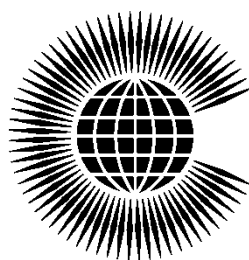


Report of the Commonwealth Observer Group

MOZAMBIQUE NATIONAL AND PROVINCIAL ELECTIONS

28 October 2009



COMMONWEALTH SECRETARIAT

Mozambique National and Provincial Elections 2009

Table of Contents

Letter of Transmittal

Chapter 1 – Introduction 1

Chapter 2 – Political Background 3

From Independence to Multi-Party Elections	3
National Elections	3
Local Elections	4
2009 National and Provincial Elections	5
Presidential Candidates	6
National Assembly Elections	6
Provincial Assemblies	8
Political Parties Fielding Presidential Candidates	8

Chapter 3 – Electoral Framework and Election Administration 10

The Constitution, State Structure and Legal Framework	10
The Role of the Constitutional Council	11
Electoral Legislation	12
The Electoral System	13
Election Administration	13
Election Calendar	14
Voter Eligibility and Registration	15
Candidate Eligibility and Nomination	15
Women and Youth Participation	16
Complaints and Appeals	16
Key Issues:	
Candidate Nomination Process	17
Composition of CNE	19
The CNE: Transparency and Public Information	20
Electoral Laws and the Election Calendar	20
Voter Registration	21
Complaints and Appeals	22
Recommendations	22

Chapter 4 – Election Campaign and Media Coverage 25

The Election Campaign	25
Overview of the Media Landscape	26

Media Framework and Issues	26
Media Coverage of the Election	28
Recommendations	29
 Chapter 5 – Voting, Counting and Tabulation	 31
The Process	31
Assessment of the Voting, Counting and Tabulation Processes	33
Key Issues:	
Speed of the Voting and Counting Procedures	37
Determination of Invalid Ballots	37
Conduct of the Tabulation Process	38
Recommendations	38
 Chapter 6 – Conclusions and Recommendations	 39
Conclusions	39
Recommendations	40
The Electoral Framework and Election Administration	40
Election Campaign and Media	42
Voting, Counting and Tabulation	43
 Annexes:	
Annex 1 – Biographies of Chairperson and Observers	44
Annex 2 – Deployment Plan	47
Annex 3 - Arrival Statement	48
Annex 4 – Interim Statement	50

Chapter 1

Introduction

Invitation

At the invitation of the Mozambique Minister for Foreign Affairs and Co-operation, the Commonwealth Secretary-General, Mr Kamalesh Sharma, constituted an Observer Group for the Mozambique National and Provincial Elections of 28 October 2009. The Group was led by H.E. Dr Ahmad Tejan Kabbah, former President of Sierra Leone, and comprised eleven eminent persons in total. The Observer Group was supported by a six-member staff team from the Commonwealth Secretariat. A full list of members is at Annex 1.

Terms of Reference

"The Group is established by the Commonwealth Secretary-General at the invitation of the Mozambique National Electoral Commission. The Group is to consider the various factors impinging on the credibility of the electoral process as a whole.

It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which the country has committed itself, with reference to national election-related legislation and relevant Regional, Commonwealth and other International commitments.

The Group is to act impartially and independently. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.

The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Mozambique, the National Electoral Commission, candidates and the leadership of the political parties taking part in the elections and thereafter to all Commonwealth Governments."

Activities

The Observer Group was present in Mozambique from 21 October 2009. During four days of briefings, the Group met with the National Election Commission (CNE), political party representatives, civil society groups, media, Commonwealth High Commissioners and other diplomats, international organisations, and domestic and international observer missions.

The Observer Group was deployed around the country on 26 October. Two-person teams visited ten of the country's 11 Provinces: Maputo City; Maputo Province; Gaza; Inhambane; Tete; Sofala; Manica; Nampula; Zambezia; Cabo Delgado. The teams

met with other domestic, regional and international observers in each Province, in order to build up a comprehensive picture of the conduct of the process.

During the deployment phase, Commonwealth Observers also met with election officials at the Polling Station, District and Provincial levels, security officials, regional representatives of political parties, media and voters.

On the basis of the Group's findings and observations, the Chairperson issued an Interim Statement on 30 October (Annex 2). The Group's Report was completed in Maputo and thereafter transmitted to the Commonwealth Secretary-General.

Chapter 2

Political Background

From Independence to Multi-Party Elections

An agreement granting Mozambique's independence from Portugal was signed on 7 September 1974 in Lusaka. A transitional government, led by Mr Samora Machel, leader of the Front for the Liberation of Mozambique (Frente de Libertação de Moçambique - FRELIMO) as interim prime minister, was installed on 20 September 1974. Before taking the country to independence on June 25 1975, FRELIMO promulgated the first Constitution of Mozambique.

Conditions were then created for the establishment of a one party system, which would remain the dominant political system until 1990. Mozambique adopted a presidential system of government, with the President of the Republic holding the positions of both head of state and government. As head of state, he chairs the Council of State and as head of government he chairs ex officio the Council of Ministers (this is described in-depth in Chapter 3). Legislative power is represented by elected deputies in the Assembly of the Republic (Parliament).

In 1976, the Mozambique National Resistance (Resistência Nacional Moçambicana - RENAMO) emerged as a major challenge to FRELIMO's ideology. A number of Mozambicans, unhappy with FRELIMO's policies, switched support to RENAMO and a civil war erupted between the two sides. The civil war was brought to an end when negotiations towards the establishment of a multi-party system were pursued. In 1990 a new Constitution was adopted and in October 1992 a General Peace Accord between FRELIMO and RENAMO in Rome was concluded.

The 1990 Constitution established "the status and role of the political parties as privileged actors on the political stage", while the revised Constitution (2004) protects the right of citizens to form or participate in political parties¹. In 1991, the first Law on Political Parties² was passed, regulating the creation and registration of political parties.

National Elections

The first multi-party presidential and parliamentary elections were held on 27-29 October 1994. Of the twelve presidential candidates only three besides Chissano (FRELIMO) and Dhlakama (RENAMO) - who obtained 53.3 and 33.7 per cent of the vote respectively - managed to get more than two per cent of the vote. Fourteen parties and coalitions presented lists of candidates for the 1994 parliamentary elections.

¹ *Constitution of Mozambique (2004), Article 53*

² *Law No 7/91, later amended by Law No 14/1992*

A total of 26 political parties³ were registered prior to the second multiparty national elections, held in December 1999, which were deemed credible by international observers. However, only 12 parties and coalitions presented lists of candidates for the parliamentary elections. FRELIMO's margin of success was little better than in 1994, but once again it secured a majority in Parliament. The trend was mirrored in the results of the simultaneous presidential election, with Mr Chissano's share of the vote dropping to 52.3% (from 53.3% in 1994), while the share gained by RENAMO's candidate, Afonso Dhlakama, rose from 33.7% to 47.7%.

Though the election outcome was endorsed by international observers, RENAMO reacted angrily to its loss, accusing FRELIMO of fraud, refusing to recognise the government, and threatening to establish a parallel administration in the provinces where it had won majorities. Serious political tensions culminating in several deaths and demonstrations throughout the country led to FRELIMO and RENAMO reaffirming their commitment to democracy and formal negotiations resumed in January 2001. However, the talks ended in stalemate in late May 2001.

The 2004 Parliamentary and Presidential Elections were described by the Commonwealth Observer Group as credible, and that "conditions existed for a free expression of will by the electors"⁴. President Guebuza won the presidential election with 63.7% of the vote and took office in February 2005. Mr Dhlakama came in a distant second with 31.7% of the vote, and announced that he did not recognize the results. The other candidates each received less than 3% of the vote. A total of 20 parties and coalitions presented lists of candidates for the parliamentary elections. Voter turnout in these elections was lower than previous elections.

The Commonwealth Observer Group also made a number of key recommendations, including calls for a review of the election management arrangements of Mozambique, with particular reference to the composition of the CNE; shifting the election date to ensure it takes place during the dry season; a simplification (and speeding up) of the results process; to reduce the length of time voting takes place to just one day; and for improved training for all polling staff. Since 2004, the Government of Mozambique has taken steps to implement some of these recommendations.

Local Elections

Local elections were held in 1998, 2003 and 2008. The first Local Elections in 1998 were boycotted by almost all opposition parties, with an abstention rate of 85%⁵. However, for the 2003 Local Elections the Commonwealth Expert Team concluded that "the elections were well conducted, credible and a reflection of the will of the people"⁶. They also recommended the introduction of "measures to create the conditions for wider consultation between the election management institutions and the political parties and civil society; an enhancement of the training programme for all voter registration and election officials; and a revised re-registration process, to adequately reconcile the 1999 handwritten and 2003 computerised registers. International observers from both the Carter Center and the EU praised the conduct

³ "Mozambique: Democracy and Political Participation", Open Society Institute (2009), p96

⁴ Report of the Commonwealth Observer Group on the 2004 Mozambique Parliamentary and Presidential Elections, p45

⁵ "Mozambique: Democracy and Political Participation", Open Society Institute (2009), p8

⁶ Report of the Commonwealth Expert Team on the 2003 Mozambique Local Elections, p20

of the 2003 local elections, but criticised the lack of transparency in the results process, cited possible misinterpretations of the law by the CNE, and objected to bureaucratic obstructions to observation. There were also concerns about the secrecy of the final computerised tabulation.

During the 2008 local elections, RENAMO challenged several aspects of the process, including the registration period, as well as the voting and counting. The party's submission set out alleged irregularities in 24 municipalities. However, all RENAMO protests were rejected by the Constitutional Council on procedural grounds, for failing to follow the calendar and procedures set out in the electoral law⁷.

2009 National and Provincial Elections

A decision was made by President Guebuza to shift the date of the 2009 elections, due to the heavy rains encountered in the December 2004 elections. This is in line with recommendations made by Observers at the time. In April 2009, the President subsequently announced that elections would take place on 28 October 2009.

A complete re-registration of the electorate was conducted from September 2007 to March 2008, plus two subsequent updates held in mid 2008 and from 15 June to 29 July 2009. This was followed by a Claims and Objections Phase, which ran till 5 August 2009. Registration was for people who had moved, lost their registration card, or would have become 18 years before the election date. Mozambique's total electorate (excluding voters resident outside the country) then stood at 9,871,949.

Despite serious problems with the computer equipment used by the registration brigades, 514,977 new voters were registered inside Mozambique (which was 107 per cent of STAE's initial target of 483,000) and 56,360 outside (of whom 40,697 were in South Africa). In addition, 498,399 people who reported that they had lost or damaged their voter cards were issued with new ones, and 218,698 people transferred their registration from one part of the country to another. The campaign issued a total of more than 1.2 million voters cards. As a result of the re-registration exercise, the number of mandates for Nampula and Zambezia were altered.

In March 2009, a new party – the Mozambique Democratic Movement (Movimento Democrático de Moçambique – MDM) - was formed, following its breakaway from RENAMO, after a decision by party leader Mr Afonso Dhlakama not to support the candidature of the party's most successful municipal politician, Mr Daviz Simango, for a second term of office as Mayor of Beira. The MDM announced its intention of running Mr Simango as its candidate for President of the Republic and a full slate of candidates for the parliamentary and provincial elections.

In July 2009 Mr Afonso Dhlakama was re-elected as RENAMO leader at a congress in the northern town of Nampula. Since RENAMO's defeat in the November 2008 local elections, the party had been in the grip of an internal struggle, which had resulted in many of its most talented members defecting to the newly-formed MDM party.

However, the wide margin of Mr Dhlakama's victory did little to disguise the fact that he was re-elected by what was in effect a significantly reduced support base. Nearly

⁷ According to the law, all complaints must first be made to local electoral commissions and then to higher levels, up to the CNE. Only if the CNE rejects a complaint can it go to the Constitutional Council.

all of the 350 delegates who attended were from Nampula, Mr Dhlakama's key stronghold of support, while the timing of the congress, which took place while the National Assembly was still sitting, ensured that many RENAMO members were unable to attend, including dissidents who had threatened to defect to the MDM.

Following his re-election, Mr Dhlakama confirmed that he would stand as RENAMO's candidate in the presidential election, and he urged Mozambican voters to prevent FRELIMO from securing an absolute majority in the National Assembly. According to Mr Dhlakama, this would have enabled FRELIMO to change the constitution and allow President Armando Guebuza to stand for a third consecutive term.

Presidential Candidates

Nine candidates presented their nomination forms for the 2009 Presidential election. The Constitutional Council, in terms of Law 7/2007 section 132, scrutinised the prospective candidates and on 14 August 2009 ruled that only three - Mr Afonso Dhlakama (RENAMO), Mr Armando Guebuza (FRELIMO) and Mr Daviz Simango (MDM) - had met the legal requirements for valid nomination; the remaining six were rejected because they failed to meet the requirement of 10 000 acceptable signatures supporting their candidacy. Some of the parties which qualified to put up a candidate in 2004 failed to do so in 2009.

National Assembly Elections

For national elections, there were 13 constituencies - each of the 10 provinces, Maputo city, and two for Mozambicans abroad.

Parties were to submit separate lists of candidates for each constituency, with names of at least three more candidates than there are seats. Candidates were to be excluded if they had not submitted all the required documents, known as a *processo individual*. This had to contain five key documents: identification details; a copy of their voters card; a certificate of no criminal record; an agreement to be a candidate; and a statement that they satisfy the conditions to be a candidate. The nomination process for candidates in all three elections also required the submission of certificates of residence; in particular, candidates for provincial parliaments were to also submit a statement from district authorities stating that they had lived in the district where they were standing for at least six months. Lists were to be rejected if there were not enough candidates remaining.

