



CENTRO DE INTEGRIDADE PÚBLICA
Anticorrupção - Transparência - Integridade

ANTICORRUPTION

20th April 2023 | Edition nrº 9 | Free Distribution | www.cipmoz.org

Critical analysis of the Attorney General's Annual Report to Parliament

Introduction

In this text, the Public Integrity Centre (CIP) makes a critical analysis of the Attorney General's (AG) Annual Report to Parliament, presented this Wednesday (19). The document focuses on the areas of anticorruption, public finance, extractive industry, public procurement, fight against terrorism in Cabo Delgado, gender based violence, human rights violation and the case of hidden debts. These are CIP's areas of research and advocacy.

It is argued that the report of Attorney General Beatriz Buchili, addresses important issues of legality and criminality in the country, but it omits other situations of equal relevance that trouble the society. The omitted issues include the violation of human rights by the Defence and Security Forces in Cabo Delgado, gender-based violence against internally displaced people from the conflict in Cabo Delgado, environmental crimes and human rights violations committed by mining companies against host communities throughout the country. The report does not give due prominence to the financial and tax crimes which, in the meantime, harm the State in millions of meticaís. Likewise, the AG has shown a lack of transparency by not revealing how much is spent on the legal proceedings of hidden debts in South African and in English courts. The report also shows the softening of justice in the fight against terrorism and its financing.

Increase in corruption cases and damages to the State

The Attorney General's report reveals that cases of corruption and the damage caused to the State by its practice have increased in the country. In 2022, the General Attorney's Office registered 1,639 new corruption cases, which represents an increase compared to the 1,277 cases registered in 2021. As a result of the corruption cases registered last year, the State lost 617,153,505.93 meticaís, more than double of the loss in the previous year, which was of 303,445,601.07 meticaís.

The increase in corruption cases is a sign that "corruption is pervasive in almost all sectors of society", says the report, from Attorney General Beatriz Buchili.

The Attorney General's Office also recorded an increase in corruption cases handled in 2022. 1,606 cases were dealt with while 614 cases remain pending. In 2021, the Attorney General's Office had handled 1,299 cases, leaving 640 cases pending.

The Attorney General noted that Mozambique "has gradually improved in the International Corruption Perception Index, with an increase of five points in the 2022 assessment, which appreciates the efforts and achievements".

This information does not correspond to the truth. Transparency International released on 31 January 2023, the results of the Corruption Perception Index for 2022 and Mozambique is still poorly positioned in the index. From 2021 to 2022, there was

no variation, which means it is in a stationary position. In 2021 Mozambique scored 26 out of 180 countries assessed, registering an increase of 1 point in relation to 2020. In 2022 the country once again recorded the same score obtained in the previous year, with the same number of countries being evaluated¹.

Recovered assets worth more than one billion meticais

In 2022, the Central Asset Recovery Office recovered assets diverted in corruption and related crimes worth more than one billion meticais (about USD 18 million), resulting from various seized movable, fixed and cash assets. This figure represents an increase of about 400,000,000 meticais (USD 6.2 million) compared to 2021, when the total assets and money recovered were 734,571,308.22 meticais (USD 11.4 million).

The increase in asset recovery may be directly related to the hidden debts case, the trial of which took place in 2022. Therefore, it represents an exceptional, unusual situation for asset recovery, which has been well below these levels.

The recovered assets were handed over to the Asset Management Office which, in turn, provisionally assigned 7 (seven) properties and 23 vehicles to public institutions. However, the Attorney General's Office recognizes that the lack of regulation of this office has a negative impact on the conservation, maintenance and security of the assets. In the last session of the Council of Ministers, the Government finally approved the Decree that will regulate the management of recovered assets.

Also related to corruption and related crimes, the Administrative Court sanctioned 521 public managers, making them financially responsible to return 492,960,809.56 MZN and to pay fines totalling 39,226,069.00 MZN. Unlike the 2021 report, which provides details of criminal proceedings brought against judicial and prosecutorial magistrates, the 2022 report only refers to the disciplinary proceedings and investigations conducted by the Supreme Judicial Council of the Attorney General's Office. This year's report presents a table indicating that seven (7) criminal proceedings were brought against magistrates in 2022, however,

without details about the criminal nature of these proceedings. A worrying omission!

