

2019 General Elections - 91

Mozambique Political Process Bulletin

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National vote count can be secret, rules CC

The national vote tabulation can be done in secret, even though district and provincial counts are open to party agents and observers, the Constitutional Council ruled on Saturday 9 November. The CC rejected a protest by eight parties who said that their agents were only allowed to attend a CNE session on Saturday 26 October in which they were shown a Power Point presentation of the results; no formal results sheets were produced, signed or posted as required. But the actual final count had been done at a closed meeting on 25 October, which they argued they should have been allowed to attend. But the CC rejected their complaint.

At national level, the CNE is supposed to simply add together the provincial results. In its statement the CNE said that STAE had done the actual work of bringing together the district and provincial results sheets and minutes. And the meeting simply approved the detailed tables provided by STAE. The parties say the 25 September meeting was the "real" <"verdadeira"> national count, and that the CNE even approved a deliberation confirming those results on 25 September. But the CC rejected that argument.

The law actually makes a distinction. For the district and provincial counts, "party agents can be present for the work of compiling the results". But at national level the law creates a special "national results assembly" and party agents can only attend the national results assembly, not the work of compiling the results, in contrast to lower levels. (art 101A, 110, 149, 150 of law 2/19)

The law gives observers the right to observe the "centralisation and compilation of electoral results at district, city, province and central levels", but this has never been tested, and observers were not allowed to attend the 25 October CNE meeting. (art 262, law 2/91)

The parties made two other arguments, also rejected by the CC. The parties complained that they were not given copies or access to the documents used to compile the results. But the CC went on to argue that the parties should have collected signed copies of results sheets (editais) at district and provincial level, and done their own parallel count, which they could have used to challenge the results presented at the national results assembly.

Parties also say that the law specifically requires that they be told about the national assembly in writing, but they were only told by telephone. This is an "infraction", the CC admits, but it did not matter as all party agents attended the 26 October meeting.

The eight parties making the complaint were Renamo, MDM, Amusi, PJDM, Podemos, Panamo, UDM, and Nova Democracia.

CC rulings are available on <http://www.cconstitucional.org.mz/Eleicoes-2019>; this is Acordao 17.

CC refuses to consider Chokwe arrests

A division between criminal and electoral law adds further complications. Ballot box stuffing, impeding party agents in any way, and failure of staff to carry out any obligations (including refusing to issue observer credentials) are criminal offenses. Thus they must be dealt with the office of the Public Prosecutor (Ministerio Publico) as common crimes, and cannot be dealt with as electoral offenses by the district tribunals and Constitutional Council (CC).

Thus Nova Democracia's complaint about failure to issue party delegate credentials in Gaza, the failure to allow those with credential to observe, and the jailing of 19 of its members was not considered by the CC because these are crimes, not electoral offenses.

The magistrate said they jailed the ND observers because the district elections commission said their credentials were false. The magistrate continued that it was from the delegates to prove that the credentials were real. (Acordao 18 of 11 November).

Other decisions

Renamo appealed to the CC about Beira, citing ballot box stuffing, exclusion of voters, refusal or polling station heads to receive complaints, blocking party-nominated polling station members, and violence and intimidation. The CC rejected all of these, because they are criminal offenses, not electoral.

In addition, Renamo said the election in Beira should be invalidated because of differences in number of votes in the three elections: President 171.098, Parliament 170.607 (491 fewer) and provincial assembly 171.222 (more than the other two). These differences show that there were illicit actions which influenced the results. The CC did consider this complaint, but concluded that the discrepancies were simply the result of three different elections and did not show any irregularity. (Acordao 16, 8 November)

In a separate complaint to the CC, Renamo protested against widespread misconduct including ballot box stuffing and improprieties in the registration. It also protested the exclusion of its party polling station delegates in Tete. The CC ruled that not enough evidence was submitted to justify annulling the elections. It also sent a copy of the ruling to the Public Prosecutor (Ministerio Publico) to deal with the crimes mentioned. (Acordao 19, 11 November)

Finally, in Alto Molocue, the CC overturned a district tribunal decision that Renamo submitted its protest too late, on 18 October. The CC accepted the Renamo argument that no polling station posted results until the day after voting, 16 October, and thus the submission was within 48 hours. But in consideration of the case, the CC rejected ballot box stuffing claims because those are crimes, not electoral offenses. But it did look at Renamo's second claim, that there was "a widespread movement in all polling stations in the district, with strong participation of electoral officials, which undermined impartiality and put into question the credibility of the process." But the CC said Renamo provided no

proof of this. (Acodao 15, 4 November)

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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> The LSE archive now has detailed 2013 and 2014 results, by polling station.

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