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Mozambique



1 Introduction

The Republic of Mozambique (Mozambique) is a member of the Southern African Development Community¹ and has a population of approximately 28.8 million people.² It is a vast country with a landmass of about 799 000 m² and a long coastline of nearly 2.5 thousand km.³ It has many neighbours, Malawi, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Both the Limpopo and Zambezi rivers flow through Mozambique to the Indian Ocean.⁴

The Portuguese settled the Mozambique area in the early part of the 16th century, but the colonial rule was characterised by disputed territorial claims by local chieftains as well as Arab settlers. Slavery and forced labour were notable features of Portuguese rule. While slavery was formally abolished in 1879, forced labour continued until well into the 20th century⁵ to provide cheap labour to South Africa's mining industry.⁶ The country was administered, not only by direct Portuguese governmental rule but also via several colonial companies, the largest of which was the Mozambique Company, which ruled large areas of the country until the company's charter ended in 1942 and the Portuguese government took over the administration of the whole territory.⁷ In 1951 Portugal declared Mozambique to be one of its provinces.⁸

The Front for the Liberation of Mozambique (Frelimo) began a guerrilla war of independence in 1964 and, by 1974, controlled the north of the country and was moving south.⁹ In April 1974, a coup in Portugal toppled the right-wing dictatorship of the Estado Novo and Portugal immediately began the process of granting independence to its colonial territories in Africa, including Mozambique.¹⁰ Mozambique obtained its independence on 25th June 1975¹¹ with Samora Machel (the head of Frelimo) at the helm of a one-party state¹² left to deal with the legacies of colonialism that included a literacy rate of only five per cent.¹³ Almost immediately, the settler population of over 200 000 left, most of them returning to Portugal or moving to South Africa,¹⁴ and the Mozambique government embarked on an economically disastrous course of nationalisation and agricultural collectivisation.¹⁵

Mozambique's post-independence period has been characterised by extreme conflict. Frelimo sided unambiguously with liberation movements in the then-Rhodesia (now Zimbabwe) and South Africa, allowing them free movement and the use of its territory for guerrilla attacks against both states.¹⁶ Both states retaliated. In 1976 the then-Rhodesian intelligence forces established the Mozambican Resistance Movement (Renamo) which effectively waged a civil war against the government, seeking its overthrow, heavily supported by Rhodesia and, later, South Africa. By the mid-1980s, Renamo controlled much of the country:¹⁷

disrupting its economy and infrastructure by cutting railway power lines, destroying roads and bridges and sabotaging oil depots. In some towns and villages, the guerrillas sometimes engaged in the wholesale massacre of civilians. By the late 1980s, Renamo's insurgency

had caused at least 100,000 deaths and the creation of more than 1,000,000 refugees.¹⁸

In 1984, South Africa withdrew its support for Renamo in return for an agreement that Mozambique would no longer provide refuge for the African National Congress.¹⁹ In 1986, Samora Machel was killed when his plane crashed in South Africa.²⁰ He was succeeded by President Joaquim Chissano who began a period of constitutional reform, including moving to multi-party democracy.²¹ In 1990 changes were made to the Constitution to make provision for multi-party democracy²² and, in 1992, Frelimo and Renamo reached a historic peace deal which paved the way for the country's first democratic election in 1994 and the passage of a new, democratic constitution founded on universal suffrage. Frelimo narrowly won the 1994 elections,²³ and President Chissano retained the presidency. In 1995, Mozambique joined the Commonwealth, an unusual step given that it is not a former British colony. The exception was made because each of its neighbouring states is a member.²⁴

Over time, relations between the ruling Frelimo and Renamo, now the main opposition party, frayed and, by 2013, open-armed conflict was, once again, a reality.²⁵ Peace talks, which took place over several years, resulted in a new peace agreement in 2019 dealing with issues such as better integrating Renamo's armed forces into the military.²⁶ Frelimo again won the 2019 elections with President Nyusi at the helm and leaving Renamo calling the elections flawed and contesting the results.²⁷

Besides on-going political tensions between its two largest parties, the country has, since 2017, been facing an Islamist insurgency in its northern Cabo Delgado province.²⁸ The Institute of Security Studies has posited that Islamic State may have taken charge of the insurgency²⁹ perhaps via local proxies. It is estimated that over 600 people have died³⁰ and over 115 000 displaced.³¹

The economy in Mozambique remains weak, and its population is poor. Natural disasters such as the catastrophic floods in 2000 and two recent cyclones in 2019 have undermined potential economic growth.³² Literacy is only 58% per cent, whereas the global average is 86%.³³ *Per capita* gross national income is approximately USD 1,430.00³⁴ and the country routinely features on lists of the ten poorest countries in the world³⁵ despite large deposits of natural gas having been discovered in 2011. However, there is hope that this will transform the country's economic fortunes³⁶ in future.

Mozambique's media freedom levels remain extremely low. Recently, journalists have been arrested, abducted, tortured and criminally charged for reporting on the insurgency in Cabo Delgado.³⁷ There are notorious historical cases of journalists investigating corruption having been murdered.³⁸ Media outlets critical of the government have been shut down.³⁹

Mozambique regularly features on international lists of poor media environments,⁴⁰ and there is little doubt that the country is not in line with international standards for democratic media regulation. Internet penetration is low at approximately 20.8%.⁴¹

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in Mozambique. The chapter is divided into five sections:

- ▶ Media and the constitution;
- ▶ Media-related legislation;
- ▶ Media-related regulations;
- ▶ Media self-regulation, and
- ▶ Media-related case law

This chapter aims to equip the reader with an understanding of the primary laws governing the media in Mozambique. Key weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Mozambique, to enable the media to fulfil its role of providing the public with relevant news and information better, and to serve as a vehicle for government-citizen debate and discussion.

2 The media and the constitution

In this section, you will learn:

- ▷ the definition of a constitution
- ▷ what is meant by constitutional supremacy
- ▷ how a limitations clause operates
- ▷ which constitutional provisions protect the media
- ▷ which constitutional provisions might require caution from the media or might conflict with media interests
- ▷ what key institutions relevant to the media are established under the Mozambican Constitution or related legislation
- ▷ how rights are enforced under the constitution
- ▷ what is meant by the three branches of government and separation of powers

- ▷ whether there are any obvious weaknesses in the Mozambican Constitution that ought to be strengthened to protect the media

2.1 Definition of a constitution

A constitution is a set of rules that are fundamental to the country, institution or organisation to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council. Constitutions such as these set out the rules by which members of the organisation agree to operate. Constitutions can also govern much larger entities, even entire nations.

The Mozambican Constitution sets out the basic rules of the Mozambican state. These are the rules on which the whole country operates. The constitution contains the underlying principles, values and laws of the Republic of Mozambique. Key constitutional provisions in the Mozambican constitution include article 1 which states: 'The Republic of Mozambique is an independent, sovereign, democratic state based on social justice.' Article 2 provides that the sovereignty of Mozambique 'resides in its people' who 'exercise their sovereignty through the constitution'.

2.2 What is meant by constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all other laws in a particular country, for example, legislation or case law. It is essential to ensure that a constitution has legal supremacy. If a government passed a law that violated the constitution, that is, it was not in accordance, or conflicted, with a constitutional provision, such a law could be challenged in a court and could be overturned on the ground that it is unconstitutional.

The Mozambican Constitution makes provision for constitutional supremacy. Article 2(3) specifically states: 'The State is subordinate to the constitution and is based on legality'. Article 2(4) goes on to provide that: 'Constitutional norms prevail over all other rules of the legal system'.

2.3 How a limitations clause operates

It is clear that rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech. Obviously, governments require the ability to limit rights to serve important societal interests; however, owing to the supremacy of the constitution, this can only be done in accordance with the constitution.

The Constitution of Mozambique makes provision for three types of legal limitations on the exercise and protection of rights in Chapter I of Title III, Fundamental Rights, Duties and Liberties.

2.3.1 Internal limitations

These are limitations that are right-specific and contain limitations or qualifications to the particular right that is dealt with in a particular section of the chapter on Fundamental Rights, Duties and Liberties. As discussed later, the right to freedom of expression and information contains such an internal limitations clause.

2.3.2 Constitutional limitations

Article 56(3) provides that: 'a law may limit any right entrenched in the chapter on Fundamental Rights, Duties and Liberties only if this is expressly provided for in a provision of the Constitution'. Examples of such constitutional limitations are the constitutional provisions regarding states of emergency discussed in detail below.

2.3.3 General limitations

The last type of limitation is a general limitations provision. General limitations provisions apply to the provisions of a Bill of Rights or other statement setting out fundamental rights. These types of clauses allow a government to pass laws limiting rights generally, provided this is done in accordance with the constitution.

The Mozambican general limitations clause applicable to the chapter on Fundamental Rights, Duties and Liberties can be found in article 56. Article 56(2) provides that rights can be limited: 'to safeguard other rights or interests protected by the Constitution'. Article 56(4) also provides that laws that limit rights and liberties must be of general application and cannot have retrospective effect (that is, cannot be used to punish acts committed before the law was enacted). Interestingly, article 57 specifically provides that a law can have retrospective effect only if this will benefit Mozambican citizens.

It is not always clear why it is necessary to have internal limitations clauses if there is a general limitations clause as well. Often, internal limitations clauses offer insight into rights that appear to be substantive but which are not very effective.

2.4 Which constitutional provisions protect the media

The Mozambican Constitution is not a document that is easy to digest for those who are not legally trained. In particular, there are several different chapters contained in Title III (the title that deals with Fundamental Rights, Duties and Liberties). Besides these, other provisions in the constitution can assist the media as it goes about its work of reporting on issues in the public interest. These are also included in this section.

2.4.1 Freedom of expression

The most important provision that protects the media is article 48 which is headed Freedom of Expression and Information.

Article 48(1) states: 'All citizens have the right to freedom of expression, freedom of the press as well as the right to information'.

Article 48(2) provides that: 'The exercise of freedom of expression, in particular, the right to disclose one's thoughts by legal means and the exercise of the right to information cannot be limited by censorship'.

Article 48(3) provides that:

The freedom of the press includes, in particular, the freedom of expression and creativity of journalists, access to sources of information, the protection of the independence and professional confidentiality and the right to establish newspapers, publications and other means of dissemination.

Article 48(4) provides that 'The public sector media's rights to expression and to disseminate a variety of views is protected'.

Article 48(5) provides that 'The state guarantees the independence of the public sector media and its journalists from the government, the administration and political powers'.

Article 48(6) contains an internal limitations clause to the rights provided for.

Article 48 requires some detailed explanation and discussion.

- ▶ This right to freedom of expression does not apply to everyone; it is protected for a certain group of people only, namely, citizens. This is a narrowing of the right that is unusual as most constitutional rights to freedom of expression recognise that this is a fundamental human right that ought to be guaranteed to all and not just to certain people, such as citizens.
- ▶ The freedom is not limited to speech (whether oral or written) but extends to non-verbal or non-written expression too. There are many different examples of this, including physical expression (such as mime or dance), photography or art.
- ▶ Article 48 also expressly gives content to media-related sub-rights that are specified in the article. These include that citizens' rights to freedom of expression include freedom of the press. This is very important because it makes it clear that this right can apply to corporate entities such as media houses, newspapers or broadcasters, as well as to individual members of the press. Also, the specific mention of the press means that the expressive rights of the press are specifically protected within the broad ambit of expression. Indeed, the wording of the right freedom of the press specifically includes the right: 'to establish newspapers, publications and other means of dissemination'. This is important because it makes it clear that the definition of the press is not confined to the print media but includes other distribution means such as broadcast and online media as well.
- ▶ Additionally, article 48 expressly sets out additional provisions regarding what is included under the ambit of freedom of the press. Again, these are significant provisions which are uncommon. The particular sub-rights (as it

were) that are expressly mentioned are, the right to the training of journalists, access to sources of information, the protection of independence and professional confidentiality. Each of these is significant, particularly the protection of independence and professional confidentiality. The protection of professional confidentiality includes, in my view, two different aspects, the protection of the confidentiality of the journalists' communications and communication tools, such as emails, phone calls, laptop, phone and so on. However, it surely also protects a journalist in respect of his or her confidential sources. This is particularly so, given the specific mention of the right of access to sources of information. These are, on paper, significant protections for the press and working journalists.

- ▶ Article 48 also specifically enshrines the right to information. This right of citizens to receive information is a fundamental aspect of freedom of expression, and this provision enshrines the right to the free flow of information for citizens. Thus, the information rights of citizens, for example, as well as the expression rights of the media are protected. This right is important because it also protects organisations that foster media development. These organisations facilitate public access to different sources and types of information, particularly in rural areas that traditionally have limited access to the media.
- ▶ Article 48 expressly provides that the exercise of freedom of expression and the right to information cannot be limited by censorship. This is an extraordinary provision which is not commonly found in other countries in southern Africa. It is not clear what credence to give it. What constitutes censorship is critical to whether or not this clause is genuinely meaningful. If censorship is interpreted to exclude any law that meets the requirements of any of the applicable constitutional limitations on the right to freedom of expression, then this provision is not particularly noteworthy as those limitations exist in any event.
- ▶ Lastly, article 48 contains express provisions regarding the expression rights of the public sector media (including, for example, the national broadcaster) and these include the right to disseminate a variety of views and the state guaranteeing its independence from 'the government, the administration and political powers'. Again, these are, on paper, significant protective provisions. However, it appears that these are not given effect to in practice as is clear from other provisions in this chapter.

2.4.2 Privacy

The Mozambican Constitution does not contain a stand-alone privacy right. Such a right is provided for with respect to professional communications for media practitioners in terms of article 48(3) dealt with immediately above.

2.4.3 Freedom of information

The Mozambican Constitution does not contain a stand-alone right to freedom of

information. Such a right is provided for as part of article 48(1) dealt with under the heading Freedom of Expression, above.

2.4.4 Freedom of association

Article 52(1) of the Mozambican Constitution provides that 'citizens enjoy freedom of association.'

Article 52(2) provides that 'social organisations and associations have the right to pursue their objectives, create institutions to achieve their objective and to acquire assets for carrying out their activities in accordance with the law.'

Article 52(3) provides that 'armed militia or paramilitary forces and organisations that promote violence, racism, xenophobia or that pursue objectives contrary to the law are prohibited.'

Article 86 of the Mozambican Constitution is headed Freedom of Professional Associations and Trade Union Membership. Article 86(1) grants workers the right to form professional associations and trade unions.

Article 86(2) deals with how such professional associations or trade unions are to operate; namely they must 'be governed in accordance with principles of democracy based on the active participation of its members in all activities and the periodic election of office-bearers by secret ballot.'

