

**DEMOCRACY IN PRACTICE: EXPLORING PARLIAMENTARY
ELECTIONS IN MOZAMBIQUE**

**DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE
UNIVERSITY OF PRETORIA, IN PARTIAL FULFILMENT OF THE
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DECLARATION

I, **AQUINALDO CÉLIO TOMÁS SAMISSONE MANDLATE** declare that the dissertation **Democracy in Practice: Exploring Parliamentary Election in Mozambique** is my work and that it has not been submitted for any degree or examination in any other university. I further declare that all the sources used or quoted have been duly acknowledged.

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DEDICATION

I dedicate this dissertation to my family. Especial dedications go to my loving parents Mr and Mrs Tomás S. Mandlate and Cecilia Timote for the love support and believe they ever demonstrate in my every day life. I recognise your support through the hard path toward education. Equally, to my brother and sisters who have been supportive at all times. May you all feel proud in joy and happiness by the grace of God.

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ACRONYMS

ARM	Assembly of the Republic of Mozambique
AU	African Union
CCPR	International Covenant on Civil and Political Rights
CGH	Constitution of Ghana
EISA	Electoral Institute of Southern Africa
FRELIMO	Frente de Libertação de Moçambique
HRC	Human Rights Committee
LI 1538	Representation of the People Instrument
OAU	Organisation of African Unity
PNDC Law 284	Representation of the People Law
PNDL Law 281	Political Parties Law
RENAMO	Resistência Nacional Moçambicana
RENAMO-UE	RENAMO-Electoral Union Coalition
STAE	Secretariado Técnico de Administração Eleitoral (Technical Secretariat for Election Administration)
UN	United Nations
UNDP	United Nations Development Programme
HRC	Human Rights Committee
1975 CRM	Constitution of the Republic of Mozambique, 1975

1990 CRM Constitution of the Republic of Mozambique, 1990

2004 CRM Constitution of the Republic of Mozambique, 2004

1992 CRG Constitution of the Republic of Ghana, 1992

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CHAPTER 1: INTRODUCTION

1. Background of the study

During the past two decades, the world has seen an astonishing number of changes. The collapse of the Communist systems in Eastern Europe and the Soviet Union and the spread of democracy to new parts of the globe are among such remarkable changes.¹ The principles and practices of democracy continue to spread ever more widely, and it is hard to believe that there is corner of the globe into which they will not eventually penetrate. Presently, many countries in the world strive to be identified as democracies.² Mozambique has taken significant steps towards the consolidation of its democracy.

Through the adoption of the 1990 Constitution, Mozambique openly adhered to democratic principles. The aforementioned constitution made provisions for such principles and institutionalised the right to vote³ as a primary political act.⁴ The impact of democracy has opened unknown possibilities for better living conditions, greater civil liberties, and opportunities for responsible and active contributions to the common good.⁵ A review of the elections in Mozambique highlights the importance of democracy in legitimising the exercise of political power held by those in public offices.

1994: First parliamentary and presidential elections. Alberto Joaquim Chissano and the FRELIMO party won the elections.

1999: Second parliamentary and presidential elections. Alberto Joaquim Chissano and FRELIMO re-elected.

2004: Third parliamentary and presidential elections. Power successfully handed over to President Armando Emilio Guebuza with majority parliamentary seats won by FRELIMO.

The events illustrate positive features of a society which, albeit slowly, is steadily maturing into a consolidated democracy. Indeed, originally the 1990 Constitution, the amendments introduced in 1998 and most recently the 2004 Constitution have very concisely and precisely designed the structure of an integrated society. However, the long route toward consolidated democracy ought to be analysed and the constraints assessed.

¹ PH O'Neil *Essentials of Comparative Politics* (2006), 1.

² Kofi Annan, Former Secretary General of the Organisation of the United Nations (UN), speech at University of Ghana Chancellor's Investiture Ceremony, Legon, 11 August 2008.

³ Art 107(2) and Art 118(1) of 1990 Constitution of the Republic of Mozambique (1990 CRM).

⁴ C Farrelly *Contemporary Political Theory* (2004), 224.

⁵ A Safty *Democracy and Governance: The Global Advance of Democracy* (2003), 1.

1.1 Problem statement

The 1990 and the 2004 Constitutions of Mozambique call for *direct suffrage*, which is understood to designate a process directly linking the voter to the elected. However, current practice faces challenges in delivering this constitutional requirement. Pursuant to the electoral system adopted⁶, votes are cast toward political parties and not toward particular candidates, thus, it becomes difficult to reconcile the practice and that principle. Direct suffrage should require the electorate to directly elect the people they see fit to represent them. Further, where such difficulty is present, it becomes relevant to evaluate the consequences that may arise from a system that favours voting toward parties rather than individuals.

1.2 Statement of research

The objective of this study is to assess the problems associated with how the people of Mozambique participate in the exercise of political power, through election of parliamentary representatives. This study also aims at suggesting alternatives to improve the system in order to make it more inclusive. Focus is placed on demonstrating how democratic principles may fall short as a result of inadequate electoral standards. To achieve these objectives the study makes a comparative study of the Ghanaian electoral system, for its specific significance in promoting effective and meaningful participation in the exercise of political power. Further, the study seeks to address the research questions below.

- What features characterise parliamentary elections in Mozambique?
- What weaknesses are there in the system of parliamentary elections in Mozambique?
- What consequences arise from such a system?
- How to improve the system for election of parliament in Mozambique?

1.3 Significance and limitation of study

As democracy has acceptably become a system of legitimate governance requiring meaningful participation of people in exercise of power, this study is significant in ambition to contribute towards the improvement of standards of people's participation in parliamentary elections in Mozambique. Pursuant to the commonality of features in African politics, this study is also important to promote uniformity among standards of African elections

The study is limited by the lack of available jurisprudence discussing the principle of direct suffrage in Mozambique. It is further limited due to research constraints regarding time limits,

⁶ Art 135(2) of 2004 Constitution of the Republic of Mozambique (2004 CRM).

which was a barrier to achieving substantive interviews with expert in the field as well as a few difficulties encountered in the collection of relevant research material. In the absence of such limitations the quality of the research could be improved.

1.4 Literature review

There are a number of books, article and journal which discuss the subject content of this study, with the exception that, often such materials relate to general aspects encompassed by this study. At international level distinct authors studied electoral systems and their consequences. The German author and distinguished student of political science, Dieter Nohlen, has edited a publication entitled '*Elections and Electoral Systems*' in which a detailed discussion of the notion of elections and some brief explanations of the consequences associated with the choice of electoral system are provided. Besides other relevant publications by Nohlen, Harrop and Miller have equally contributed to the available literature. Their co-publication designated '*Elections and Voters: A Comparative Introduction*', is an important guide to the rules governing elections and their importance.

At the regional and sub-regional levels efforts have also been addressed to reveal the underpinning issues affecting democratic practices in Africa. Mozaffar⁷ has discussed '*Electoral Systems and Conflict Management in Africa*'. This publication attempts to explain how electoral systems may be used promote stability in post conflict Africa. In addition, the Electoral Institute of Southern Africa (EISA)⁸ has also devoted special attention to studying elections and their results in Southern Africa. The most recent publication by EISA on Mozambique elections include a '*Compendium Elections in Southern Africa*' (2002)⁹, and as well as an '*Election Handbook*' (2006).¹⁰

However, there is no literature available in Mozambique discussing the principle of *direct suffrage*. Relevant publications have focused on discussing democracy at its inception and the paths it has followed. For instance, in '*Mozambique 10 Years of Peace*' Mazula¹¹ describes how democracy came into being in Mozambique. He also examines the various phases of the democratic process in Mozambique. Other authors such as Cistac have equally contributed with relevant publications on the issue; however, none of these authors or other prominent writers of Mozambican jurisprudence have attempted to explore the

⁷ S Mozaffar *Electoral Systems and Conflict Management in Africa – A Twenty Eight State Coparison*, available at <http://www.idasa.org.za>, accessed on 12 October 2008.

⁸ Electoral Institute of Southern Africa (EISA) has its head office in Johannesburg, South Africa. EISA focuses its studies on election observation and electoral systems in Southern Africa.

⁹ T Lodge et all *Compendium of Elections In Southern Africa* (2002), Electoral Institute of Southern Africa (EISA), Johannesburg, South Africa.

¹⁰ EISA *Election Handbook* (2006).

¹¹ B Mazula *Mozambique 10 Years of Peace* (2004).

principle of direct suffrage enshrined under the electoral provisions of Mozambique. Therefore, it is a challenge to this study to lay the foundation of such discussion.

1.5 Methodology

The methodology proposed is based mainly on desk research. A comparative and analytical view will also form the basis of the study in order to foster the debate aiming to propose better practices. In some instances recourse to interviews were applied to the materialisation of the study. The channels followed constitute a neutral platform for academic discourse.

1.6 Overview of chapters

The study is arranged in five chapters preceded by a declaration of authenticity, brief dedications, acknowledgments, a list of abbreviations and the table of contents. Below is an overview of the structural arrangement of the contents of the study.

Chapter one briefly introduces the study. It describes the objectives of the study, it poses the research questions, and the methodology applied.

Chapter two is a general part of the study which provides the conceptual framework of democracy and elections. Further, it provides a theoretical discussion of the two major electoral systems commonly used in the world while also providing an explanation of the advantages and disadvantages of each.

Chapter three discusses the historical background of elections in Mozambique. It analyses the electoral system and critically evaluates the consequences of its operation. This chapter aims to expose the ambiguities of the current electoral system within the context of Mozambique.

Chapter four comparatively analyses the electoral systems in Mozambique and Ghana then concludes by demonstrating the advantages of the Ghanaian system.

Chapter five draws conclusions and proposes recommendations to improve the system in Mozambique.

