

IN CASES OF PERMANENT INCAPACITY, RESIGNATION, LOSS OF
MANDATE, DISMISSAL OR DEATH

CDD Requests the Ombudsman's Intervention to Seek Constitutional Review of Provisions Empowering Political Parties to Appoint the Permanent Replacement of a Provincial Governor

- The Centre for Democracy and Human Rights (CDD) submitted a petition to the Ombudsman today, Tuesday, 18 August 2026, requesting a constitutional review of the provisions governing the permanent replacement of a Provincial Governor, as set out in Articles 36 and 37 of Law No. 11/2026 of 30 June.



The initiative calls upon the Ombudsman, in the exercise of his constitutional powers, to request the Constitutional Council (CC) to review the constitutionality of these provisions, particularly Article 37(3), which empowers political parties, coalition of political parties or nominating group of citizens that obtained the majority of votes to appoint the permanent replacement of a Provincial Governor.

PROVISION ALLOWS THE WINNING PARTY TO APPOINT THE PERMANENT REPLACEMENT

Article 37(3) of Law No. 11/2026 provides that, in cases of permanent incapacity, resignation, loss of mandate, dismissal or death, the Provincial Governor shall be permanently replaced by a member of the Provincial Assembly appointed by the political party, coalition of political parties or nominating group of citizens that obtained the majority of votes.

This provision must be read in conjunction with Article 37(5), which establishes that the replacement shall complete the mandate of the previous Governor while “exercising the full powers of the office.”

For CDD, this wording demonstrates that the arrangement is not merely an administrative or temporary substitution. The individual appointed by the political organisation assumes the full functions of Provincial Governor and completes the remainder of the mandate.

The constitutional question presented to the Ombudsman is therefore fundamental: who should have the authority to choose the person who will serve the remainder of a mandate for an office whose legitimacy derives from popular suffrage?

POPULAR SOVEREIGNTY AND THE LEGITIMACY OF THE MANDATE

CDD considers that the solution established by the new law raises questions regarding its compatibility with the principle of popular sovereignty enshrined in Article 2 of the Constitution of the Republic of Mozambique, as well as with the principles of the democratic rule of law, suffrage and democratic representation.

Under the provincial decentralised governance model, the Provincial Governor is elected as the head of a list submitted by political parties, coalition of political parties or nominating group of citizens that obtains the majority of votes in the elections to the Provincial Assembly.

Although the candidate is nominated by a political organisation, the democratic legitimacy to exercise the office derives from the will expressed by citizens through the ballot.

CDD therefore maintains that political parties, coalitions and nominating groups of citizens present candidates, but they are not the holders of the mandate conferred by the electorate.

The contested provision nevertheless allows the winning political organisation, after the electoral process has been completed, to acquire the authority to select the person who will exercise the remainder of the mandate.

For CDD, this arrangement may weaken the link between the vote and the actual holder of the office by allowing an internal decision of a political organisation to determine who exercises a public office derived from an electoral mandate.

DISTINGUISHING POLITICAL PARTIES FROM THE EXERCISE OF PUBLIC AUTHORITY

The petition also draws attention to the need to distinguish the constitutional role of political parties from the direct exercise of public authority.

Political parties perform a fundamental role in shaping and expressing the popular will. However, they are neither State bodies nor holders of popular sovereignty.

CDD considers that granting the winning party the authority to select the person who will complete the Provincial Governor’s mandate goes beyond the function of presenting candidates and confers upon the political organisation direct authority over the effective occupancy of a public office after the elections.

According to CDD, the issue is not that the candidacy originated from a political party, but that the law allows the party to become the decision-maker regarding who will occupy the office after the electoral process has concluded.

IMPACT ON DECENTRALISED GOVERNANCE

CDD further considers that the provision may raise concerns regarding the autonomy and democratic character of decentralised governance.

Constitutionally established decentralisation is intended to bring the exercise of public authority closer to citizens and deepen their participation in governance.

Accordingly, the effective composition of decentralised governance bodies must preserve a connection with the will expressed by the electorate.



For CDD, empowering the winning party to select the permanent replacement may reinforce the dependence of the provincial executive body on the party structure, allowing an internal decision of a political organisation to determine the composition of a public body for the remainder of the mandate.

INTERNATIONAL LAW REINFORCES THE PROTECTION OF POLITICAL PARTICIPATION

The petition also invokes Mozambique's international commitments concerning political participation and democratic rights.

Article 25 of the International Covenant on Civil and Political Rights recognises the right of citizens to take part in the conduct of public affairs and to vote and be elected in genuine elections.

The African Charter on Human and Peoples' Rights similarly recognises the right of every citizen to participate freely in the government of their country, either directly or through freely chosen representatives.

For CDD, these instruments reinforce the need to preserve the connection between the popular will and the occupancy of public offices whose legiti-

macy derives from suffrage.

CONSTITUTIONALITY OF THE REPLACEMENT MECHANISM UNDER REVIEW

In its petition, CDD requests the Ombudsman, in the exercise of his constitutional powers, to ask the Constitutional Council to conduct a subsequent abstract review of the constitutionality of Articles 36 and 37 of Law No. 11/2026 of 30 June, particularly Article 37(3).

The objective is for the Constitutional Council to review whether the contested provisions comply with the principles of popular sovereignty, suffrage, democratic representation, the democratic rule of law and decentralisation.

This is a matter that extends beyond the replacement of an individual officeholder. At stake is the question of who possesses the legitimacy to determine the effective holder of an electoral mandate when the original officeholder permanently leaves office.

It is therefore important for the Constitutional Council to rule on this matter and ensure that the replacement mechanisms established by law are consistent with the fundamental principles of democracy and popular sovereignty.



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