality of analysis in the public domain on issues and policies relating to the judicial sector in Mozambique". After various consultations with USAID officers Thomas Johnson and Sergio Guzman, it was decided that three relevant issues be included in the analysis, these being, equal access to justice, judicial independence and commercial transactions. It was further decided that with a case study approach, consultants should, in the first instance, define which events (or circumstances) in relation to each of the issues were to be analyzed in terms of the quality of public debate.

In relation to equal access to justice it was difficult to find a precise case, event or circumstance that was commonly debated in the public domain. Many individuals were contacted and research began but the consultants could not come up with an appropriate case.

For the issue of Judicial Independence, it was fairly clear from the initial stages of the consultants meetings with USAID which cases regarding this issue would be analyzed. The Consultants focused on the Muthisse case where the Chief Prosecutor in Maputo released 10 foreign citizens accused of illegally producing the drug Mandrax, and the Islamic Holiday case where the Supreme Court decided that it was unconstitutional to consider the Islamic sacred days of Ide-ul-Fitre and Ide-ul-Adha as public holidays. Where in the first instance the independence of the chief prosecutor is at stake, the second case demonstrates the independence of the Supreme Court.

Lastly, concerning the issue of Commercial Transactions the consultants asked questions\* about the quality of debate concerning the three Private Sector Conferences (two have already been held and the third is under preparation, to be held in September) and about the ongoing general debate in relation to land tenure. Specific or recent court cases could not be identified. It should be noted that commercial transactions are loosely tied to the judicial sector analysis through the commercial code as well as through land rights. It has been specifically requested by USAID as one of the issues to be covered in this study.

(\*note: see annex 1 for a copy of the questionnaire which includes the criteria used to assess the quality of debate.

Also see annex 2 for a list of persons interviewed. Their names are not mentioned in the body of the report for confidentiality reasons.)

## **II. FINDINGS**

### **A. Introduction**

What follows is a breakdown for each judicial area and an analysis of what people are saying in relation to each issue. One finding which should be kept in mind while reading this report, is that many of the people that the consultants spoke with talked more about the general issues themselves or went off "on tangents", instead of discussing the specific events asked about, regarding each issue. More importantly, it was often difficult to get a response concerning the "quality of debate" about each issue as opposed to simply the merits. The Consultants then tried with their questions to lead the conversation towards more of a dialogue about the quality of public debate and the findings reflect this.

The consultants recommend that this type of case study in the future be complemented with focus group discussions (five to six members in each group, who have common backgrounds) which lets the group develop the events(or cases) to be analyzed. Under the present study, perhaps by stating the cases upfront, interviewees were left with more of a closed mind. About the specific cases, the interviewees seemed rather to make only perfunctory remarks, not going into an in-depth analysis. This may also be reflected by the fact that public debate actually is a novelty in Mozambique.

### **B. Equal Access to Justice**

#### **1. Generally**

The disparity between access to the courts for those who have economic resources and for those without is great. The constitution contains a provision for legal assistance for the poor. (Article 100 states: 1. The State shall guarantee the access of citizens to the courts. It shall guarantee to persons charged with an offence the right to defense and the right to legal assistance and aid. 2. The State shall make provision to ensure that justice is not denied

for lack of resources.). Formally, this article does in effect guarantee to citizens equal access to justice. However, there is still a lack of awareness about this-many people do not know what their legal rights are, and IPAJ (The Institute for Legal Assistance and Support) who has authority to implement this law, has limited capacity (financial & human resources). Similarly, because there are very few lawyers in the country (there are 84 lawyers registered with the Bar Association), there are limited human resources available to take advantage of this right.

When respondents were asked about the quality of public dialogue in terms of equal access to justice, the criteria used was whether or not the dialogue covered all aspects of the problem, and how profound and frequent the dialogue was. The consensus was that there is very little public dialogue about access to justice(14 out of 16 respondents agreed to this and only 3 articles pertaining to this subject were found in newspapers dating from January 1). However, at the grass roots level (individual dialogue as opposed to public), people are talking and the debate is very lively. It was pointed out that in rural areas families and individuals widely discuss this issue but at the institutional level, even at the Assembly, the issue was not debated. People interviewed admitted that there were some scattered articles in the press about the subject, but nothing substantial, profound or analytical. It was pointed out that perhaps the dialogue improves farther away from Maputo because in the provinces, Government is more accessible. It was also noted by four respondents that there is no tradition to publicly debate these types of issues.

