

Digital Rights in Mozambique

Freedom of Expression and Opinion

Freedom of Information

Right to Equal Access and Opportunity

Right to Privacy

Submission to the 38th session of the Universal Periodic Review, Mozambique.

SUBMITTING ORGANISATIONS



CIPESA

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CIPESA was established in 2004 under the Catalysing Access to Information and Communications Technology in Africa (CATIA) initiative, which was mainly funded by the UK's Department for International Development (DfID). CIPESA works to enable policy makers in the region to understand ICT policy issues, and for various stakeholders to use ICT to improve governance and livelihoods.



Small Media

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Established in 2011, Small Media is a London-based organisation that works to support freedom of expression and access to information globally. Small Media works with their global partners to develop strategies and tools that can support human rights defenders, activists and journalists to work safely and effectively in the digital age. They support their network of partners to develop data-driven advocacy strategies that bring about meaningful change.



FAMOD

Website

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FÓRUM DAS ASSOCIAÇÕES MOÇAMBICANAS DAS PESSOAS COM DEFICIÊNCIA (FAMOD) is a non-governmental organization of private law and social interest, non-profit, endowed with legal personality, administrative, financial and patrimonial autonomy, legally constituted and registered in Mozambique. FAMOD's mission is to coordinate and represent the interests of organizations of people with disabilities, and promote the human rights and well-being of people with disabilities in Mozambique.



ACAMO

**Associação de Cegos e
Amblíopes de Moçambique**

Website

Address

ACAMO is the Association of the Blind and Partially Sighted of Mozambique. ACAMO mission is to advocate for the rights of those who are visually impaired in Mozambique.

Introduction

1. Human rights online, especially the right to privacy, freedom of expression, opinion and the right to access information, are important issues in Mozambique and must be reflected in the recommendations made during the third cycle of the UPR in April-May 2021.
2. In the second cycle of the UPR, Mozambique received 227 recommendations from 85 countries, with only nine referencing freedom of expression, the press and access to information. Six of these recommendations were supported.¹
3. The latest data from the International Telecommunications Union (ITU) indicates that as of June 2018, the percentage of individuals using the internet in Mozambique is 20.8%,² in comparison to 5.9% in 2014.³ With growing digitisation, it's more important for UPR recommendations to explicitly reflect the need for fundamental freedoms to be protected online as well as offline, in line with Article 48 of the Mozambique Constitution, and Mozambique's obligations under Articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), and Article 9 of the African Charter.

Updates since the previous review

4. According to ITU data, in 2014, 3.0 in every 100 inhabitants had a mobile broadband subscription⁴. By 2018 (the most recent year ITU data is available for) the figure had risen to 25.7 in every 100.⁵
5. Despite the constitutional provisions, freedom of expression is under threat in Mozambique. The country is ranked 104 out of 180 countries in the 2020 World Press Freedom Index⁶ – down by one position from 2019. According to Reporters San Frontiers, the publishers of the Index,⁷ Mozambique's October 2019 elections were marred by pressure and attacks against the media. It was reported that journalists received threatening messages through SMS and social media, while

¹ UPROAR, 'uproar recommendations directory tools', <https://tools.uproar.fyi/rec-directory/?offset=0&response=supported&sur=118&topicRight=22>, Last Accessed 13 October 2020

² ITU, 'Measuring the Information Society Report 2018', <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf>, Last Accessed 13 October 2020

³ ITU, 'Measuring the Information Society Report 2015', <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>, Last Accessed 13 October 2020

⁴ ITU, 'Measuring the Information Society Report 2015', <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>

⁵ ITU, 'Measuring the Information Society Report 2018', <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf>

⁶ RSF, 2020 rankings, <https://rsf.org/en/ranking>, Last Accessed 13 October 2020

⁷ Global Voices, "Mozambican journalists and activists targeted with threats in election year", 23 October 2019; <https://globalvoices.org/2019/10/23/mozambican-journalists-and-activists-targeted-with-threats-in-election-year/>

some were physically attacked. Meanwhile, journalists covering the insurrection in the Northern part of the country were intimidated, detained and prosecuted.⁸