CHAPTER 2: DEMOCRACY AND ELECTIONS: CONCEPTUAL FRAMEWORK

2. Introduction

It is accepted that democracy as a form of government plays a significant role in contributing toward peoples participation in the exercise of power. In this chapter the relationship between democracy and people's participation is demonstrated using election as a tool which ensures participation. In the outset of the chapter a brief introduction to the concept and theory of democracy is provide. A fair attempt to the origin of democracy precedes the discussion underscoring its present commonly accepted notions. Focus is placed in the definitions within available literature.

Secondly, a brief discussion on the theory of elections and election structures follows with the objective to explore how the plural majority electoral system and the proportional representation electoral system help to achieve people's participation in the exercise of political power. Finally, an insight to the standards and requirements of elections marinates the understanding of the environment in which elections must be conducted for purposes of election sustainability.

2.1 Concept and theory of democracy

A firm grasp on the notion of 'democracy' must precede the discussion of 'Democracy in Practice: Exploring Parliamentary Elections in Mozambique'. The word 'democracy' derives from the Greek word 'demokratia', which is formed by combining the words 'demos', meaning 'the people', and 'kratia', designating power or rule.¹² From the Greek perspective 'democracy' was conceived as an idea resembling rule by the people. Seconding the Greeks view, O'Neill noted that democracy is a system where political power resides with the people.¹³ However, at present, there are multiple ways of defining 'democracy'. Depending on the ideals envisaged when defining democracy, it may have different meanings. For many people 'democracy' may have a positive connotation. It may purport the idea that what is democratic is good and the opposite is bad. From the Communist perspective in countries such as the former Soviet Union, which saw themselves as true democracies, democracy meant collective equality rather than individual freedom. In Europe and United States, democracy has been associated with multiparty regimes, civil liberties and individual freedoms.¹⁴ There are diverse models of democracies¹⁵, which are distinguished by specific features that classify them into diverse systems of governments. It was noted among such

¹² O'Neill (n 1 above) 135.

¹³ O'Neill (n 1 above) 135.

¹⁴ O'Neill (n 1 above) 135.

¹⁵ For comprehensive understanding of the variants or models of democracy see H David *Models of Democracy* (2006).

features that democratic systems should permit citizens to participate in governance through elected representatives. Further, democracy requires that citizens enjoy certain rights and liberties which make citizenship meaningful.¹⁶ For example, freedom of speech, freedom of association and the right to form or to affiliate with a political party of one's own choice are indispensable ideals in democratic settings. Although at present, democracy has acquired diverse meanings to the extent that its denotative and connotative uses have equally changed¹⁷, democracy is largely understood to refer to a system of governance in which rulers are held accountable for their actions in the public realm by citizens acting indirectly through the competition and cooperation of their elected representatives.¹⁸ The idea of elected representatives in democratic systems is the most important feature for the purpose of this study and it is, therefore, discussed in detail.¹⁹

In democratic systems where elections are held, it is accepted that competition among political factions is a necessary evil.²⁰ It is through political parties that citizens inform themselves about the quality of life they aspire and the values that society must constantly groom. Through elections democracy becomes an inclusive system rather than a competitive system with the potential to guarantee the alternation of power.²¹

2.2 Theory of elections

Democracy is a system of governance in which rulers are held accountable for their actions in the public realm by citizens who elect them for their own representation.²² In democratic systems elections are a primary tool to legitimise the authority of the rulers. According to Diamond²³, elections are the basis for the existence of democracy. They are basic human rights²⁴ to express the will of the people.²⁵ Harrop²⁶ describes elections as:

¹⁶ The rights and freedoms of citizens in a democratic society are not absolute rights. Such limitations upon the exercise of these rights aim to ensure that the exercise of rights by citizens do not infringe upon the exercise of rights by other citizens. Lecture notes from Mr. Roland Henwood, lecturer of Political Science, University of Pretoria, South Africa (notes on file with author).

¹⁷ See M Saward *Democracy* (2003).

¹⁸ PC Schmitter & TL Karl 'What democracy is ... and is not' in L Diamond & MC Plattner (eds) *The global resurgence of democracy* (1993) 39 - 40.

¹⁹ Within discussions and debates on democracy and where such concept is applied within the context of this study, it should be understood that it means rule by the people in a system in which people are empowered to participate in governing a country, whether directly or through election of representatives.

²⁰ L Diamond, MF Plattner *The global resurgence of democracy* (1996) 52.

²¹ Marc De Tollenaere is among the supporters of the idea that democracy is not an inclusive system, but a competition that allows for change in the holders of powers. See B Mazula 'Mozambique 10 Years of Peace' (2004) 226.

²² Schmitter & Karl (n 18 above) 39 - 40.

²³ Diamond & Plattner (n 20 above) 52.

²⁴ Art 25(b) of the International Covenant on Civil and Political Rights (CCPR) (CCPR), adopted in 1966 and entered into force in 1976.

²⁵ Diamond & Plattner (n 20 above) 95.

²⁶ M Harrop & WL Miller *Elections and Voters: A comparative introduction* (1987) 2.

[A] formal expression of preferences by the governed, which are then aggregated and transformed into a collective decision about who will govern – who should stay in office, who should be thrown out, who should replace those who have been thrown out.

Elections are also defined as a procedure by which members of communities and or organisations choose representatives to hold public offices²⁷, and also as a tangible instrument of political control at the hand of the electorate.²⁸ Attempts to define elections have equally been extended to the level of several domestic legislations. For example, in Mozambique elections are defined as a ‘combination of acts and procedures aiming at choosing, among various candidates, members of parliament or the president of the state’.²⁹ Elections are so significant that regional institutions have adopted standards and principles applicable to them. In Africa the African Union Declaration on the Principles Governing Democratic Elections in Africa (2002)³⁰ and the African Charter on Democracy, Elections and Good Governance (2007)³¹ are key instruments of the regional legal framework which make reference to such standards and principles.³² Therefore, in democratic systems elections serve particular purposes.

However, there are several conflicting positions in regard to the specific objectives and importance of elections.³³ Scholars have contradicting positions. For example, Guy³⁴ began by saying an election is not a poll aimed at giving the most accurate representation of all the various opinions or interests at play in society. Immediately, he added that an electoral system is intended to give citizens the power to decide who shall rule and according to what policy. In this respect, he is self contradictory. If he admitted that electoral systems seek to give citizens the power to decide who rules and in accordance to what policies, then he should have acknowledged that such systems must have election standards which make the people more represented so that they may participate in the policy decision making processes through their elected representatives. If this is true, it is equally correct to say that those who are not represented will not be able to participate in the policy decision making process. In conclusion, in electoral systems where elections are the effective ways of citizens’ participation in political decision making, elections should aim at achieving the most

²⁷ D Nohlen *Elections and Electoral Systems* (1996) 1.

²⁸ Harrop & Miller (n 26 above) 2.

²⁹ See Electoral Law of Mozambique (Law 7/2007, dated 26 February).

³⁰ See C Heyns & M Killander *Compendium of Key Human Rights Documents of the African Union* (2007) 131.

³¹ African Charter on Democracy, Elections and Good Governance (African Election Charter), available at <http://www.africa-union.org/root/AU/Documents/Treaties/text/CharteronDemocracy.pdf>, accessed on 23 September 2008. See also Heyns & Killander (n 30 above) 108.

³² At sub-regional level other documents have equally been adopted.

³³ Diamond & Plattner (n 20 above) 177.

³⁴ See Diamond & Plattner (n 20 above) 177.

accurate representation of all opinions and interests in the society. They should be effective ways through which the citizenry chooses its representatives.³⁵

Despite contradictions, it is commonly accepted that elections function as a mechanism for decision making. They serve as a tool for choosing representatives and to allow for choice making between policy alternatives. They allow peoples' participation in government through their chosen representatives, and therefore, make them co-responsible for their decisions. They legitimise the exercise of power and they reflect the democratic path toward attaining political power.³⁶ It is possible to establish an inclusive and efficient system of government where the system in place allows for complete translation of citizens' votes into parliamentary seats. Such seats should be accorded to representatives legally chosen by the citizens. In such systems the government should be able to design and implement policies that are inclusive of diverse views of the society with full support of the citizenry.³⁷

Elections do not only confer rights to citizens. They also impose duties upon them as members of society.³⁸ Citizens have the duty to participate in the structuring and organisation of the society.³⁹ Electing representatives into public seats becomes part of the organisation of the society where elections have the power to determine how, when and who shall occupy certain positions within the society. In this way, making an elective choice of public officials is a duty of the citizen.⁴⁰ It is imperative, however, to note that the societal organisational process through elections requires the observation of a set of pre-established standards and rules. In 2.4 a brief discussion of such standards and requirements demonstrates their importance for attainment of societal organisation at the level of parliament and presidency.

2.3 Structure of elections

Undoubtedly, elections are important in democracy. However, it is equally important to understand how votes are translated into official seats. This leads to the study of electoral systems. Generally, electoral systems establish the rules describing how votes are cast, counted and translated into public seats. There are two main types of electoral systems: the plural majority and the proportional representation systems.⁴¹ The numerous subtypes of electoral systems known to exist in the world derive from the combination of the two systems.

³⁵ Art 25(a) of the International Covenant on Civil and Political Rights, (CCPR), adopted in 1966 and entered into force in 1976.

³⁶ SM Lipset *The encyclopedia of democracy* (1995) 36 - 37.

³⁷ Diamond & Plattner (n 20 above) 176.

³⁸ O'Neill (n 1 above) 141.

³⁹ In some states breach to the duty to vote is sanctioned. Belgium, Brazil and Australia are examples of states that apply sanctions for such breach. See also O'Neill (n 1 above) 141.

⁴⁰ O'Neill (n 1 above) 141.

⁴¹ O'Neill (n 1 above) 141.

Given the importance of electoral systems in determining how votes are translated in public seats, a brief analysis of the two major systems follows.

