

SADC Media Law

A Handbook for Media Practitioners

The Republic of Mozambique



An overview of media law and practice in Mozambique

KONRAD ADENAUER STIFTUNG



JOHANNESBURG



2006

SADC MEDIA LAW: MOZAMBIQUE
A handbook for media practitioners

ISBN: 0-9584935-0-2

Published by:
Konrad Adenauer Stiftung, 60 Hume Road, Dunkeld, 2195,
Johannesburg, Republic of South Africa

PO Box 1383, Houghton, 2041, Johannesburg,
Republic of South Africa
Telephone: 27 11 2142900
Fax: 27 11 214 2913/4

Email: media@kas.org.za
<http://www.kasmedia.org>

Authors: Justine White, Daddy Bujitu, Ivan Macoo
Translated by: Ivan Macoo
Proofreading: Rui Correia
Edited by: Jude Mathurine

All rights reserved

Copyright in this publication as a whole is vested in the Konrad Adenauer Stiftung Media Programme. Nothing herein may be reproduced in whole or part without the express permission in writing of the publisher. Any opinions expressed are the responsibility of the individual authors. The Konrad Adenauer Stiftung does not necessarily subscribe to the opinions of contributors.

DISCLAIMER

The information in this book was assembled and checked as far as possible. The authors/publisher cannot be held responsible for any loss that may occur due to inaccuracy or omission.

KAS, 2006 ©

KAS Media Programme	v
Mandela Institute	vi
Mkhabela Huntley Adekeye Inc	vi
About the Authors	vii
Foreword	viii
1.INTRODUCTION	1
1. General Overview	1
1.1 Purpose of report	1
1.2 A detailed breakdown of the volume	1
1.3 Interviews with journalists	2
2. Legislation and laws impacting on freedom of expression	2
2.1 General	2
2.2 Broadcasting	2
2.3 Print media	3
2.4 Access to information	3
THE REPUBLIC OF MOZAMBIQUE	4
1. Introduction	4
1.1 Political landscape	4
1.2 The mass media market in Mozambique	7
2. Experiences of journalists in Mozambique	9
2.1 Overview	9
2.2 The print media sector	12
2.3 The electronic media sector	13
3. The Constitution of Mozambique, 2005	14
4. Legislation that governs the media	17
4.1 Ministerial Diploma No 86/98 of 15 July 1998 that establishes the Superior Council of the Media	18
4.2 Decree No 9/93 of 22 June 1993 which provides for the participation of the private and cooperative sector in broadcasting	21

4.3 Decree No 31/2000 of 10 October 2000 which provides for the Television of Mozambique ie. the state television broadcast service	27
4.4 Decree No 18/94 of 16 June 1994 that provides for the Radio Mozambique service ie. the state sound broadcast service	32
4.5 Law No 18/91 of 10 August 1991 that provides for the Mozambican Press Law	36
4.6 Presidential Decree No 4/95 of 16 October 1995 that establishes the Government Press Office, known as Gabinete de Informacao	46
4.7 Decree No 65/2004 of 31 December 2004 that provides for rules governing advertising	48
4.8 Law No 12/79 of 12 December 1979 that provides for the Protection of State Secrets	52
4.9 The Penal Code, Decree of 16 September 1886	54
4.10 Draft Bill on Access to Official Sources of Information	57
5. Media Codes of Conduct	59
6. Case Law	59
6.1 Case No. 238/00C	60
7. Endnotes	62

KAS Media Programme

Konrad Adenauer-Stiftung (KAS) is an independent non-profit organisation bearing the name of Germany's first Chancellor (1949-1963) after World War II.

In the spirit of Konrad Adenauer, the foundation aims to strengthen democratic forces and develop social market economies. For more than 40 years KAS has been cooperating with partner organisations in over 100 countries worldwide. For an overview of the organisation's range of activities, go to www.kas.de

KAS views the media as an integral part of modern democracy, national development and integration. To this end, media have to be empowered and supported to fulfill their fourth estate role as watchdogs within their society. But reporting on misdeeds of politicians and company executives who do not live up to their duties is not enough. The media must be a progressive force to support human rights and shape new ideas in an open society through informed, impartial reporting and analyses.

A free, sustainable and competent press is a catalyst and resource for literacy, modernisation, informed politics and participatory development.

Since 2002, the KAS Media Programme in sub-Saharan Africa has promoted the media through support for: advanced training; the development of educational materials for communication law, journalism training, investigative reporting, editorial leadership and other areas; courses for political marketing and campaigning; media policy roundtables and specialist media conferences. Projects and resources are targeted toward mid-career journalists, media leaders, journalism educators and political decision makers.

For more information on the KAS Media Programme and its activities, go to www.kasmedia.org.



Konrad
Adenauer
Stiftung

Mandela Institute

As a centre of excellence, the Mandela Institute undertakes research, develops policy and offers advanced teaching in global law at the University of the Witwatersrand - that is, those areas of law that connect South Africa and the developing world to the global economy. These include competition law, intellectual property law, banking law, company law, communications law, the development of appropriate regulatory regimes and international arbitration. The Mandela Institute is working to create an enhanced legal framework and skills base as a contribution to the wider goal of economic growth.



The Mandela Institute aims to educate a new generation of skilled South African lawyers - black and white. The Mandela Institute comprises professors and research fellows in the School of Law, specifically recruited to endow the Institute with lawyers of the highest standing.

Mkhabela Huntley Adekeye Inc

Mkhabela Huntley Adekeye Incorporated is a newly merged entity, between the legal firms of Huntley Inc. and Mukwevho Mkhabela Adekeye Inc, and now prides itself as one of the largest black law firms that provides specialist and broad Corporate and Commercial legal services.

The firm focuses on various aspects of commercial law and has extensive experience and expertise in Restructuring of Government Enterprises as well as in Legal, Regulatory and Policy issues in many industries or sectors of the economy including, but not limited to, Corporate Law; Transportation Law; Broadcasting Law; Telecommunications Law; Media Law; E-Commerce; Information Technology Law; Energy Law, Property Law and Conveyancing; Corporate Finance; Project Finance and Intellectual Property Law.

The two firms have each advised many of South Africa's large corporations, national, provincial and local government departments and government enterprises in various commercial transactions and projects.

About the Authors



Justine White

Justine White is a Director at Mkhabela Huntley Adekeye Inc. She is the Webber Wentzel Bowens Visiting Senior Fellow in Communications Law at the Mandela Institute at the School of Law, University of Witwatersrand, where she teaches Telecommunications Law, Broadcasting Law, Media Law and Space and Satellite Law. Justine has a BA degree and an LLB degree from the University of the Witwatersrand and an LLM degree from Yale University specializing in constitutional and administrative law. Justine is listed in the *International Who's Who of Regulatory Communications Lawyers*.

Daddy Bujitu

Daddy Bujitu is currently serving his articles of clerkship at Mkhabela Huntley Adekeye Inc. Daddy holds a Law degree (equivalent of an LLB) from the University of Lubumbashi (Democratic Republic of Congo) and an LLM degree specialising in Communications Law from the University of the Witwatersrand.



Ivan Macoo

Ivan Macoo is currently completing an LLB degree at the University of Johannesburg. Ivan holds a BComm Law degree from the University of South Africa.

Foreword

Since the Konrad Adenauer Stiftung (KAS) published its first handbook of media law and practice in 2003, ten Southern African Development Community (SADC) countries have been reviewed. These include South Africa, Zimbabwe, Namibia and Malawi (2003); Zambia, Botswana and Swaziland (2004) and Lesotho, Tanzania and the Democratic Republic of Congo (2005). This year, KAS sub-Saharan Media Programme publishes its first bilingual media law reference in English and Portuguese for journalists, editors and media scholars in the Republic of Mozambique.

Mozambique has come a long way – following devastating civil war after national independence in 1972, to its first elections in 1994. However, with most Mozambicans surviving on less than a dollar a day, development and poverty alleviation remains the main concern for government, alongside democracy building. This supposes two main goals for the media: empower the public to build democracy; and redress political and economic injustice through public communication.

Like the legendary Carlos Cardoso, media professionals who wish to support development and operate as the ‘watchdogs’ of a new dispensation must have a thorough understanding of media law and practice ethical journalism. After all, freedom and responsibility are two sides to the same coin. Unfortunately, while researching this book, the authors discovered low levels of awareness of media law among Mozambican journalists. An appreciation of communication law must be embraced if Mozambican journalism is to continue develop as a credible public profession. KAS hopes this booklet will help media practitioners exercise their rights and understand their duties in the interests of supporting democracy and justice in the Republic of Mozambique.



FRANK WINDECK

Director of the KAS- Regional Media Programme
Johannesburg, November 2006

Introduction

1 General Overview

1.1 Purpose of the Report

The purpose of this report is to review the right to freedom of expression and the media freedom in the South African Development Community (SADC). For ease of reference we will use the term “mass media” in this report to refer to radio and television, other electronic media and the print media. The target country surveyed in this report is the Republic of Mozambique.

It is intended that this report should be used as a reference resource by journalists and other media professionals and by non-governmental organizations (NGOs) involved in communication law reform and journalism education.

1.2 A detailed breakdown on the volume

The breakdown of Mozambique volume comprises the following:

- an overview of the political history and the market structure for broadcast and print media;
- a summary of interviews with people working in the mass media sector;
- an analysis of the right to freedom of expression as enshrined Mozambique’s constitution;
- an overview of the most important laws that impact on the media’s right to freedom of expression consisting of (where applicable) legislation providing for the:
 - establishment of an independent communications regulator;
 - regulation of broadcasting services;
 - establishment and regulation of the public broadcaster;
 - regulation of the print media;
 - censorship of publications;
 - promotion of access to information;
 - disclosure of official state secret information;
 - disclosure of journalists’ confidential sources of information; and
 - regulation of defence and internal security;

- ▶ the most important codes of conduct prescribing standards of conduct for the broadcasting and print media industries; and
- ▶ the most important cases impacting on the right to freedom of expression of the media (where available).

1.3 The interviews with journalists

A range of people engaged in the mass media sector – including academics, media professionals employed by state and private broadcasters, journalists in the print media, journalists working for news agencies, employees of broadcasting regulatory bodies, and those working for media organisations and interest groups - were interviewed.

Most of the interviewees were comfortable with the full details of their interviews being made public. An overall synopsis of the interviews conducted is provided for in the *Introduction*.

2 Legislation and law impacting on freedom of expression

2.1 General

The authors surveyed numerous laws according to several broad theme areas:

Broadcasting,

Print media,

Access to information

and State secrets.

The case law that was surveyed relates broadly to the application of the right to freedom of expression in the common law and the development of the law of defamation.

2.2 Broadcasting

Laws related to the regulation of the broadcasting industry typically deal with things such as the establishment of a communications regulator, the establishment and oversight of the state broadcaster, and the regulation and licensing of broadcasting services.

Mozambique has established a regulatory authority with oversight over the

broadcasting and the print media sector. However, the regulatory authority is not in fact independent, as is more fully set out in the review.

2.3 Print media

In Mozambique, the print media is heavily regulated. There are detailed statutory provisions regarding the establishment and proper registration of the print media.

2.4 Access to information

Mozambique hasn't passed access to information legislation, granting journalists the right to access information held by organs of state on behalf of the public. However there is a Draft Bill on Access to Official Sources of Information that may be passed into law in the near future.

The Republic of Mozambique

1. Introduction

1.1. Political Landscape

The Republic of Mozambique (Mozambique) is a sub-tropical country located on the East coast of Southern Africa and has an estimated population of nearly 20 million¹.

Mozambique gained its independence from the Republic of Portugal on 25 June 1975.

Since then, the political landscape of Mozambique has been dominated mainly by two political forces – the Front for Liberation of Mozambique (FRELIMO) and the Mozambican National Resistance (RENAMO).

Samora Moisés Machel, the erstwhile head of FRELIMO became the first Head of the State after independence. To date, FRELIMO is still the ruling party.

In February 1977, FRELIMO adopted a single party political regime, with a Marxist-Leninist ideology². The government nationalised banks and companies and made private schools and hospitals public. An ambitious agricultural reform programme and a substantial literacy campaign accompanied this³.