6. In a further threat to press freedom, in July 2018, the Mozambican government introduced a new licensing structure for media practitioners - setting high accreditation fees. Under Decree No. 40/2018⁹, foreign correspondents living in Mozambique are expected to pay more than USD 8,600 per year to report on the country while local freelance journalists have to pay more than USD500 in accreditation fees.¹⁰ These prohibitive fees deter and inhibit the practice of journalism, going against constitutional standards of promoting a free press.
7. In a positive development, in May 2020, Decree No.40/2018 was revoked¹¹, following a Constitutional Council Declaration that it was unconstitutional on the grounds that it greatly increased the costs of practising journalism. The revocation followed an August 2018 petition by six rights groups including the Media Institute of Southern Africa (MISA) Mozambique Chapter, Association of Journalistic Companies, National Forum of Community Radios, Centre for Public Integrity, Mozambican Bar Association and the Emergency Committee for the Protection of Fundamental Freedoms.
8. There are no notable online restrictions on free expression in Mozambique. However, the insurgency in Cabo Delgado¹² and the Covid-19 State of Emergency¹³ have sparked the debate on access to information and freedom of expression in the country.
9. In 2017, the country enacted a law on electronic transactions (Law No. 2/2017 of 9 January) – which penalizes using the internet to denigrate someone’s image. The main objective of the law is to establish a legal framework for electronic transactions and to impose penalties for cyber offenses, in order to promote public and private investment and efficient use of technologies. The law establishes the National Institute of Information and Communication Technologies/*Instituto Nacional de Tecnologias de Informação e Comunicação*, whose functions include: assigning and managing the domain “.mz”, ensuring compliance with the electronic transactions law through inspection and supervision, implementing e-government, licensing service intermediaries for

⁸ Human Rights Watch, ‘Mozambique: Media Barred from Insurgent Region’, <https://www.hrw.org/news/2019/02/21/mozambique-media-barred-insurgent-region>, Last Accessed 13 October 2020

⁹ Amnesty, ‘Mozambique: Effectively closing the media space with exorbitant accreditation fees’, <https://www.amnesty.org/en/latest/news/2018/08/mozambique-effectively-closing-the-media-space-with-exorbitant-accreditation-fees/>, Last Accessed 13 October 2020

¹⁰ Human Rights Watch, ‘Mozambique: New Media Fees Assault Press Freedom’, August 2018, <https://www.hrw.org/news/2018/08/17/mozambique-new-media-fees-assault-press-freedom#:~:text=The%20Mozambican%20government%20on%20July,US%248%2C300%20per%20year%20respectively>, Last Accessed 13 October 2020

¹¹ ‘Mozambique: ‘Government revokes decree on media fees’, <https://clubofmozambique.com/news/mozambique-government-revokes-decree-on-media-fees-160881/>, Last Accessed 13 October 2020

¹² VOA, ‘3 Years Into Insurgency, Mozambique’s Cabo Delgado Remains Vulnerable’, <https://www.voanews.com/extremism-watch/3-years-insurgency-mozambiques-cabo-delgado-remains-vulnerable>, Last Accessed 13 October 2020

¹³ MISA, ‘The State must end persecutions and attacks against journalists in Mozambique’, <https://www.misa.org.mz/index.php/destaques/noticias/79-o-estado-deve-por-termo-a-perseguiçoes-e-atentados-contra-jornalistas-em-mocambique>, Last Accessed 13 October 2020

networking and communications systems, ensuring the implementation of the State's electronic certification service, promoting the application of electronic transactions and protecting the consumer in the context of transactions, e-commerce and e-government.

Freedom of Expression and Opinion

10. The preamble to Mozambique's 2004 Constitution, as amended, emphasizes the need for pluralism of opinion and the respect and guarantees of fundamental human rights. Article 48 provides for the right to freedom of expression, the press and the right to access information which shall not be censored. The Article also lays down the parameters of press rights to include journalistic expression, creativity, access to information sources, protection of independence, secrecy, the right to establish newspapers and other modes of publications, which the State must guarantee.¹⁴
11. Mozambique, like other African countries, adopted restrictive measures to avert the spread of Covid-19, with a State of Emergency declared in April 2020. The Decree declaring a state of emergency indicated¹⁵ that the media should not transmit information about Covid-19 that is "contrary to official information," arbitrarily restricting journalistic information and interfering with editorial independence.
12. Several journalists have been harassed, detained and forcibly disappeared for covering the security crisis in Cabo Delgado. On April 7, 2020, two radio journalists, Ibraimo Abú Mbaruco, and Mbaruco, reportedly went missing allegedly for covering the insurgency, while on April 14, 2020, TV journalist, Hizidine Achá, was arbitrarily detained by Defense and Security Forces. His phone was confiscated, and he was ordered to delete all recorded footage on the device.¹⁶
13. On June 25, 2020, Omardine Omar, a journalist from Carta de Moçambique – an online newspaper – was arrested while investigating a story on police extortion and harassment of market vendors. He was allegedly assaulted during detention and on June 30, 2020 was convicted of civil disobedience and fined USD 200.¹⁷
14. In August 2020, arsonists set on fire offices of the newspaper Canal de Moçambique, destroying the newsroom, furniture, and all the equipment used for content production. Earlier in December 2019, the publication's Executive Director escaped a kidnap attempt and in June 2020, he was

