

# CMI REPORT

R 2013:5

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**The Election  
Commission of Angola**

Inge Amundsen

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# The Election Commission of Angola

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**R 2013: 5**

August 2013

**CMI** CHR.  
MICHELSEN  
INSTITUTE

**Project number**  
Project 2.1/11921

**Project title**  
CEI-CMI co-operation.

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## Abstract

This report focuses on one particular institution which may mitigate the centralisation of power in Angola and pave the way for political reform and democratisation; the Angolan national electoral commission (the *Comissão Nacional Eleitoral*, CNE). The study outlines the types and role of governmental electoral management bodies (EMBs), positions the CNE in a comparative historical perspective, and analyses the CNE's mandate and independence in terms of legal autonomy, nomination of leaders/commissioners, and financial autonomy. It is argued that the CNE is in constitutional and legal terms a genuinely independent commission, with a comparatively broad mandate and powers. However, due to the political context of Angola it remains to be seen if this formal autonomy will be translated into a counter-balancing institution to the centralised Angolan government.

# 1. Introduction

During the ‘third wave’ of democratisation of the early 1990s, the establishment of an independent election commission was a main demand of the opposition forces in a large number of countries, and in particular in Africa. Truly independent election commissions were established in countries like Benin, Ghana, Zambia, and South Africa, and these paved the way for free and fair elections and for regime change according to the will of the people.

The political and economic circumstances under which *elections* can be democratic, or not, have fascinated scholars for decades. But at the same time, the election management bodies (EMBs), which are responsible for organizing elections, are hardly analysed academically. Donor support to elections, and also to EMBs have been substantial in some cases, but the level of analytical approach to EMB support by donors have been low and insufficient, and only recently emerging.<sup>1</sup>

There are several threats to electoral fairness, and these have been categorised into the three stages of the electoral process (Birch 2008:306). In the first stage, the rules of the electoral game can be skewed and electoral systems can be designed to favour one party over others; at the second stage the voters’ choices can be manipulated through inequalities in access to information; and thirdly the voting process can be rigged through various electoral administrative practices.

*“The combination of factors that interact to foster free, fair and credible elections is undeniably complex, but it can be anticipated that the institutions governing core aspects of the electoral process have an important role to play in strengthening both the objective impartiality built into electoral institutions and their credibility in the eyes of the electorate” (ibid.).*

In other words, the vote can be manipulated, in particular if there is no independent electoral management body (EMB). The independence of the EMB, as a principle governing voting operations, is important for public confidence in the electoral process. According to Lehoucq (2002: 31) “there are good reasons to think [independent electoral commissions] are one of the central institutional developments that made democratization stick in some places, but not in others”. Electoral commission independence from government may lead citizens to trust that the election has been conducted on a level playing field.

*“Perceptions about EMB independence are [...] almost as important as the actual, but indiscernible, level of independence, for perceptions might also be the basis for actions and counteractions of political actors at all levels” (Elklit and Reynolds 2001:5).*

An independent election management body can in other words be decisive for guaranteeing that the election procedure is democratic, and for establishing public trust in democratic procedures. EMBs are, however, not found everywhere, and where they are found, they come in very different shapes. Some are truly independent; some are not. Some are tools for democracy; some are not.

In the following, we will therefore outline the different election commission types, their historic development, and the long list of functions that election management bodies are supposed to fulfil.

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<sup>1</sup> The two most important organisations in the field, with increasing analytical and practical sophistication, are the *International Foundation for Electoral Systems* (IFES), an American NGO that provides support to elections and technical assistance to election officials, and the *International Institute for Democracy and Electoral Assistance* (International IDEA), a Swedish-based intergovernmental organisation that supports democracy worldwide.

Then, we will proceed to outline what is required for an election commission to be independent. This will form the basis of the analysis of the independence of one particular election commission, the Angolan *Comissão Nacional Eleitoral* (CNE).

## 2. Election commission types

An election commission (EC) is a governmental electoral management body (EMB) or electoral authority charged with *overseeing* the implementation of the election laws and thus the entire election procedure. In many cases the commission is also charged with the *implementation* of the elections proper. There are, however, many countries with no election commission.

### 2.1 Government, caretaker, and mixed models

When the European democracies were formed, the electoral system evolved over many years. In the first modern democracies, the vote was restricted to those with property and wealth, which almost always meant a minority of the male population. Then, voting rights were gradually expanded universal suffrage introduced (from early 20<sup>th</sup> century in the pioneer-countries). Universal suffrage was what the political struggles were about; election management was usually not a decisive (or divisive) issue. Election management rested with central and local government authorities, and the judiciary provided oversight and control. This latter function has been strengthened somewhat throughout many European countries, however.

In Sweden for instance, during the first half of the 20th century elections were administered by local and regional authorities under the supervision of the Ministry for Internal Affairs. Most election staff was fixed employees of the local administration (region or commune). The electoral register was based on the civil register, produced by the public *Civil Registration and Tax Collection Board*.

The electoral management system of Sweden was changed by the parliament in 2001, following a long process of deliberation and consultation. The new EMB was moved from being local authorities to a centralized system and an independent body while still falling under the remit of a government ministry.

In the UK, the process has been similar; historically elections were managed by officers appointed by local authorities, and the secret ballot, the creation of an electoral register, and limits on election expenditure dates back to the 19th century. However, a UK-wide *Electoral Commission* was established in 2000. This body does not have the responsibility for the management of elections, however, it is mainly an electoral ‘watchdog’ that has provided much-needed impetus to reform and modernization of the electoral legislation and arrangements within the UK. In addition, it is registering the political parties, monitoring and publishing donations to parties, regulating spending by parties on election campaigns, and reviewing electoral boundaries.<sup>2</sup> The commission is directly accountable to parliament and not to the government.<sup>3</sup>

In most of the OECD countries (Western Europe, USA, Australia, Japan and other ‘developed countries’) elections are held under the aegis of the ministry of the interior, the ministry of territorial administration (or equivalent), and/or through local authorities, whereas the courts have the role of oversight and control. This is what is called the ‘Governmental Model’, ‘Executive Model’, or ‘non-autonomous model’. In this system, the EMB is located within or under the direction of a ministry or department of state, and it is fully accountable to the executive (president/government) only. A minister or senior civil servant usually leads the EMB, and their budget falls within a government

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<sup>2</sup> It is, however, appointing the chief counting officer for UK-wide and regional referendums, which means that, for referendums, it acts as an EMB under the Independent Model (below).

<sup>3</sup> Source: International IDEA website (<http://aceproject.org/ace-en/topics/em/electoral-management-case-studies/>).

ministry and/or under local authorities (ACE 2012). With very few exceptions there is no 'commission' with 'members'.

In a few other countries, especially countries with a parliamentary form of government, a system of caretaker governments is used. 'Caretaker Government' is a type of government that rules temporarily. Sometimes a caretaker government is set up following a war until stable democratic rule can be restored (called provisional or interim government, or government of national unity), in other cases (including New Zealand and Australia) it is a constitutional provision for an interim government that operates (only) in the period between the normal dissolution of parliament and the formation of a new parliament and government. In this case, its sole mandate is to hold the election.<sup>4</sup>

A special type of caretaker government was adopted in Bangladesh, where a separate, non-party caretaker government (NCG) ruled the country for three months before the new, elected government took over. This caretaker government was constitutional; a former Chief Judge led it and an advisory council ran it, with the sole mandate of arranging free and fair elections. As such, the NCG was a highly independent and a very powerful 'election commission'.<sup>5</sup>

Some countries have mixed systems ('Mixed Model' or 'semi-autonomous model'); a dual structure with a policy, monitoring or supervisory component independent of the executive branch of government, and an implementation component located within a department of state and/or local government. Under this model, elections are organized by the governmental implementation component, with varying degrees of oversight and control provided by the independent component. The Mixed Model is used in France, Japan, Spain and many former French colonies, especially in West Africa, for example Senegal, Cameroon, and Gabon (ACE 2012).<sup>6</sup>

A few countries operate a 'Judicial Model', i.e. an election commission closely supervised by and ultimately responsible to a special electoral court. Countries with this mixed, semi-autonomous model include Argentina, Brazil and Mexico.

## 2.2 Independent election commission models

In countries with a separate, independent election management body, the case is often that the institution is created as a part of a process of democratisation (Mozaffar and Schedler 2002:15). The demand for an independent election commission has been a main demand of the opposition in emerging or newly restored democracies; it has been a part and parcel of the demand for free and fair elections, respect for political rights, and democracy.

