



## Displacement And Legal Response in Mozambique: Mapping Gaps to Explore Existing Beyond Solutions.

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**Abstract:** Terrorism in the northern oil and gas-rich province of Cabo Delgado tips Mozambique into severe economic and social hardship. Between 2019 and 2022, more than 750 people were killed and over 1.6 million displaced people. In 2021, one of the three main multinationals involved in the exploitation of oil and gas, Total Energies, declared force majeure and suspended their \$20 billion liquid natural gas project. Since then, the conflict has occupied the foreground of political and social debate, forcing the government to change its approach. It actioned the national disaster framework for the protection of displaced people and brought in foreign troupes from SADC and Rwanda – which concerns us here; to execute combat and security operations, stabilisation, and security-sector reform.

This research discusses these policies and pacts through the lens of protection and displacement. The main purpose is to examine how the government of Mozambique is legally responding to displacement and whether these military pacts consider the bills and laws that underpin the protection of displaced people and their (civilian) hosts.

**Keywords:** terrorism, military pacts, displacement and protection.

### 1. INTRODUCTION

In October 2017, a new form of violent conflict erupted in Cabo Delgado – a province located in northern Mozambique, following the discovery of large reserves of natural gas (Tsandzana, 2024). The conflict has been, arguably, labelled as terrorism, led by Ansar al-Sunna and the Islamic State of Mozambique (USA, 2022). Since the first attacks, the government has adopted several efforts to combat the terror, but attacks expanded all over Cabo Delgado province and in the north of Nampula province as well (Bussotti & Coimbra, 2023). According to Hanlon (2021), Tivane (2024) and Bonate (2024) the nature and roots of the conflict stream from a major economic change in Cabo Delgado, socio-economic marginalisation, corruption, and weak governance, lack of economic inclusion and youth unemployment to the exclusion of local processes and mechanisms for negotiation and mediation. These disputes led to community grievances that were then expressed in attacks that escalated into violent conflict.

From the viewpoint of displacement, as of March 2024, the conflict alone forced over 1.6 million people to flee their homes and communities, from which 0.6 million IDPs are returnees (IOM, 2024), living in villages where safety and security continue to be volatile and pose risks. Recognizing the spreading of conflict and concerns about the unfolding of displacement, the need for a definition of roles and responsibilities as well as a stand-alone instrument to orient displacement management, the government approved the Policy and Strategy for Internal Displacement Management (hereinafter – PEGDi), adopted via Resolution 41/2021<sup>1</sup>. One year before, in 2020, the government also adopted Law 10/2020<sup>2</sup> approving the Disaster Risk Management Act.

<sup>1</sup> Aprova a Política e Estratégia de Gestão de Deslocados Internos, abreviadamente designada por PEGDI.

<sup>2</sup> Lei n. 10/2020 - Aprova a Lei de Gestão e Redução do Risco de Desastres

## **2. MATERIALS AND METHODS**

This research is qualitative in nature. It uses a qualitative approach based on a bibliographical as well as documental analysis of the relevant rules contained in the branch of international humanitarian law, national disaster and displacement framework on protection of rights of internally displaced persons, amid conflict, in Mozambique. This is a conference proceeding. The paper was presented in poster section at the 8th Annual Conference, Refugee Law Initiative, University of London with the theme: ‘Pacts, Promises and Refugee Protection’, in June 2024. The paper responds to the following questions:

1. How is the Mozambique legal regime equipped to deal with the protection of conflict-induced internally displaced people?
2. How do these military pacts consider the bills and laws that underpin the protection of displaced people and their hosts?

## **3. RESULTS OF THE RESEARCH**

### **3.1. Internally Displaced People in Mozambique’s Legal Regime: Gaps and Existing Beyond Solutions.**

The notion of internally displaced people (hereinafter – IDPs) gained massive momentum in the 1998 UN Guiding Principles on Internal Displacement. This is considered one of the most important documents regulating internal displacement, let alone the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention, adopted in 2009). In Mozambique, before the IDPs’ policy, there was none. Even the Law No. 10/2020 (establishes the Legal Regime for Disaster Risk Management and Reduction) lacked references to displacement. The policy constitutes an important step in formulating norms and principles specifically tailored to redress and meet the assistance needs of IDPs, thus addressing the preexisting grey areas, gaps, and vacuums in the DRM law. The policy takes conflict as the main cause of displacement. The word conflict itself is mentioned 15 times over climate change - which is only referred to 4 times. However, there are a few areas in which the policy provides insufficient legal protection, owing to reservations that the state might have decided to make.

