Voices of the People

DEMOS Response to the European Commission

European Ombudsman Own Initiative Inquiry OI/4/2024/MIK

This is the final text of DEMOS's response of 20 November 2024. It differs from the file transmitted to the European Ombudsman only in minor stylistic corrections.

Introduction

This statement considers the European Commission's response to the own inquiry led by the European Ombudsman (O1/4/2024/MIK) on the Voices of the People initiative, carried out by DEMOS in Guinea-Bissau. DEMOS is very grateful for this inquiry and the opportunity to respond to assertions made by EC officials. Our rejoinder seeks to correct a number of inaccuracies, omissions and misunderstandings.

Our response is longer than anticipated. We apologize for this. As the reader will see, it includes a number of considerations and facts that were not fully laid out in our original complaint to the Ombudsman. The new elements provided here should offer a more comprehensive and nuanced view of the facts and consequences of our case.

The main points covered in our statement are summarized as follows:

- The contracts between DEMOS and the European Commission (EC) required book publications and dissemination. These outcomes were not "optional" or "unnecessary" as the EC suggests.

- The English volume publication with an academic press was agreed in the 2020 contract amendment. The EC did not provide funds to pay for its publication. Academic presses do not publish books at below cost. Insisting otherwise is a backdoor way of suppressing our volume.

- The EC claims it is "unreasonable" to say it censored our study. We demonstrate otherwise. In Annex A we show the different types of restrictions imposed on the Voices of the People initiative over the last three years. These actions hindered the free flow of ideas and information.

- EC officials have admitted for the first time to the censorship of our study for obscure political reasons. Their justification conflicts with favorable reviews of our manuscript made by EC officials in Bissau (November 2021) and Brussels (October 2022).

- The EC now alleges that our volume included "subject conclusions" that could "undermine EU relations with Guinea-Bissau." These vague and unfounded claims led to the censorship of African voices, a stigma which could undermine EU efforts to uphold human rights.

- The Voices of the People initiative was conceived, designed and led in its entirety by DEMOS. The Commission did not formulate or request the study but responded positively to funding requests.

- After monetizing all contributions made to this initiative, we demonstrate that DEMOS shouldered 69% of the real costs involved in implementing both

the 2018 survey and 2019-2022 follow-up project. DEMOS shouldered 75% of the costs involved in the second study.

- Publication and dissemination were crucial to the Voices of the People initiative, which promised to foster "public awareness and promote knowledge about Guinea-Bissau." Decisions taken by EC officials deprived DEMOS of its main form of compensation: publicity and prestige for developing a novel scientific instrument for social accountability.

- We offer a counterfactual scenario to assess damages and losses that resulted from EC restrictions placed on our study.

- Moving forward with practical solutions, optimal to both parties, is feasible. Mutual understanding of the core facts of the case and provisions set in our contract would be convenient. DEMOS hopes we can find a mutually beneficial outcome.

- In closing, we review ideas that could help strengthen academic freedom in EU-funded projects. We wish this will help prevent other scholars from 'falling through the cracks' DEMOS did. Drawing lessons from our experience, we identify three institutional fault lines and discuss how they relate to specific guiding principles, contract formulas and administrative instruments.

We trust the Ombudsman will make inquiries to clarify pending issues. DEMOS will be pleased to contribute in any way possible.

1. Did the DEMOS-Commission contract require book publications and dissemination activities?

The Commission claims it "did not ultimately require this" (bottom of page 4) is incorrect. None of the contracts signed between DEMOS and the Commission sustain this point. In fact, the 2019 contract and 2020 amendment treat publication and dissemination as core deliverables. Our agreement with the Commission had a very clear subject: to produce the Voices of the People study and "to disseminate these findings through publications, presentations and trainings, done in Guinea-Bissau."

The Commission's assertion that this was "not required" is based on the December 2021 contract amendment that was declined by DEMOS. There are no signed agreements between DEMOS and the Commission that treat the publication and dissemination as "unnecessary" or "optional."

Publication and dissemination of the *Voices of the People* study were crucial to DEMOS. The Commission breached our contract by blocking the study's publication and dissemination. It then unilaterally implemented the December 2021 provisions rejected by DEMOS to say that the contractual agreement to publish and disseminate our work was "not required." Which raises the obvious

question: why would EC officials try to amend the agreement unless they knew they were in breach of it?

These decisions caused considerable harm to DEMOS, the coauthors of the volume and all those who stood to benefit from the results of the project, notably, the citizens of Guinea-Bissau – including its civic and political leaders and state officials. But also, the scholars and democracy promoters who stood to benefit from the development of a novel scientific instrument for social accountability.