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<sup>4</sup> In Australia, a caretaker government is the government that starts when the Governor-General dissolves the parliament prior to a general election, and it continues for a period after the election until the next government is appointed according to election results and negotiations between parties. A caretaker government is expected to conduct itself in accordance with a series of well-defined conventions. Under normal circumstances, there is not even a separate appointment of a caretaker government; the existing government simply assumes "caretaker mode". As a caretaker government it will cease taking major policy decisions and cease making major appointments of public officials, except when urgent and then only after consultations with the opposition.

<sup>5</sup> The current government, however, with its absolute majority in parliament, decided in 2012 to abolish the practice and hold elections under the out-going (partisan) government and the Ministry of the Interior, which they see as 'normalisation'. The opposition, however, regards this as opening up for large-scale election fraud, and threatens to boycott the next elections if held under this new system (Jahan and Amundsen 2012: 58).

<sup>6</sup> In France, the independent component is the nine members CNCCFP (*Commission nationale des comptes de campagnes et des financements politiques*), established in 1990, mainly for controlling campaign expenses and financing of political parties. In Senegal, the ONE (*Observatoire National des Elections*) has broad supervisory authority but no technical responsibility for organising and conducting elections, which rests with the Ministry of Territorial Administration.

Independent electoral commissions are in fact a relatively recent invention, and they tend to have been introduced in new and fragile democracies (Birch 2008:308). Some countries, such as Ghana, Kenya, Tanzania, Uganda, Zambia and Liberia, have re-created the commissions they had after independence, which had been dissolved by one-party or military regimes (López-Pintor 2000:40).

The move towards autonomous EMBs in Africa “seems to emanate from a convergence of popular pressure for accountability and transparency in the organisation and conduct of democratic elections and growing recognition by incumbents of the need to secure some semblance of legitimacy in governing” (Mozaffar 2002:96).

In the independent or autonomous model, the election management body is established as a separate body or ‘commission’, with strategic and supervisory authority, and (usually) a permanent technical apparatus to handle all routine operations of the electoral process. Independent commissions may be permanent bodies or *ad-hoc*, re-established for each election, but this is becoming extremely rare.

In the independent election commission model, the commission is institutionally independent and autonomous of the executive branch of government, and it is composed of members from outside of the executive branch (while in EMB office). Besides, it is not only accountable to and reporting to the executive, but also to the legislature and often also to the judiciary and the public.

As such, independent election commissions resemble other special institutions of control or restraint. In liberal democracies, the horizontal accountability function of parliaments and courts (i.e. political checks and balances) is usually complemented by a host of other state institutions, which have as (part of) their mandates to regulate, oversee, and prevent abuse of power by the executive branch. These will be nominated and instituted by the parliament or the supreme court (sometimes in concert with the government/executive), and report back to the parliament and supreme court (and sometimes also to the government/executive). The special institutions include electoral commissions, ombudsman institutions, auditor generals, judicial service commissions, public service commissions, independent central banks, human rights commissions, independent media boards, and anti-corruption agencies.

A permanent independent EMB is now the preferred form of election management in virtually all countries that have undertaken electoral reform since the early 1990s. More or less independent and more or less efficient elections commissions have been created, and this point is important: one should make a clear distinction between EMBs that are truly independent and those that are formally independent but decisively influenced by the government and the ruling party. Unfortunately, many EMBs in Africa purport to be independent, but they are not.

The independence of election commissions, along with the other special agencies, varies across Africa and across the world. Election commissions vary from tightly government-controlled institutions masterminding and orchestrating massive system manipulation and election fraud in countries like Zimbabwe and Cameroon, to truly independent and powerful institutions in countries like Benin, Ghana, and South Africa. Most commissions are, however, somewhere in the middle: a mixed, semi-autonomous government body, which is contested, criticised, and under pressure from both sides.

Unless all stakeholders, such as the political parties, observers, and the general public, are convinced that the election management body (EMB) is properly protected from political control and influence by the incumbent government, the ruling party, or other partisan influences, they will question its decisions and thus the legitimacy of the election results. The legitimacy of an election depends on the actual or perceived integrity of the electoral process. The independence and legitimacy of Ghana’s *National Electoral Commission* has for instance been conducive to democratic consolidation in the country.

If citizens and candidates believe the electoral process is defective or dishonest, they may not accept the outcome. Such distrust can (and often will) lead to violence and political instability.

Thus, the mandate, composition, and independence of the national election commission are politically important issues. Besides, the neutrality and efficiency of an election commission is important because the outcome of a general election is largely influenced by conditions set prior to the ballot. The electoral system, the size and distribution of electoral districts, the terms and conditions for the registration of parties and candidates, voter registration, and the quality and transparency of the vote counting system, are all elements that can substantially influence the outcome of an election. Impartial and credible election management, broadly speaking, is therefore important for election outcomes.

It is of crucial importance for a country's electoral process that the EMB is seen to be competent and independent of any party and of the incumbent government in particular. The principle of independence is straightforward, but the elements of independence are somewhat technical and not so easy to determine or to establish. To be independent, the institution needs a guaranteed legal status, procedures for a non-partisan nomination of the commissioners, a secure financial basis, and credible enforcement powers. Although the fundamental principles are grounded in international electoral standards and norms, the actual formulation of laws, the institutionalisation of the commission, and the implementation of procedures have to take into account national country-specific conditions.

### 3. The role of an election commission

In countries struggling for the establishment of a democratic political system, free and fair elections will be at the core of the struggle, coupled with the demand for an independent election commission that can make free and fair elections take place. In countries in a process of democratic consolidation, the independence of the established commission is a political question. The struggle continues to protect the commission from influence from the incumbent government, to ensure that elections are free and fair also under the new government.<sup>7</sup>

Democracy requires free and fair elections, and free and fair elections require political freedom, equality, fairness, transparency and voting secrecy. All of this requires a legitimate and trustworthy management of elections, i.e. an election management body with integrity, impartiality, and accountability. Besides, it should preferably be effective, competent, sustainable, and service-orientated.

#### 3.1 The efficiency of an election commission

An election is a very complex administrative task and an expensive operation, which is usually implemented in a politically charged atmosphere. A separate and permanent election management body is therefore needed to guarantee the integrity and fairness of the process, and its members will have a direct responsibility for ensuring this. The machinery for organizing and administering elections need technical competence and an appropriate institutional organisation, in addition to integrity and independence.

In the pre-election period, the commission has a large number of tasks to accomplish; planning, staff recruitment and operational training for electoral officials, voter registration, voter and civic education, party and candidate approval and registration, printing and distribution of ballot papers and ballot boxes, logistics and security, observer accreditation (domestic and foreign), control of party and campaign finance, media access monitoring, and dispute resolution.

During the election period, the commission have to manage voting procedures (including external and special voting), counting votes, tabulate results, make public the preliminary and final official results, and handle complaints and appeals.

After the elections, the commission will have to undertake some additional tasks like archiving and research, audits, evaluation of procedures and functions, further institutional strengthening and professional development, revision of election system and district boundaries, etc. Post-election evaluations may be conducted by the EMB itself, or may be external, for example as a review by the legislature or auditors. Then, the commission will have to start all over again with voter registration update etc. for the next election.

Technical competence is therefore needed on many fronts. The commission will have to master the mechanics of voter registration, vote handling, and vote counting, which involves the use ever more modern, expensive, and complex technological solutions, that should at the same time be transparent and facilitate the electoral procedure for the voters. Countries around the world, including in India and Brazil, are increasingly using electronic voting and counting technologies. There is also a pressure for quick publication of preliminary and final, verified election results, which may require even more cutting edge technology.

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<sup>7</sup> In 2007, Sierra Leone's *National Electoral Commission* acted decisively by annulling votes from all the 477 polling stations that registered over 100% turnout. In the DRC, in contrast, a deficient voter register, unfeasibly high turnouts and a host of other irregularities discredited the 2011 presidential election.

Besides, voters should adequately understand the election process and to be able to exercise their rights with the least possible inconvenience. The commission will therefore have to engage in high cost and time-consuming tasks such as voter education and information.

An appropriate institutional organisation requires a legal framework that defines efficient standards for electoral practices and procedures, and defines and guarantees the finances, staff, and daily management of the organisation. Often, there is a division of functional responsibility for different elements of the electoral process, and electoral responsibilities may be divided between bodies at different levels. For example, supervision and daily operations may be organisationally divided, and national-level electoral commission may have different roles and tasks from local-level commissions. This complicates the organisation.