Article 86(3) provides that such bodies must also be 'independent of the state, political parties, churches or other religious institutions and general patronage.'

Article 86(4) provides for the regulation of such bodies by law.

Articles 52 and 86 require detailed explanation and discussion:

- ▶ As is the case with the right to freedom of expression, the right to freedom of association is available only to citizens. This is a disappointing and unusual limitation on the right because most constitutional rights to freedom of expression recognise that this is a fundamental human right that ought to be guaranteed to all, and not just to certain, people such as citizens.
- ▶ It is important to note that the right of freedom of association includes the right to form associations which are, in turn, entitled to achieve their objectives. However this is subject to some internal limitations, including that this is done 'in accordance with the law'; that such bodies are required 'to be regulated by law', and expressly prohibiting organisations whose objectives are, among other things, 'contrary to the law'. These kinds of limitations are worrying because they undermine, in fact, effectively do away with, the very concept of constitutional supremacy. This is because the constitutional provision subordinates elements of the right to freedom of association to the prescripts of ordinary laws, denying citizens effective constitutional protection of the right to freedom of association, even if the laws themselves are unreasonable or otherwise unconstitutional.

- ▶ Article 86 specifically protects the right of citizens to form ‘professional associations’ and trade unions. This is important because it protects, for example, the right of media organisations to form industry-based self-regulatory bodies and the rights of journalists to form trade unions and other kinds of professional bodies such as editors’ forums. Interestingly, sub-articles 86(2) and (3) contain unusually specific detail (for a constitutional provision) regarding how such professional associations are to be governed, for example, requiring their independence and the periodic election of office bearers by secret ballot.

2.4.5 Right to work

Article 84(1) provides that work is ‘a right and a duty of every citizen’. Additionally, article 84(2) provides that ‘every citizen has the right to choose their profession.’

This is important because it is clear that the right of citizens to choose to participate in the journalism profession is protected under article 84(2).

2.4.6 Right to petition

Article 79 provides that ‘all citizens have the right to submit petitions and complaints to a competent authority to demand the reinstatement of their rights that have been violated or in defence of the public interest.’

Article 79 is noteworthy because it provides a mechanism for redress if a journalist or media house is of the view that one or more of their rights have been violated or that a civil society organisation is of the view that the public interest is being undermined concerning the practice of any of the rights sets out above.

2.5 Other constitutional provisions that assist the media

It is important to note that there are provisions in the Mozambican Constitution, apart from the Fundamental Rights, Liberties and Duties (and associated) provisions, that are important and assist the media in performing its functions.

2.5.1 Provisions regarding the role and importance of civil society

Civil society organisations, including non-governmental organizations, trade unions, academic institutions, industry bodies and other social formations, often play a supportive role to the media by helping to highlight social issues. They are not only sources of information, but often directly support media freedom and access to information initiatives.

- ▶ Article 78(1) of the Mozambican Constitution provides that ‘civil society with legitimate interests plays an important role in the promotion of democracy and in ensuring citizen participation in public life.’
- ▶ Article 78(2) provides that ‘civil society organisations contribute towards the realisation of rights and liberties of citizens as well as to the elevation of individual and collective consciousness in the fulfilment of civic duties.’

2.5.2 Provisions regarding public administration

Article 248 is headed Fundamental Principles and forms part of Chapter I headed Public Administration in Title XII headed Public Administration, Police and the Ombudsman. Article 248 sets out the principles of the Mozambican public administration. Some of these have particular relevance for the media:

- ▶ Article 248(1) provides that ‘the public administration serves the public interest, and in its work, it must respect the fundamental rights and liberties of citizens.’
- ▶ Article 248(2) states that ‘the organs of the public administration obey the constitution and the law and respect the principles of equality, impartiality, ethics and justice.’

There can be little doubt that the media plays a crucial role in educating the population, enabling citizens to participate meaningfully in a democracy. These provisions could, therefore, be interpreted as requiring media-friendly policies on the part of the state if it is to serve the public interest properly.

2.6 Constitutional provisions that might require caution from the media or might conflict with media interests

Just as there are certain rights or freedoms that protect the media, other rights or freedoms can protect individuals and institutions from the media. Journalists need to understand which provisions in the constitution can be used against the media. There are a number of these.

2.6.1 Right to reputation

Article 41 is part of the chapter on Fundamental Rights, Duties and Liberties and concerning reputation it provides that ‘all citizens have the right to know, a good name, reputation, [and] to defend their public image’. This right is often raised in defamation cases because defamation, by definition, undermines the good name and reputation of the person being defamed. This right is often set up against the right to freedom of the press, requiring a balancing of constitutional rights.

2.6.2 Right to privacy

Article 41 is part of the chapter on Fundamental Rights, Duties and Liberties and concerning privacy it provides that all citizens have the right ‘to preserve their private life.’ The right to privacy is often raised in litigation involving the media, with the subjects of press attention asserting their rights not to be photographed, written about or followed in public and so on. The media has to be careful in this regard. In general, the media should be aware that, in respect of privacy, there are always boundaries that need to be respected, unless the public interest requires otherwise. These privacy boundaries are dependent on the particular circumstances, including whether or not the person is a public figure or holds public office,

and the nature of the issue being dealt with by the media. However, it has to be said that the public interest is not a well-developed concept in Mozambican law generally and so particular care needs to be exercised by journalists operating in that country.

2.6.3 Internal limitation to the right to freedom of expression

Article 48(6) contains an internal limitation to the rights contained in article 48, including the right to freedom of expression and information provided for in article 48(1). Article 48(6) provides that 'exercise of rights and liberties referred to in this article is regulated by law with its base in the imperatives of respect for the Constitution and human dignity.' The discussion on this is set out above under the heading Freedom of Expression in section 2.4.1.

2.6.4 Internal limitation to the right to freedom of association

Sub-articles 52(2) and (3) contain internal limitations to the right to freedom of association. Article 52(2) protects the right to form associations and for such associations to conduct their business 'in accordance with the law', while article 52(3) provides, among other things, that associations that pursue objectives contrary to the law are prohibited. The discussion on these internal limitations as set out above under the heading Freedom of Association in section 2.4.1.

2.6.5 Acts against national unity

Article 39 is headed Acts Against National Unity, and in its relevant part it provides that:

any act that undermines national unity, prejudices social harmony, creates division, or that creates situations of privilege or discrimination based on colour, race, sex, ethnic origin, place of birth, religion, education level, social status, physical or mental condition, marital status of parents, profession or political choice, shall be punishable by law.

It is not unusual for constitutions to contain wording about building the nation-state and calling for national unity. However, article 39 is extremely broadly worded and, unusually for a constitutional provision, establishes as punishable by law acts that, among other things, undermine national unity or prejudice social harmony. This is a regressive provision as there are numerous important social, political and economic debates that require airing, particularly in the media, but which are, by their nature, controversial and divisive. The effect of this provision could be to open the media up to legal sanction for disseminating content on controversial issues capable of dividing public opinion and upending social harmony. This appears to contradict the right to freedom of expression directly.

2.6.6 Duties towards each other

Article 44 is headed Duties Towards Each Other and provides 'every citizen has

the duty to respect and consider each other without discrimination of any kind and to maintain relations that promote, safeguard and reinforce respect, mutual tolerance and solidarity.'

It is unusual for constitutions to impose duties on individuals other than, in certain jurisdictions, by way of a horizontal application of constitutional rights. The Mozambique Constitution does not provide expressly for horizontal application in the same way that, for example, the South African Constitution does.⁴² It is not clear if article 44 can be said to introduce the concept of a horizontal application of the Fundamental Rights provisions in the Mozambican constitution; nevertheless, the duty of acting with respect and mutual tolerance and to act without discrimination encourages citizens to treat each other in accordance with constitutional values.

2.6.7 Duties towards the community

Article 45 is headed Duties towards the Community, and in its relevant part it provides that:

every citizen has a duty towards the community to serve the national community according to their physical and intellectual capabilities, by paying their taxes and, in their relations with the community, to preserve cultural values, in the spirit of tolerance and dialogue and, in a general manner, to contribute towards civic activism and education.

Again, it is unusual for constitutions to impose duties on individuals other than, in certain jurisdictions, by way of a horizontal application of constitutional rights, as discussed above. These kinds of duties towards the community are unusual. It is not clear what reliance can be placed on them, if any, other than as a general indication, by the constitutional drafters, of the kind of conduct expected of a citizen.

2.6.8 State of emergency provisions

Several provisions in the Mozambican Constitution deal with states of emergency or similar conditions.

Article 72 provides that individual liberties and guarantees can be suspended or limited only temporarily and only in the case of a declaration of war or a state of siege or emergency declared in terms of the constitution.

Article 160(a) empowers the president to declare a state of war 'in the national defence and public order.' It is important to note that a declaration of war can be made even if there is no other country threatening Mozambique, consequently public unrest can lead to such a declaration.

Article 290 is headed State of Siege or Emergency. It provides that 'a state of siege or emergency can be declared in all or part of the territory only in circumstances of actual or threatened aggression constituting a grave threat to the preservation of the constitutional order or public peace.'

Article 292 provides that a state of siege or emergency can be declared for a maximum of 30 days and can be renewed for up to 120 days in total, provided the circumstances giving rise to the emergency or siege remain in existence.

Article 293 has the heading Process of Declaration and article 293(1) provides that within 24 hours of declaring a state of siege or emergency, the president must submit such a declaration to parliament for ratification. However, if parliament is not in session, the president must constitute parliament to consider such ratification within five days, in terms of article 293(2). In terms of article 293(3), parliament must decide on the ratification of the president's declaration within 48 hours remains constituted for as long as the state of siege or emergency persists.

Article 294 is headed Limits of the Declaration and provides that the declaration of a state of siege or emergency cannot result in the limitation or suspension of the following:

- ▶ the right to life
- ▶ the right to personal integrity
- ▶ the right to civil capacity and citizenship
- ▶ the rights of the accused persons
- ▶ the right to religious freedom
- ▶ the non-retrospective application of any aspect of the criminal law.

Article 295 specifically provides for restrictions on individual liberties under a state of emergency, including freedom of movement, the privacy of communications, freedom of expression, including the press and broadcast media, and provision of information. It also makes provision for detention.

We think it noteworthy that there are at least six different articles in the Mozambican Constitution that deal with the declaration of states of war or emergency. It is noteworthy that the right to freedom of expression and privacy of communications are rights which can be restricted under a state of emergency.

2.7 Key institutions relevant to the media established under the Mozambican Constitution or related legislation

Several important institutions concerning the media are established under the Mozambican Constitution. These include the judiciary, the judicial council, the Ombudsman, the national commission for human rights and the superior council of the mass media.

2.7.1 The judiciary

Article 240 of the constitution provides for a Constitutional Council. This is a sovereign organ of state responsible for administering justice concerning matters of

a constitutional nature. Its functions include preserving constitutionality, considering the constitutionality of legislation and acts of organs of state and resolving jurisdictional disputes between organs of state. Article 241 provides that the Constitutional Council consists of seven judges appointed as follows, the Chief Justice appointed by the president; five judges appointed by parliament and one judge appointed by the judicial council.

Article 224 of the constitution provides that the Supreme Court is the superior court in the hierarchy of courts. This is implicitly subject to the stipulation in article 240 that only the constitutional council rules on constitutional issues. The Supreme Court is required to 'guarantee the uniform application of the law within its jurisdiction and in the public interest.'

Article 225 provides that the president appoints the president and vice president of the Supreme Court on the recommendation of the judicial council. The other members of the Supreme Court are also appointed by the president on the recommendation of the judicial council but following a public vetting process which is open to magistrates and other law graduates.

Article 227 of the constitution empowers the administrative court to hear matters concerning the public administration. Article 228 states that the president appoints the president and other members of the administrative court on the recommendation of the administrative judicial council.

Article 211 of the constitution provides for ordinary courts which do not have the jurisdiction to pronounce on the constitutionality of legislation or acts of organs of state. Article 217 provides that these courts have responsibility for resolving disputes in respect of matters set out in specific legislation.

The judiciary is an important institution for the media because the two rely on each other to support and strengthen democratic practices in a country. The judiciary needs the media to inform the public about its judgments and its role as one of the branches of government. The media is essential for building public trust and respect for the judiciary, which is the foundation of the rule of law in society. The media needs the judiciary because of the courts' ability to protect it from unlawful action by the state and unfair damages claims by litigants.

Article 216 of the constitution specifies that judges are independent, impartial and must obey the law.

In terms of article 216(3), judges have security of tenure and cannot be transferred, suspended, retired or dismissed except in accordance with the law.

2.7.2 The Judicial Council

Article 219 of the constitution establishes the judicial council which is responsible for the management of the judiciary, including in respect of disciplinary matters. Many would query why the judicial council is relevant to the media. The answer is because of its critical role in the judiciary, the proper functioning and independence of which are essential for democracy. In terms of article 220, the judicial

council comprises the president (who is the president of the judicial council) and vice president of the Supreme Court, two members designated by the president of the Republic, five representatives of the parliament elected based on proportional representation and seven judges from diverse courts elected by their peers in accordance with legislation.

2.7.3 The Ombudsman

The Ombudsman is an important office for the media because it, too, is aimed at holding public power accountable. The Ombudsman is established in terms of article 255 of the Constitution. That article provides that the Ombudsman's purpose is to guarantee the rights of citizens and to ensure legality and justice in the performance of the public administration. In terms of article 256, the Ombudsman is elected by a two-thirds majority vote by the members of parliament.

In terms of article 258, the main powers of the Ombudsman are to consider complaints made to it and to make recommendations to competent bodies in the public administration to repair or prevent instances of illegality or injustice. Further, where the Ombudsman's investigations reveal conduct which leads to the presumption that the public administration committed errors, irregularities or grave violations, the Ombudsman must report these to the parliament, the Attorney-General and the central or local authority together with recommendations for measures to be taken.

Additional provisions on the role and functioning of the Ombudsman are contained in legislation, particularly Law 7/2006 (the Ombudsman's Act). The Ombudsman's Act grants citizens (individually or as part of a collective such as an organisation) the right to complain to and petition the Ombudsman in terms of article 3.

Article 15 of the Ombudsman's Act expands on the Ombudsman's competencies set out in the constitution by including, among other things:

- ▶ the power to make recommendations to the president as to legal changes (amendments, repeals) that ought to be made to address any deficiencies in the law
- ▶ the duty to provide parliament, on request, with an opinion on any matter within his or her competence
- ▶ the power to request the constitutional council to declare a law unconstitutional
- ▶ the duty to disseminate human rights-related information among the citizens
- ▶ the power to intervene to protect collective interests in disputes involving a public entity.

