

Mozambique Political Process Bulletin

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Constitutional Council confirms election results but changes Milange

Local election results were approved by the Constitutional Council (CC) on Friday 16 January, with one change. The result in Milange was corrected by the CC, reversing a secret change made by the National Elections Commission (CNE) which had taken one assembly seat away from UNAMO and given it to Frelimo. All other results were accepted. The CC vote was 6-1, with Manuel Franque voting against.

The announcement starts the clock for the second round in Nacala. Because no candidate for mayor (*presidente*) gained more than 50% of the votes, a second round must now take place between 29 January and 14 February. The CNE meets Monday to pick a date, which it then recommends to the Council of Ministers.

Independent observation was of "crucial importance for judging the liberty, transparency and justice" of the elections, the CC said. It particularly cites the closeness of the parallel counts to the results published by the CNE.

“Transparency of the electoral process is the guarantee of the honesty and justice of the elections,” stresses the CNE in a long section of its ruling. In an unusual statement, it points approvingly to the clause in the observation regulations that says “the electoral observation process is governed by principles and rules universally established and practiced by states.” This means electoral observation is not something regulated purely by the CNE and Mozambican law, but also by international conventions and norms.

This, in turn, leads the CC to suggest that observation regulations should be set down in law, and not left for the CNE to establish.

The validation of the results, *Acórdão n.º 02/CC/2009, de 15 de Janeiro*, should be published soon on the CC website: <http://www.cconstitucional.org.mz>

Sharp criticism of Elections Commission

The Constitutional Council (*Conselho Constitucional, CC*) was sharply critical of the National Elections Commission (*Comissão Nacional de Eleições, CNE*) for acting illegally or improperly in five different ways.

In particular, the CNE must “scrupulously apply” the law with respect to dates and calendars, particularly the dates on which decisions are made as to candidates and lists. This is repeated several times in the ruling. But in an interview with STV later in the day, CNE President João Leopoldo da Costa, rejected this. He said that if the CNE had strictly followed the calendar in the law, it would have had to exclude 14 Renamo mayoral candidates.

Second, the CNE is criticised for being late in making decisions or publishing the results of those decisions.

Third, the CC criticised the continued problem of errors in the computer-printed electoral register which meant that many polling stations also had to have the original hand-written register as a back up. There should only be one computerised register, the CC said.

Fourth, the CC notes that some polling stations closed improperly at 18,00 with people still in the queues, and blames this on poor supervision of polling stations by the CNE to ensure that staff knew the rules.

Fifth, the way in which candidates and parties were ordered on the ballot paper was incorrect and in violation of the law, the CC said. Position on the ballot paper is determined by drawing lots. The CNE first ranked the parties according to the number of municipalities in which they were standing, and then drew lots to determine relative position within those groups. Only Frelimo and Renamo were standing in all municipalities, and thus Frelimo was first on all ballot papers and Renamo second. But the CC said there is no provision for this system in the law, and it discriminates against smaller parties. Each of the 43 municipal elections is a different election, it said, thus lots should be drawn from each ballot paper separately. As no party protested the decision, however, the CC took no action and only pointed to its illegality.

Candidate’s arrest was illegal

The arrest and detention for several days of the Renamo candidate for mayor of Mandlakazi was illegal, the CC said, but it took no action because Renamo filed no protest.

But the CC goes on to note the lack of links between the CNE, courts and the public prosecutors office and the lack of any system for dealing with infractions of electoral laws. There needs to be some sort of urgent procedure to resolve key problems during the electoral process, and not always wait until afterwards.

Consolidated law needed

The CC calls on parliament to “stabilise and consolidate the electoral legislation” to correct mistakes and stop the need for a new laws for each election. Four different laws covered this election, and some of the dates by which things must be done are conflicting and “manifestly” wrong, with contradictions between different parts of the laws.

Is complaints procedure unworkable?

There have been few successful protests by opposition parties because the complaints procedure is so complex. Election law works under the concept of “*impugnação prévia*” (prior objection), which means that a protest must first be made at the lowest level possible – the actual polling station or the city election commission, and only if the protest is rejected can it be appealed to the next higher level, up to the CNE and then CC.

The problem is that the deadlines are very tight and at lower levels there are no procedures for dealing with protests. Indeed, a repeated complaint from Renamo is that polling stations refuse to accept its protests. And under *impugnação prévia*, it is difficult to protest to an election commission if the polling station has not registered the protest. Indeed, the only complaints that have ever been successful were those made against the CNE itself, and not against lower level bodies.

CC member Manuel Franque refused to accept the election results, citing his earlier vote against the rejection on procedural grounds of a Renamo complaint. He wrote that over the past six multiparty elections, the electoral law has proved to be so “complex, unworkable and unjust” as to be unusable, which means that “most irregularities are ignored or whitewashed.” Franque is a respected lawyer and one of two CC member nominated by Renamo.

