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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**PROPOSAL FOR  
DRAFT AMENDMENTS  
TO THE CONSTITUTION  
OF MOZAMBIQUE**

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## Introductory Note

This is the Proposal for the Draft Amendments to the Constitution of the Republic, formally adopted by the Ad-Hoc Commission for Constitutional Amendment set up by Parliamentary Resolution No. 25/95 of 13 of October. The Proposal is based on the text of the existing Constitution and draws on three proposals submitted by the Frelimo, Renamo and UD benches.

The Proposal shall now be subject to public debate by the whole of society, political parties, religious denominations, universities, unions, economic organisations, indeed, by the society at large. The basic objective, apart from making the proposed amendments known, is to gather contributions that will improve it. This process, which will be taking place on a national scale, should cause the Proposal to be transformed into a Draft, which will then be submitted to the Assembly of the Republic for appraisal and resolution.

The greater the level of participation in this debate, the better and more consolidated the resulting Draft will be.

**PART I  
BASIC PRINCIPLES**

**CHAPTER I  
THE REPUBLIC OF MOZAMBIQUE**

**Article 1  
(Republic of Mozambique)**

The Republic of Mozambique is an independent, sovereign State of social justice.

**Article 2  
(Sovereignty and Legality)**

1. Sovereignty is vested in the people.
2. The Mozambican people shall exercise their Sovereignty in the manner provided for in the Constitution.
3. The State is subordinate to the Constitution and is founded on the democratic rule of law.

**Article 3  
(Democratic Rule of Law)**

The Republic of Mozambique is a State of democratic law, founded on democratic pluralism of expression and political organisation and on the respect for and guarantee of fundamental human rights and freedoms.

**Article 4  
(Nationality)**

1. Mozambican nationality may be by origin or it may be acquired.
2. The requirements for the attribution, acquisition, loss and re-acquisition of nationality are determined by the Constitution and regulated by law.

**Article 5  
(Territory)**

1. The territory of the Republic of Mozambique is a single whole, indivisible and inalienable, comprising the entire land surface, maritime zone and air space delimited by the national boundaries.
2. The breadth, limits and legal order of Mozambique's territorial waters, the exclusive economic zone, the contiguous zone and seabed rights shall be fixed by law.

**Article 6  
(Territorial Organisation)**

1. The territory of the Republic of Mozambique shall be subdivided into provinces, districts, administrative posts and localities.
2. Urban zones shall be classified either as cities or as towns.
3. The definition of the characteristics of territorial divisions, the creation of any new units, as well as the power to decide on politico-administrative organisation shall be fixed by law.

*(The possibility of creating new territorial divisions, based on territorial organisation by region, was raised).*

**Article 7  
(Unitary State)**

The Republic of Mozambique is a unitary State which respects the principles of autonomy of local councils<sup>1</sup> in its organisation.

**Article 8  
(National Languages)**

The State shall esteem national languages and promote their development and increasing use as spoken languages and as the cultural and educational heritage of citizens.

**Article 9  
(Official Language)**

The official language in the Republic of Mozambique shall be Portuguese.

**Article 10  
(Fundamental Objectives)**

The fundamental objectives of the Republic of Mozambique shall be:

- a) The defence of independence and sovereignty;
- b) The consolidation of national unity
- c) The building of a society of social justice and the achievement of material and spiritual well being and quality of life for its citizens;
- d) The promotion of balanced social and regional development;
- e) The defence and promotion of human rights and of the equality of citizens before the law;
- f) The strengthening of democracy, freedom, social stability and social and individual harmony;
- g) The promotion of a society of pluralism, tolerance, culture and peace;
- h) The development of the economy and scientific and technological progress;
- i) The affirmation of the Mozambican personality, of its traditions and other social and cultural values;
- j) The establishment and development of relations of friendship and co-operation with other peoples and States.

**Article 11  
(Lay State)**

- 1. The Republic of Mozambique shall be a lay State.
- 2. The lay nature of the State rests on the absolute separation between the State and religious denominations.
- 3. The activity of religious institutions shall be subject to the laws of the State.

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<sup>1</sup> Translator's note: These are local autonomous authorities called the "*autarquias locais*".

4. The State shall esteem the activities of religious denominations in order to promote a climate of social understanding and tolerance, the strengthening of national unity, the material and spiritual well being of citizens, and economic and social development.

**Article 12  
(National Symbols)**

The symbols of the Republic of Mozambique shall be the national flag, emblem and anthem.

**Article 13  
(Age-old Resistance)**

The Republic of Mozambique shall uphold the values of the heroic struggle and age-old resistance of the Mozambican people against foreign domination.

**Article 14  
(National Liberation, Defence of Sovereignty and Democracy)**

1. The Republic of Mozambique shall acknowledge and esteem the sacrifices made by those who gave their lives to the national liberation struggle and to the defence of the country's sovereignty and democracy.
2. The State shall guarantee the special protection of those who were disabled in the national liberation struggle, as well as the orphans and other dependants of those who died in this cause.

**Article 15  
(War Disability)**

The State shall give special protection to those who have been disabled as a result of war, in the performance of public service or a humanitarian act.

**CHAPTER II  
FOREIGN POLICY AND INTERNATIONAL LAW**

**Article 16  
(International Relations)**

1. The Republic of Mozambique shall establish relations of friendship and co-operation with other States on the basis of mutual respect for sovereignty and territorial integrity, equality, non-interference in internal affairs and reciprocity of benefits.
2. The Republic of Mozambique shall accept, observe and apply the principles of the Charter of the United Nations and of the Charter of the Organisation of African Unity.

**Article 17  
(International Law)**

Validly approved and ratified International treaties and agreements shall enter into force in the Mozambican legal order once they have been officially published and while they are internationally binding on the Mozambican State.

**Article 18  
(Precedence of International Law)**

The norms and principles of International Law shall, once they have entered into force in the Mozambican legal order, prevail over all internal acts of infra-constitutional substance

**Article 19  
(International Solidarity)**

1. The Republic of Mozambique shall be in solidarity with the struggle for the unity of the peoples and States of Africa on the basis of their freedom, dignity and right to economic and social progress.
2. The Republic of Mozambique shall seek to strengthen relations with countries engaged in the consolidation of their national independence and the recovery of the use and control of their natural wealth for their respective peoples.
3. The Republic of Mozambique shall join with all States struggling for the establishment of a just and equitable international economic order.

**Article 20**  
**(Support for Freedom of Peoples and Asylum)**

1. The Republic of Mozambique shall support and be in solidarity with the struggles of peoples for their national liberation.
2. The Republic of Mozambique shall grant asylum to foreigners persecuted on the grounds of their struggle for national liberation, for democracy, for peace and for the protection of human rights.

**Article 21**  
**(Special Ties of Friendship and Co-operation)**

The Republic of Mozambique shall maintain special ties of friendship and co-operation with the countries of the region, with countries whose official language is Portuguese and with countries which host Mozambican immigrants.

**Article 22**  
**(Policy of Peace)**

1. The Republic of Mozambique shall pursue a policy of peace and shall only resort to the use of force in the case of legitimate self defence.
2. The Republic of Mozambique shall support the primacy of negotiated solutions to conflicts.
3. The Republic of Mozambique shall support the principle of general and universal disarmament of all States.
4. The Republic of Mozambique shall advocate the transformation of the Indian Ocean into a nuclear free zone of peace.

**PART II**  
**NATIONALITY**

**CHAPTER I**  
**NATIONALITY BY ORIGIN**

**Article 23**  
**(*Jus Soli* and *Jus Sanguinis*)**

1. The following persons shall, provided that they were born in Mozambique, be Mozambicans:
  - a) The children of a father or a mother who was born in Mozambique;
  - b) Children whose parents are stateless, unknown or of unknown nationality.
2. The children of a Mozambican father or mother working for the Mozambican State outside the country shall be Mozambicans, even if born abroad.

3. The children of a Mozambican father or mother shall be Mozambican, even if born abroad, provided that they have expressly declared, either on their own behalf, if over eighteen years of age, or through their legal guardians, if younger, that they wish to be Mozambican.

**Article 24  
(Jus Soli)**

1. Persons born in Mozambique after the proclamation of independence are Mozambican nationals.
2. This rule shall not apply to children born of a foreign father and a foreign mother, when either of them is in Mozambique in the employ of the government of his or her country.
3. The persons referred to in paragraph 1) above, if born of foreign parents, shall only have Mozambican nationality if they declare, for themselves if they are over eighteen years of age, or through their legal guardians if younger than this, that they wish to be Mozambican.
4. The time limit for the declaration referred to in the preceding paragraph is one year, counting from the date of birth of the interested party, where the declaration is made by his or her legal guardians, or from his or her eighteenth birthday, where the declaration is made personally.

*(There is a suggestion that this article be eliminated on the ground that it is considered restrictive and discriminatory in comparison to the preceding article on nationality by origin.)*

**Article 25  
(By Age of Majority)**

Persons who, although they have satisfied the prerequisites for nationality by origin, did not acquire such nationality by virtue of a choice made by their legal guardian, shall be Mozambican, provided that, being over eighteen years of age and within one year after attaining the age of majority, they personally declare that they wish to be Mozambican.

**CHAPTER II  
ACQUIRED NATIONALITY**

**Article 26  
(By Marriage)**

1. A foreign person who has married a Mozambican citizen acquires Mozambican nationality provided that he or she meets all of the following conditions:
  - a) That he or she declares that he or she wishes to acquire Mozambican nationality;
  - b) That he or she establishes his or her domicile in Mozambique;
  - c) That he or she meets the requirements and offers the guarantees prescribed by law.
2. The nationality acquired by the spouse in good faith shall not be prejudiced by the declaration of annulment or dissolution of the marriage.

**Article 27  
(By Naturalisation)**

Mozambican nationality may be granted by naturalisation to foreigners who, at the time of their request, meet all the following conditions:

- a) That they have resided in Mozambique habitually and regularly for at least ten years;
- b) That they are over eighteen years of age;

- c) That they have sufficient knowledge of Portuguese or of a Mozambican language;
  - d) That they have command of their person and are capable of ensuring their own subsistence;
  - e) That they have civic probity;
  - f) That they meet the requirements and offer the guarantees prescribed by law.
2. The conditions set out in paragraphs a) and c) may be waived for foreigners who have rendered relevant services to the Mozambican State.

**Article 28  
(By Affiliation)**

Mozambican nationality may be granted by means of naturalisation to the unmarried children, under eighteen years of age, of a citizen who has acquired Mozambican nationality.

**Article 29  
(By Adoption)**

A person who is adopted fully by a Mozambican national acquires Mozambican nationality.

**Article 30  
(Request for Naturalisation)**

Naturalisation shall be granted at the request of the interested party, in terms of the law.

**Article 31  
(Restrictions on the Performance of Functions)**

1. Citizens with acquired nationality shall not be eligible for access to a diplomatic or military career.
2. The law shall define the conditions under which citizens with acquired nationality and foreigners may perform public functions or private functions of public interest.

**CHAPTER III  
LOSS AND REACQUISITION OF NATIONALITY**

**Article 32  
(Loss)**

Mozambican nationality shall be lost by any person who:

- a) Being a national of another State, declares, in accordance with the prescribed procedures, that he or she does not wish to be Mozambican;
- b) Having, as a person without legal capacity, been given Mozambican nationality by virtue of a legal guardian's declaration, declares, in accordance with the prescribed procedures, and within one year of reaching the age of majority, that he or she does not wish to be Mozambican, provided that he or she can demonstrate possession of another nationality.

**Article 33  
(Reacquisition)**

1. Mozambican nationality may be granted to Mozambicans who, having lost such nationality now request it, provided that they meet all of the following conditions:
  - a) That they establish their domicile in Mozambique;

- b) That they meet the requirements and offer the guarantees prescribed by law.
2. A Mozambican woman who has lost her nationality through marriage may reacquire it by addressing a request to the competent authorities.
  3. Such reacquisition of nationality shall restore the legal situation prevailing prior to the loss of nationality.

#### **CHAPTER IV DUAL NATIONALITY AND REGISTRATION**

##### **Article 34 (Dual Nationality)**

No other nationality of persons who are Mozambican nationals under the terms of the law of the Republic of Mozambique shall be recognised or have any legal effect in the Republic of Mozambique.

##### **Article 35 (Registration)**

The registration and proof of acquisition, loss and reacquisition of Mozambican nationality shall be regulated by law.

#### **PART III FUNDAMENTAL RIGHTS, DUTIES AND FREEDOMS**

##### **CHAPTER I BASIC PRINCIPLES**

##### **Article 36 (Principle of Universality)**

All citizens are equal before the law. They shall enjoy the same rights and shall be subject to the same duties, regardless of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, the marital status of their parents, their profession or their political preference.

##### **Article 37 (Principle of Equality)**

Men and women shall be equal before the law in all spheres of political, economic, social and cultural life.

##### **Article 38 (Disability)**

Disabled citizens shall enjoy fully the rights enshrined in the Constitution and shall be subject to the same duties, except those which their disability prevents them from exercising or undertaking.

##### **Article 39 (Duty to Respect the Constitution)**

1. All citizens shall have the duty to respect the constitutional order.
2. Acts contrary to the provisions of the Constitution shall be subject to punishment in terms of the law.

##### **Article 40 (Acts contrary to National Unity)**

All acts intended to undermine national unity, to disturb social harmony or to create divisions or situations of privilege or discrimination based on colour, race, sex, ethnic origin, place of birth, religion, level of

education, social position, physical or mental ability, the marital status of one's parents, profession or political preference, shall be punished in terms of the law.

**Article 41  
(Right to Life)**

1. All citizens shall have the right to life. All shall have the right to physical integrity and shall not be subjected to torture or to cruel or inhuman treatment.
2. There shall be no capital punishment in the Republic of Mozambique.

**Article 42  
(Other Individual Rights)**

All citizens shall have the right to their honour, good name and their reputation, as well as the right to defend their public image and to protect their privacy.

**Article 43  
(Scope and Meaning of Fundamental Rights)**

The fundamental rights enshrined in the Constitution shall not exclude any other rights provided for by law.

**Article 44  
(Interpretation of Fundamental Rights)**

The constitutional principles in respect of fundamental rights shall be interpreted and integrated in harmony with the Universal Declaration of Human Rights and with the African Charter of Human and Peoples Rights.

**Article 45  
(Duties Towards One's Fellow Beings)**

All individuals shall have the duty to respect and consider their fellow beings without any form of discrimination whatsoever, and to maintain relations with them aimed at promoting, safeguarding and strengthening mutual respect and tolerance and solidarity.

