

# Mozambique political process bulletin



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## Will parliament ignore the Constitutional Council?

The draft electoral law currently being debated by parliament makes few of the changes demanded by the Constitutional Council in its ruling on 19 January 2005, approving the 1-2 December 2004 election. International observers said that the sloppiness and secrecy of Mozambique's 2004 electoral process was highly unusual and suggested major law changes, but these, too, are rejected.

The seriousness of international and domestic criticism of the 2004 election was quickly forgotten after the landslide victory of Armando Guebuza. But the debate on the electoral law has brought the widespread condemnation back into view. Lack of transparency is the major issue.

The Constitutional Council stressed that "the principle of transparency of the electoral process is an essential element of its national and international credibility." The joint civil society Electoral Observatory argued in a 29 August 2006 report that "the law must guarantee observers freedom of access to all phases of the electoral process". It continues: "The law itself must define in detail the rights and responsibilities of electoral observers. This important matter cannot be left for standing orders to be defined by the National Election Commission itself."

But Alfredo Gamito, chair of the parliamentary commission which has tabled the new law, disagrees. He accepts that the 2004 election administration functioned "badly", but he

argued to the *Bulletin* that this is not a problem of the law but of "deficient functioning" of the National Elections Commission (CNE). Therefore he does not see a need for major changes in the law. Issues like transparency must be left to the new CNE to define.

This view is not accepted by civil society and donors which will be stepping up pressure.

● A detailed analysis of proposed election law changes and remaining gaps starts on page 3.

### Comment

## Is a predominant party state 'democratic'?

When Sweden's Social Democratic Party lost the election in September, it had been in power for all but nine years since 1932. Sweden is one of many democratic countries with a "natural" party of government which is repeatedly elected over decades.

In many cases, a liberation movement becomes the dominant party, such as Congress in India and the PRI in Mexico (where PRI actually stands for the

**Fraud &  
misconduct  
in 2004  
confirmed.  
See page 15.**

Institutionalised Revolutionary Party). Similarly, in southern Africa, it looks increasingly like the ANC in South Africa, CCM in Tanzania, and Frelimo in Mozambique are being seen by voters as the natural party of government.

The Swedish Social Democrats, Congress and the PRI were all eventually beaten at the polls. But in what are sometimes called “predominant party states”, elections become a referendum on the ruling party – a vote for or against its continuation in power.

Predominant party states are no less democratic than those like Britain or the US which have frequent changes of power, and for young states predominant parties may increase stability.

But what distinguishes predominant party states like Mozambique and South Africa from one-man states like Zimbabwe or rapidly changing states like Zambia? Four factors seem important:

- There are genuine elections and the party can lose, which means that
- The party must remain responsive to voters. This, in turn, means good contact with the base and usually means strong internal party democracy so that those who lose touch are moved out.
- The party is more important than any individual and there are regular changes of leader. CCM, the ANC and now Frelimo have all had peaceful handovers within the party. Frelimo’s decision to not let Joaquim Chissano stand again was particularly important – the party responded to internal pressure from below suggesting that corruption allegations and *deixar andar* meant Frelimo might lose if Chissano stood again, so he was replaced by the party itself. Chissano may have been angry, but he did not form a breakaway party; he remained in Frelimo and even campaigned for his successor. Contrast this to Zanu in Zimbabwe, which has been captured by Robert Mugabe.
- Freedom of expression means the media and civil society provide a check on the predominant party. All leaders get angry with vocal opponents, but in South Africa and Mozambique the press remains outspoken; civil society in South Africa is strong and in Mozambique it is growing.

A successful predominant party, then, has three channels of information – the normal government system, the party itself where information can bypass possible blocks in government, and the media and civil society who raise particularly serious problems. A party which listens and responds stays in power.

Looked at in this context, the very close 1999 Mozambique election was a warning to Frelimo that it was taking the voters for granted. The 2004 election (where half of Renamo’s 1999 vote disappeared) suggests that those same voters now accepted that Frelimo had made sufficient changes and were willing to allow it to remain in power as the natural party of government.

But democracy is more than just elections; indeed, shifting from one corrupt and incompetent

government to another as happens in some countries cannot be considered democratic just because people can vote. Democracy is really about:

- Responsiveness. Does the government represent you and act in your interest?
- Rights. Does the government promote your political and economic rights and protect the rights of minorities and of opposition supporters?
- Accountability. Does the government account to its citizens and can you change the government?

Clearly a successful predominant party state, such as Sweden, satisfies those conditions.

Following the 2004 elections, Frelimo has moved to consolidate its power and position, and reduce the space available to the opposition. There is now a closer identification between the state apparatus and the predominant party. Pressure has been increased on civil servants and figures in civil society to join the party, and there are increasing allegations that it is easier to obtain licences, government grants, etc, if one is a member of the party. Frelimo is using the state apparatus to squeeze and harass the Renamo-controlled municipalities of Nacala, Beira and Ihlá de Moçambique.

As noted on page 11 in this issue, there is continued concern about the justice system remaining non-functional and the lack of progress on prosecuting corruption. This creates a sense of impunity and gives the impression that some party figures are no longer accountable to the citizens.

Similarly, on page 15 we point to fraud and misconduct in the 2004 elections. Far from being punished, those who acted improperly against the Renamo opposition seem to have been rewarded. Misconduct in 2004 did not change the outcome of the election (although it may have shifted a couple of parliamentary seats), but the apparent impunity and even reward for misconduct sets a worrying precedent for future elections.

Finally, some in the party will surely interpret the “Theses Explanatory Booklet For [Party] Cells” for the Frelimo 9<sup>th</sup> Congress, 10-14 November, as a curb on public debate. “Criticism is made inside the structures of Frelimo ... not in the streets or in the open air.” The principle of criticism and self-criticism “is only valid inside Frelimo structures.” Some will interpret this to mean that debate on issues ranging from election laws to development can only happen inside the party, and not in public with non-party members.

It is, perhaps, inevitable that a predominant party will try to capitalise on its position – from arrogance because it sees itself as the natural party of government, because it wants to use its position of power, and because it wants to retain power.

This is not a return to the 1975-90 one party state. But Mozambique will remain a democratic predominant party state only if it ensures that the democratic checks on the dominant party remain in force. The party and its leaders must remain accountable, the rights of those who are not party

supporters must be protected, policy debate must be open and not closed within the party, and – ensuring the ultimate check on the predominant party – elections must remain honest.

In countries with many parties in parliament or frequent changes of power, opposition parties remain a particularly important check. But in predominant party states, this role falls much more to non-party forces, particularly civil society and the media. Transparency and accountability in government and the election processes become more important. Institutions like the Constitutional Council which have prestige and integrity and are seen as independent have more of a responsibility and need to take a more prominent role.

In the coming weeks the media and civil society have an opportunity to put pressure on Frelimo and parliament to pay attention to the Constitutional Council ruling on the 2004 elections. It argued that “the principle of transparency in the electoral process is an essential element in its credibility.” Yet the draft before parliament makes no changes to reverse the total lack of transparency.

This is an important test. Will the predominant party encourage accountability and fair elections? Will civil society and media increase the pressure enough to move parliament to change the draft law?

Predominant party states are democratic, but only when the natural party of government shows – and is forced to show – restraint in its use of its predominance.

*Joseph Hanlon*

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## Election law proposals

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### Sharp disagreements and omissions remain

Three important changes to the electoral law have been agreed by Frelimo and Renamo. The election will be held on only one day (instead of two). Reconsideration of invalid votes (*nulos*) will be done at district level instead of in Maputo. And the first summation of results will be done at district level rather than provincial level.

Disagreements remain over the summation and tabulation process at national level, the National Election Commission, decision making processes, and the relationship between the CNE and STAE (Secretariado Técnico de Administração Eleitoral, the technical secretariat for electoral administration).

Neither party has proposed changes to meet the demands of the Constitutional Council and observers with respect to transparency, deadlines, and the procedures for making complaints about election violations.