## 2. Tradition

It is interesting to explore the subject of tradition as an aside here. As was just stated, a number of respondents (largely those with legislative background) claimed that there is no public dialogue about access to justice because Mozambicans do not have the tradition of publicly debating these types of issues. During the pre-colonial period, the general public was influenced by their traditional leaders and rarely spoke up about their individual opinions. During the colonial times, public discussion was strongly discouraged and repressed. During the period after independence, Samora Machel applied Marxist based principles and little public dialogue was allowed. During the war there was little opportunity to be heard and people used arms to replace what their minds and hearts wanted to say. Only now, 5 years after the peace accord was signed and 3 years after the country's first multi-party presidential elections, can the voices of debate begin to be heard.

One individual argued that Mozambique lacks any real civil society. It was argued that civil society is just growing now and it will take some years to fully develop. Likewise, this type of analysis on public debate needs to be repeated periodically, preferably every three years in order to reflect the change in debate.

In fact tradition in another sense plays a large role in what access Mozambicans do have to the courts. It was noted that although there is no inherent access to justice and the right is merely a legal one - theoretical but not practical, there are traditional forms of justice where people do take their

complaints. These traditional means for deciding conflicts - be they the family or communal tribunals led by chiefs or religious leaders play a very large role in Mozambican society. (It should be noted however that community courts have jurisdiction over only minor cases and that they are not the appropriate forum to hear all types of disputes, as these types of "courts" are not established by law.)

The strongest inhibitor to people's access to the courts was found to be economic. Many interviewees related that access to the courts was limited to those wealthy individuals who could pay for a lawyer or even pay the judge to expedite a certain case. (corruption will be dealt with more thoroughly in subsection C under Judicial Independence.) It was also pointed out that the absence of court facilities in the districts prevented poor people from having access because they could not travel to the provincial capitals where there are courts, for lack of funds.

It was interesting and coincidental that during the interview period (May 1997) there was a seminar taking place for the Presidents of Supreme Courts from Lusophone countries. They recommended that the media publish more information on judicial issues in general and on access to justice in particular. They also encouraged the production of theater and radio programs in national languages. (see annex 3 for article pertaining to the seminar).

## **B. JUDICIAL INDEPENDENCE**

### **1. Generally**

Article 164 of the present constitution states in full that "1. In the exercise of their functions, judges shall be independent, and shall owe obedience only to the law. 2. Judges shall likewise be impartial and disinterested". One respondent related that as it is established by law, there is an independent judiciary in Mozambique. On the contrary, under the 1975 Constitution there was no judicial independence. There were cases of judges being arrested by provincial governors. Since the present constitution was approved, no judge was ever asked by the government to justify his decisions.

Unlike equal access to justice, in this issue of Judicial Independence, consultants dealt with two clearly defined court cases namely the Muthisse case and the Islamic holiday case. Both cases were well publicized in the media and were debated on the individual level, some say because the issues were "hot" items, quite sensationalized and very susceptible to public opinion.

### **2. Muthisse case**

To give a little background in the Muthisse case, 10 foreign citizens (9 Pakistanis and 1 Indian) who worked in an illegal drug laboratory which produced the drug Mandrax, were arrested after neighbors notified police of the lab's existence. Luis Muthisse, the Maputo city Prosecutor was pressured (by the Frelimo party) to release the accused (while they were awaiting trial) on the grounds that legally, they were not the owners of the factory, but merely employed there. The 10 defendants subsequently left town. Then, the Attorney

General, Sinai Nhatitima fired Muthisse and he is now appealing his dismissal to the Administrative Court, where for over a year the case has been pending.

The criteria used to measure the quality of debate here was how frequent and profound the dialogue was and whether it covered all aspects of the case. There were in fact many articles written about the case, but 10 interviewees found that the coverage was superficial, and that it was mostly the drugs, money and individuals involved that the public was interested in, not justice. It was also pointed out (mainly by 2 journalists and 1 legal professional) that the case displayed the need to remember that media coverage of judicial issues is a good thing, but journalists must respect fundamental rights and duties and not infringe on the privacy rights of the accused (confidentiality of the judicial process). It was emphasized that the newspaper is not a court and it must not take the place of a court - a judge must not make his decision based upon what people say. (see annex 4 for newspaper clipping- "Prosecutor Illegally Releases Detainees in the Mandrax Case."- Muthisse's case has not yet been before the Court.)

