Complaint to the European Ombudsman

What is the decision or matter about which you complain? When did you become aware of it?

Our grievance deals with a violation of academic freedom and human rights. This infringement resulted from decisions taken by a handful of European Commission officers who censored our groundbreaking study on Guinea-Bissau, entitled, *Voices of the People*.

Our initiative was designed to give voice to ordinary citizens in Guinea-Bissau and serve as a model for scientific inquiry in other African countries. In November 2021, European Commission officers barred the publication of our book, *Voices of the People: Society, Politics and Public Opinion in Guinea-Bissau*, just before it was to go to print. To this day, the European Commission has offered no explanations for this arbitrary measure, which triggered a two and a-half year effort to restore publication rights and fulfill the project's original promise.

The Voices of the People initiative was designed to bolster science, empower citizens, and promote democracy in Africa. Yet, in a perverse turn of events, a project paid for by EU citizens to advance knowledge and human rights led to the opposite outcome.

As explained below, the European Commission has lifted some restrictions to the publication of our edited volume, *Voices of the People*, thanks to our struggle for academic freedom. Other prohibitions, disturbingly, remain in force.

We are a modest research NGO, DEMOS – Center for Democracy, Creativity and Social Inclusion, based in Paraguay and Guinea-Bissau. Its director, Miguel Carter, is a Swiss national. Our complaint highlights a series of harmful decisions and failings that amount to a discernible pattern of maladministration. In a nutshell, we argue that European Commission (EC) officers:

- Gave DEMOS the wrong kind of contract.
- Breached crucial aspects of this agreement.
- Infringed academic freedoms and human rights.
- Hampered the development of science and democracy.
- Abused power and undermined transparency.
- Hindered efforts to resolve differences in a sensible way.
- Impaired accountability and institutional trust.

The clock for our submission deadline was set on April 21, 2023. This is when EC officers rejected DEMOS' call for formal mediation, as specified in its agreement with the EU. In the ensuing weeks, DEMOS realized it could not settle its grievances through channels prescribed in its agreement with the EU. For a small

NGO, based in the developing world, the cost of taking the EU to court in Belgium is simply prohibitive.

We have filed this complaint to call on the EU to uphold its to founding values – freedom, transparency, justice, accountability, and democracy. We hope the European Ombudsman will investigate our claim and encourage the European Commission to adopt appropriate measures to protect academic freedom in EU-funded research projects. We would dread to see any other outfit dedicated to the pursuit of science and democracy – in Africa or elsewhere – suffer the tribulations we did at the hands of a few EC officials.

Basic Facts. The Voices of the People initiative was designed to advance scientific inquiry and promote democratic development in Guinea-Bissau, by giving voice to its citizens and fostering civic dialogue. In 2018, DEMOS carried out the first public opinion survey in the history of Guinea-Bissau. Its findings were presented in a public event led by the EU ambassador. The following year, the EU agreed to sponsor a DEMOS proposal to develop the survey results through data mining, a focus group study, and a comparative review of public opinion in Africa, and to "disseminate these findings through publications, presentations and trainings."

Under this contract (FED/2019/406-596, see Exhibit 1), DEMOS produced three substantive reports and the edited volume, *Voices of the People: Society, Politics and Public Opinion in Guinea-Bissau*, in Portuguese, along with an English translation of this text, prepared in collaboration with ten scholars from Africa, Europe and the Americas (see Exhibit 2 for a copy of the volume and Exhibit 3 for a description of the project). For all we know, no other country in Africa has carried out a public opinion study of this scope and originality.

During the month of November 2021, EU officials reviewed and praised the book manuscript and described it as a "fantastic study." Yet in an abrupt turnaround, on November 29, 2021, EU representatives resolved to embargo the publication. Despite repeated requests, these officials never explained this sudden reversal or requested any alterations of the work produced.

The EU's decision to suppress an ambitious study in Africa left us dismayed. Our project had devised an innovative way to enhance understanding of the people – the *demos* – of Guinea-Bissau. It interviewed hundreds of citizens from all walks of life and involved dozens of researchers. The undertaking required more than three and a-half years of labor, at least two of which were provided at no cost to the EU. Suddenly, we saw all our efforts, sacrifice, ingenuity, and resources used to fund this endeavor thrown away, for what?

EU sanctions also prevented DEMOS from carrying out activities devised to disseminate the *Voices of the People* study and engage citizens of Guinea-Bissau in a discussion on novel insights and ideas for their country. DEMOS had organized a series of presentations, workshops, and media outreach events in

Guinea-Bissau to promote the use of this information to contribute democratic solutions, by fostering social accountability, inclusion, and civic dialogue.

