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## INTRODUCTION

Mozambique did not become a Commonwealth member until November 1995, but, under a special programme of assistance by the Commonwealth, that country received limited technical assistance on electoral matters between 1991 and 1994.

The transition from a one-party to a multi-party system, culminating in the first multi-party elections in October 1994 threw up some interesting electoral structures which are worth a brief examination in this compilation.

A new Constitution came into force in 1990. The Peace Agreement which ended the Mozambique civil war provided for multi-party election with United Nations assistance.

A new Electoral Law came into force in 1993 (referred to herein as “the Act”).

The basic legal framework which was laid down to govern the first multi-party elections – presidential and National Assembly – will be presented herein.

### — *Section 1* —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### **1.01 The Franchise**

All citizens have the right and the duty to participate in the process of extending and consolidating democracy at all levels of State and society.

Citizens 18 years of age and over shall have the right to vote and to be elected to office, with the exception of those legally deprived of this right.

The right to vote is personal and constitutes a civic duty.<sup>1</sup>

##### **1.02 Right to Form Political Parties**

All citizens shall have freedom to form and to participate in political parties. Party membership shall be voluntary, and shall derive from the freedom of citizens to associate on the basis of the same political ideals.<sup>2</sup>

##### **1.03 Participation in Political Life of the State**

The Mozambican people have the right to exercise political power through electing their representatives by universal, direct, secret and periodic suffrage, through referenda on major

national issues, and through permanent democratic participation by citizens in the affairs of the nation.<sup>3</sup>

#### **1.04 Political Parties**

Political parties are the expression of political pluralism, competing to form and express popular will, and are the fundamental instruments for the democratic participation of citizens in the governing of the country.

The internal structure and the operation of political parties shall be democratic.

In profound respect for national unity, political parties are bound by the principles enshrined in the Constitution and in the Law.

The formation and operation of political parties shall, in particular:

- (a) be national in scope;
- (b) uphold national interests;
- (c) contribute to the formation of public opinion, especially on major national issues; and
- (d) strengthen the patriotic spirit of citizens and the consolidation of the Mozambican nation.

Parties shall contribute, through the political and civic education of citizens, towards peace and stability in the country.

The formation, structure and operation of parties shall be regulated by law.

Political parties shall be prohibited from advocating or resorting to violence in order to change the political and social order of the country.<sup>4</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 National Electoral Commission**

The National Electoral Commission is the body responsible for the organisation, direction, co-ordination, carrying out, conduct and implementation of the electoral registration and all activities relating to the electoral process.

The National Electoral Commission (“the Commission”) is an autonomous body and is independent of all state authorities.<sup>5</sup>

#### **2.02 Composition**

The Commission consists of twenty-one members whose professional and personal qualities

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afford guarantees of balance, objectivity and independence vis-à-vis all political parties, and has the following composition:

- (a) ten members proposed by the Government;
- (b) seven members proposed by Renamo;
- (c) three members proposed by the political parties, other than Frelimo and Renamo;
- (d) one personality, who shall be the President of the Commission.

The President of the Commission shall be appointed by the President of the Republic on the recommendation of the members of the Commission.

In the absence of a consensus as to the recommendation referred to in the preceding paragraph, it is incumbent upon the President of the Republic to appoint the President of the Commission from a list of five persons proposed by the members of the Commission.

The President of the Commission shall be assisted by two vice-presidents, one of whom will be proposed by the Government and the other by Renamo.

The political parties may indicate one representative to be present at the session of the Commission, without speaking or voting rights.

ONUMOZ (United Nations Operation in Mozambique) may indicate one representative as an observer at the sessions of the Commission, without speaking or voting rights.

The exercise of the office of member of the Commission and its organs is incompatible with the condition of candidate for President of the Republic and for deputy to the Assembly of the Republic.<sup>6</sup>

### **2.03 Powers of the Commission**

The Commission shall have the following powers:

- (a) to take measures to ensure that the electoral process takes place under conditions of complete freedom, justice and transparency;
- (b) to organise and direct the electoral registration and electoral process;
- (c) to guarantee equal treatment to all citizens in all the acts of electoral registration and all the electoral proceedings;
- (d) to guarantee equal opportunities and equal treatment of all the candidatures;
- (e) to register coalitions of parties for electoral purposes;
- (f) to approve the models of the registration form, the electoral register, the voter's card, the ballot paper and the record of the polling process at the polling stations and any other printed forms or other materials which will be used during the electoral process;
- (g) to approve the regulations, instructions, and directives relating to the conduct of electoral registration and the election procedure which shall be published in the Government Gazette;

- (h) to draw lots for the list of candidates;
- (i) to decide, in accordance with the proposals of the local electoral organs, on the locations where polling stations will be set up and function;
- (j) to promote through the Press and other mass media civic education and information for citizens on matters concerning the electoral process;
- (k) to allocate broadcasting time on public sector radio and television to the different candidatures;
- (l) to ensure that the competent authorities create the necessary security conditions for the elections to take place throughout the national territory;
- (m) to carry out the operations for determining the electoral results;
- (n) to transmit to the Department of Public Prosecution any act of electoral misdemeanour of which it takes cognizance;
- (o) to propose to the President of the Republic the dates for the elections;
- (p) to perform any other function which may be conferred on it by the law.

