

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 50/17, 43/4, 43/16 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a draft bill on non-profit organizations (NPO) in Mozambique ("the draft NPO law"), introduced to Parliament in October 2022, and currently tabled to be discussed at the parliamentary session that started on 22 February 2023. If adopted into law in its current version, we are concerned that this bill would have serious consequences for the exercise of human rights, including the right to freedom of association, for individuals involved in and benefiting from non-profit organizations in Mozambique.

We note that this law should be contextualized by the "greylisting" of Mozambique by the Financial Action Task Force Plenary in October 2022, recognizing the concern to move away from 'strategic deficiencies' in compliance, but noting that repressive measures taken against the NPO sector do not advance that goal. We observe in particular your Excellency's Government's high-level political commitment to carry out an NPO sectoral terrorist financing risk assessment and develop an outreach plan in line with the FATF Standards.

We welcome the opportunity to submit these comments in light of international human rights standards and best practices on the rights to freedom of association and freedom of expression, and we stand ready to engage further with your Excellency's Government on this matter.

We understand that the purported aim of the proposed legislation is to regulate the establishment, organization and functioning of NPOs in Mozambique, with the aim to adapt it to the political, social and economic context of the country, in alignment with international legal standards and the Constitution. Furthermore, we note the reference, in article 4 of the draft NPO law, to NPOs being regulated by the current draft law and, subsidiarily, by laws on the prevention, repression and combat of terrorism and the proliferation of weapons of mass destruction, money laundering and further applicable legislation.

The international community recognizes the need to ensure that the NPO sector operates openly and positively and that a risk-based approach is taken to ensure that the elements of the NPO sector are not misused for such purposes as well as the need for the sector to be transparent. However, in its current draft form, we are concerned that the proposed law would place restrictions that are inconsistent with international human rights standards, especially the right to freedom of association, freedom to participate in public affairs, freedom of expression, and the full access to economic and social rights for persons working in the NPO sector. We are also concerned that should this legislation be passed, NPOs may struggle to continue to function freely and effectively as a result.

1. *Applicable International and Human Rights Law Standards*

Before addressing our specific concerns with the draft NPO law, we respectfully call your Excellency's Government's attention to the competent international human rights law provisions enshrined in the International Covenant on Civil and Political Rights (ICCPR), acceded to by Mozambique on 21 July 1993, as well as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) of the International Labour Organization (ILO), ratified by Mozambique on 23 December 1993.

Article 22(1) of the ICCPR states that "everyone shall have the right to freedom of association with others." Pursuant to article 2 of the ICCPR, States have a responsibility to take deliberate, concrete and targeted steps towards meeting the obligations recognized in the Covenant, including by adopting laws and legislative measures as necessary to give domestic legal effect to the rights stipulated in the Covenant and to ensure that the domestic legal system is compatible with it.

Article 22(2) ICCPR provides that any restrictions on the exercise of the right to freedom of association must be "prescribed by law" and "necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

For a restriction to meet the ICCPR requirement of being "prescribed by law," it must have a formal basis in law, as must the mandate and powers of the restricting authority. The law itself must be publicly accessible and sufficiently precise to limit authorities' discretion and enable an individual to assess whether or not his or her conduct would be in breach of the law, as well as foresee the likely consequences of any such breach. To meet the requirement that a restriction be "necessary in a democratic society," the restriction must be the least intrusive instrument among those that might achieve one or more of the legitimate aims enumerated above. In determining the least intrusive instrument to achieve the desired result, authorities should consider a range of measures, with prohibition remaining a last resort. The word "necessary" means that there must be a "pressing social need" for the interference. When such a pressing social need arises, States must then ensure that any restrictive measures fall within the limit of what is acceptable in a "democratic society". To conform to the principle of proportionality, any restriction must be appropriate and

narrowly tailored to achieve their protective function. The onus of establishing the necessity and proportionality of the restriction always rests on the State.

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”, and protects, inter alia, political discourse, commentary on one’s own or public affairs, canvassing, discussion of human rights and journalism. As stipulated by the Human Rights Committee in its General Comment 34, the enjoyment of the right to freedom of expression forms the basis for the enjoyment of other rights, including the right to freedom of association (CCPR/C/GC/34).

