

**DRAFT LAW NO. 26/I/4a**

**GLOBAL TEXT APPROVED IN A FINAL GLOBAL VOTING**

*Autonomization of the Juridical Regime of CNE and STAE*

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** placed under the jurisdiction of the Government.

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

Responsibility for preparing, organizing, following up and monitoring electoral processes in Timor-Leste should be incumbent upon a single 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:

- President of the Republic;
- National Parliament;
- 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.

Nevertheless, it is wise to **assign** to the same bodies the juridical and material operations that are necessary for the smooth development of the **respective processes**, without prejudice to the contentious impeachment 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 and respective sub-units they are divided into;
- 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, monitored 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 cease to be under the jurisdiction of the ministry responsible for the respective area, for 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**, albeit their intervention is limited to typical stages of the electoral process (respectively the voting and **the counting of votes and 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.

Now, 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 normalcy 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 following are electoral administration bodies:

- 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 perform functions relating to all electoral acts pertaining to organs of sovereignty, referenda, or local government.
2. In exercising their functions, it shall be the duty of all electoral administration bodies to observe criteria of strict impartiality and objectivity.

**Article 3**  
**Appealability of electoral administration acts**

Appeals against decisions made by the electoral administration bodies in the framework of their competencies shall be lodged 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 established, and it is incumbent upon it to supervise the electoral acts referred to by the present law and the regulations executing 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 their peers;
  - e) **One public prosecution magistrate** elected by their peers;
  - f) One public defender elected by their peers;
  - g) **Three representatives of civil society, of which:**
    - i. **One designated by the Catholic Church;**
    - ii. **One designated by the remaining religious denominations;**
    - iii. **One representative of women organizations.**

2. The **organs** referred to in sub-paragraphs a) to c) of item 1 above must designate, at least, one woman.

**3. The organs referred to in sub-paragraphs a) to g) of item 1 above appoint, designate, or elect, I the same act, at least one alternate member.**

4. Only citizens of recognized competent character with no responsibilities of leadership in a political party or in electoral candidacies may be designated or elected for CNE.

5. The time limit for nominating or electing members of 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 have security of tenure and shall be independent in the exercise of the **mandate, accumulating such mandate with the professional functions they exercise.**

2. **Members of CNE are entitled to a daily 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, be they public or private, without forfeiting any rights inherent to the employment legal relation.**

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 alternate member or, in the absence of the latter, under the 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 the organs of sovereignty or local government.

### **Article 7** **Mandate**

1. **Members of CNE shall have a six-year term and can only have a maximum of two terms.**

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 such a time as a new CNE is inaugurated.**

## **CHAPTER II COMPETENCY AND FUNCTIONING**

### **Article 8 Competency**

CNE shall have the following competencies:

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

### **Article 9 Functioning**

- 1. It is incumbent upon the Speaker of the National Parliament to convene the first meeting of CNE and to inaugurate its members.
- 2. In its first meeting, CNE shall elect its chairperson from among its members.
- 3. CNE shall function in plenary, where there is 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**  
**Duty to collaborate**

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 organ of electoral administration under the jurisdiction of the competent ministry.**
2. **The acts of STAE relating to operations of voter registration and to operations of a logistic and administrative nature pertaining to electoral or referenda acts shall be supervised by CNE, without prejudice to the jurisdiction of 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 the applicable regulations prepared by CNE or STAE in the framework of their respective powers.

**TITLE V**  
**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.