

**Law no. 6/2011
of 22 June**

**First amendment to Law no. 5/2006 of 28 December
(Electoral Administration Bodies)**

The National Parliament, pursuant to article 65(5) and (6) and article 95(2)(h) of the Constitution, decrees the following that shall have the force of law:

**Article 1
(Amendments)**

Articles 6, 7, 8, 9 and 12 of Law no. 5/2006 of 28 December shall read as follows:

**Article 6
(Status)**

1. (...)
2. Members of CNE are entitled to an allowance, to be regulated by a Government decree.
3. (...)
4. (...)
5. (...)
6. (...)
7. At every meeting of CNE, its members shall sign an attendance list in accordance with CNE's internal regulation.
8. CNE shall submit to the National Parliament on an annual basis a report on its activities during that year.

**Article 7
(Mandate)**

1. Members of CNE shall be appointed for a 6 (six)-year term in office which may only be renewed once.
2. (...).
3. (...).

**Article 8
(Competencies)**

CNE shall have the following competencies:

- a) (...)

b) (...)

c) (...)

d) (...)

e) (...)

f) (...)

g) (...)

h) (...)

i) (...)

j) (...)

k) to supervise the single voters registration database (*base de dados única de recenseamento eleitoral*).

Article 9

(...)

1. (...)

2. (...)

3. (...)

4. (...)

5. The Director-General of STAE shall take part in CNE's meetings without the right to vote.

6. (...)

Article 12

Nature, composition and competencies

1. The structure, organisation, composition, powers and functioning of STAE shall be defined by law, as a service of indirect State administration (*Administração Indirecta do Estado*), under the aegis of and supervised by the Government, with its own budget and enjoying technical and administrative autonomy.

2. Decisions made and procedures undertaken by STAE relating to operations of voter registration, elections and referenda shall be supervised by CNE.

3. STAE shall have its headquarters in Dili.

4. STAE shall manage and oversee the single voters registration database.

5. Access to the database referred to in paragraph 12(4) above must be duly authorized by the Director-General of STAE, without prejudice to the oversight powers of CNE.

Article 2 **Repeal**

Article 1(c) and 1(d) and 13 of Law no. 5/2006 of 28 December are hereby repealed.

Article 3 **Republication**

Law no. 5/2006 of 28 December, as amended, is published anew in an annex to this law, which is an integral part thereof.

Article 4 **Entry into force**

This law shall enter into force on the day following its publication.

Adopted on 26 April 2011.

The President of the National Parliament,

Fernando La Sama de Araújo

Promulgated on 16/6/2011.

To be published.

The President of the Republic,

José Ramos-Horta

ANNEX **Republication of 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 rejecting 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 autonomisation lies in the need to have a separate legal framework for the National Electoral Commission (*Comissão Nacional de Eleições*, CNE), as this is the body that must exercise jurisdiction over all the electoral process pertaining to the elective organs of sovereignty and of local government, as well as over referenda. Moreover, the voter registration process (compulsory, to be started on one's own initiative (*oficioso*) and universal) is the same for all elections.

Responsibility for preparing, organising, 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 procedures to be observed in and the logistics of each of the following three types of 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 the elective bodies of local government.

In this connection, there will have to be as many electoral laws as the number of constitutional offices chosen through direct election of voting citizens and to which referenda shall be added.

It is wise however to entrust the same set of bodies with the legal and material operations that are necessary for the smooth running of the respective processes, without prejudice to the possibility the acts that such bodies commit in the exercise of their legal powers being challenged.

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 the follow-up of the polling centres;
- the electoral campaign and corresponding propaganda activities;
- the voting itself;
- the counting of votes and tabulation of results.

The National Electoral Commission, which is established by the present law with a permanent character, is vested with essentially monitoring functions and is strengthened both in its composition and competencies in comparison 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 the purview of the ministry responsible for the respective area, as the Government is the superior body of Public Administration and has adequate financial and material resources to maintain it. The Technical Secretariat for Electoral Administration (*Secretariado Técnico da Administração Eleitoral*, STAE) has mainly administrative, organisational, and consultative powers.

As regards polling centres (*centros de votação*) and tabulation centres (*assembleias de apuramento*), although their intervention is limited to typical stages of the electoral

process (respectively the voting, and the counting of votes and the tabulation of results), they deserve a particular mention in the present law for reasons of accommodating and systematising the subject matters and for clarifying the areas of intervention for electoral agents (*agentes eleitorais*). The latter are considered, *latu sensu*, to be all those who, not being voters, participate institutionally in the organisation of the 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. Ultimately, it is incumbent upon the courts to 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, pursuant to 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 (*órgãos da administração eleitoral*) are:

- a) the National Electoral Commission (*Comissão Nacional de Eleições*), hereinafter referred to as CNE;
- b) the Technical Secretariat for Electoral Administration (*Secretariado Técnico da Administração Eleitoral*), hereinafter referred to as STAE.
- c) [Repealed]
- d) [Repealed]

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 independence, 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 (*Supremo Tribunal de Justiça*), hereinafter referred to as STJ, under the terms and conditions provided for in the law and regulations governing the corresponding election or referendum.

