

Mozambique political process bulletin



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Sharp divisions over election law

A wide gap has emerged in proposals for a new election law, with Frelimo arguing the present law is largely OK, while civil society wants substantive changes.

There is broad agreement that elections should be in the first week of October and that the calendar should be extended so that bureaucratic processes are not rushed and chaotic, as in the past. There is also agreement on national and international observation.

But there are clear divisions on:

- Transparency,
- Simplifying procedures for candidates,
- The importance of election law violations (particularly by polling station staff) and how to deal with them, and
- The size and role of the National Elections Commission (Comissão Nacional de Eleições, CNE).

In general, civil society and Renamo are pushing for more transparency and simplified systems, while Frelimo and the MDM (Movimento Democrático de Moçambique) largely want to maintain the present processes.

Party finance and electoral registration are also issues but do not seem divisive.

A new election law should be approved by parliament (Assembleia da República, AR) in its March-May 2012 session, in time for registration and elections in October 2013 and 2014, according to Alfredo Gamito, chair of the parliamentary Commission on Public Administration, Local Power and Media (Comissão da Administração Pública, Poder Local e Comunicação Social).

Public debate next October

Work revising the electoral law has already started. The three political parties in parliament have submitted detailed proposals for change. The Committee held three public hearings in September at which small parties and civil society made their proposals. (Many of the proposals are on our website, in Portuguese, on <http://www.cip.org.mz/election2009/pt/index.asp>).

Next steps are:

- Over the next year the commission will first try to draft revised laws acceptable to the three parliamentary parties, which will surely involve high level negotiations by party leaders.
- September 2011, publication of a draft, which will include alternatives where there is no consensus.
- September-October 2011, **public consultation** in the provinces on the draft.
- October-December 2011 parliament session – revised draft to be debated and some choices made.
- March-May 2012 parliament session – approval.

- October 2013 – municipal elections
- October 2014 – provincial and national elections.

Elections in 2008 and 2009 were governed by five different laws which the European Union Election Observation Mission noted were “unclear and at times contradictory. ... The variety of legal documents regulating the process created uncertainty about what provisions should be applied and opened space for different interpretations”. The laws also set impossible deadlines.

The Constitutional Council after the 2008 local elections said it was “essential to stabilise and consolidate the electoral law, to avoid having to approve new legislation for each election”, and called for a single, unified, permanent “electoral code” to cover all election issues. It repeated this after the 2009 election, when the Constitutional Council also stressed the need for a “simplified and rationalised election law”.

Gamito says that either they will produce a single consolidated code, or at least reduce the material to just two laws.

The two main civil society organisation, EISA (Electoral Institute for Sustainable Democracy in Africa) and the Electoral Observatory (Observatório Eleitoral), both presented papers dealing with the

difficult issues. By contrast, the three parties in parliament all suggested relatively limited revisions to the existing five laws; Renamo also presented a draft electoral code and MDM an outline code. Sticking so closely to the old laws has clearly shaped their thinking. And it did not leave space for new technology, such as the web, to be used for publication.

So the core of the debate is: How serious is the problem? European Union observers said “the legal framework is clearly the main weakness in Mozambique. A piecemeal approach to dealing with its numerous shortcomings is not advisable.” The Constitutional Council and civil society agree. But Gamito told the *Bulletin*, “the observers and reports did not say there were huge deficiencies and big gaps. So we feel, in general, the existing law is good” – just some improvements are needed. Frelimo has proposed only limited changes, and many of those are grammatical – adding accents or reversing the order such as changing “civil servants and workers” to “workers and civil servants”.

So the question for the coming year will be whether civil society can force a broader discussion, and press for change on key issues like transparency.

Can CNE secrecy continue?

The National Election Commission (CNE) can change results in secret, without explanation, and without saying they have done so, under the various electoral laws since 1994. Last year, it threw out 7% of the votes in Niassa and gave an extra parliament seat to Renamo; in Tete, the CNE rejected 16% of the total votes. There was no statement and the changes were only discovered by comparing preliminary results with final ones. No explanation was ever given.

