



PRELIMINARY STATEMENT

A very well-managed election day and a constructive campaign with, however, a process featuring transparency shortcomings and a degree of constraint with regard to political activity and voter choice at a local level.

Maputo, 30 October 2009

The European Union Electoral Observation Mission (EU EOM) has been present in Mozambique since 22 September following an invitation from the Government of the Republic of Mozambique. The EU EOM is led by Ms. Fiona Hall, Member of the European Parliament. The mission deployed 131 observers from 24 EU member states, as well as Canada, Norway and Switzerland, to all 11 provinces of the country to assess the electoral process against the international and regional standards for elections as well as the laws of Mozambique. The EU EOM was joined by a seven-member delegation from the European Parliament, headed by Mr. Christian Preda, Member of the European Parliament. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation commemorated at the United Nations in October 2005. On election day, observers visited 782 polling stations in 84 of the 141 constituencies of the Republic of Mozambique to observe voting and counting. The EU EOM will remain in country to observe post-election developments and the tabulation of results. This statement is preliminary and the EU EOM will not draw final conclusions until the completion of the aggregation of results and their announcement. A final report will be published around two months after the end of the electoral process.

Executive Summary

On 28 October three simultaneous elections were successfully held for the first time. Election day was carried out in a very well organised manner and participation was peaceful and calm. However, insufficient measures of transparency and a degree of constraint with regard to political activity and voter choice at a local level showed weaknesses in the electoral framework that call for fundamental improvements.

- Voting was conducted in a calm manner and the process was well organised. Polling procedures in 88 percent of polling stations visited by European Union observers were assessed as good or very good. Polling staff were committed and overall acted professionally in the polling stations visited. Counting went on across the country throughout most of the night. It was conducted in a calm and orderly environment and was assessed as good or very good in 70 percent of the polling stations visited.
- In general, the legal framework provides a reasonable basis for the conduct of democratic elections in line with the international and regional standards ratified and agreed to by the Republic of Mozambique. The constitution and most of the election-related legislation ensure the protection of political rights of Mozambicans and guarantee genuine elections through the respect of freedoms of association, assembly, movement and freedom of expression. However, the legal framework is dispersed

throughout several documents lacking clarity and opening space for different interpretations. Some important legal provisions ensuring the transparency of the process were not respected, including full publication 30 days before election day of lists of candidates and polling station locations and respective codes.

- CNE and STAE prepared for an election day that largely guaranteed universal suffrage. STAE was very successful in overcoming the many logistical and organisational challenges related to the size of the country and the number of registered voters. There was however a general lack of trust in the independence of CNE, due in particular to insufficient measures to improve transparency such as publication of candidates' lists and full access to the numbers of registered voters per polling station.
- An update of the voter register was carried out from 15 June to 29 July, resulting in a total of 9,815,589 registered voters. Technical problems were experienced with some of the registration equipment, including malfunctioning laptops. The quality and accuracy of the voter register raises concerns as it was not cleaned of deceased voters and of double registrations.
- The process of registration of candidates for the National Assembly and Provincial Assembly elections was a subject of controversy. CNE's deliberation 10/CNE/2009 of 14 May added complexity to a framework already prone to interpretation, just two weeks before the start of the candidate registration period. Complex and unclear procedures resulted in the rejection of several lists of some of the 29 political parties for the legislative elections. For the provincial assemblies the lists of four political parties were accepted. 64 out of the 141 constituencies featured only one political party list which constituted a considerable restriction of voter choice.
- The election campaign was generally more peaceful than in previous elections, with constructive campaign messages. It focused on the presidential elections and campaigning by parties not running in the presidential race was discreet to non-existent. The EU EOM observed a blurred delineation between FRELIMO's party machine and the public administration and it witnessed local occurrences of deliberate obstruction of opposition campaign events by FRELIMO supporters that in some cases led to abandoning of campaign activities altogether.
- Freedom of speech in the media was respected during the campaign period. Sufficient information on campaign activities was offered by the main media, with the national radio and television making positive efforts to cover campaigning by smaller parties. The state-owned media covered the campaign by political parties in a neutral tone and reasonably balanced way; however Rádio Moçambique, *Notícias* and *Domingo* showed some quantitative imbalances in favour of FRELIMO's presidential candidate.
- The constitution guarantees equal rights for both genders and there are no legal impediments for women to stand for election or be registered as a voter. The main parties have all set internal quotas for women for their candidate lists. In the campaign rallies observed by EU EOM, observers estimated the participation of women at about 40 percent in the southern and central provinces and at about 60 percent in the northern part of the country.