Under article 19 (3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it seeks to serve. In this connection, we recall that the Human Rights Council, in its Resolution 12/16, called on States to refrain from imposing restrictions which are not consistent with article 19 (3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In addition, we refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the United Nations Declaration on Human Rights Defenders. In particular, the Declaration reaffirms each State’s responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, including every person’s right, individually and in association with others, “at the national and international levels [...] to form, join and participate in non-governmental organizations, associations or groups” and “to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means” (A/RES/53/144, art. 5).

We further would like to recall that international human rights obligations remain fully applicable in the context of counter-terrorism, including in the enactment of measures to counter the financing of terrorism. The financing of terrorism has been a longstanding concern for States, as demonstrated by the agreement on the 1999 International Convention for the Suppression of the Financing of Terrorism, aimed at criminalizing acts of financing terrorism and which was ratified by Mozambique on 14 January 2003. Thenceforth, several Security Council resolutions have expressly called for the criminalization of terrorism financing, including the landmark Security Council Resolution 1373 and Security Council Resolution 2462, the first comprehensive resolution addressing the prevention and suppression of terrorism financing. The latter resolution “[d]emands that Member States ensure that all measures taken to counter terrorism, including measures taken to counter the financing of

terrorism [. . .] comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law.”

Furthermore, the Financial Action Task Force (FATF), an inter-governmental body that sets international standards for the prevention of money laundering and terrorist financing, has developed non-binding recommendations aimed at countering terrorist financing. In particular, recommendation 8 provides guidance to States on the laws and regulations that should be enacted to oversee and protect the subset of NPOs that have been identified as being vulnerable to terrorist financing concerns (recommendation 8). Recommendation 8 requires all States to “review the adequacy of laws and regulations that relate to NPOs, which the country has identified as being vulnerable to terrorist financing abuse.” These measures must be “focused and proportionate”; “a ‘one size fits all’ approach to address all NPOs is not appropriate.” FATF has reaffirmed that State compliance with Recommendation 8 should be implemented “in a manner which respects countries obligations under the Charter of the United Nations and international human rights law,” including the State obligation to promote universal respect for, and observance of, fundamental human rights and freedoms, such as freedom of expression, religion or belief and freedom of peaceful assembly and of association.” Despite such recognition, we observe that, as the Special Rapporteur on the promotion and protection of human rights while countering terrorism has documented, there are ongoing challenges stemming from overregulation of the NPO sector pursuant to soft law standards like the FATF Recommendations (A/74/335, para. 36).

Even though FATF recommendation 8 recognizes the importance of regulating the NPO sector, it stresses the importance of avoiding the adoption of blanket measures that would risk impairing the effectiveness of the sector. The interpretative note to FATF recommendation 8 states that “a risk-based approach applying focused measures in dealing with identified threats of terrorist financing abuse to NPOs is essential given the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to terrorist financing abuse, the need to ensure that legitimate charitable activity continues to flourish, and the limited resources and authorities available to combat terrorist financing in each country. [...] and that focused measures adopted by countries to protect NPOs from terrorist financing abuse should not disrupt or discourage legitimate charitable activities.”

With the above consideration, any legislation and government policy relevant to associations must clearly define the scope of the powers granted to regulatory authorities. Moreover, international best practice dictates that regulatory authorities should undertake to implement such law and policy in an impartial manner and with a view to protecting and securing the right to freedom of association. Additionally, states should consult associations and their members in a meaningful and inclusive way when introducing and implementing any regulations or practices concerning their operations (CCPR/C/GC/34; para. 18).

Furthermore, we draw the attention of your Excellency's Government to the international labour standards enshrined in ratified ILO Conventions, in

particular Convention No. 87, which establishes the right of workers to form and join organisations without distinction whatsoever; the right of workers to draw up their constitutions and rules, elect their representatives, organise their activities and formulate their programmes in full freedom and without interference by the public authorities; and the prohibition of administrative dissolution of such associations. We also highlight the provision of the Universal Declaration on Human rights pertaining to the right to work (article 23) noting that undue restrictions on the NPO sector can directly affect the employment and economic welfare of those working in this sector.