Article 16 of the Ombudsman's Act expands on the Ombudsman's powers, and these include:

- ▶ processing complaints

- ▶ undertaking investigations and enquiries to collect evidence and material
- ▶ making use of any reasonable procedure provided that these respect the rights of citizens
- ▶ appointing the staff of the office of the Ombudsman
- ▶ mediating in disputes
- ▶ conducting inspections of public entities at the national, provincial and local level as well as being able to require the production of documents and information.

The Ombudsman is elected for five years, renewable once, in terms of article 6 of the Ombudsman's Act. In terms of article 8(1), the Ombudsman will cease to fulfil the role if he or she resigns, dies, is permanently incapacitated either physically or mentally, becomes ineligible for the position (article 5 lists the eligibility requirements, including citizenship, impartiality), engages in conduct incompatible with the office, is sentenced to imprisonment or if he or she is grossly negligent in the carrying out of his or her functions. In terms of article 8(2), the body responsible for conducting the enquiry into the Ombudsman's continuing fitness to hold office is parliament.

2.7.4 The National Commission for Human Rights

Although not provided in the constitution itself, Law 33/09 has established a National Commission for Human Rights (NCHR) in Mozambique (the NCHR Act).

The NCHR is an important office for the media because it, too, is aimed at holding public power accountable and for promoting human rights, a key component of which are the rights to expression and information which are fundamental to the work of the media.

Article 3 establishes the NCHR as an autonomous public entity.

The NCHR's functions are set out in article 5 of the NCHR Act, and these include:

- ▶ promoting and protecting human rights in Mozambique by education programmes
- ▶ actively engaging in acts to protect human rights provided for in the constitution and the NCHR Act
- ▶ developing and conducting information programmes to promote public understanding of the role and activities of the NCHR and the NCHR Act as well as of Chapter III of the constitution which sets out rights, duties and fundamental liberties (some of which have been dealt with in paragraph 2.1 above)
- ▶ making proposals to organs of state or other entities established by law for domesticating international and regional human rights norms and standards

- ▶ assisting indigent citizens in cases involving human rights violations
- ▶ co-operating with national, regional and international human rights organisations.

The NCHR comprises 11 members, including a president and a vice president elected by their peers in terms of article 7(1). In terms of article 8(1), the members of the NCHR are made up as follows:

- ▶ four representatives from civil society
- ▶ three members from the education, justice and health sectors designated by the prime minister
- ▶ three persons with human rights expertise elected by parliament
- ▶ a representative of the Bar Association.

A member of the NCHR is elected for five years, renewable once, in terms of article 9(1) of the NCHR Act. In terms of article 14(1), a member of the NCHR will cease to fulfil the role if he or she resigns, dies, is permanently incapacitated or accepts a position or engages in conduct incompatible with the office. In terms of article 14(2), a resignation of a member of the NCHR must be given in writing to the president of the NCHR. If the president of the NCHR resigns, such written notice of resignation must be given to the national president with 90 days' notice. The NCHR is responsible, by a two-thirds majority vote, following a deliberation, for removing a member of the NCHR that no longer meets the requirements to hold the office, article 14(4).

2.7.5 The Superior Council of the Mass Media

Article 50 of the constitution establishes the Superior Council of the Mass Media (SCMM). However, it is important to note that the SCMM is not a media regulatory authority and does not issue licences or play a key role in the structure and make-up of the media sector. While it is provided for in the constitution, it appears to play more of a guidance and advisory role than the more usual role of media bodies provided for in constitutions, namely, a more in-depth regulatory role. It is unfortunate that in fact, real regulation of the media is carried out by organs of the state and the executive in particular.

Article 50(1) provides that the SCMM disciplines and consults to ensure the independence of the media in the exercise of the right to information, freedom of the press as well as rights to broadcasting. In terms of article 50(2), it is empowered to issue opinions on the issuance of licences to private broadcasting entities. The SCMM has a role in the appointment and dismissal of directors-general of the public broadcaster in terms of article 50(3). In terms of article 50(4), the SCMM is regulated by legislation, including in respect of its composition and functions.

The legislation that governs the SCMM is the Press Act, Law 18/1991, dealt with in various places below.

2.8 Enforcing rights under the constitution

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a Bill of Rights, and yet remain empty of substance because they cannot be enforced.

Article 2(3) of the constitution specifies that the state is 'subordinate to the constitution and is founded upon legality.' Article 38(1) provides that all citizens must respect the constitutional order. Article 38(2) provides that 'any acts that are contrary to the constitution will be subject to sanction in terms of the law.'

Further, article 79 grants citizens the right to submit petitions or complaints to the competent authority to exercise or restore, rights that have been violated or, more generally, in the public interest. This is an additional mechanism to the right of access to the courts and is one that has proved fruitful in other jurisdictions.

Perhaps one of the most effective ways in which rights are protected under the constitution is by the provisions that deal with proposed constitutional amendments. Article 299(1) provides that constitutional amendments can be proposed only by the president or by one-third of the members of the parliament. In contrast, article 303(1) requires any constitutional amendment to be passed by a two-thirds majority vote in the parliament. Further, article 300(1) requires that all constitutional amendments 'respect ... rights, liberties and fundamental guarantees' and it goes on to specify various democratic characteristics, including at (f), pluralism of expression. Lastly, all proposed constitutional amendments that deal with rights, liberties and fundamental guarantees set out in article 300(1) are required to be put to a national referendum in terms of article 300(2).

Also, article 301 prohibits an amendment taking place within five years of the previous amendment unless extraordinary powers of review have been invoked, in which case a constitutional amendment requires a vote in favour of three-quarters of the members of the parliament. Further, article 302 prohibits any amendment to the constitution being carried out during the declaration of a state of siege or emergency.

In our view, these amendment provisions grant a measure of additional protection, particularly for freedom of expression.

2.9 The three branches of government and separation of powers

All too often, politicians, commentators and journalists use political terms such as branches of government and separation of powers, yet working journalists may not have a clear idea what these terms mean.

2.9.1 Branches of government

It is generally recognised that in a democracy, governmental power is exercised

by three branches of government, namely: the executive; the legislature; and the judiciary.

Mozambique is slightly different from the norm because the constitution recognises organs of sovereignty in article 133, namely, the president, the parliament, the government, the courts and the constitutional council. Article 134 provides that these organs of sovereignty are separate and inter-dependent and are subject to the constitution and the laws.

In broad terms, it can be said that the president and the government constitute the executive; the parliament constitutes the legislature and the courts, and the Constitutional Council constitutes the judiciary of Mozambique.

The executive

In terms of article 145(1) of the constitution, the president is the head of state and is Commander-in-Chief of the defence force. He or she represents the nation of Mozambique internally and internationally and symbolizes national unity.

The president is elected by direct presidential elections, in terms of article 147(1) of the constitution. Note that the president must be elected by a majority of the votes cast and article 147(2) provides for a presidential election run-off between the two leading candidates to provide for such an outcome if this does not occur during the first round of voting.

The president's functions are set out in article 158. These include leading the nation, giving the state of the nation address annually to parliament, calling referendums and national elections, dissolving parliament, appointing the attorney general, among other things. In terms of article 200(1), he or she also appoints the council of ministers, which acts as the Cabinet of Mozambique. The council of ministers is made up of the president (who presides over the council), the prime minister and the ministers of government.

The prime minister's role, in terms of article 204(1), is to assist and to advise the president in running the government. In terms of article 204(2), this includes advising on ministerial appointments, developing government programmes and ensuring the execution of decisions of the government. The prime minister chairs the meetings of the council of ministers.

Article 203(1) sets out a number of functions of the council of ministers. These include:

- ▶ guaranteeing the enjoyment of the rights and liberties and citizens
- ▶ ensuring political order and social discipline
- ▶ developing and submitting legislation to parliament
- ▶ developing the social and economic plan and the budgets of the state for parliamentary approval

- ▶ promoting and regulating economic and social activity
- ▶ ratifying international instruments such as treaties
- ▶ directing labour and social security policy
- ▶ directing the sectors of the state, particularly concerning education and health.

Essentially, it can be said that the role of the executive is to administer or enforce laws, make government policy and propose new laws. However, as is set out elsewhere in the chapter, it is clear that the executive also has significant law-making powers, albeit of a quasi-subordinate nature.

The legislature

In terms of article 167(1) of the constitution, parliament is the representative assembly of all Mozambican citizens. Article 168(1) provides that parliament is the highest legislative organ in Mozambique. However, article 142(3) provides that the council of ministers also has legislative powers and is responsible for making decrees.

Article 168(2) determines the norms that govern the functioning of the state and economic and social life.

Article 178(1) provides that parliament legislates on both internal and external policy. In terms of article 178(2), parliament has the exclusive competence to approve constitutional amendments, determine national and provincial borders, and to approve or pass national legislation that is in line with the constitution.

Parliament also fulfils other important functions including, in terms of article 178(2)(j), deliberating on the programme of government and the reports on the activities of the council of ministers, article 178(2)(k). Essentially this is an oversight role, holding the executive accountable for its operations.

In terms of article 169(2), the parliament is made up of 250 people, directly elected through universal suffrage that is equal, secret, personal and periodic.

The judiciary

As described above, judicial power is vested in the courts. The role of the judiciary is to interpret the law and to adjudicate legal disputes in accordance with the law.

2.9.2 Separation of powers

It is important in a functioning democracy to divide governmental power between different organs of the state to guard against the centralisation of power, which may lead to abuse. This is known as the separation of powers doctrine. The aim is to separate the functions of the three branches of government, the executive, the legislature and the judiciary so that no single branch can operate alone, assume complete state control and amass centralised power. While each branch performs

several different functions, each also plays a watchdog role in respect of the other. This helps to ensure that public power is exercised in a manner that is accountable to the general public and in accordance with the constitution.

It appears that the division of governmental power in Mozambique is not ideal, with the executive playing a role that far outweighs, in influence and impact, the legislative and judicial branches of government and with the executive playing a significant role about developing quasi-subordinate legislation.

2.10 Weaknesses in the constitution that ought to be strengthened to protect the media

There are several weaknesses in the Mozambican Constitution. If these provisions were strengthened, there would be significant benefits for the media in Mozambique.

2.10.1 Ensure that media-related rights are generally applicable to the people living in Mozambique

There are numerous rights which are important to the media, such as freedom of expression, information and association, which are guaranteed to citizens only. This is a diminishing of the fundamental nature of rights which are recognised internationally as human rights, as opposed to rights which are recognised to be available only to citizens, such as voting rights.

2.10.2 Remove internal constitutional limitations and update the general limitations clause.

The internal limitations contained in articles 48(6) and (52)(2) and (3) of the constitution and applicable to the rights to freedom of expression and association ought to be repealed. These provisions are unnecessary because the provisions of the general limitations clause give the government the powers it needs to limit fundamental rights in accordance with the constitution.

The general limitations clause provided for in article 56 ought to be amended to make it clear that limitations on rights must be reasonable and necessary in addition to the other pre-existing requirements. The lack of measurement of reasonableness or necessity gives the legislature over-broad powers to draft a law of general application that limits rights unreasonably or unnecessarily.

2.10.3 Create an independent communications regulator

While the constitution does refer to a specific media-related body, the SCMM, in article 50, that body is not a regulator and has no direct role in licensing, oversight and other regulatory functions.

The bodies that do perform those functions do not enjoy constitutional protection of their functional independence and are not functionally independent. This is a

significant deficiency. The body that is responsible for licensing falls under the control of the executive and is set out elsewhere in this chapter.

2.10.4 Constitutional protections for the public broadcasters

It is clear that Radio Mozambique and Television Mozambique, the two public broadcasters in Mozambique, are in no way independent or required to act in the public interest.

The constitution should, therefore, specifically protect their independence and stipulate that they are to operate in the public interest.

2.10.5 Strengthening the separation of powers doctrine

The constitution does provide for three branches of government but, in practice, it is obvious that the executive branch of government plays a significant legislative role too, with decrees being issued by the government by an authorisation granted by the parliament to enact laws. These acts of the council of ministers in terms of article 142(3) appear to have similar legal force as actual legislation enacted by the parliament.

This skewing of the powers so that they are imbalanced undermines the specific functions of all three branches, the legislature, the executive and the judiciary.

3 The media and legislation

In this section, you will learn:

- ▷ what legislation is and how it comes into being
- ▷ legislation governing the mass media generally
- ▷ legislation governing journalists
- ▷ legislation governing the print media
- ▷ legislation governing the broadcasting media in general
- ▷ legislation governing the state broadcasting sector
- ▷ legislation governing cinema
- ▷ legislation that undermines or upholds a journalist's duty to protect sources

- ▷ legislation that prohibits the publication of certain kinds of information
- ▷ legislation that specifically assists the media in performing its functions

3.1 What legislation is and how it comes into being

As a general rule, legislation is a body of law consisting of acts properly passed by parliament, which is the legislative authority. As discussed, Mozambique vests legislative authority in the parliament.

Detailed rules in the constitution set out the law-making processes that apply to different types of legislation. Journalists and others in the media need to be aware that the constitution requires different types of legislation to be passed in accordance with particular procedures. The procedures are complicated and need not be explained here. Journalists should, however, be aware that, in terms of the constitution, there are two kinds of legislation, each of which has particular procedures and/or rules applicable to it. These are:

- ▶ legislation that amends the constitution, the procedures for which are set out in articles 299 to 303 of the constitution, and
- ▶ ordinary legislation, the procedures and/or applicable rules are set out in article 186(1) and essentially this legislation requires a majority of elected parliamentarians to pass laws (that is, fifty per cent plus one vote).

A bill is a draft law that is debated and usually amended by parliament during the law-making process. If a bill is passed by parliament in accordance with the various applicable procedures required for different types of bills as set out above, it is sent to the president. Article 190(c) read with article 181 of the Constitution provides that once a bill is signed by the president (signifying his assent to the bill) it becomes an act once it is promulgated, that is, published in the Bulletin of the Republic.

The constitution provides mechanisms of reviewing the constitutionality of an Act passed by parliament. Article 244(2) of the constitution provides that the following entities may request the constitutional council to make a declaration on the constitutionality of an act of parliament. The president, the president of parliament, one-third of the members of parliament, the prime minister, the Attorney-General, the Ombudsman and two thousand citizens (presumably acting by way of a petition). However, there is no mechanism for such a review to take place while a piece of legislation is still a bill and not yet promulgated as an act of parliament.