2.3.1 Plural majority system

A national electorate district divided into various constituencies or electoral districts characterises the plural majority electoral system. Under this system only one candidate is elected to occupy public seat available for each district. The candidate with the largest number of votes wins the district election. This system is also known as 'the winner take all system' because of its effects. Once a candidate wins the majority of votes, the votes cast in favour of other candidates simply amount to wasted votes. Candidates with lesser votes are not entitled to official seats.⁴² As such, this system has the potential to strengthen the political power of some parties over constituencies where they had little or no support before the elections. It may impact negatively on the support of losing parties which, besides losing seats, also lose direct influence in the policies and decision making of a country. This is often pointed out as one great disadvantage associated with the plural majority systems.

2.3.2 Proportional representation system

Unlike the plural majority, the proportional representation system seeks to reduce the number of votes that are wasted. As opposed to one seat per district the proportional representation system makes provisions for many seats to be contested within the same district. In this system votes are cast in favour of contesting parties, and the percentage of votes a party wins determines the number of seats the party wins out of the available seats in a particular district.⁴³ The sum of seats won in various districts equates to the total number of seats a party wins in the national elections. In proportional representation systems, the contestation is not centred on individuals but on political parties, which ultimately draw up the list of candidates to occupy public seats. This will depend on whether or not the party wins some seats during the contestation. It is noted that among the disadvantages of such systems voters, do not have much influence in making the list of candidates for public seats. Rather, they are dependent on the lists proposed by parties.

A mixture of ideals and principles of the plural majority and the proportional representation systems gives rise to the commonly known mixed systems in which votes are cast both toward parties and individuals allowing a mixed outcome of election results.⁴⁴

⁴² O'Neill (n 1 above) 142

⁴³ R Hague & M Harrop *Comparative Government and Politics: An Introduction* (2004) 150 – 151.

⁴⁴ Hague & Harrop (n 43 above) 152.

2.4 Elections standards and requirements

The most popular definition of democracy entails regular elections, which have been fairly conducted and honestly counted.⁴⁵ For the results of the elections to be valid and generally accepted, elections must be universal. They must be regular and transparent, free and fair. Elections must also allow a margin of meaningful choices to the citizens.⁴⁶ Altogether, these are standards and requirements that should govern the conduct of elections. Courts have often reiterated the importance of these standards and requirements. In the *Republican Party of Namibia and Another v Electoral Commission of Namibia and Others*⁴⁷ the court recalled the importance of such standards and principles by citing section 13 of the 1872 ballot Act of the United Kingdom, which read:

No election shall be declared invalid by reason of a non-compliance with the rules in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

The principles alluded to by the courts have diverse meanings. In elections, ‘universality’ means the right to vote should be extended to all citizens without discrimination. Both women and men should be allowed to express their choice of candidates to public offices through the vote. Some precautionary measures may be applied to regulate the electoral process. For instance, age requirements, citizenship qualifications and other special requirements may be imposed. However, where such restrictions are applicable, they should apply to all individuals in the same manner, so that those meeting vote requirements should be allowed to participate.

In elections, ‘regularity’ means holding elections over regular measurable intervals. In order to attain election regularity, some legal frameworks have adopted a time calendar, which establishes the exact dates when elections should be conducted. For example, the Mozambican constitution made provisions for five year terms of office for public offices.⁴⁸ This implies holding elections for those offices after every five years.

Another important standard of election is ‘transparency’. It requires that the rules and regulations governing the electoral process be clear to all. The parties involved should be informed of such rules and they must abide to them. Information pertaining to the electoral

⁴⁵ Diamond & Plattner (n 20 above) 52.

⁴⁶ A Ranney *Governing* (1983) 128 – 130.

⁴⁷ *Republican Party of Namibia and Another v Electoral Commission of Namibia and Others* (A387/05) [2005] NAHC.

⁴⁸ Art 147(3) and Art 170(1) read with Art 185(1) of 2004 CRM.

process should be made available to political parties, to their representatives and candidates as well as to other individual candidates and actors involved in the process.⁴⁹ The rules of campaign and utilisation of public media should be equally applied to every part involved in the process.

When employed in elections, 'freeness' broadly describes the ability to choose candidates for public seats without interference from any authority. As Mackenzie rightly noted 'elections depends on voters' choice.'⁵⁰ In elections the choice of the electorate must not be tampered with by any sort of manipulation. Citizens should choose their representatives out of their own will based on informed decisions pertaining to the type of candidates and the policies or programmes they propose. The link between voters and persons elected can only be attained through mechanisms that assure the most free and ample participation of the citizens.⁵¹ In its proper sense, the notion of elections implies competitiveness as well as freedom of choice.⁵² Thus, in elections freeness also relates to the free participation of political factions and their candidates as well as to the participation of individual candidates aspiring to occupy public offices. Intimidation and other forms of restrictions to their participation should not be tolerated, except in circumstances where they apply uniformly and evenly to all actors involved in the process.

Finally, 'fairness' is another standard of elections, and is often linked to 'transparency'. However, it does not necessarily mean that whenever the electoral process is transparent elections are fair. While transparency applies to the setting and compliance with electoral rules, fairness refers to the counting of votes. The process must be done with all honesty by the electoral managing body.⁵³

Therefore, in order to enhance free and fair elections meeting the above standards and requirements, it is necessary that political systems contain independent judiciary institutions to interpret the electoral laws. The system should also contain efficient and effective election administration bodies, and organised political parties and candidates that provide sound choice alternatives to the electorate. Finally, there must be general acceptance of pre-established rules governing the electoral process.⁵⁴

⁴⁹ A Gloor 'Electoral Conflicts: Conflict Triggers and Approaches for Conflict Management – Case Study Mozambique – General Elections 2004', 7.

⁵⁰ WJM Mackenzie *Free Elections: An Elementary Textbook* (1958) 12.

⁵¹ GS Goodwin-Gill *Free and fair elections* (2006) 55.

⁵² Nohlen (n 27 above) 2.

⁵³ Diamond & Plattner (n 20 above) 52.

⁵⁴ Mackenzie (n 50 above) 14.

2.5 Conclusion

From this chapter it is indubitable that democracy requires elections. Also, as was noted when dealing with the structures of elections, it is settled that the choice of a particular electoral system is associated with consequences which in one or the other way affect the participation of people in choosing their representatives. Thus, although it is accepted that democracy requires elections, its consolidation entails adoption of constant measures to improve the standards of people's participation. Likewise, the choice of an electoral system should be accompanied by adoption of measures that make it prone to meaningful participation. For this reason amongst others, where electoral systems fail to enhance meaningful participation they become inappropriate to consolidate democracy.

The chapter that follows provides an insight to the electoral system of Mozambique and exposes its inadequacy to achieve consolidate democracy through meaningful participation of the citizenry.

CHAPTER 3: PARLIAMENERY ELECTIONS IN MOZAMBIQUE

3. Introduction

At the time of elections millions of Mozambicans rush to the polling stations excited to choose their representatives. There is much anxiety of the citizenry to participate in elections. This is thought to ensure their effective participation in decision making process at government level. However, for a decade now, citizens are astonished that the choice they make is highly conditioned by political parties. Independent candidates become frustrated as they cannot be candidates to parliament. The Mozambican situation is alarming. This is so because instead of taking steps toward solidifying the early achievements of the 1990 Constitution which enshrined the principle of participation in the exercise of power, democracy remains stagnant with little influence of the electorate in deciding who should exercise political power.

It could be suggested that the proportional representation system established by the electoral legislation in Mozambique is good to promote the distribution of political power to various political parties.⁵⁵ However, such argument falls short where only two parties have unbearable support and occupy hundred per cent of the seats in parliament.

This chapter reveals the weakness and misfortune of the proportional representation system in achieving people's participation in the exercise of political power in Mozambique. In the previous chapter the importance of people's participation in the exercise of power was highlighted as an important feature of democratic societies. The chapter aims to expose how such ideals and aspirations of democracy may be frustrated by the using inappropriate structures of elections. Further, apart of revealing the consequences arising from such inappropriate structure, the chapter illustrates the urgent need to implement changes on structures of elections presently adopted by Mozambique in order to promote relevant meaningful participation of the citizenry.

3.1 Historical background

After decades of armed struggle on 25 June 1975 Mozambique⁵⁶ became independent. It attained its freedom from the Portuguese colonial oppressor under the leadship of the Frente de Libertação de Moçambique (FRELIMO), then headed by late president Samora Moisés Machel. In many countries that ascended to independence political parties which led the struggle for independence saw themselves self-evidently in the national interest that there

⁵⁵ Nohlen (n 27 above) 81-85.

⁵⁶ J Hanlon *Mozambique - The Revolution Under Fire* (1984) 45.

was no case for multiparty systems.⁵⁷ Evidently, Mozambique was not an exception.⁵⁸ A one party system was formally established. However, smaller clandestine parties still existed within the state. At the time of independence, FRELIMO had huge support from the majority of the people. It took over the administration of the state and soon the state party adopted a number of significant pieces of legislations, which mostly appealed to social and economic change.⁵⁹ In 1975 after FRELIMO took over power from the Portuguese government, a new constitution was adopted.⁶⁰ Established as the supreme law of the independent state of Mozambique, the 1975 Constitution provided *inter alia* that:⁶¹

The President of the Republic of Mozambique shall be the President of FRELIMO.