Last year parliament (AR, Assembleia da República) established an ad hoc commission to revise the four electoral laws (CNE, registration, national elections, and local elections) and draft a new law for provincial elections. But the commission became bogged down on the membership of the CNE and was paralysed because Renamo refused to allow it to do anything until this question was resolved.

In May, the Frelimo majority in parliament decided to abolish the ad hoc commission and remit the issues to the AR Commission on Agriculture, Regional Development, Public Administration and Local Power, chaired by Alfredo Gamito. Standing committees do not require unanimity, and it finally began work on a new election law on 15 June.

As promised by Gamito, drafts of three laws – national elections, CNE and registration – were ready for a public debate in early October.

However, the commission again did precisely what the Constitutional Council criticised it for in the

past – it simply shuffled together the proposals from Renamo and Frelimo. The draft election law is still actually headed “Lei nº 7/2004 de 17 de Junho” because the commission has simply inserted suggested changes into the old law text. In its ruling on the 2004 elections, the Constitutional Council criticised this method because it leads to errors and inconsistencies. For example the 2004 law has conflicts between the times allowed for certain actions, because a thorough check was never made to look for knock-on effects of specific changes.

There are a number of agreed changes, but the three law drafts also contain proposals by one party where the other side has not responded, and significant areas of disagreement with competing proposals. These need to be resolved during the current parliamentary session.

Past electoral laws have been agreed by consensus, usually after last minute horse trading, and the hope is that this will happen again. But it is also possible that the Frelimo majority will simply pass a law. Alternatively, a new law is not absolutely essential, and the next elections could be carried out under the old law.

However the fear is that if Renamo does not agree, it will boycott the CNE and the elections, as happened with local elections in 1998.

The system of shuffling together two party proposals and then making a last minute deal means that issues not raised by either party but which were priorities for international observers and the Constitutional Council are simply not considered.

## Some donor pressure

The European Union, which put up most of the money for past elections and is prepared to pay for future ones, has been increasingly involved in behind the scenes discussions with both parties and with the AR.

In July, the Finnish ambassador, as local EU head, sent a letter to both Frelimo and Renamo presidents urging consensus on an election law. But the letter also called for changes far beyond anything in the present draft: sharply increased transparency, a functional CNE (in contrast to the previous one), improved registration (possible using a different model), speeding up action to allow enough time to prepare new elections, and clarification of the procedures for dealing with complaints from parties.

By sending the letter to the presidents of the parties rather than to the AR commission or the heads of the parliamentary benches, the EU made it clear that it sees this as a political problem which can only be resolved at high levels within the parties, rather than in parliament.

The EU was seriously embarrassed and angry when its election observation team arrived in 2004 and was then unable to sign a memorandum of understanding with the CNE because the CNE refused to allow the kind of access and transparency that is normal in other countries. The EU report said "the overall level of transparency in the organisation and conduct of the electoral process was not adequate."

The EU is not making any threats. But it seems likely that before releasing money for the next election, the EU will want either a law which guarantees openness, or to sign an observation agreement under which the CNE guarantees transparency.

## Civil society's weak response

The public debate on the electoral law has been highly party-based, in part because of a very weak response by organised civil society.

In mid-October the AR commission ran public meetings in all 10 provinces, each of which drew up to 300 people. But most of the attendees had been mobilised by Frelimo and Renamo and most speakers simply supported the proposals, particularly with respect to the CNE, of one side or the other. There was no debate and few suggestions outside the party proposals.

For the 2003 and 2004 elections, seven Mozambican NGOs formed the Electoral Observatory. In 2004, with support from the Carter Center, it carried out a very effective parallel count. After the election EISA (Electoral Institute of

### Comment

#### ***Both sides trapped by old thinking***

To move forward, both Frelimo and Renamo need to abandon old ways of thinking about the electoral process. Renamo is locked in the belief that its only power comes from veto and boycott, and that it can only protect its interests by having as many party people within the system as possible. This leads Renamo to demand consensus decision making (giving it a veto) and partyisation of all institutions, which in turn has the advantage of increasing the number of patronage posts that leaders can hand out. But Renamo members in CNE and STAE failed to detect the main frauds in 2004, which were exposed by the press.

Renamo's use of its veto to block consideration of the electoral law for all of 2005 ensures that no one will now agree consensus voting, and Renamo will gain no international support for this. And transparency rather than party members should be Renamo's main defence – obtaining more information and bringing in sympathetic experts rather than relying on easily fooled party hacks who do not understand the process and become bored and don't pay attention.

At the same time, Frelimo is locked in the belief that it needs total flexibility to be able to manipulate the results in secret, and to be able to implement instructions from high level. But times have changed for Frelimo as well. The 2004 elections destroyed Mozambique's reputation for elections and further conduct like that will besmirch Frelimo's good name. At the same time, it has become a predominant party and does not need to be able to grossly manipulate the results. The credibility of the elections, domestically as well as internationally, depends on the process being seen to be reasonably open and fair.

Old thinking by both Frelimo and Renamo has created a climate in which it is too easy for the CNE and STAE to hide incompetence and where people with party and personal interests dominate those who want to take pride in running a good election. Twelve years have passed since the first multi-party election and it is time for new thinking. *jh*

Southern Africa) organised debates in three districts in each province, which was supposed to be the basis for an Electoral Observatory detailed legislation proposal. Instead, the thick report on the district debates remained unread and unused.

Faced with a lack of will and money as well as disagreements over leadership, the Electoral Obser-

vatory has become moribund. It released a small report on the electoral law on 29 August, but this has had little impact because it was not followed up.

## One day election

Perhaps the most important agreed change in the law is that elections will now be held on a single day, instead of two as in the past.

Holding elections over two days in the past created a host of problems, yet few people voted on the second day. Many of the errors in the results sheets (*editas*) were caused by polling station staff being tired after two days without sleep and then making mistakes. Renamo also complained about the overnight security of the ballot boxes.

The change is based on having 500 voters per polling station instead of 1000, which means that there will be twice as many polling stations and therefore double the number of polling station staff and party monitors, as well as needing twice as many rooms for polling stations.

In practice, now that everyone is more experienced, polling stations can handle more than 500 people in a day, so it might make more sense to raise the number to, say, 750.

There were widespread complaints about holding the election in 2004 after the start of the rainy season. Renamo has responded to this by proposing that elections should always be held in the first half of October. Frelimo has not responded to this proposal, but it must be under strong pressure to accept.

### **Counting at polling station**

Mozambique always gains high praise for procedures and conduct at the polling station, and there are no proposals to change this. Each polling station is independent, with its own staff and register book, and is usually in a school classroom.

As soon as voting finishes, ballots are counted in the polling station in the presence of party monitors, journalists and observers. When the count is finished, a summary results sheet (*edital*) is prepared, and immediately posted on the door of the polling station. Copies of the *edital* are given to the party monitors. This allows parties, the media and observers to do a parallel count, usually providing results within 36 hours.

This part of the process always wins high praise from observers and media, in part because it is all done in public. Criticism is of subsequent steps, which are done in secret.

## Consolidation to start at district ...

In a major change in procedure, Renamo and Frelimo have agreed to give a major role to the more than 160 district and city election commissions (CDEs). All material from polling stations would be immediately sent to CDEs.

First, CDEs would reconsider all the invalid votes (*nulos*). In the past, this was done at national level by the CNE. More than 290,000 "invalid" ballot papers were sent to Maputo in 2004 and the CNE ruled that nearly one-third were actually valid – the local polling station staff had applied criteria too strictly even though the intent of the voter was clear. More than 91,000 re-qualified votes were added to the national totals.

Under the new law, the CDE would recheck the *nulos* and then "correct" the results sheet (*edital*) of each individual polling station.

Then the CDE would add up the results from the individual polling stations, to produce a district result, within 5 days.