In 1976, Mozambique closed its borders to the then Rhodesia (now Zimbabwe) in support of the liberation struggle led by the Zimbabwean African National Union (ZANU). A year later, the Mozambican government allowed the South African liberation movement, the African National Congress (ANC) to operate from its southern border. This gave rise to the formation of RENAMO by Rhodesian intelligence. RENAMO was anti-socialist and anti-FRELIMO and it started a lengthy civil war against the Mozambican government with the support of, among others, the South African apartheid government, the United States of America and Malawi⁴. The destruction of rural and urban infrastructure such as communal villages, schools, roads and rail lines were some of the devastating effects of the civil war which resulted in wide spread famine and the collapse of the economy⁵.

In 1984, the Mozambican and South African governments signed the “Nkomati Accord” in which the South African Government agreed to stop its official support of RENAMO and Mozambique agreed to stop supporting the ANC. Mozambique subsequently also became member of the International Monetary Fund (IMF) and the World Bank⁶.

In 1986, President Samora Machel died in a plane crash while flying over South African territory. President Joaquim Chissano, who was considered as a more pragmatic leader, succeeded him. Consequently, Mozambique officially abandoned its Marxist-Leninist policy and introduced a “Program for Economic Rehabilitation” overseen by the IMF⁷.

In 1990, Mozambique adopted a Constitution that brought about a transformation of the country into a multiparty and democratic state. The country’s name changed from “People’s Republic of Mozambique” to simply “the Republic of Mozambique”. Another important change was the shift towards a free market economy. Consequently, state owned companies were privatized and freedom of expression and freedom of association including freedom to form political parties were guaranteed in the Constitution. Two years later the peace negotiations between RENAMO and FRELIMO resulted in a cease-fire and a peace treaty was signed thereafter in Rome⁸.

In 1994, the first free elections (presidential and legislative) were held, and 14 political parties participated including RENAMO and FRELIMO. FRELIMO won the elections with 44% of the votes against 38% for RENAMO. In the following year Mozambique joined the Commonwealth. In 1999, the second elections were held and once again FRELIMO won these, although there were allegations of fraud by RENAMO. However, international observers declared the elections free and fair. Despite this, protests were orchestrated by RENAMO including one in which at least 40 people were killed in Montepuez, a city in the northern province of Cabo Delgado⁹.

In 2002, President Chissano announced that he would not run for a third term in office in the 2004 election, without being forced to do so by the Constitution. The third presidential and National Assembly elections were held in December 2004 and FRELIMO’s candidate Armando Emilio Guebuza won with 64% of the votes. His main opponent Afonso Dhlakama, of RENAMO, came second with

32% of the votes. FRELIMO won 160 of the seats in Parliament and a coalition of RENAMO and seven parties won the remaining 90 seats. This is despite protestations by RENAMO claiming that the election was not free and fair. However, the European Union observers declared that the election's shortcomings had probably not affected the final result.¹⁰ The second post-1990 Constitution was then adopted and entered into force on the 21 January 2005.¹¹ It is noteworthy that one of the most significant changes brought about by this new Constitution was the creation of the office of ombudsman. This is the first Constitution in Mozambique to be adopted by a multi-party parliament¹².

The Parliament of Mozambique has a unicameral Assembly called "the Assembly of the Republic" (AR), with 250 seats. The members of the AR are directly elected by popular vote and serve a five-year term.

The economy in Mozambique is mainly based on agriculture, which is practiced by the majority of the population (87%). Hydroelectric power, coal, shrimps, natural gas, titanium, ore, tantalite, graphite, iron ore, semi-precious stones, and arable land are Mozambique's main natural resources.

In 1994, the total value of goods and services produced by the nation of Mozambique or Gross Domestic Product (GDP) was estimated at USD 2.2 billion.¹³ Since then, Mozambique has experienced impressive economic growth over the past ten years off a very low base. In 2005, GDP had grown to an estimated USD 5.5 billion. Development is mainly due to sound macroeconomic policies, structural reform and substantial donor assistance. About 45% of the annual state budget is attributed to international assistance.¹⁴

Despite development and consistent economic growth, the majority of the population still lives in abject poverty on less than a dollar a day. Gross National Income *per capita* (in other words the total value of goods and services (GDP) produced in Mozambique, added to the income received from other countries, less similar payments made to other countries) was estimated at USD 250 in 2004.¹⁵ In 2005, Mozambican exports were estimated at USD 1.69 billion. The country's primary export products are aluminum, prawns, cashew nuts, cotton, sugar, citrus, timber and bulk electricity. Main import commodities including mining equipment, pharmaceuticals, raw materials, spare parts, chemical products, consumer goods and crude oil totaled USD 2,041 billion.¹⁶

Poverty reduction remains a priority of the government of Mozambique. In 2001, a Poverty Reduction Strategy Paper (PARPA) was introduced covering the period 2001 to 2005. PARPA's main goal was to reduce the incidence of poverty to 60% by 2005. A revised version of PARPA will cover the period 2006 to 2010 and plans to reduce poverty by half by 2010¹⁷. It is worth noting that PARPA's poverty results were better than anticipated under the first five-year plan.¹⁸

The Constitution of Mozambique provides for the right to freedom of expression including freedom of the press, and the right to information.

1.2 The mass media market in Mozambique

According to Government Press Office (GABINFO), the print media sector had approximately 117 private newspapers (this figure includes both registered and suspended newspapers from 1992 to 2005). It is worth noting that the Mozambican government holds shares in a company, *Sociedade do Noticias* that owns several newspapers published in Portuguese. These titles include:

- the two most popular daily newspapers, namely, *Noticias* (the country's largest and oldest newspaper, in Maputo) and *Diario de Noticias* (in Beira);
- the only Sunday newspaper called *Domingo*; and
- a weekly sports newspaper called *Desafio*.

The number of shares actually held by the government is hard to uncover but the figure is casually estimated at between 20% and 27%.

The Mozambican Information Agency (AIM) is the country's official news agency and is also government-owned.

Other than this, newspapers are generally considered independent of government control. *Savana*, published weekly, was the first independently owned newspaper and forms part of Mediacoop (a cooperative press organisation), which also owns *Mediafax* and *Mozambique Inview* (a monthly magazine published in English).

A peculiar feature of print media in Mozambique is the wide usage of daily fax newspapers such as *MediaFax*, *Expresso*, *Imparcial*, *Vertical*, *Correio da Manha*, *Pungue*, all of which are published in Portuguese. These papers are printed in A4

format and faxed to subscribers, in an attempt to reduce the high costs of printing and distribution. These are very popular and have high circulations.

GABINFO reports that Mozambique has around 21 television services. The Television of Mozambique service (TVM) is a state broadcaster (as opposed to a public broadcaster that is run independently from government and is managed by an independent board). TVM enjoys the widest coverage in the country as it broadcasts in every province. The second largest television broadcaster is the Portuguese channel called *RTP Africa*, which has offices in and broadcasts from Mozambique. The Portuguese government owns *RTP Africa*. There are a number of private television services, which include *TV Miramar* (which is owned by the Universal Church of the Kingdom of God), *Soico Television* known as *STV*, *Radio Televisao Klint* known as *RTK*, and *9TV*. *STV* and *TV Miramar* now reach more than half of the provinces. Mozambique also boasts around 14 community television services that aim to serve the interests of relevant communities and that are owned and managed by non-profit organisations.

Two subscription television services are available - *TvCabo*, a cable subscription television service based in Maputo and *DSTV*, a satellite subscription television service based in South Africa.

Mozambique has approximately 67 radio stations, a large majority of which are community radio stations. The majority of these community radio stations are religious stations, including, *Miramar*, *Radio Transmundial*, *Radio Maria* and *Radio Feba*. The government's National Institute of Communication and foreign donors have helped to form some of these community radio stations, but a large number originate from an initiative taken by UNESCO/UNDP to strengthen media pluralism in the country.

Since 1991, new media laws have contributed to a significant increase in the number of commercial radio stations operating in Mozambique. Radio Mozambique (RM) is a state broadcaster that obtains a substantial part of its funding from government. RM is the only broadcaster licensed to transmit countrywide. It broadcasts in 21 languages, 18 of which are local dialects, and also in Portuguese, English and Afrikaans.¹⁹ There are also a number of commercial radio stations operating in Mozambique, including *Radio Cidade*, *9FM* and *RTK*. *Radio Terra Verde* is a commercial radio station owned by the main opposition party RENAMO.

International radio stations operating in Mozambique include a Portuguese channel *RTP*, and the British Broadcaster *BBC*.

2. Experiences of Journalists in Mozambique

2.1 Overview

Interviewing journalists regarding their experience and perceptions of the enabling environment for media freedom in Mozambique was not difficult. No one requested confidentiality and all media practitioners were keen to respond to questions. This is in sharp contrast to our previous experience in some SADC countries. Interviews were conducted in Portuguese with a range of persons from the commercial print media, commercial broadcasters, the Mozambique Information Agency, the state broadcaster and non-governmental organisations such as the Media Institute of Southern Africa (MISA).

In our interviews, most journalists felt that Mozambique's shift from a one party state to multiparty democracy had significantly increased media pluralism and consequently improved freedom of expression in the media sector as a whole. In 2005, *Reporters sans Frontiers* ranked Mozambique 49th in the world in its media freedom index – only six other African countries were ahead of Mozambique, namely: Benin, Namibia, Cape Verde, South Africa, Mauritius and Mali.²⁰

Journalists' perceptions did differ on key weaknesses in the media environment and the reasons therefore, namely:

- the media environment forces journalists to practice self-censorship. Journalists feel that it is sometimes not safe for them freely to report on certain politically or commercially sensitive issues. Self-censorship results in an inevitable dilution of public interest information when stories are broadcast or published;
- government officials still try to force journalists to reveal their sources, but increasingly journalists are aware of their right to protect their sources as enshrined under the Press Law of 1991;
- journalists regard the Press Law²¹ as an excellent piece of legislation. However, the law requires some revision to accommodate new challenges like media convergence and to remove vagueness and ambiguity in some of its provisions.
- knowledge of media law is generally quite low. One reporter commented that

some journalists only consult the Press Law when problems arise; on a day-to-day basis, reporters just act as they please. In particular, junior journalists lack awareness of legal provisions that affect media practice. This may be due to an increase in new journalists entering the media sector without adequate training (or indeed any training at all). Senior journalists suggest that the professional training of reporters is an urgent priority;

- the Mozambican media industry does not have a code of conduct. Generally accepted professional principles for the practice of journalism are incorporated into the Press Law of 1991.
- the degree of freedom of expression is perceived to decrease as one moves away from the south of the country, that is, away from Maputo and also as one moves out of provincial capitals into the countryside.
- journalists are still assaulted in the course of their work. An example, was an attack on certain reporters while filming outside a maximum-security prison where Anibalzinho do Santos, one of the assassins of slain journalist, Carlos Cardoso, was detained. The reporters also had their equipment and material confiscated.

No summary of the experiences of journalists in Mozambique is complete without discussing the assassination of outspoken investigative journalist and editor, Carlos Cardoso. On the night of 22 November 2000, Cardoso and a driver were gunned down and killed while leaving the offices of *Metical*, a local newspaper. He was only 48.

In the early nineties, Cardoso and a few colleagues had left the state media to establish *Mediafax*, a fax newspaper characterised by high standards of investigative reporting. *Mediafax* has been described by the *New York Times* as the “vanguard” of the press in Africa. Later, in 1994, Cardoso and his partners founded *Savana* and *Metical* newspapers.

Cardoso’s murder had an immediate chilling effect on investigative reporting in Mozambique. After his assassination, the Committee to Protect Journalists (CPJ) found that many Mozambican reporters were afraid to cover sensitive stories particularly those involving corruption for fear of their lives.

At the time of the assassination, Cardoso was investigating one of the biggest financial scandals in the country – allegations of corruption at Mozambican

bank, *Banco Austral*. *Metical* ran a series of articles linking the Central Bank of Mozambique (BCM) and *Banco Austral* to a web of corruption. Cardoso's investigations even alleged that drug money was laundered via BCM and *Banco Austral*.

No investigation followed Cardoso's murder until international pressure was brought to bear on government by organisations like the CPJ. Finally, in 2002 in a much publicised court case, two brothers from a prominent banking family, one of their business partners and three gunmen were sentenced to lengthy jail terms on charges of conspiracy to murder Cardoso. During the trial, which was broadcast live on *TVM*, the accused implicated the son of then-President Joaquim Chissano in Cardoso's murder. They explicitly stated that Nympine Chissano had ordered the assassination.