MDM's lists were disqualified in nine constituencies and only accepted in Maputo City, Inhambane, Sofala and Niassa. The Constitutional Council subsequently dismissed complaints from 14 parties that they were unfairly excluded from running in all electoral districts⁸. The rejection upheld a decision by CNE, that those parties could not run in all electoral districts on the grounds of incomplete documentation.

FRELIMO and RENAMO were the only parties accepted to stand for national parliament in all provinces. Aside from FRELIMO, RENAMO and the MDM, the CNE

⁸ *Pan-African News Wire*, 30 September 2009,
<http://panafricannews.blogspot.com/2009/09/mozambique-opposition-parties-lose.html>

cleared 16 other parties to stand in one or more of the parliamentary constituencies. They were:

- PDD - Party for Peace, Development and Democracy, which was set up by the former number two in RENAMO, Raul Domingos, after he was expelled from RENAMO in 2000. It won two per cent of the vote in the 2004 parliamentary election, and prior to the formation of the MDM, it was considered the third largest party in the country. The PDD originally submitted a list of candidates for 12 constituencies (parliamentary elections) and 60 districts (provincial elections). However, CNE only accepted candidates to contest in 7 constituencies (parliamentary elections) and 3 districts (all located in Zambézia).
- ALIMO - Independent Alliance of Mozambique. This was one of the ten minor parties allied to RENAMO in the RENAMO-Electoral Union coalition, which contested the 1999 and 2004 elections. As a result, ALIMO leader Khalid Sidat held a parliamentary seat for ten years. RENAMO then dissolved the coalition.
- PEC-MT (Ecologist Party) and PVM (Mozambican Green Party). They both stood in 2004, when the PE-MT took 0.4 per cent of the vote, and the PVM 0.33 per cent.
- PAZS (Party of Solidarity and Liberty);
- PARENA (National Reconciliation Party). This party took 0.6 per cent in 2004;
- PT (Labour Party). It won 0.47 per cent in 2004;
- PPD (Popular Democratic Party). In 2004, it won just 448 votes - or 0.01 per cent.

The remaining parties accepted by the CNE did not run in 2004. Some parties were created just prior to the 2009 elections. They were: PANAOC (National Workers and Peasants Party); PLD (Party of Freedom and Development) in 10 Provinces; MPD (Patriotic Movement for Democracy); UDM (Union of Mozambican Democrats); Union for Change (UM); PRDS (Party of Social and Democratic Reconciliation); ADACD (Democratic Alliance for Veterans for Development) in nine Provinces; and UE (Electoral Union - not to be confused with the now defunct RENAMO-Electoral Union).

A statement was issued by some of the minor parties at the end of September 2009, calling on the international community to impose sanctions on Mozambique because of the decision of the CNE, supported by the Constitutional Council, to exclude 27 parties from some or all of the constituencies in the parliamentary elections⁹. However, soon thereafter, a split began to appear among this group of minor parties when PIMO, the Labour Party (PT) and the Ecologist Party (PEC-MT) publicly indicated their support for FRELIMO¹⁰.

⁹ The parties who signed the statement included: PIMO (Independent Party of Mozambique); PARENA (National Reconciliation Party); PASOMO (Social Broadening Party); PT (Labour Party); SOL (Social-Liberal Party); PE-MT (Ecology Party); UD (Democratic Union); PANAMO (Mozambique National Party); UNO (National Opposition Union); UE (Electoral Union); UPM (Mozambique Patriotic Union); PUMILD (United Party of Mozambicans for Democratic Freedom); MPD (Patriotic Movement for Democracy); UDM (Union of Mozambican Democrats); PPLM (Liberal Progressive Party of Mozambique) – as reported by AIM news (30 September 2009)

¹⁰ As reported by the African Elections Project:

<http://www.africanelections.org/mozambique/news/page.php?news=4378>. On Tuesday 13 October 2009 PIMO became the third of the country's minor parties to announce that it was supporting the re-election campaign of President Armando Guebuza, following similar announcements the previous week by the Labour Party (PT), and by the Ecologist Party (PEC-MT).

It is encouraging that the law provides financial support for parties to participate in the elections (Law on Parties 7/91 and Arts. 35-40; Election Law 7/07), helping to create more equal conditions to some extent. However, it was raised with the Observer Group that a number of the 19 political parties putting up candidates for the election were more motivated by access to the funding than being serious political players. Their absence from the campaign and their lack of representatives in polling stations on election day highlights this.

Provincial Assemblies

Provincial assemblies were introduced when amendments were made to the Constitution in 2004¹¹. This had been a demand of RENAMO. Provincial Elections were due to be held in 2007, within three years from when the constitutional amendments took effect¹². However, they were postponed to coincide with the 2009 elections due to changes in the electoral calendar. Elections were to be held for 10 provincial assemblies or parliaments (excluding Maputo city). Only four parties stood for seats in provincial assemblies. The absence of opposition candidates in many Districts meant that FRELIMO contested in six provinces virtually unopposed. There are 141 constituencies in the ten provincial assemblies:

- FRELIMO stood in 138 – it failed to have lists approved only in Chimoio, Lichinga, and Lago (Niassa).
- RENAMO stood in 34, mainly Maputo, Manica and Cabo Delgado. It had no candidates in Zambézia and Nampula, two provinces where they had polled well in 2004.
- MDM stood in 23 districts, primarily in Manica and Sofala, and in a few districts in four other provinces.
- PDD (Partido para Paz Democracia e Desenvolvimento – Party for Peace, Development and Democracy) stood in three districts in Zambézia.

Political Parties Fielding Presidential Candidates

Front for the Liberation of Mozambique (Frente de Libertação de Moçambique - FRELIMO):

In 1962, groups of political exiles, led by Dr Eduardo Mondlane, formed FRELIMO in Tanzania, which fought a protracted struggle for independence from Portugal (1964 to 1974). Dr Mondlane was assassinated in a bomb blast in 1969. In 1975, after the April 1974 Carnation Revolution in Portugal, FRELIMO negotiated Mozambique's independence, which came into effect in June of that year. A one-party state - based on Marxist principles with Mr Samora Machel as President – was established. The new government received diplomatic and some military support from Cuba and the Soviet Union.

With the collapse of the Soviet Union, FRELIMO retreated from its Marxist traditional ideology. After the Rome General Peace Accords that put an end to the Mozambican Civil War (1977-1992), FRELIMO called for democratic, multi-party elections in 1994 that put an end to single-party rule.

¹¹ *Constitution of Mozambique (2004), Article 142*

¹² *Constitution of Mozambique (2004), Article 304*

Mozambique National Resistance (Resistência Nacional Moçambicana - RENAMO):

RENAMO was founded in 1975 following Mozambique's independence as an anti-Communist political organisation. Mr André Matsangaissa, an ex-FRELIMO army commander, was its first leader. The Ian Smith administration in Rhodesia supported RENAMO in order to prevent the FRELIMO government from providing a safe haven for Zimbabwe African National Liberation Army (ZANLA) militants seeking to overthrow the Rhodesian government. Matsangaissa was killed by government soldiers in 1979.

Following a succession struggle, Mr Afonso Dhlakama became the new RENAMO leader. During the Mozambican Civil War of the 1980s, RENAMO also received support from South Africa.

In 1984 the South African and Mozambican governments signed the Nkomati Accord, in which South Africa agreed to stop sponsoring RENAMO if the Mozambican government expelled exiled members of the African National Congress (ANC) residing there. However, the Mozambican government did not expel the exiled members of the ANC and consequently the South African government continued funneling financial and military resources until a permanent peace accord was reached in 1992. The 1992 peace accord led to the disarmament of RENAMO, to the integration of some of its fighters into the Mozambican army and to its transformation into a regular political party. This was supervised by the United Nations Operation in Mozambique (ONUMOZ) until 1994.

Mozambique Democratic Movement (Movimento Democrático de Moçambique – MDM)

The formation of MDM in March 2009, as a breakaway from RENAMO, arose following a decision by party leader Mr Afonso Dhlakama not to run its successful Mayor of Beira, Mr Daviz Simango, for a second term of office. The RENAMO grass roots in Beira rejected Mr Dhlakama's position, and Mr Simango ran as an independent. He secured re-election in the November local elections, taking 62 per cent of the vote. Following its formation, the MDM attracted a number of disaffected RENAMO members, in pursuit of fresh leadership and a new mandate, largely due to discontentment with the party's defeat in three earlier multi-party elections.

Though Mr Simango recognised that the MDM was short of financial and material resources, the party steadfastly focused on attracting the support of the youth of Mozambique. Any expectations that it would begin establishing a firm support base in the months after its formation were dented by the rejection of a significant number of its candidates standing in the 2009 elections, reportedly due to the lack of compliance with bureaucratic procedures in the nomination process. For the parliamentary elections, it could only contest in four provinces.

Chapter 3

The Legal Framework and Election Administration

The Constitution, State Structure and Legal Framework

The following is a description of the existing state structure and legal framework as provided for by the Constitution and election-related laws.

The Republic of Mozambique is a unitary state. The Constitution of 1990 provides for:

- Direct, equal, secret, free and regular elections for the President of the Republic and the deputies to the Parliament (Assembly of the Republic)
- Freedom to create political parties
- Pluralism of opinion and the freedoms of expression and the press
- The right to meet, associate and demonstrate

With the passing of this Constitution Mozambique moved from being a one-party state to a multi-party regime.

Mozambique has signed and ratified key regional and international instruments, relating to political and civil rights. The constitution and election-related laws provide basic freedoms and rights required for an election. These include the provision of freedoms of association, expression, assembly and movement. In addition Mozambique has ratified CEDAW, prohibiting discrimination against women, and in the electoral context the right for women to stand as candidates and voters is fully provided for¹³.

Changing the Constitution requires a two-thirds majority in Parliament. An amended Constitution was adopted in November 2004, following considerable debate and proposals for amendment to the 1990 text. The nature of its drafting marked a shift in that, unlike previous texts, it involved considerable popular participation and was approved by a multi-party, democratically-elected parliament.

Constitutional amendments made in 2006 created Provincial Assemblies, a key RENAMO demand, and the 5% vote threshold for representation in the Assembly of the Republic was abolished, while the CNE was restructured so as to depoliticize and professionalize it by giving a majority of positions to members of civil society. Provincial Assembly elections, originally scheduled for 2007, were postponed to coincide with the national elections in 2009.

As head of government, the President may appoint, release from office or dismiss members of his cabinet (the ministers and prime minister) at will. The Assembly of

¹³ Mozambique has signed and ratified (as relevant) among others: UN Declaration of Human Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of all Forms of Discrimination against Women; International Convention on the Elimination of Racial Discrimination; Commonwealth Harare Declaration; African Charter on Human and Peoples' Rights; African Charter on Democracy, Elections and Governance; SADC Principles and Guidelines Governing Democratic Elections.

the Republic itself may be dissolved by the President of the Republic if it rejects the government's programme.

The composition of the Council of Ministers is decided by the President of the Republic, who appoints the prime minister and the ministers. Although the role of the prime minister is in the Constitution, he/she has no functional autonomy, and is an adviser of the President of the Republic in leading and managing the government¹⁴.

According to Article 171 of the Constitution it is incompatible for a Deputy of the Assembly to be a member of the Government.

The Council of State was created in 2005. It has no decision-making powers, but acts as an advisory body to the President. The composition of the Council of State is:

- President of the Republic;
- President of the Assembly of the Republic;
- Prime Minister;
- President of the Constitutional Council;
- Ombudsman;
- Former Presidents of the Republic;
- Former Presidents of the Assembly of the Republic;
- Seven figures of recognised merit chosen by the Assembly of the Republic on the basis of parliamentary representation;
- Four figures of recognised merit chosen by the President of the Republic on the basis of parliamentary representation; and,
- The runner-up in the previous presidential election.

The National Assembly (Parliament) is Mozambique's supreme legislative body, and legislates on all basic domestic and foreign policy issues. Among other powers, it must approve the electoral law and laws governing referenda; sanction the suspension of constitutional guarantees and declarations of states of siege or emergency; ratify the appointments of the President and Vice-President of the Supreme Court, and the President of the Constitutional Council.

Parliament meets in ordinary session twice a year, opening in February and October, for a total of 90 working days. It meets extraordinarily when convened by the President of the Republic, the Standing Commission or at least one-third of deputies.

According to Article 173 of the Constitution deputies cannot be arrested unless caught in *flagrante delicto*, or sent to trial without the consent of the Assembly or its Standing Commission. Deputies are tried by the Supreme Court.

The Role of the Constitutional Council

The Constitutional Council was first foreseen in the Constitution of 1990, but its electoral competencies were carried out by the Supreme Court until November 2003, when the Council was created¹⁵. It is composed of seven judges, including one judge of appeal, serving as President of the Council and appointed by the President of the Republic; five judges of appeal appointed by the Assembly of the Republic on

¹⁴ Constitution of Mozambique 1990, Article 205, para 1.

¹⁵ Constitution of Mozambique 2004, Article 241 – see also Law 4/2003 and Law 9/2003

a proportional basis; and one judge of appeal appointed by the Superior Council of the Judiciary¹⁶.

On 21 January 2005, a revision of the Constitution took effect, which spells out the composition, role and competencies of the Constitutional Council¹⁷. The amended Constitution resulted in a new Organic Law of the Constitutional Council¹⁸, which was amended in 2008¹⁹.

The current competencies of the Constitutional Council²⁰ are to:

1. evaluate and declare the unconstitutionality of laws and the illegality of normative acts of State offices;
2. settle conflicts of jurisdiction between the sovereign public offices;
3. make prior evaluations of the constitutionality of referenda.