In this regard, we recall that the *Guidelines on Freedom of Association and Assembly* of the African Commission on Human and Peoples' Rights also stipulate that national legislation on freedom of association shall be drafted to facilitate and encourage the establishment of associations and promote their ability to pursue their objectives. Such legislation shall also be created with meaningful consultation with civil society. These Guidelines also state that any limitations on the permissible purposes of associations must be "in accordance with the principle of legality," "have a legitimate public purpose", and "be necessary and proportionate means of achieving that purpose within democratic society". Associations' rights of expression include the right to criticize state action; to advocate for the rights of marginalized and vulnerable people and communities; and to publicly comment on a state's human rights record to both national and international institutions. Indeed, states have a positive obligation to "establish mechanisms that enable associations to participate in the formulation of law and policy". Fundamental Principle VII of the Guidelines calls for decisions on associations to be "clearly and transparently laid out", "defended by written argumentation" and "challengeable in independent courts of law."

The Guidelines also provide that "associations shall not be required to transmit detailed information [...] to the authorities." The Guidelines also prohibit state inspections for the purpose of verifying an organization's compliance with its own internal procedures. In fact, no inspections at all are permissible unless there is a "well-founded evidence-based allegation of a serious legal violation," and even in those situations, inspections can occur only "following a judicial order in which clear legal and factual grounds justifying the need for inspection are presented." While some reporting requirements are permissible, they must be based "on the presumed lawfulness of associations and their activities, and shall not interfere with the internal management activities of associations." Any reporting requirements must be focused on ensuring financial propriety.

Furthermore, the Guidelines provide that suspension or dissolution of an organization can only take place in the context of a serious violation of national law, in compliance with regional and international human rights law and as a matter of last resort. Suspension may only be taken following court order, and dissolution only following a full judicial procedure and the exhaustion of all available appeal mechanisms. Such judgments shall be made publicly available and shall be determined based on clear legal criteria in accordance with regional and international human rights law.

In addition, we remind your Excellency's Government that articles 26 and 40 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which Mozambique ratified on 19 August 2013, indicate that migrant workers and members of their families may participate in and establish associations, limited to those "which are necessary in a democratic society in the interests of national security or public order or to protect the rights and freedoms of others".

2. *Issues to review*

a. *Provisions related to recognition and "authorization" of NPOs*

The draft NPO law would require NPOs to be authorized. Article 2 of the law states that the "law covers all Non-profit Organizations, established in the national territory and abroad, *authorized* to perform their activities of public utility". We note that article 5 classifies NPOs as either "national non-governmental organizations" (national NGOs) or "foreign non-governmental organizations" (foreign NGOs). As set out above, international and related human rights standards concerning freedom of association state that an authorization regime that requires the authorities to previously approve an association should not be applied. Instead, and at most, the authorities should implement a notification regime.

There are other issues with the draft law concerning the recognition of associations. Article 15 states that "the recognition of National Non-Governmental Organizations falls under the competence of" various government officials depending on the geographical scope of the association. The article does not state if recognition is mandatory or discretionary. It also does not state if there is a timeline or deadline for recognition to occur. As stressed above, the registration of associations should be governed by a notification regime, and this registration should be presumed when the association notifies the authorities of its intention to form. While this is more consistent with international human rights standards, if there is a registration and notification procedure, the relevant legislation must outline the reasons why an association can be rejected, as well as a mechanism that allows the recognition of an association automatically after a certain period if the authorities do not respond to the application. If registration is not accepted, clear reasons must be provided in writing and an association must have the right to challenge the decision before the courts.

Based on article 15 multiple officials and government bodies are granted the power to authorize or recognize NPOs. The article states that recognition is conferred by the Government for national organizations; the representative of the Government in a province for organizations whose work is at the provincial level; and by the representative of the Government in a district for organizations whose work is confined to the territory of a district. Given that Mozambique has 11 provinces and 129 districts, a large number of different officials will be making decisions regarding the formation of NPOs. This creates a risk that different officials in different areas will impose different standards. In order to minimise the risk of inconsistent treatment, a single authority should be formed

to make these decisions for all NPOs, regardless of the territorial scope of their activities.

The requirement that NPOs must carry out “activities of public utility”, as stated in article 2 should also be reviewed. Additionally, the definition of non-profit organization under the law states that such an organization is defined as one that is “primarily involved in raising or distributing money to charity, religious, cultural, educational, social or fraternal purposes, or for the development of other types of “good works””. International human rights law does not require associations to undertake such activities. We note that article 2 as drafted would lead to the exclusion of those NPOs whose activities are not covered by these provisions. Echoing the observations of the Special Rapporteur on the rights to freedom of peaceful assembly and of association according to which "associations should enjoy, inter alia, the right to express opinions, disseminate information, engage with the public and advocate with Governments and international bodies for human rights, the preservation and development of minority culture or the amendment of legislation", we recall that it is "the duty of the State to ensure that all persons can peacefully express their views without fear" (A/HRC/20/27), with the exception of propaganda for war, advocacy of hatred or acts aimed at the destruction of rights and freedoms (A/HRC/20/27). A restrictive interpretation of this provision would lead to limitations on the rights of NPOs to participate in public affairs, including engaging in regional and international cooperation, in particular with the United Nations and its constituent entities.

