REDE MOCAMBICANA DOS
DEFENSORES DE DIREITOS HUMANOS
RMDDH

Friday, July 1, 2022 I Year III, Number 27 I **President:** Prof. Adriano Nuvunga I **English**

Restricting civic space through anti-money laundering and anti-terrorist financing legislation and related actions

Créditos: Site do notícias

Exclusion in the legislative production process as a mechanism for closing the civic space

Créditos: Diário Económico

The President of the Republic recently enacted the Law of Revision of Law no. 14/2013, of 12 August, concerning the Prevention and Combat of Money Laundering and Financing of Terrorism, and the Law of Revision of Law no. No. 5/2018 of 2 August, which establishes the specific legal regime applicable to the Prevention, Suppression and Combat of Terrorism and Related Actions, approved by Parliament at lightning speed in May this year, in a context of a poor, if not lack of public participation, especially of non-governmental entities relevant for this purpose, as is the case of the Mozambican Bar Association (OAM) and civil society organizations.

The Assembly of the Republic approved the legislation in reference which is of extreme complexity in a period of approximately 24 days after the submission of the proposals for revision of the same legislation by the Council of Ministers. It is important to mention here that during this period the Assembly of the Republic was not exclusively focused on the work of analyzing the legislation in question.

The effective public participation in the process of legislative production legitimizes and gives credibility to the activity of the Assembly of the Republic in its function of legislating in the public interest, however the highest legislative body in the Republic of Mozambique, in full respect for fundamental rights and freedoms and in attention to the fundamental principles and objectives established in the Constitution of the Republic of Mozambique (CRM).

To legislate on the basis of exclusion, as did the Assembly of the Republic, is, strictly speaking, to violate the Constitution of the Republic, to which all public or private entities must be subject. Article 2(3) of the CRM states that: "The State subordinates itself to the Constitution and is based on legality."

The aforementioned haste of the Assembly of the Republic in approving the referred legislation without an effective public participation may be at the source of the poor quality of the said legislation, regarding the respect for the fundamental principles and objectives of the State, as well as the guarantees of the constitutionally enshrined fundamental rights and freedoms.

The closing of civic space by the threat to freedom of association

The activity of associations is regulated by Law 8/91 of 16 July. In effect, paragraph 1 of article 52 of the CRM states that: "Citizens enjoy freedom of association." In the same sense, paragraph 2 of the same article states that: "Social organizations and associations have the right to pursue their purposes, to create institutions aimed at achieving their specific objectives and to own assets for carrying out their activities, in accordance with the law."

From the legal point of view, duly recognized associations enjoy administrative, financial and patrimonial autonomy and must carry out their activities or pursue their scope in accordance with the law. In order to carry out their activities, as a general rule, non-profit organizations, in particular civil society organizations, do not receive funds from the State Budget, given that they are private institutions or entities, independent from the Government.

A curious and worrying fact is that Article 59(1) of the enacted Law Review Law No. 14/20143 of 12 August on Preventing and Combating Money Laundering and Financing Terrorism states the following:

"The Ministry that oversees the field of non-profit organizations shall adopt regulations that ensure that the said organizations are not maneuvered or used for the purposes of money laundering, financing terrorism and the proliferation of weapons of mass destruction." The law expresses in this norm a concern regarding the possibility of non-profit organizations, which include civil society organizations, being used for money laundering and terrorist financing purposes, which is legitimate and understandable.

However, the aforementioned rule, due to the ambiguity that characterizes it, goes much further than what it appears to intend, by giving the Government a carte blanche for an exacerbated policing through discretionary power over civil society organizations, considering that it is the Ministry that oversees the area that will, in principle, unilaterally and at its pleasure, adopt such regulations of functional policing of civil society organizations.

With the regulations to be adopted by the Government, and especially in cases where there is no public participation and transparency, as has been the Government's trademark in the decision making processes, including the regulatory process, the issue of money laundering and financing of terrorism may be misused to limit the activity of civil society organizations and increasingly close the civic space.

Therefore, while the aforementioned rule is in force, non-profit organizations should be highly vigilant regarding the regulatory power given to the Government and on the actions of it against the civic space based on the use of the same rule.

