

ELECTRICITY LAW

LAW N.º 21/97, of 1 October 1997¹

The economic development of the country depends upon the existence and availability of electrical energy, the generation and distribution of which requires substantial investments.

The State, its agencies as well as the other public law entities play a determinant role, while recognising the important role of the private sector in the development of the national electricity grid.

It is necessary to provide the Mozambican legal order with a basic regulatory instrument for the generation, transmission, distribution and sale of electrical energy, pursuant to the provisions of article 135.1 of the Constitution of the Republic, the Assembly of the Republic determines:

CHAPTER I GENERAL PROVISIONS

Article 1 Definitions

For the purposes of this Law, the following terms and expressions shall mean:

1. **Sale of Electrical Energy:** the sale of electrical energy to a consumer for the consumer's own use or for purposes of resale to third parties.
2. **Concession:** The authorisation given to public or private entities by the competent authority under the terms of this Law and its

Regulations for the generation, transmission, distribution and sale, including the importation and exportation, of electrical energy, as well as the construction, operation and management of electrical installations. The authorisation may cover one or more of the aforementioned activities.

3. **Concessionaire:** The holder of a concession granted under the terms of this Law.

4. **Consumer:** a person or entity to whom electrical energy is supplied for domestic, industrial or commercial uses.

5. **Concession Contract:** an administrative contract which defines the terms and conditions to be applied to the realisation of one or more of the activities involved in the supply of electrical energy.

6. **Distribution of Electrical Energy:** the transmission of electrical energy with a rated capacity of less than 66 kV from step-down transformer substations, transformers and or isolator stations to the installations which receive and transmit the electrical current to consumers.

7. **Force Majeure:** means any event which is not foreseeable, is outside the control of and was not caused by the party affected by such event, and which is the cause of the injury, damage or non-compliance, including floods, storms, sea tremors, earthquakes, fire, acts of war, insurrection, public unrest, strikes or other labour unrest.

importation from and exportation to outside the national territory.

2. The use and benefit of energy sources for purposes other than the generation of electrical energy shall be the subject of other, specific legislation.

Article 3 Purposes

The purpose of this Law is to define, in respect of electrical energy:

- a) the general policy for the organisation of the sector and the administration of the supply of electrical energy;
- b) the general legal framework in respect of the activities of electrical energy generation, transmission, distribution and sale within the territory of the Republic of Mozambique, as well as its exportation to and importation from outside of the national territory, as well as the grant of concessions for such activities;

Article 4 Role of the State

- 1 The State, its agencies as well as the other public law entities² have a determinant role in promoting the development of the existing potentialities in such a way as to permit an ever increasing access to the benefits of electric energy and to

contribute to the economic and social development of the nation and the region.

- 2 The State shall ensure the participation of private initiative in the public service of electric energy supply through concessions that guarantee the right of the use and benefit of the energy resources while protecting the superior interests of the State.

Article 5

Organisation and Administration Policy

- 1 The general policy for sector organisation and for management of the supply of electrical energy has the following objectives:
 - a) to make beneficial use of existing and potential resources and to contribute to the process of economic and social development of the nation and of the region;
 - b) to promote the extension of the national electric grid throughout the national territory in order to permit persons and entities not connected to the national electrical energy grid access to the benefits and facilities of electrical energy;
 - c) to ensure the efficiency and quality of the electrical energy supply³ to consumers on terms which are fair and competitive;
 - d) to develop the national energy capacity and the national electrical grid in such a way that spurs economic and social

- d) the installation and operation of the metering equipment;
 - e) appropriateness of the concessionaire's equipment;
 - f) the refusal or delay in the supply of electrical energy by a concessionaire;
 - g) access for the purpose of transiting the national transmission grid including the transmission installations of a particular concessionaire;
 - h) any other matter in respect of which a consumer or a concessionaire requests the intervention of CNELEC as a mediator or arbitrator.
- 3 CNELEC shall be made up of five to seven permanent members selected from among reputable persons with recognised experience and expertise in respect of tariffs, economics and other legal and technical aspects of electrical energy supply systems.
- 4 The members of CNELEC shall be chosen by the Government, by associations representing the productive sector, by the associations representing the general public/consumers, by scientific research institutions, by the manager of the national electric energy transmission grid and by the concessionaires.
- 5 The president of CNELEC shall be nominated by the Government from among its representatives.