3.2 Legislation governing the mass media

Mozambique's Press Act, Law 18/91, governs the mass media as a whole, including print and broadcast media as well as cinema. We deal with the Press Act in several subsequent subsections in greater detail as its provisions pertain to particular aspects of the media. However, it is important to give an overview of the Press Act, given its wide ambit.

Article 1 of the Press Act, defines the mass media as including print, broadcasting and cinema.

Article 2 of the Press Act provides that freedom of the press encompasses several different aspects, including:

- ▶ the right to freedom of expression
- ▶ the right to access sources of information
- ▶ the right to develop journalists
- ▶ the protection of the independence of journalists
- ▶ the protection of journalists' sources
- ▶ the right to develop newspapers and other publications.

Article 3 deals with the right to information. Article 3(1) provides that concerning the press, the right to information means the ability of citizens to:

- ▶ inform themselves and to be informed of all facts and opinions at the national and international level
- ▶ share information, opinions and ideas through the press.

Article 3(2) prohibits any employer from prejudicing an employee in exercising his or her right to freedom of expression through the press.

Article 4 sets out the eight prescribed objectives of the press, namely:

- ▶ the consolidation of national unity and the defence of the national interests
- ▶ the promotion of democracy and social justice
- ▶ the development of science, economics, society and culture
- ▶ to elevate social, educational and cultural consciousness
- ▶ to provide timely access to citizens to facts, information and opinion
- ▶ to educate citizens about their rights and duties
- ▶ to promote dialogue between public authorities and citizens
- ▶ to promote dialogue between the cultures of the world.

Article 11(1) of the Press Act defines the public sector mass media to include the national radio and television broadcasters, a national news agency and any other entity established to serve the public interest in this sector.

A comment on the ambit of the Press Act is required, given some of the provisions summarised above. It is unusual for a statute to set out the objectives of the press in this way as it is, of course, for the press to determine, on an on-going basis what its objectives are.

3.2.1 Establishment of the SCMM

Article 35(1) of the constitution read with article 36 of the Press Act establishes the SCMM as a body by which the state guarantees the independence of information agencies. These are defined in section 1 of the Press Act as including any media that disseminates information to the public and it specifically includes the print and broadcast media. It also guarantees freedom of the press, the right to information, the exercise of the right to broadcast airtime and the right of reply.

It is important to note that as a state organ, the SCMM is also governed by Decree 5/2000 which establishes the National Council of Public Administration (NCPA). The NCPA is made up of the ministers of state administration, finance, justice and labour and the NCPA is empowered to make regulations to govern state organs, including the SCMM. Relevant regulations made in terms of this decree are dealt with in the regulations section below.

3.2.2 Main functions of the SCCM

The powers of the SCMM are set out in article 37 of the Press Act, and they include:

- ▶ to obtain information from information agencies and government authorities to enable it to perform its functions
- ▶ to consider any violation of the Press Act and other relevant laws and to take appropriate measures to deal with such violations
- ▶ to hear and determine complaints received from the public about information agencies
- ▶ being responsible for journalists' and advertisers' adherence to ethical norms and standards.

What is glaringly absent in these functional provisions of the Press Act is any reference to regulating the mass media in terms of, for example, licensing broadcasters, making regulations to govern operations of the mass media and the like. Indeed it is clear that the Press Act does not empower the SCMM to make regulations governing the broadcast sector. Instead, it provides, at article 6(4) that the conditions for participation in the broadcasting sector for a private entity or cooperative will be contained in specific regulations or subordinate legislation, taking into account the public interest and the state's prerogative.

3.2.3 Appointment of SCMM members

In terms of article 38(1) of the Press Act, the SCMM comprises 11 members (including a president designated by the national president, article 38(2)) made up as follows:

- ▶ two members designated by the president
- ▶ four members elected by parliament
- ▶ a magistrate designated by the superior council of the judicial magistracy
- ▶ three journalists' representatives elected by the respective professional organisations
- ▶ a representative of media operators.

A member of the SCMM serves for five years in terms of article 39(1) of the Press Act. In terms of article 39(3), a member of the SCMM cannot be removed from office. Their functions cannot cease before the end of their terms of office except in the following instances, death or permanent incapacity, resignation, imprisonment or loss of eligibility to hold office which is based on enjoying full civil and political rights in terms of article 38(4). Note that, in terms of the constitution, these are guaranteed only to citizens.

In terms of article 61(3) of the Press Law, the SCMM is empowered to make internal governance rules for itself. The SCMM has done so by way of regulations that are dealt with in the regulations section below. The regulations section (below) also contains other regulations that are relevant to the composition of the SCMM.

3.2.4 Funding for the SCMM

Legal provisions regarding the funding of the SCMM are dealt with in the regulations section.

3.2.5 Is the SCMM an independent regulator?

Despite the SCMM featuring fairly prominently in the constitution and the Press Act, it is clear that the SCMM is not, in fact, a regulator of anything at all concerning the media, apart from the general issue of media ethics. Certainly, the SCMM does not engage in regulatory activities such as issuing licences, determining local content requirements and the like. These critical functions are carried out by the relevant ministry, currently, the prime minister, via the information-related executive body, Gabinfo, as is more fully set out in the regulations section below.

3.3 Legislation governing journalists

In its introductory provisions, the Press Act, Law 18/91, contains article 5 sets out the rights and duties of journalists, namely:

- ▶ in the exercise of their functions, journalists enjoy the rights and must exercise the duties provided for in the constitution, this Press Act and other applicable legislation
- ▶ journalists and the press exercise their rights and duties based on respect for the constitution, human dignity and imperatives of foreign policy and national defence.

The Press Act contains a Chapter (IV) which governs journalists working in both print and broadcast media. In brief, it provides as follows;

- ▶ Article 26 defines a journalist as a professional dedicated to the public investigation, collection, selection, elaboration and presentation of events which are news-worthy, informative or constitute an opinion by the mass media (which is defined as including print and broadcast media) and for whom this activity constitutes their principal profession and which is permanent and remunerated.
- ▶ Article 27 sets out the rights of journalists, and these include:
 - ▶ unfettered access to public places they deem necessary to exercise their profession
 - ▶ the right not to be detained, excluded or otherwise impeded from being in any location necessary for them to exercise their profession
 - ▶ the right to refuse to comply with editorial instructions that do not emanate from competent authorities within a print or broadcast media outlet
 - ▶ the right to refuse to hand over their working materials in response to an illegal request to do so
 - ▶ the right to participate in the internal activities of the editorial board of the mass media entity he or she is employed by
 - ▶ the right of recourse to competent authorities of any infringement of any of his or her professional rights
 - ▶ in the case of violence, intimidation, aggression or attempts to corrupt faced by a journalist in the exercise of his or her profession, the employer must institute legal proceedings against the perpetrator. The journalist in question has the right to be a part of the process
 - ▶ cancel an employment contract in circumstances where there has been a material and unilateral change in the editorial policy of the media entity he or she is employed by, as confirmed by the directors or otherwise clearly expressed, together with indemnity for any claims arising out of such cancellation.
- ▶ Article 28 of the Press Act sets out the duties of journalists. In brief, these include to:
 - ▶ respect the rights and liberties of citizens

- ▶ produce information that is complete and objective
 - ▶ exercise his or her profession with rigour and objectivity
 - ▶ rectify false or inaccurate information published
 - ▶ refrain from endorsing hatred, racism, intolerance, crime or violence
 - ▶ refrain from engaging in plagiarism, slander, defamation, lies, accusations without any factual basis, injurious reporting, falsifying documentation, using his or her professional prestige for personal or material gain.
- ▶ Article 31 deals with journalists in the public sector media:
 - ▶ Article 31(1) provides that public sector journalists are required to conduct their profession in a manner that is independent of their personal opinions and trade union and political affiliations. These are essential conditions for their appointment, promotion or transfer. It is not clear what this means, as, on the face of the prohibition, it appears as if opinion pieces based on the journalist's views would fall foul of this section.
 - ▶ Article 31(2) provides that a journalist who has full time employment in the public sector media may contribute content to other media operations only with the agreement of his or her employer.
 - ▶ Article 32 deals with the accreditation of journalists. In brief, it provides as follows:
 - ▶ Article 32(1) provides that local correspondents and part-time contributors must be accredited by the media house that employs them.
 - ▶ Article 32(3) provides that the government may regulate the activities of foreign correspondents. It appears that this is done through Gabinfo as is set out more fully in the regulations section below.

The duties imposed on journalists in the Press Act in terms of article 5 are unusual; it is not common for a statute to stipulate that journalists exercise duties based on criteria such as national imperatives of foreign policy and national defence. This kind of wording seems a throw-back to Mozambique's past as a one-party state and is indicative of how much work still needs to be done to embed democratic values, particularly concerning the media. Additionally, while the obligations contained in article 28 are not uncommon, it is usual to find these in a self-regulatory code of ethics rather than in a statute as it leads to the question of whether or not this article is capable of being enforced against a journalist by the state (as is done in criminal matters) rather than by a self-regulatory body.

3.4 Legislation governing the print media

The Press Act, Law 18/91 governs the mass media, including print and broadcast media as well as cinema. It contains several provisions that impose obligations or restrictions on the operations of the print media. It is important to note that references in the Press Law to the minister of information are to be understood

as being references to the executive body Gabinfo. This body operates from the office of the prime minister and has taken over the responsibilities of the minister of information since 1995.⁴³ To avoid confusion, we refer to Gabinfo although the provisions of the Press Law still refer to the minister of information. These are set out below.

3.4.1 Registration and publishing requirements

Article 14(1) defines the print media as including publications of general information and specialised publications. Publications of general information are defined as periodicals which are a source of information about both national and international current affairs that are aimed at the greater public. Specialised publications are defined as publications that deal with specific themes or areas. Thus the print media includes both newspapers and magazines, whether general or with specialised subject matter such as business, fashion, agriculture and so on.

Article 19(1) requires the mass media (which includes the print media) to register with the minister of information before commencing operations.

In terms of article 19(2), an application for registration must include the following:

- ▶ the title of the publication
- ▶ the object of the publication
- ▶ the address of the place of publication
- ▶ the languages in which the publication is printed
- ▶ the identification of the owner
- ▶ the legal status of the entity producing the publication
- ▶ the identification of directors and the editor of the publication.

In terms of article 19(4), the application must be accompanied by certain annexures, including:

- ▶ a certified copy of the constitution of the entity producing the publication. These would include documentation such as a memorandum of incorporation, articles of association and the like
- ▶ a certified copy of the editorial policy
- ▶ information setting out the sources of funds constituting the share capital and general financial resources of the publication
- ▶ information regarding the origin and nature of any subsidies or grants received by the publication, whether directly or indirectly.

Additionally, in terms of article 19(3) of the Press Act, the print media is required

to include the following additional information in its application for registration:

- ▶ the frequency of the publication
- ▶ the minimum circulation, that is, the number of copies printed
- ▶ the format and price of the publication
- ▶ the identification of the printer
- ▶ the identification of the distributor.

Any changes in the information provided as part of a registration application must be notified to Gabinfo within ten days in terms of article 21 of the Press Act.

In terms of article 20, the registration process is required to be completed within 30 days of receipt of the application. Gabinfo must provide the applicant with the certificate of registration which is valid for two years. It is automatically renewable, except where the minister has withdrawn the certificate in terms of a court order or if the registered entity has renounced the certificate of registration. No print media entity may commence operations without the certificate of registration. It appears that Gabinfo (dealt with in the regulations section below) is, in fact, responsible for carrying out the registration functions of the ministry of information.

In terms of article 22(1) of the Press Act, Gabinfo has the power to refuse an application for registration only if the applicant has not complied with the informational requirements or legal conditions set out above. Such refusal of registration must, in terms of article 22(2), be set out clearly and must contain the reasons for such refusal.

In terms of article 23 of the Press Act, Gabinfo has the power to cancel a certificate of registration:

- ▶ if the entity is unable to verify the information that was contained in its registration application or in the event of a contravention of law; or
- ▶ if the application contained false information.

These matters have to be referred to the public prosecutor, and the cancellation of registration may take place only after a finding to that effect by way of a judicial order.

In terms of article 25, any refusal to register or cancellation of registration may be appealed or taken on judicial review within 30 days.

In terms of article 24, Gabinfo may exempt a print media entity from the registration obligation if the circulation of the publication is less than 500 copies.

There are certain key requirements laid down by the Press Act in respect of periodicals once they begin publishing. These include:

- ▶ article 15(1) which requires all periodicals to include the following information in every publication printed:
 - ▶ title of the publication
 - ▶ place of printing
 - ▶ date and cost of the publication
 - ▶ number of the edition
 - ▶ the identification of the owner, editor and directors of the publication
 - ▶ the address of the editorial staff and administration of the publication
 - ▶ the name and address of the printer of the publication
 - ▶ the frequency of the publication of the periodical
 - ▶ the circulation areas of the publication
 - ▶ the registration number of the publication.
- ▶ In terms of article 50 of the Press Act, a publication will be deemed to be a clandestine publication if it does not comply with article 15(1). Article 50(2) empowers the police, the military and the administrative authorities to arrest the clandestine press (presumably this means the editor, directors, printer and/or staff thereof) and hand them over to judicial authorities within 24 hours. In terms of article 50(3), writing, editing, printing, distributing or selling a clandestine publication is an offence punishable by imprisonment and the payment of a fine.
- ▶ article 16 of the Press Act requires a publication to send at least two copies, free of charge and on the day of publication, to the following institutions:
 - ▶ Gabinfo
 - ▶ the SCMM
 - ▶ the attorney general
 - ▶ the National Library
 - ▶ the Historical Archives of Mozambique
 - ▶ any other entities legally entitled to receive such publication.

However, the Press Act contains no provisions prescribing a penalty for a failure to comply with article 16.

3.4.2 Ownership and control requirements for the print media

Article 7(1) of the Press Act specifies that a print media entity must be a legal entity or juristic person, for example, in the form of a company. The implicit effect of this is that an individual cannot own a print media entity.

Article 6(1) of the Press Act contains some provisions regarding the ownership of the print media, including that the state can own them, the community, the private sector or by a mixed entity, that is, where members of the above sectors share ownership.

Article 6(3) provides that the state can acquire ownership of a print media operation that is not part of the public sector and/or can provide other forms of subsidy or support.

Article 6(5) restricts ownership of print media outlets to Mozambican companies or citizens. Additionally, article 6(6) provides that only 20% of the share capital of a print media owner may be provided from foreign sources.

It is also important to note article 6(8) which specifies that the state observes an anti-monopoly policy concerning the print media to preserve the public's right of access to information.