Another worrying aspect is the fact that paragraph 5 of the same article 59 of the Law of Revision of Law no. 14/20143 of 12 August, relating to the Prevention and Combating of Money Laundering and Financing of Terrorism, determines that:

"Non-profit organizations shall keep, for a period of eight years, records of national and international operations in sufficient detail to enable verification that the funds have been used in accordance with the organization's object and purpose and shall make such records available to the Ministry overseeing the area of finance, the authorities overseeing the respective sector, the judicial authorities and GIFiM."

Through a careful analysis of this rule, it is easy to understand the tax burden imposed on them, even though they are apologists for the high transparency of their activities, in that they are regularly required to provide records of their financial operations to a number of authorities, including the judiciary, without being notified for this purpose for good reason, under the law, which is unreasonable.

The provision of information on the records of national and international financial operations to the Mozambique Financial Information Office (GIFiM) is sufficient and perfectly understandable. In fact, one must consider that the same Law determines, in paragraph 3 of its article 59, that: "Non-profit organizations shall publish annual financial statements that include a detailed breakdown of their income and expenses."

Now, with this norm, coupled with the obligation to regularly make available the records of national and international financial operations to GIFiM, transparency and the possibility of analysis and/or investigation of irregularities is guaranteed, without the need to burden these organizations excessively, as if it were a "trap". With these rules, the organizations in question are now operating in a regime comparable to that of the probation of citizens in conflict with criminal justice.

What is the point of non-profit organizations being obliged to regularly make available records of national and international financial transactions to the judicial authorities? What is the ratio in the same sense for the Ministry that oversees the area of finance and the authorities that oversee the respective sector, when they do not receive funds from the State Budget and are not directly subordinated to these authorities in a hierarchically organized relationship?

Limitation of guarantees of freedom of expression, press and information

Article 20 under the heading "Disclosure and Gathering of Information" of the now enacted Law of the Review Law No. 5/2018, of 2 August, establishing the specific legal regime applicable to the Prevention, Suppression and Combating of Terrorism and Related Actions, provides as follows

(1) "Anyone who, for legal duty, has custody of or is an employee or agent of the State, has access to classified information and by any means discloses it within the scope of this Law, shall be punished by imprisonment for a term of 12 to 16 years."

(2) "Anyone who, being a Mozambican, foreigner or stateless person, residing or staying in Mozambique, makes or reproduces publicly statements relating to terrorist acts, which he or she knows to be false or grossly distorted, with the intention of creating panic, disturbance, insecurity and public disorder, shall be punished by imprisonment of 2 to 8 years."

As already publicly denounced by MISA - Mozambique in its communiqués in the in the context of the approval of the legislation in question by the Assembly of the Republic, the rule contained in paragraph 1 of the aforementioned article presents a content with some ambiguity and creates manifest room for manoeuvre for violation of the rights and freedoms of public officials, insofar as it not only criminalizes the person who has the legal duty of custody or safekeeping of classified information, which is understandable but the criminalization of the conduct is extensive to any employee or agent of the State, which is no longer reasonable, since there are situations in which the employee or agent may not be subject to a legal obligation of custody of classified information or even know that the information he or she accessed by any means is classified, and has no obligation to know.

Regarding the rule contained in paragraph 2 of the aforementioned Article 20, by penalizing those who "make or reproduce publicly statements relating to terrorist acts...", it provides ample space for abusive limitation of the exercise of the right to information, freedom of expression and of the press, which jeopardizes the exercise of journalism and silences information sources, as well as intimidating responsible opinion-makers.

Concluding remarks

There is no doubt that the above mentioned norms aim at closing the civic space by limiting the freedom of speech, of the press and of information as far as terrorism is concerned, intending that the management of information and the debate on this issue is exclusively of the State.

In truth, regarding the whole problem presented here, it is important to remember that there have already been actions of restriction of the exercise of citizenship, restriction of freedom of press and information in what concerns terrorism in Cabo Delgado, which even culminated with disappearance and arbitrary detention of journalists.

More than that, it highlights the fact that there are actions aimed at closing the civic space both by the serious and frightening terms of the revision of the Press Law whose proposals have always shown an intimidating trend and criminalization of the media activity, both by the also frightening terms of the proposed revision of Law No. 8/91 of 16 July (Associations Law).

Therefore, it is urgent a strong and comprehensive debate on the trend of legalization and practices of the authorities to close the civic space for the best defence and safeguard of guarantees, rights and fundamental freedoms related to the development of the civic space and the exercise of citizenship

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