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2019 GENERAL ELECTIONS

MOZAMBIQUE POLITICAL PROCESS BULLETIN

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Opposition accepts government centralisation plans with 2 'governors' in each province

Opposition parties in parliament are not challenging government-proposed laws which centralise power in the name of 'decentralisation', it became clear last week. A constitutional amendment approved last year called for an elected governor and a new central government representative called a Provincial Secretary of State in each province. The proposed laws define the powers of each.

At present the governor of a province is appointed by the President and has wide-ranging and largely unchecked powers. The new Secretary of State is appointed by the President and has many of the same powers - in effect the new Secretary of State is simply the old governor. The newly elected governors and provincial assemblies have very limited powers, closely checked by the national government.

More serious, the Secretary of State and elected governor have identical offices and many overlapping responsibilities. Both are expected to work with citizens, encourage citizen participation, and promote local development - which is surely a recipe for competition between two "governors".

Parliament on 27 and 28 March debated the package of five laws "in general" (1st reading) and

heard the reports from the two relevant parliamentary commissions. The commissions proposed some significant changes to reduce unchecked central government power. Next week parliament debates the details of the proposals. (see page 3 for more details)

The opposition appears to have decided not to challenge the laws. MDM MP Silvério Ronguane said "the MDM bench understands that this model of decentralisation is not ideal, but it is better to have an election with defects than a dictatorship, so we will vote in favour of this proposal."

Our report on the five draft laws was published here three weeks ago, and is available on: <http://bit.ly/MozGE-2> The draft laws are on: <http://bit.ly/MocEI-Law>.

Positive changes to election law, but problems remain

Two key changes to the provincial election law draft are proposed by the 1st Commission (Constitutional Affairs, Human Rights, and Legality). First, districts will remain the constituencies for provincial assemblies, maintaining truly local representation. Second, the concept of "lowest possible challenge" (impugnação prévia) is removed.

A nonsensical interpretation had made most challenges to some fraud impossible. The law had been interpreted to mean, for example, that to challenge being illegally excluded from a district election commission meeting, the challenge had to be first made at the meeting the party nominee was not allowed to attend.

But four problems with the law remain:

- + Transparency is not required for election commissions, so votes can be changed in secret.

- + Journalists have no right to attend vote counts by elections commissions.

- + There is no requirement to inform party agents or even opposition-nominated members of election commission meetings.

- + Candidates who drop out of party lists at the last minute cannot be replaced.

All four of these encouraged misconduct in the local elections last year.

Simple change ends 'lowest challenge' fiasco

Election commissions are politicised. Members are in proportion to seats in parliament plus some chosen from civil society groups aligned to parties in the same proportion. This means Frelimo has a majority on all election commissions. In the municipal elections in October last year, in four municipalities the Frelimo majority called a late night meeting without telling the opposition, and produced a result that said Frelimo had won - despite parallel counts showing a Renamo victory.

When Renamo appealed to district courts, they often ruled that the complaint could not be accepted because "lowest possible challenge" (*impugnação prévia*) meant that the complaint had first to be made at the secret meeting they did not know was taking place, or at least had to be made when the decision was published, which sometimes was not done or was done too late to appeal to the court.

The 1st Commission said that it is unconstitutional for a law to block access to the courts, and also improper to make access to the courts conditional on a non-judicial action - to protest first at a meeting.

The law change is simple. The current law and the government draft of the new law says that irregularities in voting and counting "can be challenged in the courts, so long as they have been the object of a protest." The proposed law change simply drops the last 11 words, which imposed the unconstitutional condition.

Two other proposed changes are minor:

- + Candidates lists must be presented 120 days before the election, and because of delays to registration and other calendar changes, this is cut to 90 days.

- + Provincial assembly lists are to be presented to provincial elections commissions rather than national.

Various drafting errors in the law are also corrected, for example the draft in different places says that campaigning ends one day and 48 hours before voting. The 1st Commission opts for two days with no campaigning.

One important change had already been included in the government draft. Mozambique does not allow a person to sit in two assemblies, so if a municipal assembly member is elected to parliament, they must resign the municipal seat. But the law also says that anyone who resigns a seat cannot stand for the same assembly the next year. This had already been changed to not include people who had to resign because of election to higher office.