In May 2006, six years after the murder, Nympine Chissano was formally indicted for the murder of Carlos Cardoso. Chissano is accused of "joint moral authorship" of the murder. Under Mozambican law, this means he is charged as one of those who ordered the assassination. To date, the case still pending.²²

A gradual reopening of the media space to report on sensitive issues like corruption followed the successful prosecution of Cardoso's killers. One example cited by journalists was the case of former Minister of Education, Alcídio Nguenha who fraudulently provided bursaries to members of his family. Press reports on this issue lead to Nguenha's removal.

Journalists point to additional challenges faced by the media industry and suggest that media development and media assistance NGOs could help in the following ways:

- support to establish a fund which could be accessed (whether by loan or grant) by journalists' organisations. Lack of funds is attributed as a major contributor to poor professional standards in journalism;
- regular workshops, advocacy work, meetings and debates focusing on the day-to-day practice of journalism. Some believe that these kinds of interventions would contribute to the improvement of legislation governing the media environment including the Press Law;

- ▶ assistance to improve the actual provisions of Mozambique’s communication law environment. Journalists often spoke about the vagueness and the lack of impact of certain media laws (despite *not* being bad laws in and of themselves).

2.2 The print media sector

Print journalists ranked the level of freedom of expression in Mozambique as satisfactory even though there is still room for improvement. Nevertheless some reporters expressed concern at the poor quality of investigative journalism and raised a few particular issues that impact detrimentally on public interest journalism in newspapers and magazines. Some of these challenges include:

- ▶ underreporting on the strength of organised crime in Mozambique. Organised crime is a sensitive issue in which few journalists possess relevant skills for investigation.
- ▶ harassment and assault of journalists. A senior journalist narrated how government authorities physically attacked him several times as a result of his reports over his 30-year career. Another experienced journalist told us of his clashes with a senior army official some years ago which arose as a result of his reporting on an illegal supreme military tribunal that was about to be set up. These cases are well documented in reports by the local chapter of the Media Institute of Southern Africa (MISA);
- ▶ detention of journalists on trumped up charges or orders from the authorities. Recently three journalists were arrested for libel in the centre of the country. Defamation is not a “crime” for which one can be held for preventive probation. The arrests were strongly protested by MISA and other organisations. After a week the three journalists were released. The prosecutor is now being investigated for illegal arrests; and
- ▶ threats or pressure to reveal for reporters to reveal sources. Many interviewees detailed their experience of being forced to reveal sources of confidential information. In most of cases journalists managed to protect these. The Press Law expressly guarantees the right of journalists to protect their sources. This may not always be the case however. One reporter said that he knew of cases where some journalists revealed the identity of their sources under duress (the sources were subsequently threatened) or to colleagues in the newsroom.

Print journalists report difficulties in covering sensitive issues such as:

- corruption: some media practitioners do not report in depth on corruption issues and there is reluctance to expose the government, particularly members of the ruling party, FRELIMO;
- national security concerns: police and military issues are seen as sensitive matters. Journalists have to tread carefully and scrutinise these issues more closely when investigating and reporting.

2.3 The electronic media sector

“There is an absolute difference between the new and the old regimes,” explained a reporter from state broadcaster, *TVM*. “Materials that are aired or broadcast today would never have been allowed under the old regime.” It was previously very difficult for journalists to report freely on political issues; today, journalists are able to express their views more openly. The *TVM* reporter criticised “irresponsible” journalists who provoked confrontations with ministers and simultaneously disapproved of a growing trend where journalists develop relationships with certain powerful political people. This compromises journalists’ objectivity and ability to report impartially.

At *TVM*, broadcast content still has to be edited and approved by people in positions of authority within the broadcaster. The upshot is that broadcast material is often either directly or indirectly influenced by various gatekeepers. At a subtle level this could imply that state broadcasting employees are not anxious to criticise the government as their salaries are paid by the state.

The interviewee admitted that journalists in the private sector are able to circumvent this form of control over content but this can lead to a lessening of quality due to the lack of proper supervision of their work.

Generally speaking, journalists in the electronic media expressed similar concerns to their counterparts in print media regarding issues that undermine media freedom. These include:

- difficulty reporting on certain issues concerning administrative and police

authorities. For example, members of the Special Armed Forces (SIRE) were brought in to restore order and security in Maringue (a stronghold of RENAMO) during the 2004 elections. It later emerged SIRE members were intimidating citizens and particularly targeting people who had connections with RENAMO. A journalist confirmed that he had been unable to report on the story because his materials were confiscated;

- ▶ access to official information in the public interest is restricted. Mozambique's Access to Official Sources of Information is still in Draft Bill form. In the interim, journalists are sometimes denied access to government information under the State Secrets law of 1979. The definition of what constitutes a 'State Secret' in the Act remains vague, ambiguous and open to abuse.
- ▶ inexperienced media practitioners have little or no formal training. Junior journalists often do not approach issues correctly or perform thorough, balanced and fair investigations. The effect of this is that the image of the entire journalism profession is tarnished in the eyes of the public.

3. The Constitution of Mozambique

Commencement date

21 January 2005

Supremacy of the Constitution

Section 2 of the Constitution provides *inter alia* that the State is subordinate to the Constitution, and that the constitutional provisions prevail over all laws.

Establishment of an independent regulator

Section 50 provides for the Superior Council of the Media ('the SCM'), as the authority for the communications sector, for both the print and broadcast media. The Constitution does not specifically state whether or not the SCM is independent. We believe, however, that the power of the SCM as proper regulatory body is seriously undermined by paragraph 2 of section 50 which provides that the SCM merely *advises* the government on the granting of licenses and by paragraph 3 of the section which gives the SCM only a *role* in the appointment and dismissal of directors of state media bodies. Hence it cannot really be said that the Constitution

Provisions impacting on the media

Chapter 2 of the Constitution deals with rights, duties and freedoms including freedom of expression and freedom of the press.

Section 48 entrenches the right to freedom of expression and information. Section 48 contains provisions that protect the freedom of the press, as well as the right to access to information. The right to freedom of expression additionally includes the freedom to disseminate personal views by all legal means. The section further provides that the exercise of the right to information may not be limited by censorship.

Paragraph 3 of section 48 deals with the freedom of press that includes creative freedom and freedom of expression of journalists, access to sources of information, protection of journalistic independence and professional secrets and the right to create newspapers and other publications. According to paragraphs 4 and 5 of section 48, state media, as a means of communication, must disseminate a diversity of opinion as well as contentious thoughts. It is a constitutional requirement that state broadcasters as well their journalists are supposed to be independent from government and political groups.

The right to freedom of expression in paragraph 6 of section 48 which provides that these rights are to be exercised in accordance with national laws. Generally this kind of formulation undermines the effectiveness of rights granted under a system of constitutional supremacy. However, the wording of paragraph 6 provides that national laws must be based on “the Constitution and human dignity”. This ameliorates this problem makes it clear Constitutional values trump other considerations.

Section 72 of the constitution provides for the derogation of rights and also limits freedom of expression in certain circumstances. The section identifies the conditions under which particular rights can be can be suspended or temporarily limited under the constitution. These are only in the case of a state of war, siege or during a state of emergency. The suspension or temporary limitation of certain rights must be of general character, should be legally justified and the period of such limitation should also be specified. Paragraph (d) of section 287 provides that in the case of a

state of emergency or siege there might be restrictions on *inter alia* the right to inviolability of correspondence, right to secret communications, right of access information and freedom of the press, including radio and television.

Courts which have jurisdiction to decide on constitutional matters

In Mozambique, there is no Constitutional Court *per se*. A Constitutional Council is empowered to deal with constitutional matters. Section 241 describes the Constitutional Council as a sovereign organ with the specific function of dealing with constitutional issues.

Hierarchy of the courts

According to section 223 the following are courts that are found in the Republic of Mozambique: (i) the Supreme Court, (ii) the Administrative Court and (iii) other Judicial Courts.

The Supreme Court is the highest court in the hierarchy of courts in Mozambique on general legal matters i.e. non-Constitutional matters. It guarantees the uniform application of the law in the interest of the Mozambican people. The provincial and district courts (i.e. the other Judicial Courts) are below the Supreme Court and are common courts created to deal with criminal and civil matters and exercise their jurisdiction in all areas not attributed specifically to other judicial bodies.

The Constitution makes provisions for a number of tribunals including: administrative, labor, tax, customs, maritime, arbitration and community. The Administrative Court is the highest court in the hierarchy of administrative, tax and customs courts dealing with administrative, tax, and customs issues.

There is also a separate set of courts namely the military courts which enforce military law and offences committed by members of the military.

Appointment and removal of judges

There are seven judges that form part of the Constitutional Council. According to Section 242, the President of the Republic appoints the Judge President of the Constitutional Council. Five other judges are appointed by the Assembly of the Republic on the basis of proportional representation, and one remaining judge is appointed by the High Council of Magistracy. All judges are appointed for a renewable period of five years.

According to section 226(2) of the Constitution, the President appoints the President of the Supreme Court on the advice of the High Council of Magistracy. Section 226(3) states that the State President also appoints the other judges of the Supreme Court on recommendation of the High Council of Magistracy, after a public process. Note that all judges are required to be in possession of a law degree.

The President of the Republic also appoints the President of the Administrative Court on recommendation of the High Council of Administrative Magistracy, the other judges of the Administrative Court are also appointed by the President in accordance with the advice of the High Council of Administrative Magistracy.

According to section 220 of the Constitution, the High Council of Magistracy is responsible for supervising and regulating the conduct of judges. It is composed of the President of the Supreme Court, the vice-President of the Supreme Court, two members appointed by the State President, five members elected by the Assembly of the Republic, and seven judges of different categories.

In relation to the removal of judges, section 222 provides that the Superior Council of Magistracy has the power *inter alia* to appoint, place, transfer, promote, dismiss and exercise disciplinary action over judges.

Independence of the Judiciary

There are numerous provisions protecting the independence of the judiciary in the Mozambican Constitution. Section 133 provides *inter alia* that the courts together with the Constitutional Council are “organs of sovereignty”. The functioning of “organs of sovereignty” is based on the principles of separation and independence according to section 134 of the Constitution. In addition, section 217(1) provides that judges are independent and shall only obey the law when exercising their functions.

4. Legislation that governs the media

The main statutes and forthcoming laws that impact on media in Mozambique, include the following:

- ▶ Ministerial Diploma No 86/98 of 15 July 1998 which establishes the Superior Council of Media (SCM) known as *Conselho Superior de Comunicação*

- ▶ Decree No 9/93 of 22 June 1993 that provides for the participation of private and cooperative enterprises in the broadcasting sector.
- ▶ Decree No 31/2000 of 10 October 2000 that provides for the Television of Mozambique i.e. state television broadcasting service.
- ▶ Decree No 18/94 of 16 June 1994 that provides for the Radio of Mozambique i.e. state sound broadcasting service.
- ▶ Law No 18/91 of 10 August 1991 pertaining to the Mozambique Press Law that provides for the framework for licensing the print and broadcast media and other matters.
- ▶ Presidential Decree No 4/95 of 16 October 1995 which creates the Government Press Office known as *Gabinete de Informação*.
- ▶ Decree No 65/2004 of 31 December 2004 that provides for rules governing advertisements.
- ▶ Law No 12/79 of 12 December 1979 which provides for State Secrets.
- ▶ The Penal Code, which establish the code of criminal law, Decree of 16 of September 1886.
- ▶ Draft Bill on Access to Official Sources of Information.

4.1 Ministerial Diploma No 86/98 of 15 July 1998 that establishes the Superior Council of Media

Commencement date

15 July 1998

Purpose of the Act

The purpose of the Act is to provide for the establishment, structure, composition and definition of the objectives and functions of the Superior Council of Media (SCM).

Sector of the media governed by the Act

The Act applies to print and broadcast media.

Key provisions

Chapter 1 of the Act deals with the nature, objectives and powers of the SCM. Section 1 provides that the SCM is the organ through which the State guarantees the independence of media organisations, the freedom of the press, the right to

information, the exercise of the right to reply and the right to broadcasting party political pronouncements during elections. The section further provides that the SCM is a juristic person with administrative and financial autonomy. The SCM is to be independent in the realisation of its objectives but is also subject to the Constitution, the Press Law, the Ministerial Diploma establishing the Superior Council of the Media and its own internal policies, as well as other applicable legislation.