This may also lead to certain associations not being recognized and registered, and therefore not being able to function. The criteria for determining if an association performs these functions is not defined in the draft legislation and the reasons for distinguishing such associations who do these activities from those who do not is unclear. The lack of definition may lead to arbitrary and inconsistent decision-making.

National NGOs are also required under article 15 (2) to publish the recognition act in the Government’s Official Gazette, including the Organization’s articles of association, failing which it may not produce any effects upon third parties. We understand that such publication is expensive and that organizations must pay for this publication themselves. The high cost could inhibit many associations from being registered and recognized. Such a provision would potentially amount to creating highly restrictive access to the status of NPO under domestic law, and further negatively impact upon already marginalized or discriminated against economic and social groups. We would recommend that either this requirement be removed entirely or at least that publication be permitted free of charge.

b. Reporting requirements to the authorities

The reporting and other oversight requirements provided for in the draft NPO law will be prohibitive to the extent that associations will find it difficult to fully undertake their desired activities, negatively impacting their autonomy. We also note that the draft legislation requires associations to provide information

beyond that which is required under international standards, including matters related to the internal management of the association. We remind Your Excellency's Government that reporting requirements should not be such as to prevent or severely restrict associations from operating, should be simple and proportionate to the size of the NPO, and should be aimed at ensuring the financial propriety of associations. We echo in this context the Special Rapporteur on freedom of peaceful assembly and association's position that "[i]n order to meet the proportionality and necessity test, restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only" (A/HRC/23/39, para. 23).

We note that the provisions of the draft law that appear inconsistent with international standards are set out forthwith. Article 33 (2) of the draft NPO law requires that national organizations "should, during the first quarter of each year, submit a report on their activities to prove their pursuit of their object, including funds' accounting and a list of performed activities before the relevant authorities for recognition". These reporting requirements appear to go beyond what is required for ensuring financial propriety. Its article 52 (1) (j) also requires foreign NGOs to submit "quarterly, semi-annual and annual reports during the course of and at the end of their programs or projects". The same article also requires foreign NGOs to provide further reports in addition. Such extensive reporting requirements are likely to be burdensome, especially on smaller associations, and will likely impact their ability to carry out their principal activities and objectives. Article 70 also contains provisions that suggest associations may be under surveillance for illicit activities connected to terrorism to the extent it appears presumed that such activities will be found. We remind you that surveillance should only be pursued in cases where there is a reasonable suspicion of illegality that has led to a court-issued warrant authorizing surveillance.

Furthermore, even after a national NGO ceases to exist, article 38 (4) of the draft NPO law requires associations to keep information relating to national and international operations for eight years and produce it on request from the authorities. This requirement appears to be overly burdensome. An association should only be required to provide relevant documents upon ceasing operations and be availed of any further requirements.

We are also concerned that the ongoing reporting requirements under the draft NPO law might be overly burdensome and disproportionate as the approach taken appears inconsistent with the sectoral risk-based approach demanded by the FAFT and required by Recommendation 8. These proposed requirements may deplete already-limited budgets, detract from the ability of the targeted NPOs to carry out their legitimate activities, and deter individuals from joining or leading associations altogether — all in potential violation of the rights to freedom of opinion and expression and freedom of peaceful assembly and association as guaranteed by the ICCPR.

c. Ability to operate and organize affairs freely without undue interference

We note that article 9 of the draft NPO law states that the autonomy of national non-government organisations will be respected without interference, unless they result from a court decision and under situations set in the draft law. However, we note that a number of articles in the proposed law appear to place limits on the type and scope of activities that associations subject to the law will be able to perform. We recall that international and regional standards make clear that associations and their members should be at liberty to decide their activities, but also their structure and internal statutes and that the State should not interfere with these processes and operations.