Public procurement remains the main source corruption

Corruption in public procurement continues to be standard in the public sector. In the report of the Attorney General's Office, public procurement is pointed out as one of the areas where more cases of corruption happen in the country, "due to the high financial flow and the volume of transactions involved". However, despite this trend, in 2022 only 5 criminal cases related to corruption in public procurement were filed by the Attorney General's Office throughout the country, suggesting that very little has been done, both in the oversight of public procurement processes and in holding those involved accountable.

The lack of proper supervision of procurement processes by the competent entities, such as the Administrative Court, causes public institutions to execute contracts with irregularities that are harmful to the State. Moreover, the lack of exemplary accountability in cases of corruption in public procurement is an incentive for the entrenchment of corrupt practices.

Public procurement plays an important role in the management of public finances. At least 33% of the country's public expenditure, equivalent to 10% of GDP, is allocated to the procurement of goods and services and public works contracts². Indeed, corruption in public procurement deprives the state of scarce resources needed to provide quality public services to citizens.

Money laundering goes unpunished

Due to the weaknesses in the framework of prevention and fight against financial crimes, namely money laundering, Mozambique was placed, in October 2022, in the FATF Grey List³. And despite the legislative and institutional⁴ effort⁵ that the country has been making, crime continues to gain ground. The report of the AG refers that between 2021 and 2022, there was, in the country, an increase of 33 cases related to money laundering, rising from 36

1 CIP (2023). Mozambique in stationary position in Transparency International's Corruption Perception Index - TI (2022). Available at <https://www.cipmoz.org/wp-content/uploads/2023/02/Moçambique-em-posição-estacionária-no-Índice-de-Percepção.pdf> (consulted on 19 April 2023)

2 World Bank Group & DFID (2020) MOZAMBIQUE: Assessment of the Public Procurement System, Main Report. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/35388/Main-Report.pdf?sequence=1>. (Consulted on 17.01.2022)

3 O País newspaper, Mozambique on FATF grey list for failure to combat money laundering, available at: <https://opais.co.mz/mocambique-na-lista-cinzenta-do-gafi-por-nao-combater-branqueamento-de-capitais/>, consulted 19 April 2023.

4 For example, training of SERNIC investigators in anti-money laundering matters; creation of specific sections in the Public Prosecutor's Office dealing exclusively with anti-money laundering matters.

5 Like the Strategy to Prevent and Combat Money Laundering, Terrorist Financing and the Financing of Proliferation of Weapons of Mass Destruction 2023-2023, approved by the Government in Resolution 43/2022 of 21 October.

cases in the previous year to 69 cases in 2022⁶.

Money laundering takes place mainly through financial institutions and non-financial entities, which are recurrently accused of poor collaboration⁷. It is proven that the administrative sanctions that these institutions have suffered from the Central Bank in recent years, only in October of last year (2022) the Central Bank sanctioned 8 commercial banks operating in the country around 170 million meticais, for violation of the norms and procedures that regulate the financial sector⁸ have not proved effective in stopping crime, and there is the need to associate them with others, otherwise the country may take a long time to get off the FATF Grey List, or worse, to enter an even heavier classification.

In order to strengthen the fight against money laundering, the authorities could strengthen the enforcement of the Public Probity Law, whereby all public servants are required to declare their income before and after assuming public office. It has been proven that there are many civil servants from different departments who make illicit financial gains from their positions in the state. An example of this is the growing number of cases against INAE Inspectors⁹, INGD employees¹⁰, INATRO employees¹¹ and SERNIC agents.¹²

The figure of rewarded collaboration could also be introduced to allow better tracking and/or investigation of crimes. This figure does not exist in the country. Given the complexity of this crime, the introduction of rewarded collaboration would translate into an agreement made between the accused and the State, which holds punitive power, the accused could benefit from a procedural prize in exchange for pertinent information that could facilitate the detection of crimes and criminals more quickly.¹³

Financial and tax crimes dealt with in a superficial way

Although the report refers to the existence of several economic, financial and tax crimes, such as embezzlement, smuggling, fiscal fraud and swindling, in terms of number of cases, it only indicates those related to smuggling and embezzlement, with a total of 575 cases opened in 2022. The lack of data regarding other economic and financial crimes to which the country is prone is questionable, such as tax evasion, through adulterated commercial invoicing, provision of false declarations in the process of import or export of goods, partial declaration of goods, among others.

