



The Republic of Mozambique

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And

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1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 190 countries throughout the world.
- 1.2 JOINT: Liga das ONG em Moçambique is an independent, non-profit, CSO that works to strengthen civil society in Mozambique. JOINT is an umbrella organisation of national and international CSOs working in Mozambique.
- 1.3 In this document, CIVICUS and JOINT examine the Government of Mozambique's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Mozambique's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in January 2016. To this end, we assess the Government of Mozambique's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a series of follow-up recommendations.
- 1.4 During the 2nd UPR cycle, the Government of Mozambique received 13 recommendations relating to the space for civil society (civic space). Of these recommendations, eight were accepted, four were noted and one was partly accepted. However, an evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Mozambique has not implemented nine recommendations relating to civic space. While the government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination, particularly acute implementation gaps were found with regard to the right to the freedom of expression and issues relating to situation of journalists, HRDs and civil society activists.
- 1.5 We are deeply concerned by the deteriorating environment in which journalists and civil society activists operate. Physical attacks, intimidation and harassment are becoming increasingly common.
- 1.6 As a result of these issues, civic space in Mozambique is currently classified as 'obstructed' by the CIVICUS Monitor.¹

¹ CIVICUS Monitor: Mozambique, <https://monitor.civicus.org/country/mozambique>.

- Section 2 of this submission examines Mozambique’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines Mozambique’s implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 4 examines Mozambique’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, independence of the media and access to information.
- Section 5 examines Mozambique’s implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 6 contains recommendations to address the concerns raised and to advance implementation of recommendations under the 2nd cycle.
- An annex of implementation of 2nd cycle UPR recommendations related to civic space can be found in Section 7.

2. Freedom of association

2.1 During Mozambique’s examination under the 2nd UPR cycle, the government received four recommendations on the right to the freedom of association and creating an enabling environment for CSOs. Among other recommendations, the government committed to “revisit the legal framework governing the civil society sector, particularly with a view to reducing bureaucratic restrictions to freedom of association and the registration of national and foreign organisations” and to “facilitate the registration and work of civil society organisations, including those working on human rights and fighting discrimination on all grounds, so that they can operate without harassment, undue restrictions and administrative obstacles”.² Of the recommendations received, the government accepted two and noted two. However, as evidenced below, the government has failed to take sufficient measures to realise these recommendations. The government has partially implemented two recommendations and not implemented the other.

2.2 Article 52 of the 2004 Mozambican Constitution, as amended in 2007, guarantees the right to establish associations. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Mozambique is a state party, also guarantees the freedom of association. Law 8/91 of 18 July (1991) regulates the formation of civil society in Mozambique.

² ‘Report on the Working Group on the Universal Periodic Review. Mozambique. Addendum’, A/HRC/32/6/Add.1, UN Human Rights Council, 8 June 2016.

- 2.3** The current legal framework does not enable the formation and legal registration of CSOs. Provisions requiring associations to have a minimum of 10 founding members under Article 4 (a) of Law 8/91 are onerous. The documentation required to register, such as certified copies of identity documents and criminal records of each founding member, place an additional burden considering the challenges in securing these documents, particularly in rural areas. Further, according to article 17 (a) of Law 8/91, foreign organisations are not permitted to register if their objectives or mandate are deemed contrary to national public order. Such restrictions contravene international best practices as set forth by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- 2.4** In 2015, the Council of Ministers approved a draft law on associations and submitted it to the National Assembly. However, many of the recommendations put forward by civil society during the consultation process had not been taken into account.³ A final draft law submitted to the National Assembly in 2018 still contains many obstacles against the formation of CSOs, in particular, an expensive and onerous registration process.⁴
- 2.5** According to article 5 of Law 8/91 of 18 July 1991, the registration of an organisation should not take more than 45 days. However, Associação Moçambicana para a Defesa das Minorias Sexuais (the Association for Defence of Sexual Minorities, Lambda), an organisation working on sexual minority rights, has been denied a certificate of registration from the Ministry of Justice since January 2008. In response to a request by the Ombudsperson, Mozambique's Constitutional Council ruled on 31 October 2017 that the clause invoked by the Ministry of Justice to deny Lambda's registration, namely article 1 of the 1991 Law that prohibits associations with an objective contrary to "the moral, social, and economic order of the country and offend the rights of others or the public good," was unconstitutional as article 52 (3)⁵ of the 2004 Constitution does not mention these grounds.⁶ Despite this ruling, Lambda has still not received its certificate of registration.

³ 'Processo de Revisão da Lei das Associações Ganha Novo Impulso', Oxfam Novib,

<https://www.agirmozambique.org/processo-de-revisao-da-lei-das-associacoes-ganha-novo-impulso>.

⁴ 'Organizações moçambicanas rejeitam proposta de lei das associações', Mundo ao Minuto, 29 July 2020, <https://www.noticiasominuto.com/mundo/1550061/organizacoes-mocambicanas-rejeitam-proposta-de-lei-das-associacoes>.

⁵ Article 52 (3) stipulates that "Armed associations of a military or paramilitary nature, as well as associations that promote violence, racism, xenophobia or pursue aims that are against the law, shall be prohibited."

⁶ 'Conselho Constitucional moçambicano considera inconstitucional recusa da legalização de associação de minorias sexuais', Diário De Notícias, 9 November 2017, <https://www.dn.pt/lusa/conselho-constitucional-mocambicano-considera-inconstitucional-recusa-da-legalizacao-de-associacao-de-minorias-sexuais-8905809.html>; 'Moçambique: É inconstitucional recusar legalização de associação de minorias sexuais', Deutsche Welle, 14 November 2017, <https://www.dw.com/pt-002/mo%C3%A7ambique-%C3%A9-inconstitucional-recusar-legaliza%C3%A7%C3%A3o-de-associac%C3%A7%C3%A3o-de-minorias-sexuais/a-41380675>.

