

MOZAMBIQUE 135

PRESS FREEDOM

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JOURNALISTS FOUND GUILTY OF LIBELLING PRIME MINISTER

Maputo, 29 Aug (AIM) – A Maputo court on Friday sentenced three journalists from the right-wing weekly “Zambeze” to six months imprisonment, converted into a fine, for libeling Prime Minister Luis Diogo – but the three will not have to pay a penny in damages.

Over-zealous prosecutors brought charges against the three, Fernando Veloso, Luis Nhachote and Alvarito de Carvalho, under an archaic clause in state security legislation that had never been used before. This clause determines that libeling certain high figures of state constitutes a security offence.

The offending article, published in May, suggested that Diogo was not really a Mozambican at all because the man she married in 1981, Albano Silva, was supposedly a foreigner. A discriminatory clause in the nationality law of the time stated that Mozambican women who married foreigners lost their Mozambican nationality (no such penalty was suffered by Mozambican men who took foreign wives).

Rather than wait for Diogo or Silva to bring a libel suit, the Maputo branch of the Public Prosecutor’s Office rushed in, within days of the article’s publication, brandishing the 1991 state security law, and demanding that the three journalists pay 10 million meticaïs (about 420,000 US dollars) in damages.

This tactic has backfired. The court in the Maputo First Urban District threw out the damages claim, arguing that in cases of crimes against state security, no compensation is paid.

Six months prison converted to a fine at the rate of 30 meticaïs a day comes to 5,400 meticaïs each – or a total fine of 16,200 meticaïs (670 dollars).

The court found that the article was indeed libelous, and declared “the accused had the intention of offending the honour and the image of the Prime Minister”.

In their defence, the journalists claimed that they had done all in their power to check whether Albano Silva was a Mozambican at the time of the marriage. The simplest way of doing this would have been to ask Silva to provide some proof. Instead, the “Zambeze” journalists say they looked up back copies of the official gazette, the “Boletim da Republica”, found no documents on Silva’s nationality

there, and concluded that he had not acquired Mozambican citizenship.

But in fact, documents do exist which show that Silva applied for Mozambican nationality in September 1975, within three months of the country’s independence in June of that year. The nationality law stated that people born outside Mozambique (Silva was born in northern Portugal) but who had lived more than half their lives in Mozambique were entitled to Mozambican nationality, if they applied within three months of the proclamation of independence.

Silva was granted a Mozambican identity card in January 1976, and the formal dispatch granting him Mozambican nationality came through in September 1977. The judge remarked that the fact this had not been published in the “Boletim da Republica” did not mean that Silva’s nationality was somehow cancelled.

The three claimed that they had merely “raised questions” about Diogo’s nationality. “We didn’t say the Prime Minister is not Mozambican”, said the paper’s editor, Fernando Veloso.

This claim may not be a downright lie, but it is at least disingenuous, since the paper carried a screaming front page headline “Is the Prime Minister Mozambican?”, and the entire coverage was slanted so as to imply that she is a foreigner.

The article should be seen in the context of a long running, obsessive campaign in the pages of “Zambeze” against Albano Silva, and in favour of some of the criminals he has, as a lawyer, helped send to jail. The criminals whom “Zambeze” fawns over and tries to turn into celebrities include the country’s most notorious assassin, Anibal dos Santos Junior (“Anibalzinho”), the man who led the death squad that murdered Mozambique’s top investigative reporter, Carlos Cardoso, in November 2000.

The lawyer for the three journalists, Eduardo Jorge, announced that they will appeal against the verdict and sentence.

The Maputo prosecutors emerge from this with no credit at all. Their blunderbuss use of security legislation has merely embarrassed the government and brought the judicial system into discredit.

This is the second time this year that Maputo prosecutors have unconsciously tried to make their office a laughing stock. The first occasion was in April when a popular rap artist, Edson da Luz (who uses the stage name Azagaia) was interrogated about the supposedly violent lyrics he had written in a song about the riots against fare rises on 5 February.
(AIM)

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MAPUTO PROSECUTOR DEFENDS SECRETIVE LIBEL TRIAL

Maputo, 21 Aug (AIM) – The Maputo chief prosecutor, Amabelia Choquela, on Thursday accused some of the

Mozambican press (whom she did not name) of “disinforming” the public about the trial of three journalists of the right wing weekly “Zambeze”, accused of libeling Prime Minister Luisa Diogo.

In May “Zambeze” carried a story with the absurd suggestion that Diogo, a Mozambican woman born of Mozambican parents, in the Mozambican province of Tete, was not really a Mozambican at all.

The basis for this claim was that Diogo had married a Portuguese citizen at the time when a discriminatory nationality law was in force under which Mozambican women who married foreigners lost their nationality (though no such sanction applied to Mozambican men marrying foreign women). The story rested on the assumption that Diogo’s husband, Albano Silva, did not hold Mozambican nationality at the time of their marriage in 1981.