In terms of section 2 of the act, the objectives of the SCM are the following:

- to ensure the exercise of the right to information and the freedom of the press;
- to guarantee the independence and impartiality of the media organisations of the public sector, as well as the autonomy of its professionals;
- to observe the objectivity of the press profession;
- to ensure the right of access to broadcasting by political parties, and the right to reply referred to in the Section 12 and 33 in the Press Law;
- to defend and promote culture and national pride;
- to act against corruption in the media sector;
- to act in defense of the public interest; and
- to respect ethical norms.

Section 3 of the Act deals with the powers of the SCM, which are listed as follows:

- to obtain from any media organisation as well as the governmental authorities, any information which it thinks necessary to fulfill its obligations;
- investigate violations and contraventions of the Press Law and undertake the necessary measures;
- adjudicate complaints made by the public in relation to the performance of any media organisation;
- decide upon complaints about the right of reply and the broadcasting rights of political parties;
- ensure that journalists comply with their duties;
- research the necessary information for the realisation of its functions;
- provide views and proposals directly connected with its powers;
- ensure compliance with regards to rules governing advertisements; and
- exercise other competences which are attributed to them.

In addition, section of the Act also provides that the SCM may make recommendations to the government about matters that it believes should be subject to legislation or specified regulation within the media sphere. The SCM is able to advise in the preparation of the laws affecting the press as well as in other decisions about the media sector. The SCM has the power to institute judicial actions in the case of violation of the Press Law in the public interest.

The composition, organisation and functioning of the SCM is dealt with in Chapter 2 of the Act. Section 4 of the Act speaks to the composition of the eleven member SCM, namely:

- ▶ two members appointed by the President of the Republic;
- ▶ four members elected by the Assembly of the Republic;
- ▶ a magistrate appointed by the High Council of Magistracy;
- ▶ three representatives of journalists elected by the respective professional organisations; and
- ▶ one representative of the journalistic companies or institutions.

The President of the Republic appoints the head of the SCM. Citizens who do not enjoy full political or civil rights do not qualify to be appointed or elected as members of the SCM. Section 4 additionally stipulates that a member of the SCM may not be:

- ▶ a member of a government body ; and
- ▶ a leader of a political party.

Section 6 provides that the members of the SCM have terms of five years. Any membership vacancy in the SCM must be filled within 45 days by the competent entity, taking into account the period already served by the previous member. The section provides that SCM members may not end their functions until the term of office for which they were elected is completed, except in the following situations:

- ▶ death or permanent physical incapacity;
- ▶ renouncement of mandate;
- ▶ conviction to prison term;
- ▶ any of the incapacities provided in the Press Law.

According to section 7, the SCM shall be organised and function according to its own regime, which it may change whenever it deems necessary. The SCM may create committees and subcommittees and appoint members thereto who are members of the SCM and also technical people for specific assistance. The SCM is obliged to publish an annual report of its activities.

In terms of section 10, the activities of the SCM are financed by the State budget. However, the SCM may receive other financial support, as well as donations from private bodies including foreign institutions.

Chapter 3 of the Act deals with the rights, duties and privileges of the members of the SCM. Under section 11, SCM members are required to exercise their functions impartially, independently and responsibly. Section 9(2)(b) of the Act gives the SCM the power to administer its own human resources.

Powers granted to the Minister or Director-General by the Act

The rights and benefits of the members of the SCM are provided by the Council of Ministers the Mozambican equivalent of cabinet under section 12 of the Act.

Provisions for media not controlled by the State

The legislation applies to both state and private media.

Body that enforces compliance with the Act

The SCM together with the courts of law ensure compliance with the Act

Provisions limiting media ownership

None

Consequences of non-compliance with the Act

None

4.2 Decree No 9/93 of 22 June 1993 which provides for the participation of private and cooperative sectors in broadcasting

Commencement date

22 June 1993

Purpose of the Act

This Act defines conditions for the authorisation and licensing of co-operatives, mixed and private business organisations in radio and television broadcasting. Decree No 9/93 pertains to the implementation of section 6 of the Press Law of 1991 that regulates the participation of these sectors in broadcasting.

Sector of the media governed by the Act

The Act applies only to broadcast media.

Key provisions

Chapter 1 of the Act contains general provisions, including definitions.

Section 2 of the Act sets out the objectives of the activities of the cooperative, mixed and private sector in relation to broadcasting as follows:

- consolidation of the national unity and the protection of the national interests;
- promotion of democracy and social justice;
- promotion of scientific, economic, social and cultural development;
- elevation of social, educational and cultural consciousness of citizens;
- citizen access to facts, information and opinions;
- education of citizens about their rights and duties;
- promotion of dialogue between the political powers and the general public;
- and
- promotion of dialogue between the cultures of the world.

In terms of section 3, the cooperative sector, the mixed sector and the private sector, may broadcast only if they possess a legal (juristic) personality e.g. are incorporated as companies. The broadcast of radio and television is also subject to licensing.

The principles and norms relating to freedom of the press as provided for in the Press Law are also applicable to the cooperative, mixed and private sector in the broadcast media.

Section 4 of the Act deals with radio and television coverage. A coverage area (transmission footprint) of the television or radio station needs to be specified in the license. The coverage area may extend to the entire national territory or just a part of it.

Importantly, section 5 of the Act gives the Ministry of Transport and Communications (the Minister) the responsibility to assign radio frequencies to the relevant licensed entities. In terms of international best practice, frequency allocations and assignments ought to be undertaken by an independent regulator, not a member of the Executive.

Chapter 2 lays down principles related to the programming and provides, in section 6, that the broadcasters must:

- provide information about national and international facts which are recent, true and complete;
- contribute towards the exercise of freedom of expression and freedom of thought;
- participate in the educational dissemination of information and essential teaching related to life in community, stimulation of patriotism, civic mindedness, human dignity and fight against delinquency and moral degradation; and
- assume as a fundamental duty, the fight against any form of social, regional, tribal, racial or sexual discrimination.

Section 7 requires that programmes always identify the title and names of the persons in charge, as well as artistic and technical personnel. Every programme must include a register that specifies the identity of the author, creator and producer of the work. If the aforementioned identifying elements are not provided, the person responsible for the programme shall be held accountable.

In terms of section 8, radio and television broadcasters shall guarantee the presentation of regular and general news broadcasts during their respective periods of broadcasting. Section 8(2) makes it a requirement for news services to be compiled by *professional journalists*. In terms of section 26, the term “journalist” refers to a professional who dedicates himself/herself to the research, gathering, selection, elaboration and public presentation of events in the form of news, information or opinion, via the means of media and to whom this activity constitutes his principal profession, which is permanent and remunerated.

Broadcast advertisements must always be clearly and unambiguously identified as such. Sponsored or promotional programmes must also be expressly identified

under section 9 of the Act.

Section 10 of the Act prohibits advertisements which:

- promote the occult;
- are indirect or deceitful;
- are misleading as to the quality of the goods or services advertised;
- advertise unsafe products;
- contain pornographic or obscene material; and
- advertise products offend public morals.

Under section 11 persons responsible for television and radio programmes must ensure that the right of reply is respected.

Chapter 3 makes provisions for licensing. In terms of section 13, radio and television entities must be authorised and licensed by way of a permit. Permits are granted by the responsible Minister, and must contain the following information:

- reference to the resolution or decision of the Minister;
- the licensed entity;
- the type and scope of the licensed activity;
- the assigned frequency or frequencies;
- period of the transmission;
- the period of validity of the permit; and
- the possibility for a license extension.

Section 14 requires that license applications made to the Minister must include the following:

- a brief description indicating information on a scaled map of the proposed coverage area;
- a description of the proposed broadcasting service; and
- a blueprint of the technical installations, including the equipment, the power of the antenna/e and the radiation plan.

In the case of ventures involving the State's participation, the application must

also include the appropriate feasibility study. It is worth noting that the assessment of license applications must be decided upon within 90 days.

Section 15 states that it is the duty of the Minister to approve the necessary technical conditions which guarantee the adequate quality in the transmission of the broadcast signals, namely:

- the signal distribution as well as its management and use; and
- the channel/s, band/s, frequencies and power reserved for each transmission as well as other technical elements relating to equipments.

In terms of section 16, the Council of Ministers grants broadcast licenses for a period of 10 years. Licenses are renewable.

According to section 18, broadcast entities must commence transmission within one year after the granting of a license. Licensees are also obliged to transmit for a period of not less than four hours a day.

Section 20 provides that a licensee may be authorised to establish the necessary telecommunication systems for the provision of radio or television broadcasts within the national territory. Each transmitter used by a broadcaster shall be subject to a licensing process.

Powers granted to the Minister or Director-General by the Act

In terms of section 13, broadcast license applications must be made to the Minister. The Minister of Transport and Communications is responsible for approving the necessary technical conditions to guarantee the adequate quality in the transmission of broadcasting signals, in terms of section 15. According to section 16, the license is granted by the Council of Ministers. Thus the role of the Minister is very important in the licensing of non-state actors in broadcasting. Giving the Minister the power to grant licences is problematic because it undermines the independence of the regulator (SCM) whose primary role is to grant licences.

Provisions for media not controlled by the state

This Act deals specifically with media owned by the private, mixed and cooperative sector.

Body that enforces compliance with the Act

Chapter 4 deals with inspection and penalties. Section 21 of the Act provides that the National Institute of Communications (INCM) shall be responsible for the technical inspection of stations as well as their respective emissions and the protection against radio frequency spectrum interference. INCM is the regulator of the Post and Telecommunication sector.

Besides this, the relevant Minister ensures compliance with the present Act in relation to programming.

Provisions limiting media ownership

None

Consequences of non-compliance with the Act

In terms of section 22, the license may be suspended (jointly by the relevant Minister and the Minister of Transport and Communications) in the situations where the licensee:

- does not respect any of the objectives, limits or conditions to which the broadcast permit is subjected to;
- refuses to adopt the necessary measures to eliminate technical disturbances originated by a transmission, after being notified to do so;
- opposes the action of inspection agents; and
- ceases to pay promptly the required fees.

The Act does not provide indicate how much license fees for broadcasters will cost, but section 26(4) provides that such amount shall be fixed by a joint decision of the Minister of Information, the Minister of Transport and Communications and the Minister of Finances.

Section 23 provides that a broadcast license can be cancelled by a “competent entity” (it is unclear who the competent entity is, but we assume that it is the Ministers’ Council since it is the one that grants licenses) whenever the following occurs:

- non-observance of the measures of the suspension; and
- the suspension of the entity three times within a period of three years.

Additionally, articles 24 and 25 provide that in relation to civil and criminal acts committed by a licensee, the Press Law shall apply.

4.3 Decree No 31/2000 of 10 October 2000 which provides for the Television of Mozambique i.e. state television broadcasting service

Commencement date

10 October of 2000

Purpose of the Act

The purpose of the law is to establish and define the powers and functions of the state broadcaster known as the *Televisão de Moçambique service*, that is, the Television of Mozambique service (TVM).

Sector of the media governed by the Act

The Act applies to *TVM*, the State television broadcaster only.

Key provisions

In terms section 1 of the Act, *TVM* is a public institution with juristic personality and administrative, financial and patrimonial autonomy.

TVM is based in the city of Maputo and it may open offices in other areas of the national territory or in a foreign territory as provided for by section 2.

Chapter 4 provides for the objectives, powers and activities of *TVM*. According to section 4, *TVM's* main objective is the provision of public television broadcasting services. *TVM* may also perform activities of a commercial nature as well as other complimentary activities.

Section 5, provides that *TVM* may sub-contract the whole or a part of its services pending approval to be obtained from the Superior Council of the Media.

According to section 6 *TVM* is a juristic person and is provided with rights, obligations as well as the necessary power to manage its own affairs. Hence, *TVM* may directly or indirectly participate in commercial activities and sue or be sued in its own name.