2.6 Several CSOs and media outlets have faced break-ins and targeted robberies. On 28 October 2016, unidentified perpetrators ransacked the offices of JOINT in Maputo, taking equipment including computers, cameras, phones, external disks and folders with documents. Earlier in September 2016, the League of Human Rights faced a similar attack. Prior to these attacks, CSO leaders said they received death threats.⁷ More recently, on 23 August 2020, the head office of the weekly investigative newspaper Canal de Moçambique was broken into and set on fire, destroying equipment and documents (see 4.5 below).⁸

3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

3.1 Under Mozambique's previous UPR examination, the government received one recommendation on the protection of HRDs, journalists and civil society representatives. The government committed to "take all necessary measures to ensure a safe working environment for journalists and media workers." As evidenced below, this recommendation was not implemented.

3.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. The ICCPR further guarantees the freedoms of association, peaceful assembly and expression. However, in spite of these protections, HRDs, journalists and civil society activists, especially those working on sensitive issues such as the Cabo Delgado conflict (see 3.6), election monitoring, transparency and accountability, are regularly subjected to threats, including death threats, physical attacks, intimidation, abductions and arbitrary arrests.

3.3 Mozambique held local elections on 10 October 2018 and general elections on 15 October 2019. Civil society actors monitoring the elections and journalists reporting on them were subjected to threats and arbitrary arrests. One civil society election monitor was killed: on 7 October 2019, Anastácio Matavel, civil society activist and founder and director of FONGA-Gaza NGO Forum, was shot and killed in Xai-Xai, Gaza Province, after attending a training session on election monitoring.⁹ On 18 June 2020, six police officers belonging to the Rapid Intervention Unit of the Police were sentenced to prison terms of between three and 24 years for Matavel's killing.¹⁰ In

⁷ 'Worrying rise in attacks on CSOs and the media in Mozambique', CIVICUS, 30 November 2016, <https://www.civicus.org/index.php/media-resources/media-releases/2662-worrying-rise-in-attacks-on-csos-and-the-media-in-mozambique>.

⁸ 'Redacção do Jornal Canal de Moçambique arrombada e incendiada', Verdade, 24 August 2020, <http://www.verdade.co.mz/redacao-do-jornal-canal-de-mocambique-arrombada-e-incendiada>.

⁹ 'Director de ONG assassinado a tiros em Gaza', O País, 7 October 2019, <http://opais.sapo.mz/-director-de-ong-assassinado-a-tiros-em-gaza>.

¹⁰ 'Moçambique: 3 a 24 anos de prisão para assassinados de Anastácio Matavel', Radio France International (RFI), 18 June 2020, <https://www.rfi.fr/pt/mo%C3%A7ambique/20200618-mo%C3%A7ambique-3-a-24-anos-de-pris%C3%A3o-para-assassinados-de-anast%C3%A1cio-matavel>; 'Caso Anastácio Matavel: Seis polícias

Chokwé, Gaza Province, 18 young members of the Partido Nova Democracia (New Democracy Party) were detained on accusations of having had falsified their credentials to monitor the elections.¹¹ On 27 November 2019, the 18 were released on bail by a court in Chokwé, with bail set at a total 720,000 meticaís (approx. US\$12,000 at the time).¹² Journalists have reported being subjected to intimidation before the October 2019 elections,¹³ including through text messages.¹⁴ The Fórum Nacional de Rádios Comunitárias (National Forum of Community Radios, FORCOM) for example said that journalist and FORCOM communication and advocacy officer Naldo Chivite received a text message threat stating that: “Chivite, you must be careful what you say on Tuesday [polling day]. You talked a lot about the election in Nampula and we accepted it. Be careful.”¹⁵ According to media freedom institute Instituto de Comunicação Social da África Austral – Moçambique (MISA Mozambique), Aparício José de Nascimento, editor of the weekly Malacha, was threatened with kidnapping after the newspaper published on Facebook the results of all voting stations in Moatize, Tete Province, in the October 2018 municipal elections. The threats led him to go into hiding.¹⁶

- 3.4** There are other sensitive topics, such as the ‘hidden’ or ‘illegal’ debt scandal – loans of over US\$2 billion from European banks in 2013 and 2014 that lacked approval by the National Assembly and violated budget laws, and led to a financial and economic crisis¹⁷ – that can lead to intimidation and harassment for those who speak out or

condenados a prisão’, Deutsche Welle, 18 June 2020, <https://www.dw.com/pt-002/caso-anast%C3%A1cio-matavele-seis-pol%C3%ADcias-condenados-a-pris%C3%A3o/a-53863961>.

¹¹ ‘Moçambique : 18 membros do Nova Democracia detidos há dias’, 20 October 2019, RFI, <https://www.rfi.fr/pt/mocambique/20191020-mocambique-18-membros-do-nova-democracia-detidos-ha-dias>; ‘Os 18 membros do partido Nova Democracia foram encarcerados injustamente, analistas’, VOA, 28 November 2019, <https://www.voaportugues.com/a/os-18-membros-do-partido-nova-democracia-foram-encarcerados-injustamente-analistas-/5184869.html>; ‘Sociedade civil denuncia prisão de 18 delegados políticos em Moçambique’, Global Voices, 19 November 2019, <https://pt.globalvoices.org/2019/11/19/sociedade-civil-denuncia-prisao-de-18-delegados-eleitorais-em-mocambique>; ‘Mozambique: Fears grow for election monitors secretly transferred to new prison’, Amnesty International, 18 November 2019, <https://www.amnesty.org/en/latest/news/2019/11/mozambique-fears-grow-for-election-monitors-secretly-transferred-to-new-prison>.