Article 8 Competencies of CNELEC

Without prejudice to the other powers and authorities attributed pursuant to this Law and other legislation, CNELEC shall have the competency to:

- a) pronounce upon electrical energy supply policies and objectives;
- b) issue advisory opinions on proposals for expropriation and declaration of public utility for new projects for the construction of electrical installations;
- c) pronounce upon and propose regulations in respect of electrical energy supply and other matters relevant to the national electrical energy grid;
- d) issue advisory opinions on proposals for new projects and the applications for electrical energy supply concessions as well as the proposals for the setting and revision of tariffs and other terms for the sale or electrical energy by the concessionaire;
- e) draft proposals for the promotion and adoption of new technologies and the programs for the expansion of the geographical coverage of the national electrical grid as well as the realisation of nation-wide evaluations in respect of the execution of such programs;
- f) participate in the supervision and evaluation of national and international public bidding for

Article 10 Exemption from Concession

1. The generation of electrical energy for personal use and consumption and not for supply to third parties is exempt from the requirement of a concession.
2. Without prejudice to the provisions of the preceding clause, the construction and operation of an electrical installation requires the acquisition of an establishment licence and an operating licence as determined by regulations.

Article 11 Application for a Concession

1. The application for a concession for electrical energy generation, transmission, distribution and sale, as well as the application for importation or exportation, shall be addressed to the competent authority and shall contain the identity of the applicant as well as an exposition of the purposes of the application and the length of the concession.
2. The competent authority shall authorise or reject the application within a period of one hundred and eighty days from the date of submission.
3. The requirements for a concession application shall be fixed by regulation.
4. Concessions and the renewal of a concession shall be granted by means of a public bidding

procedure in accordance with terms to be regulated.

5. The applications for concession as well as for the renewal of a concession shall be subject to publication and to public hearings in accordance with regulations to be issued.

Article 12 Duration and Contents of a Concession

1. The concessions shall be attributed in the form of an administrative contract for the period fixed in the contract. This period shall have a maximum initial duration of fifty years and may thereafter be renewed.
2. The renewal of the concession shall be approved subject to compliance with the following requirements:
 - a) The concessionaire has complied with the obligations imposed under the terms of the concession contract;
 - b) The concessionaire has submitted a plan of operations and technical and economic studies that guarantee the best operational conditions.
3. The duration of the period of renewal shall be consistent with the periods of amortisation of the addition investments and with the need to make the resources being used available for other uses that guarantee a greater economic and social benefit.

reference to such degree of skill, diligence, prudence and foresight as described herein.

- b) provide for the proper maintenance of all the goods dedicated to the concession until the termination of the concession;
- c) payment of the indemnification due upon expropriation and upon thirty days prior notice, inform the holder of the respective rights and assets of the commencement of the operations for removal of underbrush, clearing, pruning, tree and bushcutting and earth removal;
- d) abstain generally from the restriction or limitation of property rights;
- e) restore the water used in the supply of electrical energy to the level of purity, original temperature and healthfulness in conformity with the data recorded at the time of the capture of the same water;
- f) restore to normal the passageways and circuits which have been interrupted, reduced or detoured in order to carry out construction, maintenance, improvement and repair works in respect of electrical installations;
- g) comply with the relevant parts of the legislation on water and fishing, including the regulations;

h) comply with legislation in respect of environmental matters;

i) give access to the ministry as well as persons or entities duly authorised by the ministry having oversight of the sector for the purpose of inspection of the installation, equipment, books and accounts and other documentation related to the activity in respect of which the concession was granted;

j) supply the data and information requested by the ministry having oversight of the sector and considered relevant for the oversight of the concessionaire's activities pursuant to the concession.

2 The concessionaire undertakes to carry out the service of supplying electrical energy in such a way as to best serve the interests and needs of consumers and to contribute to the nation's economic and social development.

3 The obligations defined in the preceding clauses as well as the other specific obligations, which apply to the concessionaire, shall be the subject of regulation.

Article 17 Duty to Supply Electrical Energy

1. The concessionaire shall, in accordance with the terms established in the concession, supply electrical energy within the respective area of the concession to

all consumer applicants who are able to guarantee payment for their consumption and for the cost of the installations, branch lines and other connections as well as the works for the necessary reinforcement and extension works.

2. In the event of the unjustified refusal of, reduction or delay in the supply of electrical energy to an applicant or consumer, the applicant or consumer may bring a complaint with CNELEC or other competent authority which shall decide whether or not and on what terms the concessionaire shall supply the electrical energy.