This is a quite radical change. Previously consolidation began at provincial level, and observer groups argued for an increase in power of the provincial election commissions (CPEs); this proposal takes the decentralisation much farther.

## ... but what happens at higher levels?

But disagreement remains about the role of provincial and national election commissions. The present law is confused and says that the CNE does its count based on consolidated results sheets from the CPEs and "other documents sent to the commission". Since the law also requires that a copy of each polling station *edital* be sent to the CNE, this led to the CNE doing an entirely independent count. As the box on Tete on the next page shows, the CNE result was sometimes significantly different than the CPE result; because it was all done in secret, there was no explanation.

Furthermore, one of the most serious problems is that many polling station *editais* (perhaps more than 1000) disappeared or had ink poured on them on their way to Maputo. This would not be a problem if they were considered at district level.

Domestic and international observers and the press have always been critical of the way the CNE can "correct" results in secret, and give no explanation. European Union observers said "The 'parallel' tabulation of results at central level should be eliminated because it does not serve any apparent purpose and fosters public mistrust of the system. Efforts should be concentrated on the tabulation process based upon the provincial results."

Frelimo's wants to maintain the present system.

Renamo proposes that CPEs and the CNE could only compile results based on *editais* and the more detailed minutes (*actas*) from the lower level, which would mean that there would be no alternative count at national level – it would just be a summing up of district results sheets.

## Are recounts possible?

One big problem in all five elections has been polling station results sheets (*editais*) which are manifestly wrong, often just an error in transcription or addition, and which are then excluded and the whole polling station not counted. There were also cases where there were indications of "ballot box stuffing" based

simply on submitting inflated figures on *editais*. Both of these could be checked and corrected by recounts. The law does not prohibit recounts and one was carried out in the 2003 local elections, but recounts have never been encouraged.

It would seem that the new law, with the first tabulation at district level, would allow a recount there. All materials (including the sealed bags of ballot papers) are sent to the district election commission, which could open the bags and count again in the presence of party representatives.

The European Union argues that "the electoral law should explicitly permit a recount of votes to be decided at a first level ... if there is a suspicion of fraud or results sheets are missing."

## Observers: 2004 not fair or transparent

International observers and Mozambique's Constitutional Council were highly critical of the 2004 election process. The Carter Center concluded that "the National Elections Commission (CNE) has not administered a fair and transparent election in all parts of Mozambique." Lack of transparency of the tabulation process, it warned, "will continue to cast a shadow over Mozambique's democracy."

"Like all other international and domestic observer groups, we were not given full access to the national counting centre at CNE headquarters as

well as at the various provincial counting centres," the Commonwealth said, noting that "the lack of full access created an atmosphere of secrecy and mistrust about the whole counting process." The Commonwealth was particularly concerned that "no observers were allowed to witness ... the CNE's process of reconciliation and adjustment of the official provincial result" which is "capable of having an overbearing effect on the outcome of the elections".

Observers were amazed at the fact that CNE decisions and even lists of polling stations were secret. The European Union declared that "all decisions taken should be published." It continued that "it is recommended that the law expressly state that all CNE plenary meetings are open to the public."

"The electoral law should clearly state that political party delegates and domestic and international observers shall have full access to the all stages of the electoral process, including the tabulation process at provincial and central level, as well as requalification of invalid votes and of tally sheets."

The Constitutional Council joined in the litany of criticism. "The principle of transparency of the electoral process is an essential element of its national and international credibility. Thus, without prejudicing essential guarantees of security and good conduct of the operations, adequate conditions must be created so that there do not remain any doubts about the impartiality, integrity and strict legality of these operations at local, provincial and national level."

The joint civil society Electoral Observatory in a report in August 2006 argued that that "the law must

### ***How CNE secretly changed Tete totals***

The Tete Provincial Election Commission (CPE) issued its formal results on 11 December 2004. It said that it had included 916 of 919 polling stations, missing out 2 because of errors in *editais* and 1 because results did not arrive from a rain-affected town. It said 341,197 people voted for President, of whom 234,677 voted for Guebuza and 73,417 voted for Dhlakama.

But the CD-rom of detailed results released by STAE in August 2006 shows very different results for Tete. It shows that the CNE only processed 881 of 919 *editais*. Yet it found more votes – 371,667 votes overall, of which 256,070 were for Guebuza and 76,464 for Dhlakama. (This does not include any requalified *nulos*, which were only added in at national level.)

The electoral law for 2004 said that final results should be based on provincial results, and the CNE told international observers that it would explain any changes it made to provincial results. But it never did so. So there is no explanation as to how the CNE found 30,000 more votes from fewer polling stations, or why it excluded an extra 35 polling stations.

Commonwealth, Carter Center and EU observers all criticised the ability of the CNE to change the final results in secret and with no explanation.

guarantee observers freedom of access to all phases of the electoral process as well as to all supporting documentation.”

## No response from parties

Despite the chorus of criticism about the lack of transparency, there has been little response from Frelimo and Renamo. Correcting one of the most egregious issues, they agree that detailed lists of polling stations must be published 30 days before the election.

Renamo also proposes that party agents (*mandatários*) should have the right to be present at all counts, but says nothing about observers and press.

No other changes are proposed.

## Dealing with complaints

Observers, the Constitutional Council, and Renamo all point out that the rules for dealing with complaints are complex and impossible to follow – and were not followed in 2004.

Renamo said that from polling station level up to the CNE it made complaints which were rejected without explanation, and it had no recourse. Requirements for the presentation of evidence create problems; for example, Renamo claimed that votes had been falsely disqualified, but those ballot papers were already in the possession of the CNE so Renamo could not produce them as evidence, so the CNE rejected the complaint.

The Constitutional Council was particularly critical of the CNE for not following up and prosecuting obvious violations of the law. This creates the image, it said, that election law violations go unpunished.”

The European Union and other observers also raised the problem that there seemed to be no system for recording complaints and ensuring that they are dealt with.

More recently, lack of a proper complaints procedure was raised in the July EU letter to Frelimo and Renamo presidents, and in the Electoral Observatory August report.

Proposals from the two parties only begin to deal with this. Renamo wants to create a way to appeal if a polling station president refuses to accept a

protest. It also wants to retain documents which are currently destroyed (making prosecutions more difficult). Renamo also wants to allow 3 to 5 days for protests after the various counts, compared to 2 at present.

Surprisingly, Renamo has agreed with Frelimo that complaints to the Constitutional Council must be continue to be made within 3 days after the CNE announces a result, which proved very difficult for Renamo in 2004.

Frelimo wants complaints to be decided only on the basis of proof presented, while Renamo argues that things which are “public knowledge” do not require proof.

But there is a real need for a simplified and clarified complaints system and a requirement that election commissioners deal with potentially illegal actions, and neither party has proposed this.

## Ending the 5% threshold and other proposals

Various other small changes are proposed. Frelimo wants to eliminate the 5% threshold, which requires that a party gain 5% of the national vote before it obtains seats in parliament. Renamo demands the threshold be maintained. Without the threshold, Raul Domingos’ party PDD would have won two AR seats in 2004. But both parties agree to retain the d’Hondt system for allocating seats, which discriminates against smaller parties.

Both parties also agree to retain the mathematically incorrect method in the present law for allocating AR seats to provinces. The method set in the law can give more or less than the 250 seats, and d’Hondt should be used for this, too.

Frelimo wants presidential candidates to have to post a bond of 100,000 MTn (\$4000).

Both parties agree that ballot boxes should be transparent instead of metal as they are now.

Renamo proposes that it should no longer be an electoral crime to incite hatred, racism or war during a campaign.

- More details of the proposed election law changes as well as the three draft laws (in Portuguese) are available on <http://www.open.ac.uk/technology/mozambique/>

## Partyisation with majorities or vetoes? Or is there another way?

Should Frelimo dominate through its natural majority? Should Renamo dominate with veto and boycott? Or is there some other way to organise elections?