- The provisions for complaints and appeals related to voting, counting and tabulation do not provide full opportunity for aggrieved parties to seek a remedy if the political party representative or delegate does not file a complaint at the polling station. This system for electoral petitions is inadequate.
- The EU EOM continues to observe the aggregation of results and will follow any complaints and the appeals process before reaching its final conclusions.

Statement of Preliminary Findings

BACKGROUND

Multi-party democracy was introduced in Mozambique following the comprehensive peace agreement of 1992. Three general elections have taken place since then. The 28 October 2009 elections were the fourth presidential and legislative elections and the first elections of ten Provincial Assemblies. Besides the President, 250 parliamentary representatives were elected from 13 constituencies for a five-year term. A total of 812 representatives were elected to the ten new Provincial Assemblies.

Out of nine aspiring presidential candidates, the Constitutional Council had rejected six due to irregularities in their application documents. As a result, the three presidential candidates were the incumbent Armando Guebuza for *Frente de Libertação de Moçambique* (FRELIMO), Afonso Dhlakama for *Resistência Nacional Moçambicana* (RENAMO) and Daviz Simango for *Movimento Democrático de Moçambique* (MDM). For the National Assembly and Provincial Assemblies elections, a total of 24 political parties and five coalitions of political parties had submitted lists of candidates to the National Elections Commission (*Comissão Nacional de Eleições* – CNE). As a result of the rejection of some lists by CNE, upheld by the Constitutional Council, 19 parties or coalitions competed for parliamentary representation.

LEGAL FRAMEWORK

In general, the legal framework provides a reasonable basis for the conduct of democratic elections in line with the international and regional standards ratified and agreed to by the Republic of Mozambique. Mozambique has signed or ratified all major treaties containing international and regional standards for elections of which the most relevant are the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1981 African Charter of Human and People's Rights (ACHPR). Further, Mozambique is politically committed to the 2002 African Union Declaration on Principles governing Democratic Elections in Africa, the 2004 SADC Principles and Guidelines Governing Democratic Elections and the 1997 SADC Declaration on Gender and Development. Presidential, National Assembly and Provincial Assembly elections are governed by several legal documents that include laws and deliberations issued by CNE.

The constitution and most of the election-related legislation ensure the protection of political rights of Mozambicans and guarantee genuine elections through the respect of freedoms of association, assembly, movement and freedom of expression. The right to vote and to be elected in periodic elections through universal and equal suffrage by secret vote is entrenched in the Constitution as well as the right to access to justice and legal remedies. However, the legal framework is dispersed throughout several documents lacking clarity and opening space for different interpretations.

The late approval of law 15/2009 in April 2009 with the objective of making the legal framework for the three elections consistent with each other had the opposite effect. Law 15/2009 did not revoke the provisions of laws 7/2007 and 10/2007 resulting in uncertainty about which legal provisions were to be applied to one of the most important aspects of any electoral process, namely candidate registration.

Other shortcomings in the legal framework include the system of complaints and appeals regarding irregularities that have occurred during voting, counting and tabulation of results. The legal framework does not provide full opportunity for aggrieved parties to seek redress if a complaint is not made at the time the irregularity occurred.

Finally, some important legal provisions ensuring the transparency of the process were not respected, including full publication 30 days before election day of lists of candidates and polling station locations and respective codes.