The Council is also mandated to:

- verify the legal prerequisites required of candidates for the office of President of the Republic;
- pronounce upon the permanent incapacity of the President of the Republic;
- verify the death and the divestiture of the President of the Republic;
- evaluate electoral complaints and appeals in the last instance, and validate and proclaim electoral results, in the terms of the law;
- decide, in the last instance, on the legality of the establishment of political parties and coalitions, as well as evaluate the legality of their names, acronyms and symbols, and order their dissipation in the terms of the Constitution and the laws;
- adjudicate actions contesting elections and the deliberations of political parties, as well as the legality of their names, acronyms and symbols;
- adjudicate actions concerning disputes about the terms of office of deputies;
- adjudicate actions concerning incompatibilities established in the Constitution and the law.

Electoral Legislation

For the 2009 National and Provincial Elections the key Laws were:

- Law no 7/2007 is a revision of Law no 7/2002, and relates to the President of the Republic and the deputies of the House of Assembly (Parliamentary) elections;
- Law no 8/2007 is a revision of Law no 20/2002, and relates to the organisational process, coordination, execution, transportation and supervision of the census and the electoral process;
- Law no 9/2007 relates to the institutionalised systemization of the electoral census for the accomplishment of the elections, a repeal of Law no 18/2002;

¹⁶ *Constitution of Mozambique 2004, Article 242(1)*

¹⁷ *Constitution of Mozambique 2004, Articles 241 to 248*

¹⁸ *Law 6/2006*

¹⁹ *Law 5/2008*

²⁰ *Constitution of Mozambique 2004, Article 244*

- Law no 10/2007 enacts the juridical board for the election of the deputies of the Provincial Assembly.
- Law no 15/09: it enacts the juridical board for the holding of simultaneous presidential, legislative and provincial assembly elections of 2009.

The Electoral System

The legal framework governing elections in Mozambique has a dual origin: the 1990 Constitution and the General Peace Agreement of 1992. There have been multi party elections since 1994. Concurrent Presidential and Assembly Elections are held every five years.

The 250-Seat National Assembly is elected using a system of proportional representation from closed party lists. 248 are elected from the 11 Provinces, which are allocated a number of seats according to their number of registered voters. In addition, one seat is elected from the Africa Diaspora vote and one from the Rest of the World vote, mainly Mozambicans in Portugal and Germany (elected on majority basis).

The number of seats allocated to each Province is based on the respective number of registered voters in each Province. For this election the mandate breakdown was:

- Niassa: 14 (544,770 voters)
- Cabo Delgado: 22 (888,197 voters)
- Nampula: 45 (1,801,249 voters)
- Zambezia: 45 (1,770,910 voters)
- Tete: 20 (796,257 voters)
- Manica: 16 (648,969 voters)
- Sofala: 20 (772,630 voters)
- Inhambane: 16 (641,387 voters)
- Gaza: 16 (639,658 voters)
- Maputo Province: 16 (616,208 voters)
- Maputo City: 18 (695,354 voters)
- Total: 248 (9,815,589 voters).

The proportional distribution is calculated using the D'hondt method with no threshold. (Same applies to Provincial Assemblies).

Elected members are considered to be national representatives and not representatives of the Province from which they are elected per se.

The President is elected on the basis of a single national constituency, requiring a majority of valid votes cast (i.e. 50% + 1). If no such majority is acquired then a second round of voting is held involving the two candidates securing the most votes in the first round.

Election Administration

There are two key institutions which are responsible for election management in Mozambique. The main policy body is the *Comissão Nacional de Eleições* (National

Election Commission - CNE)²¹ supported by several provincial commissions known as *Comité Provincial de Eleições* (CPEs). This policy body is supported by a technical secretariat, the *Secretariado Técnico da Administração Eleitoral* (Electoral Administration Technical Secretariat - STAE) which is responsible for the organisation of the electoral process including, voter registration, training of election staff and the provision and transport of materials.

The CNE is organised into the following divisions (Article 24 of Law 8/2007):

- Organisation and operations commission.
- Legal and deontological affairs commission.
- Training and civic education commission.
- Administration and finance commission.
- Internal and external relations commission.

CNE comprises a Chair and 12 Commissioners²². Five members are proposed by parties represented in National Assembly in accordance with their seats. Eight members are proposed by civil society organisations (CSOs). The President of CNE is chosen by consensus, from among CSO nominees. CNE is permanent and has a 5-year mandate.

STAE deals with operations and logistics under a Director-General. STAE has permanent seat on CNE, but no voting rights.

CNE and STAE also have Provincial and District/City level operations. Provincial Election Commissions (CPE) comprise a Chair and 10 Commissioners. Five are proposed by parties and six by CSOs. District Election Commissions comprise a Chair and 10 Commissioners. Five are proposed by parties and six by CSOs

Election Calendar

On 14 May 2009 the CNE issued the following key deadline dates:

Date	Election Timetable
29 July	End of voters registration and final date for submission of nominations
28 August	Candidates and Parties to resolve any irregularities and missing documents
31 August	Publication of Final Candidates List
13 Sept to 25 Oct	Election Campaign
30 Sept	Publication of Polling Station Locations
8 October	Parties to submit list of polling station delegations
25 October	Issuing of credentials for Observers and Party Delegates

²¹ The CNE is established by Law 8/2007 (Articles 1 - 3). Significant here is that Law no 8/2007 26 February (governing the CNE) replaced Law no 20/2002.

²² The members of the CNE are: Dr João Leopoldo da Costa (President, civil society), Rabia Zauria Valgy (civil society), Juvenal Bucuane (civil society), Artemisa Franco (civil society), Paulo Cuinica (civil society), Alípio Siquisse (civil society), Rev Leonardo Massango (civil society), Jeremias Timane (civil society), António Salomão Chipanga (FRELIMO), José dos Santos Anjos Grachane (FRELIMO), Rodrigues Timba (FRELIMO), Isekiel Molde Gusse (RENAMO), Latino Ligonha (RENAMO)

28 October	ELECTION AND COUNT IN POLLING STATIONS
31 October	Announcement of District Results
2 November	Announcement of Provincial Results
12 November	Announcement of National Results and Distribution of Assembly Seats to Parties
17 November	CNE submits final results to Constitutional Council

Voter Eligibility and Registration

In order to be eligible to vote a person must be:

- A Citizen of Mozambique
- At least 18 years of age
- Registered to vote (Includes also Mozambicans registered abroad - Africa and Rest of the World)

Persons are ineligible to vote if they are serving a prison sentence or in prison awaiting trial or if they have a certified mental incapacity.

Following a period of updated registration (as described in Chapter 2) there was a total of 9,871,949 voters for these elections.

There were wide provincial disparities in the process. Seven provinces (Gaza, Tete, Niassa, Maputo City, Maputo Province, Manica and Sofala) exceeded their registration targets, while the remaining four provinces (Cabo Delgado, Nampula, Zambezia and Inhambane) fell below their targets²³.

Based on the adjusted figures for the total electorate, STAE calculated the definitive number of parliamentary seats for each provincial constituency. Compared with the provisional figures released earlier in the year, Tete and Sofala each gain a seat, and Nampula and Cabo Delgado each lose one.

In comparison with the 2004 distribution of mandates, the following Provinces were altered: Niassa +2; Tete +2; Manica +2; Maputo Province +3; Maputo City +2; Nampula -5; Zambezia -3; Sofala -2; Gaza -1.

Candidate Eligibility and Nomination

In order to be eligible as a candidate for the Presidential Election, a person must be a Mozambican citizen (not naturalised) and over 35 years of age.

In addition they must:

- Submit a list of 10,000 'proposers' with signatures of registered voters
- Be put forward by a party, coalition, group of citizens
- Submit a deposit of 100,000 Mt (\$3,571)

²³ The complete figures for new voters, broken down by province, are as follows, with the percentage of the target achieved in brackets: Niassa: 36,031 (133 per cent) Cabo Delgado: 37,795 (89 per cent) Nampula: 70,954 (73 per cent) Zambezia: 72,749 (81 per cent) Tete: 68,293 (167 per cent) Manica: 36,660 (109 per cent) Sofala: 41,756 (107 per cent) Inhambane: 27,797 (89 per cent) Gaza: 54,830 (178 per cent) Maputo Province: 30,131 (125 per cent) Maputo City: 37,351 (145 per cent).

- Submit supporting documentation to the Constitutional Council

In order to be eligible as a candidate on a party list for the National Assembly Elections, a person must be of voting age and a Mozambican citizen.

In addition they must:

- Be put forward by registered party / coalition on closed ordinal list
- Provide a file of five documents, known as a *processo individual* to the CNE. The *processo individual* comprises:
 - Identification details
 - A copy of their voters card
 - A certificate of no criminal record
 - A certified agreement to be a candidate
 - A certified statement that they satisfy the conditions to be a candidate

Women and Youth Participation

The number of women represented in the out-going Assembly was 90, which is 35% of the total number. Such a level of representation compares quite favourably in terms of regional and global averages²⁴. Of the total of 90 women in the out-going Assembly, 69 were from FRELIMO and 20 from RENAMO, the remaining female deputy was from one of the minor parties.

There is no legal requirement for gender representation on party lists but the major political parties have traditionally placed a strong emphasis on guaranteeing women electable positions on their lists. FRELIMO has traditionally used a voluntary quota of 30% of women on its party lists.

Mozambique's laws provide that citizens of at least 18 years of age can vote and stand as candidates. FRELIMO, RENAMO and MDM have youth wings.

Complaints and Appeals

Representatives of candidates and voters can submit a complaint at a polling station. But the complaint must include "necessary proof" (Art 78, 7/07). The complaints, where accepted, will be attached to polling station documents, and included in the 'Acta'.

Complaints and Appeals can be submitted to CNE up to two days after the vote count, but require copy of the entry in 'Acta' (Art 184, 7/07)

Final appeal of the CNE's decision can be made to the Constitutional Council within 3 days. The Constitutional Council has 5 days for a decision, but will only declare a result to be null and void if the irregularities in question substantially affect the results.

²⁴ SADC targets 50% women's representation, the Commonwealth targets 30%.

Key Issues

1 Candidate Nomination Process

Nine Presidential nominees submitted applications for candidature, of which three were approved by the Constitutional Council. The Election Law allows for rejected nominees to be given five days to rectify their application, and resubmit. Affected parties claimed that the Constitutional Council did not afford the rejected nominees this opportunity, as stipulated by the law.

The nomination process for candidates in all three elections requires the submission of certificates of residence - in particular, candidates for provincial parliaments must also submit a statement from district authorities saying that they have lived in the district where they are standing for at least six months. Many parties complained to the Observer Group that such documents are hard to secure in such a timeframe, requiring certification from local officials or issuing of paperwork by local authorities in other Provinces. Some opposition parties also claimed that in some instances local officials – which tend to have links to the ruling party – were not always helpful in this regard.

For each constituency, if the list does not have enough candidates with *processos individuais*, then the list must be rejected automatically. The number of candidates must be more than the number of constituency seats plus 3 extra candidates, known as *suplentes*. Three of these documents must also be signed in the presence of a notary, which proves to be a challenge for candidates in remote districts, possibly accounting for some of the last-minute submissions.

All 28 parties and coalitions turned in their candidates lists and supporting documents to the CNE on the last two days. Those parties trying to stand in all national and provincial constituencies had to present more than 1500 candidates. The CNE had no way to check the thousands of files being presented, although it did try to check at least sample provinces. While such a late submission does place a burden on the CNE, parties are at liberty to submit their papers at anytime prior to the deadline and it is incumbent upon CNE to have the procedures in place to deal with this in their allotted time.

The newly-established opposition party, MDM, was excluded from contesting the legislative elections in 9 out of the 13 constituencies²⁵, on the grounds that it had not filed the proper documentation for its candidates. The MDM challenged its exclusion in the Constitutional Court – it accused the CNE of giving false information to the Constitutional Council (CC) and of stealing or losing documents. The Constitutional Council based its rulings, accepting the exclusion of party lists, on a secret internal CNE document, the *mapa de controlo*, which is the log or register of all actions taken with respect to candidates lists. MDM alleges that this *mapa de controlo* is inaccurate and falsified.

On Monday 28 September 2009, in a unanimous decision, the Constitutional Council rejected the appeal of MDM against the exclusion of its lists from most provinces. It

²⁵ MDM only contested elections for the Assembly of the Republic in Maputo city, Sofala, Inhambane and Niassa.

upheld the CNE's interpretation of the law, and published lists of unqualified candidates to show that MDM simply did not have enough candidates in most provinces. The Constitutional Council agreed with the CNE view that it is not acceptable to simply submit the name of a candidate with no supporting documents, and thus the opportunity to correct errors or gaps in documents does not extend to submitting the entire file. The Constitutional Council also accepted the CNE interpretation of the law that no candidates could be submitted after the 29 July deadline, and thus there could be no substitutions after that date.

However, the Constitutional Council was highly critical of the CNE for two errors which added significantly to the confusion:

- First, the CNE should not have accepted lists without actually checking for the *processo individual*. The lists without enough files were in the first instance unacceptable, and therefore should have been immediately rejected. The Constitutional Council noted that MDM only submitted its lists late afternoon on 29 July, with other parties, which made it difficult to actually check for files. It found that the CNE should have told MDM that its lists were subsequently not accepted.
- Secondly, in several provinces, including Gaza and Cabo Delgado, the CNE actually notified MDM that some candidates with *processos individuais* were missing some documents – without apparently noticing that there were not enough valid candidates to fill this list. This also confused the MDM, which assumed its other names had been accepted.