Many Mozambicans, particularly in the CNE and AR, seem unaware how unusual this is – democracies do not normally allow such substantial changes to results in secret and with no explanation.

The law since 1994 has allowed the CNEs to set their own rules. Although they could have been completely open, all have opted for maximum secrecy. Frelimo and MDM propose to leave this unchanged.

Both Renamo and EISA call for more openness. Renamo says the CNE must make public minutes of each meeting within 24 hours. It also proposes that candidates and their representatives, press, and observers have the right to attend all parts of the counting process.

EISA says “electoral legislation must show clearly and unequivocally that it is obligatory for electoral administration to make public and publish, fully and promptly, all information of public interest.” Regulations and deliberations should be posted on the web and published in a newspaper within 24 hours. Complete lists of polling stations with numbers, lists of candidates, and register books (which were not made public in 2009) must be published, says EISA.

Transparency is a fundamental principle of the electoral process and essential to its national and international credibility.
Constitutional Council, after 2004 elections.

COMMENT: Incompetent and illegal actions by the CNE were exposed by accident or by the Constitutional Council. Some assumed that secrecy was used to cover misconduct and bias, and the blanket of secrecy surely created a climate of mistrust in the CNE – all the more so because the CNE chose to be secretive when it could have been open.

For some, the lesson is simply that Mozambique needs a more competent CNE. But members of parties and deputies of the AR should ask two questions. First, why should anyone trust the next CNE, if it, too, works completely in secret. Second, is there any reason we should not be told why the CNE excluded votes in Tete and Niassa?

Who will trust the integrity of an electoral system where their vote can be excluded without explanation?

For the *Bulletin*, transparency is the single most important issue. The composition of the CNE and changes to procedures, discussed below, make less difference if the press is there to report the debates and explain how decisions are made.

No law required the CNEs to act in secret. But we know from experience that if it is given the choice, the CNE will hide behind a closed door. The new electoral code cannot simply allow openness, it must force the transparency which the Constitutional Council says is “essential”. We call for all election commission meetings to be open and for the entire process of counting and tabulating votes to be open. Let the next CNE win public trust by acting professionally and openly. *jh*

Simplified procedures?

Candidates in 2009 were required to present five or six documents:

- Authenticated (notarised) photocopy of an identity card or birth certificate
- Authenticated photocopy of a voters card
- Certificate of no criminal record
- Proof of residence (provincial assemblies only)
- Declaration that they are willing to be a candidate
- Declaration that they are not ineligible

This pile of documents proved difficult to obtain, especially residence and criminal record certificates, and led to many candidates being disqualified. (Also

the Constitutional Council pointed out that the residence certificate was totally unnecessary, because a voters card was also presented, and in any case not required by law.)

“We think it is essential for our young democracy that the bureaucratic procedures of electoral administration be simplified,” declared the Constitutional Council (CC). The demands on candidates set out in the law should be simplified.

Nevertheless, Frelimo and MDM would keep the list, and simply allow more time to obtain documents.

Renamo would reduce this to an ordinary photocopy of the voters card and a single declaration.

The Electoral Observatory and EISA would drop the proof of residence and certificate of no criminal record. The declaration would say the candidate has no criminal record, and the CNE would apply for the certificate.

Frelimo would require the CNE to have forms and to check each file when it is submitted, tick off the documents, and provide a receipt, to avoid the confusion that occurred in 2009. If the CNE found “formal irregularities, of non-substantial nature”, then the party would have five days to correct them. But the terms are not defined.

Renamo would give parties five days to resolve “any irregularity”. If this was impossible, the party would have 5 days to replace the candidate.

And was it significant?

How to deal with staff misconduct

Polling station staff in 750 polling stations across the country in 2009 – 6% of polling stations – were involved in fraud and misconduct. (See *Bulletin* 43) This was largely ballot box stuffing in favour of Frelimo and invalidating ballot papers for the opposition. Although not as serious as Afghanistan, where election authorities earlier this month disqualified one quarter of ballots, 6% still seems a very high level of improper and illegal action.

The Constitutional Council said, in effect, that it is impossible to complain about misconduct in polling stations. In its 27 December 2009 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 to misconduct in a polling station must be to the polling station. If the polling station president (returning officer) refuses to receive 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 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.”