The 2004 National Elections Commission (CNE, Comissão Nacional de Eleições) has 19 members, mainly appointed by Frelimo and Renamo. It proved unwieldy, politicised, unprofessional, and unable to take decisions. The political basis of the CNE was criticised both nationally and internationally. European Union Observers said the “inclusion of representatives of the parties in Parliament has resulted in an overly politicised process for tasks which, though having political repercussions, are technical in nature.”

The Constitutional Council said the CNE needed to do a better job organising and supervising the election, and that after 10 years the CNE was still unprofessional. The problems identified by citizens, observers and others “persist and are repeated in

each election, without any significant improvement”. The CNE must be institutionalised and professionalised.

The Electoral Observatory called for a reduction in party political influence in the CNE.

“These seem technical problems but they do not have a technical solution. Electoral administration has become politically controlled and too dependent on instructions from the two parties,” comments Otilia Aquinio of Amode (Associação Moçambicana para o Desenvolvimento da Democracia) “This means there is no interest in doing a good job or explaining actions to the public. This leads to a lack of pride in running a good election and no interest in improving the quality.” The system needs to change to reward skill and integrity rather than party loyalty.

Guilherme Mbilana of CEDE (Centro de Estudos sobre Democracia e Desenvolvimento) underlines the politicisation of the process. When the Electoral Observatory went to parliament (AR) to present its suggestions, “we were told, ‘talk to our bosses, who are not in this building’.”

### ***How South Africa chooses its CNE***

Parliament, the constitutional court, a selection panel, and public hearings are all part of the way South Africa chooses the Independent Electoral Commission (ICE), its CNE. The ICE has only five members who serve for seven years; one must be a judge. The present ICE was appointed in 2004.

The Constitutional Court places an advertisement in the media and anyone can apply for the job or nominate someone else. The Court then selects a shortlist. In 2004 there were more than 20 applicants and the Court shortlisted 13.

A four person panel runs the next step. The president of the Constitutional Court is chair of the panel and the other three members are named by the Human Rights Commission, the Commission on Gender Equality, and the office of the Ombud (known as the Public Protector in South Africa).

The panel runs two days of public interviews, in which candidates are asked quite hard questions, including how they would deal with difficult electoral conflicts. By law, the panel then selects a list of at least eight people.

Parliament then picks five people from the list of eight.

Thus the process is totally transparent. The constitutional court and the panel have substantial public respect. But parties in parliament are able to exclude candidates they think will be biased against them.

### ***Renamo: larger party role***

Renamo totally rejected the approach of observers and proposed that the entire process should be more politicised. After initially proposing a larger CNE of 23 members, half Renamo and half Frelimo. It now proposes a CNE of 15 members, 7 from each party, who would choose a civil society chair. CPEs and CDEs would have 11 members.

Politicisation would be increased at all levels. For STAE (Secretariado Técnico de Administração Eleitoral, the technical secretariat for electoral administration), as well as deputy directors and a few technicians named by the parties as at present, Renamo would require that permanent staff and technicians all be named by the parties. Renamo would also have the parties select polling station staff.

Renamo would require unanimous decisions by all election commissions and would require a large

number of documents to be signed by a wide range of people. Both would give veto power to individuals.

Renamo would make the 11 CPEs full time, permanent bodies, rather than simply serving in electoral periods.

The package would totally politicise the electoral process, and give Renamo a veto and substantial patronage to reward its members.

### ***Frelimo: involve civil society***

Frelimo initially proposed to continue the present system, but late last year suddenly switched to a CNE with a civil society majority – 9 members with 2 Frelimo, 1 Renamo, and 6 chosen by parliament (AR) from civil society nominations. CPEs and CDEs would have 7 members – 2 Frelimo, 1 Renamo, and 4 civil society people co-opted by the other 3. CPEs and CDEs would only function during registration and election periods.

Decisions would be by consensus when possible, but by majority if necessary. Frelimo would eliminate the party-nominated STAE deputy directors and technicians and have all staff selected from an open competition with newspaper advertisements, etc. Polling station staff would be similarly selected, as at present.

The Electoral Observatory proposed a CNE of 11 – 3 Frelimo, 2 Renamo, 5 civil society chosen by the AR, and a civil society president chosen by the other 10.

It is believed that Frelimo is ready to accept an increase to 11 or even 13 members and CDEs and CPEs of 9 members, to allow Renamo to have 2 members on each.

### ***How to choose civil society members?***

Renamo's main fear is that Frelimo will use its majority to choose "civil society" candidates close to Frelimo. In 2003, for the first time ever in Mozambique, the CNE selected its president from a list of civil society nominations. But it chose Rev Arão Litsure of the Christian Council (CCM, Conselho Cristão de Moçambique), a body widely seen as historically close to Frelimo.

Frelimo says that civil society members must be proposed by a "legally constituted civil society organisation". For CDEs and CPEs they would simply be co-opted and for the CNE simply "elected" by the AR. Frelimo majorities in these bodies would

ensure that it could select civil society representatives sympathetic to Frelimo, at a time when there is increasing pressure on civil society to be closer to the ruling party.

The Electoral Observatory members want something broader and more open, a public competition (*concurso público*) directed by the AR. It should be open to anyone to apply or be nominated. At the very least, the list of candidates and some of the discussion should be public.

Sheik Abdul Karim of the Islamic Council (a member of the Observatory) said that "candidates would present themselves as if they were applying for a civil service post and this process would be organised by the AR Commission on Legal Affairs."

Some Electoral Observatory members would like a broader jury making the choices, with AR members plus some respected outsiders such as a judge or religious leader.

Guilherme Mbilana of CEDE says the Frelimo proposal comes very close to what civil society wants. The main difference is the selection process and how open it is.

### ***Status of STAE***

The other main issue in dispute is the status of STAE, and how subordinate it should be to the CNE. This has been an area of contention, with Frelimo seeing STAE as effectively part of the civil service and carrying out a largely technical task. Renamo sees the civil service as politicised and wants the CNE to take over direct management of STAE.

Both sides agree STAE is to be subordinate to the CNE and agree on its basic tasks. But Frelimo sees STAE as a "public service for electoral administration" which organises and carries out technical-administrative activities for registration and elections. Renamo sees STAE as a body giving technical and logistic support to the CNE.

Frelimo would allow STAE to carry out actions on its own initiative ("despachar" in Portuguese) while Renamo would have it carry out orders of the CNE ("cumprir despachos"). Frelimo would have the Council of Ministers appoint the director general of STAE, while Renamo says this should be done by the CNE.

Frelimo says that registration is carried out by STAE, while Renamo says it would be carried out by the CNE.

## **New electoral register essential**

The total chaos with electoral registers in 2003 and 2004, with the failure to update and huge number of errors, means there is a consensus that a new registration must be done from scratch.

The two parties agree that there should be a new registration and that registers should only be updated in election years, not every year as called for in the present law but not done. Under new procedures, the civil registry would have to notify electoral authorities about all deaths, so names could be deleted.

The original register would be kept centrally and a copy given to the CDE.

There was a problem in the 2004 election of polling stations sometimes being far from where people registered; distance and lack of information made it hard for some rural people to vote. Renamo would solve the problem by no longer allowing mobile registration brigades and by insisting the polling stations be in the same place that people registered.

As with other parts of the election law, the new registration law will simply be the old one plus changes proposed by the parties. But observers argue that the present system is impossible – it assumes a permanent register which can be kept up to date, but this cannot be done in practice, so a new, expensive, “permanent” registration is done for each election.

The EU is calling for a total rethinking of the model. After the 2004 election confusion, EU observers suggested that eventually electoral registration should be linked to the civil register; an identify card could serve as a voting card. There is some sympathy with that idea, but the civil registry is such a mess that it could not be used for the next elections.