Section 7 allows *TVM* to engage in a number of commercial activities, including:

- ▶ advertising;
- ▶ sale and renting of televisions, movies and magnetic tapes, cassettes, video discs and similar products;
- ▶ providing technical assistance with respect to television and broadcasting equipment;
- ▶ the selling of products, namely programmes and publications related to its activities;
- ▶ professional training in co-operation with entities which maintain professional courses, namely those related to television services;
- ▶ remunerated granting of broadcasting time;
- ▶ production of public or private spectacles eg plays;
- ▶ commercialisation of the sponsorship of programmes; and
- ▶ commercial and advertising production.

Chapter 3 of the Act deals with programming. According to section 9, *TVM* has autonomy to decide on the composition of its programmes.

Section 10 provides that *TVM* must produce and transmit programmes that are informative, entertaining and cultural in order to realise its objectives. Such programmes must reflect the interests, the necessities and the aspirations of the population. In accomplishing its function, *TVM* shall seek to:

- ▶ provide information which is recent, fair, exact and complete about matters of national and international interest;
- ▶ diversify programming, taking into consideration the diverse regions of the country;
- ▶ promote the diffusion of the Mozambican language, music and culture, through educational, cultural and entertaining programmes;
- ▶ contribute to the integration of minorities or specific groups such as children and youth, with specific attention to education and entertainment;
- ▶ regularly promote information about sport events and the practice of sports; and
- ▶ ensure civic education and the discouraging of anti-social behavior in conjunction and collaboration with responsible bodies.

Section 11 prohibits programmes:

- which involve disrespect to the laws;
- which challenge the security of the State, public order and good morals;
- which encourage behavior that defies national unity; and
- that encourage disrespect towards the environment, the flora and the fauna.

Section 12 prohibits the state broadcaster from disseminating advertising that:

- promotes the occult;
- is indirect or deceitful;
- is misleading as to the quality of the goods or services advertised;
- advertises unsafe products;
- contains pornographic or obscene material; and
- incites violence.

Section 13 provides that TVM must, according to its abilities or in collaboration with other related companies, produce the maximum number of its own programmes while observing the principles set out above.

This Act does not make provision for local or international content quotas for *TVM*. This is also problematic because it implies that the state broadcaster has the freedom to determine its own content quotas. This could lead to reliance on cheaper foreign content than investing in local production.

Chapter 4 deals with the funding of the state television broadcasting service. Section 14 provides that there is to be fund known as the “constitutional fund” for *TVM*. This constitutional fund is comprised of a fixed amount provided for in the Act known as the “statutory capital” (currently 14 908 190 000 Meticals or about USD 596 000) ²³ as well as state endowments and donations and other funding from other sources, which is subject to separate regulation.

Under section 18 *TVM* needs authorisation or approval under the law regulating public institutions for the following acts:

- the definition of basic objectives to be followed preparation of activity plans and budget;

- ▶ economic and financial activity plans, both annual and multi-annual and the plans for development of the entity, namely in the areas of production and of network of transmission;
- ▶ the annual budget of exploration and of investment, as well as its revisions;
- ▶ the donations and subsidies to be allocated from the State budget;
- ▶ the discharge of obligations;
- ▶ the internal regulation of *TVM*;
- ▶ the level of participation of the enterprise in the capital of other enterprises; and
- ▶ other acts which require authorisation in terms of applicable laws and regulations.

The organs of *TVM* as set out in section 19 are the Administrative Council and the Supervising Council.

In terms of section 20, five members, including the president, compose the Administrative Council. When appointing members of the Administrative Council, due consideration must be given to a person's professional and technical capacity. Members are appointed for a renewable period of three years. An employee from *TVM* with at least 10 years experience may be appointed as a member of the Administrative Council by way of election.

In terms of section 23, the Administrative Council shall have the necessary power to ensure the management and the development of the enterprise, including to:

- ▶ assess and vote on activity and financial plans;
- ▶ approve management policies of the entity;
- ▶ represent the enterprise in legal disputes;
- ▶ coordinate all the activities of the company, lead all its services and manage everything that is related to the objective of the enterprise; and
- ▶ appoint and dismiss directors.

The members of the Administrative Council, except those appointed according to section 20(3), exercise their mandate full-time and must be attributed functions corresponding to one or more areas of activity of the company as provided for by section 26.

Section 30 establishes a Supervising Council composed of three members. The Minister of Planning and Finance appoints the Supervising Council on the advice of the Superior Council of the Media. The duty of the Supervising Council is *inter alia* to verify if the actions of the Administrative Council are legal and advise about the meeting of company targets and the performance, financial performance and efficiency of management.

Chapter 7 deals with contracted programs. Section 35 provides that the activities of *TVM* are registered in a program contract for a minimum period of 3 years, between the Ministry of Planning and Finance, the SCM and the President of the Administrative Council.

In terms of section 38, *TVM*'s revenue is constituted by:

- the returns of its own assets;
- the product of the returns from advertisements and commercial activities;
- the dividends received from its participation in the capital of other companies;
- the participations, donations and subsidies of the state and other public or private entities either national or foreign;
- the product of alienation or taxation of its own goods; and
- any other return or values thereof which originate from the exercise of its functions.

Section 42 requires *TVM* to elaborate during each economic year the exploration and investment budget, and such budget must be submitted to the Minister of Planning and Finance, upon proposal by the SCM.

Powers granted to the Minister or Director-General by the Act

The Council of Ministers can appoint or dismiss the President of the Administrative Council in terms of section 20(2).

The Council of Ministers also exercises other disciplinary actions over the President of the Administrative Council in terms of the law.

A representative of the Ministry of Planning and Finance and a representative elected by the workers must obligatorily be made members of the Administrative Council in terms of section 20(3).

Section 42 provides that *TVM* must elaborate during each economic year the exploration and investment budget, and such budget must be submitted to the Minister of Planning and Finance, after being proposed by the SCM.

In terms of section 15(2), it is the duty of the Minister of Planning and Finance and the SCM to authorise changes to the statutory capital funding of *TVM*.

In term of section 30, members of the Supervising Council shall be appointed by the Minister of Planning and Finance upon the advice of the SCM.

Provisions for the media not controlled by the State

None. The Act applies to *TVM* only.

Body that enforces compliance with the Act

This is unclear in the Act, but it appears to be the SCM.

Provisions limiting media ownership

None.

Consequences of non-compliance with the Act

None.

4.4 Decree 18/94 of 16 June 1994 that provides for the Radio Mozambique service ie the state sound broadcasting service

Commencement date

16 June 1994

Purpose of the Act

The purpose of the law is to establish and define the powers and functions of the state sound broadcaster, the Radio Mozambique service known as *Radio Moçambique* (RM).

Sector of the media governed by the Act

The Act applies to RM, the State radio station.

Key provisions

Section 1 of the Act provides that RM is a public institution endowed with administrative, financial and patrimonial autonomy. RM is based in Maputo and has offices in all provincial capitals.

In terms of section 3, the fundamental objective of RM is the provision of a public radio broadcasting service; additionally RM may devote itself to other subsidiary and complementary activities related to its objective.

Other general objectives of RM are provided for in section 4. RM must comply with the constitutional principles, the Press Law, and the following general principles:

- to contribute towards public information, guaranteeing the citizen's right to inform and of being informed, without discrimination; and
- to contribute towards the elevation of civic mindedness, the political and cultural awareness of the population, while ensuring the expression of diverse, even confrontational views and opinions.

Different organs of RM are dealt with under Chapter 6 of the Act. According to section 19, the following are the organs of RM:

- the Administrative Council;
- the Executive Directorate; and
- the Supervising Council.

Section 22 provides that five members including a president shall constitute an Administrative Council (AC). The president of the AC shall be appointed and removed by the Council of Ministers. The Minister in charge of the Communications sector, taking into account the following, appoints the four remaining AC members:

- two member are nominated by the Minister in charge of the Communications sector;
- one member is nominated by the Minister of Finance; and
- one member is nominated through an election by employees of RM

Section 21 provides that the members of the AC are appointed for a renewable period of three years. On the other hand, members of the Supervising Council are appointed for a renewable period of five years by the Minister of Finance on advice of the Minister in charge of the Communications sector, in terms of section 35.

Section 27 grants the AC the necessary powers to ensure the proper management, functioning and the development of RM and the power to represent RM in both legal and non-legal matters.

Section 36 provides for the establishment of the Supervising Council (SC) and indicates that it has amongst others the following duties:

- ▶ verify that the minutes of the organs of RM are in accordance with the law, the statutes and other applicable legislation;
- ▶ supervise the management activities of RM; and
- ▶ inform the competent organs of irregularities in the activities of management and in general in the functioning of the company.

Chapter 2 deals with programming matters and provides in section 7 that RM is required to transmit:

- ▶ at least one transmission at a national level in the Portuguese language;
- ▶ at least one transmission in a provincial level in Portuguese and in the most known local language; and
- ▶ other programmes which it finds necessary or useful for the provision of public radio broadcasting services.

Section 8 provides RM autonomy to decide on the content of its own programmes.

Section 11 prohibits programmes that disrespect the law or challenge state security, public order or good morals. Note that none of these terms are defined in the Act and may therefore be subject to abuse. Vague legal references may be problematic because they may lead to uncertainty as to the ambit of their interpretation and application towards broadcasters.

Chapter 4 deals with funding, the capital of RM and how this can be changed. Similar to *TVM*, *RM* has a statutory fund that is a monetary amount expressly included in this Act (36 600 783 000 Meticals or approximately USD 1 464 000). The funds of *RM* may also include endowments and other patrimonial receipts.

Section 48 requires *RM* to elaborate during each economic year the research and development budget, and such budget must be submitted for approval by the Minister of Finance, after being proposed by the *SCM*.

Section 25 provides that *RM* and the authorities of its organs are criminally and civilly responsible in terms of the Law of Public Institutions.

Powers granted to the Minister or Director-General by the Act

According to section 15, the Minister of Finances and the *SCM* must authorize the eventual alterations to the statutory capital of the company.

In terms of section 22 the President of the *AC* is appointed by the Council of Ministers. The Minister in charge of the Communications sector appoints the remaining 4 members.

The Minister of Finance appoints the president and the remaining members of the *SC* under section 35 of the Act. The Minister of Finance is also responsible for fixing the remuneration of the members of the *SC*.

Provisions for media not controlled by the State

None. This Act applies to *RM* only.

Body that enforces compliance with the Act

The *SCM* enforces this Act.

Provisions limiting media ownership

None

Consequences of non-compliance with the Act

None

4.5 Law No 18/91 of 10 August 1991 that provides for the Mozambican Press Law

Commencement date

10 August 1991

Purpose of the Act

The Act defines the principles that regulate the activities of the press and provides for rights and duties of journalists. Under this Act, the press is understood as any organ of information whose principal activities are the gathering, editing and the dissemination of public information by way of media platforms including graphic publications, radio, television, cinema and reproduction of writings. The Act also provides for criminal and civil responsibilities and penalties in cases of violations of the freedom of press.

Sector of the media governed by the Act

This statute covers the entire media sector whether public or private in Mozambique, namely, the print media, broadcast media, cinema or any kind of publication whether in written form or in the form of sound and/or images that are disseminated to the general public.

Key provisions

Chapter 1 deals with fundamental principles. Section 2 defines freedom of expression and particularly freedom of press. Its wording imitates section 48(3) of the Constitution which states that freedom of the press includes freedom of speech and creativity of journalists, access to information, the protection of sources, their professional independence and the right to create newspapers, publications and other means of publication including broadcasting.

Section 3 describes the right to information as a right of every citizen to receive information and to be informed of facts or opinions on a national and international level. This right also extends to the right of every citizen to disseminate information via the media. No citizen may be prejudiced at work as a result of his/her exercise of his/her legitimate right to freedom of expression via the press.

Section 5 provides for rights and duties of journalists. When performing their functions, journalists and the press should enjoy their rights and duties as provided for in the Constitution, the present law and other relevant legislation. Journalists

and the press must exercise their rights and duties in compliance with the Constitution, human dignity and the imperatives of international law and national defense.

Chapter 2 is headed 'Media organs' and provides for a range of media-related issues as set out below.

Section 6(2) provides that the frequency spectrum forms part of the public dominium of the state.

Section 6(3) provides that the state may acquire interests in any media organisation not falling under the public sector, subsidise or provide any other form of assistance where the public interest requires it to do so. This provision allows the government to support failing media bodies where public interest requires it to do so as well as it gives the government the opportunity to intervene in order to improve media diversity in the country.