**Article 46  
(Duties Towards the Community)**

Every individual shall have the duty:

- a) To serve the national community, placing his or her physical and intellectual abilities at its service;
- b) To work to the best of his abilities and means;
- c) To pay contributions and taxes;
- d) To advocate and strengthen cultural values in his or her relations with the community, in the spirit of tolerance and of dialogue and, in general, to contribute to civic and educational advancement.
- e) To defend and promote health;
- f) To protect and conserve the environment.

**Article 47  
(Duties Towards the State)**

1. All citizens shall have the duty to contribute to the defence of their country.
2. Every individual shall also have the duty to fulfil his or her obligations under the law, and to obey orders that are issued by legitimate authorities in accordance with the terms of the Constitution and with respect for his or her fundamental rights.

## **CHAPTER II RIGHTS, DUTIES AND FREEDOMS**

### **Article 48 (Freedom of Expression and Information)**

1. All citizens shall have the right to freedom of expression and to freedom of the press, as well as the right to information.
2. The exercise of freedom of expression, which consists of the ability to impart one's opinions by all lawful means, and the exercise of the right to information shall not be limited by censorship.
3. Freedom of the press shall include, in particular, the freedom of journalistic expression and creativity, access to sources of information, protection of professional independence and confidentiality, and the right to establish newspapers, publications and other means of dissemination.
4. In the public sector media, the expression and confrontation of ideas from all currents of opinion shall be guaranteed.
5. The State shall guarantee the impartiality of the public sector media, as well as the independence of journalists from the Government, the Administration and other political powers.
6. The exercise of the rights and freedoms provided for in this article shall be regulated by law on the basis of the imperative respect for the Constitution and for the dignity of the human person.

### **Article 49 (Broadcasting Rights, Right to Reply and to Political Response)**

1. Political parties shall, according to their degree of representation and to criteria prescribed by law, have the right to broadcasting time on public radio and television services.
2. Political parties that have seats in the Assembly of the Republic<sup>2</sup> but are not members of Government shall have the right, in terms of the law and according to their degree of representation and to criteria prescribed by law, to broadcasting time on public radio and television services, as well as the right to reply and the right to respond to the political statements of the Government.
3. Trade unions, professional organisations and organisations representing economic activities shall also be guaranteed broadcasting rights, according to criteria prescribed by law.
4. During election periods, contestants shall have the right to regular and equitable broadcasting time on public radio and television stations of national or local range, within the terms of the law.

### **Article 50 (Right to Freedom of Assembly and Demonstration)**

All citizens shall have the right to freedom of assembly and demonstration, within the terms of the law.

### **Article 51 (Freedom of Association)**

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<sup>2</sup> Translator's note: The Assembly of the Republic (*Assembleia da República*) is the Parliament.

1. All citizens shall enjoy freedom of association.
2. Social organisations and associations shall have the right to pursue their aims, to create institutions designed to achieve their specific objectives and to own assets in order to carry out their activities, in accordance with the law.
3. Armed associations of a military or paramilitary nature, as well as associations that promote violence, racism, xenophobia or pursue aims that are against the law, shall be prohibited.

**Article 52**  
**(Freedom to Form, Participate in and Join Political Parties)**

1. All citizens shall have the freedom to form or to participate in political parties.
2. Party membership shall be voluntary and shall derive from the freedom of citizens to associate on the basis of the same political ideals.

**Article 53**  
**(Freedom of Conscience, Religion and Worship)**

1. All citizens shall have the freedom to practice or not to practice a religion.
2. Nobody shall be discriminated against, persecuted, prejudiced, deprived of his or her rights, or benefit from or be exempt from duties, on the grounds of his faith or religious persuasion or practice.
3. Religious denominations shall have the right to pursue their religious aims freely and to own and acquire assets for realising those aims.
4. The protection of places of worship shall be ensured.
5. The right to conscientious objection shall be guaranteed.

*(There are those who disagree with the right to conscientious objection).*

**Article 54**  
**(Freedom of Residence and Movement)**

1. All citizens shall have the right to take up residence in any part of the national territory.
2. All citizens shall be free to travel inside the national territory and abroad, except those who have been legally deprived of this right by the courts.

**CHAPTER III**  
**INDIVIDUAL RIGHTS, FREEDOMS AND GUARANTEES**

**Article 55**  
**(General Principles)**

1. Individual rights and freedoms shall be directly applicable, shall bind both public and private entities, shall be guaranteed by the State, and shall be exercised within the Constitutional framework and the law.
2. The exercise of rights and freedoms may be restricted only pursuant to the safeguarding of other rights and interests that are protected by the Constitution
3. The law may restrict rights, freedoms and guarantees only in cases expressly provided for in the Constitution.

4. Legal restrictions on rights and freedoms shall be of a general and abstract nature and shall not have retroactive effect.

**Article 56**  
**(Non-Retroactivity)**

In the Republic of Mozambique laws may have retroactive effect only where this is to the benefit of citizens and other legal persons.

**Article 57**  
**(Right to Compensation and State Responsibility)**

1. Everyone shall have the right to claim compensation in accordance with the law, for damages caused by a violation of their fundamental rights.
2. The State shall be responsible for damages caused by the unlawful acts of its agents, in the performance of their duties, without prejudice to rights of recourse available under the law.

**Article 58**  
**(Right to Liberty and to Security)**

1. In the Republic of Mozambique everyone has the right to liberty and to security. Nobody shall be detained and put on trial except in accordance with the law.
2. Accused persons shall enjoy a presumption of innocence until final judgement has been passed.
3. No citizen shall be tried more than once for the same crime, nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.

**Article 59**  
**(Application of Criminal Law)**

1. Nobody shall be condemned for an act which did not constitute a criminal offence at the time when it was committed.
2. Criminal law may be applied retroactively only in favour of the accused.

**Article 60**  
**(Restrictions on Penalties and Security Measures)**

1. Penalties and security measures that restrict freedom in perpetuity or for an unlimited or indefinite period shall be prohibited.
2. Penalties are not transmissible.
3. No penalty shall deprive persons of any of their civil, professional or political rights, nor shall any penalty deprive a convicted person of his or her fundamental rights, except in so far the restrictions are inherent to the conviction and are specifically necessary for the execution of the sentence.

**Article 61**  
**(Access to Courts)**

1. The State shall guarantee the access of citizens to the courts. It shall guarantee that persons charged with a crime shall have the right to defence and the right to legal assistance and legal aid.
2. The accused shall have the right freely to choose a defence counsel to assist in all acts of the proceedings. It shall be ensured that adequate legal assistance is given to accused persons who, for economic reasons, are unable to engage their own counsel.

**Article 62  
(Preventive Imprisonment)**

1. Preventive imprisonment shall be permitted only in cases provided for by the law, which shall determine the duration of such imprisonment.
2. Citizens held in preventive imprisonment shall, within the period fixed by law, be brought before the judicial authorities who alone shall have the power to decide on the lawfulness and continuation of the imprisonment.
3. Everyone deprived of their liberty shall be informed promptly and in a way that they understand of the reasons for their imprisonment or detention and of their rights.
4. The judicial decision by which an imprisonment or detention is ordered or maintained shall be communicated promptly to a relative or trusted acquaintance of the accused, as indicated by the accused.

**Article 63  
(Principles of Criminal Process)**

1. Criminal process shall be subject to the principle of inquisition and argumentation.
2. In criminal process, the right to defence and to trial is an inviolable right guaranteed to every accused.
3. Criminal hearings shall be public, except in so far as is prudent to exclude or restrict publicity in order to safeguard personal, family, social or moral intimacy.
4. All evidence obtained through the use of torture, coercion, offences against the physical or moral integrity of the person, the abusive intrusion into their private and family life or into their home, correspondence or telecommunications, shall be invalid.
5. No case may be withdrawn from a court whose competence is established by an earlier law.
6. The law ensures that accused persons subject to disciplinary proceedings shall have the right to a hearing and the right to defence.

**Article 64  
(Habeas Corpus)**

1. In the case of unlawful imprisonment or detention, the citizen shall have the right to interpose a writ of *habeas corpus*.
2. The writ of *habeas corpus* shall be interposed before the court, which shall decide on the matter within a period not longer than ten days.

**Article 65  
(Extradition and Expulsion)**

1. Extradition and expulsion may take place only pursuant to a court decision.
2. Extradition for political reasons shall not be permitted.
3. Extradition shall not be permitted for crimes which are punishable by death or by perpetual imprisonment under the law of the requesting State, or when there are grounds to believe that the extradited person may be subjected to torture or inhumane, degrading or cruel treatment.
4. No Mozambican citizen may be expelled or extradited from the national territory.

**Article 66**  
**(Inviolability of the Home and of Correspondence)**

1. The home and the correspondence or other forms of private communication shall be inviolable, except in cases specifically provided for by law.
2. Entry into the home of a citizen against the citizen's will may be ordered only by the competent judicial authorities, in such instances and according to such procedures as are established by law.
3. Nobody shall enter the home of any person during the night without that person's consent.

**Article 67**  
**(Right to Contest)**

Every citizen shall be entitled to contest those acts which violate their rights enshrined in the Constitution and the laws.

**Article 68**  
**(Right of Recourse to the Courts)**

Every citizen shall have the right of recourse to the courts for protection against acts that violate his fundamental rights recognised by the Constitution and the laws.

**Article 69**  
**(Use of Computerised Data)**

1. The use of computerised means for recording and processing individually identifiable data in respect of political, philosophical or ideological beliefs, of religious faith, party or trade union affiliation or private lives, shall be prohibited.
2. The law shall regulate the protection of personal data kept on computerised records, the conditions of access to data banks, and the creation and use of such data banks and computerised back ups by public authorities and private entities.
3. Access to data bases or to computerised archives, files and records for obtaining information on the personal data of third parties, as well as the transfer of personal data from one computerised file to another that belongs to a distinct service or institution, shall be prohibited except in cases provided for by law or by judicial decision.

**Article 79**  
**(Supreme Council for Mass Communication)**

1. The right to information, the freedom of the press and the independence of the media, as well as broadcasting rights and the right of reply, shall be guaranteed by the Supreme Council for Mass Communication.
2. The Supreme Council for Mass Communication shall be an independent body composed of eleven members appointed in the following way:
  - a) Two members appointed by the President of the Republic, one of whom shall be a judicial magistrate proposed by the Supreme Council of the Judiciary, who shall preside;
  - b) Five members elected by the Assembly of the Republic in accordance with the degree of parliamentary representation;
  - c) Three representatives of journalists, elected by the respective professional organisations;
  - d) One representative of media companies or institutions.

3. The Supreme Council for Mass Communication shall issue a prior opinion on the Government's decision to license private television and radio channels. Such opinion shall, when favourable to the granting of the license, affect only the application for which the favourable opinion was given.
4. The Supreme Council for Mass Communication shall intervene in the appointment and discharge of directors for the offices of the public sector media, in accordance with the law.
5. The law shall regulate the organisation, functioning and jurisdiction of the Supreme Council for Mass Communication.

**Article 71  
(Suspension of Rights)**

1. Individual freedoms and guarantees may be temporarily suspended or restricted only in the event of a declaration of a state of war, of a state of siege, or of a state of emergency, in accordance with the terms of the Constitution.
2. Whenever there is a suspension or restriction of freedoms or guarantees, such suspension or restriction shall be general and abstract, and the duration and the legal grounds on which it is founded shall be specified.

**CHAPTER IV  
POLITICAL RIGHTS, FREEDOMS AND GUARANTEES**

**Article 72  
(Universal Suffrage)**

The Mozambican people shall exercise political power through elections of their representatives by universal, direct, equal and periodic suffrage and by secret ballot, through referenda on major national issues, and through the permanent democratic participation of citizens in the affairs of the Nation.

**Article 73  
(Political Parties and Pluralism)**

1. Political parties shall be the expression of political pluralism. They shall contribute to the formation and manifestation of the will of the people and shall be fundamental instruments of democratic participation by citizens in the governing of the country.
2. The internal structure and the operation of political parties shall be democratic.

**Article 74  
(Formation of Political Parties)**

1. In deep respect for national unity, all political parties shall be bound by the principles enshrined in the Constitution and in the law.
2. Political parties shall, in their formation and in the realisation of their objectives, be subject to the following conditions:
  - a) They shall be national in scope;
  - b) They shall defend national interests;
  - c) They shall contribute to the formation of public opinion, particularly on major national issues;
  - d) They shall strengthen the patriotic spirit of citizens and the consolidation of the Mozambican Nation.

3. Parties shall contribute, through the political and civic education of citizens, towards peace and stability in the country.
4. The formation, structure and operation of parties shall be regulated by law.

**Article 75  
(Names)**

Political parties shall be prohibited from using names containing expressions that are directly related to any religious denominations or churches, and from using emblems which may be confused with national or religious symbols.

**Article 76  
(Prohibition Against Resorting to Violence)**

Political parties shall be prohibited from advocating or resorting to violence in order to change the political or social order of the country.

**Article 77  
(Associations)**

1. Social organisations, as associations of citizens having joint interests and affinities, play an important role in promoting democracy and in the participation of citizens in political life.
2. Social organisations contribute to achieving the rights and freedoms of citizens, as well as towards raising individual and collective consciousness in the fulfilment of civic duties.

**Article 78  
(Right of Petition, Complaint and Claim)**

1. All citizens shall have the right to present petitions, complaints and claims to the competent authority in order to obtain the restitution of their rights violated or in defence of the public interest.
2. All citizens shall have the right not to comply with orders that are unlawful or that infringe on their rights, freedoms and guarantees.

**Article 79  
(Right of Public Action)**

1. All citizens shall have the right to public action in accordance with the law, either personally or through associations for defending the interests in question.
2. The right of public action shall consist of:
  - a) The right to claim for the injured party or parties such compensation as they are entitled to;
  - b) The right to advocate the prevention, cessation or judicial restraint of offences against the public health, consumer rights, environmental conservation and cultural heritage;
  - c) The right to defend the property of the State and of local councils.

**CHAPTER V  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND DUTIES**

**Article 80  
(Right of Ownership)**

1. The State shall recognise and guarantee the right of ownership of property.

2. Expropriation may take place only for reasons of public necessity, utility, or public interest, and in these cases according to the forms established by law and upon payment of just compensation.

**Article 81  
(Right of Inheritance)**

The State recognises and guarantees, in accordance with the law, the right of inheritance.

**Article 82  
(Right to Work)**

1. Work shall be a right and a duty of all citizens, regardless of sex.
2. All citizens shall have the right freely to choose their profession.
3. Forced labour shall be prohibited, except where the work is performed within the framework of criminal law.

**Article 83  
(Right to Retribution and to Security at Work)**

1. All workers shall have the right to just remuneration, rest and vacation and to retirement in accordance with the law.
2. Workers shall have the right to protection, health and safety at work.
3. Workers may be dismissed only in the cases and in accordance with the terms provided for by law.