¹⁴ 'Mozambique's Constitution of 2004 with Amendments through 2007', https://www.constituteproject.org/constitution/Mozambique_2007.pdf?lang=en, Last Accessed 13 October 2020

¹⁵ <https://twitter.com/BorgesNhamirre/status/1247099017462452224>, Last accessed 12 October 2020.

¹⁶ MISA, 'O Estado deve pôr termo à perseguições e atentados contra Jornalistas em Moçambique', <https://www.misa.org.mz/index.php/destaques/noticias/79-o-estado-deve-por-termo-a-persegucioes-e-atentados-contra-jornalistas-em-mocambique>, Last Accessed 13 October 2020

¹⁷ CPJ, 'Mozambican journalist Omardine Omar convicted of civil disobedience, fined',

questioned by state authorities on allegations of publishing confidential information.^{18 19}

Freedom of information and censorship of content

15. In November 2014, the Assembly of the Republic approved, by consensus, the Right to Information Law (Law 34/2014, of 31 December), after several years of advocacy and lobbying by civil society organisations, led by MISA Mozambique. The law's main objective is to facilitate citizens access to information, transparency and accountability in governance. However, implementation is hindered by provisions, which deter access to classified information. Furthermore, Act No. 12/79, of 12 December – the Law on State Secrecy is often applied to restrict access to information. Meanwhile, state responsiveness to information requests is limited, and the courts have failed to rule against arbitrary denial of information requests.²⁰

16. A 2020 assessment of government openness²¹ in Mozambique found that various state organs were adopting websites and social media as a means of government-citizen interaction. However, platforms were rarely updated and there was no coordinated approach to implementation of the Access to Information Law. Where relevant information was found to be available online, there was a “tendency to not provide information related to financial audit reports, public contracts, public procurement reports, processes that are often the subject of disputes due to lack of transparency.”

Right to Equal Access and Opportunity

17. There are three main telecom operators in Mozambique: TmCel, Vodacom and Movitel²². The country has a comparatively low Internet penetration rate - 17% as at January 2020²³.

¹⁸ CPJ, ‘Arsonists torch office of independent newspaper Canal de Moçambique in Mozambique’, <https://cpj.org/2020/08/arsonists-torch-office-of-independent-newspaper-canal-de-mocambique-in-mozambique/>, Last Accessed 13 October 2020

¹⁹ Club For Mozambique, ‘Mozambique: Journalist heard for alleged violation of state secrecy’, <https://clubofmozambique.com/news/mozambique-journalist-heard-for-alleged-violation-of-state-secrecy-165794/>, Last Accessed 13 October 2020

²⁰ ‘LEI DO DIREITO À INFORMAÇÃO AS CADEAS DE VALOR Relatório de Monitoria da Implementação da Lei nº35/14, de 30 de Outubro de 2014’, <https://www.misa.org.mz/index.php/publicacoes/relatorios/direito-a-informacao-1/100-relatorio-de-monitoria-da-implementacao-da-lei-do-direito-a-informacao/file>, Last Accessed 13 October 2020

²¹ MOZAMBIQUE TRANSPARENCY ASSESSMENT 2020, <https://www.misa.org.mz/index.php/publicacoes/relatorios/direito-a-informacao-1/104-mozambique-transparency-assessment-2020-the-citizens-analysis-of-government-openness-in-southern-africa/file>, Last Accessed 13 October 2020

²² ‘Prepaid data Sim Card’, <https://prepaid-data-sim-card.fandom.com/wiki/Mozambique>, Last Accessed 13 October 2020

²³ ‘DIGITAL 2020: MOZAMBIQUE’, <https://datareportal.com/reports/digital-2020-mozambique>, Last Accessed 13 October 2020

Telecommunication de Mozambique (TDM), Mozambique's national fixed-line operator, offers ADSL Internet access for home and business customers. State-backed Mozambique Telecom (TMCEL) launched LTE-based services by the end of November 2019, joining Vodacom and Movitel which implemented 4G networks in September 2018 and July 2019, respectively. TMCEL launched LTE in Maputo and Matola, before commencing a nationwide rollout. Multi SIM card ownership is common in Mozambique due to high cross-network prices compared to on-net prices, and variable network quality and coverage - forcing users to switch between operators.