Rather than bolster democracy and science, the EU's act of censorship disempowered Bissau-Guinean citizens, suppressed academic freedom and curtailed scientific progress.

To overcome this shattering experience, DEMOS made several efforts to engage in a dialogue with EC authorities and offer solutions. As a way out, it suggested the EU could disassociate itself from the publication and transfer its copyright to DEMOS, for volume editions in Portuguese and other languages. None of these appeals worked. DEMOS then organized an online petition, signed by scores of scholars from around the world, to get the book released.

In October 2022, DEMOS delivered print copies of the volume to the European Commission for International Partnerships in Brussels. The books bore a black swath with white letters that read "CENSORED by the European Union". A cover letter detailed the EC's contract violation resulting from its embargo of the study. A few weeks later, EC officials advised DEMOS to "go ahead" with the publication. The positive step, though, led to a protracted negotiation to settle the terms under which the study would be published.

By April 2023, the EC had indicated it could not transfer the copyright to DEMOS, due to internal hurdles, but stated DEMOS could publish the volume in Portuguese and English, in unlimited print and digital copies. However, it prohibited any sale of these books. This restriction hindered prospects of publishing the English volume with an academic press, to which the EC originally agreed (see Exhibit 4 for a copy of the August 2020 contract addenda). No publisher of scholarly texts that we know of would consent to bear the costs of production and distribution of a book it could not sell. This constraint has barred DEMOS from using market instruments to make the volume widely available to the public.

To resolve this impasse, DEMOS requested formal mediation, as specified in its agreement with the EC. Yet EC officers rejected this proviso, on April 21, 2023. This left DEMOS with no other recourse, per its contract, but to take the EU to court in Belgium, a virtually impossible feat for a small NGO from the developing world.

The impasse set off by the EC's decision to censor our study, in November 2021, delayed the effort to publish our volume in Portuguese by more than two years. The book is now available online and in limited print copies. EC prohibitions have severely restricted its distribution and held back its English publication with an academic press.

An account of these developments, description of the Voices of the People study and digital copy of our volume (in Portuguese) can be found in our website: **vozesdopovo.org**.

This site includes a petition to EU authorities signed by over 300 scholars, journalists, and civic leaders from more than 30 countries across the world (see Exhibit 5).

*** Copies of email correspondence and other communication held between DEMOS and EC officers between November 27, 2021, and April 30, 2023, can be found in Exhibits 6 and 7.*

What do you consider that the EU institution or body has done wrong?

European Commission officers made a series of procedural mistakes and harmful decisions that amount to a discernible pattern of maladministration.

1. EC officers gave DEMOS the wrong kind of contract. None of our travails with the EC would have taken place had its managers offered DEMOS a suitable research grant instead of a service agreement. When independent organizations approach the EC to fund a project to generate public information, as DEMOS did in late 2018 (see Exhibit 8), EC administrators are expected to tender a grant or subvention contract, which confers intellectual property rights to the contractors. DEMOS was never informed of this administrative process until late 2023. EC authorities, however, used the misattributed service agreement to justify their embargo on our study.

2. EC officers breached crucial aspects of the EU's agreement with DEMOS. An essential element of the Voices of the People project was the agreement to publish the work produced as a result of the contract. Neither DEMOS nor any of the scholars involved would have participated in an undertaking that would not be published. After reviewing and praising the content of the book, EC representatives ordered DEMOS – on November 29, 2021 – not to publish the study. Shortly after, in mid-December 2021, EC managers proposed an amendment to the contract, which would allow the EU to deny the publication of the edited volume and its ancillary studies. DEMOS rejected the proposition, arguing it contravened the agreement to publish the research findings and impaired the principles of academic freedom and transparency on which the project was based (see Exhibit 9). EC officials, nonetheless, unilaterally decided to implement the new clause and censor the study. With no recourse left in Bissau, DEMOS was compelled to challenge this decision in Brussels. This led to various exchanges with EC officials in Belgium over the course of five and a-half months. On March 20, 2023, the EC officers laid out the terms in which DEMOS could publish the study. EC insistence on prohibiting any book sale barred DEMOS from publishing the volume in English with an academic press and undercut the promise to distribute the volume widely (see the addenda to the contract in Exhibit 4).

3. EC officers infringed academic freedom and human rights. Censorship flouts vital freedoms of expression and access to information. The decision to ban a landmark study, devised to give voice to the people of an entire nation, violated essential human rights. It deprived citizens of Guinea-Bissau with access to novel insights on their country, stifled the free exchange of ideas and curtailed the academic freedom of the scholars involved in the project. It also deprived researchers in Africa and elsewhere of access to pioneering scientific study. While some EC prohibitions have been redressed, others remain in force, for no compelling reason. Had the government of Guinea-Bissau censored our book, many – even with the EU – would have decried the violation of human rights. The

same infringement carried out by EC officers should be treated no differently. Double standards hurt EU credibility and efforts to uphold human rights.

