

LAW NO. 5/2006

of 28 December

ELECTORAL ADMINISTRATION BODIES

This is an appropriate time to render autonomous the juridical regime of the bodies composing the so-called electoral administration without however repelling the model that is currently in force, which provides for the existence of one superior body having a supervisory role and one technical secretariat under the dependency of the Government.

An essential reason for this autonomization lies on the need to have a separate legal framework for the National Electoral Commission, as this is the body that must exercise jurisdiction over all the electoral processes pertaining to the elective organs of sovereignty, of local government, and referenda. Moreover, the voter registration process (compulsory, unofficial, and universal) is the same for all elections.

Responsibility for preparing, organizing, following up on, and monitoring electoral processes in Timor-Leste should be placed under the same set of bodies taking into consideration the identical nature of the procedural and logistic characteristics to be observed in each of the following three types of general elections to take place through universal, direct, secret and regular suffrage:

- The election of the President of the Republic;
- The election of the National Parliament;
- The election of local government elective bodies.

In this connection, there will have to be as many electoral laws as the number of constitutional positions designated through direct election of the college of voters and to which the referendum shall be added.

It is wise however to entrust the same set of bodies with the juridical and material operations that are necessary for the smooth development of the respective processes, without prejudice to the contentious challenges of the acts that they commit in the exercise of their legal powers.

As regards the electoral acts, such competencies are divided into the typical stages which compose the process, such as:

- The presentation of candidacies;
- The establishment and follow up of the polling stations;
- The electoral campaign and corresponding propaganda activities;
- The voting itself;
- The counting of votes and tabulation of results.

The National Electoral Commission established by the present law with a permanent character is vested with essentially monitoring functions and is strengthened both in its composition and competencies as compared to its predecessor which, under the same designation, supervised the elections for *suco* chiefs and *suco* councils. The National Electoral Commission also possesses its own budget and a secretariat, resulting in the strengthening of its autonomy and independence.

Precisely because it is the electoral administration's executive body, it cannot be outside of the purview of the ministry responsible for the respective area, as the Government is the superior body of the Public Administration with adequate financial and material resources to maintain it. The Technical Secretariat for Electoral Administration has mainly administrative, organizational, and consultative powers.

As regards polling centres and vote tabulation centres, although their intervention is limited to typical stages of the electoral process (respectively the voting, the counting of votes, and the tabulation of results), they should deserve a particular mention in the present law for reasons of accommodating and systematizing the subject

matters and for clarifying the area of intervention for electoral agents. The latter are considered, *latu sensu*, to be all those who, not being the voters, participate institutionally in the organization of elections.

On a different note, as an eventual stage of the electoral procedure, the jurisdictional control of impeachable acts announced by the electoral administration bodies should, by constitutional imposition, be the responsibility of the courts. It is incumbent upon the courts to, at last resort, examine and decide on the regularity and validity of the acts of the electoral process and to validate and proclaim the final results of each election.

Thus, under articles 65.2, 65.5, 65.6, article 66.5, article 95.2 h), and article 126.2 b) of the Constitution of the Republic, the National Parliament decrees the following to have the force of law:

ELECTORAL ADMINISTRATION BODIES

TITLE I SCOPE AND GENERAL PRINCIPLES

Article 1 Electoral administration bodies

The electoral administration bodies are:

- a) The National Electoral Commission, hereinafter referred to as “CNE”;
- b) The Technical Secretariat for Electoral Administration, hereinafter referred to as “STAE”;
- c) The polling centres and polling stations;
- d) The vote tabulation centres.

Article 2 General competencies

1. Electoral administration bodies shall exercise functions relating to all electoral acts pertaining to organs of sovereignty, referenda, or local government.
2. Electoral Administration Bodies shall be bound by the principle of strict impartiality and objectivity in the exercise of their functions.

Article 3 Appealability of electoral administration acts

Appeals against decisions made by electoral administration bodies in the framework of their competencies shall be filed with the Supreme Court of Justice, hereinafter referred to as “STJ”, under the terms and conditions provided for in the law and regulations governing the respective election or referendum.

TITLE II NATIONAL ELECTORAL COMMISSION

CHAPTER I NATURE AND COMPOSITION

Article 4 Definition and functions

1. The National Electoral Commission is hereby created, and it shall be the competent body to supervise the electoral acts referred to by the present law and regulations enforcing the electoral or referenda laws.
2. CNE shall be independent from any bodies of the central or local political power and shall enjoy financial, administrative and organizational autonomy.

Article 5

Composition

1. CNE shall be composed of fifteen members, as follows:
 - a) Three members appointed by the President of the Republic;
 - b) Three members elected by the National Parliament;
 - c) Three members appointed by the Government;
 - d) One judicial magistrate elected by his or her peers;
 - e) One public prosecution magistrate elected by his or her peers;
 - f) One public defender elected by his or her peers;
 - g) One nominated by the Catholic Church;
 - h) One nominated by the remaining religious faiths;
 - i) One representative of women organizations.
2. The organs referred to in sub-paragraphs a) to c) of item 1 above must nominate, at least, one woman.
3. The organs referred to in sub-paragraphs a) to i) of item 1 above shall appoint, nominate, or elect, at least one substitute member.
4. Only citizens of recognized competency with no responsibilities in a political party leadership or in electoral candidacies may be appointed or elected for CNE.
5. The period for appointing or electing members for CNE shall be fixed by notification of the National Parliament published in the *Official Gazette*, without prejudice to article 14.