TITLE II
NATIONAL ELECTORAL COMMISSION

CHAPTER I
NATURE AND COMPOSITION

Article 4
General competencies

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

Article 5
Composition

1. CNE shall be composed of 15 (fifteen) members, as follows:
 - a) 3 (three) members appointed by the President of the Republic;
 - b) 3 (three) members elected by the National Parliament;
 - c) 3 (three) members appointed by the Government;
 - d) 1 (one) judicial magistrate elected by his or her peers;
 - e) 1 (one) public prosecution magistrate elected by his or her peers;
 - f) 1 (one) public defender elected by his or her peers;
 - g) 1 (one) member nominated by the Catholic Church;
 - h) 1 (one) member nominated by the other religious faiths;
 - i) 1 (one) representative of women organisations.
2. The organs referred to in sub-paragraphs a) to e) of paragraph 5(1) above must nominate, at least, one woman.

3. The organs referred to in sub-paragraphs a) to i) of paragraph 5(1) above shall appoint, nominate, or elect at least one substitute member.
4. Only citizens of recognized good repute 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 established by a notice of the National Parliament published in the Official Gazette, without prejudice to the provisions in 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 their professional functions.
2. Members of CNE are entitled to an allowance, to be regulated by a Government decree.
3. While performing their functions, members of CNE shall be released from the exercise of their professional duties, whether public or private, and shall maintain all the rights enshrined in their employment contract.
4. In case of vacancy, members of CNE shall be replaced within a period of 30 (thirty) days from the date of the occurrence of the vacancy 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. Member of CNE shall forfeit their mandate in case they submit their candidacies to any election process for organs of sovereignty or local government.
7. At every meeting of CNE, its members shall sign an attendance list in accordance with CNE's internal regulation.
8. CNE shall submit to the National Parliament on an annual basis a report on its activities during that year.

Article 7 **Mandate**

1. Members of CNE shall be appointed for a 6 (six)-year term in office which may only be renewed once.
2. Members of CNE shall take office before the President of the National Parliament within 30 (thirty) days from the date of their nomination.
3. Members of CNE shall keep their functions until the new CNE takes office.

CHAPTER II COMPETENCIES AND FUNCTIONING

Article 8 Competencies

CNE shall have the following competencies:

- a) to supervise the electoral process;
- b) to ensure the enforcement of constitutional and legal provisions relating to the electoral process;
- c) to approve the enforcing regulations provided for in the present law and other electoral laws, as well as the codes of conduct for candidates, observers, electoral officers, delegates and media professionals;
- d) to raise awareness to and inform citizens about the electoral acts 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 for the candidacies during the electoral campaign;
- g) to examine and certify party coalitions for electoral purposes as well as lists of independent candidates;
- h) to notify the Public Prosecution Service of 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 (*acta provisória do apuramento nacional*) so that the final results of the corresponding election may be validated and proclaimed;
- j) to supervise the single voters registration database (*base de dados única de recenseamento eleitoral*);
- k) to perform any other functions assigned to it by law.

Article 9 Functioning

1. The President of the National Parliament shall convene the first meeting of CNE and shall inaugurate its members.
2. At its first meeting, CNE shall elect its chairperson from among its members.

3. CNE shall function in plenary, and their will be a 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-General of STAE shall take part in CNE's meetings without the right to vote.
6. A press release 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 Public Administration to enable it to carry out its functions.
2. For the purposes of paragraph 10(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, competition and competencies

1. The structure, organisation, composition, powers and functioning of STAE shall be defined by law, as a service of Indirect State Administration (*Administração Indirecta do Estado*), under the aegis of and supervised by the Government, with its own budget and enjoying technical and administrative autonomy.
2. Decisions made and procedures undertaken by STAE relating to operations of voter registration, elections and referenda shall be supervised by CNE.
3. STAE shall have its headquarters in Dili.
4. STAE shall manage and oversee the single voters registration database.
5. Access to the database referred to in paragraph 12(4) above must be duly authorized by the Director-General of STAE, without prejudice to the oversight powers of CNE.

TITLE IV
POLLING CENTRES, POLLING STATIONS AND TABULATION CENTRES

Article 13
Nature, composition and competencies

[Repealed]

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 (fifteen) days from the date of its publication in the Official Gazette.

Article 15
Judicial functions

Until such time as the STJ starts its functions, the competencies to be exercised by it in electoral matters shall be exercised by the Court of Appeal (*Tribunal de Recurso*).

Article 16
Repeal

1. Part V of Law no. 2/2004 of 18 February, comprising articles 29 to 35, is hereby expressly revoked, and the body identical to CNE provided for in said 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.

Adopted on 6 December 2006.

The President 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