In respect of control, article 9 of the Press Act deals with directors of print media entities. In brief, it provides that every director of a print media entity must be a Mozambican citizen, resident in the country and must enjoy full civil and political rights.

3.4.3 Obligation to have an editorial policy

Article 8 of the Press Act requires all print media operators to develop and have an editorial policy.

3.4.4 Obligation to have an editorial board

Article 10 of the Press Act requires all print media operators to have an editorial board the composition and competencies of which are defined in its founding documentation.

3.4.5 Obligation to publish government news

- ▶ Article 13(1) of the Press Act read with the Presidential Decree 4/95, which establishes the government press office, Gabinfo, requires all daily print media operators to publish official government news disseminated by Gabinfo.
- ▶ Article 13(3) of the Press Act provides that the publication of government news is to be provided at no cost to the government and the government source is to be cited.

This is a particularly onerous obligation to impose, particularly on the private sector media, and it is noteworthy that there are no provisions regarding the amount of Gabinfo news to be disseminated in this way. This gives rise to the danger of an arbitrary insistence on an unrealistic amount of government news to be carried, free of charge, by a private publication.

3.4.6 Obligation to give a right of reply

Articles 33 and 34 of the Press Act deal with the right of reply. In brief, they provide as follows:

- ▶ any person (note both individuals and juristic persons or legal entities) who considers themselves to have been injured by the publication of false or incorrect information affecting their moral integrity and good name, has the right of reply
- ▶ the right to reply can be exercised by themselves, their legal representative, their heirs or surviving spouse.

The right to reply must be exercised within 90 days on the following terms:

- ▶ the reply is to be published in the same publication
- ▶ the reply is to be published only once, and at no charge to the person making the reply
- ▶ the reply must not itself be injurious to the publication. If it is so injurious, the head of operations may legitimately refuse to publish the reply and notify the injured person within three days of his or her decision not to publish. The injured person has an opportunity to resubmit an amended reply
- ▶ the reply is required to deal with the publication in question and must be as concise as possible
- ▶ the right to reply is independent of any criminal and civil proceedings that may be instituted against the publication
- ▶ if the reply is published in a manner that does not comply with the above requirements, the injured person may notify the media house and call on it to remedy the situation. If the media house does not remedy the situation, then the injured person may approach a competent court for an order. The court must make an order within ten days, and such order may be appealed.

Article 49(1)(b) of the Press Act provides that if a director of a publication has not acted on a court order regarding the right to reply, he or she is guilty of the offence of disobedience, for which the penalty is a fine in terms of article 49(2). In terms of article 53, the owners of the publication are jointly liable for the payment of the fine. Additionally, article 54 of the Press Act requires the offenders to be subject to internal disciplinary procedures in addition to any civil or criminal proceedings.

3.4.7 Obligations imposed on the foreign press

Article 17 of the Press Act regulates the foreign press. Article 17(1) defines the foreign press as those publications which are published abroad as well as those published in Mozambique but under the title and responsibility of a foreign entity. It appears, therefore, that the provisions of article 17 apply to foreign print media only.

Article 17(2) makes the provisions of the Press Act and all other relevant legislation applicable to the foreign press, unless obviously inapplicable.

Article 49(1)(d) of the Press Act provides that if a director of a foreign publication publishes in violation of a court-ordered suspension, he or she is guilty of the offence of disobedience, for which the penalty is a fine in terms of article 49(2). In terms of article 53, the owners of the publication are jointly liable for the payment of the fine. Article 54 of the Press Act also requires the offenders to be subject to internal disciplinary procedures in addition to any civil or criminal proceedings.

3.4.8 Advertising obligations

Article 18 of the Press Act regulates advertising in the mass media, including the print media. It provides, in brief:

- ▶ advertising is defined as including images, text and graphics that are paid for
- ▶ advertising must always be clearly designated as advertising
- ▶ any sponsored editorial content must identify the name of the sponsor clearly.

3.5 Legislation governing the broadcast media generally

A single act governs general broadcasting in Mozambique, namely the Press Act, Law 18/91, which governs the mass media, including print and broadcast media as well as cinema. Besides the Press Act, there are several decrees and diplomas which regulate broadcasting, including state broadcasting, and which are dealt with in paragraph 4 below. Again, the Press Act makes numerous references to the minister of information, but his responsibilities have been assigned to Gabinfo since 1995.

3.5.1 Registration requirements

Article 19(1) requires the mass media (which includes broadcasters) to register with Gabinfo before commencing operations (note that in respect of broadcasting, an actual licence is required in addition to these registration requirements. The licensing process is dealt with below). In terms of article 19(2), an application for registration must include the following:

- ▶ the name of the service
- ▶ the object of the broadcasting service
- ▶ the address of the place where the broadcasting service is produced
- ▶ the languages broadcast
- ▶ the identification of the owner
- ▶ the legal status of the entity producing the broadcasting service

- ▶ the identification of directors and the managing editor of the broadcast service.

In terms of article 19(4), the application for registration must be accompanied by certain annexures, including:

- ▶ a certified copy of the constitution of the broadcasting entity. These would include documentation such as the memorandum of incorporation, articles of association and the like
- ▶ a certified copy of the editorial policy
- ▶ information setting out the sources of funds constituting the share capital and general financial resources of the broadcaster
- ▶ information regarding the origin and nature of any subsidies or grants received by the broadcaster whether directly or indirectly. This is an interesting requirement and obviously enables the government to be aware of foreign and/or donor funding for broadcasting outlets.

In terms of article 21 of the Press Act, any changes in the information provided as part of a registration application must be notified to Gabinfo within ten days.

In terms of article 20, the registration process is required to be completed within 30 days of receipt of the application. Gabinfo must provide the applicant with the certificate of registration which is valid for two years and is automatically renewable except where the minister has withdrawn the certificate in terms of a court order or if the registered entity has renounced the certificate of registration. No broadcast entity may commence operations without the certificate of registration.

In terms of article 22(1) of the Press Act, Gabinfo has the power to refuse an application for registration only if the applicant has not complied with the information requirements or legal conditions set out above. Such refusal of registration must, in terms of article 22(2), be set out clearly and must contain the reasons for such refusal.

In terms of article 23 of the Press Act, Gabinfo has the power to cancel a certificate of registration:

- ▶ if the entity is unable to verify the information that was contained in its registration application or in the event of a contravention of law
- ▶ if the application contained false information.

These matters have to be referred to the public prosecutor, and the cancellation of registration may take place only after a finding to that effect by way of a judicial order.

In terms of article 25, any refusal to register or cancellation of registration may be appealed or taken on judicial review within 30 days.

In terms of article 50(1) of the Press Act, a broadcaster will be deemed to be a

'clandestine broadcaster' if it does not comply with article 19 of the Press Act (the registration provisions). Article 50(2) empowers the police, the military and the administrative authorities to arrest a clandestine broadcaster (presumably this means the station manager, directors, and/or staff thereof) and hand them over to judicial authorities within 24 hours. In terms of article 50(4), the broadcast or distribution of a clandestine broadcasting service is an offence punishable by imprisonment and the payment of a fine.

3.5.2 Provisions regarding the broadcast radio frequency spectrum

Broadcasting cannot take place without access to the radio frequency spectrum. This is a finite national resource. In terms of article 6(2) of the Press Act, the radio frequency spectrum is 'an integral part of the public domain of the state'. Consequently, radio frequency spectrum matters are under the control of the government.

3.5.3 Obligation to broadcast government news

Article 13(1) of the Press Act read with the Presidential Decree 4/95 which establishes the government press office, Gabinfo, requires all broadcasters to broadcast official government news disseminated by Gabinfo.

Article 13(3) of the Press Act provides that the broadcast of government news is to be done at no cost and the government source is to be cited.

This is an especially onerous obligation to impose on the private sector media in particular, and it is noteworthy that there are no provisions regarding the amount of Gabinfo news to be disseminated in this way. This gives rise to the danger of an arbitrary insistence on an unrealistic amount of government news to be carried, free of charge, by a private broadcaster.

3.5.4 Advertising obligations

Article 18 of the Press Act regulates advertising in the mass media, including the broadcast media. It provides, in brief:

- ▶ advertising is defined as including images, text and graphics that are paid for
- ▶ advertising must always be designated as advertising
- ▶ any sponsored broadcast content must identify the name of the sponsor.

3.5.5 Obligation to give a right of reply

Article 33 of the Press Act deals with the right of reply. In brief, it provides as follows:

- ▶ Any person (note both individuals and juristic persons or legal entities) who considers themselves to have been injured by a broadcast of false or incorrect information affecting their moral integrity and good name, has the right of reply.

- ▶ The right to reply can be exercised by themselves, their legal representative, their heirs or surviving spouse.
- ▶ The right to reply must be exercised within 90 days on the following terms:
 - ▶ the reply is to be broadcast by the same broadcaster
 - ▶ the reply is to be broadcast only once, without interruption, and at no charge to the person making the reply
 - ▶ the reply must not itself, be injurious to the broadcaster. If it is so injurious, the head of operations may legitimately refuse to broadcast the reply and notify the injured person within three days of his or her decision not to broadcast. The injured person has an opportunity to resubmit an amended reply.
- ▶ The reply is required to be as concise as possible and must deal with the broadcast in question.
- ▶ The right to reply is independent of any criminal and civil proceedings that may be instituted against the broadcaster.
- ▶ If the reply is broadcast in a manner that does not comply with the above requirements, the injured person may notify the broadcaster and call upon it to remedy the situation. If the broadcaster does not remedy the situation, then the injured person may approach a competent court for an order. The court must make an order within ten days, and such order may be appealed.

Article 49(1)(b) of the Press Act provides that if a director of a broadcaster has not acted on a court order regarding the right to reply, he or she is guilty of the offence of disobedience, and the penalty is a fine in terms of article 49(2). In terms of article 53, the owners of the broadcaster are jointly liable for the payment of the fine. Additionally, article 54 of the Press Act requires the offenders to be subject to internal disciplinary procedures in addition to any civil or criminal proceedings.

3.5.6 Broadcasting ownership and control obligations

Ownership and control obligations in respect of broadcasters are regulated in terms of the Press Act.

Article 7(1) of the Press Act specifies that a broadcaster must be a juristic person, for example, in the form of a company. The implicit effect of this is that an individual cannot own a broadcasting service.

Article 6(1) of the Press Act contains several provisions regarding the ownership of the broadcast media, including that the state can own them, the community, the private sector or by a mixed entity of a combination of the above media sectors.

Article 6(3) provides that the state can acquire ownership of a broadcaster that is not part of the public sector and/or can provide other forms of subsidy or support.

Article 6(5) restricts ownership of broadcasters to Mozambican companies or

citizens. Additionally, article 6(6) provides that only 20% of the share capital of a broadcaster may be provided from foreign sources.

It is also important to note the provision of article 6(8) which specifies that the state observes an anti-monopoly policy in the broadcasting sector to preserve the public's right of access to information.

In respect of control, it is important to note article 9 of the Press Act, which deals with directors of broadcasters. In brief, it provides that every director of a broadcast entity must be a Mozambican citizen, resident in the country and must enjoy full civil and political rights.

3.5.7 Obligation to have an editorial policy

Article 8 of the Press Act requires all broadcasters to develop and have an editorial policy.

3.5.8 Obligation to have an editorial board

Article 10 of the Press Act requires all broadcasting operators to have an editorial board whose composition and competencies are defined in its founding document.

3.5.9 Obligation to stop broadcasting if a licence is suspended

Article 49(1)(a) of the Press Act provides that if a director of a broadcaster continues to broadcast in violation of a suspension order, they are guilty of the offence of disobedience, and the penalty is a fine in terms of article 49(2). In terms of article 53, the owners of the broadcasting service are jointly liable for the payment of the fine. Article 54 of the Press Act also requires the offenders to be subject to internal disciplinary procedures in addition to any civil or criminal proceedings.

3.5.10 Amending the legislation to strengthen the broadcast media generally

The provisions of the Press Act regarding the regulation of the broadcasting sector are out of step with good international practice in several ways:

- ▶ first, the Press Act doesn't deal with the issue of licensing broadcasters, including the imposition of licence conditions
- ▶ second, the Press Act is silent on who is responsible for regulating broadcasting as a whole.

Instead, such critical issues regarding broadcasting are dealt with by way of decrees and the like. Putting these critical issues in what are, effectively, regulations instead of having such issues settled in legislation undermines the importance of the broadcasting legislative regime of Mozambique.

3.6 Legislation that regulates the state broadcasting sector

The state broadcasting sector is dealt with in a single statute. Namely, the Press Act 18/91 and then by way of regulation dealt with in the regulations section below.

Unusually, the state broadcasting sector is divided into two separate entities, namely Radio Mozambique and Mozambique Television.

3.6.1 Objectives of public sector mass media, including broadcasting

Article 11(2) of the Press Act sets out the principal functions of the public sector mass media, and these include:

- ▶ to promote access to information by citizens throughout the country
- ▶ to guarantee impartial, objective and equitable news coverage
- ▶ to reflect the diversity of ideas and opinions
- ▶ to develop the use of national languages.

Article 11(3) of the Press Act sets out the objectives for the state broadcasting operators, both radio and television, and these are to:

- ▶ provide balanced programming, taking into account the diverse interests and preferences of its audience
- ▶ promote communication for development
- ▶ to promote culture and creativity by the production and broadcasting of local content.

Article 11(4) of the Press Act provides that the state broadcasting entities carry out their functions free of any interference or external influence that may compromise its independence. However, this appears unlikely given that all directors of a public broadcasting service are appointed by the state, as is dealt with immediately below.

3.6.2 Control of public broadcasting entities

Besides the generally-applicable rules governing ownership and control of broadcasting entities dealt with above, article 9(2) of the Press Act provides that all directors of a public broadcasting service are to be appointed by the state. For more detail on this, see the regulations section in paragraph 4 below.

3.6.3 Obligation to broadcast government news

Article 13(1) of the Press Act read with the Presidential Decree 4/95 which establishes the government press office, Gabinfo, requires all broadcasters to broadcast official government news disseminated by Gabinfo. Additionally, article 13(2) requires the national radio and television broadcasters to broadcast government news immediately subject to any embargoed content.

Article 13(3) of the Press Act provides that the broadcast of government news is to be done at no cost and the government source is to be cited.

Article 13(4) of the Press Act requires the national radio and television broadcasters to broadcast statements by the president of the Republic urgently subject to any embargoed content at no charge.