Until then, elections to the seat of president of FRELIMO, hence to the office of the president of the Republic of Mozambique, were conducted within the party. There was an absolute restriction on people who could be eligible candidates and those who could vote, and therefore only party members were involved in the process.⁶² Similarly, a less inclusive criteria was used to appoint members of parliament. The party structure played an important role in determining who ascended to parliament seats. The 1975 Constitution made no specific provision describing the composition and method of election of members of parliament. It simply listed a number of categories of persons whom made up the legislative body. Its article 37 provided *inter alia* that:⁶³

Pending the definition of the composition and the establishment of the criteria of elections of members of the Popular Assembly, it shall comprise the following members:

1. Members of FRELIMO Central Committee;
2. Members of FRELIMO Executive Committee;
3. Ministers and vice-Ministers of the Government of the Peoples Republic of Mozambique;
4. Governors of the Provinces;
5. Members of the Mozambique Liberation Frente chosen by FRELIMO Central Committee;
6. Two representatives of the democratic mass groups from each of the Provinces appointed by FRELIMO Central Committee;
7. FRELIMO party members chosen by the Central Committee; and

⁵⁷ KA Ninsin & FK Drah *Political Parties and Democracy in Ghana's fourth Republic* (1993) 149.

⁵⁸ Before the independence of Mozambique late president of Frente de Libertação de Moçambique (FRELIMO), Eduardo Chivambo Mondlane, supported the idea of a single party state. See Panaf *Eduardo Mondlane* (1972).

⁵⁹ Examples of economic legislation adopted between 1975 and 1985 include Decree Law 31/76, which defined the rights over maritime economic resources of the Republic of Mozambique, and Law 2/81, which defined the principles of organisation and functioning of state companies'.

⁶⁰ 1975 Constitution of Republic of Mozambique (1975 CRM).

⁶¹ Art 47 of 1975 CRM.

⁶² Interview with Prof. Brazão Mazula former Head of the National Election Commission of Mozambique 1994, Professor at the Faculty of Arts, Eduardo Mondlane University, on 24 July 2008 (notes on file with author).

⁶³ Art 37 of 1975 CRM.

8. A maximum of 10 elderly citizens chosen by FRELIMO Central Committee.

This system lasted until the early nineties when a new constitution was adopted. Acknowledging a multiparty system based on principles of freedom of association, affiliation and formation of political parties⁶⁴, the 1990 Constitution sought to establish a new political order.⁶⁵ For the first time in Mozambican history the right to vote and to contest for public seats was granted to all citizens.⁶⁶ However, there were some restrictions to the exercise of the right to vote.⁶⁷ The recently adopted 2004 Constitution maintains these fundamental civil and political rights and further provides for a specific electorate system. Article 135(2) of the Constitution provides:⁶⁸

The results of the elections shall be calculated according to the system of proportional representation.

It resonates that the Mozambican legislature saw the proportional representation system as the better system to govern elections in Mozambique. In making this choice the legislature was in full compliance with international standards as seen from the perspective of the European Court of Human Rights (European Court) which stipulated that:⁶⁹

States enjoy considerable latitude to establish rules within their constitutional order governing parliamentary elections and the composition of the parliament, and that the relevant criteria may vary according to the historic and political factors peculiar to each state.

Although more could be said about the proportional representation system in Mozambique, one aspect worth analysing is the manner in which candidates for seats in the Mozambican parliament have been elected through the system in practice. At the same time, it would be relevant to study the constitutional requirements of elections in Mozambique. The discussion on these aspects will be done simultaneously as it is not appropriate to make exclusive reference to the manner in which candidates are elected without mentioning the constitutional requirements of elections. In order to achieve the intended objective, the study draws back to the 1994, 1999 and 2004 parliamentary elections. It will specifically deal with

⁶⁴ Art 77 of 1990 CRM.

⁶⁵ See preamble of 1990 CRM.

⁶⁶ Art 30 and Art 73(2) of 1990 CRM.

⁶⁷ Neither the 1992 Constitution nor the 2004 Constitution of the Republic of Mozambique make direct restrictions or limitations to the right to vote and to the right to participation and formation of political parties. Such restrictions are provided under the electoral legislation. Restrictions affect the age of individuals and their criminal status. See Art 11, Law 3/99, dated 2 February (Law 3/99), Art 12, Law 7/2004, dated 17 June (Law 7/2004), and Art 12, Law 7/2007, dated 26 February (Law 7/2007).

⁶⁸ Art 135(2) of 2004 CRM.

⁶⁹ Goodwin-Gill (n 51 above) 58.

the manner in which votes were cast during the elections whilst assessing in particular the ballot paper. In this study, the ballot paper is viewed as an indispensable tool through which voters assign a mark representing their choice for candidates that, in their view, should occupy the official seats.

3.2 Ballot and constitutional requirements for elections

Law 11/92, Law 3/99 dated 22 February (law 3/99), and Law 7/2004 dated 17 June (Law 7/2004) governed the electoral process of the 1994, 1999 and 2004 elections, respectively. Research indicates that for each electoral period there was a distinct electoral law regulating elections.⁷⁰ Despite the different laws applied for each of these elections, there are more similarities than differences that can be drawn between the laws and the electoral processes conducted up to 2004.⁷¹ These similarities are mostly in respect of the procedures for voting instituted under such laws. For this reason and as it was stated earlier, the discussion is limited to a few aspects of the voting procedure. The study makes general assessment regarding this aspect as it appeared during 1992, 1999 and 2004 general elections. It then analyses this aspect with regard to prospective elections under Law 7/2007, dated 26 February (Law 7/2007).

The 1990 Constitution⁷², the electoral legislations preceding Law 7/2007, and the ballot paper for parliamentary elections constitute the basis of departure in the discussion. Although the 1990 Constitution made no reference to a specific electoral system, the proportional representation system was adopted for the purpose of the first three general elections conducted in Mozambique.⁷³ As explained, the proportional representation system favours the casting of votes toward political parties rather than to individual candidates.⁷⁴ It was also mentioned that such a system comes with a number of disadvantages. Critics of the system point that where votes are cast in favour of political parties the electorate has little or no influence on the list of candidates parties presented to them.⁷⁵ Nonetheless, other challenges or limitation can be drawn against the proportional representation systems. However, a few considerations need to be made before addressing this matter.

⁷⁰ In some cases there was not a new law governing the electoral process but the previous legislation, which remained applicable for the new election was most times amended so that new provisions were included. In 2004, elections were conducted under Law 3/99, which also regulated the elections in 1999. However, during the 2004 elections this law had been amended by Law 7/2004 to suit the requirements of the time.

⁷¹ Gloor (n 49 above) 7. See also the principles dealing with age requirements, voting procedures, and election complaint mechanisms were subject to the same legal restriction under the 1994, 1999, and 2004 elections.

⁷² This constitution was applied for the three general elections held in Mozambique between 1994 and 2004.

⁷³ Art 144 Law 3/99, and Art 156 Law 7/2004.

⁷⁴ Hague & Harrop (n 43 above) 150 – 151.

⁷⁵ Hague & Harrop (n 43 above) 150 – 151.

Presently, the electoral system in practice in Mozambique provides two ballot papers for the general elections: a distinct ballot paper for presidential elections and one for parliamentary contestation.⁷⁶ This first observation becomes relevant in a context where a majority of voters are illiterate. If the same ballots were used for presidential and parliamentary elections, it could happen that voters would cast their votes to one or the other political party thinking they voted toward the presidential candidate, or they could cast votes towards presidential candidates while convinced they voted toward contesting parties. However, it is not required that this question should be addressed taking into account that the two ballot papers provided under the system minimise the risk of confusion during voting. In addition the civic education process would educate voters to distinguish on the ballot paper the exact place where they should assign a mark representing a vote toward the president or a vote toward the parliament.

Most importantly, and also constituting the core of this study, is the analysis of the structure and format of the ballot for the parliamentary election. The analysis of the ballot paper for the presidential elections will not be taken into account simply because the study mainly focuses on exploring parliamentary elections in Mozambique. Moreover, the ballot paper for presidential elections does not raise many questions as to whether or not there is a direct link between the voters and the elected president⁷⁷ compared to ballot papers used for parliamentary contestation. While the ballot for presidential elections provides the images of the candidates, in a sense leaving it to the electorate to choose a candidate of their preference, the ballot paper for the parliament is characterised by symbols and images representatives of parties running for public seats.⁷⁸ It is difficult to understand such omission of images of the candidates on the parliamentary ballot paper because, upon describing the characteristics of the ballot, the electoral legislation requires that it appears if such images or at least the names of the candidates to official seats.⁷⁹ It is amazing that such omission could be made in the face of the 1990 Constitution that governed the electorate process of the 1994, 1999 and 2004 elections, which, in fact, established strict requirements and principles that together would not conform to such omission. Surprisingly, this same omission remains in the face of the 2004 Constitution, which will govern future elections.

⁷⁶ The author's experience as a voter in 1999 and 2004 Mozambique elections accounts to testify that a distinct vote bulletin was used for presidential and parliamentary elections.

⁷⁷ Annex Two illustrates a simulation of the structure and format of the ballot used in the 2004 presidential elections. The paper gives the voter opportunity to choose any one of the candidates contesting in the elections. See also Art 57(3) Law 7/2007.

⁷⁸ Annex One illustrates a simulation of the structure and format of the ballot used in the 2004 parliamentary election in Mozambique. See also Art 57(3) Law 7/2007.

⁷⁹ Art 51 Law 3/99, and Art 55 Law 7/2004.

In the 1994 elections, the 1990 Constitution, then in force, provided for the principle of direct suffrage.⁸⁰ The same constitution applied to the 1999 elections with some alterations introduced in 1998.⁸¹ Although a new constitution had been adopted⁸² in 2004, the 1990 Constitution applied for the elections held that year. At the time, as provided under its article 306, the 2004 Constitution waited to come into effect after validation of the 2004 election results.⁸³ It meant that the 1990 Constitution with amendments introduced in 1998 still applied and so applied the principle of direct suffrage, which in fact is still applicable. Yet, if direct suffrage implies that electorate directly chooses its representatives without interference of political parties, then suffrage will be indirect⁸⁴ where parties make a pre-selection of candidates and the citizenry is left to legitimise their choices. This happens to be the situation in Mozambique. As mentioned above, the ballot for parliamentary elections does not provide the images or names of the candidates for public seats. Rather, it provides party symbols. This type of ballot and the lists they are based on are favourable to allocating votes toward political parties. Nohlen⁸⁵ described this type of ballot, or rather the lists they are based on, as closed and blocked.