A study by *Global Financial Integrity*¹⁴ indicates that adulterated commercial invoicing¹⁵ is the main form of tax evasion in Mozambique. This study also indicates that about USD 5.3 billion (USD 2.33 billion commercial invoice outflow and USD 2.93 billion commercial invoice inflow), representing 8.98% of the average annual GDP over the period 2002 to 2010, was moved via Mozambique.

The report of the Attorney General's Office merely presents statistics on the number of cases without demonstrating the weights in terms of monetary values involved. The frequency of the type of crime does not necessarily convey the scale of the problem. One would expect the report to say, for example, how much the State was damaged by money laundering, how much the State lost due to tax crimes.

Given the estimates provided and the negative and serious consequences of economic and financial crimes for the country, the Office of the Attorney General's report should provide more details regarding these cases, for example the amounts involved and the measures being taken to prevent them. Incorporating data of monetary values involved in each of the types of financial economic crimes would convey the real dimension of the problem.

6 Cf. Informe Anual de la PGR, 2022, pp. 37-38.

7 Cf. <http://opais.sapo.mz/banco-de-mocambique-multa-bci-bim-uba-bni-e-unico-por-atropelarem-a-lei>, accessed on 29 December 2018.

8 Jornal e-Global Noticias em Português, Mozambique: *Bank of Mozambique sanctions financial institutions*, available at: <https://e-global.pt/noticias/lusofonia/mocambique/mocambique-banco-de-moc%CC%A7ambique-sanciona-instituic%CC%A7o%CC%83es-financeiras/>, consulted 19 April 2023.

9 O País newspaper, *INAE inspector arrested for alleged illicit charges to economic agents*, available at: <https://opais.co.mz/inspector-da-inae-detido-por-supostas-co-brancas-ilicitas-a-agentes-economicos/>, consulted 19 April 2023. See also: <https://ikweli.co.mz/2023/01/12/detido-delegado-da-inae-em-nampula/>, consulted 19 April 2023; See also:

10 DW, *Mozambique: PGR opens case against INGD coordinator*, available at: <https://www.dw.com/pt-002/mo%CC%A7ambique-pgr-instaura-processo-contra-coordenador-de-fundos-do-ingd/a-65157343>, consulted 19 April 2023. See also: <https://mznews.co.mz/niassa-detido-delegado-do-ingd-por-desvio-de-camiao-de-donativos/>, consulted on 19 April 2023.

11 DW, *Five Mozambicans arrested for transport corruption*, available at: <https://www.dw.com/pt-002/cinco-mo%CC%A7ambicanos-detidos-por-corrup%CC%A7%CC%A3o-no-antigo-regulador-de-transportes/a-64655027>, accessed 19 April 2023.

12 Jornal O País, *PRM, SENAMI AND SERNIC remain on the most corrupt list*, available at: <https://opais.co.mz/prm-senami-e-sernic-continuum-na-lista-dos-mais-corruptos/>, consulted 19 April 2023.

13 BRAVO Jorge dos Reis, *Manual sobre corrupção, criminalidade organizada e económico-financeira, uma abordagem jurídico-penal*. Maputo: justiça, CFJJ, 2010, pp. 52 and following.

14 GFI (2014). *Hiding in Plain Sight: Trade Misinvoicing and the Impact of Revenue Losses in Ghana, Kenya, Mozambique, Tanzania, and Uganda: 2002-2011*. Available at: <https://gfintegrity.org/report/report-trade-misinvoicing-in-ghana-kenya-mozambique-tanzania-and-uganda/> accessed 19 April 2023 at 17:40

15 Under-invoicing of exports and over-invoicing of imports.

Economic, financial and tax crimes should be highlighted, not only because of their harmful effects on tax collection, but also because of their multiplying effects on the economy, such as draining foreign exchange reserves, reducing the capacity to mobilise resources, cancelling out investment flows and worsening poverty.

Another important aspect to mention is related to the number of cases tried in relation to economic and financial crimes. Out of 575 cases filed in 2022, only 11 cases have been tried. There are 98% of cases yet to be tried. This aspect shows lack of celerity for these types of crimes.