**Article 84  
(Freedom of Professional Associations and Unions)**

1. All workers shall have the freedom to organise professional associations or trade unions.
2. Professional associations and trade unions shall be governed by the principles of democratic organisation and management, based on the active participation of their members in all of their activities, and on the periodical election of their bodies by secret ballot.
3. Professional associations and trade unions shall be independent from employers, from the State, from political parties and from churches or religious denominations.
4. The law shall regulate the creation, merger, alliance and dissolution of professional associations and trade unions, as well as the guarantees of their autonomy and independence from employers, from the State, from political parties and from churches and religious denominations.

**Article 85  
(Right to Strike and Prohibition of Lock Outs)**

1. Workers shall have the right to strike. The exercise of this right shall be regulated by law.
2. The law shall restrict the exercise of the right to strike in essential services and activities, in the interest of the overriding needs of society and of national security.
3. Lock outs shall be prohibited.

**Article 86  
(Right to Education)**

1. In the Republic of Mozambique, education shall be a right and a duty of all citizens.

2. The State shall promote greater and equal access to the enjoyment of this right by all citizens.

**Article 87  
(Health)**

All citizens shall have the right to medical and health care, within the terms of the law, and shall have the duty to promote and preserve health.

**Article 88  
(Right to a Balanced Environment)**

1. All citizens shall have the right live in a balanced environment and shall have the duty to defend it.
2. The State and the local councils, with collaboration from associations for environmental protection, shall adopt policies to protect the environment and shall promote the rational use of all natural resources.

**Article 89  
(Housing and Urbanisation)**

1. All citizens shall have the right to a suitable home, and it shall be the duty of the State, in accordance with national economic development, to create the appropriate institutional, normative and infra-structural conditions.
2. the State shall also be responsible for funding and supporting the initiatives of the local communities, the local councils and the people, in order to promote private and co-operative construction as well the accessibility of home ownership.

**Article 90  
(Rights of Consumers)**

Consumer associations and co-operatives shall have the right, within the terms of the law, to State assistance, the right to be heard on issues concerning consumer protection, and title to sue in order to defend the interests of their members.

**Article 91  
(Physical Culture and Sport)**

1. Citizens shall have the right to physical education and to sport.
2. The State shall encourage, through educational and sporting institutions, the practice and the dissemination of physical education and sport.

**Article 92  
(Freedom of Cultural Creativity)**

1. All citizens shall have the right to freedom of scientific, technical, literary and artistic creativity.
2. The State shall protect rights relating to intellectual property, including copyright, and shall promote the practice and dissemination of literature and art.

**Article 93  
(Right to Assistance of the Disabled and the Aged)**

1. All citizens shall have the right to assistance in the case of disability or old age.
2. The State shall promote and encourage the creation of conditions for achieving this right.

**PART IV  
ECONOMIC, SOCIAL, FINANCIAL AND FISCAL ORGANISATION**

**CHAPTER I  
GENERAL PRINCIPALS**

**Article 94  
(Economic Policy)**

The State economic policy shall be directed towards laying the fundamental bases for development, improving the living conditions of the people, strengthening the sovereignty of the State, and consolidating national unity, through the participation of citizens and the efficient use of human and material resources.

**Article 95  
(Fundamental Principles)**

The economic and social order of the Republic of Mozambique shall aim to satisfy the basic needs of the people and to promote social well being, and shall be based on the following fundamental principles:

- a) On the value of labour;
- b) On market forces;
- c) On the initiatives of economic agents;
- d) On the co-existence of the public sector, the private sector and the social and co-operative sector ownership of the means of production;
- e) On public ownership of natural resources and means of production, in accordance with the collective interest;
- f) On the protection of the co-operative and social sector ownership of means of production;
- g) On the action of the State as regulator and promoter of economic and social growth and development.

**Article 96  
(State Property and Public Domain)<sup>3</sup>**

1. Natural resources in the soil and the subsoil, in inland waters, in the territorial sea, on the continental shelf and in the exclusive economic zone shall be the property of the State.
2. The public domain of the State shall include:
  - a) The maritime zone;
  - b) The airspace;
  - c) Archaeological heritage;
  - d) Nature conservation zones;
  - e) Hydraulic resources;

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<sup>3</sup> Translator's note: The concept of property of the public domain is distinct from State property, which includes but is not limited to property of the public domain.

- f) Energy resources;
  - g) Roads and railways;
  - h) Mineral deposits;
  - i) Other property classified as such by law.
3. The law shall regulate the legal regime of property of the public domain, as well as its management and conservation, and shall distinguish between the public domain of the State, the public domain of local councils and the public domain of communities, with due respect for the principles of imprescriptibility and non-attachability.

**Article 97**  
**(Sectors of Ownership of the Means of Production)**

1. The national economy shall guarantee the coexistence of three sectors of ownership of the means of production.
2. The public sector consists of those means of production the ownership and management of which belong to the State or other public entities.
3. The private sector consists of those means of production the ownership and management of which belong to individual or collective private persons, without prejudice to the following paragraph.
4. The co-operative and social sector comprises, specifically:
  - a) Community means of production, held and managed by local communities;
  - b) Means of Production exploited collectively by workers;
  - c) Means of Production held and managed by non-profit making corporate persons whose main objective is social solidarity, namely, entities of a mutualist nature.

**Article 98**  
**(Taxes)**

Taxes shall be established and modified by law, and shall be set according to criteria of social justice.

**CHAPTER II**  
**ECONOMIC ORGANISATION**

**Article 99**  
**(Co-ordination of Economic Activity)**

1. The State shall promote and co-ordinate economic activity, acting directly or indirectly to resolve the basic problems of the people and to reduce social and regional inequalities.
2. State investment shall play a dynamising role in promoting development.

**Article 100**  
**(Natural Resources)**

The State shall promote knowledge, surveys and evaluation of natural resources, and shall determine the conditions under which they may be used and developed in the national interest.

**Article 101**  
**(Agriculture)**

1. The Republic of Mozambique shall treat agriculture as the basis for national development.
2. The State shall guarantee and promote rural development in order to satisfy the growing and diverse needs of the people, and for the economic and social progress of the country.

**Article 102  
(Industry)**

The Republic of Mozambique shall treat industry as a dynamising factor for the national economy.

**Article 103  
(Family Sector)**

1. In satisfying the needs of the people, the family sector plays a fundamental role.
2. The State shall support and provide incentives for family sector production, and shall encourage peasants as well as individual workers to organise themselves into more advanced forms of production.

**Article 104  
(Small Scale Production)**

The State shall recognise the contribution made by small scale production to the national economy, and shall support its development as a way of making good use of the capacity and the creativity of the people.

**Article 105  
(National Business Sector)**

The State shall promote and support the active participation of the national business sector in the development and consolidation of the country's economy.

**Article 106  
(Foreign Investment)**

1. Foreign investment shall operate within the framework of State economic policy.
2. Foreign ventures shall be permitted in all economic sectors, except those that are reserved exclusively for State ownership or development by the State.

**Article 107  
(Land)**

1. All ownership of land shall vest in the State.
2. Land may not be sold or otherwise disposed of, nor may it be mortgaged or encumbered.
3. As a universal means for the creation of wealth and of social well being, the use and enjoyment of land shall be the right of all the Mozambican people.

*(a proposal was made envisaging the introduction of the principle of transmissibility of land ownership to individual and corporate persons, on the ground that this would lead to more rational use of land).*

**Article 108  
(Land Use and Benefit)**

1. The State shall determine the conditions under which land may be used and enjoyed.

2. The right to land use and benefit<sup>4</sup> shall be granted to individual or corporate persons, taking into account its social purpose.

**Article 109**  
**(Rights Acquired Through Inheritance or Occupation of Land)**

In the use of rights to land use and benefit, the State shall recognise and protect rights acquired through inheritance or by occupation, unless there is a legal reservation or the land has been lawfully granted to another person or entity.

**CHAPTER III**  
**SOCIAL ORGANISATION**

**Article 110**  
**(Labour)**

1. Labour is the driving force of development and shall merit respect and protection.
2. The State shall promote the just distribution of the proceeds of labour.
3. The State maintains that everyone should receive equal pay for equal work.

**Article 111**  
**(Education)**

1. The Republic of Mozambique shall promote an educational strategy that aims at national unity, at wiping out illiteracy, at mastering science and technology, and at providing citizens with moral and civic values.
2. The State shall organise and develop education through a national system of education.
3. Public education shall not pertain to any religion.
4. Education provided by collective and other bodies shall be administered in accordance with the law and shall be subject to State control.
5. The State shall not plan education and culture in accordance with any specific philosophical, aesthetic, political, ideological or religious guidelines.

**Article 112**  
**(Higher Education)**

1. Access to public institutions of higher education should guarantee equality and equity of opportunity and the democratisation of education, taking into account the requirements in terms of qualified staff and the raising of educational and scientific standards of the country.
2. Public institutions of higher education shall be public corporate persons, they shall have legal personality and shall enjoy scientific, teaching and administrative autonomy, without prejudice to the appropriate evaluation of teaching standards, in accordance with the law.

**Article 113**  
**(Culture)**

1. The State shall promote the development of national culture and identity and shall guarantee free expression of the traditions and values of Mozambican society.

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<sup>4</sup> Translator's note: the concept of "direito de *uso e aproveitamento de terra*" may be explained as the right to use, enjoy and benefit from the land. It is generally translated as the "right to land use and benefit".

2. The State shall promote the dissemination of Mozambican culture and shall take action to enable the Mozambican people to benefit from the cultural achievements of other peoples.

**Article 114  
(Health)**

1. Medical and health care for citizens shall be organised through a national health service which shall benefit all Mozambican people.
2. To achieve the goals of the national health service, the law shall establish the ways in which medical and health care is delivered.
3. The State shall promote the participation of citizens and institutions in order to raise the standard of community health care.
4. The State shall promote the expansion of medical and health care and the equal access of citizens to the enjoyment of this right.
5. The State shall control and supervise the production, the sale and the use of chemical, biological and pharmaceutical products and other forms of treatment and diagnosis.
6. The medical and health care activities run by collective and private bodies shall be carried out in accordance with the law and shall be subject to the supervision of the State.

**Article 115  
(Environment and Quality of Life)**

1. The State shall promote efforts to guarantee the ecological balance and the conservation and preservation of the environment, with a view to improving the quality of life of its citizens.
2. With a view to guaranteeing the right to the environment within the framework of sustainable development, the State shall adopt policies aimed at:
  - a) Preventing and controlling pollution and erosion;
  - b) Integrating environmental objectives with sectoral policies;
  - c) Promoting the integration of environmental values with educational policies and programmes;
  - d) Guaranteeing the rational utilisation of natural resources and the safeguarding of their capacity to regenerate, of ecological stability and of the rights of future generations;
  - e) Promoting territorial ordinance with a view to ensuring the correct location of activities, and balanced socio-economic development.

**Article 116  
(Family)**

1. The family is the fundamental unit of society.
2. The State shall, in accordance with the law, recognise and protect marriage as the institution that secures values of the family.
3. In the context of the development of social relations based on respect for human dignity, the State shall guarantee the principle that marriage is based on free consent.

**Article 117  
(Motherhood)**

1. Motherhood shall be afforded special respect and protection.
2. The family shall be responsible for raising children in a harmonious manner, and shall teach the new generations moral and social values.
3. The family and the State shall ensure the education of children, bringing them up in the values of national unity, love for the motherland, human equality, respect and social solidarity.
4. Fathers and mothers shall support children born out of wedlock and those born in wedlock.

**Article 118  
(Infancy)**

1. All children have the right to protection from the family, from society and from the State, having in mind their full development.
2. Children, in particular orphans and disabled and abandoned children, shall be protected by the family, by society and by the State against all forms of discrimination, ill treatment and the abusive use of authority within the family and in other institutions.
3. Children shall not be discriminated against on the grounds of their birth, nor shall they be subjected to ill treatment.
4. Child labour of children who are of compulsory school going age shall be prohibited.

**Article 119  
(Women)**

1. The State shall promote and support the holding of Mozambican women in high esteem, and shall encourage their growing role in society, in all spheres of political, economic, social and cultural life of the country.
2. The State recognises and holds in high esteem the participation of Mozambican women in the national liberation process.

*(The meaning and scope of paragraph one of this provision has been questioned. It has been compared with the principle of equality between men and women, enshrined in article 37. It has also been suggested that the existing paragraph 1 be maintained as it is, using the words "emancipation of women" instead of "holding of women in high esteem").*

**Article 120  
(Youth)**

1. Young people, honourably upholding the patriotic traditions of the Mozambican people, played a decisive role in the liberation struggle and constitute a force for the renewal of Mozambican society.
2. State policy shall be directed particularly towards ensuring the harmonious development of young people, to helping them acquire a taste for free and creative work, to developing their sense of serving the community, and to providing appropriate conditions for their entering into active life.
3. The State shall promote, support and encourage young people's initiatives in consolidating national unity, and in the reconstruction, the development and the defence of the country.
4. The State and society shall stimulate and support the creation of youth organisations for the realisation of cultural, artistic, recreational, sporting and educational objectives.
5. The State, acting in co-operation with associations representing parents and persons in charge of education, and with private institutions and youth organisations, shall adopt a national youth policy

capable of promoting and advancing the professional training of young people, access to first jobs and free intellectual and physical development.

**Article 121  
(Elderly)**

1. The elderly shall have the right to special protection by their family, society and the State, particularly through the creation of housing conditions, by living in togetherness with the family and the community, and by being received at public and private institutions, thereby preventing their marginalisation.
2. The State shall promote a policy for the elderly which integrates economic, social and cultural action, in order to create opportunities that individuals can enjoy through their involvement in the life of the community.

**Article 122  
(Disabled)**

1. The disabled shall have a right to special protection by the family, the society and the State
2. The State shall promote the creation of conditions necessary for the economic and social integration of the disabled.
3. The State shall promote, in co-operation with associations of the disabled and with private entities, a policy which shall guarantee:
  - a) The rehabilitation and integration of the disabled;
  - b) The creation of conditions apt to preventing their social isolation and marginalisation;
  - c) Priority treatment of disabled citizens by public and private services.
4. The State shall encourage the establishment of associations of the disabled.

**CHAPTER IV  
FINANCIAL AND TAX SYSTEM**

**Article 123  
(Financial System)**

The financial system shall promote the deposit of savings, and shall guarantee the application of financial measures required for the economic and social development of the country.