With regard to the judicial supervision of the electoral process, the powers of the Commission are:

- (a) to watch over the implementation of the Constitution and legal provisions regarding the electoral process;
- (b) to receive, examine and decide on complaints and claims as to the validity of the elections, and to appraise the observations of the international observers;
- (c) to validate and to declare the election results, and to order the publication of the election results in the Gazette;
- (d) to check the correctness of the electoral accounts.

In the exercise of its powers and functions, the Commission may not take decisions which contradict the provisions relating to the electoral process contained in the General Peace Agreement, adopted by Law No. 13, of 14 October 1992.<sup>7</sup>

#### **2.04 Status of Members of Commission**

The members of the Commission are irremovable and shall not be answerable during their term of office for the acts performed while discharging their functions, except for those that may affect the results of the elections.<sup>8</sup>

#### **2.05 Term of Office**

The terms of office of the members of the Commission shall commence with their investiture, and shall expire within the presentation of the final report, one hundred and twenty days after the publication of the official chart of the election results.

The members of the provincial electoral commissions shall take the oath of office before the President of the Commission.

The members of the district electoral commissions shall take the oath of office before the chairperson of their respective provincial electoral commission.

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The terms of office of the members of the provincial electoral commissions and district electoral commissions shall commence with their investiture and shall expire one hundred and twenty days after the elections.<sup>9</sup>

### **2.06 Technical Secretariat for the Administration of the Elections**

In the exercise of its powers and functions, the Commission shall be assisted by a permanent organ, called Technical Secretariat for the Administration of the Elections, the functioning of which shall be regulated by decree of the Council of Ministers, on the proposal of the Commission.

During the period of operation of the Commission, the Technical Secretariat for the Administration of the Elections (“Secretariat”) shall be subordinated to it.

The Secretariat shall be headed by a Director-General, who shall be appointed by the President of the Republic.

The Director-General of the Secretariat shall be assisted by two deputy directors-general, one of whom shall be proposed by Renamo and the other by the other political parties.

The Director-General and the two deputy directors-general of the Secretariat shall have seats on the Commission, with the right to speak but without voting rights.

The provisions of the three immediately preceding paragraphs apply, with the necessary adjustments, to the local organs of the Secretariat.<sup>10</sup>

### **2.07 Assistance to Commission**

Public institutions and their agents, private bodies and the political parties must give the Commission and its organs the necessary assistance and collaboration for the efficient exercise of its duties and must provide it with information about the electoral process.

The organs of the central administration of the State, as well as the local administrative authorities, are obliged to give the Commission and its organs the necessary assistance and collaboration for carrying out the electoral registration and the poll.

The law enforcement agencies are obliged to take all the necessary steps for the maintenance of public order and safety during the electoral period.<sup>11</sup>

### **2.08 Organs of the Commission**

The organs of the Commission are:

- (a) the provincial electoral commissions;
- (b) the district electoral commissions.

The Commission also has a permanent executive organ, the composition and operating procedures of which shall be laid down in the internal rules and regulations.<sup>12</sup>

## **2.09 Provincial Electoral Commissions**

The provincial electoral commissions shall have the following composition:

- (a) three members designated by the Government, one of whom shall be the chairperson of the commission;
- (b) two members designated by Renamo;
- (c) one member indicated by each of the political parties registered at the date of the coming in force of the present electoral law.

The chairperson of the commission shall be assisted by a vice-chairperson, who shall be indicated by Renamo from among the two members of the commission appointed by that party.

ONUMOZ (United Nations Operation in Mozambique) may indicate one representative. The powers of the provincial electoral commissions are:

- (a) to co-ordinate at their level the implementation of the present law;
- (b) to supervise the electoral process and to ensure compliance with the Constitution and the provisions of the present law during electoral registration and the voting;
- (c) to transmit to the Department of Public Prosecution all acts of electoral misdemeanour of which they take cognizance;
- (d) to count the votes and to record the results of the election at their level;
- (e) to receive complaints about the electoral process and to forward them to the Commission;
- (f) to forward to the Commission the records containing the election results.

It is also incumbent upon the provincial electoral commissions to implement the instructions and directives issued by the Commission.<sup>13</sup>

## **2.10 District Electoral Commissions**

The district electoral commissions shall have the following composition:

- (a) three members designated by the Government, one of whom shall be the chairperson of the commission;
- (b) two members designated by Renamo;
- (c) one member indicated by each of the political parties registered at the date of the coming into force of the present law.

The chairperson of the commission shall be assisted by a vice-chairperson, who shall be indicated by Renamo from among the two members of the commission designated by that party.

ONUMOZ may indicate one representative.

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The powers of the district electoral commissions are:

- (a) to supervise the electoral process and to ensure compliance with the Constitution and the provisions of the present law;
- (b) to organise and direct the electoral process and in particular to distribute to the polling stations ballot papers, the ballot boxes, seals and other indispensable requisites for the act of voting;
- (c) to make public the lists of candidatures, using the most effective means of communication;
- (d) to establish, record and sign the results of the vote and to forward the respective records to the provincial electoral commissions;
- (e) to receive complaints about the electoral process and to forward them to the provincial electoral commission for all legal purpose.<sup>14</sup>

### **2.11 Election Court**

The Election Court is the judicial body with the power to give final rulings concerning appeals in electoral disputes against decisions taken by the Commission.