### 3. Islamic holiday case

In the Islamic Holiday case some members of Parliament from both Frelimo and Renamo introduced a bill making the two most holy Islamic days National holidays. The parliament voted in favor of the bill (all of the Frelimo Parliamentarians voted in favor and Renamo and UD either voted against the Bill or abstained). The story promoted a lot of debate especially by the Catholic Church and the President decided to send the issue to the constitutional tribunal to decide whether or not the law was constitutional. Because this tribunal does not yet exist the matter was considered by the Supreme Court and they decided that the law was unconstitutional. (See annex 5 for Impartial clipping.) (It should be noted here that one respondent felt that the President did not even have the right to ask the Supreme Court for their opinion as the proposed "bill" was not yet a law - i.e. it had not yet been signed by the President although Parliament did vote for it.)

By declaring the bill unconstitutional, when the majority of the Frelimo party voted in favor of the bill, the court exerted their judicial independence. They distinguished between this and Christmas day (the public holiday) by saying that Christmas day had no religious significance and was merely a "family day". (In fact Samora Machel legally declared Christmas day "family day" and there is legislation to this affect.). The Muslims in favor of the Islamic holiday (some Muslims were opposed because they did not want to politicize their religion) felt that Christmas was in fact a Christian holiday and that the Supreme court Decision denied the Muslims equal access to the law. So, this case not only portrays judicial independence, but explores the issue of equal access as well.

The case brought to the surface the issue of the lack of access to information or misinformation that journalists have in order to accurately write about judicial issues. In this case the media did not understand that the Supreme Court was assuming the competence of the Constitutional Court. It was also noted that for some cases journalists are allowed in the courts but for other

cases they are not. Although they do have limited access to the courts, their access to the Office of the General Prosecutor is completely restricted and as one journalist mentioned, "it is hard for the media to penetrate official bodies such as Courts of Justice and Government Institutions". It was also pointed out that journalists' access when they are in the provinces is even more precarious. They have no status here, they are under direct political pressure and they are often still interrogated by the police because of the things they write.

These cases revealed the fact that some of the respondents think that the Executive has power over what is written, that there is interference or some kind of hidden censorship. It was mentioned that the state must not feel criticized or insulted by debate and that the state should play an objective role. It also surfaced here that there is a conflict between the centralized Government and the Provinces and that this rivalry between the two powers hinders dialogue, hence public debate. To illustrate this conflict someone noted the fact that for a Beira shopkeeper to change addresses to the next street, they were required to submit an official request to the Ministry of Commerce, Industry and Tourism in Maputo. If local government had more power, then permits, licensees and other formalities would be handled at the local level and there would be the possibility of more debate here about these issues.

A majority of the respondents felt that the Judiciary was not Independent, people think that "money still rules over justice". One legal professional estimated that "90% of the judges were corrupt" (another simply stated that there was no justice in Mozambique). Most felt that the root of the problem was economic and that formally there is independence (under the current constitution) but that the government takes away from the judges their capacity for being impartial. It was felt that the "judiciary still works in tow with the Government" and that they still have not revised from their past stature.

In order to improve, it was agreed by most, the status of judges and prosecutors must be ameliorated, and their work must preserve an element of "dignity". In order for this to occur, careers should be established, wages must be higher and they should be granted certain privileges like housing and a car. -"judges must be economically, politically and technically independent".

#### **D. COMMERCIAL TRANSACTIONS**

The third issue analyzed and viewed in the light of public debate is "commercial transactions". Generally speaking, the majority of people interviewed ( 15 out of 16 from all the professions) agreed that the public dialogue concerning this issue was the richest here (compared to Equal Access to Justice and Judicial Independence). Even though the dialogue may be poor, someone stated, there is a dialogue between the government and economic associations. The criteria used here was measured by the type and quantity of public dialogue that respondents were aware of.

## 1. Private Sector Conference

In relation to the Private Sector Conference, the third one is now under preparation. In essence, the Conference is a forum where the private sector, private sector associations, Government, and Donors debate; the focus is on "red tape". During the Second Conference, the CTA (Working Commission for Private Sector Associations) was elected by 23 private sector associations -- at the initiative of both the new Minister of Industry, Commerce and Tourism and the private sector associations themselves). CTA tasks are: prepare for third conference and to eliminate some of the red tape barriers. Donor support comes from USAID and EU.