It was very easy to prove that “Zambeze” had not done any elementary fact checking. In fact, documents exist which show that Silva applied for Mozambican nationality in 1975, less than three months after the country’s independence on 25 June, and that he was granted nationality in 1977. By the time of the marriage he had been a Mozambican for four years.

The affair made “Zambeze” and its reporters look idiotic – until the Public Prosecutor’s Office decided to transform them into martyrs, by charging them, not merely with libel, but with a crime against state security.

To make matters even worse, the judge in the case, when it came to court on 13 August, ordered it to be held behind closed doors, thus contradicting the basic principle that trials in matters of public interest are held in public.

But at a press conference on Thursday, Choquela read out a statement from her office defending both the use of state security legislation, and the barring of the press and public from the proceedings.

She said that, under the 1991 press law and the state security law of the same year the offence of libeling a series of high ranking state figures, including the prime minister, is classified as a “public crime”. That is, the Public Prosecutor’s Office may initiate legal proceedings without any formal complaint from the person libeled.

In fact, this is the first time this clause in the security legislation has ever been used, even though foolish allegations about the Prime Minister’s nationality are not the first or most serious libels against Mozambican government figures.

Thus in April 2002, opposition parliamentarian Dionisio Quelhas, claimed that the then President, Joaquim Chissano, was “one of the accused in a case involving guns and drugs” before a Lisbon court. This was pure fiction, and Justice Minister Jose Abudo accused Quelhas of “slander, affront and defamation, crimes committed in what is manifestly a public place (the parliamentary chamber), in front of hundreds of people” (and, he might have added, broadcast to a much larger audience by Mozambican radio and television).

Under Choquela’s interpretation of the law, the Public Prosecutor’s Office should have immediately charged Quelhas with libel, regardless of any action by Chissano (who in fact decided to ignore the whole affair).

But there was no action against Quelhas, or the other Renamo deputies who had backed him up. This might lead one to conclude that Maputo prosecutors regard half-witted remarks about the Prime Minister’s nationality as more serious than accusing the head of state of involvement in drug trafficking.

Choquela added that the reference in the charge sheet to “all the legal diplomas applicable”, including the relevant article in the state security law, “is obligatory, regardless of the opinion that the Public Prosecutor’s Office, or any other body, may have about the matter”.

Clearly Choquela herself has some reservations about this clause in the security law, for she added “we share the opinion that in our legal system there are laws that need to be revised, and in some cases the question is posed with a certain urgency”.

However, she continued, “this does not exempt state bodies and citizens from the obligation to comply with the law, and it does not authorize speculative acts or erroneous interpretation against the legitimate performance of judicial bodies”.

Much worse was Choquela’s defence of secret trials. She claimed that in cases of libel and defamation only people called upon by the court to take part may attend. To justify this position, she cited articles from the Penal Procedural Code and from the law on the organisation of courts.

Choquela accused the media of “disinformation” – but her use of these two laws is itself a shocking piece of disinformation. Firstly, the Penal Procedural Code is not a Mozambican document at all. It is the Portuguese code of 1926, passed after the military coup that installed half a century of fascist dictatorship.

Much of this Code has been tacitly revoked by subsequent legislation. Mozambican jurists have been working on a new Penal Procedural Code for several years, but a final version has yet to see the light of day. In any case, according to one jurist AIM spoke to, the article in the code cited by Choquela (article 593) is not an absolute prohibition on public libel trials, but merely grants the judge discretion.

The law on court organisation quoted by Choquela is from 2007 – but the article she mentions (article 13) says nothing at all about libel. This is the article which bans cameras and microphones from trials, but at the same time stresses that trials remain public.

The exact wording of the relevant paragraph is “Trials are public, except when the law or the court determines that they be held without publicity, to safeguard the dignity of persons and public order, or when other powerful reasons occur”.

This is lamentably vague, but it covers all cases, and not just libel. The reference to “dignity of persons” is generally

regarded as referring to sexual offences, where the identity of the victim may need to be protected. It is hard to see what threat to public order or “other powerful reasons” are posed by a case involving three journalists on a small circulation weekly.

The 2007 law is the latest and most comprehensive law on court organisation. It specifically revokes all contrary legislation – which presumably includes much of the colonial-fascist Penal Procedural Code.

A reasonable reading of this law is that there is nothing special about libel cases determining that they should be held behind closed doors. Indeed, the decision to keep out the press flagrantly disrespects a ruling by the Constitutional Council (Mozambique’s highest authority on constitutional law).