The Election Court (“the Court”) is a body which is independent of all state authorities.<sup>15</sup>

### **2.12 Composition of Election Court**

The Court shall consist of five members, who shall be designated in the following way:

- (a) two judicial magistrates with more than five years service, indicated by the Supreme Council of the Judiciary Magistrature;
- (b) three judges of proven technical and professional competence, with over five years service, indicated by the Secretary-General of the United Nations on the proposal of the Security Council.

The members of the Court shall elect a president from among themselves in a session which shall take place not more than eight days after the members of the Court are sworn in.<sup>16</sup>

### **2.13 Rules of Procedure**

The appeal shall be lodged by means of a petition delivered at the registry of the Court within forty-eight hours of notification of the disputed decision.

The petition shall contain a detailed exposition of the subject matter and the basis of the appeal, and shall conclude with the application, which shall specify the terms in which the applicant wishes the sentence to be delivered, and with a request for the issuing of a summons or a formal notice of complaint to the interested parties, if any.

All documents substantiating the application shall be presented with the petition, and cannot be accepted thereafter. The petition, having been deposited and registered, shall immediately be distributed.

Upon receipt of the documents, the rapporteur shall issue, if required, a summons or notice to the interested parties, giving a time limit of twenty-four hours to present their reply.

The reply of the summonsed or notified parties, presented within the time limit stipulated, shall constitute the pleading or defence against the application, and shall for all purposes serve as contradictory hearing.

Before submitting the draft decision for consideration, the rapporteur may order the Commission to supply relevant information or to make available any document which may be relevant for the full knowledge of the matter.

The decisions of the Court shall take the form of a judgment and shall be given within twenty-four hours following the expiry of the time for presentation of the reply of the defending parties.

The decisions of the Court shall be taken by majority of the votes of the members present. Members who do not agree in whole or in part with the vote of the majority shall sign dissenting.

The proceedings shall be free of costs or any charges.

The Court shall only be able to take decisions when, in addition to its president, at least two of its members are present.<sup>17</sup>

## **2.14 Effect of Decisions**

For all citizens and other legal persons compliance with the decisions of the Court shall be obligatory and they must be executed immediately.<sup>18</sup>

# **— Section 3 —**

## **ELECTORAL REGISTRATION**

### **3.01 Universality of Registration**

All citizens of Mozambique, residing in the country or abroad, and who on polling day shall have attained the age of eighteen years, shall be entitled to register as a voter.

In their geographical areas, the electoral registration brigades shall promote registration in the electoral registers of all persons possessing voting rights and not yet registered of whom they have knowledge.

Each citizen may only register once.

Registration of a citizen in the electoral register implies the presumption of his or her electoral capacity. This presumption can only be refuted through documentary evidence in

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the possession of the registration unit or presented to it, of the death of the elector or a change of his or her electoral capacity.<sup>19</sup>

### **3.02 Place and Validity of Registration**

Citizens entitled to vote shall register at the place of operation of the registration unit of the geographical area of their ordinary place of residence.

Registration of citizens in the military forces or members of the law enforcement agencies shall take place at the geographical unit close to their unit.

The electoral registration of citizens shall be valid for an indeterminate period, subject to periodical updating.<sup>20</sup>

### **3.03 Administrative Structure for Registration**

At the central level, electoral registration shall be organised and directed by the Commission, through the Technical Secretariat for the Administration of the Elections, and its execution shall be done by the public administration through its local institutions.

In the provinces, the provincial electoral commissions shall be responsible for the organisation and direction of electoral registration.

At the level of districts, the district electoral commissions shall be responsible for the organisation and direction of the electoral registration.

In urban neighbourhoods, villages and localities, electoral registration for the multi-party general elections shall be carried out by the local organs through electoral registration brigades, under the co-ordination of the Secretariat.

Electoral registration abroad shall be carried out by the diplomatic and consular missions under the direction of the Commission.

Electoral registration brigades shall be fixed or mobile, and shall be identified by a number. Brigades shall be formed in function of the expected number of voters and their geographical distribution.

The electoral registration brigades shall be composed of electoral officials, employees of private institutions and other citizens of or over eighteen years of age, with a minimum educational qualification corresponding to the sixth grade of general education or equivalent, and they shall be selected by the local organs of the public administration with the assistance of the Secretariat.

Electoral registration brigades shall have a minimum of five and a maximum of seven members, not precluding a different composition which may be determined by the electoral commissions in accordance with the specific local conditions. At least one member of the brigade must speak the local language of the area of the registration centre.

The electoral registration brigades shall be responsible, in the areas of the geographical subdivisions, for carrying out the electoral registration of the citizens.

The electoral registration centre is the place where the registration brigade shall carry out its activities.

Wherever possible, the location of the electoral registration centre shall coincide with the place where the polling station will function.

No registration centre shall be established or operate in:

- (a) police stations;
- (b) military units;
- (c) residences of ministers of religion;
- (d) buildings of any political party or religious organisation;
- (e) premises where alcoholic beverages are sold;
- (f) places of worship or destined for worship;
- (g) health posts.<sup>21</sup>

### **3.04 Role of Political Parties in Electoral Registration**

Any legally constituted political party may co-operate with the electoral registration brigades, who shall have the power to define, without discrimination, the need and the extent of such co-operation.