Section 8 requires every media company to have its own editorial policy that defines its orientation and objectives. Such editorial policy needs specifically to declare that it respects the professional ethics of journalists.

According to section 9, directors of any local media company must be a Mozambican citizen, resident in the country and enjoying full civil and political rights. The section stipulates that the government shall appoint the directors of public sector companies and institutions.

Section 11 provides that the state media is comprised of the national radio, national television, national news agency, and other companies and institutions created to serve public interest. Thus, the main functions of the state media are:

- to promote the access to information for all citizens;
- to guarantee impartial, objective and balanced news coverage;
- to reflect the diversity of ideas and opinion groups in a balanced manner; and
- to promote the use of the national languages.

The State Broadcasters are further required to:

- conceive and realise balanced programming, taking into consideration the

- diversity of interests and the preferences of their audiences;
- ▶ promote communication that contributes to development; and
- ▶ promote national culture and creativity through local programming and create additional space for local programmes

The State media are obliged to exercise their duties free from the interference of any party or external influence, which may compromise its independence. They must be guided by high standards and professionalism.

Section 12 deals with right to broadcasting airtime, and gives a right to political parties represented in the Assembly of the Republic (AR) to have access to national radio and television, in terms of the applicable regulations. During election periods, the participating political parties have a right to regular equitable broadcasting time on both radio and television, under the Electoral Law. The opposition political parties represented in the AR are afforded with the right to reply in relation to the political declarations made by the government on radio and television stations.

Section 13 imposes a duty on daily media outlets to publish official notices of the government in their entirety and with due prominence. Further, the State broadcaster is obliged broadcast free of charge in its entirety with maximum urgency, the messages of the President of the Republic.

According to section 16 the director of every print media enterprise is obliged to send, free of charge, on the day of publication, a minimum of two copies of its publication to the following entities:

- ▶ the Ministry of Information (no longer in existence);
- ▶ Superior Council of Media;
- ▶ the Office of the Attorney-General;
- ▶ the National Public Library;
- ▶ Mozambique Historical Archive; and
- ▶ any other entity in relation to which there is a legal duty to do so.

Foreign media are dealt with under Section 17 of the Press Law. Foreign publications mean materials that are published outside the country, as well as those published in the country under foreign title and foreign editorial policy. Foreign publications published in Mozambique are subject to the Press Law except

in those aspects that make the present law not applicable to them. The import by foreign organs and diplomatic missions of periodical publications intended for free distribution must be declared to the relevant governmental entity. Note this section also applies to foreign broadcasting activities.

Chapter 3 deals with the licensing of print media and broadcast companies. In terms of section 19, application is to be made to the relevant Minister by providing the following information:

- the title;
- the objectives;
- place of publication or transmission;
- languages of publication or transmission;
- full and complete identification of the owner;
- the constitution of the editorial or production entity; and
- the complete identification of the director or editor of the organ of information.

Additional information required for print media companies are:

- frequency of publication;
- minimum number of copies published;
- format and sale price; and
- complete identification of the printing and distribution entity.

All the applications must be accompanied by the following annexures:

- certified copy of the constitution of the editorial or production entity;
- certified copy of the editorial policy;
- information regarding the sources of income that constitute the capital of the entity, as well as financial resources needed for its management; and
- information about the origin and nature of direct or indirect subsidies.

Section 20 provides that the licensing process covers a period of 30 days from the date of delivery of the complete application. Thereafter, the Minister may grant a license or a certificate of registration with a validity of two years that is automatically renewable (except in cases where the renewal is revoked by the Minister in accordance with a judicial decision or if renounced by the licensee).

According to section 22, an application for a print or broadcast license can only be rejected in the case where the requirements for the declaration or other legal requirements are not met. Notice of a rejection must contain a detailed justification thereof indicating clearly the reasons for the rejection.

Sections 23 and 24 make provision for a number of prerogatives granted to the Minister:

- the Minister may suspend a license when a media organ contravenes the law or when an application contains false information. In order to do so, the Minister must submit the process to the Public Prosecutor for judicial action which may culminate in the cancellation of the registration;
- the Minister may, excuse from compulsory registration, materials and publications of limited circulation produced by state entities, companies, organisations, educational and research institutions, as well as periodical publications which do not exceed a circulation of 500 copies.

In the case of a suspension or refusal of a license, section 25 of the Act gives interested parties the right to appeal against the decision.

Chapter 4 deals with the rights and duties of the journalists. In terms of section 26, the term “journalist” refers to a professional who dedicates himself/herself to the research, gathering, selection, elaboration and public presentation of events in the form of news, information or opinion, via the means of media and to whom this activity constitutes his principal profession, which is permanent and remunerated.

In terms of section 27(1), the rights of the journalists are listed as follows:

- free access and the right to remain in public places as may be necessary for the exercise of their duties;
- the right not to be detained, removed or by any means prevented from performing his/her duty in the place where his/her presence is required as a journalism professional, subject to the limits of the law;
- the right not to comply with editorial instructions which do not originate from the competent authority in his company;
- the right to refuse, in the case of illegal questioning, to hand in or exhibit working material used;

- ▶ the right to participate in the internal life of his/her organisation, namely in the council of the editorship or similar organ, in terms of the constitution; and
- ▶ the right to appeal to the competent authorities whenever his/her rights are contravened.

In the case of violation or aggression, or the attempt to corrupt, intimidate or press the journalist in the exercise of his profession, the respective employing entity must institute legal proceedings against the perpetrator and be part of the process.

Section 27 also provides that where there are significant editorial changes in a media organisation (these must be confirmed by management or clearly stated) a journalist may unilaterally cancel his/her job contract and may claim compensation.

Section 28 lays down the duties of the journalists as follows:

- ▶ to respect the rights and freedoms of citizens;
- ▶ to provide information that is complete and objective;
- ▶ to exercise his professional activity with integrity and objectivity;
- ▶ to rectify false and inaccurate information that has been published;
- ▶ to abstain from directly or indirectly participating in hate speech, racism, intolerance, crime and violence;
- ▶ to repudiate plagiarism, slandering, defamation, falsehood, accusation without proof, injury, and the tampering with documents; and
- ▶ to abstain from the use of the moral prestige of the profession for personal gain.

Section 29 provides that in the exercise of their functions, journalists will be granted access to official sources of information. However such access shall not be granted in relation to on-going judicial processes, to facts and documents considered by the competent authorities as military secrets or state secrets, to facts regarded as secret or confidential by legal imposition, and those that relate to the privacy of the citizen.

Section 30 deals with professional secrets, and recognises the right of journalists to withhold or protect their sources of information. Journalist's silence may not be subject to any type of sanction. In other words a journalist may not be prejudiced in any way because of his/her refusal to reveal his/her sources. This right is also

afforded to the directors of any relevant organisation who may know the source of such information.

According to section 31, journalists employed in the public sector should exercise their duties freely irrespective of their opinions, trade union or political affiliations. If a journalist is permanently employed in the public sector or state media, s/he has to obtain written agreement from the company in order to freelance for other media enterprises.

Chapter 5 deals upholds the right of any person who feels injured by the publication of untruthful and/or erroneous statements which may affect their moral integrity and the good name to have a right of reply. An offended person or his/her legal representative or his/her heir, or the surviving spouse may exercise this right. The right of reply is independent from any related criminal procedure as well as any delictual claim. A delictual claim is what is commonly known as a claim for damages suffered or compensation for any sustained losses.

Chapter 7 deals with criminal and civil liability of journalists for wrongdoing. In regard to liability, section 41 provides that the journalistic institution is vicariously liable together with the author for work published if the director or his legal substitute was aware of the publication. The decision reached by the relevant court must be published or broadcast free of charge in the relevant media enterprise, and must include important information concerning the decision taken.

According to section 42, the voluntary violation, through publication, of juristic interests protected by the Penal Code and the present law (that is contempt of court) are considered to be crimes of abuse of the freedom of the press.

In terms of section 43, responsibilities are allocated differently depending on whether it is in relation to print media or electronic media. In the case of the print media, the following persons may be held responsible for press offences:

- the author of a written material or image, except in the case where such material was published without authorisation, in which case the person responsible for the material will be liable, together with the director of the periodical or his legal substitute as an accomplice if he is not able to prove that he did not know of the material or that it was impossible to hold up the publication;

- ▶ the director of the publication or his legal substitute, in the case where the publication is not signed, or where the author cannot be liable, or if the director or his legal substitute does not clear himself from responsibility in the manner outlined above; and
- ▶ the person responsible for the inclusion, in the case of material published without the director's or his legal substitute's knowledge or where it was impossible for them to hold up the publication.

In the case of electronic media, the following persons may be held liable:

- ▶ the author of the writing, image or radio or television programme, except in the case of unauthorised publication in which case the person who has promoted them shall be responsible; and
- ▶ the editor or producer of the program, if it is impossible to identify the author or if the author is not liable.

To establish criminal liability, the director or editor of the publication and the person responsible for the radio or television programme or cinema is presumed to be the author of the unsigned material if s/he does not clear himself from the responsibility. Members of a council of editorship will be presumed responsible, in the same terms as the director, in the case of publication of material subject to a deliberative vote, unless they are able to show that they did not take part in the deliberation or voted against the publication of the said material as provided for in section 44 of the Act.

Section 46 deals with the completion and aggravation of offences and provides that the crimes of injury, defamation, threat, insult or provocation against the President of the Republic, members of the government, deputies of the Assembly, magistrates and other public authorities or against a head of state or member of a foreign government, against any diplomatic representative accredited in the country is committed with the publication of the written material or the broadcast of the programme or image in which the offence is contained.

In the case of defamation, section 47 provides that proof of the veracity of the facts is admissible as a valid defense, except in the following cases:

- ▶ when related to private persons, the imputation does not justify its publication

either on the basis of public interest or the legitimate interests of the offender; and

- when the facts relate to the private life of the person.

In terms of section 49, media can be found guilty of a “crime of disobedience” if:

- a judicially apprehended or suspended media enterprise produces a publication or transmission;
- a director fails to observe a decision of the court which orders the publication or broadcast of a right to reply;
- they refuse to publish or broadcast the decisions of the courts according to section 41 above; and
- interdicted foreign publications are imported for distribution or sale.

Section 50 declares illegal any press that is not registered or does not comply with articles 15 and 19 of the Press Law. These articles pertain to publication details and information required for registration. It further specifies that the police, military authorities, and administrative authorities shall apprehend representatives of an illegal press and bring them to the judicial authorities within 24 hours.

Section 53 provides that media organisations and their respective owners are jointly liable with the author of the press crime, for the payment of any fines and damages for which they are sentenced.

Powers granted to the Minister or Director-General by the Act

The Minister has the power to grant, suspend or revoke a license or certificate of registration in terms of articles 19, 20, 23 and 24 of the Act.

The Minister may, according to section 24, excuse from compulsory registration, materials and publications of limited circulation produced by state entities, companies, organisations, educational and research institutions, as well as periodical publications that do not exceed a circulation of 500 copies

Provisions for media not controlled by the state

The Act applies to both the private and the public media

Body that enforces compliance with the Act

The courts of law together with the Superior Council for the Media enforce the Act.

Provisions limiting media ownership

According to section 6 of the Press Law, only Mozambican institutions, associations and citizens residing in the country may be the owners of media organisations and journalistic entities. It further provides that if a media organisation is a commercial association, the direct or indirect participation of foreign capital may only occur up to 20% of the capital.

Consequences of non-compliance with the Act

The Press Law provides for both criminal and civil sanctions for contravention of the Act.

Section 47 provides that the author of a defamatory statement can be exempt from prosecution if s/he proves that the statements made are true otherwise s/he will be punished as a calumniator (slanderer) and sentenced to a prison term not exceeding two years and to a damages award of not less than 100 000 Meticals (USD 4) without need for the presentation of evidence. The proof of truthfulness (use of truth or trueness as defense) is not permissible as a defense if the journalist has defamed the State President or a foreign head of state or representative in Mozambique.

Sections 48 makes provision for recidivism or repeat offences. It provides that any periodical that is found guilty of three convictions for defamation may be suspended. If it is a daily periodical, the title can be suspended for one month; if it is a weekly periodical, the title can be suspended for six months, if it is a monthly periodical or longer, the title can be suspended for up to one year. A director of any periodical found guilty of the crime of defamation on three occasions will be prevented from managing any periodical for a period of two years.