Efforts to resolve the contract violation and restrictions imposed on our study encountered numerous obstacles.[1] The key point is this. Since late 2021, the Commission has held the unwarranted belief that our publications were "not required." This unfounded idea has been at the heart of our three-year impasse.

2. What were the terms of the contract amendment regarding the English volume publication?

The August 2020 contract amendment specified that DEMOS would prepare and deliver, "A translated copy of the book manuscript in English, for submission to reputable academic press." Nowhere did it stipulate that the academic press publication should be done free of charge. The term "for submission" meant that DEMOS would pursue the publication after project completion.

The idea of offering the English manuscript to a respected academic publisher was discussed at length with our project manager in Bissau. No added funds were provided for the English publication, as it was understood that the academic press would take care of printing and distribution.

Academic presses do not publish books at below cost. This is standard across publishing houses, scholarly or not. To insist that DEMOS find a publisher that can do otherwise is, in effect, a backdoor, oblique way of censoring our volume.

DEMOS is a non-profit organization. Any books it could sell would not generate commercial profit. Rather, the funds earned would serve to support its research activities. In the case of the *Voices of the People* volume, sale revenue would have been used to promote our study and cover transport and other expenses related to book presentations.

Prior to November 2021 and between late October 2022 and March 20, 2023, the Commission never indicated any problems with DEMOS publishing the English volume under an academic press. During our November 25, 2022, meeting, Mr. Hans C. Stausboll, head of the International Partnership (INTPA) office for Africa, affirmed there would be "no obstacles" to this. Why did the Commission change its mind?

3. Did the Commission "censor" the Voices of the People initiative? If so, how?

[1] A record of these efforts can be found Exhibits 6 and 7 of the original complaint to the Ombudsman.

The Commission claims it is "unreasonable" to say it censored our study. The UN Rapporteur for Freedom of Expression provides numerous statements on which to establish a definition of censorship.[2] Censorship involves the suppression of speech, public communication or information in ways that hampers the free flow of ideas and information. In the academic realm, censorship includes actions that prevent or restrict efforts to publish, distribute and disseminate knowledge generated through scientific research, literary or artistic works.

Censorship can be carried out in a direct or indirect mode. It can also vary in scale and intensity and involve complete or partial restrictions. Censorship also generates by-product effects that undermine the exercise of rights to freedom of expression.

We discuss these issues in Annex A and provide a timetable that shows the different types of restrictions that were imposed on specific outcomes agreed under the Voices of the People initiative. This assessment shows how the Commission enforced a complete and explicit ban on our study between November 2021 and October 2022. Thereafter, EC restrictions became more oblique, partial, subtle and indirect, but no less damaging for DEMOS and all those who stood to gain from the study's complete publication and wide dissemination.

4. Why did the Commission suppress the *Voices of the People* study?

The Commission's response to the Ombudsman provides the first admission ever that it censored our study for obscure political reasons. It alleged the volume included "subjective conclusions" that could "undermine EU relations with Guinea-Bissau". No information was offered to substantiate these vague allegations.

Under Mr. Stausboll's direction, INTPA assembled a reading committee in October 2022, to address our complaint to authorities in Brussels over contract violation and infringement of academic freedom. The reading committee found no problems with our book and recognized the study had "a lot of valuable information." During our November 25, 2022, meeting, Mr. Stausboll expressed displeasure with the decision made by the EU ambassador in Bissau, Ms. Sonia Neto.

All the EU officers we worked with in Bissau, from 2018 and 2021, conveyed their discontent with the decision taken by Ambassador Neto. During these years, we had extensive interactions with EC staff and delivered four reports and six PowerPoints to discuss project findings and progress, all to their approval. The head of INTPA in Bissau had no objections to our book manuscript and commended us for the quality of the work. The frustration with the decision to bar our study was shared widely among EC officers involved in our initiative.

[2] https://www.ohchr.org/en/topic/freedom-expression-and-opinion

After November 2021, DEMOS repeatedly asked the EU Delegation to clarify the reasons for such drastic action. We offered to discuss the study, consider revisions and find constructive solutions to the impasse. But the doors to dialogue were essentially shut. Why?

We urge the Ombudsman to make inquiries with EC officials that oversaw our activities in Bissau. They have close insights on the case. As stated in our complaint, we have reasons to believe that Ambassador Neto suppressed our study to ingratiate herself with the ruler of Guinea-Bissau and receive a presidential award at the end of term. We think there may be other obscure interests at stake. A proper investigation would shed light on these issues.