Political parties shall co-operate through individuals who they shall indicate to the district electoral commissions up to five days before the beginning of the registration period.

The legally constituted political parties may monitor electoral registration acts in order to verify their conformity with the law.

Political parties shall carry out their monitoring through monitors whom they designate and whose names shall be notified to the provincial electoral commissions and the district electoral commissions up to ten days before the beginning of the electoral registration.

In the absence of such notification, it shall be understood that the political parties do not wish to designate any persons to represent them during the electoral registration.

The provincial electoral commissions and the district electoral commissions shall issue credentials for the monitors and shall deliver them to the concerned political party within five days following their request.

The political parties shall be represented by one monitor in each brigade, without prejudice to the possibility of several brigades being monitored by the same person.

Monitors of the political parties shall have the rights and duties:

- 
- (a) to request and obtain information on activities relating to the electoral registration process;
  - (b) to submit in writing complaints and appeals about decisions concerning electoral capacity;
  - (c) to perform objective inspection; and
  - (d) to refrain from submitting complaints or appeals in bad faith.<sup>22</sup>

### **3.05 Electoral Registers**

The registration numbers and names of the citizens entitled to vote shall be recorded in electoral registers in the prescribed form. There shall be a sufficient number of registers for each one of them to contain approximately one thousand voters.

The registration brigade must initial every of the electoral registers, which shall contain an opening and a closing statement, which must be signed by the brigade.

The number in the electoral register shall be the same as the number on the registration form and the voter's card.

During the registration period, the registration brigades or the local administrative authorities shall correct factual errors that may have occurred during the registration process.

After the completion of the registration exercise, the registration brigades shall immediately communicate the number of voters registered in their geographical subdivisions to the district electoral commissions and send them all the documents pertaining to the electoral registration process. After the expiration of the period specified for the submission of complaints, the district commissions shall communicate the number of voters to the provincial electoral commissions and send them the copies of the corresponding electoral registers.

Between the fourth and the thirteenth day following the expiry of the period, true copies of the electoral registers shall be affixed at the seats of the local administrative authorities of the geographical subdivisions of the electoral registration, for the purpose of consultation and submission of claims.

The definitive electoral registers must be ready and made public by the date of the beginning of the election campaign and may not be altered after the beginning of the election campaign.<sup>23</sup>

### **3.06 Complaints and Appeals**

During the exhibition of the copy of the electoral registers and within five days after they have been put on display, any elector or political party may submit in writing to the competent district electoral commission complaints regarding omissions or improper registrations in the electoral registers.

Upon receipt of the complaint, the district electoral commission shall immediately notify the

elector whose registration is deemed irregular by the complainant, if such is the case, in order to allow her/him, if she/he so wishes, to give her/his opinion within three days, together with the evidence she/he thinks fit.

Within two days after the expiration of the time limit established in the preceding paragraph, the district electoral commission shall then complete the file, with the necessary information and all the elements of proof submitted, to the Commission, and inform the competent provincial electoral commission of the fact.

The Commission shall decide within a period of ten days on the complaint submitted.

Notice of the decision of the Commission on the complaint submitted to it shall immediately be given to:

- (a) the district electoral commission, which shall inform the competent provincial electoral commission;
- (b) the complainant;
- (c) all other interested parties.<sup>24</sup>

## — *Section 4* —

### ELECTION CAMPAIGN

#### **4.01 Freedom to Campaign**

The election campaign shall commence forty-five days prior to the date of the elections and shall terminate forty-eight hours before the opening of the polls.

The election campaign shall be conducted by the candidates and their proponents, without prejudice to the participation of citizens. The election campaign shall be conducted freely throughout the territory of the Republic of Mozambique, under equal conditions for all candidates. The candidates, political parties or coalitions of political parties, as well as the groups of electors shall have the right to equal treatment by public and private bodies, so that they may conduct their election campaign freely and under the best of circumstances.

In the course of the election campaign no limitation whatsoever may be imposed on the expression of political, economic and social principles.

During the period of the election campaign, no sanctions may be applied to the media companies or their agents for acts forming part of the campaign.

Processions and marches may be held on any day and at any time, within the limits imposed by the maintenance of law and order, traffic rules and the rest period of citizens.

Only the authorised representatives of a candidate may request the presence of agents of the public authority at meetings and demonstrations organised by that candidate;

if no such request is made, the organising body is responsible for the maintenance of public order.

The publication of opinion polls or surveys on the attitudes of the voters towards the candidates shall be forbidden from the beginning of the election campaign to the first day after the closing of the polling stations.

During the election campaign, appeals to disorder or miscorrection or incitement to hatred, violence or war shall be forbidden.

It is forbidden to carry out political propaganda in:

- (a) military and militarised units;
- (b) public institutions and workplaces during normal working hours;
- (c) educational institutions during periods of classes;
- (d) places of worship.

Without prejudice to the internal regulations of the institutions, the use of public places for electoral purposes shall be equitably shared amongst the various candidatures, in accordance with the provisions of regulations to be drawn up by the Commission.