It was felt that media coverage cannot be good though because journalists are limited by lack of access to information. There has been dialogue, especially between the Ministry of Finance and economic associations, and although the competence is increasing, (in terms of media coverage) the interesting aspects have not been reported on because the journalists were not invited to the meetings. (The dialogue which is reported on is basically only done by Mediafax). Journalists are also not sensitive enough to some of the economic issues so there are deficiencies in the depth of approach. This is also due to lack of training for journalists and instability of staff. Although media professionals are not specialists in the economic area, the "Economic Forum" television program on TVM has a good level of quality debate. The hosts seem to be informed about the issues and the guests are usually working economists who understand the topics and can debate in depth.

It was mentioned that the debate is now positive (in the sense that there are forward looking strategies for private sector promotion) but this must be followed by reform of the commercial code. The code is outdated (it dates from 1888) and has never been amended. It presents numerous obstacles for private sector investment (only some of which are the applicability of outdated rules and regulations and the appropriate conflict resolution, albeit the courts). As one business professional stated "the biggest inhibitor to investors coming here is the system of justice".

It is interesting to note here that while discussing this issue, a few respondents began talking about the National Assembly and how during general debates on the floor there seems to be only monologues as opposed to real dialogue. It was thought that this was a result of party influence. Someone went on to say that voting should be done by consensus instead of a mere majority. (Most "debating" is probably done in committee as opposed to during general assembly meetings.) Furthermore, the voice of civil society is not really felt in the Assembly. As one interviewee noted, "there is no lobbying done in the Assembly and it is still not open enough".

## 2. Land

In relation to land, two respondents promoted the fact that there is a lot of land in the country and there is only a conflict about the land surrounding cities. The debate about land is very intense at the grass roots level. Three

respondents stated that there is much more debate in the countryside than in town, and one concluded that the debate is limited to land around villages and towns. It seems that the population is more eager to debate in the countryside because there are many land disputes here and many fertile land areas are being "bought" by big private agro-businesses especially the prime land areas around towns and villages which are close to services and infrastructures. Although one interviewee said that the contribution from journalists on this issue is indispensable, another said that there is a great need for public dialogue, especially about the new land law (the law is still being written).

## E. CONCLUSIONS

1. Debate is a new development. Traditionally Mozambicans are not in the habit of publicly debating.
2. Investigative Journalists are generalists and not specialists, hence the debate in the media is not very deep or analytical -- This limits the information available to the public.
3. Corruption is discussed a lot more now than in the past.
4. There seems to be hidden censorship by the Government.
5. Further Decentralization will promote greater debate because as issues are brought closer to the public, people become more interested and responsive.
6. The National Assembly has virtually only monologues (as opposes to dialogues) and they are party-influenced.
7. Commercial transactions are more debated than other issues. Perhaps this is because it is not so sensitive an issue and it is somewhat forced on by donors. It is also because people deal with commercial transactions everyday.

## RECOMMENDATIONS

Based on conversations with interviewees as well as informal discussions with USAID delegates the consultants would like to make the following recommendations. Most of the items pertain to Equal Access to Justice, the topic least discussed in the 'public' domain, or to general judicial questions. One item refers to the Assembly of the Republic.

1. Civic education could be taught as the general curriculum in secondary school. In the United States & Europe many high school students have a civic education class and in Mozambique students used to learn about civic education as well. Today, it is not part of the curriculum at all. Public Schools are an obvious forum to disseminate information about how the various government sectors work and about individual rights and responsibilities. A project in this area would also require teacher training.
2. Courses should be offered on different aspects of justice, economics, law etc. USAID could sponsor NGO's to give courses on various topics similar to the one they sponsored on conflict resolution. It would be interesting to bring in a variety of specialists encompassing a broad range of different theories. One interviewee related how the course on conflict resolution was a good source of information.
3. Organize public forums for talking or debating about specific judicial issues. Freidrich Ebert Foundation (a German political NGO) currently sponsors monthly dissuasions open to the public about current political topics. Maximo Dias and Domigos Arouca are the moderators and they invite different MOP's, NGO representatives etc. to these monthly round table discussions. The last discussion was entitled " Men and Women, Equal or Different", another topic was about Local Governance. Similar types of discussions about judicial topics could be sponsored by USAID or other NGOs.
4. Think Tanks - i.e. an entity which researches, debates and publishes papers about specific issues, ex. The Public Policy Research Institute in Washington DC. USAID could encourage local NGO's to have a dialogue or establish a relationship with International or other national think tanks. The Land Center and the Population Study Center at the University as well as the Strategic Institute for Foreign Affairs are very similar to Think Tanks.
5. On the micro level, USIS could sponsor more radio talk shows or ameliorate the quality of already existing programs related to the judicial sector. Radio reaches more Mozambicans than any other media at the moment, but it should be noted that not all districts in the country can tune-in. Currently many districts in the northern provinces listen only to foreign radio as they do not receive Radio Mozambique. On the macro level, USAID could sponsor a project along with other donors to increase the technical capacity of