The policy is more of a charitable and humanitarian nature. It does cover provisions on ‘protection and assistance’, but there are many aspects and areas of particular relevance to IDPs in which the policy provides insufficient legal protection owing to inexplicit articulation or normative and other kinds of gaps (Goldman, 1998). It does, by analogy, leave specific protection for the basic needs of the internally displaced people amid non-international armed conflicts, which non-IDPs specified laws and norms may emphasize or distort. The guarantees provided by the Constitution and Law 17/97 are not specific for IDPs – they are generic. This creates a vacuum as regards the legal protection of IDPs, due to insufficient protection occurring in situations falling below the threshold of application of the Constitution and any other document of a legal nature, including the Policy. There are numerous areas where a general norm exists, but a corollary, more specific right relevant to the needs of the internally displaced has not been articulated (Goldman, 1998). One example of a normative gap is the fact that it contains expressions of mechanisms for controlling the freedom of movement of IDPs to be adopted by the military force. However, restricting the freedom of movement of IDPs is prohibited in the Constitution (Art 55), the Kampala Convention (Art 7) and other rules of international law. Evacuation is not prohibited, i.e., the government shall decide whether to execute forced evacuation or not, in accordance with the Constitution and other legal documents: the DRM Law (article 44) and the Law 17/97 of 1st October, on the National Defence and Security Policy (revised in 2019). Moreover, no guarantees are given in terms of regulating relocation processes in the context of armed conflict, and acts of arbitrary displacement are not prohibited nor criminalized in the current legislation (Caterina, 2023). Other such gaps are the absence of a right to restitution of property lost (or compensation for its loss) nor any express guarantee against the forcible return to dangerous areas within the conflict zones. Meanwhile, several stories of cruel treatment and torture have been reported (Tivane, 2024); and restriction on freedom of movement have arisen.

In a context of ongoing conflict, Mozambique is subject to a number of obligations that are binding under international law to limit the violence and to protect people from any abuse by the parties. These obligations are set by international human rights law (hereinafter – HRL) and international humanitarian law (hereinafter – IHL). The latter is specifically tailored to deal with problems that arise in armed

conflict, but in no way does the IHL supersede other systems of international rules protecting civilians (Plattner, 1992). Rather, they are applied concurrently. However, in most cases, the HRL is often suspended amid armed confrontations (even though the inalienable human rights remain applicable), and the IHL comes into force (Plattner, 1992). Mozambique is the party of both the Geneva Conventions (1949) and its additional PROTOCOL II (1977), since 1983, and the Kampala Convention (signed in 2010 and ratified in 2017). Then, the armed forces and decedents must rely essentially on those instruments.

### **3.2. Pacts And Protection of Idps in Mozambique: The Rwanda Military Intervention in Cabo Delgado.**

Between 2020 and 2021, terrorist and extremist attacks scattered all over the northern region. Between 2021 and 2024, at the request of the Government of Mozambique, Rwanda deployed a contingent of 2,500 troops and police from the Rwanda Defence Force (RDF) and the Rwanda National Police (RNP) to Cabo Delgado Province – because efforts by national security forces and foreign mercenaries failed to improve the situation (Shield, 2023). Official information (from Rwanda’s Minister of Defence – MOD) states that this deployment came into force on the basis of good bilateral relations between the two countries (after the 2018’ signed agreements) and Rwanda’s commitment to the Responsibility to Protect (R2P) doctrine and the 2015 Kigali Principles on the Protection of Civilians.

Mozambique is not the only African country where Rwandan troops have been deployed. Existing data suggest that Rwanda’s spirit of “African solutions for African problems” has increased since 2004 (Shield, 2023). However, it is also argued that these operations – which aren’t under the UN and AU protocols – raise questions about the conduct of Rwanda’s army and its counterinsurgency doctrine, specifically when it comes to protecting bystanders. The specifications and provisions within the Mozambique-Rwanda military pacts are not public, nor approved by or notified to the Mozambique Parliament, and this (pact) has drawn massive public and controversial arguments and harsh criticism, concerning its legality and nature. It is also argued that this deal came soon after the meeting between Rwanda and France’s presidents, alluding that it has the clear interest in protecting France’s investment in the region. On the other hand, Mozambique did not declare a ‘state of war’ [Constitution of the Republic of Mozambique - CRM Article 160(a)] but a ‘state of emergency’ (and “situation of public calamity”) for COVID-19 – not for Cabo Delgado conflict (only in 2024, the Government started to not rule out the possibility of declaring state of emergency in the province of Cabo Delgado, as response to the new wave of terrorist attacks and threats). Rwanda’s military pact came in between this described context and the adoption of the new DRR law (2020) and IDPs policy (2021). This brought attention to the plight of displaced people and the protection of their rights.