For the purposes of election campaigning, the local administrative authorities shall ensure the availability of public buildings and spaces belonging to the State and other corporate bodies governed by public law, in accordance with the number of candidates nominated by each party, for use by the different candidates.<sup>25</sup>

#### **4.02 Election Propaganda and Civic Education**

Election propaganda means any activity, whether by the candidates, the political parties, officials of their organs or their agents, or by any other person, which directly or indirectly seeks to promote candidatures, in particular the publication of texts or images which express or reproduce the contents of such activity.

The candidates for the office of President of the Republic, the political parties and the coalitions of parties competing in the elections shall have the right to use the public radio and television broadcasting service during the official period of the election campaign.

It shall be incumbent upon the Commission to regulate the broadcasting rights.

Regular public informational publications shall give equal treatment to the various candidatures. (This provision does not apply to party publications.)

During the election campaign, the candidates and their nominating organs shall be allowed to publish books, magazines, pamphlets, stickers and other materials, in addition to their current propaganda, and shall also be allowed to make use of the Press, radio and television.

The entity supporting a candidature shall be identified on all the election propaganda material it publishes.

No authorisation from or communication to the administrative authorities shall be required for making propaganda through the use of acoustic means; such propaganda shall only be permitted between 07:00 and 21:00 hours.

No authorisation from or communication to the administrative authorities shall be required for affixing posters. No posters or mural paintings shall be put on national monuments, temples and religious buildings, seats of the organs of the State at central and local level or where polling stations will operate, traffic lights or road or railroad signs and inside government offices or public buildings.

The print media owned by or dependent on public bodies, must include electoral news in their publications. Whenever the print media publish information relating to the electoral process, they must be guided by the criteria of total impartiality and rigour, and refrain candidatures, both in the way they treat them journalistically and in the amount of space dedicated to them.

The printed publications belonging to or controlled by the State have the obligation to include material relating to the electoral acts in every edition published during the period of the election campaign, and they shall be guided by the principles specified in the preceding paragraph of these provisions.

The candidates may agree between themselves to share or exchange broadcasting time or publication space belonging to them.

Through the media, the Commission shall promote the education of citizens on the objectives of the elections, the electoral process and the manner in which each voter casts her/his vote.

The communiqués, semi-official statements and other acts of the Commission shall be published by the public sector media free of charge and as a matter of priority.

After the expiry of the campaign period (48 hours before polling), no election propaganda activities shall be allowed.<sup>26</sup>

## — *Section 5* —

### DETERMINATION OF NATIONAL RESULTS OF ELECTIONS

#### **5.01 Role of Commission**

The Commission shall be responsible for the centralisation of the results from each province, the count and the announcement of the global results of the elections, as well as the distribution of the seats.

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The determination of the national results shall be based on the records and other documents relating to the provincial count, received from the provincial electoral commissions.

At the beginning of its work, the Commission shall decide on the ballot papers which have been the object of complaint or protest, examine the ballot papers considered invalid and reassess them using a uniform criterion, with the possibility of this operation resulting in the correction of the count of the provincial electoral commissions, but without prejudice to the provisions relating to judicial appeals.

The national count operation shall consist in:

- (a) verification of the total number of registered electors, of voters who voted and their percentage in relation the first number;
- (b) verification of the total number of votes obtained by each presidential candidate and by each list, the number of blank votes and or invalid votes;
- (c) determination of the presidential candidate elected;
- (d) verification of the need for a second ballot for the presidential elections;
- (e) distribution of the seats of the deputies by constituency;
- (f) determination of the candidates elected for each list.<sup>27</sup>

## **5.02 Publication of National Results**

The President of the Commission shall, within a period of fifteen days following the date of the close of the polls, announce the results of the national count, and order their publication through the media and through a public notice which shall be affixed at the entrance of the office of the Commission.

A record of the national count shall immediately be prepared, containing the established results, the complaints, protests and counter-protests submitted, and the decisions taken on them. A copy of the record of the national results shall be sent by the President of the Commission to the President of the Republic.

At the end of its mandate, the Commission shall hand over the records of the provincial electoral commissions and the records of the national results to the Ministry of State Administration, which shall decide on their custody and conservation.<sup>28</sup>

## **5.03 Official Chart of Election Results**

The Commission shall prepare an official chart of the election results, which must contain:

- (a) the total number of registered electors;
- (b) the total number of voters who voted and of those who did not vote, with their respective percentages in relation to the total number of registered electors;
- (c) the total number of blank votes, of invalid votes and of valid votes, with their respective percentages in relation to the total number of voters.
- (d) the total number of votes obtained by each candidate, and, if necessary, also by each coalition of candidatures, with their percentages in relation to the valid votes;

- (e) the names of the elected candidates, with the indication of the names of their respective lists, as well as those of the proponent political parties, in the case of a coalition.

The chart for the election of deputies to the Assembly of the Republic shall contain the information relating to each constituency.

The Commission shall cause the charts of the election results to be published in the Government Gazette, within seven days of the announcement of the results of the count at national level.<sup>29</sup>

## — Section 6 —

### THE ELECTORAL SYSTEM

#### 6.01 Mode of Election of Deputies

The election of deputies to the Assembly of the Republic shall be based on multi-national lists of parties or coalitions of parties in each constituency, with voters having a single list vote.