What is clear is that the decision to censor our study was controversial within the EC. We can see why. The actions taken involved discretionary powers. They breached contracts, infringed academic freedoms, undermined the EU's public image and violated human rights. In brief, they constituted an act of maladministration.

5. What were the "subjective conclusions" that could "undermine EU-Guinea-Bissau relations"?

The EC reading committee found no problems with our study in October 2022. We have a hard time believing that the conclusion chapter to our book, written to by two senior experts on Guinea-Bissau, Joshua B. Forrest and Philip J. Havik, could have triggered such impressions. Their text explores state-societal disjuncture in this country and recommends state decentralization and development from the bottom-up. Why would this idea rattle EU-Guinea-Bissau relations?

Other chapters recommend reforms to curb corruption, strengthen political parties, improve democratic institutions, enhance the participation of women in public life and support inter-ethnic and inter-religious collaboration. We could add other points to our list, all of similar tenor. Our question is: when did these concerns and recommendations become a threat to EU relations in Africa?

Censoring the voices of African people is far more damaging to EU-Africa relations than anything written in our book. As a result, the EU will have to cope with a stigma that could haunt its efforts to uphold human rights in the years to come.

To conclude, the *Voices of the People* is an academic study, prepared by an independent organization. It is not an EU policy paper. Our study always included a disclaimer that says it represents the views of its authors. Over the last three years, the EC has taken various actions to obstruct the volume's full publication and dissemination. We now have confirmation that all this was triggered by obscure political motives. These motives sparked a set of actions that violated rights of freedom of expression, in ways unfitting for an institution that espouses democratic ideals. The European Union will always be stronger when it stands by liberty.

6. Who developed and spearheaded the Voices of the People initiative?

DEMOS conceived, designed and led efforts to fund the initiative's two projects: the 2018 national public opinion survey and 2019-2022 follow-up study. DEMOS produced the concept notes that led to the national survey and the follow up study, in October 2017 and December 2018, respectively.[3] The Commission did not formulate or request the work but responded positively to DEMOS funding requests.

7. How much did the Voices of the People initiative actually cost?

The Commission claims it provided "full payment for" the two project "contracts, which amounted to more than EUR 154 000" (see bottom page 4). It assumes, thereby, that its contractual duties with DEMOS were adequately fulfilled. This was not the case. For DEMOS, the main compensation were not the payments offered, but the publications, outreach activities and opportunities derived from these developments (see sections 8 and 11). This part examines another problematic assumption.

We are troubled with the Commission's understanding of the project's financial value. Its account conflates two distinct issues: contract price and actual project cost. It thereby suggests that the Commission shouldered the initiative's main costs. But what were the monetary values of the two projects carried out by DEMOS?

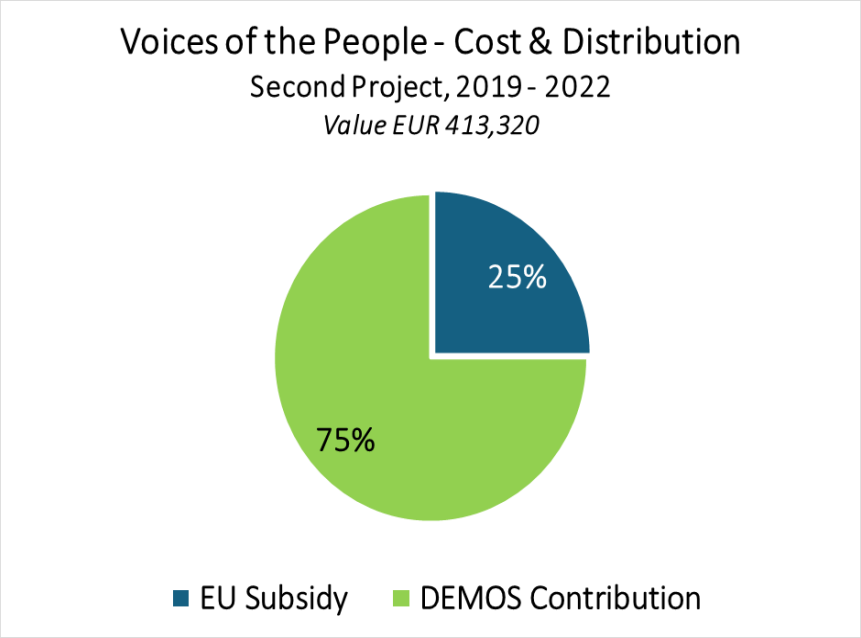
If we price the value of core project activities, using standard costs and reasonable estimates, we find that all deliverables were made possible through considerable in-kind support provided by DEMOS. The results show that, all in all, DEMOS bore a greater part of the investment needed to undertake the Voices of the People initiative. What follows demonstrates DEMOS' contribution to each of the two projects.