The response to this is divergent. MDM, Renamo, EISA and the Electoral Observatory all propose electoral tribunals. The constitution (article 223, paragraph 5) allows this, saying that “at lower levels there can be specialised courts”. Both Renamo and EISA say that the district court should be the electoral court, and during election periods would deal urgently with electoral matters. Appeals would be expedited up the court system. Where a polling station correctly receives the protest but then

rejects it, or where it refuses to receive the protest, the appeal would be to the local district court within 48 hours.

Frelimo (which largely benefited from the improper behaviour) argues that misconduct was small and insignificant, and thus not a problem. It admits that some protests were refused by the polling station staff, but says this was because the protests were badly done. And it was the case that many opposition polling station delegates (poll watchers) were illiterate. Therefore, Frelimo proposes that party delegates must “read and write Portuguese and have an education adequate for this complex task”. In addition, at least one party delegate in each polling station would be required to speak the local language. To ensure more experienced polling station staff (known as “mesas”, or tables), Frelimo proposes that priority be given to those candidates with experience of past elections.

Civil society argues for separate tribunals because at present the CNE is often being asked to judge its own misconduct. Frelimo proposes to strip the CNE of many of its functions, so it would retain the role of resolving complaints.

All parties agree that there should be a special form available at polling stations which should be used to submit complaints. And all agree the polling station must accept all written complaints, and a complaint should be immediately made to the police if it is refused.

- Renamo would change the current procedure, and allow parties to issue credentials to their delegates, rather than the election commissions.

Sense of Impunity?

“The Constitutional Council considers that the package of electoral crimes registered is symptomatic of the relative lack of effective punishment for verified infractions that have been recurrent in prior electoral processes, which to us seems to have created a sentiment of impunity on the part of the offenders,” the CC said after the 2009 elections. And again there have been no prosecutions of quite blatant and identified fraud and misconduct.

After each election, the CNE washes its hands, says it is a matter for the public prosecutors office (Ministério Público) – and often does not even try to preserve evidence. While the prosecutors office says it awaits evidence from the CNE.

Renamo says that where a crime has been committed, the local court would be required to give the papers directly to the public prosecutors office (Ministério Público). Frelimo would ask the CNE to “notify” the Ministério Público of any evidence it has of crimes. Clearly the law must have some requirement to protect evidence such as false signatures or improperly spoiled ballot papers, and to liaise with the Ministério Público.

Although not in its formal proposal, some in Frelimo have suggested a legal change that might make prosecution easier. They would make the entire polling station staff (*mesa*) collectively responsible for actions such as ballot box stuffing and spoiling ballot papers.

Biggest fight is over CNE

As in all past electoral law revision processes, the biggest fight will be over the role and composition of the electoral commissions. There are basically three approaches:

- Civil society and MDM would reduce the size of the CNE (Comissão Nacional de Eleições) and depoliticise it,
- Renamo would enlarge the CNE and totally politicise the electoral machinery.
- Frelimo would keep the CNE as at present, but largely shift power to STAE, the Technical Secretariat for Electoral Administration (Secretariado Técnico da Administração Eleitoral).

After the 2003-2004 elections, two important changes were made to electoral administration. The CNE was reduced in size, from 19 to 13; parties in parliament nominate five members (in proportion to number of members of parliament) and the others were nominated by civil society and chosen by the five party nominees. And there are no longer party nominations to the STAE, making it a purely professional body.

Observers and even the Constitutional Council distinguished between CNE and STAE, harshly criticising the CNE and praising STAE. CNE was

seen as not merely weak, but also politicised. Because the “civil society” members were chosen by the party nominees, many were from obscure organisations and were sympathetic to Frelimo. And there were accusations that Frelimo and Renamo inside the CNE, under the cloak of secrecy, had ganged up to exclude MDM.

On membership, there are four very different proposals:

- **Smaller, non-party, independent:** Both the Electoral Observatory and EISA call for a CNE of 5 to 7 members who apply individually. They would be selected by a panel on which each party in parliament would have one member. Interviews with candidates and deliberations of the panel would be in public.