These changes apply only to provincial elections, and must also be inserted in the national elections law.

District constituencies and elected governors

Just as the national parliament uses a party list system and each constituency (*circulo*) is a province, so the provincial assembly used the district as the constituency. This meant that candidates had to come from the district.

But the constitutional change says that the head of the party list that receives the most votes becomes governor. But there was no single provincial list. The government proposal abolished district constituencies, and had a single provincial list, which was seen as another sign of centralization rather than decentralization.

Parliament's 1st Commission (Constitutional Affairs, Human Rights, and Legality) proposes that 75% of assembly seats be elected from district constituencies, and 25% from a provincial list, and that the governor be the head of the provincial list that receives the most votes.

This still only requires one ballot paper, with the vote being used to choose both the district and provincial list.

Parliamentary commissions propose curbs on government power

Although the draft laws were unanimously approved by parliament "in general", there was disquiet both by the commissions and the opposition parties about the extent of the arbitrary power central government will have over elected bodies, and about restrictions on local power.

Part of the struggle between Frelimo and Renamo and between the executive and civil society has been fought out in the small print of laws. In drafting these laws government introduced many small points to increase central power and decrease local power. The parliamentary commissions did not propose major changes, but suggested many seemingly small changes in wording which shift the power balance. There are curbs on the more arbitrary and even unconstitutional aspects of power over elected bodies. Some seem really minor but could make a difference, such as challenging government's attempt to keep provincial assembly sessions very short.

Both the 1st and 4th Commission (Public Administration and Local Power) say that the power to dismiss a governor or mayor without an investigation or hearing should be removed from the law. The 1st Commission stresses this power "can be subjective and could potentially generate excesses."

The 4th Commission set the tone when it said that where the law defines the Secretary of State in the Province as "the representative of the state," it should instead be "the representative of the central government" - in other words, the Secretary of State is a political appointment, not a civil service appointment.

And the 1st Commission proposes to add that the Secretary of State acts "only in areas related to the sovereignty of the state", which it says is particularly to limit the ambit of activities of the Secretary of State. It also point out that attempts to restrict the provincial assembly from passing regulations violates the constitution.

This is followed up in multiple places by both the 1st and 4th commissions saying that disputes should not be resolved by the Administrative Tribunal as proposed, but by the Constitutional Council. Thus disputes between central and elected provincial government should not be resolved by the audit court which largely involves administrative issues, but by the highest judicial body which look more directly a conflicts of power.

The commissions also move to somewhat increase local power. The government had proposed limiting the four provincial assembly meetings per year to only 5 days each, while the 1st commission proposes 10 days and the 4th commission proposes 15 days. The government draft said there could only be 5 to 8 provincial directorates, while the 4th Commission proposes that the number be 9 to 11.

Central government wanted to put civil servants on the Provincial Executive Council, and the 1st Commission said no.

The government draft says the central government sets the "detailed structure" of the provincial government, but the 4th Commission says central government should only set "principles".

The 4th Commission proposes adding an article in the law saying development plans must be elaborated with local participation.

The proposed changes do not question the fundamental problem of the laws - that they create two "governors" and thus two competing power centres in each province. Nevertheless, although they seem minor wording changes, they significantly shift the balance of between the two "governors", reducing somewhat the ability of central government's Secretary of State to arbitrarily control the elected provincial government.



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Detailed coverage 2019 national elections is again being provided by the *Mozambique Political Process Bulletin*, which has covered all of Mozambique's multi-party elections. We will have a large team of local journalists throughout the country, ensuring that our reports are accurate and verified.

The elections newsletter is also in Portuguese; para subscrver <http://eepurl.com/cYjhdb>

The newsletters covering the 2018 local elections are on <http://bit.ly/LocEI2018>

Newsletters from 2013 local elections and 2014 national elections are on <http://bit.ly/2H066Kg>

There are two archives of historic elections data, at IESE on <http://www.iese.ac.mz/eleicoes-resultados/> and at London School of Economics on <http://bit.ly/MozEIData>

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