



The Republic of Mozambique

Joint Submission to the UN Universal Periodic Review 24th Session of the UPR Working Group

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in
General Consultative Status with ECOSOC**

And

JOINT: Liga das ONG em Moçambique

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1. (A) Introduction

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened. JOINT: Liga das ONG em Moçambique is an independent, non-profit, NGO that works to strengthen civil society in Mozambique. JOINT is an umbrella organisation of national and international NGOs working in Mozambique.
- 1.2** In this document, CIVICUS and JOINT outline urgent concerns related to the environment in which civil society activists and human rights defenders operate in the Republic of Mozambique, and discuss threats faced in the exercise of the freedoms of expression, association and assembly.
- 1.3** CIVICUS and JOINT are concerned by restrictions on the right to freedom of association including for organisations working on sexual minority rights and excessive and compulsory requirements to register an association.
- 1.4** CIVICUS and JOINT are also concerned by restrictions in practice on the free exercise of the rights to freedom of assembly and freedom of expression.
- In Section B, CIVICUS and JOINT highlight concerns related to the freedom of association and restrictions on civil society activities.
 - In Section C, CIVICUS and JOINT express concerns involving harassment and arbitrary detention of human rights defenders.
 - In Section D, CIVICUS and JOINT highlight concerns relating to the freedom of expression, including intimidation, harassment and attacks on journalists.
 - In Section E, CIVICUS and JOINT highlight concerns regarding the freedom of assembly.
 - In Section F, CIVICUS and JOINT make a number of recommendations to address the concerns listed.

2. (B) Restrictions on freedom of association and impediments to civil society activities

- 2.1** Article 52 of the 2004 Mozambican Constitution 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 freedom of association. Law 8/91 of 18 July (1991) is the primary legal instrument regulating the formation of civil society in Mozambique. However, freedom of

association remains constrained by excessive requirements related to the registration of organisations.

2.2 CIVICUS and JOINT believe that the current legal framework does not enable the formation of civil society organisations. Firstly, provisions obligating associations to have minimum 10 founding members under Article 4 (a) of Law 8/91 are onerous. Secondly 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 to securing these documents especially in rural areas. Lastly, according to article 17 (a) of Law 8/91, foreign organisations are not permitted to register if their objectives and or mandate are deemed contrary to national public order. Such restrictions contravene international best practices as set forth by the UN Rapporteur on the rights to freedom of peaceful assembly and of association.¹

2.3 CIVICUS and JOINT are deeply concerned about limitations on freedom of association for organisations working on LGBTI rights. According to article 5 of Law 8/91, registration of an organization should not take more than 45 days. However, Lambda, an organisation working on sexual minority rights, has been denied a certificate of registration from the Ministry of Justice since January 2008. In light of the authorities' failure to respond to their initial request in a timely manner, in August 2008 Lambda submitted an appeal, which was subsequently ignored by the authorities. The authorities again failed to respond when Lambda re-submitted its application in 2009. During Mozambique's previous UPR review in 2011, the Government of Mozambique failed to implement recommendations urging the authorities to register "the organisations which work on questions of sexual orientation and gender identity." In September 2013, Lambda was granted an audience with the Minister of Justice Benvinda Levi after it issued a complaint to the Ombudsman Jose Abudo. In September 2013, Lambda petitioned the National Human Rights Commission to no avail. In June 2014, Lambda submitted a 'request to rapidity' to the same institution.² At the time of publication of this report, Lambda has not received legal recognition in breach of international standards on the freedom of association.

¹ A/HRC/ 20/27. Accessible via: <http://freeassembly.net/rapporteurreports/report-best-practices-in-promoting-freedoms-of-assembly-and-association-ahrc2027/>

² All Africa (3 November 2014). Mozambique: Gay Mozambicans Demand Recognition. Accessed via: <http://allafrica.com/stories/201411032649.html>

3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists

- 3.1** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, it is a matter of concern that some human rights defenders (HRDs) engaged in legitimate activities continue to face harassment, intimidation, and threats, especially in the area of environmental justice, corporate social responsibility and community rights.
- 3.2** On 21 August 2013, an employee of the organisation Justiça Ambiental, an organisation which advocates for environmental justice, was attacked at his house in Tete Province. Two unidentified individuals broke down the main door of his house and shouted death threats to the victim. While the victim managed to escape to the nearest police station, police officials failed to act properly. The police stated that they did not have a vehicle to go to the crime scene, or phone credit to call another police station and could not leave the station as their commander was not present. This incident followed other incidents where the victim was harassed and threatened. On 17 July 2013, he was hit and chased by a car while on a motorcycle in the city of Tete, causing small injuries.³
- 3.3** Civil society organisations that monitor the activities of multinational corporations and mining companies with the aim of protecting the rights of communities have also been subjected to harassment and intimidation. On 4 June 2014, a team of three employees from environmental group Justiça Ambiental (JA) were intimidated by security guards from the Indian mining company Jindal in Changara District, in Tete Province. The investigative team was prevented from collecting research data and visiting the community of Cassoca, which is located in the area where Jindal is exploring coal mines.⁴