When the Council was asked to rule on whether it was constitutional to keep cameras and microphones out of trials, it concluded that it was – but at the same time made a strong defence of the public nature of trials. The Council’s ruling of August 2007 stressed that reporters could and should publicise the contents of trials – they just could not photograph, film or record most of the proceedings. But they could certainly take notes and tell the outside world what was going on in the courtroom.

The Council argued that banning cameras and microphones “does not prevent trials from being open to the public, or from being publicly reported”. Information could still be gathered, and then be published or broadcast “by any of the media, thus helping make effective the right of citizens to information”.

Choquela stressed indignantly that it was quite untrue to suggest there had been any interference by the government in the judiciary in the libel case. She declared that, under the constitution, the Public Prosecutor’s Office “enjoys autonomy from other state bodies, and in the exercise of their duties prosecutors, as guarantors of legality, are not subject to criteria other than objectivity, impartiality, and exclusive obedience to the law”.

She is almost certainly right. Mozambique’s recent history shows that several judges and prosecutors are quite capable of making serious mistakes, and even of bringing the legal system into discredit, without any intervention from the government.

After reading the statement, Choquela took a few questions and then declared the press conference over, even though many other journalists wished to ask questions.

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PRESS FREEDOM “SOMETHING STRANGE” FOR LOCAL OFFICIALS

Maputo, 25 Aug (AIM) – Freedom of the press in Mozambique shrinks the further one moves away from Maputo, according to Tomas Vieira Mario, the chairperson of the Mozambican chapter of the regional press freedom body, MISA (Media Institute of Southern Africa).

Interviewed in Monday’s issue of the Maputo daily “Noticias”, Vieira Mario, who was re-elected for a further two year term of office at a MISA general meeting last week, said that the great openness the media enjoy in Maputo “sometimes hides the real country from us”.

What happens lower down the administrative ladder, in rural districts and localities, is quite different. “In the districts, freedom of the press is still something strange for the great majority of local public authorities”, he accused.

The figure of the district administrator, Vieira Mario argued, had so far escaped all the reforms that have reshaped the Mozambican state, and essentially he continued the traditions of the colonial local state. At the heart of the district administrator’s form of exercising power was the idea that “he is the chief of the territory, not the idea, contained in the public sector reform, that he is a democratic facilitator”.

Far from being a facilitator, the district administrator trended to be “a centralizing figure, who believes that he is the centre of power”, said Vieira Mario. “This is reflected in everything that goes on in the district. Sometimes a simple survey in the district can be stopped if the administrator has not been informed. He can order the survey stopped to find out who the people are, where have they come from, and why are they doing this work. As for freedom of the press, basically he doesn’t know about it”.

Vieira Mario argued that this was not just a question of better academic training for administrators, but one of an attitude towards power.

Perhaps more shocking is that the provincial branches of the Public Prosecutor’s Office, far from upholding the fundamental rights of citizens, violate them, when those citizens are journalists. A flagrant example, said Vieira Mario, took place in the central province of Manica in 2006, when the deputy provincial attorney ordered three journalists from a community newspaper to be thrown into jail for supposedly libeling a local businessman – even though preventive detention is not permitted in cases of libel.

“Obviously it was all fabricated”, said Vieira Mario, and had MISA not intervened the three might have spent a lengthy period in jail “because, in compliance with their duties, they discovered and denounced a local businessman who stole livestock from the population of Barue district and sold it to South African farmers”.

The businessman was an influential figure in Barue, so the order went out to arrest the journalists and they were thrown into jail, even though there was no formal complaint against them, and no case was opened that they could respond to.

That case “symbolizes the attitude of local powers outside Maputo and shows that the further we move away from the capital, the more our fundamental freedoms are diminished”.

Judges too abused their powers, notably by holding trials behind closed doors. Such trials had occurred in Beira and

Pemba, he recalled, against local journalists. Vieira Mario argued that this happened “because the judges are aware that they may commit blunders”. So to hide their mistakes, they kicked the public out of their courtrooms.

In some cases “they even tell court clerks not to reveal the content of their rulings. This happened in Beira. These questions are very serious”.

Conflicts between the media and the judiciary were on the increase, particularly with a sharp increase in the number of libel cases. Vieira Mario thought this reflected a genuine increase in misconduct in the public administration, and a greater capacity of the press to denounce abuses.

Those accused reacted by dragging journalists before the courts. Vieira Mario noted that accusations in the press against politicians, even if based on anonymous sources, are often motivated by public interest considerations. “Unfortunately, practice shows us that judges never pay attention to questions of public interest. They’re not going to check whether or not public interest was involved, whether publication was in good faith”, he said.

He added that, if journalists have to appear in court, they should ensure the services of a good lawyer, who understands the constitutionally enshrined right to information, and why journalists are entitled not to reveal their sources. “What the judge should want to know in court is the truth of the facts, and not who told them to you”, Vieira Mario said.