¹² ‘Tribunal exige 10 mil euros para liberdade provisória de 18 militantes da oposição detidos em Moçambique’, Observador, 27 November 2019, <https://observador.pt/2019/11/27/tribunal-exige-10-mil-euros-para-liberdade-provisoria-de-18-militantes-da-oposicao-detidos-em-mocambique>.

¹³ ‘Jornalistas moçambicanos denunciam intimidações antes das eleições’, Deutsche Welle, 22 August 2019, <https://www.dw.com/pt-002/jornalistas-mo%C3%A7ambicanos-denunciam-intimida%C3%A7%C3%B5es-antes-das-elei%C3%A7%C3%B5es/a-50131188>.

¹⁴ ‘Jornalistas e ativistas moçambicanos são alvo de ameaças em ano eleitoral’, Global Voices, 11 January 2020, <https://pt.globalvoices.org/2020/01/11/jornalistas-e-ativistas-mocambicanos-sao-alvo-de-ameacas-em-ano-eleitoral>.

¹⁵ Ibid.

¹⁶ ‘Moçambique/ Autárquicas: jornalista ameaçado de sequestro após divulgar resultados’, Diário De Notícias, 12 October 2018, <https://www.dn.pt/lusa/mocambiqueautarquicas-jornalista-ameacado-de-sequestro-apos-divulgar-resultados-9989611.html>.

¹⁷ ‘Mozambique’s debt scandal: Impunity is the catch of the day’, African Arguments, 19 July 2017, <https://africanarguments.org/2017/07/19/mozambique-debt-scandal-impunity-is-the-catch-of-the-day-2/>; ‘Grand corruption and the SDGs: the visible costs of Mozambique’s hidden debts scandal’, Transparency

provide coverage. On 21 January 2019, the offices of the CSO Centro de Integridade Pública (Center of Public Integrity, CIP) in Maputo were surrounded by police officers after CIP started to distribute campaign t-shirts to citizens with the slogan 'Eu Não Pago Dívidas Ocultas' (I do not pay hidden debts). CIP reported that people were approached by uniformed and plainclothes agents and asked to remove their t-shirts, and a number were confiscated.¹⁸ In July 2017, the Budget Monitoring Forum (FMO) experienced a cyber attack and one of FMO's members was a victim of a burglary attempt, according to MISA Mozambique. These events occurred after FMO filed a petition to the Constitutional Court to declare the inclusion of the 'hidden debts' in the 2014 General State Account as unconstitutional.¹⁹

3.5 In May 2019 Alice Tomás, a Member of Parliament for the ruling FRELIMO party, threatened CIP researcher and anti-corruption activist Fátima Mimbire after Mimbire made comments on social media in a controversial debate. Tomás reportedly said in a Facebook post "that one [Mimbire] needs to be raped by ten strong men, full of energy. Then they can let her go. Because that mouth only issues words that are poisonous to the Mozambican people."²⁰

3.6 The authorities have severely curtailed the freedoms of expression and information in the northern province of Cabo Delgado, where suspected Islamist insurgents have perpetrated violent armed attacks on civilians since 2017 and where the situation has subsequently turned into a conflict with armed insurgents and security forces accused of human rights violations.²¹ Journalists and a human rights researcher have been subjected to arbitrary detention, intimidation and disappearance. Between 2017 and 2019, a total of four journalists, one human rights researcher and a driver were arbitrarily detained.²² On 5 January 2019, Amade Abubacar, a journalist for Nacedje

International, 13 December 2019, <https://www.transparency.org/en/publications/grand-corruption-and-the-sdgs-the-visible-costs-of-mozambiques-hidden-debts>.

¹⁸ 'CIP queixa-se de intimidação da polícia na sua campanha contra dívidas ocultas', O País, 21 January 2019, <http://opais.sapo.mz/cip-queixase-de-intimidacao-da-policia-na-sua-campanha-contra-dividas-ocultas>; 'CIP denuncia intimidação da polícia na sua campanha #EUNAOPAGODIVIDASOCULTAS', Deutsche Welle, 21 January 2019, <https://www.dw.com/pt-002/cip-denuncia-intimida%C3%A7%C3%A3o-da-pol%C3%ADcia-na-sua-campanha-eunaopagodividasocultas/a-47172101>.

¹⁹ 'MISA Mozambique warns of "attempts to silence the press"', Club of Mozambique, 26 July 2017, <https://clubofmozambique.com/news/misa-mozambique-warns-of-attempts-to-silence-press>.

²⁰ 'Mozambique: Civil society activist threatens lawsuit over incitement to rape – AIM report', Club of Mozambique, 8 May 2019, <https://clubofmozambique.com/news/mozambique-civil-society-activist-threatens-lawsuit-over-incitement-to-rape-aim-report>; 'CIP exige cessação de deputada da FRELIMO', Deutsche Welle, 9 May 2019, <https://www.dw.com/pt-002/mo%C3%A7ambique-cip-exige-cassa%C3%A7%C3%A3o-de-deputada-da-frelimo/a-48677881>.

²¹ Since 2017, more than 200,000 people have been displaced and over 1,000 people killed. See 'How did a 'cocktail of violence' engulf Mozambique's gemstone El Dorado?', The Guardian, 18 September 2020, <https://www.theguardian.com/global-development/2020/sep/18/mozambique-cabo-delgado-cocktail-of-violence-escalates-el-dorado-of-gemstones>.

