

METAMORPHOSES OF THE LEGITIMACY OF THE CIVIC SPACE OR THE INSTITUTIONALIZATION OF FEAR IN MOZAMBIQUE.

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The Mozambican civic space is the result of a long journey made in a way that is neither linear nor simple, but rather of advances and setbacks, especially as a produced and productive practice of society. Of course, the way in which this space will be legitimized and affirmed in Mozambican society will be the product of its interaction with this society, and is therefore its reflection.

This article from JOINT suggests that to better understand the different interactions between civil society actors in Mozambique it is necessary to reflect on two main themes. The first is a visit to the country's past to address the construction of civic space and its political history. The second is the path of the Mozambican civic space through the exercise of freedom of association, assembly and demonstration, and expression. The objective is to try to understand the different tensions and mutations that the civic space in Mozambique is undergoing, such as the main conditions for the full exercise of civil liberties.

Abstract

This article aims to show the metamorphoses of the institutionalization and legitimacy of the civic space in Mozambique. In its two parts, brief notes on the process of institutionalization are presented and, using data from the report on *Civic Space in Mozambique: Dynamics and Trends* by JOINT, the three main freedoms (association, expression and press, meeting and demonstration) are analysed. The main argument of the article is that despite a favorable legal environment for the full enjoyment of civil liberties, in practice this right is limited due to the political polarization existing in the country, in part, and the low level of political literacy among communities, especially at local district level.

Keywords : Civic space, institutionalization, legitimacy

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Introduction

The Mozambican civic spaceⁱ is the result of a long journey made in a way that is neither linear nor simple, but rather of advances and setbacks, especially as a practice made by and for society. Of course, the way in which this space will be legitimized and affirmed in Mozambican society will be the product of its interaction with this society, and is therefore its reflection.

In this context, we argue that the Mozambican civic space has been subject to marginal mutations and adjustments aimed at always safeguarding a dominant class, whether yesterday's or today's. In fact, in a field of competition for capital, whether political, for its credibility, or even economic and cultural, for the purpose of increasingly tighter positions in Mozambican society, the civic space sees itself as a "victim" of instrumentalization, making it less useful for society than for the Mozambican elite, notoriously a minority.

In this respect, we stress that even with relative financial support (visible in recent years), especially given by the international community, the readaptation of actors seeking to restrict the civic space is also visible and substantial. Moreover, the existence of an institutional framework for civic action alone is not a guarantee of its legitimacy, and numerous actions provided for in the institutional framework have not been the basis for interaction between civil society and society.

The following questions arise from this argument: What perceptions do civil society actors have about the exercise of civic actions in Mozambique? How has the interaction between civil society and other segments of society been?

These questions guide our reflection, which we divide into two main parts: (I) from a *path dependency* reading, we resort to history to show how Mozambique's political history has built the civic space, and; (II) we focus on perceptions of the civic space in Mozambique, and argue that the Mozambican civic space can only be perceived as closed given the various complexities for the exercise of freedom of association, assembly and demonstration, and expression.

I. Legal framework: institutionalization of the civic space or mechanisms of control?

Civic participation and engagement in Mozambique has been somewhat complex and marked by various metamorphoses. The 1990 Democratic Constitution opened space for a constitutional and legal environment favorable to citizens' involvement in the public life of the country, dominated mainly by the

establishment and guarantee of a set of basic rights, such as political rights (universal suffrage), civil rights (such as freedom of speech and freedom of the press and association, assembly and demonstration), protection of human rights, among others.

This is how the Associations are created under Law 8/91 of July 18th, which regulates the right to free association, to *media* and citizens are recognized the right of expression and press by the Law n°18/91 of August 10th, and finally, the right of citizens, associations, political parties and the *media* are recognised by Law n ° 9/91 of June 18thⁱⁱ.

The year 2004 marked another moment that constitutionally and formally added basic elements to civic engagement, with the recognition of the right to popular action - marches and public demonstrations, through article 51 of the Constitution of the Republic of Mozambique. It is important to note that, despite the relevant legislation, the limitations for marches and demonstrations by civic groups and movements were maintained.

In a context of democratic consolidation, civic engagement and the growing space that civil society has been taking in the public sphere was also driven by the increase in the volume of international funding for programmatic and institutional support to civil society organisations. With this, the capacity and the quality of intervention of the organisations improved significantly, having become stronger and more interventionist.

