

Reporting Organization

1 - During the second UPR Cycle, the Mozambique review put forward a number of recommendations, including recommendations improving transparency and inclusiveness of election processes and adopting concrete measures to prevent cases of election violence; guaranteeing the rights of all citizens to participate in public affairs and right to vote; take necessary measures to fully guarantee freedom of expression; prohibiting torture and cruel, inhuman, or degrading treatment; and combating discrimination against women.¹

2 – Mozambique has ratified several treaties that are relevant to these ends, including the International Covenant on Civil and Political Rights (ICCPR),¹ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),² and recently the UN Convention on the Rights of Persons with Disabilities.³ Overall, Mozambique is making efforts to ensure better human rights protections since the last UPR Cycle. This is visible through workshops and conferences conducted along with legislation passed.

3 - However, there remain areas where improvement can be made. This report addresses the degree to which the recommendations of the last cycle have been implemented and the degree to which Mozambique fulfills its human rights obligations.

4 - ***The Carter Center in Mozambique:*** The Carter Center has supported development in Mozambique since 1995, including international election observation, support for citizen observers, review of the political finance structure, and improvement of agricultural production. At the invitation of the government of Mozambique, The Carter Center supported a multi-stakeholder dialogue known as the Agenda 2025 National Vision and National Development Strategy Process. The process was unanimously approved by Parliament in December 2003 and informed the country's poverty reduction strategy, which was supported by the international donor community.

4 - The Carter Center has observed past elections and related events in Mozambique, including international observation of voter registration and the general elections of 1999, the subsequent electoral law revision process, the 2003 municipal elections, the 2004 voter registration update, and the December 2004 presidential and legislative elections. The Carter Center also conducted a number of activities to broaden the role of civil society organizations in democratic processes in the country, including technical assistance around the implementation of parallel vote tabulation exercises in 2003 and 2004.¹ The Carter Center has worked closely with the Electoral Institute for Sustainable Democracy in Africa (EISA) in Mozambique, including during observation missions in 1999 and 2004. In 2014, The Carter Center partnered with EISA to observe and report on the Mozambican elections, and implemented an election reform project in the post-election period focused on women's political participation.

Findings and Recommendations

¹ A/HRC/32/6 - Para. 128

5 - Mozambique's history of civil conflict, and today's prospects of major new foreign investment and national revenues that could fuel sustained and equitable development, represents a renewed commitment to genuine political accommodation and the strengthening of a representative multi-party democracy.

6 – The Carter Center recommends that Mozambique accede to outstanding United Nations human rights instruments, particularly the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, and the first Optional Protocol to the International Covenant on Civil and Political Rights.

a. Legal framework

7. The legal framework for the conduct of elections in Mozambique includes the Constitution, the Presidential and Parliamentary Elections Law, the Law on Election of Provincial Assemblies and Governors, the Voter Registration Law, the National Elections Commission Law, the Political Party Law, the Media Law, and other relevant legislations.

8 - Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process.² Effective dispute resolution mechanisms ensure the availability of effective remedies for redressing human rights violations related to electoral process.

9 - Currently, regulations related to the electoral dispute resolution are fragmented across numerous pieces of legislation, orders, regulations, and judicial decisions. Consolidation of the law in advance of future elections would create greater legal certainty and clarity for stakeholders on the rules governing electoral dispute resolution in Mozambique.

10 - The existing election dispute resolution system focuses primarily on the handling of complaints related to election day. Election offenses that occur during the pre-election phase, including the campaign period, are handled through the criminal justice system, including current criminal provisions on libel and defamation³ that are unduly restrictive of the rights of freedom of expression.

11 - Comprehensive reform would be beneficial to clarify questions of jurisdiction, provide definitions and options available for dispute resolution during the entire electoral period, and to clarify timeframes and deadlines.

12 - Article 19 of the ICCPR guarantees freedom of expression and opinion. In addition, Article 48 (1) of the 2004 Constitution of Mozambique provides for the right to freedom of expression, freedom of the press, and right to information.

² ICCPR, Art. 2(3), "Each State Party to the present covenant undertakes: (a) to ensure that any person whose rights or freedoms are herein recognized as violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted."

³ Articles 229, 231 and 235 of the Penal Code (Law 35/2014 of 31 December), criminalizes defamation and slander, including with sentences up to one-year imprisonment

13 - The Access to Information Bill came into effect in 2014. However, the right to freedom of expression has been regularly suppressed. The government uses criminal defamation laws to restrict the right to freedom of expression. In addition, changes to the legal framework introduced a three-tier election dispute resolution mechanism for electoral complaints, which improved the electoral dispute resolution system overall. However, some procedures need refining and harmonization with other laws.

14 – To respect, protect and promote the right to freedom of expression, in particular with regard to well-established international human rights principles, Mozambique should consider the repeal of criminal provisions on libel and defamation and replacements with civil defamation provisions that do not unduly restrict the right to freedom of expression.

b. Equality between men and women

15 - The equal participation of women in politics and government is essential to building and sustaining democracy.⁴ Democracy cannot truly deliver for all of its citizens if half of the population remains underrepresented in political processes.

16 - International and regional obligations protect women’s rights and ensure their democratic right to participation.² Mozambique is a signatory of several regional and international conventions and protocols regarding gender equality. This includes the Protocol to the African Charter on Human and Peoples’ Rights concerning the Rights of Women in Africa (December 2005) and the 1993 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). In addition to these instruments, Mozambique’s Constitution mandates that “the state shall promote, support and value the development of women, and shall encourage their growing role in society, in all spheres of the political, economic, social and cultural life of the country.”³

17 - As the 2014 election showed, under the Mozambican electoral system, there is no provision to facilitate the participation of women such as a candidate gender quota. However, at the political party level, there is a history of voluntary quotas. The Mozambique Liberation Front (FRELIMO) has used gender quotas since 1994, requiring that 40 percent of candidates be women and that there be a balance in the distribution of men and women in the party list.