One problem can be that staff members of an EMB may lack the skills to supervise or run the technical operations, another that staff may be unfamiliar with the negotiation and contracting procedures with service delivery companies for equipment and materials (like ballot boxes, electronic voting machines and indelible ink). If such incompetence leads to inefficiencies and delays, they may be confused with corrupt, fraudulent, or politically biased behaviour, leading to serious questions raised on the EMB's impartiality and legitimacy. Thus, an EMB needs professionalism: a properly trained, disciplined, and motivated staff. Only a professional EMB can ensure that all candidates, parties, and voters are treated equally and fairly.<sup>8</sup>

### 3.2 The independence of an election commission

Election commission competence and efficiency is not enough; the democratic role of an election commission depends on its independence.

*“The effectiveness of an election commission, as the institutional linchpin of democratic and electoral governance, depends largely, but not exclusively, on their autonomy from the government” (Mozaffar 2002:85).*

There is, however, no clear, universally accepted authoritative understanding of what EC *independence* entails in every given circumstance, and there are no quantitative and internationally comparable studies made on election commission independence.

Nevertheless, there is quite some agreement on what is required as a minimum. EC independence requires independence from the executive, in terms of constitutional arrangements and a legal mandate, funding, and staffing. In practice, this means that an independent commission will have a constitutionally guaranteed status, secured funding through the state budget, and a procedure of nominating commissioners and staff that is beyond the control of the executive. Thus, an independent election commission is more dependent on the law (the judiciary) and the legislature (parliament) than on the presidency.

In other words, there are basically three ways of securing formal independence of an election commission, or three components of formal independence of electoral management bodies. One is a *secure legal status* (established by the constitution or by law), two is a respected procedure of *non-partisan nomination of commissioners* (involving more than presidential discretionary nomination), and three is an independent and *secure financial status* (again established by law as a permanent budget line).

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<sup>8</sup> Perhaps election commissions, like some central banks and tax authorities, could be commissioned out and managed by international expertise according to national law and international standards? To our knowledge, this has never been discussed, probably because of the political and national sensitivity of elections, and because most governments do not want to lose control.

### 3.2.1 Legal autonomy

An election commission with a secure legal status is established by the constitution or established by law, and this legal provision needs to explicitly provide for and guarantee its institutional independence and autonomy from the executive branch of government.<sup>9</sup> An independent commission's legal establishment and protection is best ensured by a constitutional provision (López-Pintor 2000:104).

The law also needs to establish the terms of its independence, including the procedure for a non-partisan or balanced nomination of leaders (commissioners) and its secure and independent financial status.

The constitution or the law should also establish who will guard the guardian. That is, who is responsible for checking whether the appointed members and the hired electoral officials are adhering to the rules and regulations, and who is the commission answerable to. The better option is that the courts make this legal supervision (as the commission is established by law and its mandate defined by law), and that the supervision and control of the EC is done by the legislature, to whom the commission should also be reporting.

It is an advantage if the law establishes clear disciplinary powers of the EC to deal with problems like electoral officials not respecting the neutrality principle, incompetence, or corruption. It is also an advantage if the EC has the power to ensure that breaches of the electoral laws, rules and codes of conduct are followed by appropriate sanctions (ACE 2012).

Transparency is also an advantage, as it creates public trust and confidence, and should be established by law. Openness at all stages of the electoral process, including transparency in operational and financial management is a basic good practice for all EC activities. Political candidates, parties and voters should be able to judge if decisions taken by the administration are appropriate and should have the right to demand justification for the decisions made by the commission. According to ACE (2012), "transparent procedures eliminate the appearance of impropriety, limit the possibility of electoral fraud, corruption and/or favouritism towards particular political tendencies, and promote public confidence".

### 3.2.2 Financial autonomy

The law should also establish the independent election commission's adequate, secure, and autonomous financial status. The commission should, ideally, have a separately allocated budget approved by the legislature as a specific budget line in the state budget. Also, it should be able to manage its budget independently from day-to-day executive interference or control. In budgetary matters, it should not "become subservient, or under the control of the executive which is providing it with its funds and which could make pliability a prerequisite for adequate funding" (Dundas 1997, cited in López-Pintor 2000:105).

The electoral body should not only be adequately funded but also be able to manage its finances in an autonomous and a cost-effective manner, with due attention to staff development and the introduction of modern methods of resource management (López-Pintor 2000:105).

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<sup>9</sup> It does not matter much whether it is established as a legal entity (which can sue and be sued in court), like in for instance Azerbaijan, Kenya and Lithuania, or not (like in for instance Botswana and Namibia); what matters is that it has the legal powers to act independently and operates under a clear legal framework.

### 3.2.3 Non-partisan leader nomination

As an independent election commission is composed of members from outside of the executive branch (while in EMB office), the commissioners need to be non-partisan or balanced partisan to guarantee its independence. That is, the members need to have security in tenure of office, which means that the tenure is guaranteed by law and a commissioner can only be unseated by a court conviction (in other words, that they cannot be removed or dismissed by executive decision). Preferably, they should also have a fixed term of office.

In many countries, a senior member of the judiciary chairs the EC. This can be good for independence and may make undue interference by the government or opposition parties less likely, but it will depend on the impartiality of the judiciary and be less efficient as a safeguard against undue influence if judges are all nominated by the government. Alternatively, the appointment of a respected public figure, a person who is known for political non-alignment, may be another way to advance the independence of an EC (ACE 2012).

The appointment in 2010 of Professor Attahiru Jega to the *Independent National Electoral Commission* in Nigeria, for instance, and his insistence on the creation of a new voter register, enhanced perceptions of an institution and process commonly regarded with suspicion and mistrust.

An election commission do not have to be composed of non-partisan members exclusively. An election commission can well be comprised of representatives of various political parties,<sup>10</sup> but its composition needs to be balanced and not dominated by one party. One political party (or coalition) should not have the majority and the decision-making power on the commission.

In addition, in order to underpin this, a culture of independence and the commitment of the EC commissioners and staff to independent decision-making are important elements. The need for a strong leadership can also be important for maintaining the independence of an EC. Whether these are preconditions for - or a result of - formal independence is an empirical question.

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<sup>10</sup> See *Appendix I*, on the *Corte Electoral* of Uruguay, for an example of an independent, party-based commission.

## 4. Angola and the *Comissão Nacional Eleitoral*

Democratic reforms were introduced in Angola in 1991-92 as a part of the peace accords after 15 years of civil war, and this coincided with similar democratic developments in a large number of other African countries. Prior to 1991, Angola was a socialist state with the ruling party, the MPLA (*Movimento Popular de Libertação de Angola*), formally situated above the state institutions, but its dominance was contested. In fact, Angola was in a situation of civil war from independence in 1974. The war between the three factions, the MPLA (backed by the Soviet Union and Cuba), UNITA (backed by USA and apartheid South Africa) and the FNLA (initially backed by the USA) was a war linked to the control of the state, and of its resources.

The first round of civil war lasted until the cold war ended, the ruling MPLA formally abandoned Marxism-Leninism, and the peace accords were signed in 1991. The first, watershed elections in 1992 were carried out with creditable transparency and in the presence of internal and international observers, and were based on constitutional revisions that brought Angola formally from single party rule to a democratic, multiparty political system. The outcomes were open.

### 4.1 Political and institutional context

In the 1992 elections, the ‘reformed’ ruling party MPLA won with a clear majority, but the victory did not bring stability and peace. The defeated candidate Jonas Savimbi and most of his party and guerrilla army UNITA returned to the bush and the armed struggle. Another ten years of civil war followed, until government forces killed Savimbi in 2002 and his army disintegrated.

Thus, it took another sixteen years before the government felt sufficiently secure to open up for new elections. These second elections were held in September 2008. They were rated ‘credible and transparent’ but not ‘free and fair’.<sup>11</sup>

In these elections, the ruling party MPLA secured an even larger majority, and almost wiped out the opposition. MPLA won nearly 82 per cent of the votes and well above two-thirds majority in parliament, enabling it to change the constitution without the consent of the opposition.

The main problem was the incumbency advantages and the uneven playing field. Public funds and services were at the disposal of the ruling party, including military resources and the state bureaucracy at all levels. The ruling party also owned private businesses, and received various donations from public and private companies and individuals. The MPLA received officially about US\$ 50 million annually in state subsidies to cover running costs, but in addition it received subventions for central and provincial offices. The separation between the party, the government and the state was indeed blurred; the national flag and the ruling party banner, for instance, were deliberately kept similar.

In 2010, with the ruling party’s more than a 2/3 majority in Parliament, the regime changed the Constitution, sharpened the authoritarian character of the regime, and entrenched presidential rule even further by weakening the basic democratic principle of a division of powers. For instance, direct presidential elections were abolished. Instead, the first person of the party list gaining the most votes in the parliamentary elections would become President of the Republic.