An alternative would be a much simpler registration for each election or set of elections. The main cost and the main source of error has been in transcribing and computerising the registers. The alternative would be do a simple hand-written register, as now, to cover a single election or pair of elections (such as 2008 and 2009).

There would be no need to computerise or update such a register, which would simply be discarded after national elections in 2009.

## What about computers?

Computerisation has been one of the biggest sources of controversy throughout the past three elections. Systems were badly written and insecure. There were major errors and strong rumours of manipulation by Frelimo in 1999.

Renamo has tried to resolve the problem through

decentralisation and elimination of all references to computerisation in the electoral legislation. And there is strong support from observers for not doing a separate computer tabulation at national level based on individual polling station editais.

But this does not really solve the problem. In the next elections there will be more than 25,000 polling stations. Some districts will have more than 500 polling stations. Although it might be possible, it would extremely difficult to write all of these by hand onto tally sheets and the add up the columns with a calculator.

Like it or not, Renamo will need to accept some degree of computerisation and every district (even those without secure electricity) will need computers.

That means buying or creating tabulation software which can be easily used in the districts but which also can be used to compile provincial and national compilations.

In their proposals, the parties have not even considered this issue. The Electoral Observatory says that “the law must have mechanisms which guarantee transparency in the creation of any computer system”. Computer systems should be developed by an agency selected by public tender, and any programme that is developed must be made public so that it can be tested by anyone interested.

The *Bulletin* agrees with this. We might go farther and suggest that the law should set up a separate election computer authority, perhaps headed by a pair of senior technicians nominated by Renamo and by Frelimo who would then choose an eminent computer expert (perhaps from abroad) as the chair. All actions would be totally public, and this agency would hire professional staff and take responsibility for all systems, software, training, hiring, and maintenance of computers down to the district level.

Frelimo cannot hide behind an assumption that it can repeat the 2004 fiasco, and Renamo cannot hide behind total opposition to computers. Some agreement has to be reached which allows computerisation to be seen as a technical issue, but with transparency and full political access.

## Comment

### Put results on a website

In the modern world, many countries, including Portugal, have an election website which is regularly updated with partial results. This is important in building confidence in the electoral process, especially when it may take two weeks to publish final results. In Mozambique, there is also a need to give easier access to polling station-by-polling station [*mesa*] results.

CPEs should be instructed, by law, to create websites with partial results. Since it will be necessary to have computer systems at district level to tabulate the results, the law should require that these be sent to provincial level at least once a day and immediately be posted on a website. Where there is an acceptable telephone connection, this could be easily done electronically. For those remote

districts without good telephone links, it would be necessary each day to make a CD-rom and send it by car, boat or bicycle to the provincial capital.

Compiling results at district level does not need complex software and it could be written in a way that it would automatically prepare the results to send to provincial level. Posting those results on the

web would be automatic; they would not be reviewed first by the CPE.

Such a website would make clear that these are partial results, subject to addition and correction (of typing errors or in the event of a recount). But they would give observers, parties and the general public a good picture of what was happening throughout the country.

Alternatively, CPEs could submit the district information electronically to Maputo, where a national website could be maintained. But the key point is that district data must be posted *without delay* and without being subject to any checks at provincial and national level. *Joseph Hanlon*

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## Donors & government at loggerheads over governance, corruption

“Governance” is becoming an increasingly fraught issue in government-donor relations, with corruption and the justice sector causing particular headaches. The joint aide memoire between government and the group of 18 (G18) budget support donors, agreed on 14 September, says that the poor quality of the donor-government dialogue on good governance is a “special preoccupation” of the two sides, and that the two sides need to find a better way of working together.

“There has been no progress on the implementation of the government’s anti-corruption strategy,” the two sides admit. The strategy was a donor condition on aid, but was only adopted by government in April, two days before the budget support meeting with donors. That the phrase remained in the aide memoire at all is a sign of growing donor anger on this issue; government negotiators tried to have it removed or watered down, but donors stood firm. The agreed document also notes that Central Office to Combat Corruption provided “no information” about ongoing corruption cases.

### Words & good marks

Donors now admit there is hardly a dialogue at all on governance, and simply haggling over indicators as the government tries to obtain the best possible marks for governance with minimum changes. “We pretend to have a dialogue but we don’t. We only talk about indicators,” said one donor official.

After repeatedly getting bad marks for governance, government’s emphasis is not on improving practice but on changing the targets and indicators so that it gets better marks. Government negotiating tactics are to delay, avoid small meetings, and hold large formal meetings which discuss vague generalities. Government negotiators know that donors are under pressure to issue public statements at agreed times, and so they enter last minute negotiations with changes which they hope will be agreed in haste and make government looks better.

In negotiations earlier this year, they succeeded. The governance indicators agreed for 2007 (in what is called the “performance assessment framework (PAF) matrix”) will be easier to meet than those now in force, which means that although the government will get poor marks for governance in the next review

in April 2007, covering this year, it will suddenly get good marks in April 2008. No one will note that the exam was easier, and everyone will praise the pupil for doing well.

A single word in one justice indicator was enough to make it easy to meet. Donors are very concerned about people being held in prison without charge, so they wanted an indicator showing that the percentage of uncharged prisoners was falling. Government negotiators convinced donors to use the word “detidos”, which they subsequently argued means prisoners who have been charged – by definition, 100% of detidos have been charged, so the target is automatically met. The word the donors should have insisted on is “prisoneiros” or “reclusos”, which means anyone in prison.

It may seem arcane and petty, but by a careful choice of a word, the government no longer had to make certain changes in the justice system to meet donor demands.

### Justice

“Frustration has peaked in the justice sector. It is impossible to discuss the substance behind the indicators,” admits Marc de Tollenaere of Swiss Cooperation. He heads the donor governance platform and the G18 side of the joint donor-government working group on governance.

Government has resisted justice reform for more than a decade and many donors are now convinced that the Frelimo elite does not want an independent judiciary. Most donors have dropped out of the justice sector in frustration and only two remain seriously involved, the European Union and Denmark.

Much of the resistance to change is cloaked in the autonomy and independence of the judicial system. Donors want to discuss the performance of the courts and judges, but cannot. The sector even

refuses to provide statistics, which the aide memoire calls "a major preoccupation."

"Donors and government cannot interfere with judgements," said de Tollenaere, "but I doubt if autonomy exists for the administrative side."

In the talks leading up to the April donor-government agreement, the Justice Ministry agreed that there could be a "value for money" study of the sector, but at a July meeting of ministers and key donor ambassadors, Justice Minister Esperança Machavela said that such a study could only be done of the ministry and not the judicial system. In the subsequent mid term negotiations leading up the September aide memoire, it was agreed that the ministry would be evaluated this year and the judicial sector next year.

## **Banco Austral**

"The question of Banco Austral will continue on the agenda of future political meetings" between the government and the G18 donors, the aide memoire says, with the next meeting expected at the end of November. "A very high level working group will agree the next steps".

The working group consists of representatives of Sweden and Portugal and the Ministries of Finance and Justice. By late October, however, it had not met to prepare the November meeting.

Banco Austral had been privatised in 1997 and was then plundered of \$150 million by a group close to the Frelimo leadership. It was returned to state control in 2001 and António Siba-Siba Macuácuá, Bank of Mozambique (central bank) director of banking supervision, was named acting head to sort out the chaos. On 11 August 2001 Siba-Siba was murdered at the bank's headquarters. There was no investigation of either the fraud or the murder, and no charges were brought against the bank management despite clear evidence of misconduct.

Some donors kept up the pressure, and eventually forced a forensic audit, completed last year. It apparently confirms the misconduct of some senior Frelimo people, and offers leads on the Siba-Siba murder. Now the donors are trying to force a reluctant government to prosecute those responsible. The aide memoire makes it clear that key donors will continue to treat this as an important governance issue, but that government will continue to resist opening this can of worms.

## **Divisions**

On both sides, there are divisions about the role of the government-donor dialogue and about what should be expected.