He admitted there had been abuses in the press, when journalists knowingly published falsehoods. This could only be fought against by ensuring that each of the media has a code of ethics, and that journalists understand their ethical responsibilities.

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JUDICIAL HARASSMENT OF MEDIA CONDEMNED

Maputo, 17 Aug (AIM) – The Mozambican media is facing harassment from the country’s courts, warns Tomas Vieira Mario, chairperson of the Mozambican chapter of the regional press freedom body MISA (Media Institute of Southern Africa).

In a report published on the eve of a MISA-Mozambique general meeting, Vieira Mario notes that there have been advances in terms of pluralism and diversity in the media. There are now over 60 radio and television stations in the country, in the public, private and community sectors, and over 25 regular publications. Over 900 people work on the editorial side of the media, ranging from volunteer producers in local community radios, to professional journalists on the national media.

But this growth is overshadowed by an increasing trend by figures in Mozambican politics and in the judiciary itself to resort to the courts when the media publish something they find offensive.

The most serious judicial harassment, Vieira Mario recalled, came in December 2006, when equipment was seized from the private media company SOICO, putting at risk the continued operations of its television station, STV, and its other initiatives. A judge in the Maputo city court ordered the seizure because of a debt owed to someone who had never worked at SOICO.

The attack on SOICO, Vieira Mario said, was “disproportionate and unjustified”. But rather than distancing themselves from the threatening behaviour of their colleague, Mozambican judges stood in solidarity with him, and the Mozambican Association of judges (a body never heard of before or since) held a press conference in January 2007 in his defence.

In the two years that he has been at the helm of MISA-Mozambique, Vieira Maria added, “more than 10 journalists, editors and media directors have been summoned by institutions of the administration of justice for interrogations, or to stand trial for libel or defamation”.

Exorbitant sums have been claimed in damages, Vieira Mario added, which “clearly express a desire for vengeance against press freedom, rather than any feelings of justice. The purpose is clearly to frighten journalists and provoke the bankruptcy of the companies that employ them”.

The press also ran into serious problems from the country’s parliament, the Assembly of the Republic. In 2007 the Assembly unanimously passed a new law on the organisation of the courts. Most of the law was uncontroversial – but one article banned cameras and microphones from trials.

In the past, the decision on allowing or prohibiting the broadcasting of trials had been left up to individual judges. Now they were stripped of that discretion, so that there could be no repeat of the live broadcast, from beginning to end, of the trial in 2002-03 of the six men who murdered the country’s top investigative reporter, Carlos Cardoso.

The Assembly’s decision to slam courtroom doors on the press came despite an earlier ruling by the Supreme Court that live broadcasts of criminal trials “in cases of evident public interest, is justified by the right of citizens to information”.

Vieira Mario noted that the Assembly was continuing to shut the public out of some of its own sessions. Throughout the past two years, the Assembly met in closed session whenever discussing reports from its Petitions Commission, the parliamentary body that deals most closely with citizens’ demands for justice.

As with the ban on broadcasting trials, this was done in the name of citizens’ “right to honour”.

Meanwhile, the Assembly has done nothing to make an equally constitutional right, the right to information, a reality. After lengthy public debates, MISA-Mozambique submitted to the Assembly a draft bill on freedom of information, which sought to guarantee access to official sources of information. That was in 2005, and since then there has been “sepulchral silence” from the Assembly, remarked Vieira Mario.

The Constitution states that the exercise of freedom of information shall be “regulated by law” – but the Assembly is clearly in no hurry to pass such a law.

There is a constitutionally established watchdog, the Supreme Mass Media Council (CSCS), which has the task of defending the independence of the media, and the freedom of the press. But when the media has been faced with judicial attacks, the CSCS has not stood up for press freedom. Vieira Maria notes that it has done the opposite, and has actually encouraged the courts to intervene in the media. The CSCS, he said, operates as if it were “a section of the Public Prosecutor’s Office”.

On the other hand, Vieira Mario notes, the country’s President, Armando Guebuza, has always been willing to speak with MISA, and with the press in general. He has also made a point of taking on presidential visits, inside and outside the country, reporters from the private as well as the public media.

Journalists’ organisations have also been able to work fruitfully with the government press office (GABINFO), which is attached to the Prime Minister’s office. The best example of this was cooperation between MISA, other journalists’ organisations and GABINFO in producing the draft of new press law.

Although much of the draft is welcome, and in line with the press freedom clauses of the 2004 constitution, there was initially a dangerous demand for compulsory licensing of journalists. After this was the subject of some controversy in 2006, a “consensual position” has been found, according to Vieira Mario, in which holding a professional licence will become a right of journalists, and not an obligation.

If this is indeed the case in the final version of the draft, then the document in question will become more of a press card than a licence, and those who do not hold one, for whatever reason, will not be barred from practicing journalism.

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