18. The Inclusive Internet Index 2020²⁴ which assesses internet availability, affordability, relevance of content and readiness ranks Mozambique 94th out of 100 countries. According to the Index, Mozambique's low scores across the four assessment criteria is linked to low literacy levels, inadequate electricity supply and poor network infrastructure. Mozambique is currently ranked 45th out of 61 countries in internet affordability²⁵. According to the Alliance for Affordable Internet (A4AI, 2019)²⁶, for the average citizen in Mozambique, 1GB of mobile broadband data costs nearly 7% of average monthly income and owing to the country's income disparities and inequality, the "true cost to connect is much higher for those living in poverty or earning less" than the national average income.
19. In 2018, women were disproportionately affected by the high cost to connect – just 33% of women in poor areas of Maputo, the capital, are using the internet, compared to 59% of men²⁷. The 2018 After Access report²⁸ indicates that the primary determinants of digital exclusion are education and income. Although there are slight differences in mobile phone and internet usage, broadly speaking, men and women of a similar education level and income group access these services similarly. As women are concentrated among the poor, lacking education and therefore unable to gain employment, they are disproportionately marginalized from the benefits of ICTs to enhance their well-being. The After Access study indicates that very few households in rural areas have access to telecommunication services. The Survey states that the urban–rural gap is even bigger than the gender gap in Mozambique.
20. Regarding accessibility of technology for persons with disabilities, Mozambique has no strategy to include people with disabilities in the information society. The National Plan of Action for the Area of Disability²⁹ does not contain any provisions on how persons with disabilities can benefit and use the ICT. Disability rights organisations report a lack of data on ICT access, disaggregated for persons with disabilities. Meanwhile, there are limited efforts to ensure broadcasting is accessible, for instance through sign language and subtitles. Further, lack of data on accessibility specific

²⁴ 'The Inclusive Internet Index 2020', <https://theinclusiveinternet.eiu.com/>, Last Accessed 13 October 2020

²⁵ A4AI, 'Annex 1: Full 2019 ADI Results'

²⁶ A4AI 2019 report, <https://a4ai.org/affordability-report/report/2019/>, Last Accessed 13 October 2020

²⁷ Club of Mozambique, 'Mozambique must address low internet access, affordability says A4AI', <https://clubofmozambique.com/news/mozambique-must-address-low-internet-access-affordability-says-a4ai/>, Last Accessed 13 October 2020

²⁸ 'THE STATE OF ICT IN MOZAMBIQUE 2018', https://researchictafrica.net/wp/wp-content/uploads/2019/07/2019_After-Access_The-state-of-ICT-in-Mozambique.pdf, Mozambique must address low internet access, affordability says A4AI

²⁹ National Plan, 'Disability Mozambique', <https://www.mindbank.info/item/5650>, Last Accessed 13 October 2020

projects under the Universal Access Fund. Public procurement policies and public services such as emergency services, also have limited considerations for persons with disabilities.³⁰

21. Mozambique has a Universal Service Access Fund (USAF) created by Law 8/2004³¹ and managed by the Communications Regulatory Authority – INCM/ARECOM. The fund is operational through a 1% levy of licensed operator's revenue. The USAF has been implementing universal access projects in rural areas since 2008. In 2018, the Regulatory Authority began installing digital plazas to allow free Internet access in many regions of Mozambique³². In 2019 it was reported that more than one million Mozambicans had accessed the internet for free via the plazas³³.
22. On October 26 2015, three key local Internet Service Providers (ISPs) increased internet access bundles by about 75%. This followed a resolution (19/CA/INCM/2015) by the Mozambique National Communication Institute (INCM)³⁴, published on July 29 to cut subsidies for Mozambican ISPs (which includes financial support for data service, text messages, and voice) by 75%.