the radio frequencies. This would allow broader transmission to ensure effective national coverage.

6. Television coverage of Assembly proceedings and some court proceedings. Currently the radio does cover the Assembly debates but there is little television coverage.

7. Encourage the use of other forms of resolving disputes for civil cases i.e. arbitration and mediation.

8. Institutionalizing and legalizing the current traditional methods of resolving disputes (in the family, with religious or community leaders) for misdemeanor and minor type cases.

9. The legislation of the Commercial code, the Penal Code and the Civil Code must be revised and updated. A commission of Mozambican jurists should be formed in order to organize such a reform. DANIDA has a legal reform component in their project and so does the World Bank.

10. Create a weekly column in the newspaper that addresses judicial issues. There used to be such a column in the Noticias, but it ended because of structural problems.

## QUESTIONARIO

1) Como avalia a qualidade do diálogo público sobre questões jurídicas nos media / na Assembleia da República / noutros espaços ?

- fraco
- médio
- bom

Como avalia a qualidade do diálogo público sobre transações comerciais, especificamente as conferências do sector privado?

Esse diálogo aborda todos os aspectos do problema?

Com que frequência ocorre esse diálogo?

Qual é a profundidade do debate? (comentário, análise...)

Qual é a competência dos actores do diálogo?

Como avalia a qualidade do diálogo público sobre a igualdade de acesso à Justiça, especificamente em termos de género e de desigualdade social?

Esse diálogo aborda todos os aspectos do problema?

Com que frequência ocorre esse diálogo?

Qual a profundidade do debate? (comentário, análise...)

Qual a competência dos actores do diálogo?

Como avalia a qualidade do diálogo público sobre a independência judicial, especificamente no caso Muthisse e na questão dos feriados islâmicos?

Esse diálogo aborda todos os aspectos do problema?

Com que frequência ocorre esse diálogo?

Qual a profundidade do debate? (comentário, análise...)

Qual a competência dos actores do diálogo?

Quais os obstáculos ao diálogo público sobre questões jurídicas?

Como melhorar a qualidade do diálogo público sobre questões jurídicas?

## INTERVIEWS

Alice Mabota  
President of the Mozambican League of Human Rights

Amade Camal  
Industrialist, Frelimo MP

Bento Salema  
Sociologist

Bernardo Mavanga  
Journalist, director of the daily newspaper Notícias

Boaventura Macondzo  
Jurist, director of IPAC

Carlos Cardoso  
Journalist, director of the daily bulletin Metical

Carlos Cauio  
Lawyer, director of the Bar Association

Carmen Ramos  
Consultant

Ezequiel Ambrósio  
Journalist, director of the daily newspaper Diário de Moçambique

Jafar Gulamo Jafar  
Jurist, Renamo MP

Joaquim Madeira  
Judge-president of the Maputo City Court

Manuel Soeiro  
President of the Commercial Association of Beira

Máximo Dias  
Lawyer, chairman of the Monamo party

Migueis Lopes Júnior  
Journalist, director of the daily bulletin Imparcial

Orlanda Mendes  
Journalist, news director of Radio Moçambique

Paulo Maduco  
Journalist, editor of the weekly bulletin Megajornal

# Estados devem criar mecanismos de acesso de todos à justiça

NOTÍCIAS  
17/5/97

— recomenda seminário dos presidentes dos tribunais supremos da CPLP

OS participantes à conferência dos presidentes dos supremos tribunais de justiça dos países de língua portuguesa, que vinha decorrendo desde a última terça-feira, e terminada ontem na capital do país, são de consenso de que os estados membros da CPLP devem disponibilizar sistemas que facilitem o acesso à justiça dos cidadãos economicamente carenciados, através de meios expeditos e simples.