²² 'Estágio da liberdade de imprensa em Moçambique – 2019. Apagão de informação e as perseguições contra a imprensa em Cabo-Delgado', MISA Moçambique, September 2019, <https://www.misa.org.mz/index.php/publicacoes/relatorios/relatorio-2008/98-estagio-da-liberdade-de>

Community Radio, was arrested in Macomia while he was photographing people fleeing the region due to the violent attacks²³ and taken to military barracks where he was held incommunicado for 11 days and subjected to ill-treatment before having been presented before an investigating judge.²⁴ On 18 February 2019, a second journalist, Germano Daniel Adriano of Rádio e Televisão de Macomia, was detained.²⁵ Initially accused of ‘crimes of violating state secrets through digital means’ and ‘public incitement to a crime using digital means’,²⁶ both journalists were formally charged on 16 April 2019 with ‘public incitement of a crime through electronic media’, ‘incitement’ and ‘injury against public officials’.²⁷ They were provisionally released with conditions on 23 April 2019 pending their trial.²⁸

- 3.7** On 17 December 2018, journalist Estacio Valoi, Amnesty International researcher David Matsinhe and their driver were on their way from Mocimboa to Palma when they were stopped by dozens of military officers and detained, questioned and held incommunicado for two days on accusations of spying, aiding and abetting extremist groups. Their phones, laptops and cameras were confiscated.²⁹ Ibraimo Abu Mbaruco, a journalist for Community Radio of Palma, in Cabo Delgado Province, disappeared on 7 April 2020. According to MISA Mozambique, Mbaruco went to work that day until 6pm, reportedly sent a short text message to a colleague saying he was “surrounded by military” and has been uncontactable since.³⁰ At the time of writing, Mbaruco’s whereabouts were still unknown.

[imprensa-em-mocambique-2019-apagao-de-informacao-e-as-persegucoes-contr-a-imprensa-em-cabo-delgado/file](https://www.dn.pt/lusa/segundo-jornalista-detido-este-ano-na-provincia-mocambicana-de-cabo-delgado-10595788.html).

²³ ‘Caso Amade Abubacar: “Processo viciado e de acusações fabricadas”’, Deutsche Welle, 18 January 2019, <https://www.dw.com/pt-002/caso-amade-abubacar-processo-viciado-e-de-acusa%C3%A7%C3%B5es-fabricadas/a-47140489>.

²⁴ ‘Jornalista Amade Abubacar denuncia tortura à comissão dos direitos humanos da OAM’, O País, 27 January 2019, <http://opais.sapo.mz/jornalista-amade-abubacar-denuncia-tortura-a-comissao-dos-direitos-humanos-da-oam>.

²⁵ ‘Segundo jornalista detido este ano na província moçambicana de Cabo Delgado’, Diário De Notícias, 19 February 2019, <https://www.dn.pt/lusa/segundo-jornalista-detido-este-ano-na-provincia-mocambicana-de-cabo-delgado-10595788.html>.

²⁶ ‘Mozambican journalists are released pending trial, after months in detention’, Advox, 8 May 2019, <https://advox.globalvoices.org/2019/05/08/mozambican-journalists-are-released-pending-trial-after-months-in-detention>; ‘Two Mozambican journalists freed after being held for months’, Reporters Without Borders, 23 April 2019, <https://rsf.org/en/news/two-mozambican-journalists-freed-after-being-held-months>.

²⁷ Articles 323, 393 and 406 under the Penal Code. See ‘Mozambique: Further Information: Journalist Granted Provisional Release: Amade Abubacar’, Amnesty International, 30 April 2019, <https://www.amnesty.org/en/documents/afr41/0278/2019/en>.

²⁸ ‘Cabo Delgado: Libertados jornalistas Amade Abubacar e Germano Adriano’, Deutsche Welle, 23 April 2019, <https://www.dw.com/pt-002/cabo-delgado-libertados-jornalistas-amade-abubacar-e-germano-adriano/a-48446076>.

²⁹ ‘Estacio Valoi’s detention diary’, Club of Mozambique, 21 December 2019, <https://clubofmozambique.com/news/estacio-valois-detention-diary>; ‘Mozambique Civil Society Groups Call for the Unconditional and Immediate Release of Radio Journalist’, South Africa National Editors’ Forum, 12 April 2019, <https://sanef.org.za/mozambique-civil-society-groups-call-for-the-unconditional-and-immediate-release-of-radio-journalist>.

³⁰ ‘Jornalista desaparecido no norte de Moçambique’, Deutsche Welle, 10 April 2020, <https://www.dw.com/pt-002/jornalista-desaparecido-no-norte-de-mo%C3%A7ambique/a-53089579>.

3.8 Media freedom violations are becoming increasingly common in Mozambique. According to report by MISA Mozambique, the organisation documented 75 cases of press freedom violations between 2016 and 2019.³¹ Violations against journalists include abductions and physical assaults. On 17 March 2018, unidentified men abducted Ericino de Salema, political commentator for STV's Pontos de Vista and a human rights lawyer, while he was leaving the offices of the Union of Journalists in Maputo. He was severely beaten and found unconscious in the Mutanhane area on the outskirts of Maputo several hours later. Both his legs and left arm were broken.³² More recently, on 13 September 2020 Luciano da Conceição, correspondent for Deutsche Welle Africa, was abducted by unidentified men in front of his house in the city of Maxixe, in Inhambane Province, and taken to a beach where he was tied up, beaten and left, with the words "you'll see." Da Conceição's belongings – tape recorder, mobile phones and identity documents – were taken.³³ The same day, TV Sucesso journalist Leonardo Gimo was physically attacked in Nampula City by three unidentified men who took his camera.³⁴

4. Freedom of expression, independence of the media and access to information

4.1 Under the 2nd UPR cycle, the Government of Mozambique received seven recommendations relating to the freedom of expression and access to information. For example, the government pledged to "take necessary measures to fully guarantee freedom of expression, in particular freedom of the press." Of the recommendations received, four were accepted, two were noted and one was partially accepted. However, as discussed below, the government did not take effective measures to implement these recommendations, and of the seven recommendations the government has not implemented five.