ELECTION ADMINISTRATION

The main bodies responsible for the administration of elections are the National Elections Commission (CNE) and the Technical Secretariat for Election Administration (STAE). Law 8/2007 of 26 February defines the CNE as an independent and permanent state body responsible for the direction and supervision of the electoral process having regulatory powers at its disposal. CNE is composed of 13 members including a president and 12 ordinary members (*vogais*), plus one representative of the government (*elemento do governo*). Among the 13 members, five are appointed by the political parties or coalitions of parties with representation in the Assembly of the Republic according to the principle of parliamentary representation (three members of FRELIMO and two of RENAMO) and the remaining eight are proposed by civil society organisations. The inclusion of civil society members could potentially have led to an improvement in the independent character of CNE. As for STAE, it is a public service body which provides technical support to CNE. Both bodies are present at national, provincial and district levels.

Although CNE and STAE faced many logistical and organisational challenges due to the size of the country and the number of registered voters both electoral bodies managed to prepare for an election day that largely guaranteed universal suffrage. EU observers estimated STAE's performance throughout the electoral process to be generally efficient, organised and well prepared. Additionally, STAE conducted a 10-day training for polling station staff which the EU EOM judged to be good. It included new awareness-raising measures regarding fraud and penalties applied in cases of fraud.

However, the preparations for these elections were carried out in an environment characterised by a general lack of confidence in the electoral bodies' ability to supervise the elections. Key stakeholders, including opposition political parties, questioned CNE's independence. CNE's response did not show the levels of transparency that could have improved trust in the process. The information provided by CNE to the political parties and to the broader public remained generally insufficient. In addition, despite several requests made both by EU observers and by political parties, CNE did not provide full access to the numbers of registered voters per polling station, arguing that the law does not impose any obligation for this information to be public. Nevertheless, the law does not forbid it either.

The organisation of three simultaneous elections, although posing logistical difficulties, had in fact being requested by civil society organisations such as *Observatório Eleitoral*. Some

measures, corresponding to recommendations by previous EU EOMs in the country were implemented with a view to expediting the voting process, such as increasing polling station staff and making use of voters' lists outside polling stations.

VOTER REGISTER

The voter registration exercise started in 2007 and ran through 2008. It was based on data gathered during the 2007 census and reached 95 percent of the estimated 9,3 million eligible voters. An update of the voter register is required by law for each electoral process. STAE carried out an update exercise from 15 June to 29 July, with a view to including the remaining five percent of eligible voters left out of the 2007-2008 exercise. During this update, 514,977 new voters were registered, 498,399 replacement cards were issued, and 218,698 voters had their names transferred from one polling station to another. During the update, STAE however faced technical problems with some of the registration equipment, including malfunctioning laptops. The verification period, enabling scrutiny of the lists, was characterised by low levels of public interest.

Despite improvements relative to previous elections, the accuracy of the voter register raises some concerns. STAE acknowledges that deceased voters and double registrations were not erased. It admitted to not having the capacity to remove the approximately 160,000 duplicated names it estimates are wrongly shown on the lists. According to the law, STAE shall receive from the civil registry and from the courts as well as from psychiatric institutions a monthly list of deceased and mentally ill voters, as well as that of persons sentenced in court. In practice however, STAE admitted to not carrying out this regular updating

REGISTRATION OF CANDIDATES

Nine nominees submitted their candidacy to participate in the presidential elections, however six of them were rejected by the Constitutional Council. All nominees had to submit forms for at least 10,000 supporting registered voters detailing their name, voter card number and signature or fingerprint. The Constitutional Council found on 14 August 2009 that all nine nominees submitted their proponents' details with blatant errors, *inter alia*, repeated names, voter card numbers that did not match the name, and forged signatures. Before delivering its decision, the Constitutional Council hired an independent technical team who analysed the forms and confirmed the errors. The decision of the Constitutional Council was to consider only the names and details of supporting citizens that were set out correctly, i.e. without blatant documentary irregularities. As a result, three candidates (Armando Guebuza, Daviz Simango and Afonso Dhlakama), had the required number of at least 10,000 supporting registered voters.

The process of registration of candidate lists for the National Assembly and Provincial Assembly elections was a subject of controversy. The process is regulated by several legal documents that include law 7/2007, law 10/2007, law 15/2009 of 9 April and deliberation 10/CNE/2009 of 14 May. However, law 15/2009 shows inconsistencies with both laws of 2007 mainly on the distinction of the different phases of the candidates registration process and on the period stipulated for verification of documents and eligibility of candidates. Law 15/2009 also fails to mention a timeline for complaints and appeals.