With the emergence of a more vibrant civil society, its role and place in the public sphere had other burdens. The seemingly harmonious scenario of civil society engagement and political dialogue has been replaced by an exacerbation of critical questions about the effectiveness of participation and the legitimacy of civil society to represent the interests of the majority, through the spaces and mechanisms established for this.ⁱⁱⁱ

It is precisely in this context that the debate on closed spaces ^{iv}, "guest spaces" ^v, "created and invented" ^{vi}, including the separation of historic mass associations (Organisation of Mozambican Workers, Organisation of Mozambican Women and Organisation of Mozambican Teachers, just to name a few) and organisations emerging under the Law of Associations that, by the way, distanced themselves increasingly from official positions. Allied to this, an independent, investigative and denouncing *media* emerged.

In addition, Mozambique is a signatory to the main international and regional treaties on human rights related to citizenship, political participation and

democracy, having ratified, among others, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights-ACHPR. Furthermore, the country has ratified the main treaties to safeguard its citizens from discriminatory practices, with emphasis on the "United Nations Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW), and the "Convention on the Elimination of all Forms of Racial Discrimination (CERD)". Mozambique also acceded to the "African Peer Review Mechanism (APRM)", having completed some self-assessment processes (AfriMap, 2009).

However, international and regional treaties relevant to the exercise of citizenship are still pending a signature and / or ratification. Among these, the "International Covenant on Economic, Social and Cultural Rights (ICESCR)" stands out - although the Constitution of the Republic of 2004 includes provisions on such rights - the "International Convention on the Protection of the Rights of Migrant Workers and Their Families".

On the other hand, in 2014, Mozambique approved the Law on the Right to Information, Law 34/2014 on December 31st^{vi}, expanded the conditions for greater and more informed civic engagement, by guaranteeing mechanisms to regulate the exercise of citizens' right to political participation and access to information of public interest.

The context of the evolution of Mozambican civil society reveals the transition through each of the traditional areas of participation - closed, invited and claimed / created - having experienced in recent years a metamorphosis that has also produced changes in the dynamics of civic participation. Since 2005, several autonomous participation areas have emerged, ranging from peaceful demonstrations to the massive use of Information and Communication Technologies (ICTs), including social networks, for the defense of and advocacy for greater transparency, more democratic structures and broader forms for the delivery of public accounts.

This new way of life and the state of Mozambican civil society, led Mozambique in a direction that contradicts the principles of democracy, participation and social justice and the country began to show clear signs of a tendency to restrict the civic space. In recent years, several cases of intimidation, threats, kidnappings, vandalism, harassment and even murders of individuals / activists from social organisations or the *media* have been reported, who have expressed themselves freely on aspects of governance and beyond.

Monitor Civicus (2018) confirms this tendency to restrict civic space in its report, placing Mozambique in the group of countries where civic space is obstructed. In

other words, a civic space is strongly contested by those in power, who impose a combination of legal and practical restrictions on the full enjoyment of fundamental rights.

Although civil society organizations are in place, state authorities invest against them, including through the use of illegal surveillance, bureaucratic harassment, and humiliating public statements. Citizens can organise and meet within the strict limits imposed by the authorities, if they go outside the law, so to speak, they become susceptible to the frequent use of excessive force by state security forces, including rubber bullets, tear gas and baton charges. There is some scope for non-state and editorially independent *media*, but journalists face the risk of physical attacks, arbitrary arrests and defamation charges, which encourage self-censorship (Monitor Civicus, 2018).

It is important to note that, according to CIVICUS (2017), governments tend to tolerate or accept the work of CSOs which provide services, support social development and welfare projects, as well as charitable activities. However, they become more hostile when CSOs seek to promote civil and political rights, encourage good governance and accountability, and develop advocacy.

Freedom House (2017) pointed to the drop from 3 to 4 in Mozambique's civil liberties ranking in the past two years, due to an increasingly restricted *media environment*, including more attacks on journalists and a sharp increase in the cost of Internet access.

For its part, MISA Mozambique points to an increase in cases of press freedom violations, with the majority of cases (60%) registered in 2016. These cases include physical attacks, assaults, threats, arrests and censorship. The report states that the most frequent violation category involves threats to journalists, followed by censorship, through which a number of mechanisms are applied to prevent articles that question politically renowned figures from being published.