As far as directing votes in favour of political parties is concerned, the ultimate effects of these lists can raise issues of concern. It can be questioned whether it is the political party that is elected to represent people in parliament or whether it is individual persons. While it is agreed that in democracies people are represented by elected representatives of their own, it should be acknowledged that the elected representatives should be able to express the view of the people. Political parties are institutions which by themselves cannot express their interests. They rely on individuals to act on their behalf and to express the organisational will. Therefore, it is the individuals who should be elected into parliament to act on behalf of the electors.

Arguably, apologists of proportional representation system may suggest that due to its effects of driving several political factions into power, it is a better system to foster greater representation of the people in the legislature.⁸⁶ However, in Mozambique this argument falls short. The reasons behind the shortfall of such arguments are directly linked to the country's political situation. During elections only two political groups gain. On one side FRELIMO, the ruling party, and on the other side RENAMO-Electoral Union coalition (RENAMO-UE), which

⁸⁰ Art 30 of 1990 CRM.

⁸¹ Law 9/98, dated 14 December introduced substantial alterations to the 1990 Constitution.

⁸² The 2004 general elections were held on the 1st and 2nd of December, while the 2004 Constitution was adopted on 16 November 2004. For detailed information on the 2004 elections see <http://aceproject.org/regions-en/eisa/MZ/default> accessed on 8 August 2008.

⁸³ Art 306 of 2004 CRM.

⁸⁴ Mackenzie understands that elections are indirect when they depend to some extent on pre-selection of candidates by party organizations. See Mackenzie (n 50 above) 47.

⁸⁵ Nohlen (n 27 above) 61.

⁸⁶ Nohlen (n 27 above) 81 - 85.

is made of up of the largest supported opposition party and ten other smaller parties. For example in the 1999 parliamentary election only these two groups gained support as illustrated by the table below.

Party	No of votes	% of votes	No of seats	% of seats
Frelimo	2 005 703	48.5	133	53.2
Renamo	1603811	38.8	117	46.8
Others	532789	12.7	...	0.0
Totals	4132303	100	250	100

Source: Electoral Institute for Southern Africa⁸⁷

This demonstrates that the features of a majority system underlie the background of Mozambican politics. In the face of such reality, the proportional representation system fails to meet its great objective of getting many smaller parties into power. Taking into account that in such scenario voting is done in favour of those two major factions, it becomes relevant to give the voter an opportunity to discriminate among the candidates from each of the two sides. This helps make the voters choice more meaningful and enhances greater representation as the candidates who are eventually elected are directly selected by the voter. In such situation the close party lists of the proportional representation system loses its objectives. Rather, the lists become limiting to meaningful participation with regards to selecting choice representatives. Point 3.4 discusses the consequences arising from such systems.

3.3 Prospects for the future

The platform for future presidential and parliamentary elections in Mozambique is framed within the parameters of the 2004 Constitution and under the normative prescriptions of Law 7/2007.⁸⁸ In some cases, these legal instruments retained amendments or added⁸⁹ into the body of electoral provisions under the laws discussed earlier in point 3.2. Effectively, the 2004 Constitution came into force in 2005.⁹⁰ In many respects the principles of elections under the 2004 Constitution do not differ from the principles provided under the 1990 Constitution. The 1990 Constitution provided for the right to vote, it spelled out the principles of universal, direct and secret suffrage and a five year term of office for the president and members of parliament, which remain the same under the 2004 Constitution.⁹¹

⁸⁷ Mozambique 1999 general elections results, available at <http://aceproject.org/regions-en/eisa/MZ/default>, accessed on 5 August 2008.

⁸⁸ 2004 CRM and Law 7/2007.

⁸⁹ Art 51 and Art 98 of Law 7/2007, these provisions are examples of the new regulations incorporated into the electoral legislation.

⁹⁰ Art 306 of 2004 CRM.

⁹¹ Arts 73, 169(2), 147(3), 179(1), and Art 185(1) of 2004 CRM.

However, a few differences demarcate the 2004 Constitution from the 1990 Constitution. For the first time the 2004 Constitution adopted the platform that should govern the Mozambican electoral process: the proportional representation system.⁹² Its counterparts of 1990 and 1975 never made such provision. The constitutional change in 2004 with the adoption of the new constitution was accompanied by changes in the electoral legislation itself. Law 7/2007 now governing the electoral process brought new provisions by introducing new article 51, which deals with the type of ballot boxes to be used during elections. It also brought changes to article 98, which introduces yet a new formality to be observed prior to counting votes cast at the level of constituencies. These novelties were not provided under the previous electoral legislation in 1994, 1999, and 2004, respectively.

It should be cautioned that beside the new provisions, the new law also retained some important provisions dealing with the characteristics of the ballot papers and their integral elements.⁹³ Article 57 of the law deals with the integral elements of the ballot paper and provides that ‘the ballot is identified by denominations, acronyms and flags or symbols of the corresponding contesting candidates’.⁹⁴ Although the law establishes that the contesting candidates shall be presented by political parties or coalition of parties⁹⁵, just the fact the ballot paper provides party symbols becomes clear that votes will remain cast toward parties. As it happened in the case of the previous legislations discussed, the new law still does not allow direct vote toward individual candidates contesting to occupy public seats in parliament. It favours voting toward parties in conformity with article 169(3) of the 2004 Constitution. However, it contradicts with the principle provision enshrined in article 135(1) of the same constitution which favours direct suffrage. Thus, it resonates that the law curtails the right to direct suffrage by the citizenry as provided under the principle provision of the constitution. It is not surprising, therefore, to learn that the third chapter of the new electoral law, titled ‘*[e]lections*’, does not make reference to the principle of direct vote. It only makes the allusion to a free and secret vote.⁹⁶ With foresight, the scenario of the process and procedures of future parliamentary elections in Mozambique will not differ from the processes and procedures previous elections have resembled. Point 3.4 below critically evaluates from multiple perspectives the consequences arising from such processes and procedures.

⁹² Art 135(2) of 2004 CRM.

⁹³ Art 56 and 57 of Law 7/2007.

⁹⁴ Art 57(3) Law 7/2007.

⁹⁵ Art of 166 Law 7/2007.

⁹⁶ Art 64(1) Law 7/2007.

3.4 Implications of the system

3.4.1 Legal implications

Except when the state is bound to international norms, and hence required to implement their standards, the constitution is the supreme law above all laws of the state. Article 2(4) of the Mozambican constitution provides that the constitutional rules shall prevail over all other rules of the legal order.⁹⁷ Canotilho⁹⁸ rightly noted that norms which do not comply with constitutional requirements are unconstitutional. Their unconstitutionality may either arise from defects on the mode of their production, from lack of competence of the body from which they emanate, or may be due to a contradiction between parts or to the whole of the content of the norm in respect to constitutional requirements.

The electoral laws⁹⁹ of Mozambique were adopted through processes which observed constitutional formalities and were passed by a legally competent body.¹⁰⁰ However, a number of provisions of the electoral laws do not comply with the provisions of the constitution. In line with the objectives stated in the first chapter, this study aims at addressing contradictions between article 57(3) of the new electoral law (Law 2/2007) and article 135(1) read together with article 169(1) of the 2004 Constitution.

On one hand, article 135(1) provides *inter alia* that:¹⁰¹

The general rule shall be that the appointment of elective sovereign public offices ... shall take place through universal, direct, equal and periodic suffrage and by personal and secret ballot.

Article 169(1) adds that:¹⁰²

The Assembly of the Republic of Mozambique shall be elected through direct, universal, equal and periodic suffrage and by secret and personal ballot.

On the other hand article 57(3) of Law 7/2007 reads:¹⁰³

⁹⁷ Art 2(4) of 2004 CRM.

⁹⁸ JG Canotilho *Direito Constitucional e Teoria da Constituição* (1997) 834 – 837.

⁹⁹ See Law 11/92, Law 3/99, Law 7/2004 and Law 7/2007.

¹⁰⁰ The Assembly of the Republic of Mozambique (ARM) is the mandate to approve the electoral law and the rules for referenda. See Art 179(2) of 2004 CRM.

¹⁰¹ Art 135(1) of 2004 CRM.

¹⁰² Art 169(1) of 2004 CRM.

¹⁰³ Art 57(3) Law 7/2007.

The denominations, acronyms and flags or symbols of contesting candidatures, which in case of parties or party coalitions reproduce those that integrate the National Elections Commission registry, shall constitute the identifying elements of the ballot.

Whereas the construction of the constitutional provisions under analysis tends to protect the principle of direct suffrage, the normative command under article 57(3) encourages indirect suffrage. This is so because from the interpretation of article 57(3) it is clear that in Mozambique political parties make a pre-selection of candidates and present them to the electorate for voting under the party list. According to Mackenzie¹⁰⁴, where there is pre-selection of candidates elections are indirect. Therefore, article 57(3) is unconstitutional.

Further, in the Mozambican context Mackenzie's argument gains relevance in that, voters are not entitled to pick candidates of their own choice within the same party list. Rather, they are entitled to a single vote¹⁰⁵ which goes to one of the contesting party lists in the ballot as identified by their flags or symbols. In a sense in the Mozambican system voting toward the party list equates to voting toward the party itself. This is so because it is the party's symbol or flag which appears on the ballot as prescribed by article 57(3) and not the individual candidates. As long as voting is toward the party list identified by party flag or party symbol on the ballot, voting is no longer direct, because it is not cast toward individual candidates. It resonates that there is a contradiction between the content of article 57(3) of Law 7/2007 which encourages voting toward party symbol hence indirect suffrage, and that of article 135(1) and 169(1) of the Mozambican Constitution, which call for direct suffrage. Again, in this regard article 57(3) of Law 7/2007 is unconstitutional.