First Agreement (2018). The national survey contract was priced at EUR 51 575. The sum covered various costs, but not all transport, labor and management expenses. In 2022, Africa's leading polling agency, Afrobarometer, put together a budget to carry out a national survey in Guinea-Bissau. It used the same parameters DEMOS did in 2018 and priced its survey at EUR 83 660.[4] A conservative estimate, then, would suggest that DEMOS shouldered more than a third of actual project costs in 2018.[5]

[3] See Exhibit 8 in the original complaint to the Ombudsman. A copy of the October 2017 proposal can be provided upon request.
[4] Afrobarometer national survey costs are provided in Exhibit 11.
[5] Discounting 5% for inflation, we estimate the support by DEMOS at EUR 27 902 or 35% of total national survey cost. Our closing project report in 2018 also referred to higher project costs than anticipated and contributions provided by DEMOS. A copy of this report can be made available upon request.

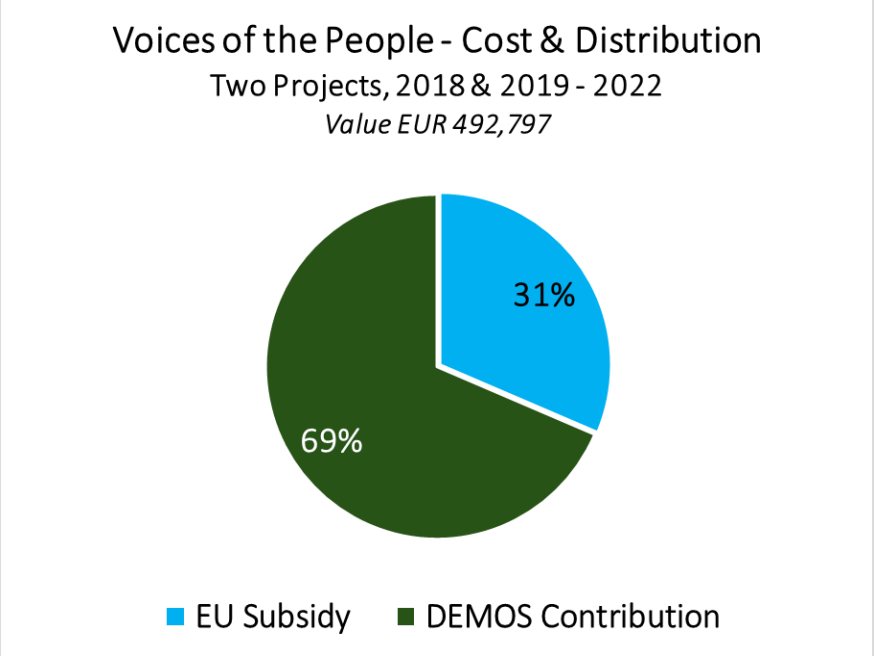
Second Agreement (2019). The follow-up study, carried out between 2019-2022, was awarded EUR 103 263. It involved more than three-and-a-half years of labor and a team of close to two dozen researchers and assistants. The project proved to be complex and ambitious. Far more than envisioned in the original 9-month timetable. The added engagement produced a pathbreaking study. Commission authorities in Bissau and Brussels recognized the substantial accomplishments made under a modest budget.

The Commission covered part of the expenses. Yet the mainstay of the project was sustained in-kind contributions. This can be ascertained through an appraisal of project costs based on the full value of the service provided. We assess these costs in Exhibit 12. The spreadsheet draws on the original 2019 budget used to determine EC project payments. It employs the same rates used to calculate labor costs. The added work required to produce all deliverables raised total expenses to about EUR 410 000 euros.[6] Payments allocated by the Commission financed a quarter of this sum. Three fourths of the project's real monetary value was sustained through in-kind support provided by DEMOS and its partners, as illustrated in the following graph.



All in all, considering the two projects carried out between 2018 and 2022, we find that DEMOS shoulder 69% of the investments made to implement the entire Voices of the People initiative.

[6] Exhibit 12 includes three charts: (1) the figures used to prepare the original project budget in 2019, (2) the budget with the 2020 addenda, and (3) an assessment of full project cost, based on actual service provide by DEMOS and associates, between June 2019 and May 2022.