Yet, the Constitutional Council added that it made no practical difference. It confirmed the CNE view that after 29 July, no further candidates could be submitted, even to replace those who are not accepted. It is a concern that the deadline for the update of the voters' register coincided with the deadline for the nomination and submission of candidates: political parties could not have known with accuracy the exact number of candidates they should have submitted by 29 July, as this required STAE to calculate the number of parliamentary seats based on the outcome of the voter registration update. This confusion exists despite a provision in the Electoral Law, which provides that CNE can affix a temporary number of seats for each constituency, "calculated... based on the total number of registered voters within 120 days before election date."²⁶

Both the MDM and the CNE were somewhat lax in following full procedures. But the CNE, as a public institution, has a responsibility to be transparent in dealing with the issues in its remit. Unfortunately in this regard it was not sufficiently transparent and there is a lack of information in the public domain, making it difficult to determine if the MDM turned in documents as it claims.

A related controversy emerged when a newly-established party, Party for Liberty and Development (*Partido de Liberdade e Desenvolvimento*, PLD) was in fact allowed by the CNE to substitute candidates without the right documents with new ones who had documents, although other parties appear not to have been able to do this. PLD was only approved as a party by the Ministry of Justice on 11 June 2009, registered on 30 June with the *Conservatória dos Registos Centrais*, and received its certificate

²⁶ Law no 15/2009 (Article 4).

only on 29 July, the last day it could submit its documents to the National Election Commission. PLD contested in 10 provinces, failing to have a list approved only for Zambézia, Africa and Rest of the World.

The MDM submitted a formal complaint to the Attorney-General's office (*Procuradoria Geral da República*) on 12 October 2009, saying that files it submitted were stolen from the CNE. MDM had claimed it submitted enough complete candidates' files to allow it to stand in more provinces, but the CNE says that such files did not exist. MDM claims therefore that someone in CNE removed their files. At the time of writing this report the AG had not yet made a decision on the case.

2 Composition of CNE

Prior to the 2004 elections, the CNE was comprised of nineteen members. However, until it was reformed in 2006, the composition of the CNE was widely criticised, as was the management of the elections by STAE. The Commonwealth Observer Group which observed the 2004 elections had also called for a review of the composition of the CNE. In particular, the CNE was made up wholly of political party representatives, with no independent members representing civil society (or even experts in electoral administration).

In 2006, the Assembly of the Republic took into consideration some of these criticisms and (among other modifications) established new criteria for the composition of the CNE. Since then, the CNE has thirteen members, five appointed by the parties or coalitions in Parliament (in accordance with their number of seats) and the remaining eight chosen by the first five from a list of names proposed by civil society organisations. The CNE chairperson was to be elected by the CNE members from among the members proposed by civil society. It is a credit to Mozambique that this mechanism for ensuring broader and non-political representation on the election management bodies was implemented.

The current CNE comprises thirteen members: five from the two main political parties and the remaining eight drawn from civil society. Of the five political party representatives, three are from FRELIMO and two from RENAMO. The eight civil society representatives are chosen by the five political party representatives: this procedure has drawn some criticism especially from civil society organisations, who question the impartiality of the process. In addition, civil society organisations through the Electoral Observatory claimed to have coordinated the submission of thirty nominees from a cross section of civil society organisations – all of which were allegedly rejected by the five political party representatives.

In meetings with the Observer Group, MDM and other opposition parties were also critical of the profiles of the selected civil society representatives, claiming that FRELIMO had used its numerical advantage among party-selected representatives on CNE to its advantage. It is also noted that only two of the 13 members of the CNE are women.

The politicisation of the electoral bodies which existed prior to 2006 was linked to the climate of distrust which prevailed between FRELIMO and RENAMO. Though this distrust has to some extent been dissipated following the review of the composition of the CNE, it nevertheless remains an issue. The alterations made to the composition of the CNE (Law 8/2007) allowing for civil society representation in

addition to political party representation is a positive step towards building public confidence and transparency in the CNE. Nonetheless, the mechanism for identifying the civil society representatives did result in some sectors of civil society expressing concern that the party members did not give proper consideration to all civil society nominees, thereby undermining some of the intended confidence-building measures.

In a number of Commonwealth countries, the Electoral Commission is established by the Constitution, which goes further to briefly outline its composition, organisation, operation and powers, thereby giving it the sanctity, independence and transparency attached to such an institution. Article 135 of the Constitution of Mozambique which establishes the CNE merely defines it as an independent and impartial body and leaves its composition, organisation, operation and powers to be established by the electoral legislation. For an organisation whose composition has been shrouded in controversy, it is unhelpful that the Constitution does not offer a more comprehensive definition.

3 The CNE: Transparency and Public Information

In addition to the concerns regarding the CNE's lack of transparency in the candidate nomination process, it is felt that a significant amount of key electoral information was not published in good time or at all.

This gap included: party candidate lists; information on which parties were contesting in which district for Provincial Assembly elections; polling station codes; and the number of voters registered in each polling station.

The law stipulates that lists of candidates, polling station locations and respective codes should be published 30 days before election day²⁷. However, this was not done. With regard to the number of voters per polling station there is no legal requirement for such information to be made public. However, at the same time there is no prohibition on it being made available, and given that it helps to build and sustain confidence and integrity in the process it can be considered a good practice, which was unfortunately lacking in this case.

In some instances the CNE responded to media requests for such information by declaring that it had posted documents on the premises of CNE in Maputo, yet this cannot realistically qualify as proper publication for information so vital for the transparency and accountability of the process.

4 Electoral Laws and the Election Calendar

Mozambique has signed and ratified key regional and international instruments, relating to political and civil rights. The constitution and election-related laws provide basic freedoms and rights required for an election. These include the provision of freedoms of association, expression, assembly and movement. The right to participate as both voters and candidates is also provided for, though there were concerns regarding the opportunity to participate for some candidate lists. However, there are now a number of separate laws relating to the election, creating quite a complex legal framework, with some overlapping provisions.

²⁷ Law 15/09, Art.15

Opposition parties, and indeed other stakeholders we met complained about the burdensome nature of Law 15/2009 which now requires candidates to present 5 documents for national assemblies and 6 documents for provincial assemblies when the 2007 legislation only required a declaration of candidature (consisting of a signed standard form and an identification). Moreover, it appears that Law 15/2009 does not explicitly revoke earlier legislation, creating some confusion in aspects such as the process of submission of candidatures where both Laws 7/2007 and 10/2007 deal with the same issue.

Under the electoral legislation in force (Law no.7/2007 and Law no. 8/2007), the date for the presidential and parliamentary elections is fixed at least 180 days in advance by the President of the Republic, on the proposal of the CNE, following which the CNE is tasked with drawing up the electoral calendar.

The electoral calendar for the 2009 Elections, mentioned earlier in this chapter, is somewhat compressed, creating tight deadlines for the CNE and a lack of adequate sequencing of key electoral elements, such as the coincidental deadline of 29 July for both the voter registration update exercise and the final submission of candidates (Law no. 15/ 2009, Article 4): This particular overlap has the potential to create an anomaly in the sense that parties have to submit candidates when they have no clarity on the number of mandates for the constituencies for which they are submitting these candidates as the CNE can only designate final mandates after the registration update process. To cure this 'defect' the law allows the CNE the flexibility to fix 'temporary' mandates for each constituency based on the total number of previously registered voters. Arguably, the CNE's 'temporary mandates' is as good as that of the parties, as it is not based on the final voter register of constituencies.

In these elections, the issue of tight deadlines and its effect on the electoral process, particularly the nomination process, was further compounded by the late approval of the Law 15/2009 in April 2009. This law, aimed at harmonising the general and provincial elections, rather introduced more bureaucratic layers to the submission of candidatures for national and provincial assemblies as discussed earlier.

5 Voter Registration

There have been repeated calls by the Constitutional Council and international observers in previous elections for a clean-up of the voter registers in terms of dead voters, double and multiple entries and other anomalies. In previous elections, thousands of people holding voters cards were unable to vote because they were not on a register.

During the 2008 voter registration update, there were some claims that the equipment regularly failed to work due to battery failure caused by a lack of constant electricity and lack of backup power supply systems. It seems that this breakdown of equipment may have been more prevalent in the northern and central areas of the country. By and large, these areas tend to be where RENAMO and other opposition parties enjoy greater support; however these are also the least developed areas with less well developed infrastructure than the southern areas of Mozambique and it is not clear that such 'technical failures' did have a political impetus.

Based on the limited lack of problems and complaints on the day of the election it seems that voter cards were well distributed and that overall the quality of them was

quite good. There were some reports that in some instances photos had faded but overall the voter cards were a positive aspect of the process.

The President of CNE informed the Observer Group that he favours continuous registration of voters, negating the need for pre-election updates.

6 Complaints and Appeals

The vast majority of the complaints submitted to the Constitutional Council related to the rejection of party candidate lists. Of the 18 applications for judicial review received by the Council, 17 related to the CNE's decision to reject lists of candidates for legislative and provincial elections. The Constitutional Council upheld the CNE's decision in all cases.

It was reported that the CNE received some 90 complaints relating to defacement of campaign material, politically motivated violence and disruption of campaign rallies. Cases were largely still under investigation.

With regard to election day, complaints cannot be made without first having been lodged at the polling station, at the discretion of the President of the polling station. Complainants are also required to obtain a copy of the Acta entry. An illustration of problem with this procedure was reported by the team in Nampula, Angoche District, where a RENAMO party representative was complaining that the President of the polling station refused to accept his complaint. Further, a number of pre-election complaints were still being investigated after the day of the election.

Overall there is a concern that the procedures for and the handling of complaints and appeals do not adequately provide the right of people to seek an effective and timely legal remedy.

Recommendations

- 1 The process for candidate nomination needs to be reviewed to improve a number of key areas. It needs to be ensured that the amount and type of documentation required of candidates is realistically attainable. The CNE needs to ensure that it has a reliable procedure and adequate resources to receive and properly and openly adjudicate on the submitted documentation in a timely manner. At the time of receipt of documents the CNE should have a standard check-list, so that it can be immediately ascertained that all documents are included in the *processo individual*. Where there are shortcomings in a party's submission these need to be immediately communicated to the party concerned. Finally, all decisions made by the CNE need to be public to ensure transparency and confidence in the process.
- 2 Consideration could be given to making the registration of voters in Mozambique a continuous process. This requires a commitment by the government in terms of resources, but it would help to improve the quality of a vital procedure, thereby improving the overall quality of the lists and freeing the CNE from such an arduous task in the lead-up to an election.

- 3 The mechanism for establishing the composition of the CNE has been improved, providing for civil society nominees. However, the right to select these should not reside with the political members, or the end result is continued domination of the process by the largest party in parliament, i.e. the ruling party. This negates some\of the intended confidence-building measures. Consultations with civil society need to be wider and the final decision on which members should either reside with a consensus among civil society, or a consensus among the parties represented on CNE on an equal basis.
- 4 The various laws relating to the conduct of the election need to be consolidated, to help clarify the process and avoid multiple or contradictory articles on the same procedure. In addressing the election laws, consideration needs also to be given to the election calendar. At present, some aspects are not adequately sequenced, so there is not sufficient time between the end of one procedure and the commencement of another. The CNE needs ample time in order to be able to properly and fully meet all its responsibilities and a discussion on the calendar, with inputs from election administrators, would help.
- 5 The CNE needs to act in a more transparent manner, and improve its approach to disseminating of public information. The CNE is a public institution, serving the interests of the public on a vital activity. Information pertaining to its operations and decisions must be fully transparent to maintain public and political confidence.
- 6 The CNE should consider a more formal and open approach to its relations with stakeholders. Models exist in a number of countries, such as South Africa and Ghana, for the establishment of advisory committees between the election management body and political parties (and other key actors if required). This would enable the CNE to ensure all parties are fully informed of procedures and decisions (such as nomination) while also enabling the parties to seek clarification on key aspects. Such models elsewhere have greatly improved confidence and transparency and helped resolve looming conflicts at an early stage.
- 7 The system for complaints and appeals needs to adequately provide for an effective and timely legal remedy, ensuring that people do have the full right to seek legal redress. At present the system is neither timely not accessible, for example with the existing requirement for people to have to get a copy of the complaint from the 'Acta' in the polling station in order for a complaint to be eligible. Of course it is important to avoid spurious complaints being lodged by a loser of an election, but it should be an automatic right for a complaint to be lodged at a polling station without recourse to the discretion of a polling official.
- 8 There is a clear need for further comprehensive civic and voter education programmes to ensure that the general public is fully aware of the importance of participating in the democratic process and the process for voting. Such education needs to be targeted at a number of levels and

categories of citizen, such as taking account of the various ethnic and linguistic groups, gender, youth, persons with disabilities etc.

Chapter Four

The Election Campaign and Media Coverage

The Election Campaign

The Campaign commenced on 13 September and ended on 25 October, 48 hours prior to the elections on 28 October 2009. The basic freedoms of association, expression, assembly and movement, as provided for in the Constitution, were largely respected.

A Code of Conduct for political parties, adopted prior to the 2004 Parliamentary and Presidential Elections, was reaffirmed for the 2009 elections. The CNE is tasked by electoral law with approving a Code of Conduct governing candidates, political parties, party coalitions and citizen groups taking part in an election²⁸. The 2004 Code contains 19 articles which committed parties to "tolerance and democratic coexistence" and to compliance with electoral law.

It was reported to the Observer Group that overall the campaign was peaceful, and that a call by Presidential candidates for a peaceful campaign generally had a positive impact on the conduct of supporters. However, there were reports of some problems, notably at the outset of the campaign but also isolated incidents throughout. For instance there were reports of some violent clashes between party supporters, damaging of party premises or disruption of rallies by groups of supporters. It was reported by other observer groups and media that state resources were used by FRELIMO in the conduct of its campaign. This was subsequently denied by FRELIMO.