Arguably, the aforementioned article 57(3) complies with article 169(3) of the Mozambican Constitution, which provides that candidates for elections are political parties. However, the later provision is rather a constitutional normative command than a constitutional principle as is article 135(1). Yet, if constitutional principles must prevail over constitutional normative commands, article 57(3) remains unconstitutional and the constitutional normative command of article 169(3) conflicts with the constitutional principles of direct suffrage enshrined in article 135(1).

¹⁰⁴ Mackenzie (n 50 above) 47.

¹⁰⁵ Art 61(2) Law 7/2007.

3.4.2 Legitimacy in parliament

Popular legitimacy is the constitutional foundation governing the exercise of political power within the Republic of Mozambique. Article 1 of the Mozambican Constitution provides that the Republic of Mozambique is a sovereign state of social justice.¹⁰⁶ Article 2(1) stipulates that sovereignty is vested on the people, and its subsection 2 regulates that the people shall exercise their sovereignty in the manner provided for in the constitution.¹⁰⁷ Article 73 requires the exercise of political power through elections of representatives by universal, direct, equal and periodic suffrage.¹⁰⁸ The interpretations of these provisions favour the conclusion that the people of Mozambique hold the legal power to legitimise the attribution of public seats connected with the exercise of political power. Thus, it is not surprising that, by law the people must elect both the president and the members of the Mozambican parliament.¹⁰⁹

However, it is revealed in this study that it is parties that choose the candidates to parliament in Mozambique. It was noted in 3.4.1 that people choose a party list, which already contains party pre-selected candidates. The list with the majority of votes wins the election. Some candidates to public seats gain access to parliamentary seats simply because they are on the winning list and not because they represent the choice of the people. The authority of such parliamentarians is not derived from the people's legitimate exercise of their sovereign power as prescribed in the constitutional provisions. Rather, they take advantage of a list proposed by their party and are voted into parliament. Such parliamentarians exercise illegitimate authority because they were not directly elected by the people who, under the constitution, are vested with political power.

3.4.3 Accountability

Accountability is the ability to provide an explanation or justification and to accept responsibility for events or transactions as well as one's own actions in relation to these events or transactions.¹¹⁰ Accountability is a function of elections.¹¹¹ It is a path for feedback toward citizens' exercise of power, supported by the interpretation of article 25(a) of the International Covenant on Civil and Political Rights (CCPR) which establishes the right for every citizen to take part in the conduct of public affairs through freely chosen representatives.¹¹² Upon elaborating on the content of this provision, the United Nations Human Rights Committee (HRC) stated in General Comment No 25 that:

¹⁰⁶ Art 1 of 2004 CRM.

¹⁰⁷ Art 2 of 2004 CRM.

¹⁰⁸ Art 73 of 2004 CRM.

¹⁰⁹ Art 147(1) and Art 169(1) of 2004 CRM.

¹¹⁰ Definition available at http://www.records.nsw.gov.au/recordkeeping/why_manage_records accessed on 14 October 2008.

¹¹¹ See 2.1.2 above.

¹¹² Art 25(a) International Covenant on Civil and Political Rights (CCPR), adopted in 1966 and entered into force in 1976.

[W]here citizens participate in the conduct of the public affairs through freely chosen representatives (...) those representative do in fact exercise governmental power and they are accountable through the electoral process for the exercise of that power.¹¹³

In its view the Human Rights Committee supports Coghill's¹¹⁴ position, which argues that when parliamentary representatives fail to fulfill their duties, they are held accountable in the next elections. They lose the required popular support which leads to voting toward other candidates in the next elections. Unfortunately, the Mozambican electorate has no legal protection to effectively decide who appears as a candidate in the next elections. This view follows from the electoral law of Mozambique making political parties the utmost responsible institutions in deciding on candidates who appear on the party list.¹¹⁵ Even if it were proven that a candidate appearing on a party list contesting for election performed poorly in the last legislative term, he or she may be elected so long as the party continues to support his or her candidature. This scenario worsens where the electorate strongly supports a specific political party¹¹⁶, but the electorate is not entitled to choose among the candidates within the party list those who better represent their interests. Electorates' party preference may lead to continuous voting toward the same party with the hope that changes occur in future. However, parties may retain the same candidates over long a period. Advocates of the participatory theory of democracy have also criticised the type of electoral system of Mozambique.

Arguments against the system includes its emphasis's on the anonymous character of the closed and blocked lists, the deepening of monopoly that parties have over the presentation of candidates and its account for the lack of representation of the elected given that the voter does not know his representative.¹¹⁷ When this happens parliamentarians become accountable to political parties and not to the electorate as required by the international standards stipulated under the Human Rights Committee General Comment No. 25.

¹¹³ Human Rights Committee (HRC) General Comment No 25 adopted 12 July 1996, attached to a compilation of General Comments and General Recommendations adopted by the United Nations Human Rights Committee.

¹¹⁴ K Coghill et al *Parliamentary Accountability to the Public – the Role of Professional Development Programmes*, available at <http://www.parliament.vic.gov.au/aspg/papers>, accessed on 7 October 2008.

¹¹⁵ The Electoral Law in force in the Republic of Mozambique establishes that political parties shall present the list of candidates to parliamentary elections for each district constituency. See Art 166(1) Law7/2007, dated 26 February.

¹¹⁶ Results of the 1994, 1999, and 2004 general elections illustrate that the electorate from Sofala, central province of Mozambique, and the electorate from Maputo, southern province of Mozambique, are strong supporters of RENAMO and the FRELIMO parties. See EISA on 2004 Mozambique election results available at <http://aceproject.org/regions-en/eisa/MZ/default>, accessed on 5 August 2008.

¹¹⁷ Nohlen (n 27 above) 83 - 85.

3.4.4 Political interest versus national interests

When parliamentarians become more accountable to political parties, other factors come into play as democratic practices are tampered with. While democracy admits exceptions to accommodate acceptable individual preferences, it is rooted in the interest of the majority. Indeed, practice has reiterated that when parliamentarians are found accountable to political parties, they have a tendency to promote party interest instead of the majority interest. It was noted that in view of defending party interest, members of parliament representing the opposition party, Resistência Nacional Moçambicana (RENAMO)¹¹⁸, have often sabotaged parliamentary sessions for party gain. On 10 September 2007 it was reported that RENAMO parliamentarians threatened to sabotage parliamentary sessions as a protest against the passing of the electoral law bill. Their actions were moved by party's interests to determine the shape of the new law. Arguably, the importance of such bill was sufficient enough to favour that individual parliamentarians voted for or against its passing with no need to resort to sabotage of the parliamentary session. Sabotage would prove that the system in Mozambique encourages parliamentarians to stand for party interests.

Mozambique parliament comprises of two hundred and fifty members, who are called deputies.¹¹⁹ At present¹²⁰, the ruling party, FRELIMO, holds 64% of these seats while the opposition, RENAMO-Electoral Union coalition (RENAMO-UE), holds 36% of the seats.¹²¹ Research has observed that where the ruling party supports a specific decision there is unanimous vote in favour of the decision by all the present parliamentarians' members of that party. The same behaviour is reported on the side of the opposition, RENAMO-UE. Mozambique is comprised of people with diverse cultural and traditional backgrounds and interests.¹²² Representing such diverse peoples¹²³, individual parliamentarians would naturally differ in their views. Differences would even occur among parliamentarians representing the same party, so that, while some could support a certain decision others would oppose to it. This situation could contribute toward the adoption of balanced decisions which do not purport to party interests, and parliament would appear as an instrument of true democracy and not a forum for competition between parties.

Furthermore, lack of difference among same-party parliamentarians presumes that the people they represent have similar political interests. This is misrepresentation of people's

¹¹⁸ RENAMO is the largest supported opposition party.

¹¹⁹ Art 169(2) of 2004 CRM.

¹²⁰ 9 October 2008.

¹²¹ EISA *Upcoming Elections: Mozambique*, available at <http://aceproject.org/regions-en/eisa/MZ/default>, accessed on 5 August 2008.

¹²² Mozambique is a heterogeneous society predominantly comprising the Shangane people at the southern region, the Cena people and the Ndaou people at the central region, and the Maconde and Macua settled at the Northern part of the country.

¹²³ Art 168(1) of 2004 CRM.

interests. Naturally, people in the southern region of the country may have different interests to those from the northern region of the country. Where there is no adequate representation, it becomes evident there is no clash and reconciliation of interests, which Anderson, understands to be the basis of political activity.¹²⁴

3.5 Conclusion

From the foregoing it should resonate that electoral system of Mozambique is inadequate to deliver meaningful participation to the people, and hence it stagnates instead of consolidating democracy. The importance placed on political parties in the selection of candidates to public offices is at the core of the problem. People's choices are conditioned and given much less importance. Additionally, the provisions regulating the structure and the format of the ballot add substantial challenges to meaningful participation of people as they do not allow them to discriminate among candidates from the same party.

Also, the current political setting characterised by the existence of two dominating political factions favours the usage of a system which would allow people to base discriminated choices among candidates from each the two dominant political factions. However, such objectives cannot be attained through the current system. Altogether, these features serve as the basis to suggest the need to alternate some features of the current electoral system of Mozambique. Although it was a unique achievement in settling the civil strife of the 1980s, the proportional representation now needs to be revisited. The next chapter makes a comparative study to the Ghanaian electoral system with the view to expose features of such system can be adopted as a solution to foster meaningful participation in Mozambique.

¹²⁴ Ninsin & Drah (n 56 above) 150.

