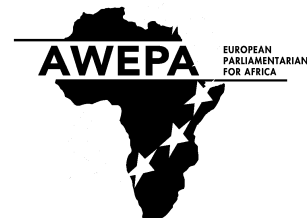


Mozambique political process bulletin



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1063 editais rejected

CC OKs election results but criticises CNE, laws & parties

Results of the 28 October 2009 election were approved by the Constitutional Council (CC, Conselho Constitucional) on 27 December. But the CC strongly criticised illegal actions by the National Elections Commission (CNE, Comissão Nacional de Eleições) which worked against the interests of some political parties. In common with most observers, the CC distinguished between CNE and STAE (Secretariado Técnico da Administração Eleitoral, Technical Secretariat for Electoral Administration), singling out STAE for praise for the way it organised the elections.

Again, the CC calls for more transparency, saying that the CNE and STAE must do more to immediately publicise decisions and notify those directly affected. There must be “more publicity for their actions” and “better communications and dialogue with political parties”. This is necessary to “increase the level of confidence and credibility in electoral administration.”

The CC was also highly critical of the “multiplicity of electoral laws” which are contradictory and hard to interpret. It called for a complete review of the election laws and the creation of a simplified and rationalised “Election Code”.

Despite the problems in the law, the CC also criticised the political parties for their “lack of knowledge of the regulations”, and for “making the same mistakes election after election”.

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Calendar

4-8 January – First session of provincial assemblies
Tuesday 12 Jan – First session of new national parliament (Assembleia da República)
Thursday 14 Jan – Inauguration of President Armando Guebuza

And it pointed to significant criminal actions by presidential candidates and polling station staff.

The CC noted that although it does not have investigatory capacity, it did take into account more than simply the documents submitted to it by the CNE, and used reports from domestic and international observers and the press.

It concluded that that the “various irregularities registered and censured in this ruling did not influence the results of the elections”, which were therefore approved.

The CC ruling, Acórdão n.º 32/CC/2009, without annexes, is posted on the CC website on

3 elections & impossible dates

The CC points out that three different elections were carried out on 28 October – President, national parliament (Assembleia da República, AR), and provincial assemblies. But these were muddled together both by the laws and the CNE. For example, the CNE submitted only one report to the CC, and when the CC asked for separate reports on each election, the CNE simply submitted three photocopies of the same report.

The elections are covered by various laws, particularly 7/2007 and 10/2007, plus a 2007 constitutional amendment which delayed the provincial assembly elections to 2009. Then last year, on 9 April, the AR passed law 15/2009 which was intended to rationalise the laws to allow all three elections to be held on the same day, but instead created a set of deadlines that were impossible to reconcile.

In fact, notes the CC, the whole calendar is impossible to meet. The election date must be set 180 days in advance. But law 9/2009 also requires that everyone who is 18 years old on election day must be allowed to vote. That means the final registration can only take place after the election date is announced. But 180 days is not sufficient to

Cut bureaucracy

“We think it is essential for our young democracy that the bureaucratic procedures of electoral administration be simplified,” declared the CC. The demands on candidates set out in the law should be simplified. And the CNE actually made matters worse, the CC noted. Law 10/2007 requires that candidates for provincial assemblies must have been resident in the province for at least six months, so the CNE demanded from each candidate a certificate of residence signed by local officials. This was totally unnecessary, the CC commented, because the candidate also had to present a voters card which showed in which province they had registered, and an identity card which has an address on it.

(Comment: Although the CC does not say so directly, the CNE decision worked against the opposition parties, because many found it impossible to get Frelimo-aligned local officials to issue residence certificates. It is also notable that the 2007 laws did set out a simplified process requiring candidates to present fewer documents, but the April 2009 law reinstated older, more bureaucratic procedures. *jh*)

allow both a registration and all the procedures for determining the number of assembly seats (based on total number of registered voters) and then presenting candidates lists as set out in the law.

Therefore, the CC says, “before anything else, legislators must set more realistic deadlines” and election dates must be set earlier.

(COMMENT: Elections must be held before the rains, which means an October election date is almost inevitable. Surely it would make sense to permanently fix the election day, for example as the second Wednesday of October. *jh*)

CNE: unclear and illegal

Despite its criticism of the electoral law and parties lack of knowledge, the CC reserved its harshest criticism for the CNE and its “administrative failures” and sometimes blatant disregard for the law, particularly about publishing information.