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<sup>11</sup> Human Rights Watch noted that “the playing field remained considerably slanted in favour of the ruling party”, and that “CNE failed in its role as oversight body, doing nothing to prevent or respond to major violations of election laws during the campaign [...] and] on polling day, important safeguards against manipulation [...] were breached, and the CNE obstructed independent monitoring”. (Human Rights Watch, 2009:3).

It was under the new Constitution of 2010 that the third multiparty general elections were held in August 2012. Again, the ruling party won big with almost 72 per cent of the votes and 175 of 220 Members of Parliament. Although the UNITA gained almost 20 per cent, these results were no surprise but the turnout was low.

The election results of 2012 were considered “transparent and democratic” by the official observer groups.<sup>12</sup> Reports by international NGOs and international media painted a bleaker picture, however. EISA (The Electoral Institute for Sustainable Democracy in Africa, based in Johannesburg), said “the election results generally reflected the will of those Angolans who turned out to vote” but added a number of problem areas (de Brito 2012:18).<sup>13</sup> Human Rights Watch said the elections were “generally peaceful during the campaign and on polling day, yet fell short of international and regional standards” (HRW 2013), and Reuters reported that “Angola's long-serving President José Eduardo dos Santos and his MPLA party scored a landslide win [...] in an election criticized as one-sided and not credible by opponents and civil society activists” (*Reuters* 2 September 2012).

The best explanation for the outcome was the ‘pull and push factors’. The extensive oil and gas resources had given the Angolan regime a particular boost to its patronage politics. Aspiring individuals flocked to the party, co-optations were frequent, and voters, especially in rural and backward areas, understood it was better to vote for a party that could ‘bring home the beef’ in terms of infrastructure projects, cash, and government favours to the constituency.

But electoral manipulations - in terms of postponing and *not* holding elections – had become an Angolan speciality. The second parliamentary elections were held sixteen years after the first (officially due to the civil war and then to ‘insecurity’ and other post-war problems), and although the third general elections were held in 2012 as scheduled, voters got to know there would be no direct elections for president. The new Constitution, made against the votes of the opposition, had ensured that. Besides, local elections have never been held. There are currently no elected local authorities; they are but local organs of the central state.

At the same time, the CNE managed the logistics of the electoral process generally well. Polling station staff was recruited and trained adequately and deployed in a timely manner, and materials were in sufficient quantities and were distributed in a timely manner, with the exception of the voters’ rolls, which in some cases arrived late at the polling stations (de Brito 2012:12).

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<sup>12</sup> The Southern Africa Development Community (SADC), the African Union (AU), the Economic Community of the Central African States (ECCAS), the Community of Portuguese Speaking Countries (CPLP) and others declared in a joint statement that the elections had been free and fair (although noting a few areas in need of improvement). Source: [https://icglr.org/IMG/pdf/Declaration\\_on\\_Angola\\_Elections\\_August\\_2012.pdf](https://icglr.org/IMG/pdf/Declaration_on_Angola_Elections_August_2012.pdf) (accessed 28 Feb 2013). The SADC *Parliamentary Forum* also stated that the elections had happened in “an atmosphere of peace and political stability” (*AgênciaAngolaPress* 4 September 2012).

<sup>13</sup> “However, the lack of publication of the voters’ roll before Election Day, the dubious audit of the voters’ database, and the lack of response by the CNE to complaints by some opposition parties cast a shadow over the transparency of the process. The intensely biased behaviour of the public media, which dominated the media market in Angola, towards the ruling party and its presidential candidate, and the unlevelled playing field among the different competing parties in terms of access to resources, dented seriously the fairness of the electoral campaign. The obstacles created by the CNE to the work of international and domestic observers and of party agents by delaying their accreditation further soiled the credibility of the whole process” (ibid.).

The opposition also generally accepted the results. Only some minor claims by the opposition still linger in the system. These are not, however, on the legality of the elections or on the independence of the CNE, but rather on a few, technical matters.<sup>14</sup>

## 4.2 Election management in Angola

Angolan elections have been held under an increasingly sophisticated institutional framework. The first multiparty elections in September 1992 were held under the urgently (and only partially) revised Constitution.<sup>15</sup> This constitution did not provide for any election commission, but one was established in order to manage the 1992 elections; the *Comissão Nacional Eleitoral* (CNE). Being in a hurry, the CNE had a weak legal mandate, and in practical terms the Ministry of Territorial Administration and the province governors managed these constituent elections.

At the same time, these were the most closely contested elections in Angola. Workers' strikes, manifestations, and heavy political activism made up a strong domestic pressure for change, and the 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 Savimbi and (parts of) UNITA could not accept electoral defeat and returned to the bush and the armed struggle, and because MPLA took back its control of the state apparatus.

For instance, from its election in 1992 until 1997 the National Assembly worked almost as the former People's Assembly had done, dominated by the MPLA. The majority of the 67 deputies elected from the second largest party UNITA only took up their seats in 1997, when a new peace agreement formed a *Government of National Unity* (GURN), which also included UNITA members. Then, 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 dominance 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 (that were finally set for September 2008), 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*.<sup>16</sup> The postponed 2008 general elections were thus conducted according to this revised and extended legal body.

The Angolan election commission, the CNE (*Comissão Nacional Eleitoral*) was established by law at the same time in 2005, through a provision of the *Electoral Law*.<sup>17</sup> As such, the CNE follows the independent or autonomous model, i.e. an election management body in the form of a separate 'commission' with a permanent technical apparatus to handle the electoral process (the CNE includes the central level and local



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<sup>14</sup> The leading opposition parties UNITA, PRS and CASA-CE formally complained to the CNE and the Constitutional Court on issues relating to the electoral roll, the location of polling stations, and deceased citizens still on the voter register (*Agência Angola Press* 19 September 2012).

<sup>15</sup> The amendments to the Constitutional Law were introduced in March 1991 through Law No. 12/91.

<sup>16</sup> *Lei Eleitoral* (6/05), *Lei dos Partidos Políticos* (2/05), *Lei do Registo Eleitoral* (3/05), *Lei de Observação Eleitoral* (4/05).

<sup>17</sup> Lei n.º 6/05: *Lei Eleitoral*, articles 154-163 (Título IX: Comissão Nacional Eleitoral).

bodies (*Comissões Provinciais Eleitorais* in all 18 provinces and *Gabinetes Municipais Eleitorais* in all municipalities)).<sup>18</sup>

The establishment of the CNE in 2005 came as a part and parcel of a legal restructuring process, largely emanating 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.<sup>19</sup> The 2008 election result is one indicator of this; the MPLA won more than 82 per cent of the votes, well ahead of the main opposition party UNITA's 10 per cent and well above the 2/3 majority needed to make constitutional changes.

With its overwhelming majority and mandate, in 2010 the MPLA government then introduced and passed a new and thoroughly rewritten constitution. Following this, a number of laws regulating elections in Angola were also revised or some new legislation enacted, namely the *General Elections Law* in 2011, the *Election Observation Law* in 2012, and the *Law on the Financing of Political Parties* in 2012.<sup>20</sup>

Although the new 2010 Constitution still does not name the CNE, it specifies that "elections are organised by independent, administrative bodies, whose structures, functioning, composition and powers are defined by law",<sup>21</sup> and following this constitutional provision, a new *Law on the Establishment and Functions of the National Election Commission* was promulgated in April 2012.<sup>22</sup> With this, all election regulation is reformulated and renewed (with the exception of local elections).<sup>23</sup>

### 4.3 Independence of the CNE

According to the Constitution of Angola, article 107; according to the former law (the *Electoral Law* of 2005) that established the CNE; according to the current *Law on the Establishment and Functions of the National Election Commission* of 2012; and according to the CNE website and other official statements, the Angolan election commission, the *Comissão Nacional Eleitoral* (CNE) is "independent". This independence is not explicit and specified, however, and it is discussed and somewhat contested.

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<sup>18</sup> "A Comissão Nacional Eleitoral é um órgão independente e participado que coordena a execução, condução e realização de todas as actividades e operações relativas às eleições, bem como nasupervintendência e supervisão dos actos de registo eleitoral".

<sup>19</sup> In the eyes of many observers and according to the opposition, this legislation was created more in order to gain control of the electoral process and to gain international legitimacy, than it was about securing a level playing field and democratic procedures.

<sup>20</sup> *Lei Orgânica sobre as Eleições Gerais* (Lei n.º 36/11 de 21 de Dezembro 2011, revoga a Lei n.º 6/05 (e a Lei 7/04)), *Lei de Observação Eleitoral* (Lei n.º 11/12 de 22 de Março 2012, revoga a Lei n.º 4/05), *Lei do Financiamento aos Partidos Políticos* (Lei n.º 10/12 de 22 de Março 2012, revoga as Leis n.º 3/97 e n.º 7/02).