3.6.4 Elections-related obligations

Article 12 of the Press Act deals with elections-related obligations imposed on the national broadcasters. Article 12(1) grants political parties represented in the National Assembly the right to airtime on the national radio and television broadcasters per regulations governing access to airtime for political parties.

Article 12(2) provides that, during an election period, political parties have the right to regular and equitable air time on the national radio and television broadcasters per electoral laws. The Elections Law (Law 8/2013) also specifically protects the rights of freedom of expression of the media during election periods (article 22), and article 31 entitles political parties and presidential candidates to make use of the state broadcaster to publicise their election campaigns.

Article 12(3) provides that opposition political parties have the right to reply to political declarations made by the government on the national radio and television broadcasters.

3.7 Legislation governing cinema

The Press Act, Law 18/91 governs the mass media, including print and broadcast media as well as cinema. Note that the Press Act continues to refer to the minister of information. However, that ministry no longer exists and, since, 1995, all functions of the minister of information are carried out by Gabinfo.

3.7.1 Registration of cinema operators

Article 19(1) requires the mass media (which includes cinema operators) to register with Gabinfo before commencing operations. In terms of article 19(2), an application for registration must include the following:

- ▶ the name of the cinema operator
- ▶ the object of the cinema operator
- ▶ the address of the place from which the cinema business is operated
- ▶ the languages in which films are shown
- ▶ the identification of the owner
- ▶ the legal status of the cinema operator

- ▶ the identification of directors and the manager of the cinema business.

In terms of article 19(4), the application must be accompanied by certain annexures, including:

- ▶ a certified copy of the constitution of the cinema operator. These would include documentation such as the memorandum of incorporation, articles of association and the like
- ▶ a certified copy of the cinematic policy, if any, that is, a type of editorial policy in respect of cinema
- ▶ information setting out the sources of funds constituting the share capital and general financial resources of the cinema operator
- ▶ information regarding the origin and nature of any subsidies or grants received by the cinema operator, whether directly or indirectly.

In terms of article 50(1) of the Press Act, a cinema operator will be deemed to be a clandestine cinema operator if they do not comply with article 19 of the Press Act (the registration provisions). Article 50(2) empowers the police, the military and the administrative authorities to arrest a clandestine cinema operator (presumably this means the manager, directors, and/or staff thereof) and hand them over to judicial authorities within 24 hours. In terms of article 50(4), the distribution and screening of audio-visual material by a clandestine cinema operator is an offence punishable by imprisonment and the payment of a fine.

3.7.2 Ownership of cinemas

Article 7(1) of the Press Act specifies that a cinema operator must be a juristic person, for example, in the form of a company. The implicit effect of this is that a cinema operator cannot be an individual.

Article 6(1) of the Press Act contains several provisions regarding the ownership of cinema operators, including that the state can own them, the community, the private sector or by a mixed entity.

Article 6(3) provides that the state can acquire ownership of a cinema operator that is not part of the public sector and/or can provide other forms of subsidy or support.

Article 6(5) restricts ownership of a cinema to Mozambican companies or citizens. Additionally, article 6(6) provides that only 20% of the share capital of a cinema operator may be provided from foreign sources.

It is also important to note the provision of article 6(8) which specifies that the state observes an anti-monopoly policy concerning cinema operators to preserve the public's right of access to information.

In respect to control, it is important to note article 9 of the Press Act, which deals with directors of cinema operator entities. In brief, it provides that every director

of a cinema operator entity must be a Mozambican citizen, resident in the country and must enjoy full civil and political rights.

Article 9(2) of the Press Act provides that all directors of a state-owned cinema operator are to be appointed by the state.

3.7.3 Obligation to have a cinematic policy

Article 8 of the Press Act requires all cinema operators to develop and have an editorial policy. We presume this to mean a cinematic policy akin to an editorial policy in other media contexts.

3.7.4 Obligation to have an editorial board

Article 10 of the Press Act requires all cinema operators to have an editorial board (we presume this to mean a cinematic policy board) whose composition and competencies are defined in its founding documentation.

3.8 Legislation that undermines or upholds a journalist's duty to protect his or her sources

Interestingly, there are no laws that we have been able to find which specify that a journalist can be forced to reveal his or her sources in Mozambique.

Article 30(1) of the Press Act deals with the protection of journalists' sources of information, and it provides that journalists, editors, publishers and broadcasters have the right to keep their sources of information secret in respect of material published or broadcast. Article 30(2) contains a presumption that, unless the source of information is indicated, the author will be presumed to have obtained the information.

3.9 Legislation that prohibits the publication of certain kinds of information

Several statutes contain provisions which, when closely examined, undermine the public's right to receive and the media's right to publish information. The word publish here is meant broadly, as in getting information out in the public domain and includes print, broadcast and online publication. Such statutes are targeted and prohibit the publication of certain kinds of information, including:

- ▶ general defamation and injury, as well as defamation against the head of state and other dignitaries
- ▶ false news and unfounded rumours
- ▶ publication that offends against national symbols
- ▶ publication that reveals the identities of minors in court proceedings

- ▶ publication of child pornography
- ▶ publication that disrupts public order
- ▶ publication of state secrets
- ▶ publication that violates the rights of others
- ▶ publication that constitutes hate or discriminatory speech
- ▶ publication that incites the commission of an offence.

3.9.1 Publications that constitute general crimes of defamation and injury, as well as defamation against public authorities, the head of state and other dignitaries, and foreign governments and ambassadors

Two different pieces of legislation criminalise defamation and related injurious expression:

- ▶ the Press Act, Act 18 of 1991
- ▶ the Penal Code, Act 24 of 2019 which comes into force in June 2020.

Article 41 of the Press Act provides that a media outlet (print or broadcast) is civilly liable (in other words for damages to a person wronged) for publications of broadcasts which are injurious or contrary to legally-protected rights. In brief, it provides:

- ▶ for joint responsibility between the author or programme manager (in the case of broadcast material) and the media entity for the publication or broadcast of injurious material or between the author or programme manager and the editor if they had knowledge about the material and did nothing to oppose the publication or broadcast of it, article 41(2)
- ▶ that a decision of the court in any civil action brought in terms of this article 41 must be published or broadcast together with the facts giving rise to the action, the injurious material, the identities of both the complainant and the respondent in the matter and the sanction imposed by the court, article 41(3). Article 49(1)(c) of the Press Act provides that if a director of a media entity has not published or broadcast the decision of the court as required in terms of article 41, he or she is guilty of the offence of disobedience and the penalty is a fine in terms of article 49(2). In terms of article 53, the owners of the media entity service are jointly liable for the payment of the fine. Article 54 of the Press Act also requires the offenders to be subject to internal disciplinary procedures in addition to any civil or criminal proceedings.

Article 42 of the Press Act provides that crimes of abuse of the freedom of the press are injurious acts or those contrary to legally-protected rights that are published or broadcast. Articles 43 and 44 of the Press Act deal with criminal liability for material published or broadcast that causes harm. In brief, it assigns liability successively as follows:

- ▶ first, the author of the relevant article or image or the person who promoted the publication without the consent of the author or producer of the broadcast programme as an accomplice
- ▶ second, the editor of the publication or broadcast programme manager provided that it was not signed (the author is not identified) and the publication was done without his consent, and he could not prevent it
- ▶ third, the managing director of a publication or broadcaster, unless he or she can exonerate him or herself
- ▶ the members of the editorial board of a publication or broadcaster are presumed criminally liable to the same extent as a managing director, where the decision to publish or broadcast was subject to a vote, unless a board member can prove that he or she did not participate in the vote or voted against publication or broadcast.

Article 45 provides that publishers of publications and signal distributors of a broadcast service will not be liable for any publication or programme broadcast unless the publication or broadcaster is clandestine (that is, unregistered) or where the publication or broadcast service has been judicially suspended.

Article 46(1) of the Press Act, Act 18 of 1991 makes it an offence to publish or broadcast material that constitutes injury, threats, defamation or calumny against the president, members of government and parliament, magistrates, public authorities in Mozambique, foreign governments or accredited diplomats.

Article 47(1) provides that: 'truth in the public interest which respects the bounds of privacy' is a defence to a charge of defamation. The offence is punishable by imprisonment and a fine in terms of section 47(2) of the Press Act.

Article 51(1) provides that a court can suspend a publication or broadcast service if the court finds that it has published or broadcast, as the case may be, content that disrupted public order, violated rights of citizens or that incited the commission of offences.

Interestingly, article 47(2) of the Press Act, Act 18 of 1991, also makes it an offence to publish or broadcast material that constitutes defamation (note defamation is also not defined in the Press Act) of a person. Article 47(1) provides that truth in the public interest which respects the bounds of privacy is a defence to a charge of defamation. The offence is punishable by imprisonment and a fine in terms of section 47(2) of the Press Act. Note that journalists who are employed by the state can also be penalised for having abused their authority in terms of article 52(2) of the Press Act.

There are additional provisions regarding punishments for periodicals. If a periodical publication is found to have published defamatory material on three or more occasions within five years, it can be suspended in terms of article 48. The periods of suspension are set out in article 48(1) and are as follows:

- ▶ up to one month for a daily publication
- ▶ up to six months for a weekly publication
- ▶ up to 12 months for a monthly publication.

Additionally, a director of a periodical that has been found to have published defamatory material on three or more occasions is prohibited from acting as a director of any periodical for two years.

Article 48(3) also provides that the person responsible for a defamatory statement or image published is liable for a fine in respect of defamation in the following circumstances:

- ▶ if there was no truth to the defamatory statement
- ▶ if the statement or image was published negligently without the intention to defame
- ▶ if this is a repeat offence by the person responsible.

Chapter IX of Title I of Book Two of the New Penal Code, Act 24 of 2019, is headed Crimes Against Dignity of Persons. It details some instances where publishing material constitutes a crime against the dignity of persons:

- ▶ Article 233(1) deals with the crime of defamation. It provides that those who defame another publicly, whether spoken, written, images published or by any other medium of dissemination (including broadcasting or the exhibition of films) or offends a person's honour (including reproducing existing defamatory material) is guilty of an offence punishable by up to one year's imprisonment and a corresponding fine. It is important to note that the penal code does not define defamation. However, the general understanding of the term is that it is a publication of material that impairs a persons' reputation.
- ▶ Article 233(2) deals with the defences to a charge of defamation. Essentially, these are that it was done to protect legitimate interests and a person facing a charge of defamation is required to prove the truth of the facts in the publication or that the publication was made in a good faith belief that the facts in question were true. However, even truth will not be a defence to a charge for defamation where the facts concern private or family life, article 233(4).
- ▶ Article 234(1) deals with the crime of injury or injuria, and it provides that the crime of injury committed against a person publicly by gestures, images, spoken words or any other medium of publication is punishable by imprisonment of up to six months. Article 234(2) specifically provides that truth is not a defence to a charge of injury when it relates to the intimacy of private life. It is important to note that the penal code does not define injury. However, the general understanding of the term is that it is intentional wrongful damage to a persons' dignity. Consequently, injury and defamation are very similar.
- ▶ Article 237(1) of the penal code provides that crimes of defamation, and injury

committed against the head of state or its legal, constitutional substitute, are punishable, on conviction, by imprisonment of between one and two years. Note that this essentially doubles the normal period of imprisonment for such crimes, when they are committed against Mozambican dignitaries.

- ▶ Article 237(2) of the penal code deals with the crimes of defamation and injury perpetrated against holders of sovereign public offices and members of the administration of justice organs. Such crimes are punishable, on conviction, by imprisonment of up to two years.

It is important to point out that there has not been an attempt at harmonising the provisions of the Press Act and penal code concerning defamation and injury. This means that these laws apply side by side even though they deal with very similar, indeed overlapping matters. However, it is important to note the provisions of article 2(2) of the penal code, which specifies that laws that are contrary to the provisions of the code are repealed. Hence, the penal code takes precedence over the criminalisation of defamation.

3.9.2 Publications that constitute false news or unfounded rumours

Article 48(4) of the Press Act, Act 18 of 1991 makes it an offence to publish or broadcast material that constitutes false news or unfounded rumours if aggravating circumstances exist, for example, where the public interest or law and order are concerned. The offence is punishable by imprisonment, and a fine in terms of article 47(2) of the Press Act read with article 48(4). Note that truth is a defence.

This is an interesting provision. Currently, countries all over the world are grappling with how to regulate so-called fake news or misinformation, particularly online. Many have decided against regulating this because of the chilling effect on breaking news that may, eventually, turn out to be simply incorrect. The problem with the provisions of article 48 is that they create a criminal offence out of what could be an error, as opposed to an intention to spread misinformation. Reasonable apprehension that the material was true ought to be a defence to such a charge and not simply truth.

3.9.3 Publications that offend against national symbols

Chapter I of Title VI of Book Two of the Penal Code, Act 24 of 2019, is headed Crimes Against the Security of the State. It details several instances where publishing material constitutes a crime against the security of the state. Article 397 of the penal code provides that publishing material that offends against national symbols is a crime punishable by a prison sentence of up to a year with a corresponding fine. Such symbols are set out in article 13 of the constitution and are the flag and the national emblem and anthem.

3.9.4 Prohibition on the publication of a minor's identity in legal proceedings

Although there is no written legal provision dealing with the protection of a minor's

identity in legal proceedings, the Mozambique courts have ruled against publishing a minor's identity in cases where this would be in the best interests of the child.

3.9.5 Prohibition on the publication of child pornography

Chapter VII of Title I Book Two of the Penal Code, Act 24 of 2019, is headed Crimes Against Sexual Liberty. Article 211 provides that the publication of child pornography (a sexually explicit visual representation of a minor) is a crime punishable, on conviction, by imprisonment.

3.9.6 Prohibition on publishing or broadcasting material that disrupts public order

Article 51(1) of the Press Act, Law 18 of 1991 provides that a court can suspend a publication or broadcaster if the court finds that it has published or broadcast content that disrupts public order.

3.9.7 Prohibition on publication of state secrets

Chapter I of Title VI Book Two of the Penal Code, Act 24 of 2019, is headed Crimes Against State Security. Article 380 provides that the publication of information that endangers the security interests of the state to 'unauthorised persons' or to the public is a crime punishable, on conviction, by imprisonment.

3.9.8 Prohibition on publishing or broadcasting material that violates the rights of citizens

Article 51(1) of the Press Act, Law 18 of 1991 provides that a court can suspend a publication or broadcaster if the court finds that it has published or broadcast content that violated the rights of citizens.