- **Smaller, partly party and parliamentary:** MDM proposes 7 members, 3 names chosen by parliament under “the principle of equality and equity”, who would choose 3 members from civil

society nominations and 1 member from proposals by non-parliamentary parties.

- **Partly party and parliamentary:** In its formal proposal, Frelimo would keep the present 13 members (but has made it known it would accept a reduction to 7 members). The composition would remain the same, 5 members chosen by the parliamentary parties in proportion to their parliamentary strength (which would exclude MDM) and 8 from civil society. But instead of the first 5 choosing the other 8, this would now be done by parliament, which would choose from applications made by civil society organisations.

- **Larger, more party and parliamentary:** Renamo would have 21 members, 5 chosen by each party in parliament, who in turn would choose 3 nominated by non-parliamentary political parties, and 3 proposed by civil society. In addition, every political party registered by the government (now at least 50) would have a seat and the right to speak, but not vote, at all CNE sessions.

There was a broad feeling by observers, the Constitutional Council, and civil society that the CNE was being asked to take too many decisions, and that too many of those depended on judgement and interpretation of unclear legislation. Therefore, the first step was a clearer law to reduce the number of decisions and actions required of the CNE. There is, for example, broad agreement that observer regulations should be in the law, and not defined by the CNE.

There are three very different proposals for the CNE and its relationship to STAE:

- **Slightly less powerful CNE:** EISA, the Electoral Observatory and MDM would all keep the present structure of the CNE being the overall policy and management body, and STAE doing the work, although better laws would reduce the number of decisions to be taken by CNE. But all three would remove from CNE the power to judge electoral violations, and create a new system of district and provincial courts acting as electoral tribunals. This would reduce the role of the CNE, and stop the anomaly that it is asked to rule on its own misconduct.

- **Shift power to STAE:** Frelimo would radically reduce the power of the CNE. It notes that many observers and the Constitutional Council praised the conduct of STAE and criticised CNE, so it would shift the running of elections to STAE. A long list of CNE tasks would be shifted to STAE. CNE would only “orient”, “supervise”, and “oversee”, with no hands on, day-to-day role. Because of its reduced role, it could continue to deal with complaints, and in effect be an electoral tribunal.

- **More powerful CNE and politicised STAE.** Renamo would go in the opposite direction, and give much more power to the CNE. STAE would be reduced to a “service directorate” of the CNE. In addition, although the director-general of STAE would be a neutral professional, he would have deputy directors appointed by the parties in parliament. In

addition, the staff of STAE would have to come partly from people named by political parties and civil society. Renamo would also require that the *mesas* of each polling station include staff nominated by different parties

At present there are provincial and district election commissions as well, but it is widely accepted that these are unnecessary. EISA and the Electoral Observatory both suggest that the CNE simply have a single delegate in each province and district, rather than a full commission. But there is also a recognition that at present provincial and district election commissions provide well paid posts for more than 1000 people nominated by the parties, and they are unlikely to want to give up that patronage.

COMMENT: The EU Observer Mission noted that “the presence of political party representatives at CNE maintains an unlevel playing field and an unequal access to information.” Civil society and other observers have also argued that many of the problems of past elections have been caused by members of election commissions and other electoral staff acting out of party interests. So civil society calls for truly non-party and independent elections commissions. But this is not likely to be acceptable to politicians in parliament who must approve new legislation.

Both Frelimo and Renamo want to continue with strong party presences. Renamo accuses Frelimo of using its dominance of the state apparatus and higher skill levels to manipulate STAE and things such as the appointment of civil society members of the CNE. Renamo argues that it needs more of its party members inside to watch Frelimo and make secret deals. Despite evidence of fraud and misconduct happening under the noses of Renamo CNE members and party delegates in polling stations, Renamo’s belief that it will be protected by more party people is strong and genuine, albeit misguided.

Frelimo’s proposal to give most electoral power to STAE will not be acceptable to Renamo, while Renamo’s proposal for a cumbersome, politicised electoral machine only amplifies past problems and is not likely to be acceptable to anyone else. In the past, Renamo refused to discuss any other election issue unless it first could politicise the CNE, which was never accepted but allowed Frelimo to write the election laws in the face of a Renamo boycott.