The election calendar approved by the CNE on 14 May 2009 was supposed to sort out all the contradictions in the laws, but instead it, too, contained “imprecisions and anomalies” and was in some places “incoherent”. Deadlines were not set out clearly and some parts of the calendar improperly overlapped, for example the registration of parties and delivery of nomination papers. The period for presenting candidatures “was not in conformity with the law” and failed to allow time for appeal, particularly over names and symbols (which did become an issue, with tiny parties registering symbols and initials that appeared to intentionally try to create confusion and take votes from more important opposition parties). The CNE also violated the law by not specifying publication of its own decisions.

Although the CNE had to take account of contradictions in the law, some of its decisions “were not plausible in light of the law”.

By law, the CNE was supposed to post candidates lists three times - when lists are first submitted, when lists are verified, and when all protests have been heard. But it only did so once, totally ignoring the rights of parties to check for omissions and make protests. “The situation was aggravated by the fact that the CNE did not notify proponents of its decisions.”

Criminal actions by parties & staff

“Fraudulent” and “criminal” actions by presidential candidates and notaries have been submitted to the director of public prosecution (Ministério Público) and the Justice Ministry by the CC. The constitution requires that each presidential candidate submit

10,000 signatures of voters to the CC (not the CNE), and electoral law requires these to be notarised.

But the CC found that some prospective candidates simply copied out lists of names and registration numbers from the electoral register. In some cases, where fingerprints were used instead of signatures, the same fingerprint appeared for many people. In at least one case, the list was made up to more than 10,000 simply by photocopying the same pages several times. This was fraudulent and notaries who approved the signatures “were acting fraudulently or negligently”.

The most extreme case was of José Viana, who claimed to submit 12,000 signatures, but the CC found only 11 were valid. Three other candidates had fewer than 1000 valid signatures.

The CC notes that 1063 polling station results sheets (*editais*) were excluded, nearly 3% of the total. Some of these simply had errors, such as the wrong polling station number. But others were “intentionally corrupted”, particularly by increasing the number of votes. The CC noted pointedly that parallel counts carried out by the observers had cited this as ballot box stuffing.

Finally, the CC points to the “high number of ballot papers that had been correctly filled in by voters but which later were adulterated by third

parties to make them invalid.” These are criminal actions, it noted.

The CC notes that in the past there has been a sense of impunity for electoral crimes, but that this seems to be changing. The Attorney General (Procurador-Geral) reported to the CC that he had begun 229 criminal actions against 254 people for electoral infractions, but these were largely for minor offences. Only 24 cases carried a possible prison sentence of more than two years, suggesting that no prosecutions have yet begun against polling station staff who stuffed ballot boxes and invalidated opposition ballot papers.

Minor provincial errors

The CC has entirely taken the results as published in tables issued by the CNE. But a minor error crept into the provincial assembly results. The CNE says in its tables that 3,971,429 people voted in provincial elections, and the votes in its table add up to this number. However, in its official statement (Deliberação n.º 75/2009) the CNE gives the figure as 3,975,703. The CC in its ruling gives a third number, 3,978,582, but then gives results which add up to one of the two CNE numbers, that 3,971,429 people voted. Thus, we think that is the correct figure.

Could the land law process provide a model for writing an electoral code?

The Constitutional Council has called for an entirely new Electoral Code, to replace the present hotchpotch of laws. And there seems broad agreement it is time to draft a new and consistent set of laws.

So far, parliament (AR) has been unable to do this, for political reasons. When the AR tried to do a new law by consensus, and set up ad hoc commissions, Renamo blocked the process. Renamo said it would not even begin discussions unless it was guaranteed that it would have a veto inside the CNE and that all the electoral bodies would be politicised. But that had already been proven not to work, so it could never be acceptable. So ad hoc commissions failed and the ruling party wrote the election law. Left to parliament to resolve, the same thing will happen again.

The revision of the land law 15 years ago was an equally contentious and politically difficult issue. It was recognised that a new land law would need broad agreement, and that it should be removed from the party political battlefield. Writing the new land law remains one of Mozambique’s most democratic, participative and effective processes, and could provide a model for developing a consensus election code.

The process started in 1995 with the creation of an ad hoc commission, which wrote a first draft of a law. This was taken by brigades for discussion in the country. In June 1996 there was an open conference with 256 participants, including ministers, Frelimo and Renamo members of parliament, non-parliamentary party members, prominent public figures, and many people from civil society.

After the conference, an inter-ministerial commission was established, but much more important was its technical secretariat. Although its official members were from relevant ministries, the technical secretariat also included “permanent invitees” from civil society, notably the NGOs working with land and peasants. Studies were done by the Land Tenure Centre at Universidade Eduardo Mondlane.