For the most part, cases of attacks and crimes against journalists and other individuals have not been carefully monitored by the police or the judiciary and [findings] remain inconclusive. This may be significant in relation to the country's tendency to restrict civic space, if we consider the most likely hypothesis, which is that the authorities are unwilling to clarify such cases.

In terms of public debate, the trend for the deterioration of the civic space has been a source of concern, linked to negative implications for all the progress that Mozambique has made. Progress in terms of the recognition and legal guarantee of arenas for civil society engagement and participation in the country's

governance, and therefore in contributing to socio-economic and political development.

II. Some data regarding the perception of civic space in Mozambique

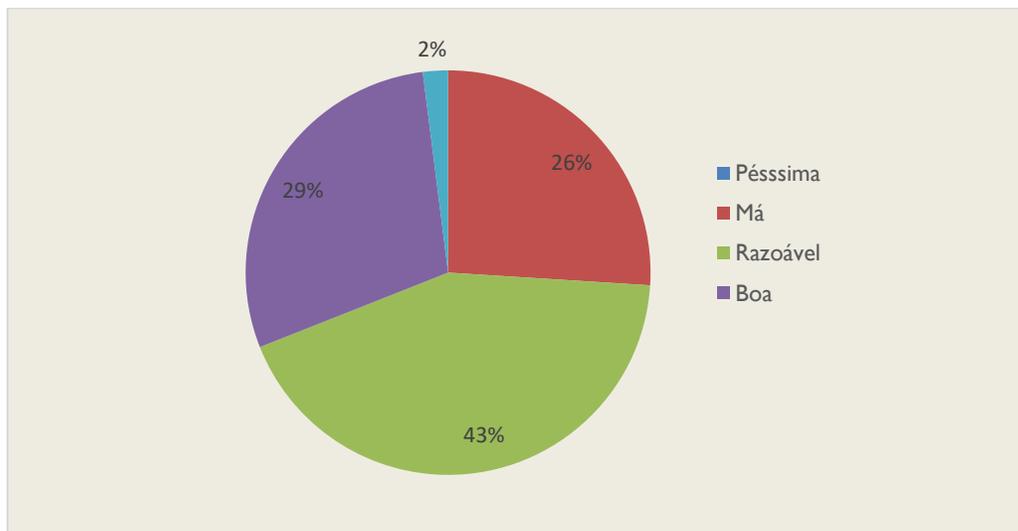
As noted above, this article is limited to the freedom of association, freedom of expression / press, freedom of assembly and demonstrations.

Freedom of Association

In a survey JOINT conducted of 100 people in their daily activities, including civil servants, activists, CSOs, journalists and citizens in general, 43% considered the level of freedom of association to be "reasonable", 29% considered it "good" and 26% thought it was "bad". Finally, 2% of respondents considered the degree of freedom of association to be "terrible" .

Graphic1:

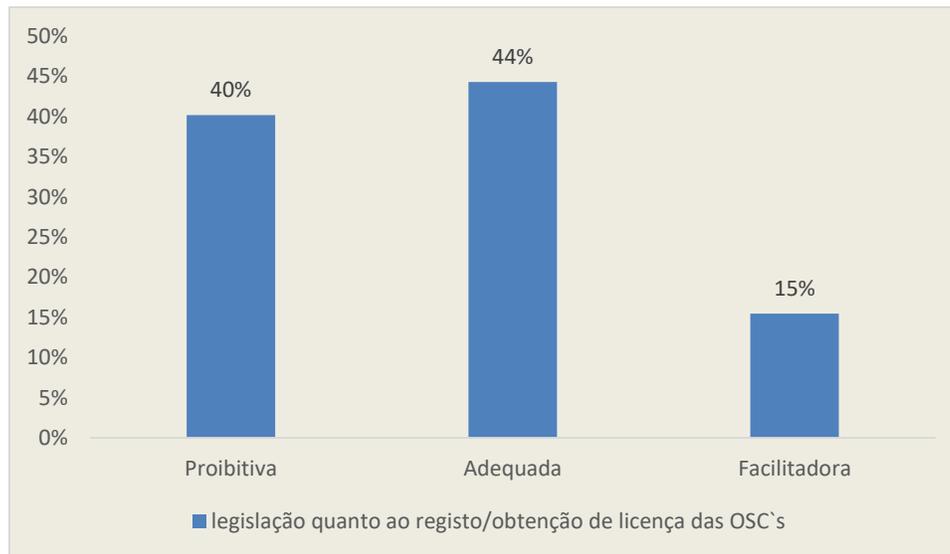
Assessment of the Current Status of Freedom of Association in Mozambique



Source: JOINT, 2019

One of the aspects mentioned in this survey refers to the process to register associations, which is evaluated as "prohibitive, adequate or facilitating".