Economic, financial and tax crimes, in addition to causing damage to public assets, have serious repercussions on production, distribution and consumption of goods and services. These crimes reduce revenue collection capacity by millions of meticaís, prevent investment and worsen poverty levels.

Justice lax in combating terrorism and its financing

The report reveals a situation of justice slowing down in the fight against terrorism in Cabo Delgado over the year 2022. The number of cases processed reduced by more than half in the last year, from 354 criminal cases processed in 2021 to 169 cases in 2022. In these cases, there are 145 defendants in custody and 56 defendants released. Among the accused, 55 are women, and there are also an undisclosed number of children under 16 years old and elderly people up to 85 years old. In 2022, only 4 defendants were tried and convicted in the same number of cases, 3 of Mozambican nationality and 1 of Tanzanian nationality. The sentences imposed ranged from 2 to 20 years in prison, the report said.

However, the reduction in the number of cases processed does not mean a reduction in terrorist activity. The report highlights “situations of foreign citizens passing through border posts without travel documents or without registering their movement in the migration system”, but that “in some cases their passports bear entry and exit stamps, supposedly issued by the competent authorities, which reveals weaknesses in this sector”.

The Attorney General’s Office also claims that “with greater relevance, the involvement of foreign citizens in crimes, including terrorism, entering national territory under the pretext of being refugees or asylum seekers”, as well as the “illegal granting of national identification and travel documents, such as full narrative birth certificate, identity card, identification and residence document for foreigners (DIRE) and passports to foreign citizens”.

Beatriz Buchili mentioned that these “are situations that reveal the involvement of public officials who, in exchange for monetary values or other benefits, facilitate the illegal entry of people, including terrorists, hindering all the efforts undertaken by our State in the fight against this criminality”. However, he did not reveal that any persons have been detained in connection with these cases.

On the financing of terrorism, the Attorney General repeated data that are already in the public domain, such as the fact that terrorists use mobile money platforms for their transfers. But she did not present any concrete actions taken to cut off these flows and hold those involved accountable.

“We noted the flow of suspicious transactions of values, made by institutions and private individuals, through bank transfers and mobile wallets, namely, mKesh, e-Mola and M-Pesa, for some citizens, located in conflict zones, at the time occupied by terrorists, specifically, in the Districts of Mocímboa da Praia, Palma, Nangade, Muidumbe, Macomia and Quissanga,” said the Attorney General without, however, revealing what actions were taken.

He went on to say that “we have also found situations that reveal the creation of front companies registered in the name of Portuguese citizens, whose investment is made by foreign citizens, with the purpose of repatriating foreign currency in the form of the acquisition of goods in the international market, in a clear situation of money laundering leading to the financing of terrorism”. It also failed to disclose any action taken against these suspects, the opening of investigation proceedings, and much less their accountability.

The Attorney General justified inaction by referring to the “complexity of this type of criminality” and therefore called for the “approval of more legal instruments that can contribute to the component of prevention and fight against the financing of terrorism, namely, regarding the financing of political parties, non-profit organisations and religious denominations, as well as the creation of the National Council for Combating Terrorism, a body to coordinate and share information relevant to the prevention and fight against terrorism”.

No word on human rights violations by the Defence and Security Forces in Cabo Delgado

The Attorney General's report made no mention of human rights violations in Cabo Delgado by Mozambican and foreign Defence and Security Forces deployed in that province to help fight terrorism. There are multiple reports and images revealing military personnel torturing people suspected of being part of or collaborating with terrorist groups. The most recent case shows a video of soldiers dressed in South African uniforms burning corpses together with rubble¹⁶.

There were several condemnations of the act that was allegedly filmed last year - the period covered by the AG's report - from domestic and foreign human rights organizations, the Southern African Development Community (SADC), which has a military mission in Cabo Delgado and South Africa. The Mozambican state has not commented on the case and the Attorney General, who is the guardian of legality, remained silent during the report.

But, this is only one of several cases that have been denounced by various national and international bodies and the Attorney General's Office ignores them, giving the idea that it tolerates situations of human rights violations.¹⁷

Report ignored gender-based violence against IDPs in Northern Mozambique

In the chapter on violence against women and children, the Attorney General report ignored the particular situation faced by women, girls and children displaced from the war in Cabo Delgado in the neighbouring provinces of Nampula and Niassa. This is worrying as in these provinces there are many cases of gender based violence (GBV) which, if not effectively addressed, may worsen and create a climate of insecurity due to the high levels of vulnerability of women and girls in these contexts.