When the defamatory facts are published as result of negligence, a fine of 100 000 Meticals (USD 4) is applicable and 200 000 Meticals (USD 8) is applicable in the case of recidivism. Intentional statements, which threaten the public interest or law and order, will be punishable with the sentence corresponding with the

crime of defamation. In the case of intentional statements, the proof of truthfulness of the facts is always accepted.

In terms of section 64, the government may update the value of applicable fines every time that inflation of the currency is experienced.

Section 49 provides that the publication or broadcast by an apprehended or suspended media organisation shall be liable to a fine between 500 000 Meticals (USD 20) and 2000 000 Meticals (USD 80) per publication added to the value of the inserted advertisements and the value of the copies at their market value.

The editing, impression, distribution or sale of illegal publications is punishable with a jail term of up to two years and to a fine between 500 000 Meticals (USD 20) and 2000 000 Meticals (USD 80). The production, broadcast, distribution or sale of illegal publications is punishable with a jail term of up to two years and a fine between 500 000 Meticals (USD 20) and 2000 000 Meticals (USD 80).

Section 52 of the Act provides that whoever violates or contravenes any of the rights, freedoms or guarantees in law shall be sentenced to a fine up to 1000 000 Meticals (USD 40) but never less than 500 000 Meticals (USD 20).

If the author is a state employee or an employee of any other public entity, s/he shall also be punished for the crime of abuse of power that has been committed in the exercise of his/her functions. The state or such entity shall also be jointly responsible for the payment of the fine.

4.6 Presidential Decree No 4/95 of 16 October 1995 that establishes the Government Press Office, known as *Gabinete de Informacao*

Commencement date

16 October 1995

Purpose of the Act

To provide for powers and functions of a Government Press Office known as GABINFO. GABINFO replaces the Ministry of Information and accounts directly to the Prime Minister.

Sector of the media governed by the Act
The Act applies specifically to GABINFO.

Key provisions

Section 1 provides that GABINFO is under the obligation to exercise its functions in subordination to the Prime Minister and section 2 provides that GABINFO is a juristic person with administrative autonomy.

The functions of GABINFO according to section 3 are the following:

- to assist the Prime Minister in matters related to communication;
- to facilitate the interaction between the Government and the media sector;
- to promote the public dissemination of information addressing activities of the government;
- to facilitate the access by the media and the general public to information about government activities;
- to make proposals to the government about initiatives of assistance which the government may provide to the media of organisations of the public, private and cooperative sector; and
- to exercise State oversight over the media bodies or institutions belonging to the public sector according to the Press Law.

Section 6 provides that the constitution of GABINFO shall be subjected to the approval of the Prime Minister. Section 7 provides that the Prime Minister shall appoint the director of GABINFO.

Powers granted to the Minister or Director-General by the Act

The GABINFO accounts directly to the Prime Minister in terms of the Act.

Provisions for media not controlled by the state:

None.

Body that enforces compliance with the Act

None.

Provisions limiting media ownership

None.

Consequences of non-compliance with the Act

None.

4.7 Decree No 65/2004 of 31 December 2004 that provides for rules governing advertisements

Commencement date

31 December 2004

Purpose of the Act

The purpose of the Act is to regulate advertisements with a view to protect cultural, social and economic values.

Sector of the media affected by the Act

Section 2 provides that this Act applies to any form of publicity, independently of the platform used, meaning that it can be the state or private media.

Key provisions

Chapter 2 deals with the general regime of advertisements. Section 4 provides that advertisements are governed by principles of lawfulness, truthfulness, and respect for the rights of the consumers.

Section 5 prohibits any advertisement, which by its form, object, or goal offends the values, principles and fundamental institutions entrenched in the Constitution. The following are also prohibited:

- the depreciative and offensive use of public or private institutions, national symbols or religious or historic personalities;
- incitement to or stimulation of violence, as well as any illegal activity;
- undermining the human dignity or any fundamental rights;
- any discrimination based on social position, political opinion, race, sex, language, physical deficiency, religion and territorial origin;
- unauthorised use of image or voice, words or ideas belonging to some one else;
- use of obscene language, image or gestures;
- encouragement of behavior which is prejudicial to the environment;

- ▶ threatening the health of the consumer; and
- ▶ advertisements broadcast in a foreign language without the respective translation in an official language and/or a national language.

In terms of section 6, advertisements must be clearly identified as such. The advertisements used in television and radio must be clearly separated from the rest of the programme by means of the introduction of a separating interjection at the beginning and at the end of the publicity space.

Section 7 prohibits the use of subliminal advertising. These are advertisements that use certain techniques to arouse some sensory perceptions in the audience of which they may not be conscious.

According to section 8, advertising must at all times respect the truth and not distort facts and that the statements relating to the origin, nature, composition, ownership and conditions of purchase of advertised goods or services must be accurate and capable of proof at all times upon request by the interested parties.

In terms of section 9, any advertisement that has the effect of deceiving, defrauding or inducing its audience to error or has the effect of prejudicing a competing product or service is prohibited. In order to determine whether a message is deceitful or fraudulent, all elements comprising the advertisement must be taken into account.

Section 10 deals with the principle of respect for the consumer and it states that advertisements may not infringe the rights of the consumer nor contravene the Act.

Section 11 prohibits advertisements that endanger the health and security of consumers. Any advertisement that may encourage behavior that is prejudicial to the health and security of the consumer, because of flawed or false information about the dangers of the product or of the special susceptibility of the verification of accidents as a result of its peculiar use, is prohibited. The advertisement must not contain any visual presentation or description of situations where safety measures are not thoroughly observed.

Section 12 requires the advertisements addressed to minors (persons below the age of 18) must take into consideration their psychological vulnerability, thus

prohibiting the following:

- ▶ direct inducement of minors, exploiting their inexperience or gullibility, to acquire a determined good or service;
- ▶ direct incitement of minors to persuade their parents or third parties to buy the products or services in question;
- ▶ the incitement to commit violent acts in various forms; and
- ▶ the exploitation of the special trust that minors have with their parents and teachers.

Minors may not be cast or used in advertisements in which they have no direct relation with the product or service.

Section 18 prohibits the advertising of alcoholic beverages, tobacco products and any pornographic material inside educational and hospital institutions as well as in publications, programmes or activities especially aimed at minors.

Section 22 deals with sponsorships in advertisements. In radio and television, prime-time news services and programmes of national politics may not be sponsored. In the print media articles containing political information may also not be sponsored. Sponsored programmes must be clearly identified as such by an indication at the beginning and at the end of the program of the name or logo of the sponsor. The content and the programming of a sponsored broadcast may not be influenced by the sponsor, in such a way as to affect the editorial responsibility and independence of the media entity.

Section 23 provides that radio and television advertisements must be inserted during the intervals in the programmes or in between programmes. In radio and television – news services, advertising may not interrupt political information programmes, actuality magazines and children’s programming shorter than 30 minutes in duration. In the case of television the interval between two successive commercials may not be less than 20 minutes.

Chapter 3 deals with advertising agencies and advertising activity. The Ministry of Industry and Commerce is responsible for granting licenses to advertising agencies under section 26 of the Act.

Section 27 provides that all advertisements originating from a foreign source must

be represented by a locally licensed advertising agency.

Section 32 deals with the state advertisements. It provides that in case of advertisements in which the state intervenes as the advertiser, such advertisement must be made by an advertising agency licensed in terms of the applicable legislation.

Powers granted to the Minister or Director-General by the Act

In terms of section 26 the Minister of Industry and Commerce grants licenses to advertising agencies and legal proceedings relating transgressions of this Act are initiated by the General Inspecting body of the same Ministry.

Body that enforces compliance with the code

According to section 37, the General Inspection Department of the Ministry of Industry and Commerce has the duty to prosecute transgressions of the Act as stated above and apply the sanctions and penalties provided for in this Act. The courts of law are also entitled to enforce the Act.

Provision for media not controlled by the state

The Act applies to both state and private media.

Consequences of non-compliance with the Act

Section 33 provides that the advertisers, the advertising agencies and the advertising platforms have joint civil responsibility in respect of contraventions to the present Act.

Section 34 prescribes different fines without prejudice to other penalties provided for in the applicable legislation:

- 10% over the amount of money paid to the media platform used in the case of violation of articles 5, 6, 7, 8, 10, 11;
- 15% in the case violation of articles 12, 13, 14, and 15;
- 20% in the case of violation of articles 9, 16, 17, 24, 25, 30, 31; and
- 25% in the case of violation of articles 18, 19, 20, 21, 22, 23, 25, 26 and 27.

Section 36, provides that the following sections may additionally be applied, without prejudice to the ones mentioned above:

- the apprehension of objects utilised in the transgressions;

- ▶ interdicting temporarily, up to two years, of the exercising the advertising activity, in the second reoccurrence; and
- ▶ the temporary closing down of the premises and/or cancellation of licenses/permits etc.

Section 38 provides that it is the duty of the Ministry of Industry and Commerce to implement the sanctions provided for in this Act.

4.8 Law No 12/79 of 12 December 1979 that provides for the protection of State Secrets

Commencement date

12 December 1979

Purpose of the Act

The purpose of the Act is to provide for the protection of State Secrets.

Sector of the media governed by the Act

The present Act is not media specific; however it contains provisions that have a direct impact on the operations of the media.

Key provisions

The Act aims to protect state secrets in relation to all documents containing classified facts and information as provided for by section 1.

‘Documents’ in terms of section 3 means any object capable of bearing information that may be passed from one person to another.

According to section 4 documents are divided into the following groups:

- ▶ **Classified Documents:** those which contain military, political, economic, commercial, scientific, technical or any other information which its dissemination would jeopardise, prejudice, defy or disturb the security of the state and that of the Mozambican population or the national economy.
- ▶ **Non-Classified Documents:** those that do not possess any of the characteristics outlined above.

Section 5 provides that the classified information referred to above is divided into State Secrets, secret, confidential and restricted.

In terms of section 6, a Commission for the Implementation of State Secrets (the Commission) issues security instructions that it finds necessary to protect state secrets.

Section 8 provides that the Commission shall appoint bodies responsible for controlling classified information and define their structures. It is the duty of the leaders of these bodies to appoint persons to supervise classified information. These persons must in turn be confirmed by the National Service for Popular Security. The responsible person for the supervision of the classified information is directly accountable to the respective leader of his/her structure and shall safeguard the compliance of the legal provisions related to the State secret.

Powers granted to the Minister or Director-General by the Act

None

Provisions for media not controlled by the State

The Act can be extended to both private and state media.

Body that enforces compliance with the Act

The Court of law enforces the Act

Provisions limiting media ownership

None.

Consequences of non-compliance with the Act

Section 10 provides that non-compliance with this Act giving rise to crimes against national security and state security shall be decided upon and punished in terms of Section 5 of Law No 2/1979 of 2 May. Prosecution and investigation shall be the duty of the National Service for Popular Security.

Section 11 provides that the non-compliance of the present Act not giving rise to crimes against the State nor State security shall be sanctioned in accordance with the work rule and discipline of the State entities and with the present law.

4.9 The Penal Code, Decree of 16 September 1886

Commencement date

16 September 1886

Purpose of the Act

The primary purpose of the Penal Code is to codify the criminal law of Mozambique. This law was been promulgated more than a hundred years ago. It is a Portuguese law made directly applicable to Mozambique and has yet to be repealed or revised.

Sectors of the media governed by the Act

This Act is not media specific, however it contains a number of provisions that impact directly or indirectly on the media sector.

Key provisions

Section 407 deals with the crime of defamation. It provides that anyone who publicly defames another person by means of spoken words, written words, published pictures or by any other means of publication, imputing facts which are offensive to another person's honor, shall be sentenced to a prison term of up to four months and a fine payable daily for up to 30 days.

Section 408 stipulates that the proof of the truth (where truth is used as a defense in a court of law) of the imputed facts shall be permissible, except in the following two circumstances:

- ▶ when facts are imputed to public servants and relate to the exercise of their functions; and
- ▶ when facts are imputed to private persons or public servants in their private capacity, and the said facts relate to a crime which is still subject to a conviction, or is till *sub judice*.