4. EC officers hampered the development of science and democracy. The Voices of the People initiative created an innovative and ambitious academic study, which involved dozens of researchers. Its methodology combined quantitative, qualitative, and comparative approaches. The edited volume, in turn, offered an inter-disciplinary analysis of the research's main findings. DEMOS pioneered a framework that could be adapted to other countries. The original study was prepared in Portuguese, to strengthen scientific capabilities in Guinea-Bissau and serve its policy makers and citizens. The English volume was crafted to inspire scholars and practitioners in other parts of the world. Our enterprise was conceived to reinforce the value of listening to ordinary citizens, to better understand and uplift democracy's *demos*. The knowledge produced was meant to improve civic capacity to uphold political freedoms. By curtailing the *Voices of the People*, EC officers impaired science and democracy, and blemished the EU's public commitment to these values.

5. EC officers abused power and undermined transparency. EC officials used discretionary powers to override the agreement signed with DEMOS and offered no justification for their actions. If EC officers found certain provisions of the book objectionable, they had an obligation to identify specific concerns so they could be addressed. DEMOS made repeated requests to the EC to clarify its concerns and proposed amendments that would allow for the study's publication, all to no avail. EC opacity prompted DEMOS to conduct its own investigation into the study's embargo. We now have firm reasons to believe that the EU ambassador to Guinea-Bissau suppressed the *Voices of the People* to ingratiate herself to the country's autocratic ruler and receive a presidential award at the end of her diplomatic mission, bestowed on August 9, 2022 (see Exhibit 10). Furthermore, we believe the ambassador's actions would have required consultation or approval from her superiors in Brussels. All this may explain why EC officers have been so reluctant to account for these decisions or engage in an honest dialogue with DEMOS. We trust the European Ombudsman will be able to investigate these serious allegations and clarify facts and motives that led to EC involvement in human rights violations.

6. EC officers hindered efforts to resolve differences in a reasonable way. Our agreement with the EC established three mechanisms to resolve disputes, to be pursued in the ensuing order: dialogue, formal mediation, and litigation in a Belgian court. EC officials essentially blocked the first two venues, knowing (most certainly) that it would be impossible for DEMOS to take the EU to court. As the record shows, between December 2021 and mid-2022, DEMOS made several efforts to engage in a dialogue with EU authorities in Guinea-Bissau and offer solutions. But none of these appeals worked. As EC officers in Bissau explained, "the ambassador has made her decision". DEMOS was left with no other recourse but to alert EC authorities in Brussels of the EU's infringement of academic freedom. Our October 5, 2022, letter led to various exchanges with EC officers over the ensuing five and-a-half months. During this time, DEMOS

requested a personal meeting with the Acting Head of the Africa Division for International Partnerships, to discuss matters in a more causal way. However, the conversation, held on November 25, 2022, proved to be quite formal and guarded. The Director appeared to be talking mostly on cue, while three EU lawyers listened in on the call.

On March 20, 2023, the EC notified DEMOS it could publish the volume in unlimited editions but could not sell any copies of the book. On March 30, DEMOS made clear to the EU that no academic press would publish a volume it could not sell and invoked the formal mediation clause set in their agreement to resolve the ongoing dispute. EC officers rejected this proviso on April 21, 2023. The EC, thus, dismissed the only venue available for a non-litigious solution, without any further discussion or effort to do so. Throughout our quest to resolve issues, the EC drew on its massive power inequities vis-à-vis DEMOS to stifle constructive dialogue.

7. EC officers impaired accountability and institutional trust. EU power relies considerably on its prestige and the strength of its core values. The idea of a giant bully, unbound by its own rules, censoring the *Voices of the People* in a small, poor African country, should be an anathema to EU officials and citizens. Public presentations of our study in Bissau, the survey in 2018 and initial findings in early 2021, shored up credibility and respect for the EU. While the act of censorship has done nothing but the contrary. Moreover, accountability is harmed when EC officers protect those who act improperly. This corrodes institutional trust and makes it very difficult for EC staff to dispute arbitrary deeds carried out by high-ranking officials. Impunity breeds cynicism, which corrodes the ideals that make democracy possible. The EU will always be more trustworthy when it stands by liberty and upholds fair management practices.

What, in your view, should the institution or body do to put things right?