Although the electoral calendar issued by CNE referred to the provisions of laws 7/2007 and 10/2007 for the publication of provisional lists, verification period, correction of procedural irregularities, period for complaints and appeals and publication of final lists, CNE did not

respect its own calendar and used mainly the provisions of law 15/2009 and its deliberation 10/CNE/2009 regarding the procedures for submission of lists of candidates.

The variety of legal documents regulating the process created an uncertainty about what provisions should be applied and opened space for different interpretations. CNE's deliberation 10/CNE/2009 of 14 May brought more complexity into the process, just two weeks before the start of the candidate registration period. The deliberation provided that CNE would only accept lists of candidates if submitted accompanied with all the required documents of each candidate. As the great majority of candidates submitted their lists within two days of the registration deadline, CNE received/accepted the documents without a proper check. It thus acted in contradiction of the provisions of its own deliberation. This attitude was criticised by the Constitutional Council in its 28 September rulings on the appeals made by several political parties.

The Constitutional Council considered that the procedures stipulated by CNE's deliberation were not respected and, consequently declared void the acceptance of lists with incomplete documents and the subsequent notifications by CNE to political parties to correct procedural irregularities. Civil society organisations such as *Observatório Eleitoral* have questioned the consistency of the CNE's deliberation with the remaining applicable laws on the grounds that the deliberation overlooks important articles that provide the right of political parties to correct irregularities and to substitute ineligible candidates.

Other elements had constrained the process of registration of candidates, namely some obstacles faced by political parties in acquiring the required documents to submit their candidacies and the timeframes for appeals. Political parties have frequently complained to EU observers about difficulties they faced in acquiring some of the required documents for the submission of their lists alleging intentional delays of public institutions to issue these documents. One of the political parties officially requested the Minister of State Administration to facilitate the process.

The electoral calendar did not provide a sufficient timeframe for political parties to file applications for judicial review of the decision of CNE before campaigning started. The appeals process started on 10 September and the Constitutional Council rulings were issued on 28 September, already within the period of the electoral campaign and after the draw for the positioning of political parties on the ballot paper.

The abovementioned constraints to candidates' registration contributed to producing a situation in which many lists of candidates were rejected. Out of the 29 political parties that submitted candidates' lists for the legislative elections, two political parties had all their lists accepted and 19 had some of their lists accepted. Of these 19 contestants, five were accepted for more than seven constituencies.

For the provincial assemblies the lists of four political parties were accepted but 64 out of the 141 constituencies featured only one political party list, which constituted a considerable limitation of voter choice.

CAMPAIGN ENVIRONMENT

The election campaign was generally more peaceful than in previous elections. Party leaders responded to isolated cases of violence by calls for restraint and mutual respect. The 43-day campaign period was often intense in the central provinces of the country. It generally lost pace in its final weeks. Rallies of presidential candidates were peaceful and generally festive, with constructive campaign messages. Door-to-door campaigning was the most widely used way by all political parties to reach voters.

The campaign was monopolised by the presidential elections, with the legislative elections and the provincial assembly elections receiving nearly no public attention. The visibility of the parties not running in the presidential race was discreet to non-existent. There was a vast gap between the campaigning capacities of FRELIMO and the limited reach of RENAMO, MDM and other opposition parties. The late release of public funds undermined the opposition parties' campaign efforts. The abundant financial and structural resources of FRELIMO were compounded by a blurred delineation between the party machine and public administration. This strengthened the position of the ruling party and did not provide a fully level playing field.

The EU EOM directly observed in Manica, Sofala, Niassa and Maputo provinces cases of municipal council personnel or teachers campaigning with FRELIMO. In several districts of the provinces of Maputo, Gaza, Inhambane, and Niassa, EU EOM observers witnessed cases of deliberate obstruction of opposition campaign events by FRELIMO supporters, often leading to the change or cancellation of events and even to abandoning of campaign activities altogether. In the specific case of Tete province, acts of arson further limited the opposition parties' access to public space.

