

# Mozambique political process bulletin



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## Local elections in November after new laws agreed

Municipal elections will be held in November this year and national elections in October 2014, following parliament's delayed approval on 12 and 13 December 2012 of changes to the electoral laws. There is a slight increase in transparency and stricter fraud prevention, but most changes in the laws are minor and clarify confusing areas in the previous laws.

The schedule is very tight. A new National Elections Commission (CNE, Comissão Nacional de Eleições) must be named and dates for both 2013 and 2014 elections announced in April. The present CNE remains in post and can do the preparatory work for setting dates and organising a new electoral registration.

The package contains two concessions to the international community, following the donor strike in early 2010 which in turn was triggered by what was seen as arrogance and misconduct by the CNE. The first is that independent observation is now included in the law, giving the CNE less power to restrict observers. International observers can now apply to participate, and do not need to be invited by the CNE.

The second is that the new package is simply a revision of the 2007 and 2008 election laws, keeping separate laws for the CNE, national elections, provincial elections, municipal elections and registration.

The Constitutional Council (CC, Conselho Constitucional) after the 2009 election was highly critical of the "multiplicity of electoral laws" which are contradictory and hard to interpret. It called for a complete review of the laws and the creation of a simplified and rationalised "Election Code". (See

### No dates

Delays in passing the changes to the electoral laws mean the calendar for local elections cannot be met, so a last minute clause says the CNE should set a new calendar. Elections must be before the end of November and cannot be on Friday or Sunday. Traditionally they have been on Wednesday (although this is not required), which suggests 20 or 27 November as possible dates.

An entirely new electoral registration is required; the law sets no calendar for this. The last full registration, in 2007, took three months to register nearly 8 million voters. The CNE will need more than two months to process the results and determine the number of signatures needed by candidates for mayor. Registration will probably be in the May to August period.

If a second round is required for some mayors, as seems likely if Renamo and MDM divide the opposition vote, then it would probably be in 2014. The only second round so far was in Nacala after the 2008 municipal elections, when the Constitutional Council proclaimed the results two months after the election, and the second round took place nearly a month later. (19 Nov, 15 Jan, 11 Feb).

*Bulletin* 44) Civil society began plans for public hearings on drafting an entirely new electoral code.

But donors thought it would be faster if government ignored civil society and the Constitutional Council, and simply revised the old laws, so donors made this the main condition for ending their strike and resuming budget support. (See *Bulletin* 46) Government agreed.

But it was no faster, going up the last minute just before Christmas and requiring that local elections this year be postponed for a month. And it continues many of the problems and inconsistencies of the old legal package.

Municipal elections this year will be held in 43 municipalities and are for municipal president (mayor, *Presidente do Conselho Municipal*) and municipal assembly. These municipalities include one-third of the Mozambican population. National elections in October next year are for President, national assembly (parliament, *Assembleia da República*, AR) and provincial assemblies. All assemblies are elected by proportional representation on a list system; only registered parties can present lists for the AR, but citizens' lists are permitted for municipal and provincial assemblies.

## CNE forced to publish more

The CNE will be required to publish decisions and minutes of its meetings, and post on its website studies, resolutions, decisions, and other data and information on its activities. Previously the CNE was allowed to keep this information secret, and before the last election it rejected a formal request from the *Bulletin* to publish this material.

This is an important increase in transparency, and gives legal recognition to the website as a form of publication.

But a high level of secrecy will remain. The law also requires the CNE to publish "other things which must be public knowledge" but it leaves the CNE to decide what those might be.

In 2009 the CNE made two controversial secrecy decisions. Apparently to correct for ballot box stuffing, the CNE in secret, without any statement or explanation, excluded 104,000 presidential votes. In Tete, 16% of the votes – nearly all for Armando Guebuza – were thrown out. Similarly in Niassa the CNE gave Renamo one additional seat in the Assembleia da República (AR, parliament) by discarding a large number of votes for Frelimo. The differences were obvious when one compared the results announced by the provincial election commissions with those announced by the CNE. No data was ever released to show in which districts changes were made, or which polling stations (*assembleias de voto*) were excluded. Yet the CNE was allowed to make these major changes to the results in secret, without ever saying it changed the results or giving any kind of explanation.

The second related to the controversial decision to exclude some parliamentary candidates of the MDM (Movimento Democrático de Moçambique, Mozambique Democratic Movement). To justify this, the CNE submitted to the Constitutional Council (CC, Conselho Constitucional) its register of documents submitted, called a *mapa de controlo*. But when MDM and media asked to see the *mapa de control*, the CNE refused, saying it was secret.