<sup>21</sup> 2010 Constitution of Angola, article 107:1: "Os processos eleitorais são organizados por órgãos de administração eleitoral independentes, cuja estrutura, funcionamento, composição e competências são definidos por lei".

<sup>22</sup> *Lei Orgânica Sobre a Organização e o Funcionamento da Comissão Nacional Eleitoral* (Lei n.º 12/12 de 13 de Abril 2012). The revised General Elections Law also specifies the role of the National Election Commission (Law 36/11; chapter IX, articles 139-152).

<sup>23</sup> Local elections are yet to be held. Most probably, the MPLA government will introduce the necessary legislation on local elections before they are held. This will take some time, and earlier promises of local elections in "either 2013 or 2014" will be most probably be delayed.

### 4.3.1 CNE legal status

According to the 2005 *Electoral Law*, the CNE was to be an independent body to coordinate and execute all operations relating to elections. However, the CNE had to relate to a number of executive branch bodies, including consultations with the Ministry of Territorial Administration on “technical matters”, and the final role of supervision and arbitration was given to the Constitutional Court.<sup>24</sup>

According to the 2010 Constitution of Angola, article 107, “elections are organized by independent electoral management bodies, whose structure, functioning, composition, and powers are defined by law”.<sup>25</sup> Thus, agreeing with this constitutional provision, the 2012 *Law on the Establishment and Functions of the National Election Commission*, defined the terms in more detail.

For instance, this law defines the CNE this way; “The National Electoral Commission, in accordance with article 107 of the Constitution of the Republic of Angola, is an independent body that organises, executes, coordinates and conducts the electoral processes”.<sup>26</sup> Its independence is defined by stating that the CNE is “an administrative authority not integrated into the direct or indirect state administration” and that it “enjoys organic and functional independence”, and that it is “a budgetary authority in itself, endowed with administrative, financial and patrimonial autonomy, in accordance with the law”.<sup>27</sup>

Thus, the independence of the CNE is firmly established by law. CNE’s independence is underlined, and even the former formulations that the CNE had to consult with the Ministry of Territorial Administration and that CNE decisions could be appealed to the Constitutional Court, are renounced in the new law.<sup>28</sup> 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”.<sup>29</sup>

The legal guarantees for CNE independence are so strong that even the main opposition party UNITA approved it and voted for it in parliament. Raul Danda, the leader of UNITA’s parliamentary caucus, said that the new law of the National Electoral Commission was “a valid instrument that made the CNE a truly independent organ” (*Jornal de Angola* 11 April 2012).

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<sup>24</sup> According to article 34/4: “ouvida a Direcção Nacional de Eleições do Ministério da Administração do Território”; and according to article 7, “A apreciação da regularidade e da validade das eleições compete, em última instância, ao Tribunal Constitucional”. See also Article 166.

<sup>25</sup> “Os processos eleitorais são organizados por órgãos de administração eleitoral independentes, cuja estrutura, funcionamento, composição e competências são definidos por lei.”

<sup>26</sup> Law 12/12, article 3: “A Comissão Nacional Eleitoral, nos termos do artigo 107.º da Constituição da República de Angola, é um órgão independente que organiza, executa, coordena e conduz os processos eleitorais.”

<sup>27</sup> Law 12/12, article 4, 1-3: “1. A Comissão Nacional Eleitoral é uma entidade administrativa não integrada na administração directa e indirecta do Estado. 2. A Comissão Nacional Eleitoral goza de independência orgânica e funcional. 3. A Comissão Nacional Eleitoral é uma entidade orçamental própria, dotada de autonomia administrativa, financeira e patrimonial, nos termos da lei.” Exactly the same is expressed in Law 36/11, article 140, 1-3.

<sup>28</sup> Previously, under the renounced Law 6/05, article 166 and 171, “Os interessados podem interpor recurso para o Tribunal Constitucional: a) das decisões proferidas pela Comissão Nacional Eleitoral sobre as reclamações mencionadas no artigo 164.º da presente lei; b) das decisões proferidas pela Comissão Nacional Eleitoral sobre as reclamações referentes ao apuramento nacional do escrutínio” and “1. O Plenário do Tribunal Constitucional decide, definitivamente, no prazo de 72 horas a contar do termo do prazo da apresentação das contra-alegações. 2. A decisão é notificada às partes e à Comissão Nacional Eleitoral”.

<sup>29</sup> Law 12/12, article 4/4, “A Comissão Nacional Eleitoral apresenta, anualmente, o seu relatório de actividades à Assembleia Nacional.”

The new law strengthens the powers of CNE. In particular, the CNE is mandated to

- organize, execute, coordinate and conduct elections and publish the results
- develop and approve the constitution and operation of polling stations and recruit, select, train and deploy members of polling stations
- maintain and manage the data of voters obtained from the civil identification database (from the Ministry of Territorial Administration) and from information provided by voters and prepare voters' rolls based on that information
- decide on the accreditation of national and international election observers, as well as accredited agents of political parties and coalitions, and establish their access areas
- approve candidates, party lists and coalition lists<sup>30</sup>
- distribute the government subventions/funding for the political parties<sup>31</sup>
- allocate broadcasting time on radio and television for parties and coalitions<sup>32</sup>
- analyse and approve the reports and accounts of the political parties
- adjudicate complaints raised by citizens and political parties

Thus, the Angolan CNE is a very powerful organ, with a wide mandate. It also has a secure legal status as it is ensured by a constitutional provision and also established by a separate law, which furthermore explicitly guarantees its legal and institutional independence from the executive branch of government. Also, the CNE has the power to sanction breaches of the various electoral laws and regulations and to uphold the law. For instance, if political parties fail to provide their accounts on election expenses on time, the CNE can refer the case to the Court of Audit (*Tribunal de Contas*).<sup>33</sup>

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<sup>30</sup> The Constitutional Court, however, has the mandate to register (or not, or de-register) the political parties proper (Law 22/10, article 13). There are currently 78 parties and 10 coalitions legalized by the Constitutional Court. This law also stipulates that parties that get less than 0.5% of the votes in an election are automatically de-registered.

<sup>31</sup> The *Law on the Financing of Political Parties* (Law 10/12) provides that parties may receive funding from Angolan private individuals and institutions, but not from Angolan public entities or foreign governments and NGOs. All political parties and coalitions with seats in Parliament receive an annual allocation from the National Budget equivalent to Kwanza 1,000 per vote obtained in the general elections. All political parties and coalition contesting the elections are entitled to public campaign funding from the National Budget. The amount to be provided to each party and coalition in an election year is announced by presidential decree (and in early July 2012, President dos Santos issued a decree providing the nine parties and coalitions competing in the elections each with K 9,600,000 (approximately USD 96,000) as public campaign funding. Opposition parties complained that the amount was too small to allow for effective campaigning, and that they were released too late.

<sup>32</sup> The Electoral Law (Law 36/11, Article 62) lays down that campaigning begins 30 days before the election and ends at midnight the day before Election Day. Article 73, states that parties taking part in elections are entitled to free access to public broadcasting during the campaign period as follows: 10 minutes public radio broadcast time daily between 15 and 22 hours; and 5 minutes public TV broadcast time daily between 18 and 22 hours.

<sup>33</sup> Law 36/11, article 84/5, "*Se as entidades concorrentes às eleições não prestarem contas nos prazos fixados nos números 1 e 3 do presente artigo ou se concluir que houve infracção ao disposto no artigo 83.º, a Comissão Nacional Eleitoral deve fazer a respectiva participação ao Tribunal de Contas, para os efeitos legais*".

### 4.3.2 CNE financial status

According to the law on the CNE, the institution has the authority to “draw up its budget proposal and send it to the Executive”,<sup>34</sup> which means the CNE ‘Plenary’ (the highest central, collegial deliberative body of the commission) approves the CNE budget itself.<sup>35</sup> Besides, the CNE is “a budgetary authority in itself, endowed with administrative, financial and patrimonial autonomy, in accordance with the law”.<sup>36</sup> The previous law (6/05) did not mention this budgetary autonomy.

Consequently, it is only the state budget process (finally approved by the parliament) that can alter the CNE’s suggested budget. 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.