Article 6 Status

1. Members of CNE cannot be removed from office and shall be independent in the exercise of their mandate, accumulating such mandate with the professional functions they exercise.
2. Members of CNE are entitled to a daily subsistence allowance for every meeting or working session in which they participate, the amount of which shall be established by a decree-law.
3. During the effective exercise of their functions, members of CNE shall be released from the exercise of their professional functions, public or private, and shall maintain all the rights inherent to their employment legal status.
4. In case of vacancy, members of CNE shall, within a period of thirty days from the date of the occurrence of the vacancy, be replaced by the respective substitute member or, in the absence of the latter, under the same terms in which the member to be replaced was nominated.
5. Members of CNE are further entitled to an identification card, the model of which shall be approved by CNE.
6. Members of CNE shall forfeiture their mandate in case they submit their candidacies to any election process for organs of sovereignty or local government.

Article 7 Mandate

1. Members of CNE shall have a six-year term and shall only have a maximum of two terms in office.
2. Members of CNE shall take office before the Speaker of the National Parliament within thirty days from the date of their nomination.
3. Members of CNE shall keep their functions until the new CNE takes office.

CHAPTER II COMPETENCY AND FUNCTIONING

Article 8 Competency

The following shall be the competencies of CNE:

- a) Supervise the electoral process;
- b) Ensure the enforcement of constitutional and legal provisions relating to the electoral process;
- c) Approve the enforcing regulations provided for in the present law and other electoral laws, as well as the codes of conduct for candidates, observers, monitors and media professionals;
- d) Promote the objective clarification of the citizens about the electoral act through the media;
- e) Ensure equality of treatment for citizens in all acts of voter registration and electoral operations;
- f) Ensure equality of opportunities and freedom of propaganda of the candidacies during the electoral campaign;
- g) Examine and certify party coalitions for electoral purposes;
- h) Notify the Office of the Public Prosecution about any acts known to it that may amount to electoral offence;
- i) Prepare and submit to STJ the provisional minutes with the national results so that the final results of the general elections can be validated and proclaimed;
- j) Perform other functions assigned to it by law.

Article 9 Functioning

1. The Speaker of the National Parliament shall convene the first meeting of CNE and inaugurate its members.
2. In its first meeting, CNE shall elect its chairperson from among its members.
3. CNE shall function in plenary, having quorum, with the presence of eight of its members.
4. Decisions shall be taken by consensus or, where this is not possible, by deliberation with the favorable vote of at least eight members.
5. The director of STAE shall participate in the meetings of CNE without a right to vote.
6. A press communiqué shall be issued at the end of each meeting and shall cover the issues discussed and the decisions made.

Article 10 Obligation of Collaboration

1. In the exercise of its competencies, CNE shall receive all the necessary support from the bodies and staff of the Public Administration to enable it carry out its functions.
2. For the purposes of item 1 above, STAE shall provide CNE with the support and collaboration requested by the latter.

Article 11 Secretariat and budget

1. CNE shall be supported by a permanent secretariat and shall have its own budget integrated in the State Budget, pursuant to the law.
2. CNE shall prepare and approve its own rules of procedure.

TITLE III
TECHNICAL SECRETARIAT FOR ELECTORAL ADMINISTRATION

Article 12
Nature, composition and competencies

1. The structure, organization, composition, competencies and functioning of STAE shall be defined by law, which must define it as an executive body of electoral administration under the dependency of the competent ministry.
2. Acts of STAE relating to operations of voter registration and of a logistic and administrative nature pertaining to elections or referenda shall be supervised by CNE, without prejudice to it being dependent on the competent ministry.

TITLE IV
POLLING CENTRES, POLLING STATIONS AND VOTE TABULATION CENTRES

Article 13
Nature, composition and competencies

Polling centres, polling stations and vote tabulation centres shall have the nature, composition, and competencies resulting from the electoral law relating to the election in which they are to intervene and from applicable regulations prepared by CNE or STAE in the framework of their respective powers.

TITLE IV
FINAL AND TRANSITIONAL PROVISIONS

Article 14
First appointment or election of CNE members

For the first electoral act to take place after the entry into force of the present law, the appointment, designation or election of the members of CNE shall take place within 15 days from the date of its publication in the *Official Gazette*.

Article 15
Judicial functions

Until such a time as the STJ starts its functions, the competencies to be exercised by it in terms of electoral matters shall be exercised by the Court of Appeals.

Article 16
Revocations

1. Part V of Law No. 2/2004 of 18 February, comprising articles 29 to 35, is hereby expressly revoked, and the body similar to CNE provided for in that Law is considered extinct.
2. Statutes or norms contrary to the present law are also hereby revoked.

Article 17
Entry into force

The present law shall enter into force on the day after its publication.

Approved on 6 December 2006

The Speaker of the National Parliament

Francisco Guterres “Lu-Olo”

Promulgated on 19 December 2006

To be published

The President of the Republic

Kay Rala Xanana Gusmão