What will happen this time? Much depends on civil society. Can it successfully press for a more non-party CNE, while still giving some guarantees to opposition parties?

jh

Campaign finance

There is broad agreement that government finance of electoral campaigns should continue, and that, to be useful to the parties, the money should be

handed out earlier: Renamo – 60 days before the start of the campaign, MDM – 45 days before the campaign, and Frelimo – 15 days before.

Only EISA raises questions, warning that “public campaign finance must not be seen as an incentive for a proliferation of candidates motivated purely by easy access to public money”. It argues that the needs to be some “viability test”, perhaps seats in an assembly or more than 2.5% of the vote in the previous election.

MDM and EISA call for the formula for distribution of funds to be set out in the law, and not left for the CNE to decide.

EISA would make all campaign finance public, including the sources of contributions to parties and candidates.

European Union observers called for “limits” on private funding of electoral campaigns, as well as effective penalties for the use of state resources.

Parties apparently violate law on funding

The law on political party funding is apparently being violated, according to a study by CIP (Centro de Integridade Pública, Public Integrity Centre) published in September as part of a regional study by Transparency International, Zimbabwe.

Present law requires all parties and candidates to submit accounts to the CNE within 60 days after the results are announced. CNE then has 60 days to establish the correctness of income and expenditure, and must publish a report. As in all practices relating to the CNE, this is secret, so it is difficult to find out what has actually been submitted.

But the CIP study finds that parties only provide the CNE with evidence of payments made from public funds, and no full financial reports are filed. The study says the CNE has never published its reports on party funding. There have never been any sanctions against parties for failing to file full reports or against the CNE for failing to publish its report. And the actual submissions made by the parties are not available from either the CNE or the parties.

CIP recommends:

- CNE should publish party accounts on a website as soon as they are received.
- The new electoral code should establish clear rules on spending, including requiring all transactions to be through the banking system.
- Names of donors and amounts received should be disclosed for all private contributions.
- The CNE should have a unit to audit party accounts that are submitted.

The study (in English) and the report on Mozambique (in Portuguese) are posted on <http://www.cip.org.mz/election2009/en/index.asp>

New registration, or permanent?

Both Renamo and Frelimo would maintain the same system as at present, in which there is a new electoral registration for each electoral cycle (local elections in one year, and provincial and national the next). Registration would start a year before the first election.

Civil Society disagrees. Both EISA and the Electoral Observatory call for a permanent register, which would be updated annually.

To keep electoral registers up to date, Frelimo, Renamo and EISA all propose requiring that electoral authorities are informed about deaths.

To allow error corrections, Frelimo and EISA suggest that the register book be displayed in the same place as registration took place, for a few days after the registration ends

Renamo would require that no one walk more than 3 km to a registration site or polling station. Renamo and MDM would also require that copies of the registers be given to parties.

Observation

Observation should be covered by the law, and not subject to regulations written each election by the CNE, according to the parties and civil society. The distinction between national and international observers is largely eliminated. Procedures would be similar to those at present, and both Renamo and Frelimo base their proposals on the observation code of the 2009 elections.

Both Frelimo and Renamo would have provincial election commissions issue domestic observer credentials (limited to one province) and the CNE issue international ones.

EISA and the Electoral Observatory say that once a credential has been issued, an observer should have the right to observe anywhere.

Renamo would not allow state and local employees to observe in the place where they work.

Some agreements

• **ELECTION DATE:** Elections should be held early in October. Frelimo says up to the first week of October, but announced 18 months in advance; elections abroad on the Sunday before national election day. Renamo proposes the second Sunday of October. MDM calls for 12 October. EISA suggests 4 October or the first Wednesday or Thursday of October.

• **NON-REGISTERED VOTERS:** Many people working on elections who were away from their polling station could not vote in past elections. All parties agree that polling station staff, observers, journalists,

police on duty, and paramedical staff can vote anywhere.

Other proposals

- **POLICE** are required to stay more than 300 metres away from a polling station, unless called by a polling station staff to resolve a disturbance. Frelimo would remove this restriction and allow police in polling stations. By contrast, Renamo would extend the radius to 500 metres.