By 2022, the reporting period, the issue of GBV and its consequences for women's well-being and safety was relevant in Mozambique and across Africa. Data shows that GBV against women and girls registered alarming rates and constituted a major

obstacle to the achievement of Sustainable Development Goal 5 (gender equality). Women and girls are subjected to degrading treatment, mainly in Cabo Delgado Province. This includes physical-sexual abuse, human trafficking, forced marriage and child prostitution. The United Nations report on Gender-Based Violence, covering the period January to June 2022, provides data for insightful analysis, revealing that of the 5,958 incidents reported during the period, 53% of them were committed by close family members. Most perpetrators were male and women and girls aged 18-24 were the main victims¹⁸.

According to the cited report, the most common types of incidents reported were physical, psychological and sexual abuse. In addition to these incidents, the report also highlights the dangers of conflict in Cabo Delgado, as well as the lack of access to resources, legal protection and health care for survivors. The report concludes that gender-based violence is an ongoing problem in Cabo Delgado, exacerbated by conflict and difficulties accessing resources and legal protection that could otherwise help prevent further incidents. The Attorney General's Report makes no mention of these incidents.

The majority of GBV incidents reported in the period, according to the study, are gender-based violence, including domestic violence (50%). It also notes that risky behaviours and sexual exploitation, as a result of population displacement, have increased, such as cases of trading essential commodities for sex, resulting in an increase in sexual exploitation (19%). Reported incidents of early and forced marriage (13%), transactional sex (6%) and physical and psychological abuse (6%) further highlight the risks within war displaced people.

Inter-community tensions and tensions between IDPs and host communities remain a driver of GBV. In the context of escalating intercommunal conflict, survivors may face additional risks from their community, which often expresses feelings of hopelessness, making the environment more conducive to the perpetration of GBV.

In order to address this humanitarian crisis, the Mozambican State must take concrete steps to create an enabling environment and effective prevention and protection mechanisms for victims of GBV, particularly those in more vulnerable populations, such as those in Cabo Delgado. In addition, it is essential to provide

¹⁶ Amnesty International (2023). Mozambique. La vidéo montrant des soldats en train de brûler des cadavres illustre les atrocités commises dans le cadre de la guerre oubliée au Cabo Delgado. Available at <https://www.amnesty.org/fr/latest/news/2023/01/mozambique-video-showing-soldiers-burning-corpse/> (consulted 19 Apr. 23)

¹⁷ Human Rights Watch reveals that "State security forces were implicated in human rights violations during counterterrorism operations in northern Cabo Delgado province, including intimidation, ill-treatment of displaced people and the use of illegal force against civilians. Available at <https://www.hrw.org/world-report/2022/country-chapters/mozambique> (consulted 19 Apr 23)

¹⁸ UNHCR (2022). GENDER-BASED VIOLENCE (GBV) INCIDENTS TRENDS ANALYSIS IN CABO DELGADO/ MOZAMBIQUE: JANUARY - JUNE 2022. Available at <https://reliefweb.int/report/mozambique/gender-based-violence-gbv-incidents-trends-analysis-cabo-delgado-province-northern-mozambique-january-june-2022> (consulted 19 April 2023)

adequate resources and funding for the implementation of effective GBV response measures. It is also necessary to address the root causes of violence and identify and create access to services to protect women and girls.

Other African countries, and states around the world, have implemented effective strategies to address GBV, including increased coordination between governmental and non-governmental actors and capacity building workshops for police, health workers, and community leaders. Ultimately, tackling the GBV pandemic requires a comprehensive approach and collective action at all levels. It is essential that the Government of Mozambique urgently and robustly recognizes and fully commits to advancing gender equality, women's empowerment and the elimination of all forms of GBV. Such commitment will contribute to building an inclusive and democratic nation, where women and girls can live without fear of violence and discrimination.