The Commission subsidized important expenditures. The bulk of the project costs, however, were actually sustained by DEMOS. Our investments were marred significantly by the Commission's decision to hinder the study's publication and wide dissemination.

In light of this account, we find the EC's statement that "the complainant could use the funds [more than EUR 154 000] to pay an 'open access fee' to publish the study with a reputable academic publisher" (see top of page 5) are rather disturbing. If anything, they suggest a lack of awareness of the actual costs and poor appreciation of the commitments made.[7]

8. Why were publication and dissemination essential to the Voices of the People initiative?

The Commission states that "the goal of the contract" was to generate "public awareness and promote knowledge about Guinea-Bissau" (bottom of page 4). We agree. Publication and dissemination were crucial to our project. They were the bedrock on which we would pursue key objectives laid in our contract, namely:

- Foster constructive, evidence-based public dialogue on the country's main democratic and development challenges.
- Strengthen the social scientific community in Guinea-Bissau.
- Create an instrument for social accountability.
- Promote knowledge about Guinea-Bissau in international settings.

[7] Budget tables used to prepare the 2019 contract and 2020 amendment, show there were no funds allocated to publish the English volume, only to subsidize part of the translation costs. If EC officers had any doubts, DEMOS was prepared to clarify this through an amicable exchange or formal mediation.

All the barriers put up by the Commission to the publication and dissemination of our work, after November 2021, severely undercut our ability to fulfill the project's essential purpose.

The study was not crafted for the exclusive benefit of the EC. The primary beneficiaries were the citizens of Guinea-Bissau. But also, researchers, development practitioners and democracy advocates in Africa and elsewhere. Making the results of our research widely available to this audience was essential to the Voices of the People initiative. Our mission as scholars was to listen to the people, process the information and give this back to the citizens of Guinea-Bissau.

'Giving back' was a lot more than just publishing the volume online. It involved a series of workshops and outreach activities to be carried out in tandem with public presentations of the book in Guinea-Bissau. All plans, efforts and expenditures made to perform these activities were curtailed by the EC's abrupt and arbitrary decision to bar the *Voices of the People*.

The Commission assumes that it fulfilled its contractual duties because it paid for the "required outputs … in full" (see top of page 3). The contractual agreement, however, stipulated that our study would be published in Portuguese and English (with an academic press), and that DEMOS would carry out various activities in Guinea-Bissau to disseminate this information.

For DEMOS, EC payments were never expected to be the main form of compensation for its work. We always understood that our most important reward would be – and derive from – the publicity of our study. EC actions had a devastating impact on our investments, expectations and business opportunities. They deprived DEMOS of a full, timely and proper reward for all the contributions made. This impaired our plans to pursue the Voices of the People initiative in other countries.

An innovative scientific project designed to uplift the voices of humble people and make sense of their perceptions and sentiments was crushed because a handful of EC officials believed it "undermine EU-Guinea-Bissau" relations. When did the quest to advance science and democracy become such a menace? We placed our trust in the European Union but feel deeply betrayed by the actions taken on its behalf.

9. What public goods? What public interests?

The Commission claims our study is a "public good" since it was paid through a service contract. As such, the Commission cannot allow DEMOS or any publishing house to "commercialize and make a profit of this 'public good' produced with EU funds." The same rationale would bar the "transfer of the copyright for this study to the complainant." The Commission notes that its contract with DEMOS was meant "to foster social development in the public interest." Adding, "The goal of

the contract was generating public awareness and promoting knowledge about Guinea-Bissau" (see bottom page 4).

We dispute the Commission's attempt to 'normalize' its unilateral decision to give DEMOS a service agreement and treat this as the result of a "negotiated procedure" (see bottom of page 2). DEMOS was never informed there could be any alternatives to this type of agreement. DEMOS created, led and shouldered most of the project costs (see sections 6 and 7). Given the nature of the undertaking, the study should have been financed through a research grant, not a service agreement. A grant would have accorded DEMOS copyright to our work and ensured far greater public use of the study than that achieved under the 2019 service agreement.

In addition, we are troubled with the Commission's understanding of the idea of a 'public good'. How can it claim to protect a 'public good' while restricting public access to this good? If the purpose of the good is to inform and uphold the public interest, why thwart efforts to ensure wide public access to this? Whose 'public good' is this? That of EC administrators who have enjoyed full access to the study? What about the public-at-large, especially, the intended project beneficiaries in Guinea-Bissau?[8]

10. What ended DEMOS' attempt to negotiate a resolution with the Commission?

In its response to the Ombudsman, the EC claims that "Since the last email exchanges in April 2023, the Commission has not heard from the complainant" (mid page 3). The statement suggests that DEMOS somehow cut-off communications with the EC. The record, however, shows it was the other way around.