Graphic2:
Assessment of Legislation for CSO registration



Source: Adapted from JOINT, 2019

The graph shows that the law for registration is adequate (44%), although this result could be misleading, since it is drawn from a group of organisations that are well-established in urban civil society circles. The various seminars held by JOINT in 2018^{viii} and a task force made up of JOINT, CESC and FDC, to review the law of associations, showed that registering associations is more costly than registering commercial entities (companies), since, in addition to the documents requested, associations are required to publish their complete statutes in the Official Gazette, at prohibitive prices, bearing in mind that these are community-based organisations.

In general, there is a perception that the exercise of freedom of association is reasonable. However, the perception at district level is negative.^{ix}

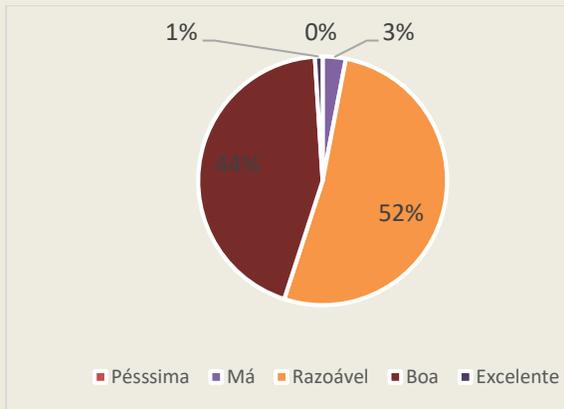
Freedom of assembly and demonstration

Similar to freedom of association, freedom of assembly is also a key dimension for measuring the state of a nation's civic space.

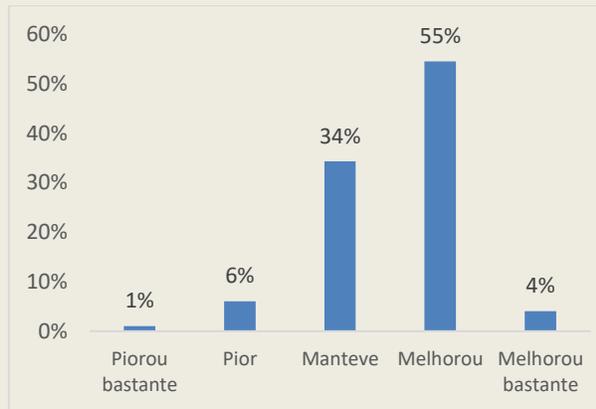
Regarding this dimension, the JOINT survey indicated that about 52% of respondents considered the current state of freedom of assembly to be "*reasonable*" while 44% of respondents considered it to be "*good*" (graph 3). However, when respondents were asked to compare the current state of freedom

of assembly [with that] of the last ten [years], 54% stated that "improvements in the exercise of this right in the country have been recorded". On the other hand, 34% of respondents believed that the situation has remained the same, while 6% considered that there have been "setbacks in the exercise of the right to assembly", and that, today, it is " *worse* " than ten years ago (graph 4).

Graphic3:Assessment of Freedom of Assembly by Individuals and CSOs



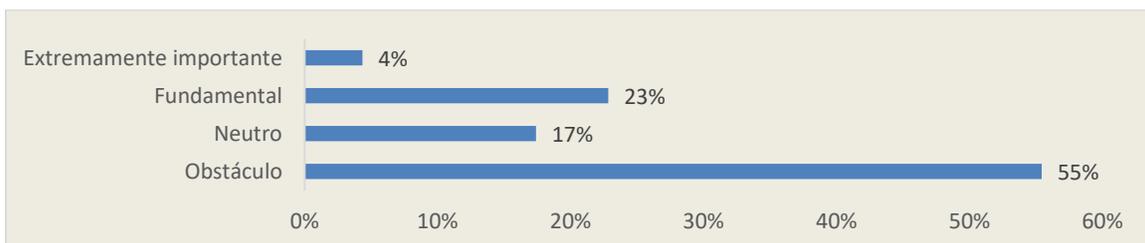
GRAPHIC 4:Assessment of the current state of Freedom of Assembly compared to ten years ago



Source: JOINT, 2019

One recurring aspect related to freedom of assembly and demonstration in Mozambique is the role attributed to the state authorities and security agencies. The JOINT survey showed that 55% of respondents consider the security agencies to be "one of the main *obstacles* to the exercise of freedom of assembly and demonstration".