Esta necessidade surge pelo facto de se ter constatado que muitos cidadãos financeiramente débeis, regra geral, não têm tido acesso à justiça neste grupo de países.

Sendo assim, os delegados à conferência dos presidentes dos supremos dos sete membros da CPLP concluíram ser obrigação dos Estados criar mecanismos que facilitem o acesso à justiça para todos os cidadãos.

Os Estados têm o dever de disponibilizar sistemas que facilitem o acesso à justiça dos cidadãos economicamente carenciados e é dever dos Estados de Direito democrático viabilizarem a solução, em prazo razoável, dos diferendos que ocorram entre os cidadãos ou entre estes e as entidades públicas, disseram os magistrados.

Para se conseguir esse objectivo, os participantes à conferência dos presidentes dos supremos tribunais da Comunidade dos Países de Língua Portuguesa (CPLP) julgaram ser dever dos governos providenciar uma eficaz divulgação da generalidade dos direitos e deveres e dos mecanismos utilizáveis para a realização desses diferendos.

De acordo com o documento produzido no final do encontro,

as instituições mais adequadas à solução dos diferendos são os tribunais estaduais, mas se só por si os tribunais estaduais não puderem proporcionar respostas convincentes e oportunas para todos os cidadãos, os Estados devem viabilizar, incentivar e acompanhar meios alternativos, conforme as respectivas sociedades, como, por exemplo, tribunais ou centros de arbitragem, ou tribunais de pequenas causas, ou funcionamento de instituições consuetudinárias.

Contudo, segundo salienta o mesmo documento, é fundamental que os Estados proporcionem meios humanos e materiais que permitam aos tribunais realizar cabalmente as suas funções.

Recorde-se que esta conferência tinha como objectivos a troca de experiências sobre o funcionamento de cada sistema jurídico e judiciário nos estados membros de CPLP, procurar caminhos e formas que permitam acolher formalmente experiências de administração da justiça de base tradicional, religiosa, comunitária e outras,

ou ainda descobrir meios novos, tais como a arbitragem de diversos institutos de reconciliação de forma a consagrá-los nas ordens jurídicas, entre outros objectivos.

## ANGOLA A COLHE II CONFERÊNCIA

A II Conferência dos Supremos Tribunais de Justiça dos Países de Língua Portuguesa vai decorrer próximo ano em Angola, segundo ficou decidido ontem em Maputo.

A decisão foi tomada no final da primeira reunião do género que vinha decorrendo desde terça-feira na capital moçambicana, reunindo delegados de Angola, Brasil, Cabo Verde, Guiné-Bissau, Moçambique, Portugal e S. Tomé e Príncipe, dirigida pelos respectivos presidentes dos supremos tribunais de Justiça.

Os participantes ao encontro de Maputo decidiram institucionalizar a realização anual das conferências, tendo para o efeito aprovado o regimento interno proposto pela delegação moçambicana.

# Procuradoria liberta (ilegalmente) presos do "caso Mandrax"

Por Paulo Machava

**A soltura de dez cidadãos asiáticos, nove indianos e um paquistanês, pelo procurador provincial de Maputo, Luís Gabriel Muthisse, detidos na sequência da descoberta de indícios de fabricação de Mandrax, droga que integra o grupo considerado de estupefacientes pesados e outros crimes, no bairro Trevo, está a criar muita controvérsia nos meios jurídicos e políticos do País.**

**A libertação dos aludidos cidadãos, registada no passado dia 23 de Janeiro, na procuradoria provincial de Maputo, é tida como ilegal, pois o processo corre, em recurso de agravo, no Tribunal Supremo, segundo apurou o SAVANA.**

Os indivíduos, segundo apurou o nosso semanário, foram restituídos à liberdade sob termo de identidade e residência para aguardar os posteriores termos processuais nos autos de instrução preparatória, segundo refere o mandado de recondução e soltura assinado por Luís Gabriel Muthisse.

"O digníssimo Luís Gabriel Muthisse, procurador provincial da República, manda que sejam devidamente conduzidos a esta procuradoria hoje, dia 23 de Janeiro de 1996, afim de, mediante termo de

identidade e residência, serem restituídos à liberdade nos autos de instrução preparatória nº 498/95 que lhes move o Ministério Público", diz o documento a que tivemos acesso.