Perhaps in response to this, the other six members of the CC in their ruling go out of their way to defend *impugnação prévia*: “we call attention to all competitors in elections to scrupulously follow the law.”

Milange change

The Constitutional Council took more than a month to deal with the results because it found “material errors and omissions” in the results tables, and asked the CNE for further information on 19 December and 9 and 13 January. UNAMO, a small party whose president, Carlos Reis, stood for mayor in Milange, had protested to the CC that the CNE had changed the count for municipal assembly and deprived it of a seat. The CC rejected the complaint on 9 January because it had not been made first to the CNE under *impugnação prévia*.

But in its ruling on the election, it said that although it had rejected the protest on procedural grounds, it did feel it necessary to consider the merits of a complaint what seemed to be about a real error. The system is that an intermediate count (*Apuramento Intermédio*) is done by each city elections commission and then the National Elections Commission pulls these together, considers invalid votes (nulos), and corrects errors. This is the final result (*Apuramento Geral*).

The Apuramento Intermédio done by the Milange city election commission for municipal assembly gave Frelimo 3815 votes, Renamo 355, PDD 91, and UNAMO 718. This gave Frelimo 10 seats, UNAMO 2, and Renamo 1. But without any explanation, the Apuramento Geral shifted 104 votes from UNAMO to PDD, which had the effect of shifting one assembly seat from UNAMO to Frelimo. The CC asked the CNE for the original data, and decided the CNE’s Apuramento Geral was wrong, that that PDD had 97 votes and UNAMO 724 – which did indeed give UNAMO its second seat.

Do they know it's Christmas?

UNAMO's rejected complaint to the CC was added to a protest appealing against the rejection of an earlier complaint made to the CNE. With respect to that complaint, the CC noted that the CNE had ruled on 29 November but not bothered to tell UNAMO until 23 December. The CNE then argued to the CC that since UNAMO had not appealed to the CC until 29 December it has missed the deadline of appealing within 3 days. The CC points out that 25 December was Christmas and that 25 and 26 December were holidays in Mozambique, so 29 December was the first working day available.

Comment

Moving from secrecy to transparency

In secret and without explanation or announcement, the CNE changed the intermediate results issued by the Milange, Beira and Nacala city election commissions. Mozambique is perhaps unique in the world in allowing the elections commission to change the results in secret and without any announcement. Indeed, the changes were discovered only by comparing the tables issued by the CNE in its final results with the intermediate results announced at local level.

From the Constitutional Council ruling, we now know that the CNE simply made a mistake on Milange. And observers were pleased with the changes in Beira and Nacala, because the CNE corrected wrong results issued under political pressure at local level.

In giving the CNE the role of announcing final results, parliament has clearly given the CNE the responsibility for checking and correcting errors. But the election will never be seen as free, just and accurate when that responsibility is carried out in secret. Changing the results in secret remains totally unacceptable. Elections will be seen as transparent and internationally acceptable only when the CNE's changes are listed and explained publicly.

The CNE deserves high praise for a radical shift in thinking, toward a new level of transparency, and resolving many of the problems criticised by international and domestic observers in the past. Observer regulations promise a transparency which is normal in other countries but is unprecedented for Mozambique. The regulations give observers the right to:

“Consult the deliberations, directives, regulations, and instructions issued by the National Elections Commission and STAE on material relating to the voting.”

and to

“Observe the operations following the voting at all levels, namely the centralisation and summation of electoral results at district, city, provincial and central level, including the announcement, validation, and proclamations of electoral results.”

In the past, deliberations and directives were secret, and centralisation of results could not be observed.

This year, many processes such as the requalification of invalid votes (nullos) were open to press and observers. Many of the deliberations were published, albeit with long delays. So there has been a real and positive shift to more openness. Centralisation of results, however, remains secret.

In its ruling on the results, the Constitutional Council stressed that observation and transparency are not governed just by CNE regulations and Mozambican law, but also by international norms and standards. To meet these standards, two further changes are essential.

- First, **decisions must be published promptly**. Most controversially, the lists of candidates approved by the CNE was posted at the CNE headquarters, but never put on the website or published in *Boletim da República*, leading to charges of misconduct, bad faith, and illegal changes of lists. The Constitutional Council and this *Bulletin* have no problem posting information on their websites quickly, and the CNE must find a way to do this.

- Second, **changes to results cannot be secret**. All changes must be listed and explained, and all relevant documentation made available. This already happens with revalidation of nulos, and must be extended to all other changes.

This CNE has made great strides toward openness and transparency, and made even greater promises. International and domestic credibility requires that the CNE take these final steps toward transparency.

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