4.2 Article 19 of the ICCPR guarantees the rights to the freedoms of expression and opinion. Article 48 (1) and (2) of the 2004 Constitution of Mozambique provides for the right to the freedom of expression, press freedom and the right to information.

³¹ 'Estágio da liberdade de imprensa em Moçambique – 2019. Apagão de informação e as perseguições contra a imprensa em Cabo-Delgado', MISA Moçambique, September 2019, <https://www.misa.org.mz/index.php/publicacoes/relatorios/relatorio-2008/98-estagio-da-liberdade-de-imprensa-em-mocambique-2019-apagao-de-informacao-e-as-persegucoes-contra-a-imprensa-em-cabo-delgado/file>.

³² 'Raptos fraturaram as pernas e braço do jornalista moçambicano Ericino de Salema', VOA, 29 March 2018, <https://www.voaportugues.com/a/raptos-fraturaram-as-pernas-e-braco-do-jornalista-ericino-de-salema/4322416.html>.

³³ 'Jornalistas raptados e ameaçados em Inhambane e Nampula', MISA Mozambique, <https://www.misa.org.mz/index.php/destaques/noticias/94-jornalistas-raptados-e-ameacados-em-inhambane-e-nampula>; 'Moçambique: Sindicato e MISA condenam ataque a jornalista da DW', Deutsche Welle, 16 September 2020, <https://www.dw.com/pt-002/mo%C3%A7ambique-sindicato-e-misa-condenam-ataque-a-jornalista-da-dw/a-54949949>.

³⁴ Ibid.

However, in practice, a number of restrictions to these provisions undermine these rights.

- 4.3** Despite these constitutional protections, these rights are undermined by the 1991 Press Law (Law 18/91 of 10 August 1991), the Penal Code (Law 35/2014 of 31 December 2014) and the Law on Crimes against the Security of the State (Law 19/91 of 18 August 1991). Specifically, articles 229, 231, 232 and 235 of the 2014 Penal Code criminalise defamation and slander, including offences to public authority, with prison sentences of up to one year. Moreover, articles 46 and 47 of the 1991 Press Law allow for up to two years in prison and a fine of no less than 100,000 Meticaís (approx. US\$1,375) for publications, broadcasts or pictures that slander or defame the president, members of the government, deputies of the National Assembly, magistrates and other public authorities. In addition, the act of defamation, libel and slander against the head of state, the president of the National Assembly, members of the government, judges of the Supreme Court and members of the Constitutional Council are considered a crime against the security of the state, punishable with a prison sentence of between one and two years.³⁵ Further, libel, slander and defamation against deputies, magistrates, presidents and secretary generals of political parties and civil or military officials that exert public authority can lead to prison sentences of between three months and two years.³⁶ The above provisions taken together create strong impediments against legitimate criticism of public authorities.
- 4.4** On 23 July 2018, Executive Decree 40/2018 was initially approved, setting exorbitant fees for the registration, licencing and renewal of licences for media outlets, while also substantially increasing the fees for the accreditation of local and foreign journalists wishing to work in Mozambique. These provisions would, if applied, have threatened the sustainability of media and endanger the freedom of information.³⁷ Community radio and television stations would also have been affected and obliged to pay 50,000 Meticaís (approx. US\$822) and 150,000 Meticaís (approx. US\$2,465) respectively for their licence. National radio stations and television stations would have had to pay 2 million to 3 million Meticaís (approx. US\$27,500 to US\$41,300). The Decree, which was approved without prior consultation with media organisations and CSOs, was finally revoked by the Council of Ministers in May 2020³⁸ after media freedom

³⁵ Article 22 (1), Law on Crimes against Security of the State Law 19/91 of 18 August 1991.

³⁶ Article 22 (2), Ibid.

³⁷ 'Taxas ameaçam sobrevivência da imprensa em Moçambique – Ordem dos Advogados', Diário De Notícias, 13 August 2018, <https://www.dn.pt/lusa/taxas-ameacam-sobrevivencia-da-imprensa-em-mocambique---ordem-dos-advogados-9712553.html>; 'Novas taxas para "disciplinar" comunicação social moçambicana', Deutsche Welle, 10 August 2018, <https://www.dw.com/pt-002/novas-taxas-para-disciplinar-comunica%C3%A7%C3%A3o-social-mo%C3%A7ambicana/a-45033877>.

³⁸ 'Governo revoga decreto que fixava taxas à comunicação social', SAPO Notícias, 21 May 2020, <https://noticias.sapo.mz/actualidade/artigos/governo-revoga-decreto-que-fixava-taxas-a-comunicacao-social>.

advocates and CSOs, led by MISA Mozambique, petitioned the Ombudsperson in 2018 with the aim of having the Decree declared unconstitutional.³⁹

- 4.5** Recent attacks against independent media outlets have raised concerns. Unknown perpetrators broke into and used petrol bombs to set fire to the offices of the independent weekly Canal de Moçambique in Maputo on 23 August 2020, destroying equipment, documents and furniture. According to news sources, the government initiated a suit against the media outlet in June 2020 for having leaked confidential information on government contracts with gas exploration companies operating in Cabo Delgado.⁴⁰ A few months earlier, on 1 February 2020, unidentified people broke into the facilities of media group Media Mais TV in Maputo, and stole the technical equipment necessary for broadcasting. The media group considers the robbery as an ‘act of sabotage’.⁴¹
- 4.6** The right to access to Information is regulated through Law 34/2014 of 31 December 2014. In practice, serious implementation gaps exist. A study conducted in 2020 by a several CSOs revealed that institutions failed to respond in a timely manner to information requests. Of the 10 institutions that were sent a request, only one responded within the 21 days as stipulated by law, while no response was given to appeals filed with the Administrative Court.⁴² According to the CSOs, there is ambiguity in the interpretation of the law.