In Mozambique, Rwandan forces have attained impressive results without inflicting substantial civilian harm. Only one civilian fatality was reported after nearly a year of intervention (Shield, 2023). Through joint operations with Rwandan forces, reclaimed territories allowed many displaced persons to return to their homes and helped the counterinsurgency efforts gain momentum with the killing of the leader of the Ahl al-Sunna wal-Jama’a (august 2023). The Rwandans also involved themselves in working with residents in recaptured areas to create a liveable environment. Three years later, no cases of severe human rights violations of civilians involving Rwandan soldiers have been reported. Nevertheless, in January 2024, it was reported that Rwanda security forces blocked the road to stop civilians from fleeing the town of Mocímboa da Praia after insurgents’ attacks reached within 5km of the town. *Internments* of protected persons are prohibited in situations of non-international armed conflict governed by the central principles of humanitarian law and by many human rights guarantees: the 1949 Geneva Conventions (art 35), and, by inference, Additional Protocol II (P II); the Kampala Convention (KC Art. 7 [5d]) and the Constitution of Mozambique but not the IDP policy gives the national military forces the rule to control freedom of movement.

Mozambique did not invoke the principle of non-interference. Amid conflict, the country and all parties involved are subject to obligations that are binding under international humanitarian law (even if the state of conflict is not officially recognized). The protection of civilian IDPs in Cabo Delgado is guaranteed by these international laws (tailored specifically to deal with the special problems arising during armed conflict), the Constitution, the Law 10/2020. and the Policy. The use of the IHL or one of its kind (e.g., the Policy), would be more appropriate for the purpose of monitoring compliance with

humanitarian rules. Humanitarian actors would use these instruments to have access to protected people on a regular basis, essentially for the purpose of preventing violations of their rights (Plattner, 1992).

The question that springs to mind is whether or not these military pacts and support from Rwanda are provided within this outlined legal framework. The answer is neither affirmative nor negative. There are no bases to be precise. In principle, only States can be held responsible for human rights violations during a conflict. As part of Protocol II, both Mozambique's and Rwandan (as invited) military must, in principle, govern their operations within the limits of international rules or customary laws – but those in no way supersede the Constitution, the Law 17/97, DRR Law and the IDPs Policy. However, aside from the general human rights guaranteed by the Constitution and Law 17/97, the provisions affording specific protection of IDPs amid conflict within the DRR Law and IDP policy are very few, or generalised.

#### **4. CONCLUSION**

To conclude, Mozambique has the primary duty and responsibility to provide protection and humanitarian assistance to IDPs, empowered by international rules [GC Art 1, KC Art 5] and national framework (the Constitution, Law 10/2020 and the Policy). The Policy and Strategy constitute the affirmation of this duty and an initial process for the domestication of relevant international and regional laws and bills to protect civilian IDPs. However, two notes are to be taken. First, the current legislation and the underlying IDPs protection provisions embedded in it are not tailored for dozens of specific problems and concerns arising from the conflict. They are too generic and insufficient to operate as mechanisms to ensure compliance with human rights and the protection of IDPs, under existing rules of international humanitarian law (IHL) and those of national nature. They leave a vacuum as regards legal protection for the internally displaced in the light of key human rights treaties and/or protocols. This might be explained by the fact that conflict is not specified but implied as the cause of the disaster (or displacement) in Law 10/2020. In light of this gap, the Rwandan military is compelled to often rely on either international or their own rules (the Kigali Principles) governing the protection of civilians in peace operations including in Mozambique.

Second and last, the existing legal instruments or of a legal nature are effective in ensuring immediate humanitarian assistance for IDPs. It should be stressed that even in cases in which these legal instruments contain very few specific and detailed provisions or to which no analogies with these instruments apply amid armed conflict, the plight of the civilians (IDPs) would be worse if they did not exist. Therefore, it can be improved by far if only the basic specific provisions are integrated, and if they promote their implementation.

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