The G18 budget support group (known as the Programme Aid Partnership, *Parceria de Apoio Programático*, PAP) now provides one-third of the state budget and increasingly has a role at the very heart of government. There are 24 joint donor-government working groups, some of which are now highly professionalised; education and

municipalisation, for example, each have a full time person working for them. In areas where there are SWAPs (sector wide approaches) there is already detailed coordination between donors and ministries. Others are more informal. In many cases, the donor representatives are project officers who are focussed more on day-to-day and short term needs and do not think about policy issues.

On the government side, the Ministry of Planning and Development takes an active role in the process, while some other ministries do not. With respect to governance, neither donors nor government have been active in the decentralisation, justice and public sector working groups.

Despite the rhetoric, governance is not a high priority with most donors. The United States is ending its governance programme, and there is relatively little donor money for governance.

There are also divisions and questions on the donor side. How much should donors push governance? Mozambique is a democracy and some of these issues should be left to the democratic process. Also, donors do not want to impose governance conditions that might force them to cut aid; they need to move money and keep the image of Mozambique as a donor darling. Agreement with government is more important than pushing on difficult governance issues.

A key area of division and confusion is just how important corruption is, and how to deal with it. This comes to a head around Banco Austral, where Sweden has insisted on a forensic audit and now on prosecutions. This follows a view taken by some in civil society that if the people who broke the bank and killed Siba-Siba are not prosecuted, it will set a permanent precedent for impunity. The other view comes from Britain (DfID) which prevented Sweden from making Banco Austral prosecutions a condition of aid. Britain argues that it is better to look forward rather than back, and that there is little to gain from prosecuting individual members of an increasingly cooperative Frelimo elite.

Finally, there is a politician-technician split. Technicians from both sides negotiate the PAF matrix, but political discussions take place between ambassadors and ministers. On both sides, there is too little contact between politicians and technicians, leading to a mismatch in discussions. Government ministers charm ambassadors with vague promises that are not carried forward at technical level.

Also, areas like elections, human rights and to some extent corruption, which are not in the PAF matrix, are handled at the political level rather than the technical level. Thus there are discussions about elections at a technical level, but despite the fact that the key decisions on the election law are being taken in the coming weeks, only the European Union has been raising this at a political level.

Another issue is the regular turnover of donor staff. There are few in Maputo who remember the

2004 elections and the harsh criticisms of international and domestic observers.

### **Indicators**

de Tollenaere notes that in other sectors such as education, it is easy to agree targets and indicators such as teacher/pupil ratio. But there is still considerable debate about how to measure governance, and this is not simply government intransigence. "On decentralisation, the government has done really well", yet it has not met two of the three indicators so officially it is doing poorly. "Everyone from both sides agrees this does not reflect reality", he said. This is because the "7 billion meticas" (old money, about \$275,000) given to each district and the various decrees passed were

government initiatives and were not part of the donor government agreement and thus had no indicators. Government gets good marks by meeting donor demands, not by showing initiative.

"This is frustrating for both sides," de Tollenaere continues. "We are getting bogged down in targets. Has the process actually made it more difficult to make a fair appraisal, rather than easier? How do we take the discussion back to the issues around longer term reform?"

- The Programme Aid Partnership (Parceria de Apoio Programático, PAP) has a website <http://www.pap.org.mz/pt/index.htm> which contains some information, including the PAF matrix. It has not posted the 16 September aide memoire, which can be found on <http://www.open.ac.uk/technology/mozambique/>

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## **What role for provincial assemblies?**

Elections of provincial assemblies (parliaments) are scheduled for next year. So far no legislation has been tabled setting out their role, but proposals will be made in the currently parliamentary session.

Provincial assemblies were included in the new constitution at the insistence of Renamo, but unlike national and municipal elections, only the assembly will be elected; the governor will still be appointed by the President. This assures that the governor will be for a different party than the assembly majority in Sofala and perhaps several other provinces.

Although initially a Renamo idea, the government is now looking a provincial assemblies as part of its decentralisation and deconcentration process. Alfredo Gamito is chair of the parliamentary Commission on Agriculture, Rural Development, Public Administration and Local Power, which will consider the proposals.

Gamito says that just as there are national, provincial and district roads, education and other services are similarly divided at the three levels. A province, he explains, gets money from central government for centrally defined activities but also receives money for things like provincial roads which can be decided on and carried out by the provincial government.

Therefore, the national government will table legislation giving the provincial assemblies the responsibility for approving and then overseeing the carrying out of that part of the provincial budget which is not determined nationally.

Gamito points to the "7 billion meticais" (old money, \$750,000) given this year to each district as being part of the same process. The spending of that money was partly determined by unelected district consultative councils, which Gamito sees as embryonic elected district councils. Similarly, his personal view is that governors will eventually be elected. This is all, he says, part of a "gradual process" of decentralisation.

Renamo is expected to want a less gradual process, and to table alternative proposals giving the provincial assemblies more power.

### **2007 seems impossible**

It now seems impossible to approve new legislation, set up an election commission and then do a registration in time to hold provincial elections next year. Also, there is a strong feeling that it is simply too expensive and time consuming both for the government and the political parties to have elections three years in a row.

Thus there is a growing view that provincial elections should be held at the same time as either local elections (next in 2008) or national elections (2009). This might require a constitutional amendment and would require agreement of Frelimo and Renamo. So far, neither seems willing to raise the issue, at least publicly.

### **District base for province elections?**

Provincial elections will use districts as constituencies. (*círculos eleitorais*). Just as at national level there is a separate list of candidates for each province, so at provincial level there will be a list for each district. This follows the decentralisation direction of the government, which has accepted a substantial shift of the national electoral process to district level.

Government seems likely to propose that as with municipal elections, independent lists of citizens will be able to stand for election.

## Government names Frelimo administrators for 2 Renamo cities

Two Renamo-controlled municipalities have had a competing Frelimo administration imposed on them by central government, and the position remains confused.

In a little noticed ruling before the 2003 municipal elections, the then President Joaquim Chissano announced that the central government would have “representatives” in three of the 33 municipalities, Maxixe in Inhambane and Nacala Porto and Ilha de Moçambique in Nampula. No explanation was given as to why these three needed representatives and the others did not.

In the event, representatives were only appointed in the two cities won by Renamo, Nacala and Ilha. The Ilha city administration had only a handful of skilled staff, and most were transferred to the new “representation”, which left the new and inexperienced Renamo administration with little support. This has been one cause of the ongoing problems in Ilha.

No representative was appointed to Maxixe, where the mayor is Frelimo’s Narciso Pedro.

The government has the right to appoint “representatives” under article 8 of the municipalities law (Lei 2/97 de 18 de Fevereiro) which says that “the state administration may maintain its representation and services” in all or part of a municipality.

Locally, this “representation” is being referred to as a “district administration”, with the district having the same area as the city. But government officials disagree over this designation, and the question of whether there are now 130 districts instead of 128.

Dr. Wilson Jarnet of the National Directorate for the Development of Municipalities (Direcção Nacional de Desenvolvimento Autárquico) told the *Bulletin* that there are now 130 districts. Nacala and Ilha were once districts, she said, although the legal documents making these two cities districts again has not yet been published. But this was immediately denied by the National Directorate of Local Administration (Direcção Nacional de Administração Local), which said they are not districts.

On the Ilha, it is accepted that in colonial times there was a central government representative, but it is said the Ilha was never also a district. It is also pointed out that in the colonial era, cities had less power than they do under the present municipalities law. Indeed, the 1998 report of the Ministry of State Administration says that the city of the Ilha serves as the headquarters of several district directorates for neighbouring Mossuril district, which seems to make clear that Ilha is not seen as a district itself.

The new administration of Armando Geubuza also appointed a governor for Maputo city, which since 1980 has had the status of a province but where the mayor always acted as governor. Maputo mayor Eneas Comiche is Frelimo, but is seen as linked to former President Chissano.