We bring your Excellency's Government attention to the "principal of legal certainty" under international law (ICCPR Article 15(1)) which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. We note that several provisions in the draft NPO law may contravene the latter principle due to its broad and vague nature. Article 7 of the draft NPO law states that the "constitution of Non-profit organizations whose purpose is legally impossible, undeterminable, against the law, against the public order or social moral shall be null". Likewise, its article 48 (1) allows foreign NGOs to perform "other activities which are allowed by the law in force" and article 28 in reference to national NGOs states "decisions that are against the law are null". It is unclear what would encompass a constitution that is "legally impossible" or "undeterminable" or a decision that is "against the law". It is also not clear if an activity promoting a change to the law would be something that is not "allowed by the law in force". Given the vague and broad nature of these terms, there is the risk that these terms might be used arbitrarily to make an NPO's constitution or its decision "null" or to stop an activity.

We further note that the terms "against the law, public order and social morals" are also vague, and open the possibility for legitimate and human rights-affirming activities to be restricted. As stated above, a similar vague provision in article 48 (1) which allows foreign NGOs to perform "other activities which are allowed by the law in force" could similarly be used to restrict activities. For example, an association with a purpose to advocate for a change to the law or to currently prevalent attitudes towards social morals that discriminate against certain groups, may be prevented from doing so if it is perceived that such a purpose is "against the law", "legally impossible", "against social morals" or not "allowed by the law in force". Turning to article 8 (3), with reference to national NPOs, while the prohibition of "Armed non-profit organizations of a military or paramilitary type and those that promote violence, racism, xenophobia" may be permissible under international human rights law, we are concerned by the addition of the vague term "or that pursue ends contrary to the law". Again, this term could result in associations pursuing legal reform to be deemed acting "contrary to the law", even though the proposed reform might be aligned with international human rights law.

Other provisions would limit activities or put unwarranted obligations on associations to perform certain activities. Indeed, article 57 (2) of the draft NPO law grants authority to the Council of Ministers, without seemingly judicial oversight or recourse, to stop the operations of a foreign NGO if it undertakes certain activities. This includes “involvement in the execution or funding of political parties’ or labor unions’ activities”, “performance of activities that can cause damage to the national security, the public order, the public moral or health, and further, which can incite discrimination, hate or commotion”; and “any other causes that may be contrary to the Constitution of the Republic of Mozambique and any other laws in force in the country”. Not only can foreign NGOs be closed down merely for performing legitimate and human rights-affirming activities, but also that the Council of Ministers is given discretionary power to do so without the clear provision of the possibility to challenge a decision of the Council in the courts.

Article 52 (1) (d) of the draft NPO law states that foreign NGOs “must” participate in the implementation of social and economic programs which are defined and approved by the Government. In this regard, we draw the attention of your Excellency’s Government to several issues. First, associations should not be limited to activities that have been defined and approved by the Government. Second, associations should not be required to perform a certain type of activity or to operate in a particular domain. We remind Your Excellency’s Government that “members of associations should be free to determine their statutes, structure and activities and make decisions without State interference” (A/HRC/20/27, para. 64) so that they can effectively exercise their rights to freedom of association, opinion, and expression. For example, an association focusing on civil and political rights should not be required under article 52 (1) (d) to operate social and economic programs if it is not within its purpose. These provisions suggest that all foreign NGOs would have to do so. Article 34 also amounts to an overreach of government interference in a national association’s ability to change its purpose and activities. The article states that “changes in the process of constitution or of the articles of association which imply the change of the objectives, scope and name of the organization, shall not produce any effects until they have been approved by the relevant entity for recognition”. Associations should be able to make such changes without the requirement of receiving Government approval to do so.

We further note that the draft NPO law imposes other restrictions or undue requirements on the decision-making abilities of national and foreign NGOs in terms of their partnerships and activities. Under its article 11, national NGOs are allowed to apply to be members of national and international bodies, but the article states these should be national or international bodies with complementary or common interests. Furthermore, article 50 requires foreign NGOs to “establish strategic partnerships with national non-governmental organizations and develop synergies with other foreign non-governmental organizations that operate in the same area of intervention or in the same location”. These provisions are restrictive of the right to freedom of association, as it places undue requirements on the actions of associations. While associations may wish to establish such partnerships, they should be able to do so voluntarily, and not be compelled to do so.