Regular meetings of the technical secretariat typically included 10 to 15 people and involved intense discussion. There was no formal veto, but the secretariat tried to reach consensus. As one

member noted: "You cannot simply ignore a problem raised by a member, so you must discuss it".

A new version of the law was drafted and passed to Frelimo, which gave its comments. The draft was revised and sent to parliament. In November 1996 the draft was discussed by the agriculture committee, which also held one of the few open sessions of a committee, with an effort made to attract the public to watch and join the discussion.

The draft was revised yet again, and finally approved by parliament in June 1997.

What was unique and effective was that this was a mixed process. The basic drafting of the law was done outside parliament and was very public, involving ministries, political parties and civil society. Parliament had the final say, but it was working with a draft law already shown to have a very broad consensus.

The idea of the land law process might be used to draft a new electoral code. A conference setting the broad parameters of a new election code would be followed by the creation of a technical commission outside parliament. The commission would have lawyers, election experts, and civil society and would draft and revise a proposed election code. When broad agreement was reached, this would be submitted to parliament.

The land law process is not the only model. But it is essential to take the initial process outside parliament and away from narrow party battles, and to ensure that election experts, civil society, and the public play a role in developing election laws that are coherent and give the electoral process maximum credibility.

Joseph Hanlon

CNE admits error in key secret document

In what ought to be an embarrassing error, the CNE awarded a provincial assembly seat to a party that did not stand, and has been forced to admit that its secret control sheet had an error no one noticed. This throws into question the early CC ruling accepting the exclusion of many party lists based on the accuracy of this document.

The PDD (Partido Para a Paz, Democracia e Desenvolvimento) of Raul Domingos stood in several Zambezia constituencies, and gained 29% of the vote in Namarroi district and 21% in Mocuba, enough to win 1 seat in each district, and this was stated in the initial CNE announcement of the results. The only problem was that PDD did not put forward a list in Mocuba, and was put on the ballot paper by mistake by the CNE. Recognising this, the CNE then took away the Mocuba seat. PDD appealed to the CC, which on 30 November in acórdão nº 29/cc/2009 ruled that PDD could not claim a seat when it did not stand, no matter what mistake the CNE made.

But in responding to the PDD claim, the CNE was forced to admit that its secret "mapa de controlo" – the internal log of movements of documents – had a major error which led to the PDD being put on the ballot paper in Mocuba.

The CNE excluded AR candidates from the MDM (Movimento Democrático de Moçambique) of Daviz Simango in most provinces. CNE said MDM had not submitted the proper documents while MDM said it did. The CC in its Acórdão nº 24/CC/2009 of 2 October accepted the CNE line and rejected the MDM appeal. The only evidence used by the CC was the "mapa de controlo", which the CC assumed to be accurate; the "mapa de controlo" has always been secret so its contents could never be checked for accuracy, and is already known to disagree in some ways with public CNE documents.

Now the CNE has admitted that the "mapa de controlo" had a least one substantive error which was significant enough to lead a party to be put on the ballot paper incorrectly. This leads to the obvious question: Was the CC wrong to accept the accuracy of the "mapa de controlo" in October, without allowing the MDM to see and contest it?

CC says, in effect, protest is impossible

The Constitutional Council has said, in effect, that it is impossible to complain about misconduct in polling stations. In its 27 December ruling, the CC underlines the "cascade" principle – that actions must be protested at the lowest possible level and then appealed to higher levels. Thus the first protest against misconduct in a polling station must be to the polling station – often to those who are accused. If the polling station president (presiding officer) does not accept the protest or does not pass it on to higher level, the president may be committing an illegal act, but it also kills the protest. With no decision at polling station level, there can be no appeal.

In its announcement of results (Deliberação n.º 75/2009, de 10 de Novembro) the CNE said that it had received no protests or complaints.

Yet the European Union in a statement on 18 November said its observers received copies of six complaints filed by political parties regarding irregularities during polling day and tabulation which were officially registered by the electoral officers at the polling stations. The EU also notes that "EU observers directly witnessed ... presiding officers refusing to register complaints from political party

representatives, in numerous polling stations throughout the country."

In its ruling on a Renamo complaint (Acórdão nº 29/CC/2009) on 30 November and in its final ruling (Acórdão nº 30/CC/2009) on 27 December, the CC underlined that a complaint must be dealt with at all levels – polling station, district, province and CNE – before it can go to the CC. Thus, there is no way to protest about the refusal to accept or to forward a complaint. Or, looked at differently, the CC says a complaint of this type cannot be accepted if it is true.

