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Special Report: Constitutional Council election result

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Special report on Constitutional Council validation of 11 October 2023 municipal elections

This report is in five parts:

- Results and confirmation of fraud.
- CC wants changes to election tabulation pyramid and STAE
- CC and CNE secrecy
- CC wants changes to electoral courts
- Why CC rules work against political parties and ensure crime pays.

The full Constitutional Council ruling (in Portuguese) is on <https://bit.ly/Moz-CC-Loc>.

CC confirms mega-fraud, names Renamo winner in 4 more cities, but not in Maputo

The Constitutional Council today confirmed widespread fraud in the 11 October municipal elections. The CC declared Renamo the winner in Chíure, Quelimane, Alto Molocue and Vilankulo. And in what seems a clear political compromise, the CC declared Frelimo the winner in Maputo and Matola, but admitted 78,000 fraudulent votes for Frelimo and gave Renamo 9 more city assembly seats.

There will be a new election in Marromeu and new elections in some polling stations in Nacala-Porto, Milange, and Gurue. These elections must be before Sunday 3 December, the second Sunday after the CC decision. Results in these four municipalities will only be declared after the repeat elections.

In Maputo, the CC took 29,000 votes and 6 assembly seats fraudulently given to Frelimo and gave them instead to Renamo. In Matola, the CC took away 49,000 votes fraudulently given to Frelimo - 24% of all the votes given to Frelimo by the CDE and CNE - and 5 assembly seats, and gave 1 seat to MDM and 4 to Renamo. Extra seats were given to MDM and Renamo in Xai Xai, Matola Rio, and Marracuene without changing the result.

These huge numbers of false votes and assembly seats give some idea of the magnitude of the fraud in these elections.

CC says unnecessary three level vote tabulation and confused STAE role must change

The confusing vote tabulation pyramid must be changed, says the Constitutional Council (CC) in its ruling Friday (24 Nov) on the municipal elections. At present, votes are counted in the polling stations, those results are added together by the District Elections Commission (CDE), which passes the results to the Provincial Elections Commission (CPE) which passes the results to the National Elections Commission (CNE). And each commission has a Technical Secretariats for Electoral Administration (STAE, *Secretariado Técnico de Administração Eleitoral*). The relationship between the three tiers in the tabulation pyramid and their relationship with their STAEs is confused even in the electoral law, with too many organisations doing the same thing, says the CC.

One part of the law says STAE is "responsible for elaborating a summary table of the vote totals" which suggests the election commission simply signs the documents provided by STAE, notes the CC. In practice, this is what happens now. Yet the CC notes that elsewhere in the law STAE is seen as simply a "postbox" to give material to elections commissions who have responsibility to compile results. In practice it is the STAEs that do the work and elections commissions just sign. The idea of an active election commission role "is, in fact, a dead letter that can only be the result of the remnants of the presidential, legislative or provincial assembly elections. The intervention of these bodies therefore jeopardises procedural speed and causes conflicts."

The CC adds "If there are two electoral bodies competing to exercise the same functions, not only does this juxtaposition overshadow the role of the district or city electoral commissions, but it also creates confusion and makes the process more complex." And the CC says that the results submitted to it by the CNE were compiled on the basis of district results, ignoring the provincial tabulation, and the CC asks why results should be tabulated by three levels of commissions. The CC also points to the legislation being "imprecise and complex".

In its notes submitted to the CC with the results, the CNE points to its own "heated debates" with an opposition minority wanting to look closely at the lower level results reports which were being challenged, while the majority said these issues are only treated in the courts and CC and the CNE only has time to collect the results sent up to it by lower commissions.

The CC admits that that the CNE did not have time to check all of the results.

The whole process is secret

The CC says that its role is "guaranteeing the transparency and fairness of the election", in its 24 November announcement of results. Yet the CC's own role is not transparent; it says in nine municipalities it changed the results and it gives the new and old numbers, but does not say what evidence it used. And on 9 November 2019 the CC ruled that the part of the tabulation done by STAE is secret, and not open to observers. Yet the CC itself admits that all the decisions are taken by STAE, in total secrecy. The only part of the process open to observers, party delegates and press is exactly where the CNE and lower election commissions actually present the results already written by STAE.

"The CNE sent the Constitutional Council a copy of the minutes and *editais* of the general tabulation, for the purpose of validating the election results. The minutes of the general tabulation carried out by the CNE give a detailed account of the work carried out," the CC notes. Transparency demands that such a good and complete document be public, but the CC does not publish evidence and the CNE says documents submitted to the CC are secret. No transparency there. And there is no public record of what the CNE did and why. The becomes important because the CC itself found that the

data submitted by the CNE was wrong and sometimes false, but we have no way of knowing why the CNE submitted fraudulent information to the CC.

The CC says that the CNE says in the secret minutes that in only 8 of the district elections commissions was there consensus to approve the results, whereas in 57 opposition members voted against. Again, no explanations are given.

Secrecy became worse this year. The CC had a good website where rulings were posted promptly, but that website has been closed during the entire municipal election process. CC rulings are given to friends who circulate them on social media. The CNE no longer has a functioning website, but it does have a Facebook page and two WhatsApp groups to circulate press statements and results.

CC wants changes to the electoral court system

Mozambique's electoral legal system has been changed multiple times and is now a mix of the normal court system and a special court system. The Constitutional Council (CC) called for further changes in its 24 November validation of the results of the 11 October municipal election. The normal court system is headed by the Supreme Court but a separate Constitutional Counsel rules on constitutionality issues and it has also been made the special electoral court.