Election laws as approved by parliament (although still needing editing and renumbering) and past issues of the *Bulletin* are posted on [tinyurl.com/mozamb](http://tinyurl.com/mozamb)

The revised law specifies that observers will be allowed to observe "the process of preparation, filing, and registration of proponents and the verification of the formal requirements of parties and their candidates." This should mean that observers will be able to watch the whole process of accepting and rejecting candidates, which would be a major change.

**COMMENT:** Mozambique remains unique among electoral democracies in allowing the elections commission to change the results in secret and without explanation, and to keep key documents secret even when they have been submitted as evidence to a court. Will the new CNE continue to rule that these are not "things which must be public knowledge"?

Much depends on the CNE's own attitude toward transparency. The minutes of its meetings must now be published, but they can be vague and simply say "the CNE considered the final results" or they can detail changes made and decisions taken. Similarly, there is nothing in the law that requires that publication be timely. Detailed results of the 2009 elections have still not been released. *jh*

## Parties dominate 13 member election commission

The new National Elections Commission (CNE, Comissão Nacional de Eleições) will have 13 members, the same as the present one, but with a party majority and fewer civil society representatives. There will be 5 Frelimo, 2 Renamo and 1 MDM (Movimento Democrático de Moçambique, Mozambique Democratic Movement), plus 1 judge nominated by the Higher Judicial

Council (Conselho Superior da Magistratura Judicial), 1 prosecutor nominated by the Public Prosecutors Council (Conselho Superior da Magistratura do Ministério Público), and 3 members of civil society. The CNE chooses its own president (chair) from the 3 civil society representatives.

There are two non-voting members of the CNE, one named by the government, and the other the head of the electoral administration system, STAE (Secretariado Técnico da Administração Eleitoral; Technical Secretariat for Electoral Administration).

Extended arguments about the composition of the CNE were one reason for the delay in approving the electoral laws. Renamo demanded a more politicised electoral system and an opposition majority on the CNE. MDM insisted on at least one member of the CNE. Renamo voted against the electoral laws, but MDM voted in favour.

The outgoing CNE was the first to have civil society membership, but the choice was structured in such a way that civil society CNE members all came from groups allied to Frelimo. A new system

has been established for this CNE, but the outcome will be the same. Parliament will create an ad hoc commission. Civil society groups and forums will propose people to this commission within 30 days after it is named, and the commission will create a shortlist of 12 to 16 names. Parliament then selects the three civil society members. This probably will not occur until late March or early April.

Previous CNEs had 21 members in 1994, 9 in 1998, 17 in 1999, 19 in 2002, and 13 in 2007.

The CNE is a full time body. The previous electoral law said that CNE members could not have any other jobs, but this was ignored by the CNE. The new law allows CNE members to have self-employed earnings and to continue in any non-government post held at the time of appointment.

In addition there are provincial, district and city election commissions which only serve during registration and election periods. They will have 11 members: 3 Frelimo, 2 Renamo, 1 MDM and 5 civil society chosen by the CNE from nominations submitted.

## Fraud, parallel counts, and new crackdown

Fraud and misconduct occur in all elections, but it seemed more apparent in 2009 in Mozambique and generated more controversy, and this has resulted in a number of changes to the law (see article below). The ability to do parallel counts means that the impact of fraud has been limited (see box), except perhaps in 1999.

The *Bulletin* estimated that there was widespread misconduct and fraud by polling station staff, in perhaps 6% of polling stations – that is 750 polling stations across the country, which is a very large number. This involved ballot box stuffing and falsely invalidating votes for the opposition.

In 2004 there were problems in 2000 polling stations. A study by the London School of Economics Crisis States Research Centre of the 2004 Mozambican election reported "that ballot box stuffing, improper ballot nullification and organisational failure did indeed take place on a large scale. Furthermore, we conclude that fraud was most prevalent in those provinces where Renamo complained about misconduct."

Ballot box stuffing did not usually involve physical ballot papers, but simply changing the final results sheets. Although it did not say so, in 2009 the CNE threw out 104,000 presidential votes, apparently from polling stations with an impossible turnout of near 100%, which is a good indication of ballot box stuffing. In Tete, 85,693 presidential votes and 68,610 parliamentary votes were excluded, nearly all for Guebuza and Frelimo.