Some concerns were expressed to the Group on the timing of the disbursement of campaign funding to political parties, as parties were to receive it in several installments. Half the money was to be distributed immediately, and the rest distributed in two tranches once the previous money has been accounted for. Funds could be used for posters and other campaign expenses, but not for salaries, buildings, or purchase or rehabilitation of vehicles. This had an adverse impact on those political parties which faced resource constraints. The Group was informed that nineteen parties and coalitions were to receive MT 50 million (US\$1.85 million) for the election. FRELIMO was to gain the largest amount (MT 22 mn, \$810,000) with the MT 50 million being divided into four equal parts by the CNE²⁹.

FRELIMO's campaign was dominant - marked by rallies, posters and billboards throughout towns, and lengthy motorcades, with a party-like atmosphere. The major themes of the FRELIMO election manifesto were to strengthen national unity, to fight

²⁸ Law 8/2007, Article 7.1(I)

²⁹ One quarter (MT 12.5 mn, \$462,000) was to be divided equally among the three presidential candidates. The next quarter was to go to the two parties in parliament, divided according to the number of seats. The third quarter was to go to all parties standing for national assembly, in proportion to the number of seats they were contesting. The fourth quarter was to go to parties standing for provincial assembly, also in proportion to the number of seats being contested.

against poverty, to promote the culture of hard work, and to strengthen Mozambican sovereignty and international cooperation. RENAMO promised to improve living standards, focusing on improvements in higher education to cultivate a larger number of professionals. The MDM formed a new fixture on the campaign trail, and in its campaign focused on the provision of quality education for the youth, improvement in energy resourcing and transport infrastructure.

Overview of the Media Landscape

A diverse range of public and private media operate across Mozambique and considerable coverage was given to the National and Provincial elections, both during the campaign, on Election day and afterwards when provisional results were being announced.

Given that around 55.6 per cent of the adult population is illiterate, broadcast media -- and in particular radio -- is the key source of news for people in Mozambique.

In terms of media, Radio Mozambique (*Rádio Mozambique* - RM), the public broadcaster, has the widest reach across Mozambique (over 90 per cent) and is in effect the only real national news source. The formerly-state-owned RM and Mozambique Television (*Televisão de Moçambique* - TVM) became public companies in 1994 with financial and administrative autonomy and legal provisions for independence. Discrepancies, are however highlighted by the fact that the Chief Executive Officers of Radio Mozambique and TVM are directly appointed by Cabinet. The Mozambique News Agency (*Agência de Informação de Moçambique* - AIM) is state-funded.

Privately-owned radio stations provide local coverage. In addition, there are also a number of community radio stations in the provinces which cover local and national issues. These are either state-owned, or run by civil society organisations or the Catholic Church.

Television is popular in the towns and cities. TVM is the most widely-available television network in the country and broadcast throughout Mozambique's 11 provinces. Privately-owned stations include KTV, STV, TIM, TV Maná, and TV Miramar although these do not enjoy nationwide coverage.

There are three national daily newspapers: *Notícias*, *O Diário de Moçambique* and *O País*, (which became a daily in 2008). *Notícias* is the largest circulation paper in the country, with a daily print run of around 16 000 copies (May 2008 figure).

Around nine newspapers, both publicly, and privately-owned are published weekly, including *Desafio*, *Domingo*, *Escorpião*, *Fim-de-Semana*, *Magazine Independente*, *Público*, *Savana*, *A Verdade* and *Zambeze*.

In Mozambique, news is also distributed by fax and online, but these do not have a wide circulation.

Media Framework and Issues

The 1990 Constitution established the freedoms of expression and of the press as integral to the fundamental rights of Mozambicans, and the 2004 Constitution

confirmed and extended these protections, adding the right to information to the list of fundamental values.

The 1991 Press Law (Law no. 18/91 of 10 August) confirms the right to freedom of expression and of the press.

Two months prior to the elections, journalists representing a wide range of media outlets voluntarily signed an updated Code of Conduct of Elections Coverage, which was coordinated by the Mozambique Chapter of the Media Institute for Southern Africa (MISA-Mozambique). This has been well-received in terms of providing the foundations for balanced coverage and professional integrity. The code of conduct calls for all journalists to act with independence, impartiality, objectivity and respect for human dignity. It stresses on the respect of the principle of equality of treatment for candidates, show respect for ethical standards in the search for electoral information and impartiality.

There are still a number of issues pertinent to freedom of the press in Mozambique:

- Although press freedom and freedom of expression is enshrined in the law, there is often a “yawning gap” between what the law says and what happens in practice, according to the peer review African Media Barometer Mozambique 2009. Censorship is prohibited by law, but some journalists exercise self-censorship. The public media, in particular, ‘restrict debate on sensitive matters, since they are less open to certain points of view’. (Source: Mozambique Democracy and Political Participation – A review by AfriMAP and the Open Society Initiative for Southern Africa 2009).
- Mozambique has no specific law to regulate radio and television broadcasting and allocate, for example, frequencies. A proposed Broadcasting Bill has been under preparation for the past two years, but GABFINO (*Gabinete de Informação da República de Moçambique*) has been slow in bringing this to Parliament.
- The Law on State Secrets (Law no.12/79 of 12 December), which was adopted during the one-party state, is described as broad, ambiguous and open to subjective interpretations. Article 4, paragraph 1 locates state secrets in ‘classified documents’ which are described as: ‘those which contain military, political, economic, commercial, scientific, technical or any other data or information publication of which may put at risk, prejudice or disturb the security of the State and of the People, or the national economy’. Restrictions on access to information or its publication can be imposed by invoking this law with the threat of criminal action. Although the Press Law (article 2) specifies free access of journalists to sources of information, it is also not clear how this information can be obtained.
- The Crimes Against the State Act (Law no.19/91) also adopted during the one-party state era states that “crimes of defamation, calumny and slander committed against the President of the Republic, the Speaker of Parliament, members of the Cabinet, Judges of the Supreme Court and members of the Constitutional Council shall be punishable with a prison sentence of no less than one year and a maximum of two years plus a corresponding fine”. In August 2008, three Zambeze newspaper journalists were tried and convicted

on charges of defamation and threatening state security over an article questioning the Prime Minister's nationality.

- There have been an increasing number of cases brought to court alleging defamation. The effect of the criminal libel law (articles 46/47 of the Press Law no. 18/91) when applied to media is significant given that many privately-owned media houses are financially strapped and court proceedings and compensation can effectively cripple their operations.
- The Higher Mass Media Council, (*Conselho Superior da Comunicação Social* – CSCS) is responsible for ensuring the independence of mass media and freedom of the press. It has been criticised by journalists for protecting the reputation of public figures who have submitted complaints. In addition, it has in the recent past used its powers to seek judicial solutions to media-related complaints rather than dealing with these complaints by offering ethical guidance to the media. The composition of the CSCS also reflects political divisions within Mozambique, with six of its 11 members having clear political links: Two are appointed by the President of the Republic and four are elected by the Assembly of the Republic.
- Public media is still largely under the 'invisible' influence of government. For example, the Chief Executive Officers of Radio Mozambique and TVM are directly appointed by Cabinet. By law, under the 2004 Constitution, the CSCS has to be consulted, but this has not happened, according to MISA-Mozambique.
- Despite the fact that *Notícias* is registered as a privately-owned company, the majority shareholders of its parent company Sociedade Notícias which also owns Domingo, are state-owned institutions.

Media Coverage of the Election

The campaign period was characterised by a vibrant media involvement with diverse viewpoints on the issues raised prior to election and on the broader political landscape in Mozambique.

AIM reported an incident of local government intimidation towards a journalist in Zambezia just prior to the start of election campaign.

The agency also reported that on 16th September, days after the start of the campaign, a community radio journalist was beaten by men believed to be RENAMO supporters in the northern port of Nacala. MISA-Mozambique strongly condemned both incidents.

Results of EU media monitoring suggest that the key media outlets were reasonably balanced in terms of both qualitative and quantitative coverage of the different political parties. Public radio and television made an effort to include smaller parties in their coverage. The private media tended to concentrate on the three main parties (FRELIMO, MDM and RENAMO) and this was explained by budgetary constraints. Radio Mozambique, however showed some quantitative bias towards the incumbent President Armando Guebuza.

CNE regulations allocated free radio and television airtime-spots on a daily basis to each of the parties during the campaign. Journalists reported that this election campaign was characterised by a culture of debate in newspapers, television and radio. Active public political participation through phone-ins and commentary also marked the run-up to this election in contrast to the past, they said.

Radio Mozambique was praised by MISA- Mozambique for the role it played in voter education during the campaign.

On Election Day, there were no reports of journalists being obstructed for carrying out their professional responsibilities. Journalists were present at polling stations documenting the voting and Radio Mozambique continued its long tradition of transmitting the results live as they are posted from the provinces.

The announcement of results by STAE/CNE to media at the Press Centre lead to claims by some journalists that TVM was given preferential, early access to preliminary results.

Recommendations

- 1 Public media institutions should have an independent board which appoints the executives who run the media organisation.
- 2 Capacity-building within CSCS to strengthen its role as an body providing guidance on media ethics to protect freedom of the press. This could include examples of best practice in terms of how CSCS could function.
- 3 Capacity-building for media and parliamentary political parties to increase understanding of the role of an independent media as a pillar of democratic process.
- 4 Training to improve the relationship between the media and judiciary. There is also a need for sensitising the judiciary to the role of the media in a democracy.
- 5 Police training to improve accountable and effective policing through universally accepted standards is also recommended, given that the first point of contact with the law is often with the police.
- 6 The draft Bill to regulate access to state information submitted by MISA-Mozambique in 2005 should be tabled and discussed during the next Parliament in January 2010.
- 7 Review legislation which compromises freedom of the Press, including the Crimes Against the State Act and the Law on State Secrets is advised.
- 8 A three-tier broadcasting law, separating public, private and community broadcasting and one that has clearly defined mechanisms for obtaining a licence needs to be clearly finalised and approved.

- 9 Media can play a greater role in civic education –not only on how to vote but also on the importance of the vote in the context of good governance. It should be targeted to communities in terms of different language, ethnic, gender, and age groups.

Chapter 5

Voting, Counting and Tabulation

The Process

On 28 October 2009 Mozambique held three elections simultaneously, for the President, National Assembly and Provincial Assemblies. The exception was Maputo City, where there were no elections for a Provincial Assembly as the city is already served by an elected council.

In the days leading up to the election, balloting materials were distributed throughout the Provinces and thereafter to the Districts. From the District level they were distributed to local polling centres, in most cases on the eve of the election. The distribution was carried out by STAE, and involved the use of helicopters for more remote areas.

For the purpose of voting, 12,694 polling stations were established. Each polling station had a staff of seven persons, under the authority of a 'President'. Polling stations were often located in schools and in most cases were grouped in a cluster. In addition, an effort was made to use the same premises as for the voter registration to facilitate voter familiarity with their location.

Each polling station was provided with an 'election kit', which comprised:

- Certified voter register
- Polling manual
- Ballots for three election types (2 for Maputo City)
- Three translucent ballot boxes
- Voting booths, seals, wax, envelopes
- Sponge and ink for use by some voters
- Indelible Ink for marking finger of voters
- Stamp
- Light
- Calculators

A police presence was provided for each polling station, and by law they were not allowed within 300 metres of the polling station unless required.

Political party representatives were permitted to have one representative present for each polling station, with an alternate also permitted to provide cover as required. In addition, national and international observers as well as accredited media were also allowed to be present.

Voting was from 07.00 hrs – 18.00 hrs. Prior to the commencement of voting, the empty ballot boxes were shown to be empty and then sealed with plastic security seals. There were three ballot boxes – one for each election type – and each had a

different coloured lid corresponding with the colour of the respective ballot. Voting booths were provided to enable voters to cast their vote in secret.

The basic voting process was as follows:

- Voter arrives at polling station
- Voter shows Voter Card
- Identity checked against register and register marked to indicate voting
- Name and number of voter is called out loudly
- Hand of eligible voter is checked for ink
- Voter is given ballot papers
- Voter goes to booth and marks papers in secret
- Voter places ballots in respective box
- Finger of voter is inked
- Register is marked indicating person has voted
- Voter given their voter card
- Voter leaves polling station

Some other key aspects of the voting process were:

- Polling officials, candidate representatives, appointed security, journalists can vote first and be added to the list where required.
- Maximum of 1,000 voters per polling station
- Blind and disabled voters can be assisted by a voter of their choice
- Illiterate persons can mark ballot by a finger print using ink provided
- If a ballot is spoiled voter can be issued a replacement
- Armed forces not allowed within 300 metres of polling stations
- If a person does not have their voter card, but is due to vote at that station (i.e. on register) they can provide alternate photo ID. But this must be confirmed by candidate representative.

Polling closed at 18.00 hrs. If people were waiting in line at that time to vote they were to be provided with a small numbered 'token' to identify their presence at the allocated time, and voting was to continue until all these persons had voted.

Counting takes place in the polling station. Following the close of polling the officials had to count the number of unused ballots (which were then cancelled) and then the number of persons marked on the register as having voted. They were then to open the boxes and count the total number of ballots therein. Once counted ballots were placed back in their respective box.

If total number of ballots is less than number of persons marked on the register as having voted, then this is noted. However, if the total number of ballots is higher than the number of persons registered at that station then voting is declared null and void.

Following this procedure, each ballot box is opened and the ballots counted and identified per candidate/list. At the completion of the count the result for the polling station is announced and a summary posted at the site. Party representatives were entitled to receive an official copy of the result. All the paper work had to be completed and a results summary transmitted to the respective District/City Election Commission within 24 hours of the end of polling.

District/City Commission then had to tabulate all polling station results for their respective area based on results summary sheets. Again, official copies of the results summary was to be given to Party Representatives. District/City Commissions had to announce the result within 3 days of the close of polling; via media and public posting.

Polling materials and a summary of results for the District/City were then sent to the respective Provincial Election Commission. Provincial Commissions had 5 days from the close of polling to summarise and announce the result for their Province. Official copies of the summary of results were to be made available to party Representatives.