3. Electrical energy consumers within a concession area may obtain the supply of electrical energy from any concessionaire.

4. The concessionaire shall co-operate in the co-ordination with other suppliers of electrical energy with regard to national and regional plans for the supply of electrical energy.

Article 18 Regularity of Supply

1. The concessionaire shall ensure that the service provided for the supply of electrical energy is regular and of good quality and is carried out in such manner as to avoid prejudice and damages to economic activities and the electrical appliances and equipment of consumers.

2. The service provided may be suspended or interrupted momentarily or partially in order

that the concessionaire may ensure the maintenance or repair of the installations and equipment and undertake works of improvement.

3. The concessionaire undertakes to reduce to the minimum possible, the frequency and duration of the interruptions and to limit them to the periods and times at which the interruption is likely to cause the least possible inconvenience to the consumer.

4. The concessionaire shall notify consumers of the dates and times of these interruptions by prior public notice.

5. Provided that unforeseen circumstance beyond the control of the concessionaire demand urgent action, exceptionally, the concessionaire may immediately undertake the measures necessary to maintain and repair the equipment and installations, including the suspension of the services provided.

Article 19 Reduction or Termination of Supply

The concessionaire may not reduce or terminate the supply of electrical energy except in the following cases:

a) subject to the terms and procedures of the applicable Law, the consumer is declared insolvent or bankrupt;

b) the consumer does not timely pay the agreed charges;

- when the electrical energy is no longer being supplied.
2. The right of access referred to in the preceding clause shall be exercised during normal business hours except where special circumstances concerning the consumer or the concessionaire justify that access occurs at a different time.
3. The concessionaire is obligated to repair any damages caused by virtue of the exercise of the rights referred to in clause 1.

Article 22 Application of Rates by the Concessionaire

1. The electrical energy use, consumption and transit tariffs shall be fixed in the concession in question.
2. The tariffs for electrical energy use, consumption and, subject to the provisions of clauses 2 and 3 of article 20, transit shall be fair and reasonable.
3. The concessionaire may not charge consumers any other charges or tariffs that have not been stipulated in the concession.
4. The approved tariffs may be revised at the request of the concessionaire who shall provide all the information necessary for this purpose. The revision of tariffs shall comply, with the necessary adaptations, with the procedures for the attribution of a concession.

Article 23

Termination of a Concession

1. A concession shall terminate:
 - a) on the date of expiry of the concession, without the term having been extended;
 - b) by revocation, in accordance with the provisions of the following numbers;
 - c) by rescission by the concessionaire in accordance with the provisions of number 5 of this article 23.

2.

- Upon prior notice and in accordance with the procedures to be established by regulations, the entity which issued a concession may revoke the concession upon occurrence of any one of the following events:
- a) deviation from the purpose of the concession;
 - b) suspension of the activity which is the subject of the concession, which suspension does not result from a force majeure event;
 - c) repeated refusal to permit the due exercise of inspection and supervision;
 - d) refusal to undertake the appropriate maintenance and repair of the electrical installation and assets dedicated thereto;
 - e) the intentional charging of tariffs at a rate in excess of that which has been fixed in the concession;

- f) the bankruptcy of the concessionaire;
 - g) the unauthorised assignment or other transfer of the concession;
 - h) the material violation of the terms of the concession contract or the dispositions of this Law and its regulations.
3. The entity which issued the concession shall not revoke the concession in the event that the concessionaire complies fully with its obligations and corrects or cures the cause of the aforesaid notice within the period fixed in the notice for this purpose.
4. The concession contract may provide for notice to be given to the principal creditors of the concessionaire to permit that such creditors may, in the period provided for this purpose, propose a solution which might preclude the revocation.
5. The concessionaire may rescind the concession contract on twelve months prior notice and based upon the material violation of the States obligations, provided that such violations have resulted in the disturbance and/or damage which compromises the proper exercise of the concession activities and the fulfilment of the respective obligations related to the regular supply of electrical energy.
6. Upon the termination of a concession pursuant to the preceding clauses, the competent authority may, in accordance with the criteria and procedures which

are applicable to the grant of a concession, determine:

- a) the reversion, subject to the provisions of article 24, of the installations and equipment in favour of either the State or a third party having the appropriate capability to undertake directly the operation of such installations and equipment;

- b) the removal or destruction of the electrical installations and/or the assets dedicated thereto.