Section 409 deals with proof of the truth of facts and calumny. In the case where the truth of the facts as prescribed above are indeed proved, the accused shall be exempted from conviction. On the other hand, if s/he is unable to prove the truth of such facts, s/he will be sentenced to up to two months in prison and a fine payable daily for up to 30 days. In the case of accusation for *injuria* no 'proof of

fact' is admitted in relation the injurious facts. In other words, in the case where a person has maliciously insulted another person's good name and honour by alleging derogatory facts, the proof of the truthfulness of the harmful facts is not admitted.

Section 411 deals with defamation and *injuria* against a public institution. If the crimes referred to in the Articles 407 and 410 are committed against a public authority, the sentence shall be for a period of six months. The section also provides that if such crimes are committed against any of the legislative chambers, the sentence shall be for a period up to six months plus a fine payable daily for up to 30 days.

Section 413 provides for corporal offenses with the intention to defame. A corporal offense is the intentional causing of physical harm or assaulting the bodily integrity of another person. According to this section if such offence is committed publicly, the perpetrator shall be charged with the defamation with aggravating circumstances, save where the offence is graver, in which case it shall applied as if in the crime there where aggravating circumstances.

Section 414 states that anyone who maliciously commits any offensive or injurious act towards a public authority shall be charged with the offence of defamation. The exception is the case where the offence itself is covered by a heavier sentence, in which case it shall be applied concurrently as aggravating circumstances.

Section 415 provides that the crimes mentioned in the Penal Law, when committed against one's parents or any of the legitimate ascendants, shall always be punished with the maximum sentence.

Section 417 states that the crime of defamation or *injuria* when committed against a deceased person, shall be punished if the ascendants or descendants, or spouse or brothers or heirs of such person so accuse the offender.

Section 418 provides that whoever provides a satisfactory explanation for the relevant defamation or *injuria*, will be exempt from prosecution if the offended party accepts such explanation.

Section 420 provides that insult to public morals, committed in public by words shall be punished with a prison sentence for a period up to three months and a fine

payable daily for up to 30 days. If this crime is committed in the form of published writing or pictures, the sentence shall be for a six month prison sentence or a fine payable daily for up to 30 days.

Powers granted to the Minister or Director-General by the Act:
None.

Provisions for the media not controlled by the State
The provisions of the Act relate to both state and private media.

Body that enforces compliance with the Act
The courts of law enforce the compliance with this Act.

Provisions limiting media ownership
None.

Consequences of non-compliance with the Act
As mentioned above, a prison term up to four months and a fine payable daily for up to 30 days is prescribed in case of contravention of section 407 of the Act. Please note that when referring to sentencing and fines this Act makes provisions for fines in terms of days that is because a certain adjustable amount is allocated to each day.

Section 409 provides that if the accused is unable to prove the truth of such facts, (in case of calumny) he will be sentenced to up to two months in prison and a fine of up to a month. Calumny is the act of making incorrect and unjust reports about a person with the intention of destroying the good name of that person

If defamation is committed against a public authority, section 411 provides that the sentence shall be for a period of six months. The section also provides that if such crime is committed against any of the legislative chambers, the sentence shall be for a period up to six months plus a fine of up to one month.

In case of contravention of section 420, a prison sentence for a period up to three months and a fine of up to one month shall apply.

4.10 Draft Bill on Access to Official Sources of Information

Commencement date

Not applicable as this is still a draft Bill.

Purpose of the Act

The purpose of the draft Bill is to implement the right of access to official sources of information, as well as the right to information held by relevant private entities as provided for in the Constitution.

Sector of the media governed by the Act

This draft Bill is applicable to both the print media and broadcast media.

Key provisions

Section 1 provides that the right to information necessarily implies the free access to the sources of such information.

Section 2 provides that official i.e. state sources of information are the object of the present draft bill and that private sources shall be equivalent to official ones whenever the public good may be at stake.

Section 3 provides that information may be provided in oral or documentary form and whatever their nature, they must be capable of providing a satisfactory response to the request. Written sources may consist of any authentic document. Note that the present draft bill does not cover anonymous texts (texts where the author is not known or identified).

Section 4 defines the objective of the Act which is to regulate the access by citizens of official sources of information or its equivalent.

Section 5 provides that bodies and institutions of the public administration, public companies and private entities (whenever the public interest requires this) are obliged to provide written or oral information and explanations, whenever these are requested from them. The section additionally states that the draft bill does not cover matters forming part of State secrets, matters which are *sub judice*, and those that involve the private life of the individual.

Section 6 deals with the duty to inform. This duty lies with the highest authority

within the structure of the relevant entity but it may nevertheless be delegated depending on each case. Those who fail to comply with the duty mentioned above may be held responsible in terms of the law.

Chapter 2 deals with the exercise of the right. Section 7 deals particularly with the request for information. It provides that the petitioner who wishes to gain access to information shall specify the request and adequately identify himself. The information shall, according to this article, be given to the petitioner himself or the person he/she indicates.

Section 8 provides that access to the documents held by entities mentioned in Section 5 presupposes:

- a consultation free of charge on the relevant premises;
- obtaining a copy, or reproduction by any technical means, of the documents desired, through payment of a fee; and
- other forms which confirm the existence of the document or information desired.

In terms of section 9 the reply to the request shall be given within 10 days. If there is no satisfactory reply at the end of this period, or a refusal is given, the petitioner may present a complaint to the Superior Council of Media. In the case where the SCM believes the refusal or imprecise reply is not justified, it shall order the entity petitioned to satisfy the request properly within 10 days, while communicating the procedure to the petitioner. According to the section, the failure to satisfy the request by the SCM within the prescribed period shall constitute the crime of “qualified disobedience”.

Sanction (punishment) for ‘qualified disobedience’ is not provided for in the Draft Bill. Penalties with regard to qualified disobedience are provided for in the Press Law. However, the Press Law does not make provision for a specific figure, it merely states that the amount shall be fixed by the Ministers of Information, Transport and Communication and Finances.

The SCM shall institute the relevant criminal proceedings. On the other hand, in the event where it finds the refusal or response is justified, the SCM shall inform the petitioner within 10 days, giving reasons for its decision. Appeals against the decisions of the SCM shall be directed to an Administrative Tribunal.

Section 10 provides that the Act shall be interpreted in harmony with other relevant laws.

Powers granted to the Minister or Director-General by the Act:

None.

Provisions for the media not controlled by the State

None

Body which enforces compliance with the Act

The SCM together with Administrative Court enforces the Act.

Provisions limiting media ownership

None.

Consequences of non-compliance with the Act

None are provided for in the Draft Bill. Penalties with regard to qualified disobedience are found in the Press Law.

5. Media code of conduct

There is no common media code of conduct for Mozambique.

6. Court cases

Overview

In Mozambique, detailed explanations are to be provided to court officials in order to access court cases. When access is granted, those cases are difficult to locate because there are not properly recorded. This is largely due to the lack of a proper functioning of the judicial system. We believe that this state of affairs impacts negatively to researchers or any persons interested in the legal development. The only important Supreme Court case that impacts on freedom of expression that we surveyed relates to defamation.

6.1 Case Number 238/00C.

The full citation of parties (eg. The Nation Pty Ltd vs. Evelyn Wade 1987) involved in court cases is not provided in Mozambique

Date of the judgment

29 May 2001

Sector of the media affected by the judgment

In our view, the print media was the subject of this judgment, however we believe the principle applies of all media.

Key legal principles established

This case helped to establish that to comply with the requirements of the crime of defamation and injury to personality, it is always necessary to establish the presence of specific intention to defame or injure. Also in order to establish the presence of calumnious accusation it is necessary to prove that the facts complained of are false and that such falsity is within the knowledge of the accuser.

Court handing down the judgment

The criminal section of the Supreme Court of Mozambique.

Key provisions of the judgment

The respondent (who was the accuser in the court *a quo*) together with the applicants were associates in the ownership of a clinic. On 5 May 1995, Mr DC Bagorro

contacted another person named Mr Fernandes (his partner) and informed him that he had used for his own benefit the amount of 3,200 US Dollars, which had been given to him by the other partners in order to pay the rent for the company. On the following day during a weekly meeting of the partners, Mr Bagorro confirmed to other partners that he had used the funds of the enterprise for his personal benefit. The other partners approached the authorities (namely PIC which is the Criminal Investigations Police) accusing Mr Bagorro of theft.

The Respondent (Mr Bagorro) contended that the conduct of the applicants constituted the crime of defamation and injury. Mr Bagorro relied on the fact that upon accusing him of theft with the police, having stated that the amount exceeded 3,200 US Dollars and having declared that the "...his trip to the prison shall be with no return.." which caused him to be detained for 81 days when in fact it was him who informed Mr Fernandes that he had used the amount for his own benefit, the elements of defamation had been satisfied. He also relied on Section 71 of the Constitution which provides that "...every citizen has the right to the honor, and good name, reputation and the defence of his public image..." the respondent further contended that such accusations had been made in bad faith and with grave negligence.

The court *a quo* (the previous court that heard the case) held that the accused were guilty of the crime of defamation and sentenced them to one month imprisonment, eight days of daily fines of 20 000 Meticals (USD 8), plus 750 000 Meticals (USD 30) of legal fees and the payment by each defendant of the amount of 50 000 US Dollars to the Respondent for the moral damages caused by them. The prison term was then commuted to a daily fine of 20 000 Meticals (USD 8).

The Applicants applied for an appeal against the decision. The Supreme court reversed the decision of the first court on the grounds that amongst other irregularities there was no specific indication of the facts included in the Section 407 of the Penal Code, and the absence of allegation in terms of the existence or non-existence of *animus defamandi* (in other words intention to defame on the part of the applicants).

7. Endnotes

¹ *Agenda Estatística 2006* INE

CIA World Factbook - Mozambique timeline: available at <http://www.odci.gov/cia/publications/factbook/geos/mz.html>

² The Crawford Homepage: Mozambique timeline: available at http://crawford.dk/africa/mozambique_timeline.htm

³ *Ibid*

⁴ The Crawford Homepage: Mozambique timeline: available at http://crawford.dk/africa/mozambique_timeline.htm

⁵ See note 2 at page 7

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

⁹ *Ibid*

¹⁰ Election in Mozambique: available at http://en.wikipedia.org/wiki/Elections_in_Mozambique

¹¹ *Agenda Estatística 2006* INE

CIA World Factbook - Mozambique timeline: available at <http://www.odci.gov/cia/publications/factbook/geos/mz.html>

¹² Polity: Policy and Law on Line News: available at <http://www.polity.org.za/news/2004/show=59840>

¹³ ECONSTATS: available at <http://www.econstats.com/weo/C110V019.htm>

¹⁴ Mozambique-economy: Global partner pledge 722 million dollars for Mozambique: available at <http://www.aegis.com/news/afp/2001/AF011081>

¹⁵ US Department of State: Background Note: Mozambique: <http://www.state.gov/r/pa/ei/bgn/7035.htm>

¹⁶ *Agenda Estatística 2006* INE

CIA World Factbook - Mozambique timeline: available at <http://www.odci.gov/cia/publications/factbook/geos/mz.html>

G.E source: Mozambique World Guide: available at <http://www.gesource.ac.uk/worldguide/html/966.html>

¹⁷ USAID Budget: Mozambique: available at <http://www.usaid.gov/policy/budget/cbj2006/afr/mz.html>.

¹⁸ *Ibid*

¹⁹ - *Gabinte de Informação de Moçambique (GABINFO)*

- US Department of State: Mozambique: Country Report on Human Rights

Practices: released by the Bureau of Democracy, Human Rights, and labor in March 31, 2003. available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18217.htm>.

-TVM : available at http://www.tvn.co.mz/tvm_cobertura.htm

²⁰ See www.rsf.org/rubrique.php3?id_rubrique=554 accessed 17 March 2006.

²¹ Law No. 18/91.

²² - Committee for the Protection of Journalists available at:

http://www.cpj.org/Briefings/2002/moz_may02/moz_may02.html and

- New York Times: International: available at

<http://www.nytimes.com/2006/01/21/international/africa>

[21mozambique.html?ex=12](http://www.nytimes.com/2006/01/21/international/africa/21mozambique.html?ex=12)

²³ Average exchange rate of US Dollars to Mozambique meticals = 0.0004 (2006)