The Provincial Election Commission then had to transmit the summary of results to the CNE, which had to tabulate and announce the result for Presidential and National Assembly elections within 15 days of the close of polling. At the Provincial and National levels results were summarised and mandates calculated using a computers with a specially designed software package. Some districts also used computers for their tabulation.

Results were transmitted through the CNE structure informally at first, as a kind of quick count, and later the official result would follow.

Any complaints and appeals on the results process would be considered by the Constitutional Council.

Assessment of the Voting, Counting and Tabulation Processes

Overall, Observers reported very positively on the conduct of voting, commenting that in the vast majority of stations the process was carefully and properly managed.

Opening and Voting

On the day of the election, the Commonwealth Observer Group reported that the delivery of materials had been well conducted, enabling a timely opening in the vast majority of cases. During the early phase of the day relatively large numbers of people turned out and there were long, orderly queues in many places. Polling stations were generally well organised and the processing of voters was extremely thorough if a little slow, partly due to the fact that people were voting in three elections simultaneously and officials often explained the voting procedure to voters. It is clear that further voter education is required in Mozambique to increase familiarisation with the electoral process.

Observers reported that voters were free to express their will through a secret ballot. There were some reports of minor incidents and technical shortcomings, such as inaccurate or missing voter lists, but overall it was a well-administered voting process.

It was observed that many of the polling staff were women, and also included many young persons and that the turnout of women and young voters was also relatively high. Party representatives were present in all polling stations, but were predominantly from FRELIMO, RENAMO and, to a lesser extent, MDM.

Representatives of other parties were largely not seen on the election day. However, party representatives were not provided with a copy of the voter register to enable them to properly monitor the process.

The regulations provide for voters such as pregnant women, women with babies, disabled voters etc, to be 'fast-tracked' so they do not have to stand in line for too long. However, it was observed on a number of occasions that such 'preferential' treatment created some tensions among those who had been waiting for hours themselves to vote. This resulted in some queues not giving preference to such vulnerable voters.

While overall the voter registers were present and adequate for the task, there were problems in some areas with the printing or delivery of the voter registers. It was also noted that there were some discrepancies between the two copies – manual and computerised - of the voter register present at the polling station, creating some confusion in affected cases. In a District in Sofala, observers reported that in a number of places batches of names were missing from the list, and polling officials were inconsistent in dealing with the problem. In a District in Nampula there was some tension as a polling station had the wrong register, preventing people from voting at the time of our visit. There were reports that two national observers were detained.

Closing, Counting and Tabulation

Observers reported that polling stations closed on time, with persons waiting to vote being allowed to do so. Observers reported that the count at the polling station was generally well conducted but lengthy. The count did suffer a little from the fact that officials were exhausted by this point, and also that officials in some instances were a little less familiar or confident in the procedures for this part of the process, with some inconsistencies in the procedural handling of the count.

Observers did report that there appeared to be a lack of familiarity on the part of some officials on the proper determination of invalid ballots. Observers also noted that there were a number of blank ballots during the count at some polling stations. It is a concern that this may indicate a lack of familiarity on behalf of the voter with voting procedures.

The results were posted at the polling station as required and party representatives received a certified copy of results. It is very positive that the count is conducted at the polling station, with a copy provided to party representatives and a further copy posted at the polling station in a public place. These are very good practices and help to provide for transparency and accountability in this crucial phase of the process. So long as later results are broken down by polling station for parties to verify that their observed results were in fact used in the final tabulation of results then confidence in and integrity of the process are maintained.

Observers followed the tabulation at the District levels, and it was reported that the high level of organisation which characterised election day was not entirely replicated during the tabulation process, though no irregularities were reported. However, in many places there were queues of polling officials either waiting to deliver materials and results or to collect their remaining salaries for.

In terms of team reports from different Provinces some specific points raised were:

Gaza / Inhambane

- Voting materials in Inhambane were seen being prepared and transported to polling stations a day ahead of election day, together with polling staff and police. The majority of the polling station staff were young women, including presidents and vice-presidents.
- With the exception of FRELIMO, most parties did not send their agents even though they were apparently issued with accreditation.
- Witnessed two cases of blind voters at Acordo de Lusaka polling station in Gaza being accompanied by persons of their choice to the polling booth to vote.
- Policemen were present at polling centers and positioned at a distance away from the polling tables and the queues. At EPC Josina Machel and Acordo de Lusaka in Ganza, the police men were invited by the staff to assist in controlling the queues, during our presence.
- With the exception of FRELIMO, most parties did not send their agents even though they have been reported to have been given accreditation.
- At EPC Praia in Gaza, the counting only finished at 7.00 am where the total ballot papers in each ballots box was about 604. Lighting was generally inadequate particularly where there was no electricity in the room.
- In Xai Xai District STAE office in Gaza, a truck-load of polling station staff with election materials were observed happily singing in high spirit. The election materials were promptly received by the District STAE staff.

Sofala / Manica

- It was interesting to observe the impact of the exclusion of certain parties in the nomination process on election day: In two polling centres in the Nhamatanda district in Sofala (Muda and Metuchira primary schools), RENAMO party agents complained that their party was not represented on the ballot paper for the provincial elections. In one polling station, disgruntled party agents were adamant that they would not be signing the results sheet for this reason. Upon enquiry from the presidents of the respective polling stations, we were informed that only FRELIMO had qualified to stand for the provincial election in this particular constituency. It appeared that RENAMO party leaders had not explained this to its party agents.
- In Dondo Secondary School polling station presidents applied inconsistent procedures for voters who had voter identification cards, but who could neither be identified in the manual nor the certified voter register: In one polling station, the president was allowed such voters to vote as long as the numbers on their cards fell within the range of numbers of the polling station. In other polling stations, such voters were simply turned away. A gathering of MDM supporters in the compound of this school, complained strongly about this situation, alleging that more than 100 such voters had been allowed to vote – an allegation which we were unable to verify.

Nampula

- RENAMO party representatives were angry and frustrated with what they described as limitations and problems they faced during the campaign period, including having activists jailed for no apparent reason and where some of their supporters' houses were burnt. RENAMO also claimed that at a closing rally a FRELIMO vehicle, transporting campaign material, had forced its way through the

crowds injuring some supporters. As a consequence the crowd retaliated angrily. They claimed that police quelled the ensuing disorder and caused some injuries.

- The local General Secretary of FRELIMO confirmed that the incident had taken place as did the Police Chief in Nampula. However, the Police Chief in Nacala where the incident took place denied that any such incident had taken place.

Cabo Delgado

- There was a lack of uniformity on how to deal with voters whose names were not in the register. For example, at Nsanja School in Ancuabe district, three people had been sent away as at 14:00hrs on account that their names were not in any of the voter registers. But at Mpir School three people whose names were not in either of the two registers were allowed to vote after their names were noted and added to the manual register.
- In a polling station in Muaja district, the team were denied access by the Presiding Officer citing inadequate documentation as he expected an accompanying letter from provincial officials in addition to the accreditation badges.
- In some centres voters claimed that others who had been waiting in the queue since morning had given up and left. This was the case at Natite School, which by 1745hrs had only processed 282 voters still had a very long queue of over 98 people waiting to vote.
- During the counting process some, polling station Presidents were more conscious of the need for consensus in results management. In some cases this weakened their ability to assert their authority leaving the party agents in control.
- There were delays in making payments to polling staff members. Some polling staff complained of being hungry and the inefficiency of STAE to pay subsistence allowance on time. As late as two days after the Election Day, at the district STAE office in Pemba, there was still a long queue of polling staff waiting to collect their subsistence allowance.

Zambezia

- The team received cooperation at all levels.
- The voting count was slow but transparent, and conducted at a time when the polling staff and party officials were exhausted.
- The staff responsible for collecting and tabulating results at the district level looked extremely tired on the 30th of October. Some had not slept properly for three or four days. In a close election this can be a source of trouble particularly given the chaotic arrangements for the reception of the results.
- All district headquarters visited had electricity and would have greatly benefitted from the use of a computer for the tabulation.
- In Nicoadala District there were long queues of staff waiting to collect their salaries.

Tete

- Voting in the majority of places was well conducted with a seemingly well-trained and efficient team of officials. The secrecy of the vote was scrupulously adhered to (with voters who had not folded their ballot papers being sent back into the booths to do so). There was plenty of evidence that infirm and disabled voters as well as nursing mothers were given preferential access to the polling stations (often to the chagrin of those in the much-longer queues).

- The existence of two voter lists, one electronic and one manual caused some confusion. In particular we witnessed a number of voters who were absent from the electronic version but were allowed to vote after their presence on the manual list was confirmed.
- At Alpende Mitsanha in the district of Changara the team was initially refused entry to the polling station. The accreditation signed by the National CNE Chairman was apparently insufficient for the Polling Station President who wanted to see clearance from an election official in Changara. We were eventually granted access but the atmosphere was uncomfortable. The team were later informed that opposition parties had failed to gain access to the stations in Changara as their accreditation had not come through in time.

Key Issues

1 Speed of the Voting and Counting Procedures

Both the voting and counting processes are extremely slow. In this instance because the voter turnout was less than 50% polling officials could handle the queues eventually and without too much pressure at the end of the polling period. However, if voter turnout was higher it would lead to even lengthier queues and waiting periods, which would not only frustrate voters but may also lead to tension as well as polling being conducted in darkness. For instance at present, there are 11 hours formally provided for voting and a maximum number of 1,000 voters allocated to each polling station. This equates to 39.6 seconds per voter, when it often took several minutes for the process to be completed. Even on the basis of a 50% turnout, this is 1 minute 19 seconds per voter, which again is still less time than it takes to process voters.

The count was conducted in an extremely thorough manner, but it is extremely drawn out and almost pedantic. It is important for all concerned to be assured of its integrity and fairness, and from this perspective officials are diligent. However, it should be possible to streamline certain aspects of the vote count and still maintain necessary transparency, confidence and accountability. This would ensure that officials are less exhausted and better able to undertake their duties with regard to tabulation.

2 Determination of Invalid Ballots

The polling manual did not contain illustrated examples of acceptable and non-acceptable votes, and in many instances polling officials seemed unclear on the correct decision. The spirit of the law is for a vote to be counted so long as the voter's intention is clear and so long as there are not other reasons to disqualify the vote, such as writing on the ballot.

However, it is clear from our observation of the counting process that many officials – and party representatives – are not sufficiently clear on this and would benefit from being given explicit examples.

3 Conduct of the Tabulation Process

The tabulation process was not as orderly as the voting and polling station count. Both District and, particularly, polling officials were exhausted at this stage but it was felt that in many instances the premises provided for the receipt and administering of results was too small and that officials were sometimes simply dumping materials and paperwork at the District.

It is not suggested that this resulted in any undue practices, but for such a vital part of the process it is important to maintain order and integrity of the process in all instances. There were also reported tensions in a couple of districts as staff queued for their outstanding salaries for their election duties.

Recommendations

- 1 There needs to be consideration on how to speed up the voting process. It is acknowledged that voting is now over one day instead of two, which is an improvement as it creates a more coherent and secure process, but does raise some challenges. There are a number of possible ways to help to increase the speed of voting. For instance, the flow of voters inside a polling station could be improved, with officials processing more than one voter at a time; consideration could be given, where resources allow, to increase the number of polling stations and spread them out over a number of locations to also facilitate crowd management; programmes of voter education for voters would also help the speed of voting as there would be less need for the process to be explained repeatedly and the time for marking the ballot could be reduced.
- 2 There also needs to be a review of counting procedures to identify ways in which this part of the process can also be streamlined in order to make it faster, while maintaining transparency and confidence.
- 3 District Commissions need to be adequately resourced, in terms of premises and personnel, in order to properly handle the receipt and tabulation of materials and results to ensure it is orderly and maintains the integrity of the process. Where resources allow it would also be helpful for all Districts to have access to a computer for the summary of polling station results.
- 4 At present a number of smaller parties seek and obtain accreditation for their representatives, but they do not attend the voting and counting. Parties also have a responsibility to make a full contribution to the transparency and integrity of the process and it is incumbent upon them to fulfil this responsibility. All parties participating in the election receive public funds and these should be used by the party to fulfil its responsibilities, including the deployment and resourcing of representatives. Further, parties should ensure that their representatives are fully acquainted with the procedures, so they can play a full and active role as foreseen in the law.

Chapter 6

Conclusions and Recommendations

Conclusions

The 28 October 2009 elections were Mozambique's 4th national multi-party elections and were conducted in a largely peaceful atmosphere. Voting and counting in the polling stations on election day were generally well administered. While there were some reports of incidents during the campaign it benefitted from the calls for good behaviour by party leaders, for which they are to be commended.

The election met a number of key democratic benchmarks, providing for freedom of association, expression, assembly and movement, as well as equal and universal suffrage and the right to vote. However, disputes over the nomination of party lists for the National and Provincial Assembly elections and a lack of transparency in some key aspects of the work of the National Election Commission (CNE) were of concern.

There was controversy during the pre-election period regarding the rejection of some political party lists for the National Assembly elections, with claims and counter-claims being made between some opposition parties and the CNE, requiring a ruling by the Constitutional Council. The CNE claimed it had adhered strictly to legal provisions but affected parties claimed interference with their submissions. The nominations process would have enjoyed more confidence and credibility had greater transparency been provided.

Voters were offered a competitive choice between political alternatives in the Presidential elections. But for the National and Provincial Assembly elections the rejection of candidate lists for some parties – while acknowledging that in some instances parties may also have been culpable - effectively limited the choices offered to voters in affected Provinces. This impacted on both the National and Provincial Assembly elections, and is most acutely illustrated by fact that FRELIMO was unopposed in more than 60 of the 141 constituencies for the 10 Provincial Assemblies.