The lists shall be presented to the electors by their proponents during the election campaign.<sup>30</sup>

#### 6.02 Distribution of Deputies in Each Constituency

The number of deputies who shall be elected by each constituency of the national territory shall be established in the following way:

- (a) the total number of registered electors in the national territory shall be established.
- (b) the total number of registered electors in the national territory shall be divided by two hundred and forty-seven, in order to obtain the quotient corresponding to each deputy to be elected;
- (c) the total number of registered electors in each constituency shall be established;
- (d) the total number of registered electors in each constituency shall be divided by the quotient established in these provisions.

If the remainder from the division is larger than half the quotient, the corresponding constituency shall have the right to elect an additional deputy.<sup>31</sup>

#### 6.03 Distribution of Seats Within Lists

Seats shall be distributed within the lists according to the order of precedence shown on each list.

The existence of an incompatibility between the function exercised by a candidate and the exercise of the function of deputy shall not prevent the allocation of the seat.

In the case of death or an illness causing physical incapacity of the candidate, the seat shall be allocated to the next candidate on the list, in accordance with the order of precedence.<sup>32</sup>

#### **6.04 Minimum Number of Votes**

Each nomination list can only win a seat if at the counting of the votes it receives five per cent of the votes cast nationwide.<sup>33</sup>

#### **6.05 Election Criterion**

The conversion of votes into seats shall be done in accordance with the d'Hondt proportional representation method, obeying the following rules:

- (a) the number of votes obtained by each list in a constituency shall be counted separately;
- (b) the number of votes counted for each list shall be divided successively by 1, 2, 3, 4, 5, 6, 7, 8, etc, and the quotients shall be aligned in descending order to form a series of as many terms as there are seats attributed to the respective constituency;
- (c) the seats shall belong to the lists to which the terms of the series established by the preceding rule correspond, and each list shall receive as many seats as its terms in the series;
- (d) if there remains only one seat to be distributed and if the next terms in the series are equal but belonging to different lists, the seat shall be allocated to the list which has obtained the lowest number of votes.<sup>34</sup>

#### **6.06 Mozambicans Abroad**

The election of the three deputies representing Mozambican communities abroad shall be done according to the criteria and rules established under the preceding section.<sup>35</sup>

Candidatures shall be presented by political parties, individually or as a coalition, provided that they are registered by the beginning of the nomination period, and the list may include citizens who are not members of the respective parties.

No party may present more than one list of candidates in the same constituency.<sup>36</sup>

#### **6.07 Coalitions for Electoral Purposes**

Coalitions of political parties for electoral purposes shall be formed in accordance with the relevant law.

Political parties making coalition pacts for electoral purposes shall communicate the fact to the Commission, before the actual delivery of nomination papers, in a document signed jointly by the competent organs of the respective political parties.

Such communication shall contain:

- (a) a definition of the planned scope of the coalition;
- (b) indication of the name, abbreviation and symbols of the coalition;
- (c) designation of the office holders in the executive or co-ordinating bodies of the coalition;
- (d) the deed confirming the approval of the coalition pact.

Coalitions shall constitute a single parliamentary bench and they shall cease to exist at the end of each legislature.<sup>37</sup>

### **6.08 Mode of Presenting Candidatures**

Political parties or coalitions of political parties shall present candidatures by submitting to the Commission on application in the form of a petition, accompanied by lists of candidates. The list of candidates must contain the full name and the number of the voter's card of each candidate and shall be accompanied by the following documents:

- (a) photocopy of the identity card of each candidate;
- (b) certificate of the criminal record of each candidate (if any);
- (c) declaration of individual or collective candidature, signed by each candidate and notarised;
- (d) documentary evidence of the electoral registration of each candidate;
- (e) documentary evidence of the electoral register of the election agent of each list.

In the declaration referred to in sub-paragraph (c), the candidates shall explicitly declare:

- (a) that they are not affected by any form of ineligibility;
- (b) that they do not appear on any other list of candidates;
- (c) that they accept the nomination presented by the proponent;
- (d) that they agree with the name of the election agent of the list.<sup>38</sup>

## **— Section 7 —**

### **ELECTORAL DISPUTE**

#### **7.01 Competent Body**

The petition for an appeal shall specify the relevant points of law and fact and shall be accompanied by all the elements of proof.

The judicial appeal shall be lodged with the Commission on the day following the counting of the votes, and a decision shall be reached during the following two days.

Before making a decision on the appeal, the Commission shall give notice to the election agents of the candidatures, in order to allow them, if they so wish, to give their opinion within twenty-four hours.

Notice of the decision shall be given to the appellant or appellants in the fastest possible way.

The vote at any polling station shall only be considered null and void if irregularities have been observed that can substantially affect the result of the elections.

If the voting at one or more polling station has been declared null and void, the corresponding polling process shall be repeated on the second Sunday following the decision.

The proceedings shall be free of charge and take priority over the other business of the Commission.<sup>39</sup>

### **7.02 Judicial Appeal**

Irregularities which have occurred during the polling and the partial global counting of the votes may be examined through a judicial appeal, provided that they have been the object of a complaint or protest submitted at the moment they were verified.

In addition to the person lodging the complaint, protest or counter-protest, the candidates and their election agents, as well as the political parties contesting the elections in the constituency concerned, may also appeal against the decision on the complaint or protest.