The European Commission should mitigate harm, clarify issues, repair the damage produced, and take measures to safeguard academic freedom in EU-funded projects.

First, **Mitigate Harm.** EC authorities should immediately remove all restrictions on the publication of the *Voices of the People* volume, including book sale prohibitions, so academic publishing houses can produce and distribute the volume in English and other languages.

Second, **Clarify Issues.** EC authorities should investigate and take stock of what happened and provide an honest account of this. In particular, it should look into the allegations raised regarding the facts and motives that led to censorship of the Voices of the People study. It should also investigate if authorities in Brussels were involved in this decision.

Third, **Repair the Damage Produced.** The EC should offer symbolic restitutions to DEMOS, the authors of the *Voices of the People* volume, the social science community in Africa, and, most importantly, the citizens of Guinea-Bissau.

- Compensate DEMOS for financial and reputational harm that resulted from actions taken to undermine the Voices of the People initiative and hamper efforts to redress EC infringement of academic freedom and breach of contract. DEMOS would use a portion of these sums to present and distribute the *Voices of the People* volume in Guinea-Bissau, and thus fulfill the project's original promise.
- Indemnify the authors of *Voices of the People* for reputational injury caused by EC constraints and delays imposed on the publication and distribution of their book.
- Transfer copyright of the Voices of the People study to DEMOS and restore what would have been the case had EC managers offered DEMOS a proper grant contract.
- Support social science research in Africa designed to generate knowledge and ideas aimed at strengthening democracy's *demos* and enhancing civic capabilities.
- Reaffirm the EU's commitment to democracy in Guinea-Bissau and give voice to its citizens by underwriting a new, national public opinion survey.

Fourth, **Take Measures to Safeguard Academic Freedom in EU-Funded Projects**. Our experience with the EC allowed us to detect a number of administrative deficits. The reforms proposed here would enhance protection for

independent scholars involved in EU-funded projects. The EC should strive to implement the following practical ideas for improvement:

- Provide appropriate grant contracts to independent organizations that submit a research proposal for EC funding, rather than service agreements. EC managers should duly inform contractors of their rights and allow them to retain the copyright to their study.
- Establish instruments to ease copyright transfers in cases where the EC would wish to disassociate itself from a study over which it held intellectual property rights. This would prevent EU suppression of scholarly publications. Other multilateral agencies can reassign copyright in a matter of days. The EC should be able to do the same.
- Facilitate an ombudsman or a liaison office within the European Commission for International Partnerships for smaller contractors. This would allow NGOs to have an alternative communication channel or way to reach an amicable settlement if dialogue is blocked by high-ranking EU officials.
- Enshrine the right to formal mediation in agreements with NGOs and smaller contractors in the developing world, whose chances of getting legal representation in Belgium are close to nil. The EC should be mindful of the huge asymmetries at stake and provide a level playing field for dispute resolution. EC contracts should treat formal mediation as a right, rather than a privilege that can be bestowed or ignored at will.
- Allow for the sale of books produced under EC-funded projects. If the goal is to improve access to knowledge, the EC should encourage – rather than bar – publication with an academic press. EU subsidies can enable open-source access and free distribution of print copies. None of this should prevent citizens or libraries from acquiring print copies of an EU-sponsored study. It seems unfitting, even condescending, to restrict market opportunities in Africa that the EU would not hesitate to offer to its citizens. EC authorities should also consider the fact that researchers are likely to invest more time and effort in preparing a book than set in their contract. Our case involved at least two years of added labor, free-of-charge. Book royalties, thus, should be treated for what they actually are: token reimbursements for unpaid research expenditures.

If none of these measures can be properly agreed to, the EC should at very least accept DEMOS' request for formal mediation.

Have you already contacted the EU institution or body concerned in order to obtain redress?

This is a mandatory condition for a complaint to be admissible. Evidence that you have contacted the relevant institution or body to seek redress must be annexed to the complaint form. Otherwise, you will be informed that we cannot deal with your complaint.

Yes. DEMOS contacted EU authorities to rectify the problem on repeated occasions, between December 2021 and April 2023. Ample evidence of our communication can be found in Exhibits 5 and 6, attached to this complaint.

In particular, see emails dated December 2, December 21 and December 31, 2021; as well as January 18, May 29, October 5 and November 7, 2022; and February 23, 2023.

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Our complaint involves a dispute between an independent contractor and the EU, not staff relations within an EU body.

Has the object of your complaint already been settled by a court or is it pending before a court?

No. DEMOS made inquiries and found that the cost of taking the European Commission to court in Belgium were prohibitive for small research NGOs, based in the developing world.

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he or she is not entitled to deal with it?

Yes.