From the face of it, it also seems that the CNE is well funded. Its headquarters in Rua Amílcar Cabral in Luanda is a state-of-the-art office building, and new office buildings for the CNE provincial and sub-provincial commissions (*Comissão Provincial Eleitoral CPE* and *Comissão Municipal Eleitoral CME*) keeps getting erected and inaugurated.<sup>37</sup>

### 4.3.3 CNE commission nomination

According to the previous *Electoral Law* (the law that legally established the CNE in 2005), the National Election Commission was composed of eleven members elected for five years. Two of these were appointed by the President of the Republic, six by the National Assembly (by absolute majority; three proposed by the largest/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) (elected by the council).<sup>38</sup> Furthermore, the National Assembly elected the CNE commissioner among the eleven members.<sup>39</sup>

The composition of the commission was, however, substantially changed with the 2012 *Law on the Establishment and Functions of the National Election Commission*. This new law requires the commission to be composed of seventeen members, elected by the legislature (again elected for five

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<sup>34</sup> Law 12/12, article 6: “A Comissão Nacional Eleitoral tem as seguintes competências: b) elaborar a sua proposta de orçamento e remetê-la ao Executivo.”

<sup>35</sup> Law 12/12, article 13 b: “*Compete ao Plenário da Comissão Nacional Eleitoral: b) aprovar o orçamento da Comissão Nacional Eleitoral.*”

<sup>36</sup> Law 12/12, article 4/3: “*A Comissão Nacional Eleitoral é uma entidade orçamental própria, dotada de autonomia administrativa, financeira e patrimonial, nos termos da lei.*”

<sup>37</sup> See for instance *Jornal de Angola* 22 February 2013 on the inauguration of the CPE offices in Kuando-Kubango.

<sup>38</sup> Law 6/05, article 156/1: “A Comissão Nacional Eleitoral é composta por onze membros:

- a) dois cidadãos indicados pelo Presidente da República;
- b) seis cidadãos designados pela Assembleia Nacional, por maioria absoluta dos Deputados em efectividade de funções, sob proposta dos partidos com assento parlamentar, sendo três pelo partido ou coligação maioritário e três pelos demais partidos ou coligação de partidos;
- c) um Juiz do Tribunal Supremo eleito pelo Plenário do respectivo Tribunal;
- d) um representante do Ministério da Administração do Território;
- e) um membro do Conselho Nacional de Comunicação Social, eleito pelos seus pares.”

<sup>39</sup> Or by absolute majority if no consensus could be reached. Law 6/05, article 156/2: “A Comissão Nacional Eleitoral é presidida por uma das personalidades a que se refere o número anterior designada, por consenso, pela Assembleia Nacional ou na impossibilidade de consenso, designada por eleição nos termos estabelecidos na parte inicial da alínea b) do ponto anterior.”

years), except for the leader who is to be nominated by the judiciary.<sup>40</sup> The commissioner of the CNE (called “president/presidente”) is to be a judge (magistrate) and to be appointed by the High Council of the Judiciary (*Conselho Superior de Magistratura*, CSM<sup>41</sup>), among their peers (council members) (prior to formal election by the parliament). Furthermore, the leader is to be chosen on the basis of competition, and the leader will suspend his/her judicial functions after designation.

The new law requires the other sixteen members to be appointed by the National Assembly after nomination by the political parties represented in parliament, relative to their strength.<sup>42</sup> The members are supposed to be nominated on criteria of “civic and moral probity, honesty, and technical competence”, and they may not be members of any government body (at any level) or any political party or party coalition.<sup>43</sup>

The later law is in other words quite different from the former. Up till the new law entered into force, the President of the Republic effectively nominated the majority of the commission. With two members appointed directly by the president, three suggested by the ruling party (and President dos Santos is the leader of the party), one chosen by the Supreme Court (which is nominated by the president); the majority depended on the executive and consequently the president effectively controlled the former National Election Commission.

Now, the situation is changed, and the President of the Republic has no direct role in the nomination of the commissioners. The judiciary nominates the leading commissioner, and the legislature elects the rest. Of course, as the parliamentary nominations are according to the relative strength of the parties in parliament, the ruling party will still be dominant.

Besides, the executive will still be able to influence the nomination of the CNE leader, because the President of the Republic nominates most of the senior judges who are nominating the CNE leader. There is consequently an indirect executive influence on the election of the commission president. However, in formal terms, the CNE has become fully independent of the executive.

Thus, according to the 2005 Electoral Law and the 2010 Constitution, a (second) eleven-member CNE was nominated in August 2010, under the commissioner (“presidente”), Ms Suzana António Inglês, who took over the position from Mr António Caetano de Sousa who had held

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<sup>40</sup> Law 12/12 article 7/1: “A Comissão Nacional Eleitoral é composta por dezassete membros, sendo:

a) um magistrado judicial, que a preside, oriundo de qualquer órgão, escolhido na base de concurso curricular e designado pelo Conselho Superior da Magistratura Judicial, o qual suspende as funções judiciais após a designação;

b) dezasseis cidadãos designados pela Assembleia Nacional, por maioria absoluta dos Deputados em efectividade de funções, sob proposta dos partidos políticos e coligações de partidos políticos com assento parlamentar, obedecendo aos princípios da maioria e do respeito pelas minorias parlamentares”.

<sup>41</sup> The High Council of the Judiciary (or the High Council of the Judicial Power) is presided over by the president of the Supreme Court and is composed by 3 lawyers nominated by the President of the Republic, 5 lawyers nominated by the parliament and 10 judges elected by judicial judges. The High Council is responsible for proposing the appointment of judges to the Supreme Court, appointing, placing, transferring and promoting judges, as well as considering the professional ability of judges and taking disciplinary action when necessary.

<sup>42</sup> The first commission nominated according to this system thus had 9 MPLA appointees, 3 from UNITA, 2 from PRS, 1 from FNLA, and 1 from ND (de Brito 2012:9).

<sup>43</sup> Law 12/12, article 7/2: “Os membros referidos na alínea b) do n.º 1 do presente artigo, são designados na base dos critérios da idoneidade cívica e moral, probidade, competência técnica, não podendo pertencer a órgãos de direcção, a qualquer nível, de qualquer partido político ou coligação de partidos políticos.” The 2010 Constitution of Angola also states that the members of the electoral administration are elected by the National Assembly, according to article 163/d: “Relativamente a outros órgãos, compete à Assembleia Nacional: [a,b,c] d) eleger membros dos órgãos de administração eleitoral, nos termos da lei.”

this position for many years.<sup>44</sup> The independence of this commission raised much doubt among the opposition parties, and particularly in UNITA (*Jornal de Angola* 26 October 2011), and UNITA and other opposition parties finally challenged the election of the commission president in court.

In April 2012, according to the new law on the CNE, a (third) seventeen-member election commission was nominated. This commission was elected by the Parliament, with nine members nominated by the ruling party MPLA and seven by the opposition. In May 2012, André Silva Neto substituted Inglês as CNE president.<sup>45</sup>

## 4.4 The public debate

Perceptions matter, and Birch makes the hypothesis that institutional structures which promote a 'level playing field' (at each stage of the electoral process, including electoral systems, party funding schemes, an independent election commission, etc.), will enhance the extent to which voters perceive their elections to be fair (2008:305).

Thus, by exploring the media coverage of the CNE in Angola, some light can be shed on Angolan citizen and voter perceptions of the independence of the CNE. We will primarily look at some of the basic issues of the debate on the CNE prior to the August 31<sup>st</sup> 2012 elections and the tenure of Inglês as CNE president. This aspect of the CNE stands out as particularly controversial; media coverage demonstrates that the nomination of Inglês as chief commissioner was deeply contested.

Besides, some issues on the 'un-level playing field' were debated, but the overall organisation of the CNE did not cause much debate. The law on the CNE (Law 12/12 on the *Establishment and Functions of the National Election Commission*) was approved unanimously by parliament in April 2012, without much discussion (*Jornal de Angola* 11 April 2012). After the new law on the CNE was promulgated and a new commissioner appointed in May 2012, the public debate on the CNE largely silenced.

### 4.4.1 CNE chairman election

The main issue of contestation regarding the CNE was the election of Ms Suzana Inglês as CNE leader. Being elected in August 2010, Inglês held the position of CNE leader only until June 2012, just months before the country went to the polls for its third multiparty elections. Her tenure went through much controversy, and finally the Supreme Court annulled her nomination and a new CNE leader was chosen.

For one thing, she was deemed too close an ally of President dos Santos to be truly impartial (being for instance an MPLA member and a leading member of OMA, the ruling party's women's group). But, finally, she was challenged on the fact that she was not a judge (magistrate) at the time of her appointment, as the law required, but a lawyer (*BBC World News* 18 May 2012).

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<sup>44</sup> Suzana Inglês had served as a common CNE member since 2005, nominated by the MPLA, and the former commissioner, de Sousa, had served since 1992 (*Novo Jornal* 30 December 2011). The other members were Júlia Ferreira, João Damião, Alfredo Matias (nominated by MPLA), Horácio Junjuvile and Cláudio Silva (nominated by UNITA), Quipoya Watele Chimbelengue (nominated by PRS), and Raul Araújo, Adão de Almeida, and Lucas Kilundu (*Jornal de Angola* 13 August 2010 and 30 September 2010).