Mr. Stausboll's last letter to DEMOS, on April 21, 2023, accomplished two things. First, he declined our request for formal mediation, as specified in our agreement. This decision annulled our last and only prospect for negotiation on a level-playing field. Second, the dispatch essentially closed door to further dialogue, as the last sentence makes clear:

> Furthermore, ***the EC does not see any added value in entering into further negotiations***, and we consider that our proposal as formulated on 20 March is the best we can do in this particular case (our emphasis).[9]

[8] Adding to these concerns, the EU provides funds a great variety of organizations and enterprises in Europe and across the world, from NGOs, universities to business firms and farmers. Most of these recipients can sell products generated with the help of EU subsidies. Guinea-Bissau, alone, has scores of nonprofit groups and small cooperatives that generate revenue for their organizations through the provision of goods and services financed by the EU. Why can't NGOs like DEMOS do the same? Why are nonprofits dedicated to the pursuit and dissemination of knowledge barred from the recovering their basic costs? Is this not an unfair burden to place on organizations that seek to advance the public interest?

[9] For a full copy of the email, see Exhibit 7, in the original complaint to the Ombudsman.

The EC's decision to cancel communication with DEMOS was not an isolated event. It fit into a broader pattern. Over the course of 17 months, between November 2021 and April 2023, DEMOS made repeated attempts to engage the Commission in a meaningful exchange and find a constructive way to resolve our differences.[10] But time and again our efforts were rebuffed. In all this, it has been striking to see EC officials leverage their huge power asymmetry vis-à-vis DEMOS. Did they think our problems would 'disappear' if they ignored our appeals?

11. What would have happened if the publication of the *Voices of the People* had been allowed?

A counterfactual scenario can help assess damages and losses.

All our travails with the EC began on November 29, 2021, when DEMOS received orders not to publish our study. In the preceding three years, DEMOS had developed constructive relations with EU Delegation staff and authorities. Our Portuguese volume was ready to go print and would have been presented in Bissau by mid-December. Our exchanges with the INTPA team in Bissau, and previous presentations made to civil society and political party leaders in Guinea-Bissau, suggested that the study would have been well-received.

DEMOS would have closed the project in early 2022. Soon thereafter, we would have submitted the English book manuscript to an academic press. Considering the standard peer review and revision process, the volume could have been ready for publication by late 2022.

All this would have given us three years to promote the Portuguese volume and about two years to do the same with the English book. The publications would have been timely and strengthened DEMOS' prestige and that of its partners in considerable ways. All this would have accorded ample time and momentum to pursue the Voices of the People initiative in other countries, especially in Africa.

Moreover, there would have been no need to exert extensive time, energy and resources to overcome constraints imposed on our study. It has been an exhausting experience. Spared of this, DEMOS would have been to complete other research projects and book publications. By any account, the damage done to our reputation and ability to generate new publications and income opportunities has been huge.

But for DEMOS, nothing has been more distressing than to see the European Union stifle the voices African people and betray our shared values of freedom, science and democracy.

[10] For copies of all our communication with EC officials between November 2021 and April 2023, see Exhibits 6 and 7, in the original complaint to the Ombudsman.

The European Union owes a special debt of gratitude to the people of Guinea-Bissau. Their struggle for national independence contributed to the demise of Portugal's authoritarian regime. The Carnation Revolution of 1974 was led by military officers deeply influenced by their time in Guinea-Bissau. Portugal's transition, in turn, set-off a global wave of democratization that swept through southern Europe in the 1970s, South America in the 1980s and Eastern Europe by the end of this decade.

The citizens of Guinea-Bissau deserve better appreciation. Censoring their voices was wrong and short-sighted. For DEMOS, its academic colleagues and friends across the world, this was a particularly painful event to endure.

None of this would have taken place had the EC upheld our contract, continued our positive rapport and enabled the timely publication of *Voices of the People*, in Portuguese and English, as agreed in our contract.

12. How can we move forward?

DEMOS is willing to move forward with practical solutions, optimal to both parties. A spirit of truth and reconciliation would make this much easier. Mutual understanding of the basic facts of the case and key provisions set in our contract would improve dialogue and compromise.

Our publications and dissemination activities in Guinea-Bissau were never 'optional' in the agreements signed with the EC, despite the Commission's attempt to depict this as "not ultimately required" (see bottom of page 4). DEMOS never signed the 2021 amendment that would have established this provision. These acts of publicity, including the English language publication, were essential to the project's core objectives and our main source of reward. Agreement on these issues will facilitate a sensible resolution to our current impasse.