Graph5:Role of Security Agencies in Exercising Freedom of Assembly



Source: JOINT, 2019

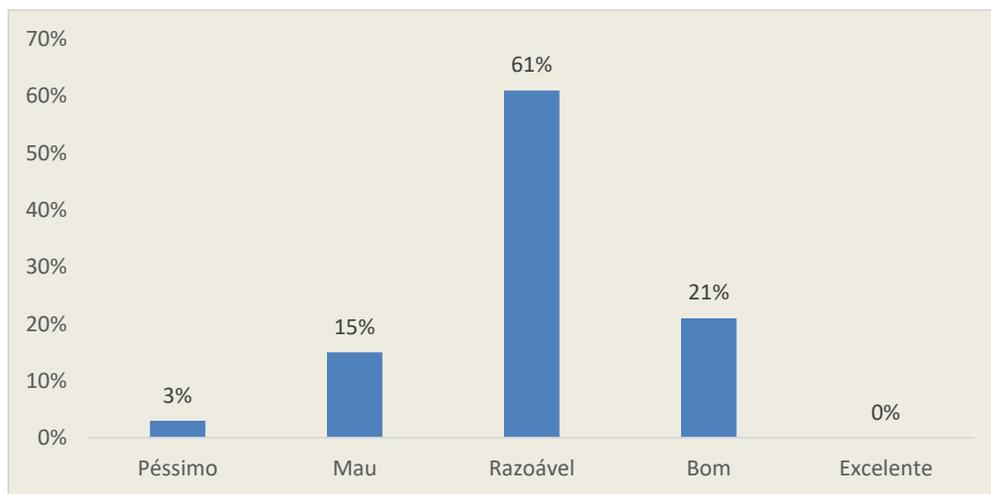
Assessment of the exercise of freedom of assembly did not differ from that of freedom of association, in which a higher percentage of respondents (36%) considered that the lower the territorial level, the more critical the exercise of freedom of assembly. For this category, 22% of respondents believed that this right is fully realised at both central and local levels. Finally, about 15% asserted the opposite, stating that the exercise of freedom of assembly is more critical at higher levels, that is, it is more difficult to exercise freedom of assembly at the central level.

Freedom of expression and information

Freedom of expression is recognised as a fundamental human right, and as a necessary condition for the promotion of democracy and civic participation by citizens.

JOINT (2019) found that 61% considered the current state of freedom of expression to be " *reasonable*".

Graph 6: Assessment of the Current State of Freedom of Expression



Source: JOINT, 2019

This assessment took account of the large number of public debates about critical and sensitive governance issues in the media, including on social networks. However, the reality is quite different. Considering that academics such as Gilles Cistac ^x and José Macuane ^{xi} and journalist and activist Ericino de Salema ^{xii} were victims of violence because they exercised their freedom of expression [one could

say that] this is one of the most frequently violated freedoms. Table 1, below, shows cases of violations of freedom of expression and the press in 2018.

Table 1. General classification of the incidence of cases of violations and victories of freedom of the press / expression by province.

Violation type	Provinces							Total
	Maputo	Sofala	Manica	Tete	Zambezia	Nampula	Cabo Delgado	
Physical attacks	2	1	1	0	1	0	1	6
Assaults	2	0	0	1	0	0	0	3
Censorship	0	0	0	0	1	0	1	2
Detentions	0	0	0	0	0	1	0	2
Legislation	2	0	0	0	0	0	0	2
Threats	1	1	0	3	0	2	0	7
Victories	2	0	0	0	0	0	0	2
Public violations of freedom of expression and the press	0	0	0	0		1	0	1
Total	9	2	1	4	2	4	2	25

Source: MISA (2019)².

Although 13% of respondents consider the exercise of freedom of expression and access to information to be equal at central and local levels, data analysis indicates that the exercise of freedom of expression and access to information needs to be more effectively realised at the lower territorial level, with a percentage of 66%. On the other hand, 10% assert that the exercise of freedom of expression only exists at the central level (Graph 12), with a higher percentage of respondents considering the current state of the exercise of freedom of expression in Mozambique to be "reasonable".