7. Without prejudice to the provisions of the preceding clauses, during the twelve months preceding the expiry of the concession, the competent entity shall take all measures which are useful and necessary to ensure the continuity of the public service for the supply of electrical energy and its transfer to a new regime of operation.
8. The entity which, pursuant to the terms of this article, comes to operate the system, shall inventory the existing assets and shall assume the responsibility for same.

Article 24
Indemnification

1. Upon termination of a concession and the reversion of the installations and assets dedicated thereto, the concessionaire shall, subject to the terms of article 25, be indemnified for the audited accounting value of the patrimonial investment, free of any encumbrance or charge and without

3 The responsibility referred to in clause 1 of this article simultaneously covers:

- a) Criminal liability incurred for non-compliance with the laws and regulations in force;
- b) Civil liability for the injury and damages caused in accordance with the laws in force.

4 This civil and criminal liability is subject to:

- a) Events of force majeure;
- b) The fault or negligence of the injured party, where duly proved;
- c) Cases where the accident is attributable to third parties;
- d) Injury, damages or disasters which result from the nature of the installation.

5 When the injury and damages result from different but inter-dependent installations, the concessionaires of each installation are jointly liable. The respective indemnification shall be divided among the several concessionaires, unless it is demonstrated that some are liable and others are not. In this case the indemnifications shall be fairly and equitably divided among the persons liable therefor.

6 The concessionaire of an electrical installation is liable for any damages that result from the acts of the concessionaire's employees.

CHAPTER V FEES AND FISCAL REGIME

Article 27 Concession Fee

1. The concessionaire shall pay annually a concession fee assessed on the gross revenue of the concession derived from the supply of electrical energy.
2. The rate as well as the terms and conditions shall be established by the Council of Ministers.

Article 28 Fiscal Regime

The concessionaires shall be subject to the general fiscal regime established in the legislation currently in force. The Council of Ministers may establish a fiscal regime applicable to the activity of the supply of electrical energy, with forms and rates of taxation appropriate to this activity, as well as incentives for investment realised in this area.

CHAPTER VI LAND USE AND EXPROPRIATION

Article 29 Right to Land Use and Protection Zones

1. The concession for the supply of electrical energy implies the authorisation to have access and to use, in accordance with the approved terms, the land necessary for the realisation of the works and the appropriate operation of the concession, subject to the payment of the fees and indemnification

CHAPTER VII SAFETY AND ENVIRONMENTAL PROTECTION

Article 31

Safety and Protection of Assets and the Environment

1. The supply of electrical energy shall obey the safety rules in force as well as the norms of good electricity industry practice. The electrical installations shall be established in such way as to eliminate all foreseeable dangers to persons and avoid damage to material goods, to avoid the disturbance of free and normal circulation in public or private rights of way, nor affect their security, nor to prejudice other energy or telecommunication lines or to cause damages to water and other pipelines.

2. In the establishment of an electrical installation, the most convenient location shall be chosen subject to consideration of environmental and scenic landscape concerns and the ecological systems traversed.
3. The historical and cultural patrimony of the nation, as well as other places which have a scientific, ecological, scenic or architectural value shall, whenever located within areas chosen for the establishment of an electrical installation, be respected and shall warrant special protective measures to avoid any damage thereto. The measures which are necessary in order to reduce the cutting of stands of trees to the absolute minimum shall also be taken.

Article 32 Safety Measures

1. The realisation of any operations which could put at risk the safety of the persons carrying out the tasks due to the proximity of electrical installations, or place in danger or cause disturbances to these same installations shall only be initiated after the interested parties take the mutually agreed, necessary precautions.
2. Regulations shall be promulgated setting forth the safety and protective measures to be adopted to prevent damages to electrical installations, including those which are important to the national electrical grid.

CHAPTER VIII WORKS AND OPERATIONS

Article 33

Realisation of Works and Operations

1. The concessionaire, or the persons contracted for construction works or services, may realise works and operations within the scope of the concession attributed for electrical energy generation, transmission and distribution, subject to compliance with the applicable legal and regulatory dispositions.
2. The works and operations may imply the temporary alteration of the configuration of the areas of public use such as rights of way and sidewalks, for the purpose of installing or replacing aerial or subterranean cables, the installation

wire made of other materials or any other part of any electrical installation, as well as any component of any part of an electrical installation including, without limitation, appliances, equipment, spare parts and other accessories which are used in the supply of electrical energy who is unable to prove the legal provenance of same.

b) The possessor of products or articles, which contain copper, aluminium, galvanised steel and other metals, accessories and materials used in the supply of electrical energy, who is unable to prove the legal provenance of same.