5. Freedom of peaceful assembly

- 5.1** During Mozambique’s examination under the 2nd UPR cycle, the government received two recommendations on the right to the freedom of peaceful assembly. The government committed to ensuring to “continue the government efforts of protecting the rights of freedom of expression and peaceful demonstrations and respect the political rights in this aspect” and to “put an end to arbitrary detention, practices of torture and methods use by security forces in public demonstrations.” These two recommendations were accepted by the Government of Mozambique. However, as evidenced below, the government has failed to implement them.

³⁹ ‘Sociedade civil moçambicana pede revogação de novas taxas à comunicação social’, SAPO, 13 August 2018, <https://www.sapo.pt/noticias/atualidade/sociedade-civil-mocambicana-pede-revogacao-de-5b71be65b1f37f3c4d758fee>.

⁴⁰ ‘Mozambican newspaper HQ torched after leaking state documents’, News24, 24 August 2020, <https://www.news24.com/news24/africa/news/mozambican-newspaper-hq-torched-after-leaking-state-documents-20200824>.

⁴¹ ‘Emissora TV moçambicana denuncia tentativa de sabotagem’, RFI, 3 February 2020, <https://www.rfi.fr/pt/mo%C3%A7ambique/20200203-emissora-tv-mo%C3%A7ambicana-denuncia-tentativa-de-sabotagem>.

⁴² ‘Moçambique: Instituições não cumprem Lei do Direito à Informação’, Deutsche Welle, 9 July 2020, <https://www.dw.com/pt-002/mo%C3%A7ambique-institui%C3%A7%C3%B5es-n%C3%A3o-cumprem-lei-do-direito-%C3%A0-informa%C3%A7%C3%A3o/a-54096021>.

- 5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 51 of the 2004 Mozambican Constitution guarantees the right to the freedom of assembly. Article 3 (1) of Law 9/91 of 18 July 1991, amended by Law 7/2001 of 7 July 2001, states that “all citizens can, peacefully and freely, exercise their right of assembly and manifestation without prior authorisation under the law.” According to article 10 of the same law, a written notification four days prior to an assembly to the civil authorities and the police of the area is sufficient. However, article 4 and 5 of Law 9/91, as amended, contains certain restrictions. The exercise of the right to peaceful assembly “cannot offend the Constitution, law, morals, good behaviour and individual or collective rights,” while demonstrating within 100 meters of headquarters of sovereign bodies, military installations, prisons, consulates and diplomatic representations and headquarters of political parties is not allowed.
- 5.3** In practice, violations of these constitutional rights have taken place, such as intimidation of protest organisers, unequal application of the law and the use of excessive force.
- 5.4** Intimidation has been used to deter civil society and political parties from protesting. In June 2016, Alice Mabote, president of human rights organisation Liga dos Direitos Humanos, said she had received death threats after notifying police of her intention to organise a civil society protest ‘of hope’ against the military and political crisis, among other issues.⁴³ João Massango, president of the Partido Ecologista Movimento da Terra and spokesperson for a demonstration in Maputo against the military and political crisis and the hidden public debt, was attacked by three unidentified men on the outskirts of Maputo on 20 May 2016 while he was preparing for a press conference on the upcoming march. The authorities had previously rejected the notification about the protest, thereby denying permission, stating that the documents submitted had errors.⁴⁴
- 5.5** In January 2020, the Municipal Council of Lichinga arbitrarily banned a planned protest by Fórum das Organizações Feministas do Niassa (Forum of Feminist Organisations of Niassa). The protest aimed to denounce public insecurity, especially with regards to sexual violence and femicide.⁴⁵
- 5.6** Police used excessive force and dispersed a protest on 4 February 2019 against a court decision to bar Manuel de Araújo from standing for a second term as mayor of the city of Quelimane. Nhama Matabicho, a journalist for Diário da Zambézia, was

⁴³ ‘Alice Mabota ameaçada de morte’, Folha de Maputo, 16 June 2016, <http://www.folhademaputo.co.mz/pt/noticias/nacional/alice-mabota-ameacada-de-morte>.

⁴⁴ ‘Organizador de marcha é espancado em Moçambique’, RFI, 20 May 2016, <https://www.rfi.fr/pt/mocambique/20160520-organizador-de-marcha-e-espancado-em-mocambique>.

⁴⁵ ‘CDD repudia veementemente a decisão ilegal do Presidente do Conselho Autárquico de Lichinga de impedir a marcha pacífica do Fórum das Organizações Feministas do Niassa’, Centro para a Democracia e Desenvolvimento, 25 January 2020, <https://bit.ly/3dtWolb>.

assaulted by police officers and saw his equipment confiscated. Fifteen protesters were reportedly arrested.⁴⁶ On 31 August 2019, police used teargas to disperse a group of protesters who were protesting about the death of four women in the maternity ward of the Linchinga hospital and detained 20 people. They were released a few hours later.⁴⁷

- 5.7** Police officers used rubber bullets and teargas against protesters on 5 October 2017 in Nampula City. Hundreds of people gathered to demand justice for the killing of Nampula City's mayor, Mahamudo Amurane, who had been assassinated on the previous day. Several protesters and journalists were injured, including VOA correspondent Adina Sualehle and Luís Rodrigues from the weekly Jornal Makholo.⁴⁸ Police later banned 'illegal protests', saying that procedures need to be adhered to,⁴⁹ and a heavy police presence prevented further gatherings from taking place.⁵⁰
- 5.8** During the weekend of 28 July 2018, the Rapid Intervention Force intervened in protests in Inhassunge district in Zambézia Province, killing one person and seriously injuring two people.⁵¹ People were protesting against plans for their resettlement in order to make way for the exploitation of heavy mineral sand by the Chinese-owned Africa Great Wall Mining Development Company.