The draft NPO law also restricts or requires approval from authorities for internal matters that unduly interfere with the organization of an association's affairs. For example, article 12 requires that national NGOs must have a minimum of ten individual members. However, international and regional standards state that no more than two individuals should be required to create an association. Furthermore, a number of articles (see articles 13, 14, 19, 21, 23 and 24) put excessive requirements on associations in regards to the content of their names, statutes and internal functioning. Any changes to an NPO's name or statute must also be approved by the authorities (article 34).

Lastly, we note that article 16 of the draft NPO law could also impede the activities of a national NGO, as it requires that an NPO can only dispose of or acquire immovable property if this is to pursue their statutory purposes. As a result, if an NPO wishes to change its activities to something outside of its statutory purpose, it may be restricted from doing so if it needs to use equipment for a purpose that does not match its statute.

d. Limitations on memberships to associations

The current draft NPO law would illegitimately limit certain individuals from joining associations and limit associations from joining umbrella groups on a national and international level. First, article 8 of the draft law states that "citizens" enjoy freedom of association. This text therefore could be interpreted to limit the rights of non-citizens in Mozambique to freedom of association. Further restrictions on non-citizens are found in article 12. Under this provision, non-citizens who are members of associations are required to submit their permanent resident permit. This provision could further infringe the right of non-citizens to this right, especially those without a permanent residence permit. This provision could limit the rights of migrants without a permanent residency visa, as well as asylum-seekers and refugees, to join associations. This is particularly concerning given the importance of civil society groups in advocating for protecting the rights of migrants, asylum seekers and refugees. Once again, we recall that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in Articles 26 and 40, states that migrant workers and their families may participate in and establish associations, limited only by such restrictions "as are necessary in a democratic society in the interests of national security or public order or to protect the rights and freedoms of others". In addition, we would like to mention that in the report on the right to freedom of association of migrants and their defenders (A/HRC/44/42), the Special Rapporteur on the human rights of migrants recommended that States should recognize in national legislation the right of migrants to freedom of association and encourage them to organize, regardless of their migration status; and strengthen civil space and create an enabling environment for civil society organizations, including those working on migration and migrants' rights issues.

We further note that persons under the age of 18, regardless of their nationality, are limited also in exercising the right to freedom of association. Article 12 states that constitutions of National Non-Governmental Organizations are

required to have at least 10 members who must be over the age of 18. This provision seemingly limits children from becoming members of associations. We remind Your Excellency's Government that the ICCPR makes clear that everyone has the right to freedom of association. This right includes non-citizens, regardless of their immigration status, and children. The draft law in its current form therefore is in violation of international human rights law in putting in place such limitations.

e. Access to resources

The Special Rapporteur on freedom of peaceful assembly and of association recommended in his report on access to resources that States should “ensure that associations – registered and unregistered – can fully enjoy their right to seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments – including from individuals, associations, foundations and other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities” (A/HRC/50/23). The Special Rapporteur also called on states to create and maintain an enabling environment for the enjoyment of civil society organisations' right to seek, receive and use resources, to ensure any restrictions are in line with international law, and to repeal laws and regulations that impose restrictions that are contrary to human rights law.

Provisions in the draft law concerning access to resources put in place unnecessary restrictions that are contrary to international human rights law. These restrictions may make it difficult or impossible for NPOs to access funding. Article 41 (4) of the draft NPO law limits the method in which national NGOs can obtain donations, as it requires that any “donations or financial contributions to any title should be made through wire transfer”. This appears to prevent NPOs from acquiring donations via other means, such as through cash, property, goods or services, which is inconsistent with regional standards (see article 37, *Guidelines on Freedom of Association and Assembly*, African Commission on Human and Peoples' Rights). The ability of associations to be able to freely use resources obtained appears to be unduly obstructed under the proposed legislation. Article 41 (3) states that “organizations benefiting from donations may not unlawfully change the destination of such donations received nor assign them to other activities”. Regional human rights standards require that organisations use their funds “in compliance with non-profit aims” but otherwise require that relevant laws allow associations to use their funds freely (see article 37, *Guidelines on Freedom of Association and Assembly*, African Commission on Human and Peoples' Rights). As currently drafted, this provision may overly restrict the ability of associations to use their funds, including when they decide to use it for new or different activities that will still be within “non-profit aims”.

f. Excessive or unclear consequences for non-compliance

Several provisions in the draft NPO law that outline how an NPO can be suspended or closed appear to be in violation of regional and international

human rights law. The provisions of concern appear to allow the dissolution of an association for reasons or in situations where there is not a serious violation of national law and where it cannot be considered a means of last resort. The process and decision regarding suspension and dissolution should also be done in full compliance with international human rights law.