<sup>45</sup> The current CNE is composed of André Silva Neto (president), Agostinho Miguel Lima, João Damião, Lucas M. João Quilundo, Edeltrudes M. da Costa, Amélia Augusto Varela, Kipoy Watela Chimbelengue, Tristão Ernesto, Júlia de Fátima Leite da S. Ferreira, Alfredo Graça Matias, João Maria Pokongo, Manuel Saboneti Camati, Isaias Celestino Chitombe, David Horácio Junjuvili, Maria Chicunga, and Manuel Moreira Pinheiro (CNE website, accessed 27 February 2013).

When the parliament members first elected Inglês for CNE president as they elected the (second) CNE in August 2010 (according to the 2005 Electoral Law and the new Constitution), they did so unanimously. It took a while before the criticism started; in fact it came only with the re-election of Inglês in January 2012, according to the new Electoral Law (36/11) that had been promulgated in December 2011. This law required the CNE president to be a judge of and be appointed by the High Council of the Judiciary. Then it became clear that Inglês was not a judge at the time of her nomination, as required by the law.

First, UNITA and other opposition parties walked out of her inauguration ceremony in February, and the opposition nominees started boycotting the plenary meetings of the CNE in protest (*Novo Jornal* 17 February 2012). Then, UNITA wrote a letter to the CNE about its concerns, including the state of the voters' roll, election observation, vote count, and the diaspora, in addition to the issue of the appointment of Inglês (*Angolense*, 13 April 2012).

Subsequently, criticism was raised in all major newspapers, and also referred to in the state-run, ruling-party loyal newspaper *Jornal de Angola*. The opposition also staged protests in March and April, and UNITA threatened to stage mass protests in Luanda as well as throughout the provincial capitals across the country in May if the CNE did not address the alleged irregularities (*Angolense* 11 May 2012; *CPRA Daily Briefing* 19 July 2012; *News24* 5 August 2012).

Furthermore, the opposition parties UNITA and PRS (and later also the parties FNLA and BD) raised a formal lawsuit against the nomination of Inglês (*Voz da América* 17 May 2012; *Angolense* 25 May 2012).

The ruling party first reacted to this criticism by denouncing the critics, condemning "the practice of illegitimate, groundless, and irresponsible criticism promoted by political actors and broadcast by certain press against the organs of the judiciary, trying to engage them in the political debate, which is not the prerogative of their missions and tasks" (MPLA parliamentary caucus chairman, Virgílio de Fontes Pereira, cited in *AgenciaAngloPress* 25 January 2012).

Then, as pressures mounted, the ruling party reversed itself, and the Supreme Court finally nullified the nomination of Inglês. The MPLA said it would then "unscrupulously respect the decision of the Supreme Court" (*Jornal de Angola* 18 May 2012), and the case was brought (back) to the High Council of the Judiciary, which nominated the judge André da Silva Neto. Then the parliament swiftly appointed Mr Neto as the new CNE leader (*Voz da América* 18 May 2012; *O País* 15 June 2012), and he was then sworn in by the President in June.

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 ruled against the MPLA government. The opposition claimed the pressure from below and the threats to hold mass demonstrations were decisive, but the final reversal came with the court case. Anyway, the case brought the debate on the CNE and its leader high on the agenda and reached out to a large number of people.

#### 4.4.2 Other issues and criticism

Other criticism regarding the CNE raised and debated in the media, by the media and by commentators and by the opposition, included issues like the voter registration; the observation and the accreditation of observers; access to media; and voting of Angolans abroad.

Regarding the voters' roll (*Ficheiro Central do Registo Eleitoral*, FICRE), this is maintained by the Ministry of Territorial Administration (MAT). For the 2012 elections, the rolls were based on the voters' roll used in 2008 with updates done through two voter registration drives, one from July to December 2011, and a second from January to June 2012. In May 2012, while the court case over the

Chairperson of the CNE was still proceeding, the Ministry for Territorial Administration handed over the roll with more than 9.7 million voters to the CNE (de Brito 2012:12-13).

Much criticism was raised against the voter registration procedures. For one thing, the fact that the voter's roll was made and revised by the Ministry of Territorial Administration led some opposition figures to doubt "the independence and transparency of the process" (*Novo Jornal* 30 December 2011). Besides, there were suspicions of false names registered and the full voters' roll was not published before election day as required by law (de Brito 2012:12-13).

The opposition went as far as requesting the postponement of the elections for a month in order to correct alleged irregularities primarily related to the voters' roll and the accreditation of party agents (de Brito 2012:12). After talks between the CNE and the opposition, after which the CNE spokesperson said the opposition claims were "unfounded", the opposition parties still went to the polls (*LUSA* 23 August 2012).

In the 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 in FICRE; something that constitutes a massive and systematic obstruction of the right to vote" (UNITA press statement 10 September 2012).

Regarding the issue of observation and accreditation of observers, it was noted in 2008 that there were "a few decisions made over the election period which cast the impartiality of the CNE in an unfavourable light", for instance when political party representatives were denied access to the central tabulation centre and when significant numbers of domestic observers were denied accreditation (EU Observation Mission 2008:11). In 2012, similar problems came to the fore, and were debated.

For one thing, the process of accreditation of international observers was very slow.<sup>46</sup> This meant that most international observers were deployed only a couple of days before election day, and were denied the opportunity to observe the electoral campaign (de Brito 2012:14). UNITA made this point in various rallies, and claimed the government was refusing visas to foreign observers (*PNN* 27 August 2012).

Regarding the accreditation of party agents as observers, the opposition parties claimed that many of their party agents were not accredited and therefore were not able to properly and adequately monitor election day operations (de Brito 2012:14). In a press statement by UNITA after the elections, the biggest opposition party claimed that "more than 40% of the list of UNITA observers were prevented from supervising the elections, through the bureaucratisation of accreditation procedures that dragged on until election day" (UNITA press statement 10 September 2012).

Regarding access to the media, the public media, especially TPA, the public TV broadcaster, devoted a disproportionate amount of broadcast time to the public activities of the president, at the same time as he was also the MPLA candidate, "often blurring the line between coverage of legitimate government activities and MPLA election campaign coverage" (de Brito 2012:12). For instance, on opposition leader criticised the call for election on 31 August, only three days after the President dos Santos' anniversary (*Angolense* 8 June 2012). Every anniversary of the President is celebrated throughout the country in festivities arranged by the MPLA, government institutions, as well as the President's charity foundation FAS (*Fundação Eduardo dos Santos*).

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<sup>46</sup> Observers from the *Southern African Development Community* (SADC), the *African Union* (AU) and the *Community of Portuguese-Speaking States* (PALOP) witnessed the vote in 2012, but there were no formal observer missions from the European Union or the United States.

Finally, regarding the vote of Angolans abroad, they were denied the possibility to vote in 2012, like they had been in the last elections of 2008, despite the law.<sup>47</sup>This was due to a lack of “human conditions, materials and logistics”, according to the CNE. Thus, Angolan citizens could only exercise their civic right when in the country on the polling day (*Jornal Popular* 23 July 2012).

Of the above issues, the question of the tenure of Inglês as the CNE president got far the most attention and media coverage. Her tenure was seen as disproving the independence of the CNE. The registration of voters also got some attention, as it lasted for a long period and questions were raised about its correctness and possible manipulation. It seems that people had very little trust in the impartiality of the Ministry of Territorial Administration.

The issue of the denial of Angolans abroad the right to vote was not much debated, although this could potentially give a strong bias to the results (some observers believe the many Angolans abroad would have voted massively in favour of the opposition). Likewise, the weak presence of international observers did not get much attention, probably because the issue came to the fore only a short time before election day.

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<sup>47</sup> Law 36/11, article 2/2: “*Os cidadãos angolanos que se encontrem no estrangeiro por razões de serviço, estudo, doença ou similares, desde que regularmente inscritos nos cadernos eleitorais, exercem o seu direito de voto nas missões diplomáticas ou consulares nos termos da presente lei e das regras definidas pela Comissão Nacional Eleitoral*”.

## 5. Summary and conclusions

The Angolan election commission, the *Comissão Nacional Eleitoral* (CNE) is largely following the independent model of election management. It is *not* a governmental or executive type of organisation, because it is organically separate from the government and the ministries, and it is composed of members from outside of the executive branch. Neither is it mixed or ‘semi-autonomous’, because the CNE is monitoring and supervising elections at the same time as it is organising and implementing elections. It has a few, mixed traits in that the Ministry of Territorial Administration is compiling the voters’ register, but the CNE is implementing all aspects of the election, also at the local level.