- 3 Persons, who purchase, pawn or receive as a gift or in any other form acquire, receive or conceal for their own benefit or the benefit of a third party anything that the person knows to be the product of a crime⁵ shall be considered to be accessories to the crime of theft as provided for under paragraph a) of clause 35.2. Persons, who assist the thief, make use of the product⁵ or influence other parties to acquire, receive or conceal in good faith shall also be considered to be accessories to the crime of theft as provided for under paragraph a) of clause 35.2.
- 4 Accessories and accomplices of a crime shall be subject to the same punishment as that provided for the authors of a crime.

- 5 In the cases provided for under clauses 2 and 3 of this article, the prison sentences may not be suspended nor substituted by a fine.

Article 36 Damages

Any person who in any way interferes, or voluntarily disarranges any electrical installation or any part of an electrical installation in such a way so that the public utility production is impeded shall be considered to be a perpetrator of the crime of damage and as such, be punished in accordance with the provisions of the Penal Code and other legislation in force, provided that the prison sentence may not be less than one year.

Article 37 Proof of Charges

In the charges for crimes referred to in this chapter and filed by the agents of authority or by the agents of a concessionaire who is a public law entity, the requirement of naming the witnesses shall be dispensed with. These charges will be treated as prima facie proof in court during both the instruction of the charges⁶ and the trial until contradicted by proof regardless of the type of proceeding that is applicable to the crime charged.

Article 38 Aggravated Contempt

Any person who, being a user of lands adjacent to electrical energy transmission lines, causes, consents to or maintains in or on such lands plantings or constructions which prejudice or damage such lines or their operation and, having been duly notified, fails to destroy such plantings or constructions, shall, in accordance with the provisions of the Penal Code, be punished

the basis of the normal consumption of the consumer;

whenever it is demonstrated to be necessary.

c) for the crime referred to in paragraph a) of article 35.2, 45 000 000 Meticals for each kilometre or fraction thereof of cable or wire unlawfully taken when low tension installations are involved and 168 000 000 Meticals for each kilometre or fraction thereof when medium to high tension installations are involved, and in relation to any other part(s) of an electrical installation, three times the cost of replacement or repair of same;

CHAPTER XI FINAL & TRANSITIONAL PROVISIONS

Article 42 Regulations

The Council of Ministers shall have the competency to regulate the legal framework established by this Law.

Article 43 Celebration of Agreements with Third Parties

No provision of this Law may be interpreted in such manner so as to constitute an impediment to the celebration of any agreement or contract between a concessionaire and a third party for the purpose of the realisation of works, equipment installation, technical assistance, management, or the partial or total operation of the installations, provided that the concessionaire shall remain responsible as defined in the authorisation.

Article 44 Acquired Rights

1. The holders, at the date this Law enters into force, of concessions for electrical energy supply shall maintain the rights and obligations established in the respective concession contracts and in respect of the assets dedicated thereto.

d) for the crime referred to in paragraph b) of article 35.2, an amount equal to four times the market price of the articles found in the possession of the perpetrator;

e) for the crime referred to in article 36, an amount equal to three times the cost of replacement or repair of the equipment or appliance;

f) for the crime referred to in article 36 an amount equal to the cost incurred by the concessionaire to remove or destroy the plantings or constructions.

2. The applicable fine shall be doubled in the event of a repeat offence. The determination of whether or not an offence is a repeat offence shall be determined in accordance with the Penal Law, then in force.

3. The Council of Ministers shall update the fines provided for herein

Article 48
Entry in Force

This Law enters into effect thirty days after its publication ⁷.

Endnotes:

¹ Published in the Boletim da Republica, 1st Series, No. 40-3rd Supplement dated 7 October, 1997

² the term actually used is "*personas colectivas*" or collective persons which includes corporate entities, cooperative and other associations

³ easement or right of way

⁴ The Water Law

⁵ *stolen goods*

⁶ (during and preliminary hearing for determination of patrimonial case)

⁷ The Electricity Law, Law n.º 21/97, of 1 October, was published in the 1st Series, No. 40-3rd Supplement dated 7 October, 1997 of the Boletim da Republica (*Government Gazette*). Therefore the Electricity Law entered into force on November 7, 1997.