Electoral Observatory says CNE grossly unfair

"The Electoral Observatory (OE) deplores the way electoral bodies interpreted and applied the legislation, with a tendency that was to prejudice and not favour the citizen whenever there was a gap or ambiguity, raising doubts about the way the laws were applied. The OE recommends that in future the CNE gives priority to dialogue and transparency in administering the electoral process."

This very harsh criticism of the National Elections Commission (CNE) comes from the main domestic observer body, the Electoral Observatory, which monitored the entire process closely and had 1662 observers in the field on polling day.

It is particularly critical of the way the CNE excluded parties other than Renamo and Frelimo from standing in most constituencies, "for reasons which were legally dubious". The way the CNE interpreted and applied the laws "gives the impression of an intention to impede, unjustly, candidates from participating in the election, and not guaranteeing the ample participation of all contestants in a way that would have conferred more democratic legitimacy to the electoral process."

A lack of transparency in the awarding to the computer software contract to the Mozambican company LabSoft is also criticised.

The Observatory report points to what it sees as a "disinformation" campaign intended to reduce the confidence in, and credibility of, independent observers. "The idea was transmitted that observers were working for particular parties and candidates." As a result, observers suffered abuse, public insults, and obstruction in some places by police, polling station staff, and even party and government officials.

Police were generally praised, but in some instances police were biased in favour of the ruling party, Frelimo. "For example, if members of the opposition were caught committing criminal acts, they were promptly detained. But this did not happen with activists of the party in power, who were simply told to stop their criminal actions."

Frelimo's use of government resources, particularly cars and motorcycles, during the campaign became notorious, the Observatory notes.

The Electoral Observatory is a coalition of eight Mozambican civil society groups: Associação Moçambicana para o Desenvolvimento da Democracia (AMODE, Association for the Develop-

ment of Democracy), o Centro de Estudos de Democracia e Desenvolvimento (CEDE, Centre for the Study of Democracy and Development), o Conselho Cristão de Moçambique (CCM, Christian Council), o Conselho Islâmico de Moçambique (CISLAMO, Islamic Council), a Conferência Episcopal de Moçambique (Igreja Católica, Catholic Church), o Instituto de Educação Cívica (FECIV, Civic Education Institute), a Liga dos Direitos Humanos (LDH, Human Rights League) and a Organização para Resolução de Conflitos (OREC, Conflict Resolution Organisation).

Commonwealth gives election mixed report

"The election met a number of key democratic benchmarks, providing for freedom of association, expression, assembly and movement, as well as equal and universal suffrage and the right to vote. However, disputes over the nomination of party lists for the National and Provincial Assembly elections and a lack of transparency in some key aspects of the work of the National Election Commission (CNE) were of concern," concluded the Commonwealth observer mission.

The Commonwealth calls for improvements in the nomination process, including the requirement of fewer documents, plus better procedures and more transparency by the CNE.

Procedures for choosing CNE members should be changed. The right to select civil-society-nominated members should not reside with the political party members, because that means Frelimo, as the largest party in parliament, dominates the process, which negates the advantage of civil society members.

"The CNE needs to act in a more transparent manner, and improve its approach to disseminating

public information. The CNE is a public institution, serving the interests of the public on a vital activity. Information pertaining to its operations and decisions must be fully transparent to maintain public and political confidence.”

“The CNE should consider a more formal and open approach to its relations with stakeholders.” Commonwealth members South Africa and Ghana have advisory committees which bring together the election commission and political parties. “This would enable the CNE to ensure all parties are fully informed of procedures and decisions (such as nomination) while also enabling the parties to seek clarification on key aspects. Such models elsewhere have greatly improved confidence and transparency and helped resolve looming conflicts at an early stage.”

“The system for complaints and appeals needs to adequately provide for an effective and timely legal remedy, ensuring that people do have the full right to seek legal redress. At present the system is neither timely nor accessible.”

Why Mozambique’s Peace Worked

Mozambique’s peace process is widely seen as a success, but it is also very unusual. There were no trials or truth commission, and instead of looking back the stress was on acceptance and moving forward. Why did Mozambique’s peace process work so well? Was the Mozambican situation unique, or are there lessons for other post-war transitions?

In a new and unusual book, Lucia van den Bergh, who was AWEPA representative in Maputo at the end of the war, returns to interview people she worked with at the time, 15 years ago. They reflect on the transition from war to peace and from fighting forces to parliamentary parties, suggesting what interventions were successful and why. Religious leaders, members of parliament, and ordinary people look back and discuss why the peace held.

Why Peace Worked – Mozambicans look back, by Lucia van den Bergh, is posted on the web in English:

www.awepa.org/resources/why-peace-worked-by-lucia-van-den-bergh_en.html

A Portuguese edition will be published shortly.

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