6. Recommendations to the Government of Mozambique

CIVICUS and JOINT call on the Government of Mozambique to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the

⁴⁶ 'Quelimane: Polícia trava mortes a marcha em apoio a Manuel de Araújo e agredide jornalista', VOA, 5 February 2019, <https://www.voaportugues.com/a/quelimane-pol%C3%ADcia-trava-marcha-em-apoio-a-manuel-de-ara%C3%BAjo-e-agride-jornalista/4773927.html>.

⁴⁷ 'Marcha em repúdio a mortes de mulheres na maternidade de Lichinga termina em detenções', Deutsche Welle, 31 August 2019, <https://www.dw.com/pt-002/marcha-em-rep%C3%BAdio-a-mortes-de-mulheres-na-maternidade-de-lichinga-termina-em-deten%C3%A7%C3%B5es/a-50241469>.

⁴⁸ 'Marcha em Nampula contra assassinato de Amurane', Deutsche Welle, 5 October 2017, <https://www.dw.com/pt-002/marcha-em-nampula-contra-assassinato-de-amurane/a-40825649>.

⁴⁹ 'Polícia moçambicana proíbe "manifestações ilegais" contra o homicídio de autarca', Observador, 5 October 2017, <https://observador.pt/2017/10/05/policia-mocambicana-proibe-manifestacoes-ilegais-contra-o-homicidio-de-autarca>.

⁵⁰ Deutsche Welle, 5 October 2017, op. cit.

⁵¹ 'FIR mata uma pessoa e fere duas em protesto contra reassentamento', Deutsche Welle, 30 July 2018, <https://www.dw.com/pt-002/fir-mata-uma-pessoa-e-fere-duas-em-protesto-contra-reassentamento/a->

right to seek and secure funding and the state's duty to protect. In the light of this, the following specific recommendations are made:

6.1 Freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association.
- Revive the dialogue with civil society to revise Law 8/91 of 18 July 1991 on associations. Specifically, this law should be suitably amended to guarantee that undue restrictions on the freedom of association are removed to bring its provisions into compliance with ICCPR articles 21 and 22.
- Stop unwarranted raids on civil society groups and unjustifiable disruptions to legitimate conferences, seminars and other activities organised by CSOs.
- Allow for the registration and accreditation of Lambda.
- Refrain from acts leading to the closure of CSOs or the suspension of their peaceful activities, and instead promote a meaningful political dialogue that allows and embraces diverging views, including those of CSOs, HRDs, journalists, political activists and others.

6.2 Protection of human rights defenders

- Provide civil society members, HRDs and journalists with a safe and secure environment in which they can carry out their work, conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or harassment.
- Immediately and unconditionally release all HRDs, including journalists and bloggers, detained for exercising their fundamental rights to the freedoms of association, peaceful assembly and expression, and review their cases to prevent further harassment.
- Senior government officials should publicly condemn instances of harassment and intimidation of civil society activists and organisations.

- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect human rights activists by adopting a specific law on the protection of human rights activists, in accordance with Human Rights Council resolution 27.31.

6.3 Freedom of expression, independence of the media and access to information

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Reform defamation legislation in conformity with ICCPR article 19.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive.
- Take adequate steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Develop an action plan to ensure that internet laws comply with the government's commitment to guarantee the freedoms of expression and information, including by ensuring free access to electronic media, liberalising electronic media ownership rules, and allow domestic bloggers, journalists and other internet users to play a full and active role in promoting and protecting human rights.
- Implement the law on access to information and establish mechanisms to facilitate public access in line with best practices.
- Organise inclusive consultations with journalists and the media in order to resolve disputes that exist.
- Refrain from adopting any laws providing for censorship or undue control over media content.
- Refrain from censoring social and conventional media and ensure that the freedom of expression is safeguarded in all forms, including in the arts.

6.4 Freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2012 report, which calls for a process of simple notification for the holding of an assembly rather than explicit permission being needed to assemble.
- Immediately and impartially investigate all instances of extrajudicial killing and excessive force committed by security forces while monitoring protests and demonstrations.
- Review and if necessary update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Publicly condemn at the highest level the use of excessive and brutal force by security forces in the dispersal of protests, launch a formal investigation into such instances and bring the perpetrators to justice.
- Provide recourse for judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to the freedom of peaceful assembly by state authorities.

6.5 Access to UN Special Procedures mandate holders

- The Government should ensure official visits by the following UN Special Procedure mandate holders: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 3) Special Rapporteur on the rights to freedom of peaceful assembly and of association; 4) Special Rapporteur on the Independence of Judges and Lawyers; 5) Special Rapporteur on extrajudicial, summary or arbitrary executions; 6) Special Rapporteur on the rights to privacy; and 7) Working Group on Arbitrary Detention.

6.6 State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.

- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

7. Annex: Assessment of implementation of civic space recommendations under the 2nd cycle

Recommendation	Position	Theme	Evaluation /comments on the level of implementation
<p>130.13 Agree to the registration of LAMBDA (the Association for Defence of Sexual Minorities) as an official NGO (United Kingdom of Great Britain and Northern Ireland);</p> <p>Source of position: A/HRC/32/6 - Para. 130 & A/HRC/32/6/Add.1 - Para. 26</p>	Noted	Association	<p>Not implemented</p> <p>Lambda has still not received its certificate of registration (see 2.5)</p>
<p>128.74 Put an end to arbitrary detention, practices of torture and methods use by security forces in public demonstrations. These are forms of limiting freedom of expression and trial those persons responsible in line with Mozambique's international human rights obligations (Costa Rica);</p> <p>Source of position: A/HRC/32/6 - Para. 128</p>	Supported	Peaceful Assembly	<p>Not implemented</p> <p>Arbitrary detention of protesters and journalists, excessive use of force by security forces continue. (see 3.6, 3.7, 5.6, 5.7, 5.8).</p>
<p>128.121 Take necessary measures to fully guarantee freedom of expression, in particular freedom of the press (France);</p> <p>Source of position: A/HRC/32/6 - Para. 128</p>	Supported	Expression	<p>Not implemented,</p> <p>No measures have been taken to fully guarantee freedom of press. In practice, journalists are subject to attacks, arbitrary detention, threats and intimidation (see 3.8). Executive Decree 40/2018 would have set exorbitant fees for the accreditation of journalists and the licensing of media outlets (see 4.4). Additionally, defamation and slander, including offences to public authority, remain criminalised in the Penal Code, the Press Law and the Law on Crimes against State Security (see 4.3).</p>