Invalidation occurs when polling station staff add an extra ink mark to a ballot paper, making it look as if a person has voted for two different candidates, and thus the vote is invalid (nulo). Typically 2% to 3% of votes are invalid, where people really do put

### Polling station & parallel counts

Mozambique always gains high praise for procedures and conduct at the polling station, and this is not changed. 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 (delegates), journalists and observers. When the count is finished, a summary results sheet (*edital*) is 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.

In 2009, the Electoral Observatory (Observatório Eleitoral) and EISA (Electoral Institute of Southern Africa) did a formal Parallel Vote Tabulation (PVT, Amostra Aleatória dos Apuramentos, AAA) based on a random sample of 8% of polling stations. This was highly accurate, predicting the outcome very closely.

And on the day after voting day, Radio Moçambique had journalists reading out the editais from classroom doors during the entire day, and covered 14% of polling stations. There was a bias toward urban areas, but it still gave a good picture of the final outcome.

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 by the CNE.

multiple crosses or fingerprints on the ballot paper, or write words such as “thief”.

The requalification of nullos is done by the CNE in Maputo and is open to press and observers, and it soon became clear that there were groups of ballot papers with an unusual characteristic – they had a second ink mark which is in a similar place on many sequential ballot papers. And all had the main mark for an opposition candidate. Many had a neat X or + for Daviz Simango or Afonso Dhlakama, and then a suspicious extra fingerprint somewhere else on the ballot paper. It is hard to believe that so many people voted for one candidate neatly with an X and then for another candidate with a fingerprint. It seems obvious that the mark is extra. This invalidation was quite widespread, and probably reduced the votes for Simango and Dhlakama by at least 30,000. (For details, see *Bulletin* 33, 1 November 2006; *Bulletin* 43, 19 November 2009; and *2009 Elections* 34 and 37 – special daily election bulletins dated 9 and 13 November 2009 which include photographs.)

As head of an international observation team at the 2004 elections, former US President Jimmy Carter publicly questioned the outcome of the 1999 election. The election was close and the official result gave Joaquim Chissano only 205,000 votes more than Afonso Dhlakama. Nationally, there were 241,000 more votes in the presidential election than in the parliamentary election. In Nampula, in particular, nearly one in ten people voting in the presidential election did not vote in the parliamentary election. Strangely, no observer ever reported a voter not putting a ballot paper in the parliamentary ballot box. Was there ballot box stuffing in 1999, and did it make a difference? (See *Bulletin* 31, 29 December 2004)

## Protests and prosecution

In its final declaration of the 2009 results, the CNE said that some votes had been improperly invalidated by polling station staff, acting in bad faith, and said this was a criminal action. But there were no prosecutions. In both 2004 and 2009 the Constitutional Council criticised the CNE for failing to prosecute obvious fraud by its own staff. MDM made formal complaints, with photographs, which were never considered by the CNE.

### **Math error means secret seat theft**

An arithmetic error that has been in every election law since 1994 is retained in the new law. There are 248 AR seats in Mozambique (plus 2 outside). The law says to divide the total number of voters by 248 and use that to assign the number of seats per province. Except this does not work. In 2009, this gave 249 seats, and the CNE, in secret and without ever saying anything, simply took one seat away from Nampula, giving it 45 seats instead of 46 in order to get the total back to 248.

This problem is recognised elsewhere in the law. The more complex d'Hondt system is used to assign seats to parties after the election, and should also be used to assign seats to provinces.

The new election law makes both prosecution and consideration of protests more likely.

The new law requires the CNE to inform the attorney general (Ministério Público) "of any electoral offenses that it has knowledge of". Having a prosecutor on the CNE also makes it more likely that this will be done. Penalties for polling station staff violating the law are also made stricter. Fraud in the count and refusing to accept a protest are both punishable by at least six months in jail.

The new law requires polling station staff to accept official protests, and if they refuse, the police should be called and election authorities immediately informed.

As in the previous laws, protests should be made at the lowest suitable level and appealed to higher level. In practice, complaints never made it up the chain and were never seriously considered. The new law allows the CNE to consider protests that have not gone through the entire hierarchy of election commissions.

And in an attempt to curb the false invalidating of opposition ballot papers, the revised law requires that all ink, pens, stamps, stamp pads, and any containers of liquids must be taken away from the area where the votes are being counted, and before the count all polling station staff must show their hands are clean.

# Electoral Process

## Campaign

Parties and candidates can campaign at any time, because the constitution guarantees free speech and the right to hold meetings and demonstrations.