**Article 124  
(Tax System)**

1. The taxation system shall be structured in a way that will satisfy the financial requirements of the State and other public bodies, achieve the aims of the country's economic policy, and guarantee the just distribution of income and wealth.
2. Taxes shall be established by law, which shall stipulate tax incidence and tax rates, and fiscal benefits and guarantees afforded to tax payers.
3. Nobody may be compelled to pay taxes which have not been established in terms of the Constitution, and which are not assessed and collected in accordance with the law.
4. During the course of the same financial year, tax incidence and tax rates may not be increased.

5. Tax law shall not have retroactive effect, except where this would be more favourable to the tax payer.

**Article 125  
(Budget)**

1. The budget shall be unitary, shall classify revenue and expenditure according institution and to function, and shall at all times respect the rules on annual publication and on publicity, in accordance with the law.
2. The budget may be structured by multi-annual programmes or projects. In these cases, the budget shall present the expenditure in respect of the particular year.
3. The budget proposal, together with reports to substantiate revenue and expenditure and variations thereof, as well as such other information as may be necessary, shall be submitted by the Government and voted on by the Assembly of the Republic, within the time limits prescribed by law.
4. The implementation of the budget shall be supervised by the Assembly of the Republic, which shall appraise and approve the general State account.
5. The law shall define rules for implementation of the budget, and shall establish the criteria according to which the budget may be modified during the course of its implementation. The law shall also establish procedures to be followed whenever it is not possible to meet the time limits for submission of and voting on the budget.

**Article 126  
(Central Bank)**

The Bank of Mozambique, as the Central Bank and the State Bank, shall be the exclusive issuer of currency and shall contribute to the definition and implementation of monetary, financial and exchange policies, in accordance with the law.

**PART V  
ORGANISATION OF POLITICAL POWER**

**SOLE CHAPTER  
GENERAL PRINCIPLES**

**Article 127  
(Sovereign Public Offices)**

The sovereign public offices are: the President of the Republic, the Assembly of the Republic, the Government and the Courts.

**Article 128  
(Separation and Interdependence)**

The sovereign public offices are established on the principles of separation and interdependence of powers enshrined in the Constitution, and shall owe obedience to the Constitution and the laws.

**Article 129  
(General Principles of the Electoral System)**

1. The general rule shall be that the appointment of elective sovereign public offices and elective local government shall take place through universal, direct, equal and periodic suffrage and by secret ballot.
2. Results of elections shall be calculated according to the system of proportional representation.

3. Voter registration and electoral activity shall be supervised by an independent body, the composition, organisation, operation and powers of which shall be established by law.
4. The electoral procedures shall be established by law.

**Article 130  
(Referenda)**

1. Citizens who have been registered as voters within the national territory, and those living abroad who have been properly registered as voters, may be called to take part in referenda on major national issues.
2. The decision to call a referendum shall be taken by the President of the Republic upon the recommendation of the Assembly of the Republic, made by an absolute majority of its members and at the initiative of at least one third of the deputies.
3. The following matters may not be subject to referenda:
  - a) Amendments to the Constitution;
  - b) Matters referred to in paragraph 2 of article 171.
4. If the matters referred to in paragraph 2 of article 171 are the subject of an international convention, they may be submitted to a referendum, except where they concern peace and the changing of boundaries.
5. No referendum shall be called or held during the period between the calling and the holding of a general election for sovereign public offices.
6. A referendum shall be considered valid and binding only where at least half of the registered voters have voted in it.
7. In addition to the relevant provisions of the electoral law in force at the time when they are held, the conditions for setting up and for holding referenda shall be established by a specific law.

**Article 131  
(Incompatibility)**

1. The offices of President of the Republic, Deputy, Prime Minister, Deputy Prime Minister, Minister, Deputy Minister, Secretary of State, Magistrate in office and Provincial Governor, shall be mutually incompatible.
2. The law may define other incompatibilities, including incompatibilities between public offices and private duties.

**Article 132  
(Central Offices)**

Central State offices are: the sovereign public offices, governmental bodies as a whole, and such institutions as are responsible for guaranteeing the precedence of national interests and the realisation of a unitary State policy.

**Article 133  
(Powers of Central Offices)**

1. Central offices shall, in general, have power to act in the exercise of sovereignty, to regulate matters in accordance with the law, and to define national policies.

2. The central offices shall have exclusive powers in the following matters: representation of the State, definition and organisation of the territory, national defence, public order, supervision of borders, issuing of currency, and diplomatic relations.

**Article 134**  
**(Heads and Agents of Public Offices)**

1. Central offices shall take action directly, or through appointed heads or agents of the administration, who shall supervise central activities within a particular territorial area.
2. The law shall determine the form, organisation and powers for the exercise of Public Administration.

*(In articles 132, 133 and 134 the concept of central offices, their powers and their duties seem to conflict with the concept of sovereign public offices. For this reason, there is an argument in favour of eliminating them).*

**Article 135**  
**(Provincial Government)**

1. The representative of the Government at provincial level is the Provincial Governor.
2. The Provincial Government is the body charged with ensuring the implementation, at provincial level, of centrally defined Government policies. The Provincial Government shall exercise administrative control over local councils.
3. Members of the Provincial Government are appointed by the Ministers responsible for the particular portfolios.
4. The composition, powers and functioning of Provincial Government shall be defined by law.

**Article 136**  
**(Normative Instruments)**

1. Legislative instruments shall consist of laws and decree-laws.
2. Regulatory instruments of the Government shall take the form of Decrees, whether they are made under the authority of a regulatory law or are made as autonomous regulations.
3. The instruments listed below shall be published in the *Boletim da República*<sup>5</sup>, otherwise they shall have no legal effect:
  - a) Laws, motions and resolutions of the Assembly of the Republic;
  - b) Decrees of the President of the Republic;
  - c) Decree-laws, resolutions and other legal instruments emanating from the Government;
  - d) Decisions of the Constitutional Court and of the benches of the Supreme Court of Justice;
  - e) The results of elections and national referenda;
  - f) International treaties and agreements.
4. The law shall define the publicity requirements applicable to other public legal instruments.

**Article 137**

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<sup>5</sup> Translator's note: this is the Government's Official Gazette.

**(Representation of Central Offices)**

The State offices shall ensure that they are represented at all territorial levels.

**PART VI  
PRESIDENT OF THE REPUBLIC**

**CHAPTER I  
STATUTE AND APPOINTMENT**

**Article 138  
(Definition)**

1. The President of the Republic is the Head of State, embodying national unity, representing the Nation on a national and an international scale, and overseeing the correct functioning of the State offices.
2. The Head of State shall be the guarantor of the Constitution.
3. The President of the Republic shall be the Commander-in-Chief of the Defence and Security Forces.

**Article 139  
(Eligibility)**

1. The President of the Republic shall be elected through direct, universal, equal and periodic suffrage and by personal and secret ballot.
2. All Mozambican citizens may be candidates for the office of President of the Republic, provided that they fulfil all of the following conditions:
  - a) That they possess nationality by origin and do not possess any other nationality;
  - b) That they are the children of parents who held Mozambican nationality by origin;
  - c) That they are at least thirty five years of age;
  - d) That they are in full possession of their civil and political rights;
  - e) That they have been proposed by at least ten thousand voters.
3. The term of the office of the President of the Republic shall be five years.
4. The President of the Republic may be re-elected only once.
5. A President of the Republic who has been elected on two consecutive occasions may be a candidate for further presidential elections only five years after the end of his last term of office.

**Article 140  
(Election)**

1. The candidate who gains more than half of the votes cast shall be elected President of the Republic.
2. If none of the candidates obtains the required majority, there shall be a second ballot between the two candidates receiving the most votes.

**Article 141  
(Incompatibility)**

The President of the Republic may not, except where the Constitution expressly provides otherwise, perform any other public function, and in no event may he perform any private functions.

**Article 142**  
**(Investiture and Swearing Into Office)**

1. The President of the Republic shall be sworn into office by the President of the Constitutional Court in a public ceremony before the deputies of the Assembly of the Republic and other representatives of the sovereign offices.
2. On assuming office, the President of the Republic shall take the following oath:

"I do swear on my honour that I will respect and ensure respect for the Constitution, that I will faithfully carry out the task of President of the Republic of Mozambique, that I will dedicate all my efforts to the defence, promotion and consolidation of national unity, and to the well-being of the Mozambican people, and I will ensure that justice is done for all citizens."

**Article 143**  
**(Disability or Absence)**

1. In the event of short term disability or absence of the President of the Republic, he shall be substituted by the President of the Assembly of the Republic<sup>6</sup> or, failing whom, by his substitute.
2. The simultaneous absence from the Country of the President of the Republic and his constitutional substitute shall be prohibited.
3. The Assembly of the Republic, the Constitutional Court and the Government shall be notified immediately of any short term disability or absence of the President of the Republic.

**Article 144**  
**(Interim Substitute and Incompatibilities)**

1. The functions of the Head of State shall be assumed on an interim basis by the President of the Assembly of the Republic in the following circumstances:
  - a) In the event of death or permanent incapacitation, certified by a medical board;
  - b) In the event of resignation, notified to the Assembly of the Republic;
  - c) Dismissal as a result of a condemnatory sentence of the Supreme Court of Justice.
2. The circumstances referred to in the preceding paragraph shall result in the holding of a general election for the office of President of the Republic.
3. If the President of the Republic resigns from office, he may not run as a candidate for a new term of office during the following ten years.
4. While the President of the Assembly of the Republic is acting as interim President of the Republic, his functions as a deputy shall be suspended automatically.

**Article 145**  
**(Criminal Liability)**

1. For crimes committed in the performance of his duties, the President shall be tried before the Supreme Court of Justice.

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<sup>6</sup> Translator's note: also known as the Speaker of Parliament.

2. For crimes committed outside the performance of his duties, the President shall be tried before the ordinary courts, during the term of his office.
3. The Assembly of the Republic shall request that the Attorney General of the Republic institute criminal proceedings against the President of the Republic, upon the recommendation of at least one third and carried by a majority of two thirds of the deputies of the Assembly of the Republic.
4. The President of the Republic shall be suspended from his duties as of the date on which final sentence or its equivalent has been passed, and his conviction shall result in his discharge from office.
5. The Supreme Court of Justice, sitting as a whole house, shall proffer a sentence within a maximum period of thirty days.
6. In the event of a conviction, the President of the Republic shall not be able to stand as a candidate for that office again, nor may he hold any position in a sovereign public office or a local council.

**Article 146  
(Preventive Imprisonment)**

In no circumstances whatsoever shall the President of the Republic be subjected to preventive imprisonment.

**Article 147  
(Election in the Event of Vacancy of Office)**

1. The election of a new President of the Republic, as a result of the death, resignation, or permanent incapacitation of the Head of State, shall take place within ninety days. The interim President of the Republic shall be excluded from standing as a candidate.
2. The President of the Republic elected as a result of the vacancy shall hold office for the remainder of the term of office of his predecessor.
3. An election for the office of President of the Republic shall not be held if the vacancy occurs during the three hundred and sixty five days prior to the end of the term of office. In this case, the interim President of the Republic shall hold office until the next general election.

**Article 148  
(Incapacitation)**

1. The permanent incapacitation of the President of the Republic shall be certified by a medical board, as defined by the law.
2. The permanent incapacitation of the President of the Republic shall be announced by the Constitutional Court.
3. The Constitutional Court shall certify the death and the divestiture of office of the President of the Republic.

**Article 149  
(Regime Governing the Interim Period)**

1. During the period in which the office of President of the Republic is vacant, the Constitution may not be altered.
2. The interim President of the Republic shall guarantee the functioning of the offices of the State and all other institutions, but shall not exercise the powers referred to in lines c), e), j) and k) of article 151.

3. The interim President of the Republic may carry out all acts referred to in lines d), f) and g) of article 151, in line e) of article 152, in article 153, and in line c) of article 154, after consulting the Council of State.

**Article 150  
(Form of Instruments)**

Normative instruments of the President of the Republic shall take the form of presidential decrees, and other decisions shall take the form of presidential orders.

**CHAPTER II  
POWERS**

**Article 151  
(General Powers)**

1. In his role as the Head of State, the President of the Republic shall have the power to:
  - a) Address the nation through messages and other communications;
  - b) Inform the Assembly of the Republic every year on the general state of the Nation;
  - c) Call a referendum in terms of the Constitution;
  - d) Call a general election;
  - e) Dissolve the Assembly of the Republic in terms of article 180, after consulting the political parties with seats in the Assembly of the Republic and after consulting the Council of State.
  - f) Dismiss the Government when its programme has been rejected by the Assembly of the Republic;
  - g) Appoint the President of the Constitutional Court, the President and the Vice President of the Supreme Court of Justice and the President of the Supreme Administrative Court;
  - h) Appoint, exonerate and dismiss the Attorney General of the Republic;
  - i) Appoint, exonerate and dismiss the Rectors and Vice Rectors of the State Universities, in accordance with the law;
  - j) Grant pardons and commute sentences;
  - k) Confer, within the terms of the law, honorary titles, decorations and distinctions;
  - l) Promulgate the laws and decree-laws;
  - m) Declare wars, states of siege and states of emergency, after consulting the Government, the Council of State and the Council of National Defence and Security.
2. In relation to other offices, the President of the Republic shall have the power to:
  - a) Preside at sessions of the Council of State;
  - b) Require that the President of the Assembly of the Republic convene an extraordinary session of this body in order to consider specific issues;
  - c) Appoint and exonerate the President of the Supreme Council for Mass Communication.

**Article 152  
(In Matters of Government)**

In matters of Government activity, the President of the Republic shall have power to:

- a) Appoint, exonerate and dismiss the Prime Minister, after consulting the parties represented in the Assembly of the Republic;
- b) Appoint, exonerate and dismiss, on the recommendation of the Prime Minister, the following:
  - The Deputy Prime Ministers;
  - The Ministers;
  - The Governor and Vice Governor of the Bank of Mozambique;
  - The Provincial Governors.
- c) Convene and preside at sessions of the Council of Ministers, to debate issues of major national interest, in particular, crucial problems in respect of national defence and security, public order and foreign policy.

*(The elimination of line c) has been suggested).*

**Article 153  
(In Matters of Defence and Public Order)**

In matters of national defence and of public order, the President of the Republic shall have power to:

- a) Declare a state of war and its termination, a state of siege, or a state of emergency;
- b) Sign treaties;
- c) Decree general or partial mobilisation;
- d) Appoint, exonerate and dismiss the Chief and Deputy Chief of the General Staff, the General Commander of the Police, the Wing Commanders of the Armed Forces of Mozambique, and other officers of the Defence and Security Forces in the terms established by law.

**Article 154  
(In Matters of International Relations)**

In matters of international relations, the President of the Republic shall have power to:

- a) Guide foreign policy;
- b) Ratify international treaties after they have been validly approved;
- c) Appoint, exonerate and dismiss Ambassadors and diplomatic envoys of the Republic of Mozambique;
- d) Receive the credentials of Ambassadors.