3.9.9 Prohibition on publishing or broadcasting material that constitutes hate or discriminatory speech

Chapter V of Title I Book Two of the Penal Code, Act 24 of 2019, is headed Crimes against Humanity, Cultural Identity and Personal Integrity. Article 191(3) makes it an offence, punishable by imprisonment, to disseminate by any media:

- ▶ provocation of acts of violence against a person or group based on their race, colour, ethnic origin, nationality, religion, race or gender identity
- ▶ defamation of a person or group based on their race, colour, ethnic origin, nationality, religion, race or gender identity by the denial of war crimes to incite or encourage discrimination
- ▶ threats against a person or group based on their race, colour, ethnic origin, nationality, religion, race or gender identity.

3.9.10 Prohibition on publishing or broadcasting material that incites the commission of an offence

Two different pieces of legislation criminalise incitement, the:

- ▶ Press Act, Act 18 of 1991
- ▶ Penal Code, Act 24 of 2019 which comes into force in June 2020.

Article 51(1) of the Press Act, Law 18 of 1991 provides that a court can suspend a publication or a broadcaster if the court finds that it has published or broadcast content that incited the commission of an offence.

Chapter I of Title VI Book Two of the Penal Code, Act 24 of 2019, is headed Public Instigation and Criminal Association. Article 345(1) makes it an offence, punishable by imprisonment, to incite the commission of a crime employing communication.

3.10 Legislation that specifically assists the media in performing its functions

In countries that are committed to democracy, governments pass legislation which specifically promotes the accountability and transparency of public and private institutions. Such statutes, while not specifically designed for use by the media, can and often are used by the media to uncover and publicise information in the public interest. Mozambique has passed two pieces of legislation of this nature.

3.10.1 Press Act, Act 18 of 1991

The Press Act contains some provisions that support the media:

- ▶ Article 3(1) of the Press Act provides that the right to information gives every citizen the right to be informed about relevant facts and opinions at the national and international level as well as the right to divulge information, opinion and ideas via the press.
- ▶ Article 3(2) of the Press Act provides that no citizen may be prejudiced in their work by them exercising their right to freedom of expression in the press. It appears that this could be used to protect whistleblowers that divulge wrong-doing at their place of work.
- ▶ Article 29 of the Press Act deals with sources of information. In brief, it provides that journalists shall be given access to official sources of information. However, the following sources of information are exempted:
 - ▶ judicial proceedings held *in camera*, in other words, without public access as ordered by the presiding judge
 - ▶ facts and documents considered secret by the competent military or state authorities

- ▶ facts and documents considered secret or confidential in terms of the law
- ▶ facts and documents, the publication of which would constitute an infringement of the privacy of citizens.
- ▶ Article 52(1) of the Press Act makes it an offence, punishable by a fine, for any person to violate the rights, liberties and guarantees given to the mass media. This includes print and broadcast media (note that online media protection is not expressly specified) and to journalists, in terms of the Press Act. Moreover, if the offender is a public official, then he or she can also be liable for the crime of abuse of authority, in which case the state is jointly liable for the payment of the fine, article 52(2) of the Press Act.

3.10.2 The Right to Information Act, Act 34 of 2014

Article 1 sets out the objectives of the Right to Information Act (the Info Act). These are to:

- ▶ provide for the exercise of the right to information
- ▶ materialise the constitutional principle of permanent participation in the democracy and in public life by citizens
- ▶ guarantee the fundamental rights connected with the above.

Article 3 details who is bound by the Info Act. In brief, it applies to:

- ▶ organs and institutions of the state, including local authorities
- ▶ diplomatic representatives of Mozambique in foreign countries
- ▶ private entities that provide a public service or which access public resources and which hold information that is of interest to the public.

Article 4 sets out the principles of the Info Act. In brief, these are that:

- ▶ exercise of the right to information must respect the constitutional order, protect national unity and social harmony
- ▶ the following principles govern exercise of the right to information:
 - ▶ the right to dignity
 - ▶ maximum sharing of information
 - ▶ public interest
 - ▶ transparency in the activities of public and private entities
 - ▶ permanent accountability to citizens
 - ▶ open public administration
 - ▶ the prohibition against unlimited exceptions

- ▶ the promotion of the rights of citizenship
- ▶ permanent democratic participation of citizens in public life
- ▶ simplicity and swiftness of legal procedures and regulations
- ▶ respect for classified information.

Article 6 deals with the principle of ‘maximum divulgence’, and it requires information to be provided in the public interest and to be disseminated as widely as possible by diverse mediums accessible to citizens. Article 6(2) sets out the kinds of information that public and private bodies ought to provide as a matter of course, including:

- ▶ information regarding organisational structures and services provided
- ▶ annual budgets and organisational plans for activities as well as annual reports on their execution
- ▶ audit reports, court judgments, enquiries and inspections of its activities
- ▶ such information must be available online, on broadcasting services and other mass media outlets as well as being affixed in public buildings.

Article 14 grants citizens the right to request and receive information that is in the public interest from the state or applicable private persons.

Article 15 sets out the procedure for such requests. These are, in brief:

- ▶ requests for information must be directed to the manager responsible for information, archives and the like in the public sector or private sector body
- ▶ requests for information can be made in writing, orally or even by gesticulations (see articles 15 and 18). However, certain requests for information must be put in writing, namely:
 - ▶ requests for official correspondence
 - ▶ information regarding government services
 - ▶ information regarding government officials.

Article 16 provides that information must be provided to the requestor within 21 days.

Article 17 provides that information which is provided in response to a request must be provided free of charge unless the provision of such information required copying, certifying or authenticating documentation, or unless the provision was subject to any taxation.

Article 22 sets out the limitations on the right to information. In brief, these include:

- ▶ classified information, that is, where the state has classified information as being secret, restricted or confidential, article 20(1)

- ▶ restricted information, article 20(2) that is:
 - ▶ state secrets: detailed information and documents that have a degree of security classification and which require protection from unauthorised distribution to avoid risks to the state and damage to internal and external security (read with article 21)
 - ▶ secrets of justice: documentation, the publications of which would undermine the administration of justice or the protection of private life (read with article 22)
 - ▶ information regarding the public administration received as being confidential (read with article 25)
 - ▶ information regarding relations with foreign states or international organisations (read with article 21)
 - ▶ professional secrecy, for example, attorney-client privilege (read with article 23)
 - ▶ banking secrecy, including banking information of clients (read with article 24)
 - ▶ personal information, this includes the protection of electronic information as well as information regarding the private lives of citizens, and any other information that could cause prejudice to one's good reputation or image. Any images of private life may be shared only with the express consent of the person involved (read with article 27)
 - ▶ Victims, witnesses and whistle-blower information, this is information regarding victims of or witnesses to a crime and whistleblowers (read with article 26)
 - ▶ commercial secrets, where the publication of information would divulge commercial or industrial secrets or information regarding the internal life of a business enterprise (read with article 28)
 - ▶ authored publications, copyrighted works are protected from distribution where the rights of the author would be violated by their use or reproduction (read with article 29).
- ▶ Articles 37-39 of the Info Act make it clear that providing information in ways that violate laws governing the protection of human dignity, classified information, professional, banking and justice secrecy will be dealt with in terms of applicable legislation in respect of such violations.

4 Regulations affecting the media

In this section, you will learn:

- ▷ what regulations are
- ▷ regulations on the mass media including the print media
- ▷ regulations governing the SCMM
- ▷ regulations governing broadcasting generally
- ▷ regulations governing the state broadcasting sector
- ▷ regulations governing the establishment of a government press office, Gabinfo
- ▷ regulations governing the Bureau of Public Information
- ▷ regulations governing the Institute for Mass Media
- ▷ regulations governing journalism education

4.1 Definition of regulations

In general terms, regulations are subordinate legislation. They are legal rules made in terms of a statute. Regulations are a legal mechanism for allowing a member of the executive or a state institution to make legally binding rules governing an industry or sector without requiring parliament to pass a specific statute.

Mozambique, however, has a range of regulatory mechanisms. Many of these have the force of law in a very similar way to an act of parliament such as a statute. This feature of Mozambican law has already been discussed in paragraph 2.9.5 above.

There are four types of non-statute regulatory mechanisms in Mozambique, diplomas, decrees, deliberations and resolutions:

- ▶ a singular ministry makes diplomas on sector-specific issues
- ▶ the government makes decrees. These can be either by the president as the chief of the government or council of ministers on a specific matter or a joint decree involving two or more ministries

- ▶ deliberations are made by a collective decision-making body such as a council or something similar
- ▶ resolutions, these are other acts or decisions of the government that are not made in a decree form.

4.2 Regulations governing the mass media, including print media

Diploma 2/2005 issued by the prime minister, sets out additional functions of Gabinfo (dealt with in more detail in section 4.6 below) in many key areas. One of these has particular importance for the mass media, including broadcasting.

Information-related additional functions, article 3(1): to facilitate compliance by the government with its obligations under the Press Act (dealt with above). It is clear that this has been interpreted as allowing the ministry of information to delegate many of its functions under the Press Act to Gabinfo which carries out some functions on behalf of the ministry including to:

- ▶ accredit and register foreign correspondents. The effect of this is that Gabinfo is the body that carries out the responsibilities of the ministry of information in respect of the registration and accreditation of foreign correspondents and publications provided for in the Press Act
- ▶ ensure the registration and licensing of the mass media. The effect of this is that Gabinfo is the body that carries out the responsibilities of the ministry of information in respect of the registration and licensing of the mass media provided for in the Press Act.

4.3 Regulations governing the SCMM

4.3.1 Deliberation 9/1994 (the SCMM Deliberation)

The SCMM Deliberation, passed by the SCMM in terms of the Press Act (dealt with above), contains the SCMM's own internal rules. Those that are particularly relevant include:

- ▶ article 2(1) provides that the SCMM is funded out of the national budget and that it is entitled to receive funding from other sources, including donations
- ▶ article 13(1) provides that decisions of the SCMM are taken on a simple majority basis
- ▶ article 15 provides that decisions of the SCMM and the outcome of complaints will be made available to media institutions.

4.3.2 Ministerial Diploma No. 86/1998 (the diploma)

The Diploma was enacted by four ministers, state administration, justice, finance, and labour in terms of Decree 3/85 (now repealed and replaced by Decree 5/2000). Essentially the diploma repeats provisions relating to the composition and powers of the SCMM that have already been dealt with above concerning the Press Act. One additional key aspect, not covered in the Press Act, is that a member of the SCMM cannot be a member of a government body or the leader of a political party, article 4.

4.4 Regulations governing broadcasting

4.4.1 Decree 9/93 (The Broadcasting Decree)

The Broadcasting Decree was enacted by the council of ministers acting in terms of article 6(4) of the Press Act and is the most significant set of regulations dealing with broadcasting in Mozambique. The Broadcasting Decree deals only with private or community or a mixed model of both, broadcasters. Public or state broadcasting is dealt with in other regulations as set out below.

Licensing-related provisions

Article 3(2) of the Broadcasting Decree provides that no-one may provide broadcasting services without a licence issued in terms of this decree or other applicable laws.

Article 4(1) of the Broadcasting Decree stipulates that the licensed broadcast coverage area of a particular broadcasting service is as specified in the licence. Coverage areas are either national or a part of the national territory.

The minister responsible for transport and communications is also responsible for licensing the use of the radio frequency spectrum by broadcasting licensees in terms of article 5 of the Broadcasting Decree.

Article 13 deals with licensing of broadcasting services. It is clear from the provisions of article 13 that the power to grant and issue broadcasting service licences in Mozambique is vested in the minister of information. Note that it is clear from the provisions of Decree 2/2005, dealt with below, that this function has been delegated to Gabinfo. Thus, the SCMM plays no role in the granting of broadcasting licences.

Article 14(1) provides that an application for a radio or television broadcasting licence must be made to the Minister of Information.

Article 14(2) makes it clear that the licensing process for broadcasters operates in parallel with the general registration requirements applicable to print media entities, broadcasters and cinema operators in terms of the Press Act, that is, broadcasters have to be both registered with, and licensed by, the Minister of Information.

Article 14(2)(a) specifies what is to be included in a broadcast licence application, namely:

- ▶ the proposed coverage area, specified on a coverage map
- ▶ a description of the proposed broadcasting service
- ▶ proposed specifications of transmitter equipment and installations, including the effective radiated power of the transmission.

Additionally, where an application is made by an entity that includes participation by the state, the application must include a feasibility study for the service, article 14(3).

Article 26(1) requires an application fee to be paid in respect of every licence application. The licence application fee is prescribed by the ministers of information, transport and communications and finances in terms of article 26(4).

An application must be decided on within 90 days by the minister of information in terms of article 14(4). Importantly, article 15 provides that it is the minister of transport and communication that is responsible for determining the technical, that is, transmission-related licence conditions.

Article 13(2) sets out the features of a broadcasting licence (after the decision to grant it has been made), and these include:

- ▶ the name of the licensee
- ▶ the ambit and scope of the licensed activity. For example, whether the service is radio or television and the format of any radio service
- ▶ the assigned frequencies
- ▶ the period of broadcast transmission, that is, how many hours per day
- ▶ the period of validity of the licence (up to ten years renewable, in terms of article 17 of the Broadcasting Decree).

Article 16 provides that it is the Council of Ministers, that is, the Cabinet, which grants broadcasting licences to applicants. The political nature of that body and the fact that it lacks independence can hardly be overstated.

Suspension of a licence

A reference to a licence being suspended means that it would be suspended for between seven and 30 days as stipulated by the minister of information with the concurrence of the minister of transport and in terms of article 22(2) of the Broadcasting Decree. A failure to comply with any broadcast licence suspension order may result in the relevant authority (we presume this to mean the minister of information and the minister of transport and communications) cancelling the licence in terms of article 23(1)(a). Additionally, the imposition of three suspension

orders in three years may result in the cancellation of the licence in terms of article 23(1)(b) of the Broadcasting Decree.

Responsibilities of broadcasters in Mozambique

▶ **Adherence to licence conditions**

Article 22(1)(a) of the Broadcasting Decree provides that a licence may be suspended if the licensee does not comply with its licence conditions.

▶ **Obligation to broadcast**

Article 18 of the Broadcasting Decree provides that licensed broadcasters must commence broadcasting operations within one year of the granting of the licence.

Article 19 prescribes a minimum broadcast transmission period of four hours per day.

▶ **Obligation to eliminate interference**

Article 22(1)(b) of the Broadcasting Decree provides that a licence may be suspended if the licensee does eliminate interference with other frequencies after been notified to do so.

▶ **Obligation to grant access to inspectors**

Article 22(1)(c) of the Broadcasting Decree provides that a licence may be suspended if the licensee does not grant access to its installations or equipment by a designated inspector.