CHAPTER 4: OTHER MODELS - A COMPARATIVE STUDY OF THE GHANAIAN SYSTEM

4. Introduction

The quest for democracy is an on-going process. Ghana has shown features that are inherent to such a quest. The demands for self determination and nationalism as a pro-active response to colonialism sowed the seeds of Ghanaian democratic aspirations.¹²⁵ Indeed, Ghana has experienced the transition from colonial rule to one-party system, to military intervention, and most recently to a multiparty system¹²⁶ rooted in the rule of law. The latter event characterises Ghana's present political situation. At the centre of the Ghanaian democratic system, its constitution makes provisions for a variant of the plural majority electoral system.¹²⁷

This chapter aims to demonstrate how the features of the electoral structure of Ghana may be used to foster a meaningful participation of citizenry in Mozambique in deciding who should exercise power connected with public offices. Focus is placed in addressing and scrutinising elections in Ghana under its 1992 Constitution. A brief description of the Ghanaian electoral system precedes a comparative study of the constitutional electoral provisions which regulate election in Ghana and in Mozambique. In addition, the discourse is framed around the structure and format of the Ghanaian ballot for parliamentary elections. The study in this chapter concludes by exposing advantages of the Ghanaian electoral system over the system in Mozambique.

4.1 Elections in Ghana

In Ghana elections are viewed with particular importance. They are thought to be a process that formalises the character of popular participation in and influence over government.¹²⁸ They are also said to account for new ways of using institutionalised mechanisms to manipulate popular influence. In fact, Ayee¹²⁹ noted that the rules of the electoral game are subject to definition and redefinition by those in power. He further observed that it is possible for those in power to adjust the rules of democratic process in order to diminish or even preclude the very possibility of electoral influence.

The history of elections in Ghana dates before 1951 when Ghana was under British colonial rule. At first the colonial system made no provision for participation of the natives in the

¹²⁵ JRA Ayee *the 1996 General Elections and Democratic Consolidation in Ghana* (1998) 1.

¹²⁶ Art 55(1) of the 1992 Constitution of the Republic of Ghana (1992 CRG).

¹²⁷ Art 50(1) of the 1992 CRG.

¹²⁸ Ayee (n 125 above) 1.

¹²⁹ Ayee (n 125 above) 1.

process. Later, a few representatives of society were appointed to represent the local population in the council of representatives which resembled the colonial local parliament. An election based on political parties and universal adult suffrage was conducted for the first time on 8 February 1951.¹³⁰ Several elections were held after independence in 1957.¹³¹ Along with the 1966, 1972, 1979 and 1981 elections, military coups erupted and threatened the very attempts of democracy.¹³² At the time, the formation of political parties was banned. After the last coup in 1981, a military regime was established controlling the administration of state affairs until 1992 when the new constitution was adopted. On 15 March of the same year, the ban on political party activity was lifted.¹³³

Under the 1992 Ghanaian Constitution, the President of Ghana is the head of state, head of government and commander-in-chief of the armed forces.¹³⁴ In terms of the constitution his ascendance into power is subject to attainment of more than fifty per cent of the total number of valid votes cast in the presidential election.¹³⁵ The law further provides that legislative power is vested in Parliament, and its exercise is subject to compliance with the provisions of the constitution.¹³⁶ The Parliament of Ghana consists of no less than one hundred and forty elected members.¹³⁷ Finally, the law provides that the National Electoral Commission may divide the Republic of Ghana into as many constituencies as needed for the purposes of election of Parliament members.¹³⁸

4.1.1 Overview of the electoral system

As previously mentioned, the 1992 Constitution of the Republic of Ghana recognises a multiparty state.¹³⁹ It provides for the basic standards and principles of elections.¹⁴⁰ Since its inception, it has witnessed four sets of elections in 1992, 1996, 2000, and 2004. The laws and norms governing elections in Ghana are framed in accordance with the provisions of the constitution. Generally, the Ghanaian electoral system comprises constitutional provisions regulating elections, the Political Parties Law (PNDC Law 281), the Representation of the People Law of 1992 (PNDC Law 284)¹⁴¹, and the Representation of the People Instrument (LI 1538). Altogether these instruments have some basic characteristics. Ayee¹⁴² pointed out that some of the features of the Ghanaian electoral system include:

¹³⁰ KA Badu & J Larbie *Elections 96 in Ghana* (1996) 1 – 2.

¹³¹ Badu & Larbie (n 130 above) 3-15.

¹³² Badu & Larbie (n 130 above) 1 – 13.

¹³³ Badu & Larbie (n 130 above) 1 – 2.

¹³⁴ Art 57(1) of 1992 CRG.

¹³⁵ Art 63(3) of 1992 CRG.

¹³⁶ Art 93(2) of 1992 CRG.

¹³⁷ Art 93(1) of 1992 CRG.

¹³⁸ Art 47(1) of 1992 CRG and Art 1(1) Representation of the Peoples Law, 1992 (PNDC Law 284).

¹³⁹ *'The right to form political parties is here by guaranteed.'* See Art 55(1) of 1992 CRG.

¹⁴⁰ See Chapter 7 of 1992 CRG.

¹⁴¹ PNDC Law 284.

¹⁴² Ayee (n 125 above) 35.

- (i) *Universal adult suffrage for citizens who are 18 years and above (it used to be 21 years up to the advent of the second Republic, 1969 – 1972);*
- (ii) *Secret ballot;*
- (iii) *Official registration of voters;*
- ...
- (vi) *Presidential and parliamentary and local government elections on the basis of first-past-the post;*
- ...
- (xiv) *Presidential and parliamentary elections are held every four years; and*
- (xv) *200 constituencies for purposes of elections to the legislature...*

Badu and Larbie¹⁴³ noted that there are other features which characterise the system. These include parliamentary and local elections on the basis of the first-past-the-post, a run-off election in case of no winner on the first ballot, no minimum voter turn-out requirement for presidential or parliamentary election and a permanent electoral commission. The most prominent tool of the Ghanaian electoral system is the Representation of the People Law of 1992 (PNDC Law 284). It is the key instrument which regulates the scope and content of the right to vote as provided under the Constitution of Ghana.

Passed by parliament in 1992, the PNDC Law 284 has been amended twice. The first amendment in 1994¹⁴⁴ added and substituted substantive provisions to the body of subsection (3) of section 11 of the law, and it repealed paragraph (a) and (b) of the same provision. The second amendment¹⁴⁵ extended the right to vote to Ghanaians living abroad. Despite the two amendments, there are still a number of features in the law that make it similar to the electoral norms under the Mozambican system.¹⁴⁶ However, for purposes of comparative analysis, focus is placed on specific differences between the two systems. The discussion below analyses the differences of substantive electoral provisions. Following this discussion, the next point examines the differences in the structure and format of the ballot.

¹⁴³ Badu & Larbie (n 130 above) 21.

¹⁴⁴ Representation of the People (Amendment) Act 471 of 1994 dated 14 February (Act 471).

¹⁴⁵ Second amendment to the PNDC Law 284. was made in 2006 by the Representation of the People (Amendment) Act 699 of 2006 dated 24 February (Act 699).

¹⁴⁶ Eighteen years voting requirement is a common feature of Ghana and Mozambique constitutions. See Art 42 of 1992 CRG and Art 73(1) of 2004 CRM read with Art 10(1) Law 7/2007.

4.1.2 Comparison of substantive constitutional electoral provisions

It was mentioned that the Mozambican constitution makes specific provisions for a proportional representation electoral system.¹⁴⁷ Conversely, the Constitution of Ghana provides for a first past the post (plural majority) system¹⁴⁸, and further entrusts the Electoral Commission with the task of designing the necessary regulations for the conduct of public elections.¹⁴⁹ Further, the Ghanaian Constitution states that the Ghana national parliament shall consist of not less than one hundred and forty elected members.¹⁵⁰ There is no restriction as to the number parliament cannot exceed. In fact 230 candidates were elected into the Ghana National Parliament in the 2004 parliamentary elections. On the other hand, the counterpart legislation in Mozambique provides that the parliament shall consist of two hundred and fifty members.¹⁵¹ Thus, the Mozambican provision is more restrictive than the provision under the Ghanaian constitution.

4.1.3 Differences in the structure and format of the ballot

The ballot paper is an important tool in elections. Depending on its structure and format, it may lead to significant influence on the outcome of elections. In 3.2 above closed party lists were distinguished from open party lists. While the former is structured to allow voters to elect an entire party-list, the latter is designed to allow voters to pick individual candidates from various lists or to make a cross-selection of candidates within the same list. Ballot papers used in Ghanaian elections are based on open party lists. They bear photographs of the candidates for elections and allow electors to allocate their votes toward specific persons of their choice.¹⁵² In Ghanaian presidential elections the order candidates are arranged on the ballot is determined by the order established by draws of their nominations. Independent candidates follow by alphabetical order after the names of candidates representing parties. The same applies for parliamentary elections with the exception that, because parliamentary candidates are picked by constituencies, different constituencies will have ballots with different candidates.¹⁵³ In the case of Mozambique, ballots for parliamentary elections are based on close party lists. They do not allow voting toward individual persons as is the case in Ghana. They favour voting toward an entire party list.¹⁵⁴ The only similarity is the ballot for presidential elections, which allows voting toward specific individuals.¹⁵⁵ There are advantages and disadvantages of the differences between the two systems. In line with the

¹⁴⁷ Art 135(2) of 2004 CRM.

¹⁴⁸ Art 50(1) of 1992 CRG.

¹⁴⁹ See Art 51 of 1992 CRG.

¹⁵⁰ See Art 93(1) of 1992 CRG.

¹⁵¹ Art 169(2) of 2004 CRM.

¹⁵² See Annex Three copy of ballot of the 2004 Ghanaian parliamentary elections.

¹⁵³ Badu & Larbie (n 130 above) 30.

¹⁵⁴ See Annex One, copy of ballot of the 2004 Ghanaian presidential elections.

¹⁵⁵ See Annex Two and Annex Four.

objectives of this study, only advantages favouring the Ghanaian system are taken into account.