Preliminary conclusions

² Report on the State of Freedom of the Press and Expression in Mozambique 2018 . Maputo: MISA-Mozambique. p.2 available at <http://www.misa.org.mz/index.php/publicacoes/relatorios/relatorio-2008/90-relatorio-sobre-o-estado-da-liberdade-de-imprensa-2018/file>

In general, there is a perception that freedom of expression and the press is "reasonable", while freedom of association is "good", and, finally, freedom of assembly and demonstration is "good".

The main factors that affect the full exercise of civil liberties are: (i) the politicisation of local communities, (ii) mandatory authorisation by local government bodies for civic activities to take place, (iii) frequent cases of intimidation and censorship at district level, and (iv) a lack of access to information, despite the existence of a current, approved Law for the Right to Information .

ⁱ This is understood as the freedom that individuals have to associate, come together and demonstrate, and freely express their views on issues that concern them.

ⁱⁱⁱ Law of Associations (Law no. 08/91 of June. Maputo: National Press), the Press Law (Law no. 18/91 of August. Maputo: National Press), the Freedom of Assembly and Demonstration Law (Law no. 9/91 of 18 June. Maputo: National Press), approved following a single session of the Assembly of the Republic. Interestingly, on the same occasion, the Law on Crimes against the Security of the State was also approved (Law no 19/91 of 16 August. Maputo: National Press).

ⁱⁱⁱ On this theme, SIDA (2013) notes that engagement in the government arena is associated with co-optation and inefficiency. One example of this is the district planning and budget monitoring carried out by Local Advisory Councils. This is reinforced by USAID (2016), which stated that political dialogue in Mozambique is permeated by a paternalistic government approach.

^{iv} Closed arenas are generally arenas in which access to decision-making is closed. That is, decisions are taken by certain agents behind closed doors, without any intention of extending the criteria for inclusion (Gaventa, 2006). Closed arenas are increasingly challenged to restore the legitimacy of decisions, by creating invited arenas. A lot of civil society efforts are focused on opening up these arenas, through advocacy for greater public involvement, transparency or accountability.

^v To some extent, invited arenas result from pressure to expand participation and transform closed arenas into more "open" arenas, in other words, ones in which citizens or the beneficiaries of public policies are invited to participate in various decision-making processes (Cornwall 2002). Invited arenas may be institutionalized or temporary (ad hoc), for specific forms of consultation (Gaventa, 2006).

^{vi} These arenas are demanded or created by social actors for autonomous participation. Cornwall (2002) refers to such arenas as "organic" spaces that emerge from a set of common interests and concerns and may be the result of popular mobilization around issues of identity or common interest, or spaces in which people who share the same ideals come together to pursue them. In general, such arenas arise from more autonomous people or groups, seeking to use their own forums to engage with the state. These arenas range from those created by social movements and associations, to ones which are simply places where people come together to debate, discuss and resist, outside the institutionalized political arena (Idem).

^{vii} Until its approval, the Right to Information Act was lodged at the Assembly of the Republic for seven years. Its approval in 2014 came about as the result of advocacy carried out by a group of CSOs within the framework of the AGIR's Access to Information sub-programme, whose main funding body is the Swedish embassy.

^{viii} JOINT. Provincial seminars for information gathering halted the proposed Law of Associations. Cabo Delgado, Nampula, Zambezia, Manica, Inhambane, Gaza, 2018.

^{ix} Through seminars held in the cities of Beira and Matola, within the framework of the FORUS' partnership project, participating CSOs expressed concerns about the difficulty of working at provincial and district level, due to an excess of politicization. For instance, in the Sofala province, CSOs were under pressure from political parties to support parties in the election campaign, in

contradiction of the aims of their project funding. Moreover, the fact that meetings take place in the same locations (political parties and CSOs) confuses local populations, leading to low local legitimacy because of the association between CSOs and political parties.

^x Professor and constitutional lawyer Gilles Cistac was shot dead on a public highway, in March 2015.

^{xi} José Macuane, professor and television political commentator was kidnapped, shot and abandoned in a remote area of Maputo, on 24 May 2016.

^{xii} Ericino de Salema, journalist, activist and television political commentator, was kidnapped and severely assaulted in 2018