This odd situation of having competing central and locally elected administrations in three cities has caused considerable confusions and competition, and seems unlikely to be resolved soon.

Adriano Nuvunga

## Aid improves municipal governance

External support does improve the quality of municipal services and administration without reducing local accountability, according to a study comparing Dondo and Chibuto, done by Adriano Nuvunga as part of his Master’s thesis.

Chibuto has an annual budget of 7.5 million MTn (\$300,000), half from central government and half local revenue. Dondo has a budget of 32 million MTn (\$1.2 mn), more than half from outside agencies including Austria and the World Bank.

Nuvunga found that Chibuto’s lack of money prevents it from delivering basic services such as rubbish collection and improving the municipal bureaucracy; leading to poor administration. “Citizens ignore the local government, arguably because it has limited reach in services provision,” he notes

In Dondo, aid revenues resulted in improved governance, in large part because donors either manage or oversee the tendering for infrastructure construction. However, “by using the donors’ procedures, the municipality has made far-reaching improvements in financial management, accountability, participatory planning, services delivery, and budget allocation,” Nuvunga notes.

Without outside help, Chibuto has had a harsh learning process. In 2005 it hired a contractor to rehabilitate three streets, including part of Av Ngungunhane and Av 20 de Maio. A year later, the roads are full of holes and there is no evidence that any work was ever done. Jaime Muthemba, the vereador for construction, admitted that “we were naïve. We did not know how to carry out public tenders and we were cheated.”

Perhaps Chibuto has learned, because work on another section of Av Ngungunhane involved a public tender. Extension of the water system and market improvements seem to have been done well.

Nuvunga rejects the fear expressed in some academic literature that aid and non-tax revenues are wasted, make recipients less accountable, and reduce incentives for good policies. Instead, he finds that for these municipalities, simple lack of money proves to be the biggest constraint on the development of a well functioning administration.

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# Results analysis confirms fraud & misconduct in 2004 presidential election

Fraud and misconduct in the 2004 national elections is confirmed by a study by the *Bulletin* of the detailed results released on CD-rom in August by the Secretariado Técnico de Administração Eleitoral (STAE). Data is included for each polling station, which is much more detailed than information released about the 1999 election.

Of the 12,807 polling stations, we estimate that more than 2000 (16%) had problems. We also estimate that the difference between the two presidential candidates was 140,000 less than was reported – Armando Guebuza's total was 70,000 too high because of ballot box stuffing and Afonso Dhlakama's was 70,000 too low because his supporters were prevented from voting. Since Guebuza won by a landslide in 2004, this was not enough to change the result. But in 1999 the difference between the two candidates was only 200,000, and this level of manipulation could have affected the result.

Renamo, the *Bulletin*, and observers all identified three kinds of misconduct, which can be confirmed from the detailed results:

- **BALLOT BOX STUFFING.** Either putting extra ballot papers in the box or simply writing higher numbers on the results sheets. This was particularly serious in Tete and Gaza. This affected at least 189 polling stations and probably gave 70,000 extra votes to Armando Guebuza.
- **UNABLE TO VOTE.** Many polling stations opened very late due to late arrivals of materials, register books were sent to the wrong polling stations, and some polling stations were moved without voters being informed. Thus many voters were unable to vote. In all, 37 polling stations did not open, but at 69 only the staff voted, and in another 568 the turnout was under 8% indicating some serious problem. The problem was much more serious in Renamo supporting areas, suggesting, at the very least, the electoral staff did not work as hard in opposition zones. We estimate Dhlakama lost 70,000 votes.
- **SPOILED BALLOT PAPERS.** Many votes for Dhlakama were simply not counted at the polling stations. This occurred in 253 polling stations. Most dramatically, polling stations staff put ink fingerprints on votes for Dhlakama, so that the ballots had multiple marks and became invalid (nulo). Much more common, in the poor light late at night during the count, Dhlakama votes were simply called invalid when they were not. However, all nullos were reconsidered by the National Election Commission, and we think most were actually credited to Dhlakama in the end.

Finally, we note 881 polling stations (7% of the total) were not even counted. The Constitutional Council says that 699 presidential editais (polling station results sheets) "went astray", had ink poured

## Comment

### ***If violations are unpunished they will multiply***

In its 19 January 2005 ruling accepting the election, the Constitutional Council (CC, Conselho Constitucional) was nonetheless highly critical of the National Elections Commission (CNE, Comissão Nacional de Eleições), which it said violated the law in various ways. It attacked the CNE's secrecy.

And it was highly critical of the CNE's failure to investigate and prosecute apparent violations of the electoral law. This creates the image that election law violations go unpunished. "If violations of the election law remain unpunished, they will multiply and threaten the entire fundamental principals of our state. The is a real threat," the Council said.

The CNE totally rejected the Council's criticisms and took no action. Its spokesman said that if the Council had wanted actions, it would have rejected the election results submitted by the CNE; since it did not, nothing need be done. (*Bulletin* 32)

We agree with the CC that if violations are not challenged, they will multiply. Many Frelimo election officials have come away from the 2004 elections believing that fraud is rewarded. Therefore, we think it is important to at least publish evidence of misconduct and show how it can be identified in future. jh

on them, or contained irreconcilable mistakes and could not be used.

In fact, an analysis of the results shows that an even larger number, 881 editais, were not included. Cabo Delgado was most seriously affected. (See table on the next page.)

Below, we go into more detail about the three kinds of fraud and misconduct.

### ***Ballot box stuffing***

During the election Renamo complained that its party delegates were not allowed to observe the counting in some places and that allowed ballot box stuffing, particularly in Tete and Gaza. A close

examination of the results shows clearly that this occurred.

There were three registrations, in 1999 with updates in 2003 and 2004. Normally each register book corresponds to a polling station. On average, 10% of the people in the 1999 register books will have died by the 2004 election. Many others will have moved away. And some people will have been ill or away on the voting days and unable to vote. Therefore, a turnout of more than 95% on a 1999 register book is virtually impossible, and anything above 85% is highly suspect

It is often possible to do clear comparisons. In EP1 Chicualacuala B in Gaza, the school had two polling stations, side by side, with 1999 registers. One would expect them to be similar. Yet one had a remarkable 99% turnout with no votes for anyone except Guebuza, while the other had a more normal 57% turnout and included a handful of votes for Dhlakama. Of course it is possible that one register book had a magic quality which meant no one died or moved away, and the other register book did not confer such longevity. But it is much more likely that the staff in one polling station stuffed the ballot box, while their neighbour did not.

There are circumstances in which people not on the register can vote – the five people on the polling station staff (mesa), police and journalists were allowed to vote anywhere. And people who had been left off registers when they were computerised were allowed to vote and their name added to the book. Thus it is theoretically possible to have a turnout of over 100% because of these extra votes. But consider the polling station mentioned above, in Chicualacuala, where there were 1000 people on the register (which meant no one had been left off). It was claimed that 986 people voted. Of those, perhaps 6 were staff and police. That means in five years only 20 of 1000 people had died or moved. We do not believe that.

For 2003 and 2004 register books, high turn outs are possible. Many enthusiastic 18-year-olds registered and they will have been casting their vote for the first time, so many will have voted. Nationally, the turnout (as a percentage of the 10 million names on the register) was 33%, but for voters in the 1999 books it was only 28%, while for those in 2003 and 2004 books it was 47%, significantly higher. (In *Bulletin* 31 after the election, we estimated the real number of possible voters at 7.6 million and the real turnout at 43%.)

Thus we only consider turnouts of over 95% suspect for 2003 and 2004 books.

Looking at the results, we find 140 polling stations with turnouts over 95%.and a further 49 polling stations with 1999 books and a turnout of between 85% and 95%. Thus we consider that all of the 189 ballot boxes were almost surely stuffed with extra votes (or polling station staff simply wrote a different number on the results sheets).

