

Controlling elections: The Angolan Election Commission



The election winner, President José Eduardo dos Santos, is received by his MPLA party crowd in Luanda after the 2012 elections.

Photo: MPLA (www.mpa.ao)

Over the last few years, Angolan legislation on elections and the Angolan national election commission has been strengthened considerably. In legal terms the *Comissão Nacional Eleitoral* (CNE) is now an independent commission with wide-ranging powers, that might pave the way for political reform and democratisation in Angola. However, due to the political context it remains to be seen if this formal autonomy will be translated into a counter-balancing institution to the centralised Angolan government.

ELECTION COMMISSIONS WORLDWIDE

Election commissions are important regulatory bodies throughout the developing world. An election commission (EC) is a governmental electoral management body (EMB) charged with *overseeing* the implementation of the election laws and procedures. In many countries the commission is also charged with the *implementation* of the elections proper.

An election commission is a special institution of control or restraint. In liberal democracies, the horizontal accountability function of parliaments and courts (i.e. political *checks and balances*) is complemented by a host of other state institutions with a role in regulating, overseeing, and preventing power abuse by the executive branch. Special institutions include electoral commissions, auditor generals, ombudsmen, central banks, and human rights commissions.

Independent election commissions are usually created as a part of a process of democratisation. An independent election commission was a main

demand of the opposition in many emerging democracies; it was part and parcel of the demand for free and fair elections, respect for political rights, and democracy. Independent electoral commissions are in fact a relatively recent invention, and the preferred form of election management in virtually all countries that have undertaken electoral reform since the early 1990s.

ELECTION COMMISSION INDEPENDENCE

Many electoral management bodies purport to be independent, but they are not. Election commissions vary from tightly government-controlled institutions orchestrating massive system manipulation and election fraud in countries like Zimbabwe and Cameroon, to truly independent and powerful institutions in countries like Benin and Ghana. Most commissions are, however, somewhere in the middle: a mixed, semi-autonomous government body, which is contested, criticised, and under pressure from incumbents and opposition alike.

To be independent, an election commission needs a guaranteed legal status, procedures for a non-partisan nomination of commissioners, a secure financial basis, and credible enforcement powers.

This point is important: one should make a clear distinction between commissions that are truly independent and those that are formally independent but decisively influenced by the government and the ruling party.

There is no clear-cut, universally accepted model of electoral management, and no quantitative and internationally comparable statistics on election commission independence, but there is some agreement on what is required as a minimum. To be independent, an election commission needs a guaranteed legal status, procedures for a non-partisan nomination of commissioners, a secure financial basis, and credible enforcement powers. These fundamental principles are grounded in international electoral standards and norms.

In practice, this means that an independent commission needs a constitutionally guaranteed status, secure funding through the state budget, and a procedure of nominating commissioners that is beyond the control of the executive. In other words, an independent election commission should be more dependent on the law (the judiciary) and the legislature (parliament) than on the presidency.

ANGOLA'S ELECTION COMMISSION

Angolan elections have been held under an increasingly sophisticated institutional framework. The first multiparty elections in 1992 were held under an urgently and only partially revised constitution. It did not provide for any election commission, but one was established in a hurry in order to manage the elections. This commission had a weak legal mandate, and in practical terms the Ministry of Territorial Administration and the provincial governors managed the 1992 constituent elections.

At the same time, these were the most contested elections in Angola ever. Manifestations, strikes, and heavy political activism made up a strong domestic pressure for change, and the ruling MPLA was not confident about its electoral chances. Angolan NGOs and independent professional associations emerged, as did independent media. This energetic reform period came to a halt soon after the elections, however, as did the reform process, because the opposition party (and army) UNITA could not accept electoral defeat and returned to armed struggle.

Then, from 1992 until 1997, the National Assembly worked almost as the former People's Assembly, dominated by the MPLA. The majority of the 67 deputies elected from UNITA only took up their seats in 1997, when a new peace agreement formed a *Government of National Unity* (GURN) that also included UNITA members. For the first time in Angola's history, a determined and active National Assembly started to operate in 1997, but then only for a short period until the process was interrupted

by yet another round of civil war from late 1998 to early 2002.

During this period, President dos Santos and the MPLA re-asserted their control over the government to such an extent that both the GURN as well as the parliament became subservient institutions.

In 2005, in expectation of new elections, a number of laws were passed in order to regulate elections; the *Electoral Law*, the *Law on Political Parties*, the *Voter Registration Law*, and the *Election Observation Law*. The (postponed) 2008 general elections were thus conducted according to a thoroughly revised and extended legal body.

