

3 candidates reinstated

CNE ‘flagrantly’ violating law says Constitutional Council

“Flagrant” violation of the law by the National Elections Commission led the Constitutional Council to allow three Renamo candidates to stand for mayor, even though they are clearly ineligible.

“It is manifestly clear that the CNE observes neither the procedures and deadlines legally set, nor the priorities they impose,” said the Constitutional Council (CC, *Conselho Constitucional*) in a ruling that was unusually harsh and critical of the National Elections Commission (CNE, *Comissão Nacional de Eleições*).

Allowing ineligible candidates to stand “is the sad consequence of lack of rigour and inobservance of the law” by the CNE. “The strict observance of the law is one of the essential guarantees of the transparency of the electoral process.”

The CC ruling upheld a Renamo appeal against the disqualification of three candidates for mayor - Benjamim Luís Garife Massangaice in Manica, Manuel Zeca Bissopo in Dondo, and Cristóvão Filipe Soares in Gorongosa. They had been included on the list of candidates approved by CNE on 8 October and published on 16 October, but then on 30 October CNE ruled they were ineligible because they did not satisfy the requirement that they had lived in the municipality for six months.

The CC is particularly critical of the CNE for apparently failing to read a 2003 CC ruling in similar circumstances, which states explicitly that the CNE cannot change the list once it is published. In any case, the 30 October ruling was well beyond the 20 October deadline for publishing candidates lists. And the CC notes that the CNE made three decisions on the same day, 8 October, which were contradictory, both accepting and rejecting the candidates.

In its defence, the CNE said that the 16 October list was “not definitive” and that Renamo had always known that it still had to show that the three candidates were eligible, and they were removed from the list only when Renamo failed to do this. The CNE further claimed that in extending the deadlines, it was acting in a “spirit of collaboration” and “tolerance” to try to encourage maximum participation.

This view is totally rejected by the CC. It stresses that the law has no provision for publishing provisional lists and that “the deadlines fixed by law are mandatory and not optional, and cannot be replaced by others set by the CNE.”

The CC confirms that the three candidates “were in fact ineligible” but that once they were included on the published list, the CNE could not remove them. Lists become definitive according to the law, “and not according to internal and informal procedures and understandings of the CNE which are outside the law”.

As part of its ruling, the CNE rejected another Renamo claim. Renamo had argued that the election law itself was unconstitutional, because it required candidates to live in the municipality while the constitution gives citizens the right to live anywhere in Mozambique. The CC rejected this, saying it is reasonable to say that municipal

governments should be made up of local people. This does not force any Mozambican to live in the municipality, but rather gives rights to people who do live there.

Because of the pending Constitutional Council ruling, STAE printed two sets of ballot papers for those three cities, with and without the Renamo candidates for mayor. Thus the election can go ahead on schedule.

The full ruling is available on the constitutional council website:

<http://www.cconstitucional.org.mz/UserFiles/File/Tsave/Acordaos/Acordao9cc2008.pdf>

The Constitutional Council website (<http://www.cconstitucional.org.mz/>) also has the rulings relating to the 2003 and 2004 elections, posted under *Deliberações*. More recently it has changed its terminology, and rulings this year are called *Acórdãos* which are in a different section of the website.

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