**Article 155  
(Promulgation and Veto)**

1. The President of the Republic shall promulgate laws and decrees and shall order their publication within thirty days of having received them.

2. The President of the Republic may, by order with reasons adduced, return a bill to the Assembly of the Republic for re-examination.
3. Should the Assembly of the Republic confirm the decision to approve the law by an absolute majority of deputies, the President of the Republic must promulgate the law within eight days.
4. Should the Government confirm a decree-law, the President of the Republic may send it to the Assembly of the Republic for examination within ten days, in which case the provisions of the preceding paragraph shall be observed.
5. A majority of two thirds of the deputies of the Assembly of the Republic shall be required for the confirmation of laws and decree-laws that address matters referred to in lines b), c) and d) of paragraph 2 of article 171, as well as the following other matters:
  - a) Limits on ownership of the means of production by the public sector, the private sector and the co-operative and social sector;
  - b) Foreign relations.

*(Regarding paragraph 3, there is an argument in favour of requiring a two thirds majority, instead of an absolute majority, to carry the confirmation of a decision).*

### **CHAPTER III COUNCIL OF STATE**

#### **Article 156 (Definition and Composition)**

1. The Council of State is a political body to advise the President of the Republic.
2. The Council of State shall be presided over by the President of the Republic and it shall have the following composition:
  - a) The President of the Assembly of the Republic;
  - b) The Prime Minister;
  - c) The Purveyor of Justice<sup>7</sup>;
  - d) The former Presidents of the Republic who were not dismissed from office;
  - e) The former Presidents of the Assembly of the Republic;
  - f) Seven persons of recognised merit elected by the Assembly of the Republic, for the length of the legislative term, on the basis of parliamentary representation;
  - g) Four persons of recognised merit appointed by the President of the Republic, for the term of his office;
  - h) The runner-up of the Presidential elections.

*(With regard to line h), it was suggested that the leader of the opposition and his respective statute be introduced, in the following terms: "The leader of the largest opposition party with parliamentary positions shall be given a suitable status, to be defined by law.")*

#### **Article 157**

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<sup>7</sup> Translator's note: The Purveyor of Justice ("Provedor de Justiça") is the Ombudsman.

**(Taking Office and Status)**

1. The members of the Council of State shall take up office before the President of the Republic.
2. The members of the Council of State shall continue to perform their functions while they remain in their respective offices.
3. The members of the Council of State shall enjoy the same privileges and immunities as Deputies of the Assembly of the Republic do, including ceremonial treatment.

**Article 158  
(Powers)**

The Council of State shall, in general, advise the President of the Republic on the performance of his functions whenever the President requests such advice. In particular, the Council of State shall:

- a) Advise on the dissolution of the Assembly of the Republic;
- b) Advise on the dismissal of the Government;
- c) Advise on the declaration of a state of war, a state of siege or a state of emergency;
- d) Advise on the actions of the interim President of the Republic in respect of the appointment of the Prime Minister, the dismissal of Government, the appointment and exoneration of the Attorney General of the Republic and of the General Chief of Staff of the Armed Forces.

**Article 159  
(Functioning)**

1. The opinions of the Council of State shall be issued at the meeting convened for this purpose by the President of the Republic, and may be made public when the action to which they refer is carried out.
2. Meetings of the Council of State shall not be public.
3. The Council of State shall establish its own regulations.

**PART VII  
ASSEMBLY OF THE REPUBLIC**

**CHAPTER I  
STATUS AND ELECTION**

**Article 160  
(Definition)**

1. The Assembly of the Republic is the representative assembly of all Mozambican citizens.
2. Deputies shall represent the entire country and not only the circle by which they were elected.

**Article 161  
(Election and Composition)**

1. The Assembly of the Republic shall be elected through direct, universal, equal and periodic suffrage and by secret and personal ballot.
2. The Assembly of the Republic shall consist of two hundred and fifty deputies.

3. Candidates for election shall be political parties, either individually or in coalitions, and their respective lists may include citizens who are not party members.

**Article 162**  
**(Term of Office of Deputies)**

1. The term of office of the deputies shall be the same as the legislative term, except where there is a resignation or loss of office.
2. The suspension, substitution, disqualification or resignation of deputies shall be regulated by the Statute of Deputies.

**Article 163**  
**(Incompatibility)**

1. The office of Deputy shall be incompatible with the following offices:
  - a) Member of Government;
  - b) Magistrate in office;
  - c) Diplomat in active service;
  - d) Military person in active service.
2. The law shall establish any other incompatibilities.

**Article 164**  
**(Powers of Deputies)**

The Deputies shall have the following powers:

- a) To present bills and proposals for resolutions or decisions;
- b) To exercise the right to vote;
- c) To stand as candidates for offices of the Assembly;
- d) To demand and obtain from the Government or from public institutions such data and information as are required for the performance of their functions;
- e) To put questions to the Government;
- f) Other powers assigned by the Regulation of the Assembly of the Republic<sup>8</sup>.

**Article 165**  
**(Immunities)**

1. No Deputy may be detained or arrested without the permission of the Assembly of the Republic or of its Standing Commission, unless apprehended in the act of committing a wilful criminal offence that carries a sentence of long term imprisonment.<sup>9</sup>

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<sup>8</sup> Translator's note: This is the "*Regimento da Assembleia da República*".

<sup>9</sup> Translator's note: I have translated "*prisão maior*" as long term imprisonment, in the absence of an exact equivalent in English. Based on the Penal Code of Mozambique, "*prisão maior*" covers prison sentences ranging between two to eight years and sixteen to twenty years, depending on the offence committed.

2. Deputies shall enjoy a special forum and shall be tried by the Supreme Court of Justice in terms of the law.

*(There are those who argue that the powers referred to in paragraph 1 should not be exercised by the Standing Commission).*

**Article 166  
(Non-Liability)**

1. The deputies of the Assembly of the Republic may not be sued, detained or put on trial for the opinions voiced or votes cast in exercising their functions as deputies.
2. The above does not apply to civil or criminal liability for insult, defamation or slander.

*(The elimination of paragraph 2 was proposed, on the grounds that it is a restriction on the freedom of expression of deputies and conflicts with the provisions of the preceding paragraph).*

**Article 167  
(Rights and Privileges of Deputies)**

1. Deputies shall enjoy the following rights and other privileges:
  - a) A special identification card;
  - b) Free movement through public places with restricted access, in the performance of and because of their functions as deputies;
  - c) Support, co-operation, protection and facilities from public or military entities of the Republic, for the purposes of the performance of their functions within the terms of the law
  - d) Remuneration and subsidies established by law.
2. Deputies may not take part in judicial proceedings as witness or expert witnesses, unless this has been authorised by the Assembly of the Republic or by its Standing Commission.
3. Deputies shall also enjoy the other rights and privileges established by law.

**Article 168  
(Duties of Deputies)**

Deputies shall have the following duties:

- a) To comply with the Constitution and the laws;
- b) To comply with the Statute of Deputies;
- c) To respect the dignity of the Assembly of the Republic and its Deputies;
- d) To attend Plenary sessions and sessions of the Commission of which he is a member;
- e) To take part in voting and in the work of the Assembly.

**Article 169  
(Resignation and Loss of Office)**

1. Any Deputy may resign from office within the terms of the law.

2. Deputies shall lose their office if they:
  - a) Have been definitively convicted of a wilful crime that carries a prison sentence of over two years;
  - b) Become a member of or assume a position in a party or coalition other than the one for which they were elected;
  - c) Do not take up a seat in the Assembly of the Republic, or exceed the number of absences established in the Regulation.
3. Loss of office shall also occur in the event of any ineligibility existing at the date of the elections and discovered subsequently, as well as any form of incapacity prescribed by law.

## **CHAPTER II POWERS**

### **Article 170 (Functions)**

1. The Assembly of the Republic is the legislative body of the Republic of Mozambique.
2. Through laws and decisions of a generic nature, the Assembly of the Republic shall determine the rules governing the activities of the State and of economic and social life.

### **Article 171 (Powers)**

1. The Assembly of the Republic shall have power to legislate on basic issues of the Country's domestic and foreign policy.
2. In particular, the Assembly of the Republic shall have power to:
  - a) Approve constitutional laws;
  - b) Delimit the boundaries of the Republic of Mozambique;
  - c) Decide on territorial divisions;
  - d) Approve the electoral law and the rules for referenda;
  - e) Approve treaties dealing with issues within their powers;
  - f) Propose the holding of referenda on matters of national interest;
  - g) Endorse the suspension of constitutional guarantees and the declaration of a state of siege or a state of emergency;
  - h) Ratify the appointment of the President of the Constitutional Court, of the President and the Vice President of the Supreme Court of Justice, and of the President of the Supreme Administrative Court;
  - i) Appraise and decide on the Government programme;
  - j) Appraise and decide on progress reports from the Council of Ministers;
  - k) Appraise and decide on the State Plan and Budget and the respective report concerning their implementation;

- l) Define defence and security policy, after consulting the National Defence and Security Council;
  - m) Define the bases for tax policy, taxes and the tax system;
  - n) Authorise the Government to legislate;
  - o) Authorise the Government, while defining the general conditions, to contract and make loans, to carry out other credit transactions, other than floating debt transactions, and to establish the upper limit for guarantees that may be given by the State in any one financial year;
  - p) Define the statute for holders of sovereign public offices and local council offices;
  - q) Appraise and decide on the general bases for the organisation of Public Administration;
  - r) Ratify decree-laws;
  - s) Ratify and terminate international treaties;
  - t) Ratify treaties on Mozambique's participation in international defence organisations;
  - u) Grant amnesties and pardons.
3. The Assembly of the Republic shall also have power to:
- a) Elect the President, the Vice Presidents, the Standing Commission and the Board of the Assembly of the Republic;
  - b) Approve the Regulation of the Assembly of the Republic and the Statute for Deputies;
  - c) Set up Commissions of the Assembly of the Republic.

*(With regard to the powers of the Assembly of the Republic, it was suggested that they be treated separately, establishing absolute powers, relative powers and powers subject to reservation, as well as powers which may be exercised by the Council of Ministers under legislative authority).*

**Article 172  
(Laws Conferring Legislative Authority)**

- 1. Laws conferring legislative authority shall define the purpose, intention, extent and duration of the authorisation.
- 2. Legislative authorisations may not be used more than once, without prejudice to cases where their implementation is broken down into parts or where they have been extended.
- 3. Legislative authorisations expire at the end of the legislative term, on the dissolution of the Assembly of the Republic or on the dismissal of Government.
- 4. The Government shall publish authorised legislative instruments by the last day of the time limit stipulated in the authorising legislation, which shall commence on the date of its publication.

**Article 173  
(Decree-Laws)**

- 1. A decree-law approved by the Council of Ministers under the authority of authorising legislation shall be deemed to have been ratified if its ratification is not demanded by at least fifteen deputies during the session of the Assembly held immediately after its publication.

2. The Assembly of the Republic may wholly or partially suspend the legal force of the decree-law until it has been evaluated.
3. The suspension shall expire if by the end of the session the Assembly has not pronounced on the matter.
4. Refusal to ratify shall imply revocation.

**Article 174  
(Form of Instruments)**

Legislative instruments of the Assembly of the Republic shall take the form of laws, and its other decisions shall take the form of resolutions.

**Article 175  
(Legislative Initiative)**

1. Legislative initiative shall belong to:
  - a) The deputies;
  - b) The parliamentary benches;
  - c) The Commissions of the Assembly of the Republic;
  - d) The Government;
  - e) The President of the Republic.
2. The Deputies and the Benches may not propose bills which, directly or indirectly, involve an increase in State expenditure or a reduction in State revenue, or which in any way change the financial year in progress.

*(There are those who believe that the legislative initiative of the President of the Republic should be removed).*

**Article 176  
(Rules for Debate and Voting)**

1. The discussion of legislative proposals and bills, and of proposed referenda, shall consist of a general debate and a specialised debate.
2. Voting shall consist of a general vote, a specialised vote and a final overall vote.
3. If the Assembly so resolves, texts approved by the general vote shall be put to the specialised vote of the commissions, without prejudice to the power of avocation of the Whole House, and to the final vote of the Whole House for overall approval.

**CHAPTER III  
ORGANISATION AND FUNCTIONING**

**Article 177  
(Legislative Term)**

1. The legislative term shall be of five years. It shall commence with the first session of the Assembly of the Republic held after the elections and shall terminate with the first session of the newly elected Assembly.

2. The first session of the Assembly of the Republic shall take place within twenty days after the election results have been announced and validated.

**Article 178  
(Parliamentary Sessions)**

The Assembly of the Republic shall meet in ordinary session twice each year, and in extraordinary session whenever requested by the President of the Republic, by the Standing Commission or by at least one third of the deputies.

*(There is a debate about the duration of parliamentary sessions. Some argue that there should be only one session a year, while others argue that there should be three).*

**Article 179  
(Quorum and Decision Making)**

1. The Assembly of the Republic may enter into debate and make decisions only when more than half of its members are present.
2. Decisions of the Assembly of the Republic shall be carried by more than half of the votes of the members present.

*(Two proposals are under discussion, the second alternative being the following: "draft constitutional laws shall be carried by a majority of two thirds of the votes of the deputies in active service; A majority of the votes of two thirds of the deputies present, provided that this exceeds the absolute majority of all deputies in active service, shall be required to carry legislative proposals and bills dealing with the following subject matters: national symbols, the acquisition, loss and reacquisition of citizenship, the legal rules for national referenda, the organisation of national defence, the rules on states of siege and states of emergency, political parties and the statute of the opposition, the definition of crimes, punishment and security measures, including the respective criminal procedures, the general bases of the organisation of Public Administration, the general bases of the organisation, functioning and discipline of the Defence and Security Forces, military service, including the police, the rules on land transactions, and the rules on radio and television broadcasting; In all other cases, legislative proposals and bills shall be carried by an absolute majority of the deputies in active service; The election of the Purveyor of Justice, of the five members of the Supreme Council for Mass Communication, the five members of the Supreme Council of the Judiciary, the seven members of the Constitutional Court, the seven members of recognised merit of the Council of State, and four members of the National Council for Defence and Security, shall require a majority of two thirds of the deputies in active service").*

**Article 180  
(Dissolution)**

The Assembly of the Republic shall be dissolved in the event of an institutional crisis which, during a period of ninety days, obstructs the formation of Government or the approval of the State Budget. The act of dissolution shall be preceded by consultation with the parties or coalitions and with the Council of State.