The Angolan election commission, the *Comissão Nacional Eleitoral* (CNE) was established through a provision of the Electoral Law in 2005. It became a commission following the independent or autonomous model, i.e. it is an election management body in the form of a separate 'commission' with oversight powers and a permanent technical apparatus to handle the entire electoral process. It also includes commissions at the provincial and sub-provincial level: *Comissões Provinciais Eleitorais* and *Gabinetes Municipais Eleitorais*.

The establishment of the CNE largely emanated from above, from the MPLA government's wish to formalise, institutionalise and 'normalise' the political game without losing control and without opening up for a possible government change after elections. The 2008 election result is an indicator of this; the MPLA won more than 82 per cent of the votes, well ahead of the main opposition party's 10 per cent and well above the 2/3 parliamentary majority needed to make constitutional changes.

With its overwhelming majority, the MPLA government introduced and passed a new and rewritten constitution in 2010, which replaced the only partially reformed former Constitution Law. Following this, more laws regulating elections were revised and enacted, including the *General Elections Law* in 2011, the *Election Observation Law* in 2012, and the *Law on the Financing of Political Parties* in 2012 (see text box).

As the new 2010 Constitution specifies that "elections are organised by independent, administrative bodies", a new *Law on the Establishment and Functions of the National Election Commission* was also promulgated in April 2012. With this, all election regulation is reformulated and renewed, with the exception of local elections (that has yet to be held).

FORMAL INDEPENDENCE

According to the Constitution of Angola;

according to the former law (the Electoral Law of 2005) and the current *Law on the National Election Commission* of 2012; and according to the CNE website and other official statements, the Angolan election commission is "independent". This independence has, however, been contested.

According to the 2005 Electoral Law, the CNE was to be an independent body but had to relate to a number of executive branch bodies, including "consultations" with the Ministry of Territorial Administration. Besides, the final role of supervision and arbitration was given to the Constitutional Court.

The new 2012 Law on the National Election Commission defines the CNE independence in more detail. It defines the CNE as "an independent body that organises, executes, coordinates and conducts the electoral processes" and specifies that it is "an administrative authority not integrated into the direct or indirect state administration" and that it "enjoys organic and functional independence".

Thus, the independence of the CNE is firmly established by law. The only current provision for supervision of the CNE lies in the fact that the CNE is "reporting to the Parliament on an annual basis".

According to the new law, the institution is also "a budgetary authority in itself". Thus, the CNE makes its own budget requirements, and only the state budget process (finally approved by the parliament) can alter this. This means that in Angola, the law not only establishes CNE's legal independence, but also that it guarantees it a secure and independent financial status.

According to the previous law, the CNE was composed of eleven members elected for five years. Two members were appointed by the President of the Republic, six by the National Assembly (three by the ruling party and three by the opposition), one judge of the Supreme Court elected by the court, one representative of the Ministry of Territorial Administration, and one member of the National Council for Social Communication (CNCS; a media board). Consequently, the President of the Republic effectively nominated the majority of the commission, because two were appointed directly by him, three were suggested by the ruling party (of which President dos Santos is the president), and one chosen by the Supreme Court (whose judges are nominated by the President of the Republic).

Now, the composition of the current commission is substantially changed with the new law. It requires the commission to be composed of seventeen members, all elected by the legislature except for the commission president who is to be nominated by the judiciary. The new law requires the

LEGAL FRAMEWORK

- LEI DOS PARTIDOS POLÍTICOS de 2005 (Lei Nº 2 de 1 de Julho 2005, *Law on the Political Parties*)
- LEI DO REGISTO ELEITORAL de 2005 (Lei n.º 3 de 1 de Julho 2005, *Voter Registration Law*)
- LEI ELEITORAL de 2005 (Lei Nº 6 de 10 de Agosto 2005, *Electoral Law*)
- LEI DE OBSERVAÇÃO ELEITORAL de 2005 (Lei n.º 11 de 22 de Março 2012, *Election Observation Law*)
- CONSTITUIÇÃO DA REPÚBLICA DE ANGOLA de 2010 (Constitution of Angola of 2010, replacing the Constitutional Law of 1975 with the 1992 amendments)
- LEI DOS PARTIDOS POLÍTICOS de 2010 (Lei n.º 22 de 3 de Dezembro 2010, *Law of the Political Parties*, replacing law 2/05)
- LEI ORGÂNICA SOBRE AS ELEIÇÕES GERAIS de 2011 (Lei n.º 36 de 21 de Dezembro 2011, *Electoral Law*, replacing law 6/05)
- LEI DO FINANCIAMENTO AOS PARTIDOS POLÍTICOS de 2012 (Lei n.º 10 de 22 de Março 2012, *Law on the Financing of Political Parties*, replacing laws 3/97 and 7/02)
- LEI DE OBSERVAÇÃO ELEITORAL de 2012 (Lei n.º 11 de 22 de Março 2012, *Law on Election Observation*, replacing law 4/05)
- LEI ORGÂNICA SOBRE A ORGANIZAÇÃO E O FUNCIONAMENTO DA COMISSÃO NACIONAL ELEITORAL de 2012 (Lei n.º 12 de 13 de Abril 2012, *Law on the Establishment and Functions of the National Election Commission*)

members to be appointed by the parliament after nomination by the political parties, relative to their strength, and the nominees may not be members of any government body (at any level) or any political party or party coalition.