The Commission claims that "nothing prevents the complainant from publishing the English version" (top page 5). But the facts of the case show that his is not true. DEMOS cannot publish with an academic press in the terms set by the EC. Publishers will not do this at below cost and DEMOS was never given funds to pay for this. The Commission's unwillingness to recognize the damage produced as a result of its decisions – including ongoing forms of oblique and by-product restrictions to academic freedom – are a major impediment to a constructive, mutually beneficial outcome.

Adding to our drawbacks, DEMOS has no funds to deliver and present the Portuguese volume in Guinea-Bissau. It lost the air tickets and other investments made to distribute and present the study in December 2021. In the end, EC subsidies for the Portuguese text paid for only 300 paperback copies of the

book.[11] We believe this volume deserves far greater accessibility than it has had. Added print copies would be important.

DEMOS is willing to find ways to publish the English volume through open access, with a "reputable academic press." Funds will be needed to facilitate digital and print copies of the book. Publishing the existing book manuscript online, however, would diminish the value of our study. Proper academic publications go through a peer-review process and (usually) substantial revisions to clarify and improve the final text. This validation process is an essential part of the scientific enterprise. At this point, our manuscript will also have to contend with the effects of a three-year submission delay.

In summary, DEMOS is willing and prepared to take positive steps to resolve differences with the EC through open dialogue or mediated negotiation. We hope this will allow us to move forward on the basis of two principles outlined in our April 2024 complaint to the Ombudsman:

> A. Mitigate harm by removing actual restrictions – de facto and/or administrative – on the publication and dissemination of the Voices of the People study, to ensure its wide availability.
>
> B. Repair the damage produced through symbolic restitutions to DEMOS, the volume authors and other parties adversely affected by the study's embargo, especially, the citizens of Guinea-Bissau (see sections 8 and 11)

These measures can create a win-win solution for all parties involved. They can remove the stain of having 'censored the voices of African people' and hampered scientific development, while restoring faith and commitment to the European Union's democratic ideals.

13. How can the Ombudsman strengthen academic freedom in EU-funded projects?

The European Ombudsman can help protect rights, identify systemic problems and propose appropriate solutions to improve EU administration. We believe our grievances with the EC go beyond the particulars of the case. Our complaint bears on issues that deal with power abuse, contract violation, lack of transparency and accountability, including the inability to resolve differences through constructive dialogue and/or mediation, as prescribed in EC contracts. All these problems contributed to the infringement of academic freedom and misuse of EU funds allocated to promote civil society and democracy in Guinea-Bissau.

If allowed to fester with impunity, such patterns of behavior will undermine confidence in EU institutions and corrode trust in the democratic process. The rationale deployed by EC officials to justify actions taken in our case could be used

[11] Printing prices had increased substantially over the four years it took to go to print, in January 2024. What is more, the size of the volume – number of chapters, authors and pages - was much larger than originally anticipated, hence the higher cost.

to restrict academic freedom elsewhere. The Ombudsman should do its best to prevent such risks of autocratization.

From a systemic perspective, we can discern three institutional fault lines in the ability to protect academic freedom in EU-funded projects. These relate to specific (1) guiding principles, (2) contract formulas and (3) administrative instruments. There is much that can be discussed here. Our brief comments build on our experience and are driven by the desire to prevent others from 'falling through the cracks' that DEMOS did. We would dread to see other scholars endure our experience. We also share an underlying belief in the EU's capacity to learn from its mistakes and make improvements.

Guiding Principles. How can the Commission reconcile its duty to provide free access to scientific studies funded by the EU, while ensuring broad access to them? If these studies are to be considered 'public goods,' designed to benefit the 'public interest,' then the question of their availability to the public should be of paramount importance. A 'public good' that is not available to the public, is really not a 'public good'. If scarcely available or largely unused, it is, at best, a devalued public good. Accessibility and use value, then, are defining elements of what constitutes a 'public good.' They determine the 'public good's' actual contribution to the public interest.

Our situation involves a clear contradiction in this regard. The claim to protect a 'public good' and defend the 'public interest' are used to restrict public access to this good. This is illogical.
One cannot invoke the 'public interest' to undermine the public interest, in this case, by suppressing an academic study designed to uphold the public interest. Something is not right.

