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Maputo, 15 June 2020

C/c: Office of the President of the Republic

Supreme Court

Parliament

Ministry of Justice, Constitutional and Religious Affairs

Institute for Legal Aid

Nacional Penitentiary Service

Mozambican Bar Association

National Commission for Human Rights

TO THE MINISTER OF JUSTICE, CONSTITUTIONAL AND  
RELIGIOUS AFFAIRS

HONOURABLE HELENA MATIAS KIDA

OPEN LETTER ON THE IMPACT OF THE STATE OF EMERGENCY ON  
THE CRIMINAL JUSTICE SECTOR

Dear Minister Kida,

Around the world, the novel coronavirus - COVID-19, has impacted people's lives on many levels. We are all faced with diverse and complex challenges. States across the globe are putting in place number of measures aimed at preventing, detecting, and responding to the pandemic.

On the 31 March 2020, only a week after the first confirmed case, Mozambican Government declared the National State of Emergency. REFORMAR congratulates the government for its prompt response and measures put in place, particularly in the criminal justice sector.

From the very onset of the crisis, the Government realised the devastating consequences the virus can have inside the penitentiary institutions, and without delay promulgated the Amnesty and Pardon Law (Law 2/2020 of the 6 of April), aimed at decongesting prisons. In addition, the Supreme Court released a directive 03/TS/GP/2020, of the 01 of April, to accelerate parole processes. Consequently, around 5.600 prisoners, mostly low-level offenders, were freed. With these measures, the national prison overcrowding rate of around 230% decreased to 190%.

The State of Emergency (the latest Law Decree 26/2020 of the 8 of May) introduced other measures like the closure of educational and vocational training establishments, prohibition of public gatherings of more than 20 people, closure of commercial establishments such as bars and shebeens for the sale and consumption of alcoholic beverages. Enforcing these measures is having a significant impact on the country's criminal justice system, considering that people found to be violating these measures are punished criminally. The criminalization of these acts puts pressure on criminal justice institutions and, in some cases, violates citizens' rights.

Based on this background REFORMAR decided to address your Excellency through this open letter, to draw the attention of the Government, the Assembly of the Republic and the Supreme Court to some of the problems that have arisen in the criminal justice sector, as a consequence of the State of Emergency. We hope that the Government will act on this, overcoming some of the problems presented below.

#### Excessive use of force of the police

There has been a rising number of complaints about the excessive use of force and deaths at the hands of the police.

While the enforcement of the State of Emergency requires police interventions, it should never, under any circumstances violate the most basic human rights like right to life and freedom for torture and degrading treatment. Unfortunately, in the last weeks we witnessed some flagrant violations of these rights.

- On the 22 April 2020, in the city of Beira, a 44-year-old man lost his life at the hands of the police. After criticizing the police's attitude and stating that he was going to film them because they confiscated a group of children's ball where they were playing in public, in disobedience to the State of Emergency, he suffered abuse on the street by the police, and was then taken to the police station. He died on his way to the hospital.<sup>1</sup>
- On the 27 May 2020 two people died on the hands of the police, in the city of Lichinga. The police were trying to disperse hundreds of Muslims who had been

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<sup>1</sup> Available at: <http://opais.sapo.mz/policia-espanca-cidadao-ate-a-morte-na-beira> (accessed 4 June 2020).

celebrating the end of Ramadan, against the provisions of the state of emergency, which prohibits gatherings of more than 20 people.<sup>2</sup>

The cases of Beira and Lichinga are emblematic of broader issue of the use of excessive force that occurs in the country. The fact that these gruesome violations happened under State of Emergency should not minimise the need for accountability. These acts are crimes under both international and national law, and perpetrators should be held accountable and punished accordingly.

### High number of detentions for disobeying State of Emergency regulations

The crime of disobedience (Article 412 of the Penal Code) is punishable with up to three months of imprisonment, or in the case of qualified disobedience (Article 413 of the Penal Code) up to 6 months of imprisonment.

Disobeying the state of emergency - referring to the administrative execution measures of Decree no. 26/2020 of 8 May, means, in practical terms, engaging in acts such as:

- being found without a mask in places of crowding of people such as public roads, in markets and common areas (Article 7);
- carry out cultural, recreational and sporting activities in public spaces (Article 15 n. 1);
- operate bars and tents selling alcoholic beverages (Article 15 n. 2c);
- carry out funeral ceremonies exceeding 20 people (Article 17);
- keep a market in operation, outside the period between 6 am and 5 pm (Article 23 n.1).

Being arrested for these offences results in getting in contact with the criminal justice system, from being held in police custody, waiting to be presented to the court, and ultimately even being imprisoned. However, there is also evidence of broad interpretations of the Decree Law by the implementers of the justice system. For example, Article 15 n. 2c prohibits operating bars and shebeens that sell alcoholic beverages. While, according to the law, only those who operate bars and shebeens should be punished, in practice, people found drinking in shebeens are also being detained.