In addition, it is important that the voices of women and girls are heard and included in the decision-making process regarding policies and programmes aimed at combating GBV. This may include promoting the active participation of women and girls in policy and other decision-making processes at all levels. Finally, it is critical that all efforts to combat GBV are supported by adequate and sustainable resources, including adequate funding, and capacity building for civil society organisations, government bodies and other stakeholders working in this area. To this end, the Attorney General's Office needs to problematize these issues in its analysis and reflections and document them in its activity reports.

No reference to crimes linked to mining activities

The extractive industry is frequently linked to the occurrence of crimes linked to the resettlement of populations, the environment and the health of workers in the industry. It was expected that the Attorney General's report would address these crimes, which harm the most fragile people. However, in the chapter where crimes related to the defence of collective interests and diffuse rights are presented, the report made no reference to the various cases that

have been reported publicly, including by CIP.

CIP has already exposed several cases. It highlights the dangers to the environment and the forest reserve in Zambézia Province¹⁹, the establishment of a heavy sands mining company in Zambézia fraught with irregularities²⁰, the problematic resettlement in Olinda Island, Inhassunge District²¹, the impositions and negotiations on behalf of the population in the resettlement in Cuassiane, Pebane District²², in addition to other several cases reported by the press. However, the Attorney General ignored these crimes and illegalities in its report.

Natural resources are exhaustible. The risk is to be left with a degraded population, environment and health without anyone being held accountable for bad practices.

Lack of transparency in the costs of hidden debts processes abroad

Regarding the hidden debts, the AG confirmed that the Mozambican appealed to the Constitutional Court of South Africa, against the extradition of Manuel Chang - former Minister of Finances to the United States. This extradition process has high costs for the State. By 2020, the State had spent about 100 million meticaís only with South African lawyers to try to avoid the extradition of Chang to the USA²³. Three years later, and with the various inter-port appeals, the AG has spent much more money on this case and it was important that it be transparent and disclose the expenses, but it has not done so.

Another civil suit filed by the Mozambican state to avoid payment of the loan for the hidden debts is also underway in London. This lawsuit also has very high costs for the State. The AG did not reveal, in its report, how much was spent, showing, once again, the lack of transparency that the AG itself demands from other public entities.

Still on the London case, Buchili did not comment on the alleged refusal of the Mozambican state to hand over documents considered to be classified, required by the English Court, without which, it is claimed, there are serious risks that the case will be filed²⁴.

19 - <https://www.cipmoz.org/pt/2022/08/18/estado-perde-milhoes-de-meticais-por-falta-de-fiscalizacao-da-producao-de-areias-pesadas-na-provincia-da-zambezia/>
20 - <https://www.cipmoz.org/pt/2022/08/18/estado-perde-milhoes-de-meticais-por-falta-de-fiscalizacao-da-producao-de-areias-pesadas-na-provincia-da-zambezia/>
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23 CIP (2020). Mozambican Government pays fees of over 100 million meticaís to South African lawyers in the “Chang case”. Available at <https://www.cipmoz.org/pt/2020/01/14/governo-mocambicano-paga-honorarios-de-mais-de-100-milhoes-de-meticais-aos-advogados-sul-africanos-do-caso-chang/> (consulted 19 April 2023)

24 VOA Portuguese (March 06, 2023). British judge urges Mozambique government to hand over documents for prosecution in London. Available at <https://www.voapor-tugues.com/a/1u%C3%ADz-britânico-insta-governo-de-moçambique-a-entregar-documentos-para-processo-em-londres/6992160.html> (accessed 19 April 2023)

Meanwhile, for the internal cases of hidden debts, the novelty was the relevance of the existence of a second autonomous process (third in total) with the number 372/11/P/2020, in which 07 defendants were found, of which 04 are uncertain. Meanwhile, the Public Prosecutor's Office claims that the preparatory instruction of the case referred to above is dependent on the response to requests for mutual legal assistance and extradition issued to various countries in connection with the facts that are the subject of the case.

The four defendants that Mozambique intends to extradite for trial in the country are the three former collaborators of Credit Suisse, Andrew Pearse, Surjan Singh and Detelina Subeva, involved in the contracting of the hidden debts, and Jean Boustani, the collaborator of Prinvest, the main perpetrator of the hidden debts.

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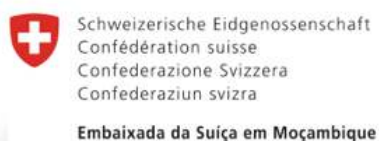
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