CNE and STAE have a strong technical capacity and the delivery of materials across the country was vastly improved compared to 2004, thereby enabling the commencement of polling on time in the vast majority of cases. However, there is concern at the lack of transparency in some aspects of CNE's work. For instance a lot of key information was not published in good time or at all, such as: party candidate lists; information on which parties were contesting in which district for Provincial Assembly elections; polling station codes; and, the number of voters registered in each polling station.

The electoral calendar as prescribed by related laws is somewhat compressed, creating tight deadlines for the CNE and a lack of adequate sequencing of key electoral elements, such as the completion of voter registration and the commencement of candidate nomination.

During the campaign, contestants enjoyed the requisite freedoms. There were some violent incidents reported, particularly at the start of the campaign, such as skirmishes between party supporters or attacks on some party offices. But overall the campaign was relatively calm. However, it was also reported by other observer groups and media that state resources were used by the ruling party in the conduct of its campaign.

Overall, media provided comprehensive coverage of the campaign and in-depth coverage on the day of the election. It is encouraging that media monitoring efforts suggest that there was generally balanced coverage among public and private media.

On election day, observers reported that voters were free to express their will through a secret ballot. Polling stations generally opened on time and were well organized by the staff, who appeared to be well trained. There were some reports of minor incidents and technical shortcomings, such as inaccurate or missing voter lists, but overall it was a well-administered vote. Observers reported that the count at the polling station was generally well conducted but lengthy. The presence of party representatives at the polling stations and their right to receive a certified copy of results at the polling station and at district and provincial levels helps provide transparency and accountability for this crucial aspect of the process and greater confidence in the outcome, though in some areas representatives from opposition parties were not present.

The tabulation process at the District level was not quite as well organised, with exhausted officials struggling to deal with the delivery of materials and summarising of results. At the time of writing the report there were no reported irregularities on the tabulation process, but the process did suffer in some instances from a lack of organisation. However, there were some subsequent media reports of alleged irregularities in a number of polling stations, notably in some places in Gaza and Tete.

Each election should build on the last, strengthening the process and providing for improved conditions. Looking forward, it appears that by virtue of its parliamentary size and longevity in power, the ruling party enjoys a predominant position. In order to further deepen democracy in Mozambique it is important to ensure that for future elections the process enjoys a greater degree of transparency and the playing field is reasonably level for all aspirant participants, thereby increasing confidence and participation and helping to encourage consolidation of the country's multi-party system.

Recommendations

Electoral Framework and Election Administration

- The process for candidate nomination needs to be reviewed to improve a number of key areas. It needs to be ensured that the amount and type of documentation required of candidates is realistically attainable. The CNE needs to ensure that it has a reliable procedure and adequate resources to receive and properly and openly adjudicate on the submitted documentation in a timely manner. At the time of receipt of documents the CNE should have

a standard check-list, so that it can be immediately ascertained that all documents are included in the *processo individual*. Where there are shortcomings in a party's submission these need to be immediately communicated to the party concerned. Finally, all decisions made by the CNE need to be public to ensure transparency and confidence in the process.

- Consideration could be given to making the registration of voters in Mozambique a continuous process. This requires a commitment by the government in terms of resources, but it would help to improve the quality of a vital procedure, thereby improving the overall quality of the lists and freeing the CNE from such an arduous task in the lead-up to an election.
- The mechanism for establishing the composition of the CNE has been improved, providing for civil society nominees. However, the right to select these should not reside with the political members, or the end result is continued domination of the process by the largest party in parliament, i.e. the ruling party. This negates some of the intended confidence-building measures. Consultations with civil society need to be wider and the final decision on which members should either reside with a consensus among civil society, or a consensus among the parties represented on CNE on an equal basis.
- The various laws relating to the conduct of the election need to be consolidated, to help clarify the process and avoid multiple or contradictory articles on the same procedure. In addressing the election laws, consideration needs also to be given to the election calendar. At present, some aspects are not adequately sequenced, so there is not sufficient time between the end of one procedure and the commencement of another. The CNE needs ample time in order to be able to properly and fully meet all its responsibilities and a discussion on the calendar, with inputs from election administrators, would help.
- The CNE needs to act in a more transparent manner, and improve its approach to disseminating of public information. The CNE is a public institution, serving the interests of the public on a vital activity. Information pertaining to its operations and decisions must be fully transparent to maintain public and political confidence.
- The CNE should consider a more formal and open approach to its relations with stakeholders. Models exist in a number of countries, such as South Africa and Ghana, for the establishment of advisory committees between the election management body and political parties (and other key actors if required). This would enable the CNE to ensure all parties are fully informed of procedures and decisions (such as nomination) while also enabling the parties to seek clarification on key aspects. Such models elsewhere have greatly improved confidence and transparency and helped resolve looming conflicts at an early stage.
- The system for complaints and appeals needs to adequately provide for an effective and timely legal remedy, ensuring that people do have the full right to seek legal redress. At present the system is neither timely nor accessible, for example with the existing requirement for people to have to get a copy of

the complaint from the 'Acta' in the polling station in order for a complaint to be eligible. Of course it is important to avoid spurious complaints being lodged by a loser of an election, but it should be an automatic right for a complaint to be lodged at a polling station without recourse to the discretion of a polling official.

- There is a clear need for further comprehensive civic and voter education programmes to ensure that the general public is fully aware of the importance of participating in the democratic process and the process for voting. Such education needs to be targeted at a number of levels and categories of citizen, such as taking account of the various ethnic and linguistic groups, gender, youth, persons with disabilities etc.

Election Campaign and Media Coverage

- Public media institutions should have an independent board which appoints the executives who run the media organisation.
- Capacity-building within CSCS to strengthen its role as an body providing guidance on media ethics to protect freedom of the press. This could include examples of best practice in terms of how CSCS could function.
- Capacity-building for media and parliamentary political parties to increase understanding of the role of an independent media as a pillar of democratic process.
- Training to improve the relationship between the media and judiciary. There is also a need for sensitising the judiciary to the role of the media in a democracy.
- Police training to improve accountable and effective policing through universally accepted standards is also recommended, given that the first point of contact with the law is often with the police.
- The draft Bill to regulate access to state information submitted by MISA-Mozambique in 2005 should be tabled and discussed during the next Parliament in January 2010.
- Review legislation which compromises freedom of the Press, including the Crimes Against the State Act and the Law on State Secrets is advised.
- A three-tier broadcasting law, separating public, private and community broadcasting and one that has clearly defined mechanisms for obtaining a licence needs to be clearly finalised and approved.
- Media can play a greater role in civic education –not only on how to vote but also on the importance of the vote in the context of good governance. It should be targeted to communities in terms of different language, ethnic, gender, and age groups.

Voting, Counting and Tabulation

- There needs to be consideration on how to speed up the voting process. It is acknowledged that voting is now over one day instead of two, which is an improvement as it creates a more coherent and secure process, but does raise some challenges. There are a number of possible ways to help to increase the speed of voting. For instance, the flow of voters inside a polling station could be improved, with officials processing more than one voter at a time; consideration could be given, where resources allow, to increase the number of polling stations and spread them out over a number of locations to also facilitate crowd management; programmes of voter education for voters would also help the speed of voting as there would be less need for the process to be explained repeatedly and the time for marking the ballot could be reduced.
- There also needs to be a review of counting procedures to identify ways in which this part of the process can also be streamlined in order to make it faster, while maintaining transparency and confidence.
- District Commissions need to be adequately resourced, in terms of premises and personnel, in order to properly handle the receipt and tabulation of materials and results to ensure it is orderly and maintains the integrity of the process. Where resources allow it would also be helpful for all Districts to have access to a computer for the summary of polling station results.
- At present a number of smaller parties seek and obtain accreditation for their representatives, but they do not attend the voting and counting. Parties also have a responsibility to make a full contribution to the transparency and integrity of the process and it is incumbent upon them to fulfil this responsibility. All parties participating in the election receive public funds and these should be used by the party to fulfil its responsibilities, including the deployment and resourcing of representatives. Further, parties should ensure that their representatives are fully acquainted with the procedures, so they can play a full and active role as foreseen in the law.

Annex 1

Biographies of Chairperson and Observers

HE Dr Ahmed Tejan Kabbah (Sierra Leone) – Chair

HE Dr Alhaji Ahmad Tejan Kabbah is the immediate past president of Sierra Leone. He served as President of Sierra Leone for constitutional two-term of office from 1996 to 2007. He took over from a military regime which was engaged in civil conflict. He was able to resolve the conflict and brought about peace to the country. At the end of the conflict in 2002, he contested and won election for a second term which ended in 2007.

Dr Kabbah is a barrister and Honorary Benchers of Grays Inn, London. He had a distinguished record of service at national and international levels spanning more than two decades in different capacities ranging from District Officer in the colonial era, to Permanent Secretary in various ministries after independence. He held various positions in the UN system including Resident Representative and Special Representative in Lesotho, Tanzania, Zimbabwe and Namibia as well as at the UN in New York. He was also directly responsible for co-ordinating UN system assistance to liberating movements including African National Congress (ANC) of South Africa and the South West African People's Organisation (SWAPO) of Namibia.

Hon Mrs Sheila Holder, MP (Guyana)

Sheila Holder is the Vice-President of the Alliance For Change (AFC) parliamentary party, a member of the Parliamentary Management Committee (PMC) and the Standing Committee responsible for appointing persons to the Rights Commissions and the Service Commissions. She first entered the National Assembly in 2001 as the Member of Parliament for the Working People's Alliance (WPA) and was reelected in 2006 having helped to form the AFC. Sheila Holder is an Ambassador of Peace by the Universal Peace Federation.

Professor Dr Nazmul Ahsan Kalimullah (Bangladesh)

Professor Dr Nazmul Ahsan Kalimullah is the founder and chairman of JANIPOP (National Election Observation Council) the lead poll monitoring organisation of Bangladesh. Professor Dr Kalimullah was elected co-chairman of the Election Working Group, a network of 32 organisations in Bangladesh. Dr. Kalimullah is a Professor and immediate past chairman of the department of Public Administration, University of Dhaka, Bangladesh. At the moment, he is Director in-charge of the Japan Study Centre of the same University. He is also advisor to the department of Governance Studies, Northern University of Bangladesh.

Prof. Ibrahim Haruna Lipumba (Tanzania)

Prof. Ibrahim Haruna Lipumba is the National Chairman of The Civic United Front, an opposition party in Tanzania. He has been the party's Presidential candidate in all

three multi-party elections in Tanzania. He studied Economics at the University of Dar es Salaam in Tanzania and Stanford University in the USA where he was awarded PhD in 1983. Before joining politics, he was Professor of Economics at the University of Dar-es-Salaam. In 1995 – 2000, he was a member of the Committee for Development Policy of the United Nations that is responsible for providing advice on development policy to the Secretary General of the United Nations.

Mr Comfort Mabuza (Swaziland)

Comfort Mabuza, is currently the National Director of the Media Institute of Southern Africa (MISA) Swaziland. He is a radio broadcasting journalist by profession with over 15 years experience. He received his training in Radio Production from the famous City & Guilds Of London Institute, and was attached to BBC in London for his internship on radio production and drama. He received further training on Advanced Radio Production and Mass Communication at the INTRACARE (International Research and Training Centre) in the Netherlands (Holland). He was also attached to the Minnesota News Council.

Hon Mrs Akosua Frema Osei-Opore, MP (Ghana)

Akosua Frema Osei-Opore is a second term member of parliament of Ayawaso West Wuogon Constituency in Ghana since 2005. In 1989 to 1992, she worked for the Food and Agriculture Organization in Nigeria. Between 1993- 2003, Mrs Osei-Opore worked with SNV/Netherlands Development Organisation and as Country Director of ActionAid Ghana. She served under the government of the New Patriotic Party as Deputy Minister for Manpower, Youth and Employment from 2005 to 2008. Mrs Osei-Opore is a specialist on Social Development with special interest in areas of gender equality, marginalized groups such as persons with disability, orphans and vulnerable children, and extreme poor.

Hon Mrs Dorothy Yvonne Pine-McLarty, O.J. (Jamaica)

Dorothy Yvonne Pine-McLarty, O.J. is an Independent member of the Election Commission of Jamaica. She was a partner in the law firm Myers, Fletcher & Gordon, Kingston, Jamaica for over thirty years and is now a Consultant. She served as the head of that firm's Property Department from 1992 to 1995 and was a Managing Partner from 1995 to 1998. She was admitted as a Solicitor of the Supreme Courts of Jamaica in 1958 and of the United Kingdom in 1995. Mrs. McLarty serves on the boards of several organisations and is the Chairperson of the Access to Information Appeals Tribunal. In 2007 she was awarded the Order Of Jamaica by the Governor General for outstanding Public Service.

Mr. Elijah Rubvuta (Zambia)

Mr. Elijah Rubvuta is the Executive Director of the Foundation for Democratic Process (FODEP). Mr. Rubvuta has served on more than ten International Election Observer Missions, including Mozambique, Zimbabwe, Tanzania/Zanzibar, Zambia, South Africa, Democratic Republic of Congo, Malawi and the United States of America. He was also part of the Commonwealth Observer Group during Mozambique's 2004 general elections. Mr. Rubvuta has coordinated regional Election Observer Missions on behalf of the SADC Electoral Support Network (SADC-ESN), and between 2005

and 2008, Mr. Rubvuta was the national chairperson of the National Voter Education Committee (NVEC) of the Independent Electoral Commission in Zambia.

Dr Andrew Russell (United Kingdom)

Dr Andrew Russell is Senior Lecturer in Politics at the University of Manchester. He has written extensively on political parties, elections and electoral engagement. He is well known for his work on minor parties in established democracies and the political engagement of minority groups and young people. He is editor of the academic journal "Representation".