Right to data protection and privacy on the internet

23. There have been efforts by civil society and the government to engage in opportunities for creating a safer online environment in Mozambique. For instance, MISA Mozambique and the Ministry of Science and Technology met and reflected on how to further uphold privacy and personal data protection beyond the existence of a cyber security legal framework.³⁵
24. Despite concerns related to privacy, there has been a push for SIM-card registration in Mozambique as far back as 2010. On June 28, 2019, the Mozambican Communications Authority (ARECOM), a public entity that regulates the postal and telecommunications sectors and manages the radio frequency spectrum, issued a 10-day ultimatum for operators to urgently register all mobile phone users. The Mozambican government maintains that the registration of SIM cards will help fight crime and fraud.³⁶

³⁰ Interview with Forum das Associações Moçambicanas dos Deficientes - FAMOD (Disabled Persons Organisations Forum), <https://www.famod.org>

³¹ Universal Service Access Fund – Law, ‘Mozambique must address low internet access, affordability says A4AI’, <https://www.incm.gov.mz/index.php/mercado/servico-de-acesso-universal/documentos-fsau/1-regulamento-do-fundo-do-servico-de-acesso-universal-decreto-n-69-2006-de-26-de-dezembro>, Last Accessed 13 October 2020

³² Digital plazas, ‘free Wifi’, <https://noticias.sapo.mz/tecnologia/artigos/servico-de-internet-gratuito-em-15-municipios>, Last Accessed 13 October 2020

³³ Access Internet, ‘Digital plazas’, <https://www.caicc.org.mz/diario/?p=9419>, Last Accessed 13 October 2020

³⁴ <https://www.arecom.gov.mz/>

³⁵ MISA, ‘Government and MISA Mozambique explore synergies for cyber security’, <https://www.misa.org.mz/index.php/destaques/noticias/85-government-and-misa-mozambique-explore-synergies-for-cyber-security>, Last Accessed 13 October 2020

³⁶ Registration of SIM cards - Resolution No. 19/CA/INCM/2015 – Mozambican Communications Authority (ARECOM).

25. Towards the end of 2019, Mozambique revised its Penal Code, introducing provisions related to the invasion of privacy. The new Penal Code provisions outlawed the interception, recording, transmission or disclosure of online communications, including email, messages, audio-visual and social media content without consent.³⁷ Upon conviction, offenders are liable to one year imprisonment and/or a fine. An equal penalty could also be imposed against whoever “captures, photographs, films, manipulates, records or disseminates images of persons or of intimate objects or spaces”, as well as on whoever “secretly observes or listens to persons who are in a private place”. The law also seeks to punish anyone who discloses “facts concerning the private life or serious illness of another person”.
26. In 2016, the government of Mozambique began the installation of CCTV surveillance in the cities of Maputo and Matola, purportedly for security purposes. The project was allegedly awarded without a public tender.³⁸
27. Also in 2016, there were reports³⁹ that the government of Mozambique was intercepting and surveilling citizens’ online communications, with the support of a Chinese company - ZTE.
28. Mozambique's position in the Global Cybersecurity Index has been deteriorating: from 2017 to 2018, Mozambique declined 23 places, moving from position 109 (with 0.206 points in the index) to position 132 (with 0.158 points in the index)⁴⁰.

Proposed Recommendations

29. In light of Mozambique’s existing record on freedom of opinion and expression, freedom of the press, and the right to privacy online, the submitting organisations call on states to offer the following recommendations to Mozambique:
- Enhance capacity building efforts to enforce the right to information law, including encouraging proactive disclosure and compliance with timely responses to information requests.
 - Repeal provisions of the Covid-19 Emergency Decree, which are contrary to national and international obligations on freedom of expression and access to information and promote open reporting and commentary on issues of public concern.

³⁷ Club for Mozambique, ‘President enacts laws to revise Penal Code’, <https://clubofmozambique.com/news/mozambique-president-enacts-laws-to-revise-penal-code-149556/>, Last Accessed 13 October 2020

³⁸ Club for Mozambique, ‘Citizens to be monitored 24 hours a day – Global’, <https://clubofmozambique.com/news/mozambique-citizens-to-be-monitored-24-hours-a-day-global-voices/>, Last Accessed 13 October 2020

³⁹ Global voices, ‘The Government of Mozambique is “Spying on its Citizens”, According to @Verdade’, <https://globalvoices.org/2016/05/16/the-government-of-mozambique-is-spying-on-its-citizens-according-to-verdade/>, Last Accessed 13 October 2020

⁴⁰ Global Cybersecurity Index 2018, https://www.itu.int/dms_pub/itu-d/opb/str/D-STR-GCI.01-2018-PDF-E.pdf Last Accessed 13 October 2020

- c. Institute an independent body to investigate, hold accountable and deter security forces who repeatedly violate journalists' rights, especially those covering elections and the insurrection in the North.
- d. Implement measures aimed at promoting inclusive access targeting marginalised and vulnerable groups including women, rural communities and persons with disabilities by the Universal Service Fund.
- e. Enact a data protection law, in line with international and regional standards, and best practices through participatory/consultative processes.