18 - Despite the lack of a formal quota system, female candidates were relatively well-represented both in the 2014 and 2019 elections. Forty percent of the 2014 parliamentarians were women. At the national level, while no party nominated a woman as a presidential candidate, FRELIMO, the Mozambican National Resistance (RENAMO), and the Democratic Movement of Mozambique (MDM) nominated women candidates for national assembly positions. FRELIMO had the highest percentage of women candidates on the national assembly ballot with 40 percent. RENAMO and MDM had the second and third highest percentages of female candidates at 28 and 21 percent, respectively. Across all parties, women candidates made up 30 percent in the legislative elections.

19 – Similarly, for the 2019 election, women comprised 40% of FRELIMO candidates, 27.6% for RENAMO and 20.4% for MDM. The 2019 election also had the first woman ever to declare

⁴ Article 21 of the Universal Declaration of Human Rights recognizes the right of every person to take part in the government of his or her country.

candidacy for the presidency of Mozambique but was later disqualified for not having enough signatures. The 2019 election showed a higher percentage of the registered voters were women (53.38%) compared to men (46.62%). However, the new National Assembly is composed of approximately 37.6 percent women, about a 2 percentage reduction from the previous legislature.

20 - The government of Mozambique is obligated to take steps to increase women's participation in electoral processes at all levels, particularly as candidates, election administrators and voters to ensure the full realization of women's rights.

22 - To increase women's participation in politics and to ensure balance in women's representation across all political parties, Mozambique should consider revising articles of the electoral law that govern the organization of the candidate lists in the closed-list system. Consideration should also be given to a "zippered" or "zebra" list that ensures women representation throughout the list. For example, requiring that every other candidate be a woman.³ A zippered list system may provide the best prospects for enhancing women's political participation that fulfills Mozambique's international commitments.

c. Right to participate in public affairs

Campaign Finance Regulations

23 - Financing and adequate access to resources can be a critical component of democratic development and ensuring that voters are provided with a genuine choice on election day. Campaign finance regulations are also critical in ensuring the implementation of ICCPR Article 25,⁵ which protects the right of every citizen to take part in public affairs directly or through freely chosen representatives.

24 - Political representation and access to elected positions should be open to all members of society and not limited to those who have access to greater resources. It is crucial to have clear legislation and regulations in place that ensure equality between contestants, transparency of campaign finance, oversight and accountability of electoral contestants.

25 - Mozambique is obligated to take measures to prevent corruption, particularly in the context of campaign financing. Campaign finance regulations should enforce a transparent process in which all political parties and candidates are treated equally. Even where these ideal conditions are met, it will not erase the major advantage of available resources to the incumbent party which is amplified by the party's use of state resources in the campaign.

26 - Funding plays an essential role in politics, and the high cost of election campaigning means that politics often does not afford equal opportunities for all to compete. Money is one of the essential elements that facilitate the election of women and increases their participation in politics. Studies have found that one of the strongest deterrents to women entering politics is the lack of finances to campaign for elected office.⁵ New parties, or those not represented in

⁵ International Covenant on Civil and Political Rights, 1966, Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country."

parliament, usually feel the challenge of political finance most acutely.

27 - Legislating a limit on campaign spending and donations and increasing oversight of campaign spending is recommended in a corresponding white paper in this series focused on campaign finance. Implementation of those recommendations would help level the playing field for all candidates and could have a particularly important impact on increasing the equal participation of women in politics.⁶

Vote Counting Regulations

28 – The tabulation of results is an integral phase of the electoral process. It ensures the will of voters is accurately and comprehensively reflected in final results. The tabulation of results should be verifiable and transparent at all levels of the election administration. A lack of clear procedures and an overall lack of transparency in the tabulation process have undermined the quality of elections in Mozambique, including the 2019 elections.

29 – During the 2014 Election, the Carter Center observed some incidents of indiscipline and bad practices in the counting and tabulation of voting caused by lack of written tabulation procedures clear steps for verifying results, which are critical to the tabulation process. Similarly, the European Union 2019 Election Report described the overall district tabulation of results process as confused and secretive in 11 and 10 districts, respectively. Tabulation in over of the districts observed were described as needing transparency.

30 - It is critical that procedures be reformed to strengthen the tabulation process in advance of future elections. The Center recommends that Mozambique establish clear and comprehensive procedures on verification, tabulation, and publication of the result process. This should be combined with staff training in advance. Reforms should include expansion of Article 196(a) to establish parameters regarding the kinds of irregularities that should lead to a recount. Trigger mechanisms should be established to allow for the detection of irregularities at the district and provincial levels. Clear guidelines should be developed to improve tabulation processes, including clear workflows and instructions for the district and provincial aggregation of results, to harmonize the production of results throughout Mozambique.

Notes

1 Additional information about the Center's work with civil society and the 2003 and 2004 parallel vote tabulations can be found in the Carter Center's report, *Observing the 2004 Mozambique Elections*, available at www.cartercenter.org

2 United Nations International Covenant on Civil and Political Rights.

3 1990 Constitution, Article 122.1 Articles

4 167 – 171 of Law No. 8/2013 of February 27, 2013, deal with the closed-list system for legislative elections.

5 Inter-Parliamentary Union survey of 300 parliamentarians in 1999; UN Women 2013 research.

6 International IDEA, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance*, 2014

7 European Union Election Observation Mission, Republic of Mozambique Final Report General And Provincial Assembly Elections October 15, 2019