Ms. Thembi Thadzi (Malawi)

Thembi Thadzi is the current Chairperson of the National Youth Council of Malawi, an institution that governs and coordinates youth programmes and related initiatives aimed at empowering the youth in Malawi, through training, mentorship and economic empowerment programs. She is also the Regional Youth Caucus member for the Commonwealth Youth Program in the African Region. As youth activist she is involved extensively in the involvement of youth in matters of governance, politics and youth economic empowerment.

Datuk Christopher Wan Soo Kee (Malaysia)

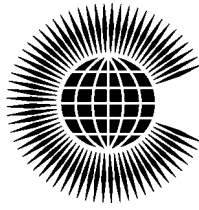
Datuk Christopher Wan Soo Kee is a member of the Election Commission of Malaysia and is also responsible for the International Relations Division of the Commission. He started his public career as a senior police officer in the Royal Malaysia Police. He served the police force for 38 years and during his tenure of service, he has held several command positions including the Chief Police Officer of the States of Penang and Melaka and the Director of Criminal Investigation Department at the Federal level. He retired from the police force in 2007 with the rank of Commissioner of Police.

Annex 2

Deployment Plan

Team	PROVINCE	LOCATION	NAMES
1	MAPUTO CITY / MAPUTO PROVINCE	Maputo	HE Dr Tejan Kabbah Mark Stevens Victoria Holdsworth
2	MAPUTO PROVINCE	Maputo Province	Linford Andrews
3	GAZA	Inhambane	Mr Christopher Wan Soo Kee Hon Mrs Akosua Osei-Opere
4	TETE	Tete	Dr Andrew Russell Ms Thembi Thadzi
5	SOFALA	Beira	Dr Nazmul Kalimullah Mrs Yvonne Apea
6	NAMPULA	Nampula	Hon Sheila Holder Mr Comfort Mabuza
7	CABO DELGADO	Pemba	Mr Elijah Rubvuta Ms Monica Vincent
8	ZAMBEZIA	Quelimane	Professor Ibrahim Mrs Dorothy Pine
Office	MAPUTO		Madonna Lynch

Annex 3



Commonwealth Observer Group Mozambique National and Provincial Elections

28 October 2009

NEWS RELEASE

Arrival Statement by HE Dr Ahmad Tejan Kabbah

Chairperson of the Commonwealth Observer Group

The Commonwealth Secretary-General, Mr Kamalesh Sharma, has constituted an Observer Group for the 2009 Mozambique National and Provincial Elections, following an invitation from the Minister for Foreign Affairs and Co-operation of Mozambique.

It is my honour and privilege to have been asked to lead this Commonwealth Observer Group and be here in Mozambique at this time for the country's fourth multi-party elections.

Democracy and good governance are core Commonwealth principles and ones which our Observer Group has been constituted to promote and uphold. These elections are crucially important for the people of Mozambique, as they elect their President and National and Provincial Assemblies. It is therefore imperative that the electoral process is transparent, fair and ultimately reflects the wishes of the people.

Our task as the Commonwealth Observer Group is to observe and report on relevant aspects of the organisation and conduct of the elections. The Group will consider all the factors impinging on the credibility of the electoral process as a whole, and assess whether the elections have been conducted according to the standards for democratic elections to which Mozambique has committed itself, with reference to its own election-related legislation as well as relevant regional, Commonwealth and other international commitments.

In this regard, we will consider, among other things, whether the conditions exist for free and competitive elections; the transparency of the process; participation rights; the impartiality of state apparatus and public media; whether voters enjoyed universal suffrage and the right to vote; whether candidates were free to campaign on a level playing field; and if voters were able to express their will free of intimidation and if their will was respected.

In conducting our duties and undertaking our assessment, we will be neutral, impartial, objective and independent. Commonwealth Observers are present here in their individual capacities as eminent Commonwealth citizens. The assessment by the Group will be its own and not that of member governments. If we offer any criticism it will be constructive, with the intent to help further strengthen the democratic process in the country.

The team of Observers come from across the Commonwealth, and includes politicians, members of election commissions, an academic and representatives of civil society, youth and the media.

In the pre-election period we will meet with officials from the National Election Commission (CNE), the Electoral Administration Technical Secretariat (STAE), representatives of political parties, civil society and media, as well as High Commissions and representatives of other international and domestic observer groups.

Prior to the election day, Commonwealth teams will deploy to at least eight of the 11 provinces around the country to observe the voting, counting and results processes. Our Group will co-ordinate closely with other international and domestic observer groups before, during and after the poll.

We will issue an Interim Statement after the election but we are aware that the results process will take some time, so our Interim Statement will be a preliminary one on the process up to that point.

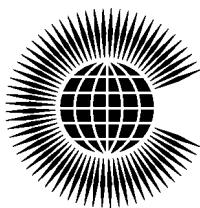
The conduct of peaceful, transparent and credible elections is vital for Mozambique and I urge all concerned to meet their responsibilities in this regard. I wish the people of Mozambique well and hope that these elections serve to further strengthen the democratic process in the country.

Maputo, 23 October 2009

Note to Editors

For media enquiries, please contact Ms Victoria Holdsworth at (+258) 824 186 594 or v.holdsworth@commonwealth.int

Annex 4



Commonwealth Observer Group Mozambique National and Provincial Elections

28 October 2009

INTERIM STATEMENT

**HE Dr A Tejan Kabbah, Chair of the Commonwealth
Observer Group**

30 October 2009

***A relatively calm campaign and a well managed vote. A
number of benchmarks for democratic elections have been
met although some concerns remain***

***A need to provide for increased transparency and a more level playing field
in order to increase confidence and encourage fully inclusive multi-party
politics in Mozambique***

The 28 October 2009 elections are Mozambique's 4th national multi-party elections. The Commonwealth was pleased to be invited by the Minister for Foreign Affairs and Co-Operation to observe the elections, and I am honoured to have been asked by the Secretary-General of the Commonwealth to lead its Observer Group.

The Commonwealth team has been present in the country since 21 October. We have met with a range of stakeholders, including the National Election Commission (CNE), the Electoral Administration Technical Secretariat (STAE), political parties, civil society, media, other observer groups and Commonwealth High Commissions and representatives of the international community present in Mozambique.

During the election period, Commonwealth Observers reported from ten of the 11 provinces in the country and we have co-ordinated closely with other regional and international observers as well as national observers, building up a comprehensive picture of the conduct of the process. This is our Interim Statement, and represents an overview of our key findings up to this point. It is important to stress that this statement is only interim, as the tabulation process is continuing and the final results yet to be declared.

Key Interim Findings

- The 28 October National and Provincial elections in Mozambique were conducted in a largely peaceful atmosphere. Voting and counting in the polling stations on election day was well administered and now the vital tabulation process is underway. While there were some reports of incidents during the campaign it benefitted from the calls for good behaviour by party leaders, for which they are to be commended. The election, up to this point, has met a number of key democratic benchmarks, providing for freedom of association, expression, assembly and movement, as well as equal and universal suffrage and the right to vote.
- However, disputes over the nomination of party lists for the National and Provincial Assembly elections and a lack of transparency in some key aspects of the work of the National Election Commission (CNE) were of concern.
- There was controversy during the pre-election period regarding the rejection of some political party lists for the National Assembly elections, with claims and counter-claims being made between some opposition parties and the CNE, requiring a ruling by the Constitutional Council. The CNE claimed it had adhered strictly to legal provisions but affected parties claimed interference with their submissions. The nominations process would have enjoyed more confidence and credibility had greater transparency been provided.
- Voters were offered a competitive choice between political alternatives in the Presidential elections. But for the National and Provincial Assembly elections the rejection of candidate lists for some parties – while acknowledging that in some instances parties may also have been culpable - was to effectively limit the choices offered to voters in affected Provinces. This impacted on both the National and Provincial Assembly elections, and is most acutely illustrated by fact that Frelimo was unopposed in more than 60 of the 141 constituencies for the 10 Provincial Assemblies.
- CNE and STAE have a strong technical capacity and the delivery of materials across the country was vastly improved compared to 2004, thereby enabling the commencement of polling on time in the vast majority of cases. However, there is concern at the lack of transparency in some aspects of CNE's work. For instance a lot of key information was not published in good time or at all, such as: party candidate lists; information on which parties were contesting in which district for Provincial Assembly elections; polling station codes; and, the number of voters registered in each polling station.
- The electoral calendar as prescribed by related laws is somewhat compressed, creating tight deadlines for the CNE and a lack of adequate sequencing of key electoral elements, such as the completion of voter registration and the commencement of candidate nomination.
- During the campaign, contestants enjoyed the requisite freedoms. There were some violent incidents reported, particularly at the start of the campaign, such as skirmishes between party supporters or attacks on some party offices. But overall the campaign was relatively calm. However, it was

also reported that state resources were used by the ruling party in the conduct of its campaign.

- Overall, media provided comprehensive coverage of the campaign and in-depth coverage on the day of the election. It is encouraging that media monitoring efforts suggest that there was generally balanced coverage among public and private media.
- On election day, observers reported that voters were free to express their will through a secret ballot. Polling stations generally opened on time and were well organized by the staff, who appeared to be well trained. There were some reports of minor incidents and technical shortcomings, such as inaccurate or missing voter lists, but overall it was a well-administered vote. Observers reported that the count at the polling station was generally well conducted but lengthy. The presence of party representatives at the polling stations and their ability to receive a certified copy of results at the polling station and at district and provincial levels helps provide transparency and accountability for this crucial aspect of the process and greater confidence in the outcome.
- The process is continuing, with results being tabulated at District, Provincial and National levels. It is expected that final results will be tabulated fully and transparently with official results issued as soon as available in order to maintain confidence. We also hope that if the CNE makes any corrections to the final result due to decisions on invalid votes or because of adjudication on complaints that these changes will be fully transparent.
- Each election should build on the last, strengthening the process and providing for improved conditions. Looking forward, it appears that by virtue of its parliamentary size and longevity in power, the ruling party enjoys a predominant position. In order to further deepen democracy in Mozambique it is important to ensure that for future elections the process enjoys a greater degree of transparency and the playing field is reasonably level for all aspirant participants, thereby increasing confidence and participation and helping to encourage consolidation of the country's multi-party system.

The Legal Framework

Mozambique has signed and ratified key regional and international instruments, relating to political and civil rights. The constitution and election-related laws provide basic freedoms and rights required for an election. These include the provision of freedoms of association, expression, assembly and movement. The right to participate as both voters and candidates is also provided for, though there were concerns regarding the opportunity to participate for some candidate lists. However, there are now a number of separate laws relating to the election, creating quite a complex legal framework, with some overlapping provisions.

Election Administration

The make-up of the members for the national, provincial and district level Election Commissions was also altered. Now all bodies have a mixed membership of appointees from the two largest parties in Parliament alongside a majority of

appointees from civil society. In theory this is a reasonable mechanism for ensuring broader and non-political representation on the election management bodies. However, the mechanism for identifying the civil society representatives did result in some sectors of civil society expressing concern that the party members did not give proper consideration to all civil society nominees, thereby undermining some of the intended confidence-building measures.

An updated voter registration exercise was conducted, resulting in more than 9 million registered voters for these elections. There were some technical problems during the registration exercise but universal suffrage is largely provided for. For future elections, it is important that the printing and distribution of voter registers avoids any of the problems – albeit localized ones - identified during this process.

Election Campaign

The election campaign lasted for 45 days, followed by a 48-hour period of campaign silence. It was reported to the Observer Group that overall the election campaign was relatively peaceful, and that a call by the Presidential candidates for a peaceful campaign generally had a positive impact on the conduct of supporters. There were reports of problems, notably at the outset of the campaign but also isolated incidents throughout. For instance there were reports of some violent clashes between party supporters, damaging of party premises or disruption of rallies by groups of supporters. Such incidents are of concern but appear to have been kept to a relatively low level in this instance.

Voting, Counting and Tabulation

On the day of the election, the Commonwealth Observer Group reported that the delivery of materials had been well conducted, enabling a timely opening in the vast majority of cases. During the early phase of the day relatively large numbers of people turned out and there were long, orderly queues in many places. Polling stations were generally well organised and the processing of voters was extremely thorough if a little slow, partly due to the fact that people were voting in three elections simultaneously. Overall, Observers reported very positively on the conduct of voting, commenting that in the vast majority of stations the process was carefully and properly managed.

It was reported that the CNE issued a number of relatively late new instructions on the administering of voting, which led to some inconsistent procedures in the polling stations, though all in the spirit of the law. There were problems in some areas with the printing or delivery of the voter registers. For example, in a District in Sofala, observers reported that in a number of places batches of names were missing from the list, and polling officials were inconsistent in dealing with the problem. In a District in Nampula there was some tension as a polling station had the wrong register, preventing people from voting at the time of our visit. There were reports that two national observers were detained, which if true is extremely unfortunate.

Observers reported that polling stations closed on time, with persons waiting to vote being allowed to do so and that the count of ballots was rigorous. It is important that complaints and appeals are dealt with fairly and openly and that any anomalous individual polling station results are looked into. We are cognisant that the tabulation

process is still on-going and a vital element of the process. We will issue a final detailed report of conclusions and recommendations at a later stage.

For media enquiries, please contact Ms. Victoria Holdsworth at +258 824 186 594 or v.holdsworth@commonwealth.int

Declaration of Principles for International Election Observation

The Commonwealth Secretariat is a signatory to both the Declaration of Principles for International Election Observation and the associated Code of Conduct for International Election Observation Missions, which were commemorated on 27 October 2005 at the United Nations in New York.

Commonwealth Observer Groups are organised and conducted in accordance with the Declaration and Commonwealth Observers undertake their duties in accordance with the Code of Conduct.