**Article 181  
(Restrictions on Dissolution)**

1. The Assembly of the Republic may not be dissolved during the first twelve months following its election, during the year preceding the elections for the President of the Republic, in the event of a state of siege or a state of emergency, during the course of such a state, or until the sixtieth day after it has terminated.

2. A dissolution carried out contrary to the provisions of the preceding paragraph shall be of no legal effect whatsoever.
3. The dissolution of the Assembly of the Republic shall not bring to an end the term of office of its deputies nor the powers and functions of the Standing Commission, which shall persist until the first session of the new elected Assembly.
4. In the event of dissolution, the new Assembly shall begin a new legislative term, which shall endure for the remainder of the previous legislative term.

**Article 182**  
**(President of the Assembly of the Republic)**

1. The Assembly of the Republic shall elect from among its members a President of the Assembly of the Republic.
2. The Head of State shall convene and chair the session at which the election of the President of the Assembly of the Republic takes place.
3. The President of the Assembly of the Republic shall be sworn into office by the President of the Constitutional Court.
4. The President of the Assembly of the Republic is accountable to the Assembly of the Republic.

*(There is disagreement in respect of paragraph 2, which is seen as an interference by the President of the Republic in the functioning of the Assembly).*

**Article 183**  
**(Powers of the President of the Assembly of the Republic)**

The President of the Assembly of the Republic shall have power to:

- a) Convene and chair sessions of the Assembly of the Republic, of its Standing Commission, and of its Board;
- b) Ensure the implementation of the decisions of the Assembly of the Republic;
- c) Sign bills adopted by the Assembly of the Republic and submit them for enactment;
- d) Sign and order the publication of resolutions of the Assembly of the Republic;
- e) Represent the Assembly of the Republic;
- f) Exercise any other powers established by the Constitution and the Regulation.

**Article 184**  
**(Vice Presidents of the Assembly of the Republic)**

1. The Assembly of the Republic shall elect from among its members three Vice Presidents nominated by the parties with the greatest parliamentary representation.
2. In the case of absence or disability of the President of the Assembly of the Republic, his functions shall be exercised by the Vice Presidents.

**Article 185**  
**(Standing Commission)**

1. The Standing Commission is the body of the Assembly of the Republic that co-ordinates the activities of the Assembly and of its Commissions.
2. The Standing Commission of the Assembly of the Republic shall be composed of the Board, and deputies elected in accordance with the law, on the recommendation of the parliamentary benches in accordance with their degree of representation.
3. The representatives referred to in the preceding paragraphs shall have the same number of votes in the Standing Commission as that of the benches that they represent.
4. The Standing Commission of the Assembly of the Republic shall function during the intermissions of the Assembly of the Republic, and at other times established in the Constitution and the law.

**Article 186  
(Permanence)**

At the end of the legislative term or in the event of dissolution, the Standing Commission of the Assembly of the Republic shall remain in office until the founding session of the newly elected Assembly.

**Article 187  
(Powers)**

The Standing Commission of the Assembly of the Republic shall have power to:

- a) Exercise the powers of the Assembly of the Republic in respect of the terms of office of the deputies;
- b) Ensure compliance with the Constitution and the laws, and monitor the activity of the Government and the Public Administration;
- c) Give its prior opinion on the declaration of war;
- d) Authorise or confirm, subject to ratification, declarations of states of siege and states of emergency, whenever the Assembly is not in session.
- e) Conduct the relations between the Assembly of the Republic and parliaments and similar institutions in other countries;
- f) Authorise the President of the Republic to make State visits abroad;
- g) Establish Inquiry Commissions of an urgent nature, during intermissions between plenary sessions of the Assembly of the Republic;
- h) Exercise such other powers as are conferred by the Regulation.

*(In relation to line g), there is an opposing view according to which it is argued that the Inquiry Commissions should be set up only by the Whole House).*

**Article 188  
(Board of the Assembly of the Republic)**

1. The Board of the Assembly of the Republic shall consist of the President, three Vice Presidents, and Secretaries, who shall be elected in accordance with the Regulation.
2. While the members of the Board are in office, they shall not take part in the leadership of the Benches nor shall they be members of any commissions.

**Article 189**

**(Powers)**

1. The Board of the Assembly of the Republic shall have power to:
  - a) Conduct the work of the plenary sessions;
  - b) Announce the loss of office and resignation of deputies, as well as suspensions, in terms of the Constitution and the Regulation;
  - c) Decide on questions of interpretation of the Regulation, during plenary sessions;
  - d) Integrate the initiatives of deputies, the Benches and the Government into the work of each session.
2. The Board of the Assembly of the Republic shall also guarantee the performance of Secretarial services, Administration and Financial services.

*(There is disagreement about paragraph 2. There is a view that the function provided for in that paragraph should be assigned to a Board of Directors or to a Commission established specially for this purpose).*

**Article 190  
(Parliamentary Benches)**

1. The deputies elected by each political party may set up a Parliamentary Bench.
2. The formation and organisation of Benches are provided for in the Regulation of the Assembly of the Republic.

*(The term Parliamentary "Bench" is under discussion and there are those who prefer the term "Group" rather than "Bench", for reasons of linguistic and technical accuracy.)*

**Article 191  
(Powers of the Parliamentary Benches)**

1. The Parliamentary Benches shall have the following powers:
  - a) To present candidates for the office of President of the Assembly of the Republic;
  - b) To propose candidates for Vice President of the Assembly;
  - c) To nominate candidates for the offices of the Assembly of the Republic;
  - d) To formulate questions to put to Government;
  - e) To propose that the Standing Commission convene the Assembly;
  - f) To exercise legislative initiative;
  - g) To exercise other powers established in the Regulation of the Assembly of the Republic.
2. Each Parliamentary Bench shall be entitled to have places of work within the Assembly, as well as to technical and administrative staff, in terms of the law.

**Article 192  
(Five-Yearly Government Programme)**

1. At the beginning of each legislative term, the Assembly of the Republic shall evaluate the Government programme.
2. The Government may present a revised programme that takes into account the conclusions of the debate.

**Article 193**  
**(Participation of Members of Government in the Sessions)**

1. The Prime Minister and the Ministers shall be entitled to attend the plenary sessions of the Assembly of the Republic, and shall have the right to speak, in accordance with the Regulation.
2. At plenary sessions, the attendance of the member or members of Government that were convened shall be mandatory. The Prime Minister may be substituted by the Deputy Prime Minister, if there is one and, otherwise, by another Minister designated for that purpose.

**PART VIII**  
**GOVERNMENT**

**CHAPTER I**  
**DEFINITION AND COMPOSITION**

**Article 194**  
**(Definition)**

The Government of the Republic of Mozambique is the Council of Ministers.

**Article 195**  
**(Composition)**

1. The Council of Ministers shall consist of the Prime Minister and the Ministers.
2. The Council of Ministers may comprise one or more Deputy Prime Ministers.
3. Deputy Ministers and Secretaries of State may be summoned to take part in meetings of the Council of Ministers.

**Article 196**  
**(Head of Government)**

The Prime Minister shall be the Head of the Government.

**Article 197**  
**(Convocation and Chairmanship)**

The Council of Ministers shall be convened and chaired by the Prime Minister.

**Article 198**  
**(Convocation and Chairmanship by the Head of State)**

The President of the Republic shall convene and chair meetings of the Council of Ministers in the cases established by law.

**CHAPTER II**  
**POWERS AND RESPONSIBILITIES**

**Article 199**  
**(Functions)**

The Council of Ministers shall secure the administration of the country, shall guarantee its territorial integrity, shall safeguard public order, including security and stability of citizens, shall promote economic development, shall implement the State's social programme, shall develop and consolidate legality and shall carry out the country's foreign policy.

**Article 200  
(Powers)**

1. In particular, the Council of Ministers shall have the power to:
  - a) Guarantee the enjoyment by citizens of their rights and freedoms;
  - b) Secure public order and social discipline;
  - c) Draft bills to be submitted to the Assembly of the Republic;
  - d) Adopt decree-laws under the authority of legislation of the Assembly of the Republic;
  - e) Draft the State Plan and Budget and implement them after they have been approved by the Assembly of the Republic;
  - f) Request any vote of confidence from the Assembly of the Republic;
  - g) Promote and regulate economic activity and the activity of social sectors;
  - h) Prepare the signature and formalisation of international treaties, and sign, ratify, adhere to and terminate international agreements;
  - i) Direct labour and social security policy;
  - j) Direct the State social sectors, particularly education and health;
  - k) Direct and promote housing policy.
2. The Council of Ministers shall also have power to:
  - a) Guarantee the defence and consolidation of the public domain of the State and of State property;
  - b) Direct and co-ordinate the activities of the ministries and other offices subordinate to the Council of Ministers;
  - c) Evaluate the activities of local executive offices and regulate their organisation and functioning, and supervise the offices of the local councils within the terms of the law;
  - d) Stimulate and support entrepreneurial activity private initiative, and protect the interests of consumers and of the general public;
  - e) Promote the development of co-operatives and support family sector production.
3. The Government shall have exclusive legislative initiative in respect of matters concerning its own organisation, composition and functioning.

**Article 201  
(Powers of the Prime Minister)**

The Prime Minister shall have power to:

- a) Direct the Council of Ministers;
- b) Submit proposals to the President of the Republic for the appointment of the members of Government;
- c) Submit proposals to the President of the Republic for the removal from office, exoneration or dismissal of the members of the Council of Ministers;
- d) Appoint Deputy Ministers and Secretaries of State;
- e) Exercise all other powers conferred upon him by the Constitution and the law.

**Article 202**  
**(Relationship with the Assembly of the Republic)**

1. In his relations with the Assembly of the Republic, the Prime Minister shall have power to:
  - a) Present to the Assembly of the Republic the Government's programme and the draft Plan and Budget;
  - b) Present Government reports;
  - c) Express the Government's positions to the Assembly of the Republic.
2. In the exercise of these functions, the Prime Minister shall be assisted by members of the Council of Ministers, whom he shall have designated.

**Article 203**  
**(Political Accountability)**

The Council of Ministers shall be accountable for its actions to the President of the Republic and to the Assembly of the Republic.

**Article 204**  
**(Political Accountability of Members of Government)**

1. The Prime Minister shall be accountable to the President of the Republic and to the Assembly of the Republic.
2. The Deputy Prime Ministers and the Ministers shall be accountable to the Prime Minister.
3. The Deputy Ministers shall be accountable to the Ministers.

**Article 205**  
**(Joint Governmental Responsibility)**

The members of the Government shall be bound by the Government Programme and by the decisions of the Council of Ministers.

**Article 206**  
**(Form of Instruments)**

1. Normative instruments of the Council of Ministers shall take the form of decree-laws and decrees.
2. The decree-laws and decrees referred to in the preceding paragraph shall indicate the law under the authority of which they were adopted.

3. Decree-laws and other decrees of the Government shall be signed by the Prime Minister and by the Ministers responsible by virtue of the particular subject matter.
4. All other Government instruments shall take the form of resolutions.

**Article 207  
(Government Programme)**

1. The Government Programme shall contain the main directives and measures to be adopted or proposed for the various areas of governmental activity.
2. The Government Programme shall be submitted to the Assembly of the Republic, for its approval, within a maximum of ten days after the appointment of the Prime Minister.
3. The debate shall not exceed three days and, during that time, any Parliamentary Bench may propose the rejection of the Programme and the Government may request the approval of a vote of confidence.

**Article 208  
(Vote of Confidence)**

At the request of the Government, the Assembly of the Republic may pass a vote of confidence on a declaration of general policy, or on any matter of public interest.

**Article 209  
(Censure Motion)**

1. The Assembly of the Republic may appraise proposals for censure motions against the Government on matters relating to the implementation of the Government programme or on any matter of public interest.
2. Motions must be introduced by one third of the deputies and must be passed by an absolute majority of the members of the Assembly of the Republic.
3. Censure motions shall be submitted to and evaluated by the Whole House within two working days after they were introduced, and the debate shall last for no more than one day.
4. In the event that the censure motion fails, its proponents may not introduce another one during the course of the same legislative session.

**Article 210  
(Dismissal)**

1. The Government shall be dismissed in the following cases:
  - a) At the commencement of a new legislative term;
  - b) At the request of the Prime Minister, accepted by the President of the Republic;
  - c) On the death, the temporary disability or the permanent physical incapacitation of the Prime Minister;
  - d) Upon the rejection of the Government Programme;
  - e) When a vote of confidence requested by the Government fails to be passed;
  - f) When a censure motion is passed.

2. The powers of the dismissed Government, as well as the Government's powers during the period between its appointment and the submission of the Government programme for parliamentary appraisal, shall be limited to such public juridical acts as are strictly necessary for the purposes of ordinary management.

**Article 211  
(Immunity)**

1. No member of Government may be arrested or detained without the permission of the Assembly of the Republic or of its Standing Commission, unless apprehended in the act of committing a wilful criminal offence that carries a sentence of long term imprisonment.<sup>10</sup>
2. In the event that criminal proceedings are brought against a member of Government, and the member has been definitively charged, the Assembly of the Republic or its Standing Commission shall decide whether or not the member should be suspended for the purposes of the proceedings. The decision to suspend shall be mandatory when the crime in question is of the type referred to in the preceding paragraph.

**PART IX  
THE COURTS**

**CHAPTER I  
GENERAL PRINCIPLES**

**Article 212  
(Jurisdictional Function)**

1. It shall be the function of the courts to guarantee and strengthen the rule of law as an instrument of legal stability, to guarantee respect for the laws, to safeguard the rights and freedoms of citizens, as well as the legal interests of other bodies and entities that have legal existence.
2. The courts shall educate citizens in the voluntary and conscientious observance of laws, thereby establishing a just and harmonious social community.
3. The courts shall punish violations of the legal order and shall adjudicate disputes in accordance with the law.

**Article 213  
(Evaluation of Unconstitutionality)**

Under no circumstances may the courts apply laws or principles which are contrary to the Constitution.

**Article 214  
(Court Decisions)**

It shall be compulsory for all citizens and other legal persons to obey court decisions. The decisions of the courts shall take precedence over the decisions of other authorities.

**Article 215  
(Jury, Social Participation and Accessibility)**

1. The Jury shall be composed of judges of law and of jurors and they shall take part in the judgement of crimes that carry a major sentence<sup>11</sup>, with the exception of terrorism and highly organised crime.

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<sup>10</sup> Translator's note: please see note 9, above.

<sup>11</sup> Translator's note: I have translated "*pena maior*" as major sentence. According to the Penal Code of Mozambique, the term "*pena maior*" denotes a class of sentences covering long term imprisonment and suspension of political rights.