The petition shall specify the points of law and fact of the appeal and shall be accompanied by all the elements of proof, including a photocopy of the record of the polling process of the polling station where the irregularity is alleged to have occurred.<sup>40</sup>

## **— Section 8 —**

### **ELECTORAL OFFENCES**

#### **8.01 Offences Relating to Electoral Registration**

A person who registers without having electoral capacity is guilty of an offence, punishable with imprisonment (up to six months) and a stipulated fine.

A person who registers more than once is guilty of an offence punishable with imprisonment and a fine.

Any citizen who makes false statements or gives false information in order to obtain registration is guilty of an offence.

Any person who, through violence, threat or fraudulent ruse induces a citizen not to register in the electoral register or to register after the expiry of the period established by law is guilty of an offence.

Any person who wrongly issues a certificate of physical or mental health, with implications for electoral registration, commits an offence.

Any person who refuses to register in the electoral register an elector who has taken the correct steps for registering, is guilty of an offence.

A person who, through negligence, fails to discharge her/his obligations regarding registration is guilty of an offence.

Any person who does not prepare, organise and correct the electoral registers in the terms stipulated in the law, is guilty of an offence.

Any person who, with fraudulent intent, modifies or replaces a voter's card, is guilty of an offence.

Any person who, in any manner, alters, spoils, replaces or conceals electoral registers, is guilty of an offence. A person who does not affix copies of the electoral registers or prevents their inspection by registered electors during the period prescribed by law, is guilty of an offence.

Members of the electoral registration brigades who, through negligence, do not correct the electoral registers or do so contrary to the provisions of the law, are guilty of an offence.<sup>41</sup>

### **8.02 Offences Relating to Election Campaign**

A person who, during the election campaign, uses the name, abbreviation or symbol of a party or coalition of parties with the intention of damaging or insulting it, is guilty of an offence.

Political parties or coalitions of parties and their respective members who, through radio and television and in the exercise of their broadcasting rights for the purpose of election propaganda during election campaigns, instigate to disorder or insurrection or incite to hatred, violence or war, shall be immediately suspended from exercising this right for a period of one day to the number of days that the campaign lasts, according to the gravity of the offence and the frequency of its repetition, without prejudice to their civil or criminal liability.

The suspension shall apply to the exercise of broadcasting rights on all radio and television stations, even if the event determining it has been verified in only one of them.

The Commission shall, on its own initiative or that of a citizen or any agency or institution, decide to apply the suspension referred to above.

Radio and television stations shall record any broadcasts made in the exercise of the broadcasting rights conferred on the political parties, and keep the recordings as possible evidence of their contents, until the validity of the elections and with the obligation to hand them over to the Commission.

The Commission shall announce its decision before the next scheduled broadcast on any radio or television station by the political party to which the offender belongs, except when it has taken cognizance of the infringement less than twenty-four hours before that time, in which case it shall take a decision within such period.

The decision referred to in the preceding paragraph shall always be preceded by a written hearing of the political party to which the offender belongs, which, if necessary, shall be requested by a telegram addressed to the seat of the said party containing a summary indication of the offending facts and a notification that the response may be transmitted in the same manner within the time limit which shall be established for this purpose.

Only the submission of documentary evidence, delivered to the Commission within the period granted for the response, shall be accepted.

The Commission shall reach its decision by consensus.

A person who prevents the holding, or interrupts the proceedings of an election propaganda meeting, rally, procession or march, is guilty of an offence.

A person who steals, robs, destroys, tears or in any manner causes to be totally or partially useless or illegible any displayed election propaganda material, or defaces it or superimposes therein any material for the purpose of concealing it, is guilty of an offence.

The acts referred to in the preceding paragraph shall not be punishable if the propaganda material has been displayed on the person's own house or establishment without her/his consent or if its contents are clearly outdated.

A person who misdirects, retains, or does not deliver to the addressee leaflets, posters or election propaganda papers from any list, is guilty of an offence.

A person who makes election propaganda in any manner on polling day or the day before, is guilty of an offence. A person who, on polling day, makes propaganda inside a polling station or in the surrounding area of five hundred metres, is guilty of an offence.<sup>42</sup>

### **8.03 Offences Relating to Voting**

A person who, without having electoral capacity, presents herself/himself to vote, is guilty of an offence, punishable with a stipulated fine.

A citizen who exercises the right to vote without having electoral capacity, is guilty of an offence, punishable with imprisonment (for up to one year) and a stipulated fine.

A person who fraudulently uses the identity of another duly registered citizen in order to exercise that right, is guilty of an offence, punishable with imprisonment (up to two years) and a stipulated fine.

A person who contributes to allowing the right to vote to be exercised by someone who does not have that right or to excluding someone who has that right, and a physician who falsely attests about incapacity to exercise the right to vote, is guilty of an offence.

A person who votes more than once or allows someone to vote more than once, is guilty of an offence.

A person who accompanies a blind or disabled person for the purpose of voting and with fraudulent intent unfaithfully expresses her/his choice, is guilty of an offence.

A person who, at the polling station or in its surrounding area of five hundred metres, uses coercion or deceit of any nature or her/his ascendancy over a voter to make that voter reveal her/his vote, is guilty of an offence.

A person who, at the polling station or in its surrounding area of five hundred metres, reveals for which list she/he intends to vote or has voted, is guilty of an offence.

A person who uses violence or threats or fraudulent ruses against any voter in order to coerce or induce her/him to vote for a particular candidate or abstain from voting, is guilty of an offence.