To speed up procedures, protests against electoral misconduct must be submitted to district courts within 48 hours and ruled on within 48 hours. Appeals go to the CC and must be ruled on in three days. Objections to CNE actions go directly to the CC. The role of the district court is to establish the validity of the complaint and the evidence.

But the system has an unexpected complexity. Not issuing observer credentials, ballot box stuffing, faking results sheets, etc are electoral crimes, and should go through the criminal law system. Again they start with the district court, but then pass not to the CC but through the office of the attorney general (*Ministério Público*) and the criminal justice system.

The CC recommends that electoral crimes are initially treated in the same way as electoral disputes, so that they are treated quickly and the district court looks at their impact on the electoral process. The district court and CC would look at the impact of the irregularity, while the attorney general would, in parallel, carry out criminal investigations and prosecutions. This is a sensible proposal.

CC backs legal principles which benefit the criminals

The CC in its Friday 24 November ruling backed two legal principles which led many protests to be excluded, largely benefitting those trying to steal elections. This is compounded by secrecy which means it is not known how the CC allocated votes.

The first legal principle, which is the basis of the electoral court system, is **the principle of "prior challenge"** (*impugnação prévia*). In order to resolve disputes locally, a complaint must be made at the lowest possible level - at the polling station or election commission where the alleged offence occurred. Their decisions can be appealed to a district court.

But the complaint must go to the district court within "48 hours of the posting of the edital". This works against political parties complaining in two ways.

First, under pressure in an election period, local offices of parties have trouble meeting the 48 hour deadline to submit both their protest and the evidence. District *editais* must be posted within 3 days of the close of voting. So party officials have a maximum to 5 days, and probably only 4, to collect

polling station *editais*, compare with the official district results, and write and submit a protest. This *Bulletin* received nearly all of Renamo's *editais* for Maputo and Matola, but only 6 and 7 days after the election.

The CC keeps totally secret any explanation of its decisions. For example on Maputo and Matola, it suggests that not enough protests were submitted to the district court within 48 hours of the district elections commission publishing the results.

Second, there is no requirement that an election commission respond promptly. Therefore many elections commissions waited more than two days to reject the initial complaint, by which time it was too late to appeal to the court. The CC makes no comment about this problem.

But the CC stresses that if a district court rules that the evidence presented was not accepted and there was no appeal, then the district court decision was final. The CC says this was the case in Kamubukwane and KaMaxaquene urban districts of Maputo and in Nampula city, as well as 11 other municipalities.

If there was an appeal, only the original evidence collected for the submission can be used, and later evidence is not accepted. While in other Maputo districts and 13 municipalities where proof was produced to the CC, some Renamo *editais* were accepted and results were changed. Details of which *editais* were accepted and which were not remain secret.

The other legal principle is set out in the electoral law: "Voting at any polling station and voting throughout the local authority area is only judged null and void if there are illegalities that could substantially influence the overall result of the election." The key phrase "**substantially influence the overall result**" defines many court and CC rulings and often means perpetrators of fraud get away unpunished.

The CC leaves the phrase "substantially influence" undefined in one place in its 24 November ruling, but in another says it relates to the number of seats for each party in the municipal assembly.

The CC ruled that refusal to give credentials to observers in Xai-Xai was illegal but did not substantially affect the outcome of the vote, so could be ignored even though it was "patently illegal". Similarly, barring 741 people from voting in Cuamba was illegal but did not substantially affect the outcome.

The CC spends three pages of its ruling defending "prior challenge", but it avoids the basic point that parties should not be able to win elections based on fraudulent actions because the opposition parties could not jump all the bureaucratic hurdles. Surely it does not make sense that evidence of fraud and criminal activity cannot be submitted beyond 48 hours after the *edital* is posted.

And surely fraud and criminal activity should not be ignored simply because it was not successful in substantially influencing the election. This totally ignores the culture of small frauds in this election.

The CC admitted that in Matola and Maputo there were 78,000 fraudulent votes for Frelimo. This *bulletin* saw more than 90% of the *editais* for the two cities and Renamo won in both by a wide margin. Yet the CC effectively admits that Frelimo was declared winner apparently because Renamo had not collected enough *editais* within 48 hours. Excluding those *editais* collected later "substantially affected" the outcome. Frelimo is not penalised for a massive fraud and crime pays handsomely.

[CC reported criminal offenses](#)

Handfuls of already marked ballot papers to be used for ballot box stuffing were reported to the CC, which called for tighter control of unused ballot papers.

People in the election administration were offering to favour certain parties for MT500,000 (\$7500). This was noted in Chiure and Maputo.


[Other CC rulings](#)

The Constitutional Council annulled the CNE's decision on safeguarding the right to vote for all voters with a card, even if they are not on the electoral roll. On 1 October this *Bulletin* reported

Renamo's claim that 120 registered voters were taken off the electoral roll in Morrumbala, after they had registered.

The CC considers that this could "create confusion in the vote, because it could allow citizens who do not live in the municipal area to vote," so it reversed the CNE decision. But the CNE was right. Again, this benefitted the criminals, because people improperly removed from the list could no longer vote.

Maputo was wrong to bar some party delegates from voting the CNE ruled. The law says party delegates, observers, and journalists can vote anywhere in the geographical zone where the registered. For all other municipalities this is a district. But Maputo has urban districts. Electoral officials said people could only vote in the urban district, but CC said this was wrong because the law specifically treats Maputo as a single unit.

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