4.2 Conclusion

It may be concluded that there are a number of advantages in the Ghanaian system favouring meaningful participation of citizens in the exercise of political power. Similarly, there are advantages arising from such meaningful participation of citizens in the exercise of power. Arguably, the manner in which the constitutional electoral provisions are drafted, the manner in which voters select their representatives and the level of accountability of members of Ghana National Parliament to the people of Ghana are some of the advantages observed.

As regards to the manner in which constitutional electoral provisions are drafted article 93(1) of the Ghanaian Constitution correlates to article 169(2) of the Mozambican constitution. These provisions refer to the number of parliamentarians required to make up the legislative bodies of Ghana and Mozambique. As previously mentioned in 4.1.2, article 93(1) of the Ghanaian Constitution broadly provides that parliament consist of not less than one hundred and forty members.¹⁵⁶ It was also mentioned that article 169(2) of the Mozambican Constitution states that the Assembly of the Republic shall consist of two hundred and fifty deputies.¹⁵⁷ The interpretation of these provisions leads to the conclusion that based on the outcome of the elections there could be more than a hundred and forty parliamentarians in the Ghanaian Parliament, but there could never be more than two hundred and fifty parliamentarians in the Mozambican Parliament. This is because the construction of the provision in the Mozambican Constitution is more restrictive. Perhaps in the absence of such provision there could be more parliamentarians elected into the Mozambican Parliament, hence, it would become more representative than it is. The system in Ghana has shown that as long as candidates to parliament obtain the required support from their constituencies¹⁵⁸ and they attain the vote requirement prescribed by law they are automatically eligible to seats in parliament. This has made the Ghanaian legislature more representative.

In regards to the manner in which voters chose their representatives, the system in Ghana has yet another advantage. Although in both the Ghanaian and Mozambican electoral systems voters have little influence at the party parliamentary candidates pre-selection process, under the Ghanaian electoral system their role is influential and decisive in shaping election outcomes. Behind this reality is the fact that the system is based on open party lists

¹⁵⁶ Art 93(1) of 1992 CRG.
¹⁵⁷ Art 169(2) of 2004 CRM.
¹⁵⁸ Badu & Larbie (n 130 above) 37.

which encourage the casting of votes toward specific candidates contesting on behalf of political parties.¹⁵⁹ By so doing, the Ghanaian system allows voters to be more involved in determining who occupies public seats in parliament. Contrarily, in the case of parliamentary elections in Mozambique, where voters do not cast their votes directly to specific candidates, they have little influence in determining election outcome. This is so because, as mentioned, before the ballots for parliamentary election in Mozambique are based on closed party lists.¹⁶⁰ They are characterised by symbols of contesting parties¹⁶¹, which encourages voting toward the party itself and not to candidates representing the party. As such, voters in Mozambique have limited rights. They are restricted to choosing a party list which was subject to prior selection by party factions. Although the system in Ghana has such pre-selection of candidates by parties, still voters are entitled to pick the exact candidates of their choice and not the entire party list as is the case in Mozambique.

Finally, the study on the Ghanaian system resonates to conclude that the manner in which voters chose their representatives determines the level of accountability of parliamentarians. The greater the influence of the voter over the outcome of elections, the more accountable parliamentarians become toward the voter. In Ghana this is shown by the manner through which candidates for public offices descend to the grass roots seeking for votes. The less the influence exerted by voters on the outcome of elections, the more minimal the accountability of parliamentarians towards the electorate. In 4.3 it was indicated that the lack of parliamentarian's accountability toward the electorate in Mozambique is a direct consequence of the little influence voters have in determining election outcome.¹⁶² Contrarily, as was established above, voters influence in determining the outcome of elections is much higher in Ghana. This is enhanced by the mere fact that in Ghanaian elections voters elect individual persons into parliament, thus the more accountable parliamentarians become to the people.

Despite the comparative advantages demonstrated in this chapter, there are still certain constraints that affect democratic practices in Ghana. The system allows for the creation of as many constituencies as may be prescribed by the Electoral Commission.¹⁶³ This may be a challenge to the system if the Commission becomes influenced by political parties which may request the Commission to create more constituencies where they have greater support. This may advantage parties by accumulating seats over such constituencies. Secondly, each party is represented by a single candidate in a constituency. This curtails the voter from the

¹⁵⁹ See Annex Three.

¹⁶⁰ See 3.2 in Chapter 3 above.

¹⁶¹ See Annex One.

¹⁶² See 3.4.3 above.

¹⁶³ See Art 47 of 1992 CRG, and Art 1(1) PNDC Law 284.

possibility of making meaningful choices between candidates of the same party. The system may be improved by allowing voters to select candidates from the same party.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The Mozambican constitutional framework acknowledges the exercise of political power through elections based on universal, direct, equal and periodic suffrage. Also, the constitution protects and guarantees the permanent democratic participation of citizens in the affairs of the nation.¹⁶⁴ However, at present, democracy faces challenges in the path towards consolidation. The infra-constitutional normative framework has since placed significant constraints with regards to meaningful participation of citizens.

The law which regulates the electoral process facilitates party intervention rather than promoting ample participation of the citizenry in elections. Such law opposes the view that the link between voters and persons elected, and genuine representation can only be attained through mechanisms that assure the most free and ample participation of the citizens.¹⁶⁵

As shown in the previous chapters of this study, there are numerous contradictions between the constitutional framework in Mozambique and the electoral norms.¹⁶⁶ While the constitution purports to favour direct suffrage¹⁶⁷, the electoral legislation encourages the opposite.¹⁶⁸ However, there are also provisions in the constitution which contradict one another.

Research has also demonstrated significant shortcomings arising from electoral practice in Mozambique. Indeed, matters concerning accountability of parliamentarians toward the electorate and emerging conflicts between party interest and national interest appear remarkable.¹⁶⁹ These are issues that affect both the opposition and the ruling parties, not to mention the impact they have on society, which finds itself left to be ruled by politics instead of being a part of the process. Additionally, the legitimacy of members of parliament in the exercise of political power may be questioned. Thus, if democracy has to be consolidated in Mozambique through meaningful participation, the gap between constitutional requirements and the electoral provisions has to be filled.

¹⁶⁴ Art 73 of 2004 CRM.

¹⁶⁵ Goodwin-Gill (n 51 above) 55.

¹⁶⁶ See 3.3 and 3.4.1 above

¹⁶⁷ Art 73 of 2004 CRM.

¹⁶⁸ It is noted that indirect elections occur when office holders are elected by a body, which has itself been chosen by a wider constituency. Analogically, if the system in Mozambique favours voting toward political parties, which then attribute seats to their chosen representatives, the system encourages indirect elections. For explanatory details about indirect elections see Hague & Harrop (n 43 above) 156.

¹⁶⁹ See 3.4.3 above.

5.2 Recommendations

Consolidated democracy does not exceptionally require the mere participation of citizens in party activities, but also their ample and meaningful participation in deciding who is elected to occupy public offices connected with the exercise of political power. Constitutional codification of the right to vote and the codification of other basic rules pertaining to elections amount to single achievements in democracy. However, the materialisation of this right and the implementation of those rules demand availability of adequate legislation, sound processes and capable institutions, which together make an appropriate electoral system.

While the Mozambican normative acknowledgement of the right to vote toward parliament is a commendable step, effective voting requires reforms of current electoral legislation.

On one hand, legislative reforms should take into account specific constitutional norms which impact negatively on representation. It is imperative to lift constitutional limitation on the number of parliamentarians.¹⁷⁰ The electoral rules should be designed to meet such necessity. Candidates who do not meet requirements established under electoral norms lose the elections. However, candidates fulfilling such requirements should be able to ascend to parliament without other limitations, except for limitations established under the electoral norms. This should help improve representation based on power vested in the people. In addition, there is no ideal electoral system, and electoral systems have advantages and disadvantages.¹⁷¹ From time to time, depending on the objectives envisaged there might be need to situate between variants of the proportional representation or plural majority systems.¹⁷² The constitution ought not to adopt a specific model. If consolidation of democracy is a priority in Mozambique, its constitution should entrust to the Electoral Commission the task of designing the rules of elections while making guideline provisions regulating elections. Additionally, conformity among the provisions of the constitution is recommended.

On the other hand, reforms of infra-constitutional normative framework should target electoral provisions which are found to be in contradiction with the constitution. Focus should be placed on repealing such provisions. As such article 57(3) of Law 7/2007¹⁷³ and other similar provisions, which are found to be unconstitutional, should be dealt with in the same manner. Alternatively, unconstitutional provisions should be amended to bring them into conformity with the constitution. Amendments should consider adopting a ballot structured

¹⁷⁰ See Art 169(2) of 2004 CRM.

¹⁷¹ Nohlen (n 27 above) 138.

¹⁷² Nohlen (n 27 above) 138.

¹⁷³ See discussion on unconstitutionality of this provision in 3.4.1 above.

not only to encourage electors to cast votes toward candidates from different parties but also to exercise the ability to discriminate between candidates from the same party list.¹⁷⁴

It is also imperative that politicians holding public offices are educated about their role in society. They should be enlightened about their accountability toward the electorate. The idea that in politics there is no opposing side because it is recognised by all sides that there is a national interest must prevail.¹⁷⁵ As demonstrated by the study the proportional representation system is not adequate to bring Mozambican parliamentarian to accountability. Altogether, this affects underpinning principles of democracy.

Weighing democracy and elections entails that democracy cannot survive without elections where citizens effectively participate in the exercise of power through chosen representatives of their own. Finally, it is recommended that the issues discussed in this study provide the politicians in Mozambique and elsewhere, students of political sciences and the society at large with pressing concerns for reflection and action.

Word count: 15 800 words

¹⁷⁴ Harrop & Miller (n 26 above) 3. See also Nohlen (n 27 above) 61 – 62.
¹⁷⁵ Ninsin & Drah (n 57 above) 152.

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