The new law is thus quite different from the former. The executive has no longer any direct role in the nomination procedure. The judiciary nominates the leading commissioner, and the legislature elects the rest. That is, as parliament's nominations are according to the relative strength of the parties, the ruling party will still be dominant, and because the president nominates most of the nominating senior judges, the executive will still be able to influence the nomination of the CNE leader.

CNE CONTESTED

One of the most discussed and contested aspects of the CNE was the nomination of Ms Suzana Inglês as president, and a whole series of interesting events took place after her nomination in 2010, that raised doubt about the independence of the commission.

For one thing, Inglês was deemed too close an ally of President dos Santos to be truly impartial. She was an MPLA member and a leading member of OMA, the ruling party's women's group. Then, when Ms Inglês was re-elected in January 2012, it became clear that she was not a judge (magistrate) at the time of her appointment, as the law required, but a lawyer. Thus, her re-election was criticised in all major newspapers,

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and even referred to in the state-run, ruling-party loyal newspaper.

The opposition staged protests and UNITA threatened to stage more mass protests in Luanda and in the provincial capitals. Then, the opposition parties UNITA and PRS raised a formal lawsuit against the nomination of Inglês. The ruling party first reacted to this criticism by denouncing the critics, but as pressures mounted, the ruling party backtracked, and the Supreme Court nullified the nomination of Inglês. The case was then brought (back) to the judiciary, which nominated the judge André da Silva Neto.

In this story, it is interesting to note the fact that the opposition took the case to court. And, it is even more interesting to note that this is one of the very few cases in which the Supreme Court has heard a case raised by the opposition, and apparently ruled against the MPLA government. But also other issues regarding the CNE, its decisions, and the 'un-level playing field' were debated, without few consequences.

One of these issues was the voter registration procedure. The fact that the voter's roll was made and revised by the Ministry of Territorial Administration led many to doubt the independence and transparency of the process. In a press statement by UNITA after the elections, the party claimed that "more than 30% of the electorate was selectively deleted from the process through fraudulent manipulation of the electoral roll, through transferring thousands of voters to voting places far away from their homes, and because their names did not appear" (UNITA 10 September 2012).

Another issue was the process of accreditation of international and national observers. This was very slow, so most international observers were deployed only a couple of days before the election. UNITA also claimed "more than 40% of the list of UNITA observers were prevented from supervising the elections, through the bureaucratisation of accreditation procedures that dragged on" (*ibid.*)

Yet another issue was the public media, and especially the public broadcaster TPA, which devoted a disproportionate amount of broadcast time to the public activities of President dos

Santos, at the same time as he was the MPLA candidate. And finally, Angolans abroad were denied voting, like in 2008, despite the law. This was due to a lack of "human conditions, materials and logistics", according to the CNE.

The overall organisation of the CNE did not cause much discussion, however. The new law on the CNE was passed unanimously in parliament in April 2012, and Raul Danda, the leader of UNITA's parliamentary caucus, said the new law was "a valid instrument that made the CNE a truly independent organ" (*Jornal de Angola* 11 April 2012). And as soon as the new commissioner was appointed in May 2012, the public debate on the CNE largely silenced.

INDEPENDENCE TO WHAT?

Although the CNE is formally independent, one should note the fact that there is only a loose coupling between formal institutions and actual practice. Formally dependent institutions may be acting independently, and formally independent institutions may be intimidated, thwarted, and neutralized in practice.

Angola is particularly predisposed to the latter, because here rule of law is yet to be established. Angola is an authoritarian country, according to the 2012 Democracy Index of the Economist Intelligent Unit (IEU) and other indexes. Therefore, although the CNE is formally independent, the commission has to operate in a political context that is not conducive to special institutions of control and restraint. The regulatory and political environment is working against an independent CNE.

The true measure of independence of any public authority is in its decisions. The litmus test of the independence of the CNE was not the 2012 elections, because these elections were so clearly won by the incumbent ruling party and the government. The independence (or subordination) of the CNE will only manifest itself when the opposition is so strong that it poses a real challenge to the incumbent MPLA government and president.

In the meantime, the CNE will have another chance to demonstrate its independence when local elections are finally held. No local elections have ever been held in Angola, but are promised for 2015.