MEDIA ENVIRONMENT

Freedom of speech in the media was respected during the campaign period with no reports of restrictions of movement or access for journalists covering the campaigns of the candidates and parties. Sufficient information on campaign activities by political parties was offered by the main media, with the national radio and television making positive efforts to include campaigning by smaller parties in their daily electoral reports. Some quantitative imbalances were detected in the coverage of the presidential candidates by Rádio Moçambique, *Notícias* and *Domingo*. However, their coverage of campaigns by political parties was balanced and generally presented in a neutral tone.

From 5 to 25 October the EU EOM monitored the following 13 media: Rádio Moçambique (RM, Antena Nacional), Televisão de Moçambique (TVM), Soico TV (STV), Televisão Independente de Moçambique (TIM), Miramar TV, *Notícias*, *O País*, *Diário de Moçambique*, *Domingo*, *Magazine Independente*, *Savana*, *Zambeze* and *Canal de Moçambique*. According to EU EOM media monitoring findings, both RM and TVM gave access to a good sample of political parties contesting the elections. Quantitative results reflect that FRELIMO received a total of 43 and 45 percent of airtime on RM and TVM respectively, while RENAMO enjoyed 22 and 23 percent and MDM 13 and 12 percent of airtime on the same media. The total distribution of airtime allocated to the ruling party on RM and TVM (44 and 45 percent) and the rest of political parties all together (56 and 55 percent) was reasonably balanced. However, coverage of presidential candidates' campaigning on RM showed some quantitative imbalance in favour of Armando Guebuza, who received 63 percent of the airtime (23 percent for Afonso Dhlakama and 14 percent for Daviz Simango). Reports by both RM and TVM were presented in a neutral tone.

Similar scenarios were detected on the newspapers *Notícias* (daily) and *Domingo* (weekly), who allocated 46 and 50 percent, respectively of their space to FRELIMO, and 54 and 50 percent of their space to other parties. The tone of this coverage was generally neutral. However, quantitative imbalances were noticeable in the news relating to the three presidential candidates, with Armando Guebuza receiving 67 and 76 percent of the space on

Notícias and *Domingo* respectively followed by Afonso Dhlakama (18 and 17 percent) and Daviz Simango (15 and seven percent).

In the private media sector, both lack of resources and lack of equal treatment to political contestants resulted in some media providing little coverage of campaign activities by smaller parties. However, the coverage offered was generally well balanced and presented in a neutral tone.

Abiding by CNE's regulation (*Regulamento de Exercício do Direito de Tempo de Antena*), free airtime spots (*Tempos de Antena*) by political parties were broadcast by the public electronic media on a daily basis during the entire campaign period. However, repetition of TV spots by presidential candidates during the time slot allocated to National Assembly candidates resulted in the three presidential candidates gaining on TVM more than double the 15 minutes' airtime per week/candidate allocation as established in the abovementioned regulation. Neither CNE nor the media supervisory body, *Conselho Superior da Comunicação Social*, took action in this regard.

PARTICIPATION OF WOMEN

The constitution guarantees equal rights for both genders and there are no legal impediments to women registering as voters or standing for election. Mozambique is ranked within the top 20 list of countries for women representation in Parliament. FRELIMO has traditionally used a 30 percent women quota in their candidate lists. RENAMO stated to the EU EOM that about 20 percent of its candidates are women, whilst MDM claims to pursue a target of 45 percent of women candidates.

In the campaign rallies observed by the EU EOM, observers estimated the participation of women at about 40 percent in the southern and central provinces and at about 60 percent in the northern part of the country. Nearly half of the observed campaign events featured female speakers.

VOTER EDUCATION

STAE deployed 2,100 civic and voter education officers throughout the country during two months. They used traditional leaders as points of entry and communication in the communities. They ceased their activities on the day before the official beginning of the election campaign in a bid to avoid creating confusion among voters between voter education and political campaigning. Civic education spots were also broadcast in Portuguese and 22 local languages in national and local radios and TV stations for a period of four months that ended on election day. Further, UNDP provided a small fund which STAE distributed among special focus-NGOs for civic and voter education aimed at the youth, the elderly and special needs groups.