Para além deste documento, um outro encontra-se anexado. Trata-se de uma certidão assinada por uma funcionária da Procuradoria Provincial de nome Adélia Xavier Nhamuanzo com o seguinte conteúdo:

"Certifico e dou fé que hoje, neste período da tarde subscrevi nesta procuradoria o

mandato de soltura dos arguidos acima mencionados".

Os arguidos, até à data da sua recente soltura, encontravam-se encarcerados na Cadeia Central da Machava,idos da ex-BO, no dia 21 de Dezembro.

## Tribunal distancia-se

O Tribunal Judicial da Matola, na voz da sua juíza-presidente substituta, Claudina Macuacua, distanciou-se deste acto ilegal. Em comunicado distribuído ontem à imprensa, Claudina Macuacua afirma que "não corresponde à verdade o envolvimento do Tribunal Judicial de Maputo, pois que, na referida terça-feira, nenhuma funcionária do tribunal se deslocou a nenhuma instituição prisional na companhia do advogado Máximo Dias, nem sequer aqueles cidadãos asiáticos foram conduzidos ao Tribunal para posterior soltura, tanto mais que o processo-crime em que são arguidos não se encontra à ordem deste Tribunal".

Este pronunciamento da juíza-presidente de Maputo vem desmentir as informações postas a circular pelo semanário "DOMINGO", na sua edição do dia 28 de Janeiro, segundo as quais os nove cidadãos indianos e um paquistanês foram libertados

por ordem daquele tribunal.

Fontes judiciais revelaram ao SAVANA que "há bastante tempo que o advogado de defesa, Dr. Máximo Dias, vinha tentando a liberdade provisória dos arguidos sob pagamento de caução, mas que não lhe era concedida devido "à natureza do crime dos seus constituintes".

As mesmas fontes adiantaram-nos dizendo que "o Tribunal Provincial de Maputo nunca arbitrou qualquer caução, pelo contrário, indeferiu o pedido para tal efeito e, por sua vez, chegou a solicitar à procuradoria a prorrogação do tempo de prisão preventiva, visto que tinham sido expirados os 90 dias determinados pela lei".

Segundo nos revelaram, "o juiz de instrução deste processo, vendo o prazo de prisão preventiva expirado, fez a prorrogação do prazo por mais 45 dias. Pelo que, a responsabilidade e formalização de soltura dos indivíduos não coube ao tribunal provincial, mas a uma outra instituição".

## Os contornos da história

A história dos detidos do "caso Trevo" começa a ganhar outros contornos com a decisão de soltura pela procuradoria de Maputo.

Os asiáticos detidos no dia

6 de Setembro, numa operação policial, começaram pelo início do julgamento enquanto o processo continuava a trilhar a sua fase de instrução preparatória.

Entre os dias 22 e 23 de Dezembro, o processo foi enviado ao juiz de instrução para se pronunciar sobre o requerimento apresentado pelo advogado de defesa dos arguidos, o Dr. Máximo Dias, o qual solicitava a concessão de uma liberdade provisória.

O documento de defesa, de acordo com as fontes, invocava estar expirado o prazo de prisão preventiva.

De assestar que até a esta fase o processo ainda não tinha a chance de acusação por parte do Ministério Público, não obstante existir indícios de matéria para se proceder à acusação.

## Juiz indefere o pedido de caução

O juiz de instrução do processo indeferiu o pedido da defesa para a concessão de liberdade provisória dos arguidos.

O juiz de instrução, segundo as fontes, recusou o pedido da defesa tendo em conta a personalidade dos arguidos e outras circunstâncias processuais.

O magistrado tomou a sua posição baseando-se na

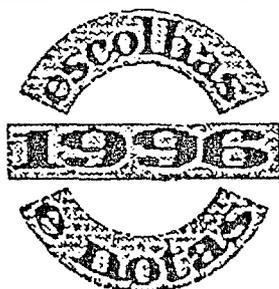
Lei 2/93, instrumento legal que confere aos juizes de instrução poderes para validar, legalizar as prisões e pronunciar-se sobre a liberdade dos detidos, enquanto o processo se encontra na sua fase de instrução preparatória.

Fontes judiciais revelaram ao SAVANA que, em contrapartida, o juiz de instrução prorrogou a prisão preventiva dos arguidos.