4. (D) Concerns regarding freedom of expression, independence of the media, harassment and attacks on journalists

- 4.1** Article 19 of the ICCPR guarantees the freedom of expression and opinion. Moreover, Article 48 (1) of the 2004 Constitution of Mozambique provides for the right to freedom of expression, freedom of the press and right to information.

³ A Verdade (23 August 2013). Funcionário da Justiça Ambiental foi vítima de um atentado em tete. Accessed via: <http://www.verdade.co.mz/destaques/democracia/48411-funcionario-da-justica-ambiental-foi-vitima-de-um-atentado-em-tete>

⁴ A Verdade (18 June 2014). Jindal intimida activistas da ONG Justiça Ambiental. Accessed via <http://www.verdade.co.mz/destaques/democracia/46924-jindal-intimida-activistas-da-ong-justica-ambiental>

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

4.2 While journalists have strong constitutional protections, these rights are undermined by the 1991 Press Law and the Penal Code. Specifically, articles 229, 231 and 235 of the recently revised and approved Penal Code (Law 35/2014 of 31 December), criminalise defamation and slander, including with sentences up to one year imprisonment. 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 for persons who slander or defame the President, members of the Government, deputies of the Assembly, magistrates and other public authorities. In addition, the act of defamation, libel and slander against the Head of State, the president of the Assembly, members of the Government, judges of the Supreme Court and members of the Constitutional Council are considered as a crime against the security of the state, punishable with minimum one year to two years in prison.⁵ Further, libel, slander, defamation against deputies, magistrates, presidents and secretary generals of political parties as well as officials that exert public authority – civil or military – can invite prison sentences from 3 months to two years.⁶ The above provisions taken together create strong impediments against legitimate criticism of public authorities. .

4.3 In a worrying incident, a criminal case for defamation was opened against Professor Carlos Nuno Castel-Branco for writing a critical open letter to the then Head of State, Armando Guebuza in December 2013.⁷ The letter was first posted on his Facebook page, and he was charged with defaming the Head of State. The media outlets which published the open letter, *Canal de Moçambique* and *MediaFax*, were later questioned by the Attorney General for abuse of the freedom of the press.⁸

4.4 Attacks, intimidation and harassment of journalists have continued to occur with frequency since Mozambique's previous examination under the UPR. According to a recent report presented at the National Conference on Press Freedom⁹ in Mozambique, several instances of violations took place in 2014 including: (i) detention and theft of material of a journalist and editor of *Diário da Zambézia*, a newspaper in February 2014; (ii) death threat to a journalist of the Community

⁵ Article 22 (1), Law on Crimes against Security of the State Law 19/91 of 18 August 1991

⁶ Article 22 (2), Law on Crimes against Security of the State Law 19/91 of 18 August 1991

⁷ MMO Notícias (11 December 2013). PGR processa Nuno Castel-Branco. Accessed via:

<http://noticias.mmo.co.mz/2013/12/pgr-processa-nuno-castel-branco.html>

⁸ VOA (22 June 2015). Director do Media Fax, de Moçambique, arguido por difamação ao Presidente da República. Accessed via: <http://www.voaportugues.com/content/director-do-media-fax-constituído-arguido-por-difamação-ao-presidente-da-república/2806002.html>

⁹ The National Conference on Press Freedom was organised by MISA-Moçambique on 7 May 2014 in Maputo.

Radio of Catandica in the province of Manica on 29 September 2014 and, (iii) temporary closing of the Community Radio Progresso in Maxixe in the province of Inhambane on 28 August 2014.

- 4.5** On 27 April 2014, the Government of Barue, in Manica Province temporarily suspended the activities of community radio station, Catandica for 20 days without due notification. This occurred prior to the visit of the then President Armando Guebuza to the region. The authorities provided a number of specious explanations for the closure.¹⁰
- 4.6** Despite these and other regressive steps taken by the authorities which undermine the right to freedoms of expression, CIVICUS and JOINT welcome the adoption of the Freedom of Information Bill by the Assembly in August 2014, allowing citizens to access government information in the public interest, thereby strengthening accountability and reducing opportunities for corruption.