2. The law shall provide for the participation of lay magistrates in the adjudication of issues involving labour, minors, infractions against the public health and petty crimes.
3. The law provides for the participation of technically qualified advisers in the adjudication of certain matters.
4. The composition, organisation, selection and functioning of the Jury shall be established by law.

**Article 216  
(Role of the Jury)**

1. The Jury shall take part only in judgements of the first instance.
2. In court hearings, questions of law shall always be determined by the professional judges.

**CHAPTER II  
STATUTE OF JUDGES**

**Article 217  
(independence of Judges)**

1. In the exercise of their functions, judges shall be independent and shall owe obedience only to the law.
2. Judges shall likewise be impartial and unaccountable.
3. Judges shall be irremovable, inasmuch as they shall not be transferred, suspended, retired or dismissed, except in the cases established by law.
4. The judges of the courts of justice shall form a unified body and shall be governed by a single statute.

**Article 218  
(Responsibility)**

1. Judges may be held responsible in civil, criminal and disciplinary proceedings for acts committed in the discharge of their duties only in cases specified by law.
2. The removal of a professional judge from the bench may take place only under legally established terms.

**Article 219  
(Incompatibility)**

Judges in office may not undertake any other public or private activity, except for teaching and research.

*(There are those who argue that judges should not perform any other remunerated activity whatsoever).*

**Article 220  
(Supreme Council of the Judiciary)**

The Supreme Council of the Judiciary shall be the body responsible for the management and discipline of the Judiciary.

**Article 221  
(Composition)**

1. The Supreme Council of the Judiciary shall be composed of:

- a) The President of the Supreme Court of Justice;
  - b) Two members appointed by the President of the Republic;
  - c) Five members elected by the Assembly of the Republic;
  - d) Five judges of law, all of whom shall be elected by their peers in conformity with the principle of proportional representation of category.
2. The Supreme Council of the Judiciary shall be presided over by the President of the Supreme Court of Justice, and shall provide annual information to the Assembly of the Republic about the general state of the administration of justice.
  3. The Supreme Council of the Judiciary may incorporate officers of justice elected by their peers for discussion and deliberation on matters related to professional merit and to the exercise disciplinary authority over them, in terms to be determined by law.
  4. The law shall regulate all other matters in respect of the powers, organisation and functioning of the Supreme Council of the Judiciary.

**Article 222  
(Powers)**

The Supreme Council of the Judiciary shall have power to:

- a) Nominate, appoint, transfer, promote, exonerate and evaluate professional merit, take disciplinary action and, in general, carry out all acts of the same nature in respect of judicial magistrates;
- b) Evaluate professional merit and take disciplinary action in respect of officers of justice, without prejudice to the disciplinary powers assigned to judges;
- c) Propose extraordinary inspections, inquiries and investigations to the courts;
- d) Evaluate the general state of the administration of justice.

**CHAPTER III  
ORGANISATION OF THE COURTS**

**Article 223  
(Categories of Courts)**

1. In the Republic of Mozambique there shall be the following courts:
  - a) The Constitutional Court;
  - b) The Supreme Court of Justice and other courts of justice;
  - c) The Supreme Administrative Court and other administrative and fiscal courts;
  - d) The Military Tribunals.
2. The law may establish maritime courts, labour tribunals, customs tribunals and community courts.
3. The powers, organisation and functioning of the courts referred to in the preceding paragraph shall be established by law.
4. The courts of justice shall have common jurisdiction in civil and criminal matters and shall exercise their jurisdiction over all areas not assigned to other jurisdictional orders.

5. The establishment of courts for the sole purpose of adjudicating specific categories of crimes shall not be permitted, save as expressly provided for in the Constitution.

#### **Article 224**

##### **(The Supreme Court of Justice)**

1. The Supreme Court of Justice shall be the highest body within the hierarchy of courts of justice in the Republic of Mozambique, without prejudice to the specific jurisdiction of the Constitutional Court.
2. The Supreme Court of Justice shall ensure the uniform application of the law, in the interests of the Mozambican people.

#### **Article 225 (Composition)**

1. The Supreme Court of Justice shall be composed of judge counsellors<sup>12</sup>, and their number shall be established by law.
2. Judge counsellors shall be nominated by the President of the Republic, after consultation with the Supreme Council of the Judiciary.
3. The participation of jurors in the Supreme Court of Justice shall be defined by law.
4. Admittance to the Supreme Court of Justice shall be by competition based on qualifications open to all judicial magistrates, magistrates of the Public Prosecution Office, and other national citizens of reputed merit, all of whom shall hold degrees in Law and be in full possession of their civil and political rights, and, at the time of their appointment, they shall have carried out professional activities in the judiciary or in any other judicial forum, or shall have practised teaching in law, for at least ten years.
5. The judge counsellors of the Supreme Court of Justice shall be of at least thirty five years of age, shall have at least ten years of professional experience. All other requirements, and the term of their respective office shall be fixed by law.

#### **Article 226 (Functioning)**

The Supreme Court of Justice shall sit:

- a) In divisions, as a court of first instance and as a court of appeal;
- b) As a whole house, sitting either as a court of appeal or as a court of sole instance, in cases expressly provided for in the law.

#### **Article 227 (Supreme Administrative Court)**

1. The Supreme Administrative Court shall be the highest body in the hierarchy of administrative, customs and fiscal courts.
2. The Supreme Administrative Court shall control the legality of administrative acts and shall supervise the legality of public expenditure.
3. In particular, the Supreme Administrative Court shall:

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<sup>12</sup> Translator's note: Judge counsellor is a literal translation of the Portuguese "*Juiz Conselheiro*", who is a judge in the Supreme Court.

- a) Adjudicate actions dealing with disputes arising out of legal administrative relations;
- b) Adjudicate litigious appeals against decisions of State offices, their office holders and agents;
- c) Examine the accounts of the State.

**Article 228**  
**(Organisation, Composition and Functioning)**

The law shall determine the organisation, composition and functioning of the Supreme Administrative Court, as well as all other matters related to its competence.

**CHAPTER IV**  
**PUBLIC PROSECUTION OFFICE<sup>13</sup>**

**Article 229**  
**(Public Prosecution Office)**

1. The Public Prosecution Office shall be a hierarchically organised magistracy, which is subordinate to the Attorney General of the Republic.
2. In the exercise of their functions, the magistrates and agents of the Public Prosecution Office shall be subject to the criteria of legality, objectivity, impartiality and exclusive obedience to the directives and orders prescribed by law.
3. The Public Prosecution Office shall enjoy its own statute and autonomy, within the terms of the law.

**Article 230**  
**(Functions)**

The Public Prosecution Office shall represent the State and defend such interests as the law may determine, and it shall control the legality and duration of detentions, shall conduct the institution of criminal proceedings, shall exercise penal authority, and shall ensure the legal defence of minors and absent or incapacitated persons.

**Article 231**  
**(Office of Attorney General of the Republic)**

1. The Office of the Attorney General shall be the highest body of the Public Prosecution Office. Its organisation, composition and powers shall be defined by law.
2. The Office of the Attorney General shall be headed by the Attorney General of the Republic.
3. The Attorney General of the Republic shall be accountable to the Head of State.
4. The appointment of Deputy Attorney Generals shall be through competition on the basis of qualifications, open to all magistrates of the Public Prosecution Office and to other lawyers of reputed merit, in the terms of the law.

**Article 232**  
**(Term of Office of the Attorney General of the Republic)**

The Attorney General of the Republic shall be appointed by the President of the Republic for a period of five years, and his term of office shall be terminated only in the following cases:

- a) By resignation;

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<sup>13</sup> Translator's note: This is the closest translation found for the "*Ministerio Público*".

- b) By dismissal;
- c) By compulsory retirement consequent to disciplinary or criminal proceedings;
- d) By acceptance of a position or office which is incompatible with the exercise of his functions.

**Article 233**  
**(Supreme Council of the Magistracy of the Public Prosecution Office)**

1. The Office of the Attorney General of the Republic shall comprise the Supreme Council of the Magistracy of the Public Prosecution Office, which shall include members elected by the Assembly of the Republic, and members elected by and from among the magistrates of the Public Prosecution Office.
2. The Attorney General of the Republic shall provide annual reports to the Assembly of the Republic.

**CHAPTER V**  
**THE PURVEYOR OF JUSTICE**

**Article 234**  
**(Definition)**

The Purveyor of Justice<sup>14</sup> shall be an office established to guarantee the rights of citizens, the defence of legality and justice in the actions of the Public Administration.

**Article 235**  
**(Election)**

The Purveyor of Justice shall be elected by the Assembly of the Republic, for a term which shall be determined by law.

**Article 236**  
**(Independence)**

1. The Purveyor of Justice shall be independent and impartial in the exercise of his functions, owing obedience only to the Constitution and the laws.
2. The Purveyor of Justice shall provide an annual report on his activity to the Assembly of the Republic.

**Article 237**  
**(Powers)**

1. The Purveyor of Justice shall investigate the cases submitted to him. He shall not have power to make decisions about the cases, but shall submit recommendations to the appropriate offices to correct or prevent illegalities or injustices.
2. If the investigations of the Purveyor of Justice lead to the presumption that the Public Administration has committed serious mistakes, irregularities or breaches of the law, he shall inform the Assembly of the Republic and the relevant Minister or local authority, with recommendations for pertinent measures.

**Article 238**  
**(Duty to Collaborate)**

The offices and agents of the Public Administration shall be under a duty to collaborate with the Purveyor of Justice in the exercise of his duties, at his request.

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<sup>14</sup> Translator's note: The Ombudsman.

**Article 239  
(Statute, Procedures and Organisation)**

All other aspects pertaining to the statute, the procedures, and the organisational structure supporting the Purveyor of Justice shall be fixed by law.

**PART X  
THE CONSTITUTIONAL COURT**

**Article 240  
(Definition)**

1. The Constitutional Court shall be a body with specialised jurisdiction in respect of legal constitutional questions.
2. The organisation and functioning of the Constitutional Court, and the procedures for supervision and control of constitutionality and of the legality of legislative acts, as well as all other powers of the Constitutional Court, shall be fixed by law.

**Article 241  
(Composition)**

1. The Constitutional Court shall consist of seven judges, chosen from among magistrates and lawyers in the following way:
  - a) One judge, who shall be the President of the Constitutional Court, appointed by the President of the Republic;
  - b) Three lawyers elected by the Assembly of the Republic;
  - c) Three judges elected by the Supreme Council of the Judiciary.
2. The judges of the Constitutional Court shall be appointed for five year terms of office, which shall be renewable, and they shall enjoy independence, irremovability, impartiality and unaccountability.
3. The judges of the Constitutional Court shall have at least ten years of professional experience in the judiciary or in any other judicial forum or in the teaching of Law.

*(There is view that judges of the Constitutional Court should all be elected by the Assembly of the Republic and that the President of the Constitutional court should be appointed from among them by the President of the Republic).*

**Article 242  
(Powers)**

1. The Constitutional Court shall have power to:
  - a) Adjudicate and declare the unconstitutionality and illegality of legislative acts of State bodies;
  - b) Settle conflicts of powers between the sovereign public offices;
  - c) Make prior evaluations of the constitutionality of referenda.
2. The Constitutional Court shall also have power to:
  - a) Verify the legal prerequisites required of candidates for the office of President of the Republic;
  - b) Pronounce on the permanent incapacity of the President of the Republic;

- c) Verify the death and the divestiture of the President of the Republic;
- d) Evaluate electoral complaints in the last instance, and validate and proclaim electoral results, in the terms of the law;
- e) Verify the legality of the establishment of political parties and coalitions, as well as evaluate the legality of their names, acronyms and symbols, and order their dissipation in the terms of the Constitution and the laws;
- f) Exercise such other powers as may be assigned to it in terms of the law.

*(There was a proposal to introduce preventive supervision of constitutionality, in the following terms: "The President of the Republic may request the Constitutional Court to carry out preventive evaluation of the constitutionality of any rule contained in an international treaty submitted to him for ratification, or of any legal instrument sent to him for promulgation; Preventive evaluation of constitutionality should be requested within eight days after the date on which the legal instrument was received; The Constitutional Court shall pronounce on the matter within twenty five days, or within such shorter period as may be required by the President of the Republic for reasons of urgency.")*

**Article 243**  
**(Request for Evaluation of Unconstitutionality)**

The following may request a declaration of unconstitutionality of laws, or of illegality of legislative acts of State bodies, from the Constitutional Court:

- a) The President of the Republic;
- b) The President of the Assembly of the Republic;
- c) At least one third of the deputies of the Assembly of the Republic;
- d) The Prime Minister;
- e) The Attorney General of the Republic;
- f) The Purveyor of Justice.

*(There was disagreement as to the inclusion of the Purveyor of Justice).*

**Article 244**  
**(Unconstitutionality of International Treaties)**

The President of the Republic may request the Constitutional Court to evaluate the constitutionality of any rule contained in an international treaty that has been submitted to him for ratification.

**Article 245**  
**(Appeals)**

1. There shall be an appeal to the Constitutional Court from decisions of courts which:
  - a) Have refused to apply any rule on grounds of its unconstitutionality or its illegality;
  - b) Apply rules whose unconstitutionality or illegality has been questioned during the proceedings.
2. The appeals referred to in the preceding paragraph may be made only by the party having raised the question of unconstitutionality or illegality.

3. The law shall regulate the rules on admissibility of appeals.

**Article 246  
(Irrevocability)**

1. There shall be no appeal from the decisions of the Constitutional Court.
2. The decisions of the Constitutional Court shall be published in the *Boletim da República*.<sup>15</sup>

**PART XI  
PUBLIC ADMINISTRATION, POLICE, NATIONAL DEFENCE  
AND LOCAL STATE BODIES**

**CHAPTER I  
PUBLIC ADMINISTRATION**

**Article 247  
(Fundamental Principles)**

1. The Public Administration shall serve the public interests and, in its actions, shall respect the fundamental rights and freedoms of citizens.
2. The offices and agents of the Public Administration shall owe obedience to the Constitution and the law, and shall act with respect for the principles of equality, of impartiality, of ethics and of justice.

**Article 248  
(Structure)**

1. The Public Administration shall be structured on the basis of the principle of decentralisation and de-concentration, thereby promoting the modernisation and efficiency of its services, without prejudice to unity of action and the directive powers of government.
2. The Public Administration shall promote the simplification of administrative procedures, and shall bring the public services closer to citizens.

**Article 249  
(Access and Statute of Officers)**

1. Access to Public Office shall not be obstructed on grounds of colour, race, sex, religion, ethnic or social origin, or party-political option, and shall adhere strictly to the criteria of the merit and ability of applicants.
2. The law shall regulate the statute of officers and other agents of the State, as well as the incompatibilities and the guarantees of impartiality in the exercise of public offices.