### Excessive use of arrest for violation that do not pose a threat to public safety

In recent weeks there has been a substantial number of arrests daily for violations concerning the State of Emergency. The numbers go as high as 200 in a day in the all country as anecdotal evidence shows, while the Police of the Republic of Mozambique claims to have detained more than 2500 people since the start of the State of Emergency<sup>3</sup>.

### Excessive arrests for minor crimes place an unnecessary strain on the criminal justice system

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<sup>2</sup> Available at: <https://e-global.pt/noticias/lusofonia/mocambique/mocambique-policia-mata-cidadaos-por-violarem-estado-de-emergencia/> (accessed 4 June 2020).

<sup>3</sup> Report from the PRM's spokesperson, Orlando Mudumane, 12 June 2020.

- Excessive arrests place a great strain on criminal justice, especially police, courts and prisons, as well as legal aid practitioners.
- It is also victimising a large number of people who for actions that for minor offences are now entering our criminal justice system, placing an additional economic, social and psychological burden, not only on the 'offenders' but also their families.
- It is typically the poor and marginalised that are arrested for these violations who are left without their only source of income due to the State of Emergency.
- And, as experiences have shown, the most likely to get arrested for disobedience are the poorest in our communities, and owners of shebeens and informal business, who are left without their only source of income due to the State of Emergency. However, the media reports that formal commercial establishments such as restaurants, for example, are only ordered to close by the authorities, without incurring detentions<sup>4</sup>.

In addition to high number of arrests for disobedience, and as its direct consequence, the following problems have arisen:

#### Bail

When bail is granted, it is unaffordable for nearly all people.

- When suspects appear in court for State of Emergency violations, the judges are setting bail that goes up to 10,000 Mt. This exceeds a monthly earning wage for majority of our citizens.

Why punish people for being poor?

- This amount is considered to be punishing people for being poor since they cannot afford it and remain in custody.
- This amount is considered to be disproportionately high, especially in the times of a public health and socio-economic crisis that we are experiencing now due to COVID-19.
- It has to be considered that many of the "disobediences" come from a particularly hard economic realities of our citizens. Many jobs have been and are being lost every day and many people have been left without their only income.

#### Pre-trial detention and sentence of imprisonment

- Whoever cannot afford bail, is waiting for his/her court process in pre-trial detention. Judges are also condemning the "disobedient" to effective prison sentences and or fines. However, those who cannot pay the fines go to jail.
- The same prisons that our Government intended to decongest with the Amnesty Law, are being overcrowded again. The objectives and intentions of

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<sup>4</sup> Francisco Rava, *Restaurante atuado por violação do Decreto Presidencial sobre Estado de Emergência na Beira*. O País 9 de Junho de 2020.

the law were clear: “Havendo necessidade de proteger a vida e a dignidade da Pessoa Humana e movidos pelo espírito de humanismo em face da pandemia do COVID-19, urge adoptar medidas destinadas a mitigar a superlotação dos estabelecimentos penitenciários do País, visando a prevenção da propagação do novo coronavírus e a contenção da pandemia no ambiente penitenciário e na sociedade.”

- However, current situation is completely diminishing previously put efforts and are making prison population even more vulnerable to the spread of COVID-19.
- The exact numbers of newly admitted people in our prisons is not officially known, but there is a valid concern that the numbers could soon surpass the prison population prior to coronavirus and granted amnesties. There are indications that people over the age of 60, are also entering prison facilities.
- In addition, it is of great concern that the new inmates cannot be tested for COVID-19 before entering the facility, which is increasing the risk of virus penetrating prisons. The consequences of in-prison transmissions would be devastating. For that very reason, Government initially limited the contact of prisoners with the outside world, by banning family visits. However, that effort is also being compromised as we see hundreds of untested people entering our prison facilities daily.

We are living in unprecedented times full of uncertainty. Social and economic consequences of the COVID-19 pandemic are already being felt, but strict measures are needed to avoid a further public health disaster.

Our citizens need to act responsibly and respect laws and measures in place. But they also need to be respected, supported in these extraordinary hard times, and protected from victimisation and unnecessary exposure to high-risk places like prisons. Therefore, the abovementioned problems need to be addressed as a matter of urgency.

REFORMAR would like the government to take the following recommendations into account as soon as possible:

1. COVID-19 represents a public health emergency and the criminalization of acts of disobedience to the State of Emergency is not appropriate. The government should opt for administrative responses and fixed a priori, for example a fine between 200 and 500 Mt for people who do not respect the measures.
2. The current Decree-Law that establishes the measures for the prevention and containment of the spread of COVID-19 is often unclear, giving space to broad interpretations by its implementers. The government should enact clear laws that leave no room for individual interpretation.
3. The current measures impact the most vulnerable strata of society. The government should not punish people because they are poor.

We stay at your disposal.

Sincerely,

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Tina Lorizzo

(Director of REFORMAR – Research For Mozambique)

[reformar.co.mz](http://reformar.co.mz)  
[reformar.researchformozambique@gmail.com](mailto:reformar.researchformozambique@gmail.com)  
Tel. 850457317