▶ **Obligation to pay licence fees**

Article 22(1)(d) of the Broadcasting Decree provides that a licence may be suspended if the licensee does not pay the licence fee prescribed in terms of article 26. Article 26(2) read with article 26(3) makes provision for a licensed broadcaster to pay two different types of licence fees, one for the broadcast service and one for the transmission equipment.

▶ **Obligation to have a fixed address**

An interesting negative obligation is set out in article 27 of the Broadcasting Decree which prohibits a broadcaster from broadcasting from a ship, aeroplane, or any other mode of transport. Thus all broadcasters have to broadcast from a fixed address. This is doubtless to try to avoid the so-called pirate broadcast ships phenomenon of people directing transmitters onshore from off-shore boats to avoid licensing requirements.

▶ **Obligation to keep a register of broadcasting equipment**

Article 28 of the Broadcasting Decree requires all broadcasters to maintain a record of all transmission equipment.

4.4.2 Diploma 2/2005

Diploma 2/2005 issued by the prime minister, sets out additional functions of Gabinfo (dealt with in more detail in section 4.6 below) in several key areas, including to:

- ▶ accredit and register foreign correspondents. The effect of this is that Gabinfo is the body that carries out the responsibilities of the ministry of information in respect of the registration and accreditation of foreign correspondents and publications provided for in the Press Act
- ▶ ensure the registration and licensing of the mass media. The effect of this is that Gabinfo is the body that carries out the responsibilities of the ministry of information in respect of the registration and licensing of the mass media provided for in the Press Act.

4.5 Regulations governing the state broadcasting sector

4.5.1 Introduction

Radio Mozambique and Mozambique TV were both nationalised as state broadcasters in 1975 following Mozambique gaining independence. They continue to operate separately.

Two decrees govern the state broadcasting sector, namely:

- ▶ Decree No 18/1994 creation of Radio Mozambique
- ▶ Decree No 31/2000 creation of Mozambique TV.

4.5.2 Establishment of Radio Mozambique

Radio Mozambique is governed in terms of Decree 18/1994 (the Radio Decree). Article 1 provides that Radio Mozambique is a public organ. It has a separate legal personality and has administrative and financial autonomy in terms of article 2(1). Article 2(2) stipulates that Radio Mozambique is also subject to the applicable provisions of the Press Act.

4.5.3 Radio Mozambique's mandate

The Radio Decree sets out the functions of Radio Mozambique in articles 3 and 4. These include:

- ▶ to provide a public radio service as its principal objective
- ▶ the right to carry out commercial activities (presumably the right to sell advertising and the like).

The Radio Decree contains provisions titled Statute of Radio Mozambique, namely Chapters I to XII of the Radio Decree (the Statute). Note that these are entirely standalone as they too have articles within them.

Articles 4 and 5(1) of the statute sets out additional broad objectives of Radio Mozambique, and these are essentially concerned with promoting national unity, identity and values.

A commitment to the pluralism of programming is expressed in articles 5(2) and 9(2) of the statute which contains some sub-articles that elaborate on this principle, including:

- ▶ promoting access to information;
- ▶ promoting national languages and culture. In this regard, article 7 of the statute specifies that at least one national service is to be provided in Portuguese with other Mozambican languages being accommodated at the provincial services level.
- ▶ ensuring the provision of educational programming
- ▶ that programming must be objective, impartial, true, factual and rigorous.

4.5.4 Appointment of the Radio Mozambique's Board

In terms of article 22, Radio Mozambique has a board of five directors, including a president designated by the council of ministers and the other four appointed as follows:

- ▶ two directors are designated by the minister responsible for the mass media
- ▶ one director is designated by the Minister of Finance
- ▶ one is designated by the staff of Radio Mozambique.

Directors are appointed for a three-year term, which is renewable in terms of article 21(1) of the statute.

All directors are required to be citizens who enjoy full civil and political rights in terms of article 20 of the statute. There are no other stipulated criteria.

Article 27 of the statute provides that the board is responsible for managing Radio Mozambique including administratively and financially. In particular, it is responsible for determining the internal operations, coordinating the activities and managing the programming.

Article 35 of the statute also establishes and provides for a fiscal council of Radio Mozambique comprising three members, all of whom are appointed by the minister of finance. Article 36 of the statute sets out the role of the fiscal council, and essentially these consist of overseeing the financial affairs and corporate governance of Radio Mozambique.

4.5.5 Funding of Radio Mozambique

Article 5 of the Radio Decree and Chapter IV of the statute refer to a statutory fund

that is available to Radio Mozambique. The annual amount available is set out in article 15 of the statute and may be augmented only by the minister of finance in terms of article 16(2) of the statute. Article 15 of the statute also refers to Radio Mozambique being funded by way of other state or public entity endowments.

The Radio Decree also goes on to provide, in article 7, that in carrying out its functions, it has the powers to: 'collect fees, service revenues and other credits'. In our view, this includes collecting advertising revenues. There is a radio licence fee that is charged at the time of the annual car licence fee — so in effect the radio fee is charged to car users.

Article 14 of the Radio Statute in the Radio Degree deals with limitations on advertising flighted on Radio Mozambique. In addition to the general advertising requirements set out in the Press Act, advertising on Radio Mozambique is restricted in that the following is prohibited:

- ▶ advertising content that is not acknowledged as advertising
- ▶ misleading advertising in respect of the quality of the goods offered
- ▶ advertising of products that are harmful to health
- ▶ pornography and incitement of violence.

4.5.6 Radio Mozambique: public or state broadcaster?

There is no doubt that Radio Mozambique is a state broadcaster given that the majority of its board is appointed by members of the executive branch of government. Article 2(1) of the Radio Decree specifies that it is a subordinate arm to the Ministry of Information.

4.5.7 Establishment of Television Mozambique

Television Mozambique is governed in terms of Decree 31/2000 (the Television Decree). As was the case with the Radio Decree, the Television Decree also contains a statute for Television Mozambique (the Television Statute). Article 1 of the Television Statute provides that Television Mozambique is a public organ. It has a separate legal personality and has administrative and financial autonomy. Although it is not expressly stated in the Television Decree, it is clear that Television Mozambique is also subject to the applicable provisions of the Press Act.

4.5.8 Television Mozambique's mandate

The Television Decree contains within it, provisions that are titled Statute of Television Mozambique, namely Chapters I to XII. Note that these are entirely standalone as they too have articles within them.

The Television Statute sets out the functions of Television Mozambique in article 4. These include:

- ▶ to provide a public television service as its principal objective
- ▶ the right to carry out supporting commercial activities (presumably the right to sell advertising and the like).

Article 10 of the Television Statute sets out the requirements of Television Mozambique's programming, and these include that programmes are to be informative, entertaining and cultural. Article 10 also contains additional specific requirements that programming is to:

- ▶ be factual, truthful and rigorous
- ▶ promote Mozambican language, music and culture
- ▶ promote the integration of minorities or specific groups such as children and the youth
- ▶ provide a diversity of programmes reflecting the diversity of the country
- ▶ promote sporting information and the playing of sport
- ▶ promote civic education and de-incentivise anti-social behaviour.

4.5.9 Appointment of the Television Mozambique's board

In terms of article 20 of the Television Statute, Television Mozambique has a board of five directors. They are appointed by the council of ministers and include:

- ▶ a president designated by the council of ministers
- ▶ one director designated by the Minister of Planning and Finance
- ▶ one director designated by the staff of Television Mozambique.

Article 20(4) specifies that directors must have the necessary technical expertise.

Directors are appointed for a three-year term, which is renewable in terms of article 20(5) of the statute.

Article 23 of the Television Statute provides that the board is responsible for managing Television Mozambique including administratively and financially. In particular, it is responsible for determining the strategic plans and budget of Television Mozambique as well as being responsible for managing its activities.

Article 30 of the Television Statute also establishes and provides for a fiscal council of Radio Mozambique comprising three members. The Minister of Planning and Finance appoints all of them. Article 31 of the Television Statute sets out the role of the fiscal council, and essentially these consist of overseeing the financial affairs and corporate governance of Radio Mozambique.

4.5.10 Funding of Television Mozambique

Article 38 of the Television Statute makes it clear that the sources of funding for Television Mozambique include:

- ▶ returns on its assets
- ▶ revenue generated by advertising and other commercial activities
- ▶ dividends from its investments
- ▶ donations and subsidies from the state and/or private entities, nationally or foreign.

It is noteworthy that article 38 allows for donations and so-called subsidies from both foreign and private entities. It is not clear to what extent such non-public funding takes place. The issue raises concerns regarding potential conflicts of interest.

There are no provisions in the Radio Decree for the levying of a television licence.

Article 12 of the Television Statute in the Television Decree deals with limitations on advertising flighted on Television Mozambique. In addition to the general advertising requirements set out in the Press Act, advertising on Television Mozambique is restricted in that the following is prohibited:

- ▶ advertising content that is not acknowledged as advertising
- ▶ misleading advertising in respect of the quality of the goods offered
- ▶ advertising of products that are harmful to health
- ▶ pornography and incitement of violence.

4.5.11 Television Mozambique: public or state broadcaster?

There is no doubt that Television Mozambique is a state broadcaster given that the majority of its board are appointed by members of the executive branch of government.

4.6 Regulations establishing a Government Press Office — Gabinfo

4.6.1 Introduction

There are two key regulations regarding Gabinfo:

- ▶ Decree 4/95
- ▶ Diploma 2/2005

Presidential Decree 4/95 establishes the government press office, Gabinfo. In

terms of article 1, it has a juristic personality that is, it can sue and be sued in its own right, and has administrative autonomy. In terms of article 2, it is accountable to the prime minister.

Article 7 of Decree 4/95 provides that the prime minister appoints the director of Gabinfo.

It is clear that Gabinfo operates as an arm of the executive branch of government under the auspices of the prime minister who can issue diplomas regarding Gabinfo.

4.6.2 The functions of Gabinfo

Article 3 of Decree 4/95 sets out the functions of Gabinfo, and these include to:

- ▶ advise the prime minister in matters relating to the mass media
- ▶ facilitate interaction between the government and the mass media
- ▶ promote interactions between ministerial spokespeople and the mass media
- ▶ promote the public dissemination of information regarding governmental activities
- ▶ facilitate access to information by the mass media on government activities
- ▶ making proposals to support the mass media (public, private and community)
- ▶ exercise state oversight over public or state organs of communication.

Diploma 2/2005, issued by the prime minister, sets out additional functions of Gabinfo in three key areas, and these include:

- ▶ Information-related, article 3(1):
 - ▶ to divulge information about its activities
 - ▶ to disseminate information that promotes development
 - ▶ accredit and register foreign correspondents. The effect of this is that Gabinfo is the body that carries out the responsibilities of the ministry of information in respect of the registration and accreditation of foreign correspondents and publications provided for in the Press Act
 - ▶ ensure the registration and licensing of the mass media. The effect of this is that Gabinfo is the body that carries out the responsibilities of the Ministry of Information in respect of the registration and licensing of the mass media provided for in the Press Act.
- ▶ Mass media development-related, article 3(2):
 - ▶ to study and propose legislation and governmental initiatives to support the mass media

- ▶ to work cooperatively with the mass media to meet the development objectives of the media sector.
- ▶ State/public media sector-related, article 3(3): to exercise oversight over state/public sector mass media. The effect of this is that Gabinfo is the body that exercises regulatory oversight of the state media and not the SCMM.

4.7 Regulations governing the Bureau of Public Information

Diploma 11/89 establishes the Bureau of Public Information (BIP) in article 1.

Article 2 sets out the aims of the BIP and these include to:

- ▶ guarantee the dissemination of written and audio-visual materials that promote the image of the country
- ▶ evaluate the informational activities of Mozambican media in Mozambique both within and outside the country
- ▶ evaluate the presentation of information regarding Mozambique produced outside the country.

Article 3(1) sets out the functions of the BIP, and these include:

- ▶ to establish a centre of public access in Maputo to supply information and material about Mozambique
- ▶ to collect and prepare written and audio-visual material about Mozambique in a range of foreign languages
- ▶ to develop a foreign distribution network for the written and audio-visual material about Mozambique prepared by it and to research its impact
- ▶ to investigate the impact of content produced by the mass media within Mozambique
- ▶ to solicit necessary information from state or private entities to fulfil its functions.

Article 3(2) provides that in carrying out its functions, the BIP must develop relations with the mass media and with other entities that disseminate public information both within and outside Mozambique.

Article 5 provides that the BIP is managed by a director appointed by the minister of information.

The BIP operates as an arm of the executive branch of government under the auspices of the minister of information. However, it has separate legal personality and is financially and administratively autonomous, see article 1(1).

It is clear that the BIP essentially operates as a government public relations operation concerning information about Mozambique aimed at foreigners.

4.8 Regulations governing the Institute for Mass Media

Decree No. 1/89 (amended by Decree 59/2004) passed by the council of ministers established the Institute for Mass Media (ICS) whose main objective is to provide development-related information to people in rural areas. In terms of article 2 of the Amendment Decree, the ICS is subordinate to Gabinfo (dealt with above).

In terms of article 3 of the Amendment Decree, its functions are, essentially, to support rural community development by developing community radio and television channels. While these are styled as community broadcasters, they are obviously part of the state broadcasting machinery, as they operate under the auspices of the state.

4.9 Regulations governing journalism education

Decree 27/2008 is a decree published by the council of ministers which creates a school of journalism as an institute of higher learning. The school of journalism established in terms of Decree 27/2008 is a state-run institution funded by the government.

5 Media self-regulation

Mozambique has not established any self-regulatory structures or codes for the media.

6 Case law and the media

Mozambique's court and jurisprudential system is a civil law system. Consequently, the case law is not based on precedent, as is the case in common law systems (commonly found in former British colonies).

Mozambique court decisions are not published electronically or in law reports and there is no formal indexing system of previous judgments. However, court decisions are available at the court registrar's office and the Supreme Court has published its decisions in a print format. The services of a lawyer who has access to the registrar of the relevant court is usually essential when trying to obtain a copy of a particular judgment.

Notes

- 1 <https://www.sadc.int/member-states/> [accessed 9 March 2020]
- 2 <http://www.ine.gov.mz>.
- 3 <https://www.sadc.int/member-states/> [accessed 9 March 2020]
- 4 <https://www.britannica.com/place/Mozambique> [accessed 9 March 2020]
- 5 <https://www.eisa.org.za/wep/mozoverview11.htm> [accessed 9 March 2020]
- 6 <https://www.politicsweb.co.za/opinion/mozambique-44-years-from-liberation> [accessed 9 March 2020]
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