The same penalty specified in the preceding paragraph shall be increased, according to the terms of the prevailing penal code, if the threat is made with the use of a weapon or the violence perpetrated by two or more people.

If the same offence is committed by a citizen invested with public power, a civil servant or agent of state or another public corporate body or a minister of any religion, the punishment shall be imprisonment for eight months to two years and a fine of up to 1,000,000.00 M.T.

A person who dismisses or threatens to dismiss a citizen from her/his employment, prevents or threatens to prevent someone from obtaining employment, or applies any other sanction in order to force her/him to vote or not to vote, or because she/he voted for or did not vote for a particular candidate, or because she/he abstained from voting or from not participating in the election campaign, is guilty of an offence.

A person who, in order to induce someone to vote or refrain from voting for a particular list, offers, promises or procures public or private employment or any other goods or advantages to one or more voters, or, in agreement with them, to a third person, even if the goods or advantages used, promised or obtained, are disguised as being a monetary compensation given to the voter for travel or accommodation expenses, or payment for food or drinks, or a payment for election campaign expenses, is guilty of an offence.

The presiding officer of a polling station who, with fraudulent intent, fails to exhibit the ballot box in front of the voters at the opening of the poll, is guilty of an offence.

If ballot papers are found in the ballot box which has not been exhibited, the punishment shall be imprisonment for up to two years and a fine of up to 200,000.00 M.T.

A person who, with fraudulent intent, deposits ballot papers in the ballot box before or after the start of the voting, or takes possession of the ballot box with the not yet counted ballot papers inside it, or takes possession of a ballot paper at any time after the opening of the polling station until the global counting of the votes of the elections, is guilty of an offence.

A polling station officer who, with fraudulent intent, puts a confirmation mark for a voter who has not voted, or allows it to be put, or who in reading a ballot paper changes the list indicated or during the counting of the votes adds or substitutes votes to a list, or in any other manner falsifies the result of the election, is guilty of an offence.

A person who prevents delegates of candidatures from entering the polling stations or leaving them, or in any other manner prevents them from exercising the powers which the law bestows on them, is guilty of an offence, punishable with imprisonment for up to six months.

In the case of the presiding officer, the punishment shall never be less than one year.

A presiding officer of a polling station who unjustifiably refuses to receive complaints, protests or counter-protests, is guilty of an offence.

A person who disrupts the normal functioning of a polling station through insults, threats or acts of violence, causing a commotion, is guilty of an offence.

A person who enters a polling station carrying arms, shall be subject to the immediate confiscation of the weapons and shall be punished with imprisonment for up to two years and a stipulated fine.

A candidate, election agent, representative or delegate of a candidature, who disrupts the normal functioning of the electoral operations, is guilty of an offence.

Any person who has been designated to act as a polling station officer, and without justification neglects to perform or abandons these functions, is guilty of an offence.

A person who, in any manner, fraudulently spoils, replaces, conceals, destroys or amends electoral registers, ballot papers, records of the polling process at the polling stations or any document relating to elections, is guilty of an offence.

A person who without cause, fraudulently accuses any other person of the practice of any offence considered in the law, shall be punished according to the provisions for malicious prosecution of the prevailing penal code.

Any person who, in bad faith, lodges a complaint, appeal, protest or counter-protest or who contests the decisions of the organs through unfounded appeal, is guilty of an offence.

If a police force has been requested by the competent authorities for guaranteeing the normal progress of the voting operations, and this force does not arrive and no proper justification is presented within a period of twenty-four hours, its commander shall be punished with imprisonment for up to six months and a stipulated fine.<sup>43</sup>

### 8.04 Suspension of Political Rights

A prison sentence for a malicious electoral offence under the law shall entail a mandatory suspension of political rights for a period from one to five years.

### NOTES

1. Constitution of Mozambique 1990, see section 73
2. Ibid., see section 77
3. Ibid., see section 30
4. Ibid., see sections 31-33
5. Electoral Law of Mozambique 1993, see sections 13 and 14
6. Ibid., see section 15
7. Ibid., see section 16
8. Ibid., see section 17
9. Ibid., see section 18
10. Ibid., see section 19
11. Ibid., see sections 20 and 21
12. Ibid., see section 23
13. Ibid., see sections 24 and 25
14. Ibid., see sections 26 and 27
15. Ibid., see sections 30 and 31
16. Ibid., see section 32
17. Ibid., see sections 34 and 35
18. Ibid., see section 36
19. Ibid., see sections 39-42
20. Ibid., see sections 44 and 45
21. Ibid., see sections 46-49
22. Ibid., see sections 50-53
23. Ibid., see sections 54-69
24. Ibid., see sections 70 and 71
25. Ibid., see sections 84-92
26. Ibid., see sections 93-103
27. Ibid., see sections 159-172
28. Ibid., see sections 173-175
29. Ibid., see section 176
30. Ibid., see section 199
31. Ibid., see section 200
32. Ibid., see section 201
33. Ibid., see section 203
34. Ibid., see section 204
35. Ibid., see section 205
36. Ibid., see section 206
37. Ibid., see section 208
38. Ibid., see section 211
39. Ibid., see sections 216-219
40. Ibid., see section 215
41. Ibid., see sections 224-233
42. Ibid., see sections 237-246
43. Ibid., see sections 249-269