5 (E) Concerns regarding freedom of assembly

- 5.1** Article 21 of the International Covenant on Civil and Political Rights (ICCPR), guarantees the freedom of peaceful assembly. In addition, article 51 of the 2004 Mozambican Constitution guarantees the freedom of assembly and manifestation. Article 3 (1) of Law 9/91 of 18 July, amended by Law 7/2001 of 7 July, 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 the assembly to the civil authorities and the police of the area is sufficient. However, in practice, violations of these constitutional rights have taken place.
- 5.2** At the local or district level, demonstrations are sometimes “de-authorised” although the law clearly states that prior authorisation is not required. For example, in the province of Niassa, a demonstration was organised in 2013 by a local CSO, against the poor state of the road between the cities of Lichinga and Cuamba. After notifying the city council, the Provincial Governor, “de-authorised” the demonstration claiming that security conditions were not met. The organising CSO decided that it was in compliance with the law, and hosted the demonstration. The CSO later received a fine of 300, 000 Meticais (equivalent of 8,800 USD). In addition, some of the donors of the CSO were requested to stop the funding the CSO.¹¹

¹⁰ A Verdade (12 May 2014). Administrador de Barue encerra radio para impressionar Guebuza. Accessed via: <http://www.verdade.co.mz/nacional/46106-administrador-de-barue-encerra-radio-para-impressionar-guebuza>; <http://www.verdade.co.mz/destaques/democracia/45950-governo-de-barue-privar-cidadaos-do-acesso-a-informacao>

¹¹ JOINT (2015). Avaliação Nacional sobre o Ambiente Propício para Actuação das OSC, page 43

5.3 Although most protests have been held without incident, some violations on the right to peaceful assembly occurred. In April 2013, police used rubber bullets and teargas to disperse a protest of 500 potters in Moatize that were relocated due to the construction of a coal mine by the company Vale, resulting in injuries.¹² Three protesters were later detained on 14 May 2013 for their involvement in the protests. The protestors were released later.¹³

6. (F) Recommendations to the Government of the State of Mozambique

CIVICUS and JOINT call on the Government of the Mozambique to create an enabling environment for civil society to form and operate, in accordance with the rights ensured by the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

6.1 Regarding restrictions on the freedom of association

- The Government of Mozambique is urged to revisit the legal framework governing the civil society sector, with a view to reducing bureaucratic restrictions. This should be done in close consultation with Mozambican civil society organisations, which have proposed amendments to the Law 8/91 of 18 July or the Law on Associations since 2009. The government should also refer closely to the recommendations made by the Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- The Government of Mozambique is also urged to guarantee the freedom of association to organisations working on sexual minority rights and LGBTI rights. Organisations should be able to register and operate freely and receive the necessary legal protections to guard against intimidation and violence from members of the public.

6.2 Regarding the arbitrary detention and harassment of civil society activists

- Civil society members and human rights defenders should be provided with a safe and secure environment to carry out their legitimate activities. All

¹² BBC Brazil (17 April 2013). Polícia dispersa protesto contra a Vale em Moçambique. Accessed via http://www.bbc.com/portuguese/noticias/2013/04/130416_mocambique_vale_mdb_if ;

¹³ Global Voices (24 May 2013). Protestos em mina de carvão termina com prisões em Moçambique. Accessed via: <http://pt.globalvoicesonline.org/2013/05/24/protestos-mina-de-carvao-priso-es-mocambique-vale/>

instances of their violations should be independently investigated.

- The Government of Mozambique should investigate and bring to justice perpetrators of violence against human rights defenders.
- The Government of Mozambique should ensure the free exercise of the right to association and freedom of movement for civil society organizations and human rights defenders to investigate and monitor sensitive issues, including environmental degradation caused by multinational companies.

6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists

- The Government of Mozambique should do more to protect journalists and citizens exercising their right to free speech. The government must ensure that its officials are not responsible for abusing the right to free expression. Where they do, they must be held to account. Where non-state actors are responsible for violating the right to free speech, they must be arrested, charged and prosecuted.
- The Government of Mozambique should ensure that all instances of threats against and harassment of journalists are duly investigated.
- The Government of Mozambique should take steps to ensure that independent media outlets are not harassed on arbitrary and politically motivated reasons.
- Efforts should be made to repeal or amend the Press Law, the Penal Code and the Law on Crimes against State Security by removing provisions which interfere with the freedom of speech and allow for criminal sanctions for defamation, libel and slander.

6.4 Regarding restrictions on freedom of assembly

- The use of excessive force by security forces in the dispersal of protests should be publically condemned and a formal investigation into such instances should be launched;
- It should be ensured that freedom of assembly is not unwarrantedly or arbitrarily restricted by the misapplication of existing legislation which requires simple notification to hold a demonstration.

6.5 Regarding access to UN Special Procedures mandate holders

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on Independence of Lawyers and Judges.