## Polling stations not included in the final result

Province	Polling Stations	Missing editais	% missing
Cabo Delgado	1391	326	23%
Niassa	725	82	11%
Gaza	993	108	11%
Zambézia	2370	207	9%
Africa	62	4	6%
Maputo Prov.	752	32	4%
Tete	919	38	4%
Sofala	1039	25	2%
Nampula	2282	48	2%
Maputo City	762	5	1%
Manica	723	4	1%
Inhambane	786	2	0%
Europe	3	0	0%
<b>TOTAL</b>	<b>12,807</b>	<b>881</b>	<b>7%</b>

The most serious problems appear to have been in Changara, Tsangano, Mogoe and Chifunde in Tete, and Chicualacuala and Bilene in Gaza – nearly all places where Renamo complained of delegates being excluded. Of the 189 problem polling stations, 114 were in Tete. In all, we think that there were about 70,000 improper extra votes for Guebuza.

## Failing to open

Officially, only 37 polling stations failed to open. But the results show another 69 polling stations where 6 or fewer people voted. The law (04/2004 art 62 & 73) specifies that only people on the electoral register may vote, plus members of the mesa (polling station staff, 5 members), police, and journalists. Thus when only six people vote, we can assume that only people not on the register voted, and therefore there was no register or the wrong register. We find another 176 polling stations where the turnout was 7-25 (inclusive), where we must assume that the register arrived very very late or the polling station was in the wrong place and very few people found it.

Renamo made a number of complaints about polling stations opening very late, register books being sent to the wrong polling station and never sent to the right one, or only very late, and polling stations which had been moved so people did not know where to vote. Observers also noted all of these problems. In all, 241 polling stations had turnouts of less than 4%, which surely indicates that something of this sort was wrong. A further 396 polling stations had turn-outs of more than 4% but less than 8%; this is still very low so most of these must also have opened late or been difficult to find.

At one level the failure to get supplies to polling stations on time, ensure that polling stations and registers were in the right place, etc, was due to a mixture of rain, incompetence, laziness (what Mozambicans call *desleixo*). The question which we tried to test was if polling stations workers were lazier in Renamo areas, which might indicate tacit or even active support for actions which had the effect of preventing Renamo supporters from voting. Of course, this cannot be proved. But we can test if there problems were worse in Renamo areas.

The four worst affected provinces were Nampula with 14% of polling stations with very low turnout, Zambézia 9%, and Cabo Delgado and Niassa 6%. We looked in detail at Nampula and Zambézia. The data for Zambézia is very suggestive. The two districts where Renamo was strongest in 1999, Morrumbala and Milange, were also the two districts which had the highest percentages of polling stations with low turnouts (20% and 18%). Renamo made a formal complaint about very late openings in Milange, and clearly lost significant number of voters there. We think Dhlakama lost at least 25,000 votes in Zambezia because of polling station problems.

Looking more closely at Nampula, we find four districts badly affected: Mogovolas 30% of polling stations with low turnout, Nampula-Rapale 28%, Namapa 27% and Murrupula 26%. In the 1999 election, Namapa was strongly Frelimo but the other three districts were pro-Renamo. By contrast, in 2004 Mogovolas and Murrupula both had Frelimo majorities and in Nampula-Rapale the two parties were close; it could be argued that Renamo voters had been intentionally denied the right to vote, and Frelimo gained. But in Namapa, it was clearly Frelimo voters who could not vote, and Namapa was a district where Renamo increased its share of the vote.

There is no proof on intent, as there is, for example with ballot box stuffing. But we can conclude that laxness and poor management did do more harm to Renamo than Frelimo, and, in Zambézia at least, it does look intentional. We think Dhlakama lost 70,000 votes.

### **Improperly excluding votes**

Observers reported, and Renamo complained of, votes for Renamo and Dhlakama being unfairly excluded. They allege that during the count in very bad light, votes for Dhlakama were put in the bag of nulos. They also claim, and both we and EU observers saw, that polling station staff were putting extra inkmarks on ballot papers to invalidate them.

One place where this is very clear is Nauela in Alto Molócuè. Two neighbouring polling stations, 02D988-99 and 02D989-99, both had 1000 registered voters and an almost identical turnout (42% and 41%). Both had 63 votes for Guebuza. But the first had 135 votes for Dhlakama and 212 spoiled ballot papers, while the neighbouring station had 318 votes for Dhlakama and 11 spoiled ballot

### **Evidence of excluded votes**

One place where Renamo votes were clearly invalidated was Lumbo Sede in Ilha de Moçambique district. Of the 26 polling stations, 19 look normal. It was a very close race. Guebuza was just ahead with 2820 votes to 2584 for Dhlakama, with 7% invalid votes.

But in the other 7 polling stations, there were 30% invalid votes and Guebuza led 1210 to 604. The very high percentage of invalid votes is highly suspect. In those 7 polling stations there were 621 more invalid votes than if the rate has been 7% as elsewhere in Lumbo Sede. Elsewhere in Lumbo Sede, Dhlakama was roughly equal with Guebuza, but in these 7 polling stations, the difference between the two was 606 votes.

This seems strong evidence that, as claimed, roughly 600 votes for Dhlakama were improperly excluded.

EP2 Domué-Sede in Angónia, Tete, shows a similar pattern: four polling stations with only 4% invalid votes and Dhlakama gaining more than twice as many votes as Guebuza. But in two classrooms in the school, there were 33% invalid votes and a majority for Guebuza. It seems clear that about 200 votes for Dhlakama were disqualified.

papers. It looks suspiciously like 200 Dhlakama votes have been invalidated.

Checking closely on the polling stations where there are high percentages of nulos and where it is possible to do a comparison with another polling station with fewer nulos, it is clear that, as Renamo alleged, votes for Dhlakama had been excluded. There were 94 polling stations with nulos over 25%, which is clearly excessive. There were a further 161 polling stations with nulos between 15% and 25%, which must be suspect. Together, this suggests that at least 15,000 votes for Dhlakama were unfairly excluded at the polling stations. However, all nulos were reconsidered at national level by the National Election Commission. Dhlakama received 21,803 re-qualified votes, compared to 13,614 for Geubuza.

This suggests that more than 10,000 of the unfairly excluded Dhlakama votes were given back to him at national level. That, in turn, suggests that the most common method of improperly excluding ballot papers was simply not counting them.

Clearly some ballot papers were invalidated by extra ink marks (we saw some during the count) but it appears that in most cases ballot papers were simply improperly counted and this was corrected later.

► More details of these calculations are posted on the website  
<http://www.open.ac.uk/technology/mozambique/>

► A CD has also been issued for the 2003 municipal elections, but it only contains the totals for each municipality, which have already been published.

## **Books**

*Subvertendo o poder político? Análise de género das eleições legislativas em Moçambique, 2004*, Conceição Osório, WLSA Moçambique, Maputo, 2005.

One third of the members of parliament (Assembleia da República) are women. But in her study, Conceição Osório finds they have not changed the very male nature of Mozambican politics. Looking at the 2004 elections, Osório interviewed 72 candidates (two-thirds women), 8 party leaders (only 1 woman) and 14 others linked to the process. She also analysed campaign material and radio and TV broadcasts.

The number of women in parliament has increased. There are now more women ministers and governors (8 now compared to 1 in 1997). But the number of women in key positions such as national and provincial director and district administrator has recently fallen. There were 38 women in these posts in 1997 and this had risen to 78 in 2004 but fell again to 39 in 2005.

Osório argues that there are more women in parliament primarily because the parties need to be *seen* to have more women, and do not accept that women will want to change the structure and organisation of politics. They remain a subordinate group and are relegated to issues related to the roles as wives and mothers. She notes that in the campaign, Frelimo stressed that its men had emancipated women.

Not all women in parliament accept this, and Osório points to a group of women who are challenging the mechanisms of male dominance of the party. For example, they challenge the closed ways that the male party elite allocates resources and places on party lists.