But the law sets aside an official campaign period, which grants extra rights. This begins:

- 30 days before municipal elections
- 45 days before national elections
- 11 days before a second round

In the 48 hours before polls open, there can be no campaigning (24 hours before a second round).

Outside the official campaign period, law 9/91 (Liberdade de Reunião e de Manifestação; Freedom of Meetings and Demonstrations) requires four days notice of a public meeting, and demonstrations can only be held weekends, holidays and between 1900 and 0030 on working days. During the official campaign, notice of public meetings is cut to one day, and marches and rallies can be held at any time. Sound and public address systems can be used without permission between 0700 and 2100.

Posters and other publicity require no permission, but cannot block road signs.

During the campaign, some public buildings can be used free of charge for meetings. The CNE has the right to force owners of cinemas and other private halls to rent them out to political parties if asked.

Media is restricted during the official campaign period. There can be no publication of opinion polls until results are announced, and there can be no exit polls. Publicly owned media "must be governed by criteria of absolute impartiality" during the official campaign and cannot discriminate between candidates.

Government resources and resources of state companies, such as cars, cannot be used as part of the campaign.

## Voting

Wherever possible, people register and vote at schools. The polling station must be in the same place as registration. There is one register book with no more than 800 voters for each polling station. At an urban school, many more than 800 people will register, so when a book is full, a new book is opened, and corresponds to a new polling station. Thus a school will be a "voting centre" and each classroom will be a polling station (*assembleia de voto*).

All voting is on one day, between 0700 and 1800. Anyone in the queue at 1800 is given a numbered ticket and the polling station stays open until all have voted.

Voters must be 18 years old on polling day.

Each polling station has five staff, known as the *mesa* or table: president, vice-president, secretary and two scrutineers. (If there are very few voters in the register book, the *mesa* can have just three.)

There is a separate transparent ballot box for each election (2, president and assembly, for municipal in 2013; 3, President, AR, and provincial assembly, for national in 2014)

A voter who has lost their voters card can still vote if they are on the register and have a photo ID. In a large secondary school, this can cause confusion as people search for the right classroom. The new laws says there is to be a second copy of the register book at each polling station purely for people to check to see if they are registered at that station.

### The 300 metre zone

The law creates a restricted zone within 300 metres of any polling station. Within that area there can be no campaign material; in particular, voters cannot wear party t-shirts. No police can be inside the area unless requested by a polling station president. Observers, party delegates and journalists cannot interview voters within 300 metres of a polling station. And within that 300 metre zone a voter cannot say for whom they voted.

An important change is that a range of people necessarily not at their own polling station can vote elsewhere: members of the *mesa*, party delegates, police, journalists, and observers.

## Calendar – 2013 municipal

180 days before – President announces date as proposed by CNE

*These dates are set out in the law, but will have to be changed by the CNE because of the late passage of the law:*

180 days before - CNE announces number of registered voters in each municipality and number of municipal assembly seats

120 days before – candidates lists presented; candidates for mayor must have signatures of at least 1% of registered voters

60 days before – lists accepted or rejected

30 days before – final candidates lists published

*The remaining dates will follow the law:*

30 days before - official campaign begins

20 days before – parties submit lists of delegates (polling station monitors) and alternates for each polling station

2 days before – no campaigning allowed

ELECTION DAY – before end of November 2013

3 days after – results announced at municipal level

15 days after – CNE announces results

no fixed date – CC proclaims results

## Calendar – 2014 national

18 months before – President announces date as proposed by CNE

180 days before – CNE publishes number of AR seats per province

120 days before – Presidential candidates present to CC more than 10,000 notarised nomination signatures; parties present candidates lists to CNE

105 days before – CC publishes list of accepted Presidential candidates

60 days before – CNE publishes lists accepted (followed by a 28 day appeal process)

45 days before. Official campaign begins.

45 days before. Full list of polling stations with code numbers and number of voters.

20 days before – parties must submit lists of delegates (polling station monitors), one delegate and one alternate per polling station.

2 days before – no campaigning

ELECTION DAY – before mid-October 2014

3 days after – district and city results

5 days after – provincial results

15 days after – national results

no fixed date – CC proclaims results

## Calendar – 2<sup>nd</sup> round of either municipal or national

*If no candidate for president of the nation or of a municipality gains more than half of the valid votes, then there must be a second round between the two candidates with the most votes.*

11 days before – official campaign begins

1 day before – no campaigning

ELECTION DAY - less than 30 days after first round results proclaimed