Recommendation	Position	Theme	Evaluation /comments on the level of implementation
<p>129.31 Work to promote freedom of expression in line with international human rights principles, including by repealing criminal defamation laws (Norway);</p> <p>Source of position: A/HRC/32/6/Add.1 - Para. 25</p> <p>Comments: A/HRC/32/6/Add.1 states at para. 25: Mozambique accepts the first part of the recommendation on the promotion of freedom of expression because it is a principle pursued by the Mozambican Government. However, we take note of the second part, as defamation is considered a criminal offence because it undermines the principles that the law seeks to protect.</p>	Supported/noted	Expression	<p>Not implemented</p> <p>In practice, journalists are subject to attacks, arbitrary detention, threats and intimidation (see 3.8). Executive Decree 40/2018 would have set exorbitant fees for the accreditation of journalists and the licensing of media outlets (see 4.4). Additionally, defamation and slander, including offences to public authority, remain criminalised in the Penal Code, the Press Law and the Law on Crimes against State Security (see 4.3).</p>
<p>129.30 Decriminalize defamation and place it under the Civil Code in accordance with international standards (Ireland);</p> <p>Source of position: A/HRC/32/6/Add.1 - Para. 24</p>	Noted	Expression	<p>Not implemented</p> <p>Defamation and slander, including offences to public authority, remain criminalised in the Penal Code, the Press Law and the Law on Crimes against State Security (see 4.3).</p>
<p>129.32 Review laws criminalizing defamation of public figures, to respect and guarantee freedom of expression (Switzerland);</p> <p>Source of position: A/HRC/32/6/Add.1 - Para. 24</p>	Noted	Expression	<p>Not implemented</p> <p>Defamation and slander, including offences to public authority, remain criminalised in the Penal Code, the Press Law and the Law on Crimes against State Security (see 4.3).</p>

Recommendation	Position	Theme	Evaluation /comments on the level of implementation
<p>129.35 Take all necessary measures to ensure a safe working environment for journalists and media workers (Latvia); Source of position: A/HRC/32/6/Add.1 - Para. 7</p>	Supported	Situation of HRD's and journalists	<p>Not implemented. No measures were taken to guarantee a safe environment for journalists. In practice, journalists are subject to attacks, arbitrary detention, threats and intimidation (see 3.8).</p>
<p>129.33 Provide adequate administrative resources in order to fully and effectively implement the Code on Access to Information (Belgium); Source of position: A/HRC/32/6/Add.1 - Para. 7</p>	Supported	Expression	<p>Implemented However, in practice there are substantial implementation gaps (see 4.6.)</p>
<p>128.122 Continue the government efforts of protecting the rights of freedom of expression and peaceful demonstrations and respect the political rights in this aspect (Iraq); Source of position: A/HRC/32/6 - Para. 128</p>	Supported	Expression & Peaceful Assembly	<p>Not implemented In practice, journalists are subject to attacks, arbitrary detention, threats and intimidation (see 3.8). Executive Decree 40/2018 would have set exorbitant fees for the accreditation of journalists and the licensing of media outlets (see 4.4). Additionally, defamation and slander, including offences to public authority, remain criminalised in the Penal Code, the Press Law and the Law on Crimes against State Security (see 4.3). In the area of peaceful assembly, there have been instances of intimidation of protest organisers, unequal application of the law and the use of excessive force (see 5.3 – 5.8).</p>

Recommendation	Position	Theme	Evaluation /comments on the level of implementation
<p>128.123 Implement the Law on Access to information as well as the National Strategy to prevent and fight early and forced marriage (Portugal);</p> <p>Source of position: A/HRC/32/6 - Para. 128</p>	Supported	Expression	<p>Implemented</p> <p>However, in practice there are substantial implementation gaps (see 4.6.)</p>
<p>129.37 Revisit the legal framework governing the civil society sector, particularly with a view to reducing bureaucratic restrictions to freedom of association and the registration of national and foreign organizations (Netherlands);</p> <p>Source of position: A/HRC/32/6/Add.1 - Para. 7</p>	Supported	Association	<p>Partially implemented</p> <p>The law is being revised, but the current draft law has many obstacles, including an onerous and costly registration process (see 2.4).</p>
<p>129.34 Ensure the right of association of NGOs working on issues of sexual orientation and gender identity (Norway);</p> <p>Source of position: A/HRC/32/6/Add.1 - Para. 26</p>	Noted	Association	<p>Not implemented</p> <p>Lambda has still not received its certificate of registration (see 2.5)</p>

Recommendation	Position	Theme	Evaluation /comments on the level of implementation
<p>129.36 Facilitate the registration and work of civil society organizations, including those defending human rights and fighting discrimination on all grounds, so that they can operate without harassment, undue restrictions and administrative obstacles (Czech Republic);</p> <p>Source of position: A/HRC/32/6/Add.1 - Para. 27</p>	Supported	Association	<p>Partially implemented</p> <p>There are cases where associations are obliged to amend their statutes in order to get registered.</p>