We believe this problem reflects an exceedingly narrow definition of the 'public good,' one that prioritizes EC copyright ownership over all other public goods at stake, including academic freedom. This straitjacket involves a noble idea: that all publicly-funded studies be available free-of-charge. We strongly support this principle. But we also know from firsthand experience that this idea can be used to curtail public access these studies, through oblique and other backhanded restrictions.

We think the Ombudsman should look into this matter carefully. Without proper mitigation, EC officials could use the free-of-charge requirement to suppress academic freedom in indirect and subtle ways. Scholars, publishers and other organizations that receive public payments or benefits, of whatever kind or amount, could find 'surprising obstacles' to publication. Manipulations of this kind could be more prevalent in an autocratizing context.

The free-access principle provides a one-track, one-size-fits-all approach to the question of how EU-funded studies must be published. It prioritizes gratuity over any other meaning tied to the concept of 'access.' 'Free-access,' however, is not

the same as ‘wide-access'. Free books can be scarcely available. Gratuity alone does not ensure their real and wide availability.

We think that the principle of ‘wide accessibility’ should be considered as important as the value of ‘free access.’ Broad access serves the public interest. It facilitates knowledge sharing and production and strengthens the right to academic freedom.

The Ombudsman could help explore alternatives to the one-track approach upheld by the EC. A two-track mechanism that offers free access and ensures wide accessibility could work best for the public interest. This approach would give citizens the right to purchase paperback copies of studies produced with EU-funds. It would also guarantee free-of-charge access to these books, online tools and free-print distributions, subsidized by the EU. Other book copies could be sold through retailers and publishers.

The dual-track approach would ensure greater access to EU-funded studies. Market outlets would address demand issues and facilitate distribution. Greater access to these outlets and publication copies will enhance academic freedom protections. Under this approach, EU administrators would be unable to deny the right to publication with academic publishers, by restricting funds (on legitimate or spurious grounds) or imposing other restrictions.

A dual-track approach, combining free access and market distribution, would be particularly relevant for nonprofit organizations, notably in the developing world, where access to publication funds can be quite difficult. When nonprofits carry out book sales, the revenue obtained does not constitute a ‘profit’. Proceeds made cover expenses related to its nonprofit activities, including book production, promotion and distribution. Far from undermining a ‘common good,’ such efforts would actually enhance the value of EU-funded studies and contribute in a more effective way to the public interest.

Contract Formulas. The type of contract offered to scholars who wish to carry out independent inquiries designed to generate public awareness matters a lot. Researchers should be given information on available contract options. We don’t think that service agreements are the only way to go, not in Europe or abroad. Research grants have a distinct purpose and are meant to support projects like the one we developed in Guinea-Bissau. We trust the Ombudsman will review this matter with independent experts. The Commission’s position on this question, as stated in the response to the Ombudsman (see page bottom page 3, top of page 4), is far from unanimous within the organization. As far as we know, other managers hold different views and assign contracts in alternative ways. Clear guidelines and administrative consistency appear to be insufficient on these matters, which enhances the risk of discretionary abuse.

Crucially, EU research contracts should include clear and enforceable measures to prevent infringements of academic freedom. If the purpose of the agreement is to produce public information and “foster social development in the public

interest," contracts should offer adequate guarantees to ensure commitments will be upheld.

Administrative Instruments. Drawing on our experience, we believe the Commission could reinforce its commitment to academic freedom by adopting the following practical ideas for improvement.

- **Establish instruments to ease copyright transfers** in cases where the EU would wish to disassociate itself from a study over which it held intellectual property rights. This would prevent EC suppression of scholarly publications. Other multilateral institutions, like the Inter-American Development Bank, can reassign copyright in a matter of days. The EU should be able to do the same.

- **Enshrine the right to formal mediation** in agreements with research organizations, especially 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.

- **Facilitate an ombudsman** or a liaison office within the European Commission for International Partnerships for smaller contractors. This would provide research organizations with an alternative communication channel or way to reach an amicable settlement if dialogue is blocked by high-ranking EU officials.

In all likelihood, had any of these instruments been available to DEMOS, we would have resolved our impasse with the Commission a long time ago.

A final word. We bring to your attention the recent letter released by the African Studies Association in support of a "transparent investigation" (see Exhibit 13). DEMOS and many scholars around the world appreciate the Ombudsman's good efforts in this regard.

List of Annexes

A. Restrictions Imposed on the Voices of the People Initiative

B. Points of Clarification

List of New Exhibits

11. Afrobarometer Budget for Guinea-Bissau Survey

12. Budget for Follow-Up Study (2019-2022) – Voices of the People

13. Letter from the African Studies Association to Ms. Ursula von der Leyen, President of the European Commission