**Article 250  
(Hierarchy)**

1. In the exercise of their functions, officers and other agents of the State shall owe obedience to their hierarchical superiors in terms of the law.
2. The duty to obey shall cease whenever its performance would involve the commission of a crime.

**Article 251  
(Rights and Guarantees of Citizens)**

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<sup>15</sup> Translator's note: this is the Government's Official Gazette.

1. Citizens shall have the right to receive information from the competent Public Administration services, whenever they request it, on the progress of processes in which they have a direct interest, in terms of the law.
2. Administrative acts shall be notified to the interested parties within the terms and the time limits established by law, and they shall be reasoned whenever they affect the rights or interests of legally entitled citizens.
3. Interested citizens shall be guaranteed the right to judicial recourse against the illegality of administrative acts which endanger their rights.

### **CHAPTER III POLICE**

#### **Article 252 (Definition)**

1. The function of the Police, in collaboration with other State institutions, shall be to guarantee law and order, to safeguard the security of persons and property, public tranquillity, respect for the Rule of Law, and the strict observance of the fundamental rights and freedoms of citizens.
2. The Police shall not adhere to any particular party.
3. In the exercise of its functions, the Police shall obey the law and shall serve citizens and public and private institutions with impartiality and independence.

#### **Article 253 (Command and Organisation)**

1. The Police shall be headed by a Commander-General.
2. The law shall establish the general organisation of the Police, shall establish its branches, and shall determine its functions, its structure and the rules regarding admission into the Police.

### **CHAPTER III NATIONAL DEFENCE**

#### **Article 254 (Fundamental Principles)**

The State's national defence and security policy shall aim to defend national independence, to preserve the sovereignty and the integrity of the country, and to guarantee the normal functioning of institutions and the security of citizens against armed aggression.

#### **Article 255 (Defence and Security Forces)**

1. The Defence and Security Forces shall be the Armed Forces and the State Security Service.
2. The Defence and Security Forces shall be subordinate to national defence and security policy and shall owe allegiance to the Constitution and to the Nation.
3. The oath taken by members of the Armed Forces and of the State Security Service shall establish the duty to respect the Constitution, to protect institutions and to serve the people.
4. The Armed Forces and the State Security Service shall not adhere to any party and they shall abstain from taking positions or taking part in actions that could threaten their internal cohesion and national unity.

5. The Armed Forces and the State Security Service shall owe special obedience to the President of the Republic, in his capacity as Commander-in-Chief.

**Article 256**  
**(Defence of the Motherland, Military Service and Civic Service)**

1. It shall be the sacred duty and the honour of all Mozambican citizens to participate in the defence of independence, of sovereignty and of national integrity.
2. Military service shall be rendered within units of the Armed Forces in terms of the law.
3. The law may establish a civic service to substitute or complement military service, which shall be compulsory for all citizens who are not subject to military duties.
4. Exemptions from military service shall be established by law.

**Article 257**  
**(Definition and Composition)**

1. The National Defence and Security Council shall be the State consultative body for matters pertaining to national sovereignty, territorial integrity, the defence of democratically established authority, and the security of the Mozambican Nation.
2. The National Defence and Security Council shall be presided over by the President of the Republic. Its composition shall be determined by law, provided that it shall comprise at least two members appointed by the President of the Republic and four members appointed by the Assembly of the Republic.

**Article 258**  
**(Powers)**

The National Defence and Security shall have the following powers:

- a) Pronounce upon a state of war before such is declared;
- b) Pronounce upon the suspension of constitutional guarantees and the declaration of a state of siege or of a state of emergency;
- c) Give advice on the criteria and conditions of use of zones of total or partial protection used for the defence and security of the national territory;
- d) Analyse and monitor the initiatives of other State bodies aimed at guaranteeing the consolidation of national independence, the strengthening of democratic political power, and the maintaining of law and order.

**Article 259**  
**(Organisation and Functioning)**

The composition, organisation and functioning of the National Defence and Security Council shall be fixed by law.

**CHAPTER IV**  
**LOCAL STATE BODIES**

*(With regard to this chapter, there is still no clarity about what principles should be made constitutional).*

**Article 260**  
**(Definition)**

Local State bodies shall have the function of representing the State at local level, in the administration and development of their respective territories, and they shall contribute to national integration and unity.

**Article 261  
(Functions)**

1. Local State bodies shall, within their respective territories, and without prejudice to the autonomy of local councils, ensure that economic, cultural and social programmes and tasks of local interest are implemented, in accordance with the Constitution and the decisions of the Assembly of the Republic, the Council of Ministers, and State bodies of superior authority.
2. The organisation, functioning and powers of the local State bodies shall be regulated by law.

**PART XII  
LOCAL AUTHORITY**

**Article 262  
(Objectives)**

1. The objective of Local Authority shall be to organise the participation of citizens in solving the particular problems of their community, to promote local development, and to promote the deepening and the consolidation of democracy, within the framework of unity of the Mozambican State.
2. Local Authority shall rest on the initiative and the capacity of the people and shall act in strict collaboration with organisations in which the citizens participate.

**Article 263  
(Local Councils)<sup>16</sup>**

1. Local Authority presumes the existence of local councils.
2. Local councils shall be public corporate persons, equipped with their own representative bodies. Their purpose shall be to pursue the interests of the local people, without prejudice to national interests and to the role of the State.

**Article 264  
(Categories of Local Councils)**

1. The local councils shall be made up of municipalities and self governing settlements.<sup>17</sup>
2. The municipalities shall correspond to the territorial constituency of towns and cities.
3. The settlements shall correspond to the territorial constituency of administrative posts.
4. The law may establish other categories of local councils, which may be either greater or smaller than the territorial constituencies of municipalities or settlements.

**Article 265  
(Creation and Dissipation of Local Councils)**

The creation and dissipation of local councils shall be regulated by law, and the changes in the particular area shall be preceded by consultation with the local bodies.

**Article 266**

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<sup>16</sup> Translator's note: please see note 1, above.

<sup>17</sup> Translator's note: the phrase "self-governing" has been attached to "settlements" in an attempt to add clarity to this provision. The Portuguese text classifies a "*povoação*" (settlement) as a category of "*autarquias*" (autonomous bodies, which have been termed "local councils" by the translator).

**(Executive and Decision Making Bodies)**

1. The local councils shall possess and assembly equipped with decision making powers, and an executive body which shall be accountable to the assembly, in terms of the law.
2. The Assembly shall be elected through universal, direct, equal and periodic suffrage and by secret and personal ballot, by the voters living within the constituency of the council, in accordance with the principle of proportional representation.
3. The executive body shall be headed by a President, elected through universal, direct, equal and periodic suffrage and by secret and personal ballot, by the voters living with the particular constituency.
4. Candidates for election to the local council offices may be proposed by political parties, either individually or as coalitions, or by groups of voters, within the terms of the law.
5. The organisation, the composition and the functioning of the executive bodies shall be defined by law.

*(It has been suggested that the President of the Executive Body of the council should not be appointed through elections different from the elections for the Assembly. It is thought that the President of the council should be the head of the list that gains the most votes.)*

**Article 267  
(Local Property and Revenue)**

1. Local councils shall have their own property and revenue.
2. The law shall define the property of the councils and shall establish a local revenue regime which, within the superior interests of the State, shall guarantee the just distribution of public resources and shall ensure that necessary adjustments are made to correct the imbalances between them.
3. The law shall define the forms of technical human support given by the State to the local councils, without prejudice to their autonomy.

**Article 268  
(Administrative Supervision)**

1. The local authorities shall be subject to the administrative supervision of the State.
2. Administrative supervision over local councils shall consist of verifying the legality of the administrative acts of council offices, within the terms of the law.
3. The exercise of supervisory power may also be applied in respect of the merit of administrative acts, but only in cases and within the terms expressly established by law.
4. The dissolution of council bodies, notwithstanding that they have been established through direct elections, may take place only as a result of serious legal acts or omissions, as provided for and in accordance with the terms of the law.

**Article 269  
(Self Government)**

Local councils shall have the power of self-government, within the limits of the Constitution and of the laws and regulations issued by authorities with supervisory power over them.

**Article 270  
(Staff of Local Councils)**

1. Local councils shall have their own boards of staff, in accordance with the law.
2. The regime governing officers and agents of the State shall be applicable to officers and agents of local administration.

**Article 271  
(Organisation)**

The law shall guarantee the forms of organisation that the local councils may adopt for the pursuit of the common interest.

**Article 272  
(Term of Office)**

The resignation and the renovation of the terms of office of the elected members of council bodies shall be regulated by law.

**PART XIII  
CONSTITUTIONAL GUARANTEES**

**CHAPTER I  
STATES OF SIEGE AND OF EMERGENCY**

**Article 273  
(States of Siege or of Emergency)**

1. A state of siege or of emergency may be declared, in the whole or in part of the territory, only in cases of effective or imminent aggression, cases of disruption of or serious threat to the constitutional order, or cases of public disaster.
2. The declaration of a state of siege or of emergency shall be reasoned and shall specify which freedoms and guarantees have been suspended or restricted.

**Article 274  
(Assumptions in the Declaration)**

The least serious of the assumptions in the Declaration shall be determinate of the decision to declare a state of emergency. The principle of proportionality shall be respected in all cases, and the extent of the measures used and the duration shall be limited to what is strictly necessary for the prompt restoration of constitutional normality.

**Article 275  
(Duration)**

The duration of a state of siege or of emergency shall not exceed thirty days, which may be extended for the same period up to three times, if the reasons for the declaration persist.

**Article 276  
(The Declaration Process)**

1. Having declared a state of siege or of emergency, the President of the Republic shall submit the declaration, together with the reasons therefor, to the Assembly of the Republic within twenty four hours.
2. If the Assembly of the Republic is not in session, an extraordinary session shall be convened and should meet within a maximum of five days.
3. The Assembly of the Republic shall evaluate and decide on the declaration within a maximum of forty eight hours, and may remain in session while the state of siege or of emergency is in place.

**Article 277**  
**(Limits of the Declaration)**

The declaration of a state of siege or a state of emergency shall in no event restrict or suspend the right to life, the right to personal integrity, the right to civil capacity and citizenship, the right to non-retroactivity of criminal law, the right of defence of accused persons, or the right to freedom of religion.

**Article 278**  
**(Restrictions on Individual Freedoms)**

Under a state of siege or a state of emergency, the following measures restricting personal freedoms may be taken:

- a) Obligation to remain in a certain place;
- b) Detention;
- c) Detention in buildings not intended for persons accused or convicted of common crimes;
- d) Restrictions in respect of the inviolability of correspondence, the confidentiality of communication, the giving of information and the freedom of the press and of radio and television broadcasting;
- e) Home search and home arrest;
- f) Suspension of freedom of assembly and demonstration;
- g) Requisitions of goods and services.

**Article 279**  
**(Detentions)**

Detentions made under a state of siege or of emergency shall adhere to the following principles:

- a) A parent or trusted acquaintance of the detainee, indicated by the detainee, should be notified immediately;
- b) The name of the detainee and the legal basis for his detention shall be made public within five days;
- c) The detainee shall be presented before a judge within a maximum of ten days.

**Article 280**  
**(Functioning of the Sovereign Bodies)**

The declaration of a state of siege or a state of emergency shall not affect the application of the Constitution in respect of the powers and the functioning of the sovereign bodies, or in respect of the rights and immunities of the respective office holders or members.

**Article 281**  
**(Termination)**

1. Upon the termination of a state of siege or of emergency, the President of the Republic shall address a message to the Assembly of the Republic, giving detailed information about the measures taken under it and giving a nominal list of all citizens affected.
2. The termination of the state of siege or of emergency shall bring its effects to an end, without prejudice to the responsibility for illicit acts committed by its executors or agents.

**CHAPTER II**

**AMENDING THE CONSTITUTION****Article 282  
(Initiative)**

1. Initiatives to amend the Constitution shall be introduced by the President of the Republic or by at least one third of the deputies of the Assembly of the Republic.
2. Proposed amendments to the Constitution shall be lodged with the Assembly of the Republic ninety days before the beginning of the debate.

**Article 283  
(Material Restrictions)**

1. Laws for constitutional amendments shall have to respect the following:
  - a) The independence, the sovereignty and the unity of the State;
  - b) The republican form of Government;
  - c) The separation between religious denominations and the State;
  - d) The rights, freedoms and guarantees;
  - e) Universal, direct, secret, personal, equal and periodic suffrage for the appointment of elective sovereign public offices and elective local authorities, as well the system of proportional representation;
  - f) The pluralism of expression and political organisation, including political parties and the right of democratic opposition;
  - g) The separation and interdependence of the sovereign public offices;
  - h) The supervision of constitutionality;
  - i) The independence of the judiciary;
  - j) The autonomy of local councils;
  - k) The rights of workers and trade unions;
  - l) The rules governing nationality, which may not be amended in such a way as to restrict or remove rights of citizenship.

**Article 284  
(Time)**

The Constitution may be amended only after five years have passed since the last amending legislation entered into force, save where there has been an assumption of extraordinary powers to amend, approved by a majority of four fifths of Deputies in active service.

**Article 285  
(Voting and Form)**

1. Amendments to the Constitution shall be carried by a majority of two thirds of the deputies of the Assembly of the Republic.
2. The constitutional amendments that are approved shall be consolidated into a single amending law.

3. The President of the Republic cannot refuse to promulgate the amending law.

**Article 286  
(New Text)**

1. Amendments to the Constitution shall be inserted into the appropriate place, by means of the necessary substitutions, deletions and additions.
2. The Constitution, as amended, shall be published together with the amending law.

**PART XIV  
SYMBOLS, CURRENCY AND CAPITAL OF THE REPUBLIC**

*(Matters pertaining to the national flag and the emblem have not yet been decided on).*

**Article 287  
(National Flag)**

**Article 288  
(Emblem)**

**Article 289  
(National Anthem)**

The words and the music of the national anthem shall be established by law.

**Article 290  
(Currency)**

The national currency shall be the Metical.

**Article 291  
(Capital)**

The Capital of the Republic of Mozambique shall be the City of Maputo.

**PART XV  
FINAL AND TRANSITIONAL PROVISIONS**

**Article 292  
(Precedence of Constitutional Rules)**

The constitutional rules shall prevail over all other rules in the legal order.

**Article 293  
(Previous Law)**

Previous legislation which is not contrary to the Constitution shall remain in force until it has been modified or repealed.

**Article 294  
(Entry into Force)**

The Constitution shall enter into force on .....

Approved by the Assembly of the Republic .....

*(At the end of the work on approving the text, it was suggested that traditional authority should be constitutionalised. Since the topic had not been the subject of any proposal or prior debate, it has been introduced in this final end note, for public debate).*