EU observation in the provinces suggests that civic and voter education efforts did not fully meet their objectives. While knowledge on the presidential elections is satisfactory among voters, EU observers reported a very limited understanding by rural citizens about the legislative elections. Knowledge of the provincial assembly elections was nearly non-existent throughout the country.

CIVIL SOCIETY AND OBSERVATION

Civil society organisations played a vital role in improving the transparency of the voting/elections process. The main Mozambican group observing the elections was the *Observatório Eleitoral*. It consists of eight national NGOs and it had about 1,800 observers in the field on election day. The *Observatório Eleitoral* was the only observers group to organise a parallel count. Several other organisations like the National Youth Council (*Conselho Nacional da Juventude* – CNJ) also fielded observers.

International observer missions from the African Union, the Commonwealth, the South African Development Community (SADC), the Electoral Institute of Southern Africa (EISA), the Community of Portuguese Speaking Countries (*Comunidade dos Países de Língua Portuguesa* - CPLP) and a United Nations Development Programme-coordinated group (UNDP) of 68 locally-recruited foreign diplomats observed the elections.

COMPLAINTS AND APPEALS

CNE deals with appeals on decisions arising from lower levels of the electoral administration. This includes irregularities during voting, counting and tabulation, provided that a complaint has been lodged at the time the alleged irregularity occurred. In practice, this provision does not provide full opportunity for aggrieved parties to seek a remedy if the political party representative or delegate fails to file a complaint at the polling station.

The Constitutional Council received a total of 18 applications for judicial review from 15 political parties or coalitions. Of the 18 applications, 17 challenged CNE's decision to reject lists of candidates for legislative and provincial assemblies' elections and one application was filed by MDM concerning CNE's decision to conduct the draw for the political parties position on the ballot paper for legislative and provincial assembly elections. The Constitutional Council responded to all these applications confirming the legality of CNE's decisions and as in one case considered the application was filed after the deadline for appeals. Additionally, MDM lodged a complaint on 12 October against CNE at the *Procuradoria Geral da República* (Attorney General's Office). The political party claims that files of its candidates have been stolen from the CNE resulting in the rejection of its lists of candidates for the elections. The case is pending at the Attorney General's office.

CNE and police authorities have received so far at least 80 official complaints relating to the electoral process. Of these complaints, 36 regard defacement of campaign material, 32 refer to politically motivated violence including aggressions during campaign rallies or against political parties and their members, five politically motivated detentions and seven cases of deliberate disruption or obstruction to campaign rallies of opposition parties. These complaints were filed in the provinces of Cabo Delgado, Tete, Nampula, Zambézia, Sofala and Maputo province. Most of these complaints are still pending or are under investigation.

POLLING, COUNTING AND TABULATION

Generally, all material required for voting and polling staff was present on opening to ensure voting started on time and voting commenced at the large majority of polling stations according to schedule. Overall, voting was conducted in a calm manner and the process was

well organised. Polling procedures in 88 percent of polling stations visited by European Union observers were assessed as good or very good.

Polling staff were committed and overall acted professionally in the polling stations visited. Efficient processing of voters, use of controls and safeguards by polling staff and the secrecy of the vote were also assessed as very good or good in over 95 percent of polling stations visited. European Union observers made a positive assessment of the administration. Closing was also assessed as fair to good in all polling stations visited. Immediately following the close of polling, counting commenced at all polling stations, in clear sight of party agents and election observers. Counting, which went on across the country throughout most of the night, was mostly conducted in a calm and orderly environment. Despite difficult conditions such as poor lighting in some cases, counting was assessed as good or very good in 70 percent of the polling stations visited. On the whole, opening, voting itself, closing and counting were carried out in line with procedures.

The EU EOM continues to observe the aggregation of results and will follow any complaints and the appeals process before reaching its final conclusions.

The EU EOM wishes to express its appreciation to the Government of Mozambique, the *Comissão Nacional de Eleições*, the *Secretariado Técnico de Administração Eleitoral* and civil society as well as the people of Mozambique for their cooperation and assistance in the course of the observation. The EU EOM is also grateful to the Delegation of the European Commission to Mozambique and the member states' diplomatic missions resident in Mozambique for their support throughout.

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