In Angola, the CNE is mandated to manage all aspects of elections (except for compiling the voter register): it does staff recruitment and operational training of election officials, voter and civic education, party and candidate approval and registration, printing and distribution of ballot papers and ballot boxes, logistics and security, observer accreditation (domestic and foreign), and it controls party and campaign finance and media access. The CNE manages voting procedures (although no external voting takes place), counts votes, tabulates results, makes public the preliminary and final results, and handles complaints and appeals.

Only to some extent can it be said that the CNE was created as a part of the process of democratisation in Angola. However, its establishment and institutionalisation was rather done from above, by the president, government, and ruling party, in a process of establishing control of elections (and election results), rather than as a core demand of the opposition forces. An independent CNE was never a strong demand of the Angolan opposition.<sup>48</sup>

The legal framework regulating the CNE nevertheless seems to be appropriate, and to be strong. The legal framework defines the electoral practices and procedures, and guarantees the finances, staff, and daily management of the CNE. Furthermore, the independence of the CNE is firmly established by law. CNE’s independence is explicit in the legal texts.

The perceptions of CNE independence still varies. On the one hand, critical voices like Human Rights Watch claims that the CNE, despite a more balanced composition than in 2008, “was not able or willing to fulfil its role as an impartial oversight body” (Human Rights Watch 2013).<sup>49</sup> On the other hand, international observers like SADC had “full confidence in the CNE” (*Jornal de Angola* 29 August 2012). The opposition was also rather unconvinced about CNE capacity and independence, until the new law entered into force and the new commissioner was nominated shortly before the August 2012 elections. After that, the public debate on the CNE largely silenced.

One should note, however, that there is only a “loose coupling between formal institutions and actual practice”, according to Mozaffar and Schedler (2002:15), who further remarked that formally independent institutions may be “intimidated, colonized, or neutralized in practice by government authorities”, whereas others may be “acting independently despite their formal subordination”.

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<sup>48</sup> Given the civil war background, it can be said that the main opposition party UNITA was more concerned with gaining exclusive power over the state apparatus and its resources, and less concerned with democratic procedure and democratic institutionalization.

<sup>49</sup> HRW noted that the “CNE failed to address major violations of electoral laws, including unequal access of parties to the public media and ruling party abuse of state resources and facilities. Moreover, the CNE hampered independent observation through the massively delayed, restrictive, and selective accreditation of domestic and international observers. The CNE also obstructed the accreditation of opposition officials at the polling stations, leaving up to half of opposition representatives without credentials on polling day. The police did not act impartially during the election campaign, on several occasions arbitrarily arresting opposition activists” (ibid.).

Thus, despite being formally independent, the election commission CNE has to operate in a political context that is not particularly conducive to special institutions of control and restraint. For instance, on the World Bank Institute's *worldwide governance indicators* (WGI) Angola scores very low and is not improving on 'voice and accountability' (15 of 100), on 'regulatory quality' (12 of 100), and on 'rule of law' (10 of 100)(World Bank 2011); and according to the Economist Intelligent Unit's *Democracy Index* of 2012, Angola is "authoritarian" (IEU 2013:7). The regulatory and political environment is, in other words, 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. The big and final question remains; with the present electoral laws and CNE would the MPLA government ever accept electoral defeat?

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...

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## Appendix I: The *Corte Electoral* of Uruguay

Uruguay is one of the oldest democracies in the world and one of marked stability. Except for the country's military interregnum of 1973 – 1984, multi-party elections have been held without interruption since the late 19th century. It also has one of the few party-based electoral administrations with a tradition of independence from the executive. Its national electoral body, the *Corte Electoral*, played a major role in overturning military rule by organizing and validating the referendum through which the dictatorship lost popular approval of an effort to legitimize and perpetuate itself.

The Corte Electoral was created by statute in 1924, after successive elections rife with irregularities and fraud under limited suffrage, and enshrined in the Constitution of 1934. Of its nine members, five are considered neutral, as they are elected by a two-thirds vote by a General Assembly of senators and deputies of both houses of Parliament; the other four are representatives of political parties, directly elected at the Assembly by the two parties with the greatest number of votes. The Corte is an autonomous body in all respects, except that its budget must be negotiated with the government and approved by Parliament. It is responsible for all aspects of the conduct of elections, including the hearing of claims and complaints, for which there is no higher appellate body. Consequently, the Corte is simultaneously the supreme electoral authority, manager of elections, and supreme electoral court of justice.

The lower electoral bodies (*juntas departamentales*) are elected by popular vote every four years. They are composed of nine members and 18 deputy members; the candidate elected with the greatest plurality serves as the presiding officer. These juntas direct the operations of provincial electoral offices, which are administratively dependent on a national electoral office. The juntas also hear claims and complaints at the provincial level, as well as appeals from lower electoral officials. Both the juntas and the electoral offices are permanent bodies.

Since 1982, the polling officers have all been public servants on five-day leave from other government bureaus. The electoral administration employs a permanent staff of over 1000 at all levels of management. Electoral officials are not subject to the general regulations of the state civil service, but to a special statute that has remained basically unchanged since 1925. The Corte recruits and appoints its own officials at all levels through competitive public examinations, but each is required to submit evidence of party support (a certificate of *confianza partidaria*), and appointments are made in proportion to party vote.

The primary lessons from the experience of the electoral body of Uruguay represent the essence of democratic politics— involvement, negotiation, and strict adherence to the rule of law. By being party based from top to bottom and inclusive of new parties as these arise, the Corte has permanently embodied the political pluralism of a country whose historical experience has been labelled “the politics of co-participation”. Whatever negotiations take place in the political arena influence the Corte's decisions; conversely, decisions adopted by the Corte can easily be assumed by the parties as their own. This applies to both informal politics and to law-making. Consequently, once a decision is taken, all the parties usually implement it. The Corte provides a further lesson — of cumulative legitimacy that stems from endurance. Because of its strict adherence to the Constitution, coupled with flexible interpretations of electoral law when necessary, the Corte came to enjoy such high public esteem that even a 15-year experience with military rule did not substantially erode its institutional capacity to act in a neutral and effective manner for the return of democracy.

Cited from López-Pintor 2000:22-24

## Appendix II: Angolan Legal Documents

- LEI DOS PARTIDOS POLÍTICOS de 2005 (Lei Nº 2/05 de de 1 de Julho 2005, *Law on the Political Parties*)
- LEI DO REGISTO ELEITORAL de 2005 (Lei n.º 3/05 de 1 de Julho 2005, *Voter Registration Law*)
- LEI ELEITORAL de 2005 (Lei Nº 6/05 de de 10 de Agosto 2005, *Electoral Law*)
- LEI DE OBSERVAÇÃO ELEITORAL de 2005 (Lei n.º 11/12 de 22 de Março 2012, *Election Observation Law*)
- CONSTITUIÇÃO DA REPÚBLICA DE ANGOLA de 5 de Fevereiro 2010 (Constitution of Angola of 2010, replacing the Constitution of 1975 with the 1992 amendments (Lei Constitucional de 1992))
- LEI DOS PARTIDOS POLÍTICOS (Lei n.º 22/10 de 3 de Dezembro 2010. *Law of the Political Parties*, replacing law 2/05)
- LEI ORGÂNICA SOBRE AS ELEIÇÕES GERAIS (Lei n.º 36/11 de 21 de Dezembro 2011, *Electoral Law*, replacing law 6/05, plus some minor additions in Lei n.º 18/12 de 23 Mayo 2012)
- LEI DO FINANCIAMENTO AOS PARTIDOS POLÍTICOS (Lei n.º 10/12 de 22 de Março 2012, *Law on the Financing of Political Parties*, replacing laws 3/97 and 7/02)
- LEI DE OBSERVAÇÃO ELEITORAL (Lei n.º 11/12 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 (Lei n.º 12/12 de 13 de Abril 2012, *Law on the Establishment and Functions of the National Election Commission*)

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INDEXING TERMS

Angola

Election commission

This report focuses on one particular institution which may mitigate the centralisation of power in Angola and pave the way for political reform and democratisation; the Angolan national electoral commission (the Comissão Nacional Eleitoral, CNE). The study outlines the types and role of governmental electoral management bodies (EMBs), positions the CNE in a comparative historical perspective, and analyses the CNE's mandate and independence in terms of legal autonomy, nomination of leaders/commissioners, and financial autonomy. It is argued that the CNE is in constitutional and legal terms a genuinely independent commission, with a comparatively broad mandate and powers. However, due to the political context of Angola it remains to be seen if this formal autonomy will be translated into a counter-balancing institution to the centralised Angolan government.