As mesmas investigações apuraram que, em função da prorrogação do prazo de prisão preventiva, o Ministério Público e a defesa requereram recurso de agravo ao Tribunal Supremo.

O juiz de instrução admitiu o recurso de agravo e mandou notificar o Ministério Público e a defesa, tendo de seguida mandado subir as peças do recurso ao Tribunal Supremo onde continua a correr o expediente de análise do referido recurso de agravo.

Entretanto, todos os esforços enviados para se falar com o procurador provincial, Luís Gabriel Muthisse, foram infrutíferos, dado que está fora de Maputo em gozo de férias. Igualmente, não conseguimos ouvir o Dr. Máximo Dias que, segundo nos foi dito, encontra-se em Pemba desde segunda-feira em missão de serviço.



Repetindo o que fez há um ano, a redacção do IMPARCIAL escolheu figura e acontecimento do ano e deu 'notas' às actuações de personalidades e instituições como o Presidente da República, Governo, Parlamento e partidos com assento parlamentar, durante os 365 dias de 1996.

## Figura do ano: Tribunal Supremo

### Acontecimento

### do ano: Acórdão sobre feriados islâmicos

O Tribunal Supremo no desempenho das suas funções provisórias de Concelho Constitucional, bem como o parecer sobre a chamada 'Lei dos Ides', foram escolhidos pela redacção do IMPARCIAL como figura e acontecimento do ano, respectivamente.

A independência, profissionalismo e isenção manifestadas pelos juizes do TS no seu arbitrio, e sem atendermos sequer ao conteúdo do mesmo, como que lançou potente pedrada para desfazer uma das maiores pechas da democracia em Moçambique, notória aliás ao longo do ano em inúmeros processos, prisões, libertações, 'casos', julgamentos feitos ou por fazer e outras actuações: a submissão do judiciário ao poder frelimista (que é o nome próprio ainda hoje de poder político em Moçambique bizarramente desproporcionado à sua aplicabilidade legítima real decorrente das urnas).

Que fique bem claro que nada nos move contra os muçulmanos, crentes de qualquer outra religião, agnósticos ou ateus.

Somos como é evidente respeitadores da vontade de cada um praticar - ou não praticar - qualquer religião.

Se salientamos esta decisão das muitas que vieram a público durante 1996, foi porque exigiu muita coragem e verticalidade a recusa de 'aparar' jogadas políticas só na aparência respeitadoras da liberdade de religião - curiosamente vinda da bancada que se acolita sob a sigla que durante 16 anos representou um grupo de sistemáticos inimigos e perseguidores dos frequentadores de mesquitas como de qualquer outra igreja não ligada aos Vaticanos ML de Moscovo ou Pequim.

Ao decidir pela negativa sobre uma lei viciada e

viciosamente inconstitucional, o TS teve uma actuação pedagógica para o partido no Poder, mostrando-lhe que já não pode impor o que lhe convém, quando lhe convém, (e mesmo que hoje desdiga o que disse ontem), à sociedade moçambicana com a chancela da Assembleia da República, como no antigamente.

Remetendo-se inquestionavelmente à Lei e sua interpretação determinou as largas margens de irregularidade do que não era mais do que uma operação da ala parlamentar frelimista para reconquistar simpatias e apoio financeiro da comunidade muçulmana e do mundo árabe.

Como diz o acórdão do Tribunal Supremo, «embora a laicidade do Estado, tal como consagrada na Constituição, admita colaboração e não signifique desinteresse nem interferência do Estado perante o fenómeno religioso - em vista da necessidade de ordem pública, pacificação social e redução de situações de conflito - não permite qualquer protagonismo do Estado no sentido de discriminatoriamente, e em violação do princípio constitucional da Igualdade dos cidadãos, conceder vantagens e privilégios a uma confissão religiosa em detrimento das outras. Tal acontece ao decretar-se feriado nacional os dias das festas religiosas do Ide-Ui-Fitre e do Ide-Ui-Adha, sem que as festas religiosas de outras confissões recebam o mesmo tratamento». Considera ainda que quando o Estado, através de um acto solene que dele emana, decreta um feriado nacional por ocasião de uma data religiosa, assume ele próprio o significado e o conteúdo dessa data». Assim, ao «Conduzir oficialmente todos os cidadãos nacionais, crentes e não crentes, não se alcança tal desiderato».

AS e ML Jr

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