- **NACIONALIDADE ORIGINÁRIA:** At present, candidates for president must be “native Mozambicans” (nacionalidade originária), but for any assembly simply need be ordinary Mozambicans. Frelimo would require candidates for national parliament (but not lower level assemblies) also to be of nacionalidade originária. This means born in Mozambique, child of at least one Mozambican parent, or born abroad before independence but by the time of independence had lived in Mozambique for more than half of their lives.

- **300 VOTERS:** The number of voters per register book and per polling station should be reduced to 300, to end the queues at polling stations, argues Renamo.

- **RECOUNTS:** Election commissions and candidates could order recounts of votes, Renamo suggests.

- **NEUTRALITY:** After complaints that school and health centre heads actively promoted Frelimo in the workplace, Renamo would require all public workers to be “rigorously neutral” in the workplace.

- **PRESS CONTROL:** During the official campaign period, publicly owned media such as Radio Moçambique and Notícias are expected to maintain balanced and neutral coverage of candidates. Renamo would extend this to private media and tighten the rules. Media would not be allowed to criticise, “degrade” or “ridicule” parties or candidates. Political advertising would also be prohibited during the campaign.

- **OLD POSTERS.** Candidates should be required to take down all their posters and advertising within 60 days of the election, suggests Renamo.

- **DISRUPTION:** MDM had trouble with Frelimo militants disrupting its parades and rallies so it proposes a ban on obstruction of meetings, rallies, marches, and parades.

- **GENDER PARITY:** EISA calls for “gender parity” to be required by law, with women being at least half of assembly candidate lists and 40% of the CNE.

- **BOND:** Several would-be presidential candidates failed to submit the required 10,000 signatures (and some submitted false signatures). Frelimo proposes that would-be candidates be required to pay 100,000 meticias (about \$3000), which would be refunded if the candidate was accepted and allowed to stand.

- **OTHER JOBS FOR CNE:** Present law requires CNE members to work only for the CNE and not take on other jobs, although the present CNE ignored that completely, and insisted that late decisions were not

due to other activities. Frelimo would recognise that, and allow CNE members to carry on with existing activities and manage family farms and businesses, as well teach, research and carry out cultural activities, in addition to being a CNE member.

- **7 YEARS:** Renamo would have CNE members serve for 7 years instead of 5 (perhaps looking forward to a proposal for a constitutional change to have elections every 7 years).

And the arithmetic error remains

Every election law since 1994 has contained an arithmetic error, which is ignored each time the law is redrafted. To assign the number of AR seats to each province, the law says divide the number of voters by 248 to get a number of voters per seat, then in each province divide the number of voters by that number to get seats per province. It seems simple, but it does not always work. Sometimes the total number of seats is more than 248 and sometimes less, so the CNE (in secret, of course) makes some kind of correction.

The problem has long been recognized across the world, and the Mozambican electoral law already uses the D’Hondt method, originally developed in Belgium, to assign seats to parties after an election. Only assigning seats to provinces before the election is wrong, and the law should be changed to use D’Hondt to also assign seats to province.

New book

Género e democracia - as eleições de 2009 em Moçambique, Conceição Osório, WLSA Moçambique.

The rapid increase in the number of women in parliament and in the leadership of political parties “places Mozambique as one of the countries with the most women in politics,” writes Conceição Osório in this new book, to be published 12 November. But her research also shows that although women are gaining political power, “her position of power within the party co-exists with a subordinate role at home.”

But the growing role of women in the democratic process can bring other changes, concludes Osório. “The democratic system renews itself through the arrival on the political scene of new actors, such as women, who bring new problems, new demands, and impose a necessary reconceptualisation of democracy and practical politics. In this way, we recognise on another as subjects with rights.”

The book notes that the share of women in parliament has risen steadily from 25% in 1994-99 to 40% in the current parliament. Women are 37% of the members of provincial assemblies.

The advance is even sharper in government. Presently, women are 28% of ministers, 13% of vice-ministers, and 23% of governors. In 1997 women were 4% of ministers and 21% of vice-ministers, and there were no female governors.