There are a number of examples where the draft legislation allows for dissolution or suspension of associations for illegitimate reasons, including failure to produce reports (articles 33 and 52) and if a national NGO does not have at least 10 members for a period of one year (article 36).

Foreign NGOs can also be dissolved under vague and overbroad provisions that *prima facie* appear to be contrary to international human rights law. For example, article 52 allows for a foreign NGO to be dissolved if it fails to comply with certain requirements, including to “preserve and respect the customs and traditional habits of the environment in which they operate”, to “submit to the competent government bodies, by 31 October of each year, all projects subject to implementation in the following year, including their detailed budgets,” and to “implement programmes or projects duly approved and aligned with relevant sector policies”. Similarly, article 56 allows for foreign NGOs to be dissolved if there are “indications” that there are practices of “illicit acts or acts harmful to the sovereignty and integrity of the Republic of Mozambique”. First, article 56 appears to allow dissolution even if the allegations are not proven before an independent court. Mere “indications” appear to suffice. It is unclear what would be the judging body of this assessment or what the threshold would be for proving such “indications”. Second, the provision is vague and overbroad as to what would fall under “illicit acts or acts harmful to the sovereignty and integrity”, which could allow for an arbitrary interpretation. Article 57 (2) (b) is similarly overbroad as regards to dissolution for acts that “harm national security, public order, public moral or public health, or that may lead to discrimination, hatred or commotion” and may raise the same issues.

The draft law also provides powers to the relevant authorities to dissolve associations in a way that is outside the scope of international human rights law. Article 36 (1) states that an authority that can recognize a national NGO has a general power to “extinguish” an association as well. Similarly, under article 57 (2), the Council of Ministers may decide to terminate the activities of a foreign NGO. Both of these articles appear to provide an arbitrary and unrestricted power to entities seemingly without the availability to affected parties of recourse to the courts in order to challenge the decision. We recall that, in adherence to international standards, an association can only be dissolved or suspended involuntarily by an impartial and independent court.

Moreover, there are several provisions for which it is unclear what the consequence of non-respect would entail, particularly those relating to the internal affairs of national NGOs. Additionally, national NGOs are civilly liable for the acts or omissions of their representatives (art. 17), which is contrary to international standards. In this regard, we emphasize the importance of ensuring that any penalties are strictly proportionate to the alleged offence and absolutely necessary to its legitimate aim.

Finally, we note that the draft provisions do not provide clear procedures to protect the rights of NPOs, including guarantees of judicial review of adverse decisions. We recall that “associations whose submissions or applications have been rejected should have the opportunity to challenge the decision before an impartial and independent court” (A/HRC/20/27, para. 61). We therefore urge Your Excellency’s Government to ensure that, in addition to allowing for the possibility of appeal, any procedures governing NPO registration and reporting must be transparent, accessible, non-discriminatory, expeditious, and inexpensive.

In light of the abovementioned elements, the overall prospective impact of the draft NPO law would likely be detrimental to civic space in Mozambique.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify matters brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please explain how the draft NPO law is compatible with the obligations of Your Excellency’s Government under articles 19 and 22 of the International Covenant on Civil and Political Rights.
3. Please provide information on how the assessment of the threats and vulnerabilities of the NPO sector was carried out and address if such assessment was carried out in line with FATF guidance, including with the proper involvement of the NPO sector.
4. Please provide more detailed information concerning the powers extended to various government officials and entities to enforce provisions of the draft NPO law and safeguards to ensure that measures adopted are necessary and proportionate in a democratic society.
5. Please provide more information concerning the safeguards that will be put in place to ensure NPOs can challenge adverse decisions made under this draft law through judicial review or any other court processes before an independent and impartial tribunal.
6. Please provide information about the legislative process, its expected timeline, along with efforts to ensure substantive civil society consultation and outreach.
7. Please provide information on how this legislation conforms to the “risk-based” approach required by FATF recommendation 8.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) after 48 hours. They will

also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a copy of this communication has also been sent to the FATF.

Please accept, Excellency, the assurances of our highest consideration.

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism