

This document contains an unofficial translation of: the July 2021 amendment law, followed by a consolidated version of the law with changes highlighted in yellow and annotated.

LAW No. 16 / 2021 of July 28th

THIRD AMENDMENT TO LAW No. 5/2006, OF DECEMBER 28 ON ELECTORAL ADMINISTRATION BODIES

Law No. 5/2006, of December 28, amended by Law No. 6/ 2011, of June 22, and 7/2016, of June 8, established the National Election Commission and the Technical Secretariat of Electoral Administration as Electoral Administration Bodies.

Between 2017 and 2018, the country went through three electoral processes which tested the respective structures and professionalism of the National Elections Commission (CNE), and the Technical Secretariat for Electoral Administration (STAE).

The effectiveness, efficiency of and equality of treatment by the Electoral Management Bodies in relation to all stakeholders in the electoral processes and referenda that they organize and lead, are a guarantor of their suitability and legitimize the recognition they are given, internally and externally.

Recognizing the excellence of the work developed and the effort made by all who participated in the organization and implementation of the electoral processes, it was possible to see some aspects that could be improved, namely with regard to the coordination of competences between the two bodies in implementing and analyzing the proposals for implementing regulations provided for in the laws on elections as well as the codes of conduct required in electoral or referendum periods, that are approved by the Government.

Also considering the nature of STAE and the competences of the Government provided for in paragraph 3 of article 115 of the Constitution of the Democratic Republic of Timor-Leste, according to the article 12 of this legislative initiative to exclusive competence of the Government with regard to its own organization and operation, as well as that of direct and indirect administration of the State.

Finally, regarding the budget for the extraordinary allowance during the election period, already enshrined in the law, and considering the redoubled efforts made by the officials of these two electoral bodies, it is intended that the setting of its respective values is accompanied by a budget allocated for the same.

Thus, the National Parliament decrees, pursuant to paragraph h) of paragraph 2 of article 95 and of paragraph 6 of article 65 of the Constitution of the Republic, the following to be valid as law:

Article 1 Object

This law approves the third amendment to Law no. 5/2006, of 28 of December, amended by Laws No. 6/2011, of June 22, and 7/2016, of June 8th.

Article 2 Amendment to Law No. 5/2006, of December 28

Articles 8, 11, 12, and 15-A of Law no. 5/2006, of 28 of December, amended by Laws No. 6/2011, of June 22, and 7/ 2016, of June 8, are replaced by the following wording:

"Article 8 [...]"

1. [...]:

- a) [...];
 - b) [...];
 - c) Issue an opinion on the draft implementing regulations provided for in this law and in other laws on elections, that are to be approved by Government decree, and approve codes of conduct for candidates, observers, party/candidate agents and professionals from media organizations, that are proposed by STAE;
 - d) Provide, in coordination with STAE, objective explanation of electoral activities to citizens through the media;
 - e) [...];
 - f) [...];
 - g) [...];
 - h) [...];
 - i) [...];
 - j) [...];
 - k) [...];
 - l) [...].
2. [...]:
- a) Monitor voter registration operations, for which purpose it may appoint delegates, in the national territory which should preferably be the CNE's municipal directors, and abroad, under the terms of the Law on Electoral Registration;
 - b) [...];
 - c) [...];
 - d) [...];
 - e) [...].
3. [...].

Article 11
[...]

- 1. [...].
- 2. The organic structure of the permanent secretariat of the CNE is approved by decision of the CNE.
- 3. [...].

Article 12
[...]

- 1. STAE is a service of the State's Indirect Administration under the supervision of the Government, with its competences, organization and functioning being established by decree-law.
- 2. [...].
- 3. [...].
- 4. [...].
- 5. [...].

Article 15-A
[...]

The members of the National Election Commission, the leaders, the heads, employees and agents of the Public Administration that perform functions in Electoral Management Bodies in the context of electoral processes or referendums, are entitled to an extraordinary allowance whose budget and value are fixed by decree-law.”

Article 3
Revocation

Article 14 of Law no. 5/2006, of December 28, as amended by Laws No. 6/2011, of June 22nd, and 7/2016, of 8th of June. is revoked.

Article 4
Republication

Law No. 5/2006, of December 28, amended by Law No. 6/ 2011, of June 22nd and 7/2016, of June 8th, is republished, with the current wording and the necessary corrections of grammar and law and is annexed to this law, of which it forms an integral part.

Article 5
Implementation

This law enters into force on the day following its Publication.

Approved on June 28, 2021.

The President of the National Parliament,
Aniceto Longuinhos Guterres Lopes

Enacted on July 26, 2021.

To be published.

The President of the Republic,
Francisco Guterres Lu Olo

Re-publishing of Law No. 5/2006, of 28th December
(as amended by law 7/2011, Law7/2016 and Law 16/2021)
Electoral Management Bodies

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

An essential reason for this autonomisation lies in the need to have a separate legal framework for the National Election 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, as well as the registration (mandatory, own-initiative and universal) that is common to all these acts.

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 contentious challenges of the acts that they commit in the exercise of their legal powers.

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

- The presentation of candidacies;
- The setting-up and follow-up of ballot centres;
- The electoral campaign and corresponding propaganda activities;
- The voting itself;
- The counting of votes and tabulation of results.

The National Election Commission established by the present law with a permanent character is vested with essentially monitoring functions and is strengthened both in its composition and powers as compared to its predecessor which, under the same designation, supervised the elections for suco chiefs and suco councils. The National Election 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 Election 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, which

are considered, *lato sensu*, as everyone that institutionally participates in the organization of an election but is not a voter.

On a different note, as an eventual stage of the electoral procedure, the jurisdictional control of impeachable acts announced by the electoral administrative 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 enacts the following that shall have the force of law:

Title I

Scope and general principles

Article 1

Electoral Administrative Bodies

The electoral administrative bodies are:

- a) The National Election Commission, hereinafter referred to as “CNE”;
- b) The Technical Secretariat for Election Administration, hereinafter referred to as “STAE”;
- c) *[Repealed]*;
- d) *[Repealed]*.

Article 2

General tasks

1. The electoral administrative bodies perform tasks regarding any election of sovereignty bodies subject to election, of local authorities, suco bodies and referenda.
2. Electoral administrative bodies shall be bound by the principle of strict impartiality and objectivity in the exercise of their tasks.

Article 3

Ability to appeal of electoral administration acts

Appeals against decisions made by electoral administrative bodies within their powers 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 Election Commission

Chapter I

Nature and composition

Article 4

Definition and tasks

1. The National Election Commission is established, which must supervise the elections of sovereignty bodies subject to election, of local authorities, suco bodies and referenda.
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. The National Election Commission comprises seven members, namely:
 - a) One appointed by the President of the Republic;
 - b) Three elected by the National Parliament, at least one woman;
 - c) One 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;
2. The bodies referred to in sub-paragraphs a) to e) of paragraph 1 above shall appoint or elect, at least one substitute member.
3. The National Parliament elects the President of the National Election Commission, within its members, by an absolute majority of the Members of Parliament in full exercise of office.
4. The National Election Commission elects, within its members, the Vice-President and the Secretary.
5. Only citizens of recognized conduct with no responsibilities in a political party leadership or in electoral candidacies may be appointed or elected for CNE.
6. 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 5-A Powers of the President and Vice-President

1. The President shall:
 - a) Represent CNE;
 - b) Convene the meetings, establish the agenda and chair them;
 - c) Undertake the resolutions passed by CNE;
 - d) Draft the annual activity report of CNE;
 - e) Justify the absences of CNE members;
 - f) Oversee and guide the work performed by the staff and other agents of CNE;
 - g) Sign all correspondence of CNE;
 - h) Exercise other powers determined by law or CNE's resolution.
2. The Vice-President shall:
 - a) Replace the President as representative, whenever instructed by him or her;
 - b) Replace the President during his or her absences and impediments.
3. The replacement of the President by the Vice-President cannot last longer than 3 months, otherwise he or she shall lose his or her position and the National Parliament shall appoint a new President.
4. The substitute is only entitled to the benefits granted to the replacing position if the replacement lasts for longer than thirty consecutive days.

Article 5-B Powers of the Secretary

The Secretary shall:

- a) Support the President while organizing the works, as well as overseeing and guiding the Services;
- b) Draft the minutes of the CNE's sessions and resolutions;
- c) Exercise other powers determined by law and the Internal Regulation of CNE;
- d) Perform the tasks determined by the President or by CNE.

Article 6 **Status**

1. CNE members are irremovable and independent during office and are not liable for the decisions made and votes cast, in similar terms as judges.
2. During actual fulfilment of tasks, CNE members are released from their public or private professional duties, without losing any employment rights.
3. The President and Secretary of CNE perform their tasks on a full time and exclusive basis.
4. Other CNE members combine their tasks as CNE members with the conduct of their professional activities.
5. The President of CNE is entitled to a monthly exclusivity allowance with the same amount as the salary of the General-Director of the State Direct Administration Services, which cannot be combined with any other pay from public or private sector, and to entertainment expenses up to 100% of the exclusivity allowance.
6. The Secretary of CNE is entitled to a monthly exclusivity allowance with the same amount as the salary of the General-Director of the State Direct Administration Services, which cannot be combined with any other pay from public or private sector, and to entertainment expenses up to 50% of the exclusivity allowance.
7. The Vice-President is entitled to an allowance and entertainment expenses, both up to 30% of the exclusivity allowance awarded to the President of CNE.
8. The remaining CNE members are monthly entitled to an allowance and entertainment expenses, both up to 25% of the exclusivity allowance awarded to the President of CNE.
9. CNE members are also entitled to daily allowances in similar terms as the officers of the State Direct Administration Services.
10. In case of vacancy, CNE members 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.
11. CNE members are further entitled to an identification card, the model of which shall be approved by CNE.
12. CNE members shall forfeiture their mandate in case they submit their candidacies to any election process for organs of sovereignty or local government.
13. In each CNE session, its members shall sign an attendance list, in accordance with its own regulation.

Article 7 **Mandate**

1. CNE members are appointed for a five-year mandate, to be renewed only once.
2. CNE members shall take office before the Speaker of the National Parliament within thirty days from the date of their nomination.
3. CNE members shall remain in office until the new members take office.
4. CNE members lose their seats if they are absent from two consecutive plenary sessions or five interspersed, without justification accepted by the President, within twelve months.
5. The decision of the President regarding the justification of absences can give rise to appeal to the CNE's Plenary and the decision of the Plenary can be appealed to judicial courts, within ten days with suspensive effect.

6. The Plenary determines if a member loses his or her seat, decision which may give rise to an appeal to courts, within ten days and with suspensive effect.

Chapter II Powers and functioning

Article 8 Powers

1. The following shall be the powers of CNE:

- a) Supervise the registration process, the elections and the referenda;
- b) Enforce the application of constitutional and legal norms regarding the registration process, the elections and referenda;
- c) Issue an opinion on the draft implementing regulations provided for in this law and in other laws on elections, that are to be approved by Government decree, and approve codes of conduct for candidates, observers, party/candidate agents and professionals from media organizations; that are proposed by STAE
- d) Provide, in coordination with STAE, objective explanation of electoral activities to citizens through the media;
- e) Ensure equality of treatment for citizens in all registration and election acts;
- 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 and lists with independent candidates;
- h) Notify the Public Prosecution Office about any acts known to it that are considered as illegal;
- i) Draft and submit to STJ the provisional minutes with national results, in order to validate and proclaim the final results of general elections.
- j) Verify the sole electoral registration database;
- k) Appoint the CNE delegates to supervise the local counting assemblies of elections and referenda;
- l) Any other appropriate tasks determined by law.

2. While exercising its supervising and registration powers, CNE may:

- a) Monitor voter registration operations, for which purpose it may appoint delegates, in the national territory which should preferably be the CNE's municipal directors, and abroad, under the terms of the Law on Electoral Registration;
- b) Request to STAE and other Public Administration bodies and services the information needed to supervise registration operations;
- c) Request and receive updated and regular information from STAE on the number of registered voters;
- d) Give advice on the compliance with safety legal rules regarding the Registration Database, from STAE;
- e) Decide on the appeals lodged regarding the registration decisions made by STAE.

3. CNE submits to the National Parliament, also addressed to the entities responsible to appoint its members, the annual activity report.

Article 9 Functioning

1. The Speaker of the National Parliament shall convene the first meeting of CNE and inaugurate its members.
2. CNE convenes ordinarily at least once a month, without prejudice to the CNE Internal Regulation providing for more ordinary meetings, and extraordinarily whenever convened by the President, on its own initiative or after request from a third of its members.
3. CNE operates in plenary sessions, if there is quorum, with the absolute majority of its members in full exercise of office.
4. Resolutions are passed by consensus or, whenever it is not possible, by the absolute majority of its members in full exercise of office.
5. The director of STAE shall participate in CNE sessions without a right to vote.
6. A press release shall be issued at the end of each session and shall cover the issues discussed and the resolutions passed.

Article 10 Obligation of Collaboration

1. In the exercise of its powers, CNE shall receive all necessary support from the Public Administration bodies and staff to enable the fulfilment of its tasks.
2. For the purposes of paragraph 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. The organic structure of the permanent secretariat of the CNE is approved by decision of the CNE.
3. CNE drafts and approves the regulation of its plenary sessions, to be published in 2nd Series of the Official Gazette.

Title III Technical Secretariat for Election Administration

Article 12 Nature, composition and powers

1. STAE is a service of the State's Indirect Administration under the supervision of the Government, with its competences, organization and functioning being established by decree-law.
2. The acts performed by STAE regarding registration, election and referendum operations are supervised by CNE.
3. STAE is headquartered in Dili.
4. STAE keeps the sole electoral registration database.

5. The access to the database referred to in the preceding paragraph depends from authorization to be given by the General-Director of STAE, subject to the supervisory powers given to CNE.

Title IV

Polling centres, Polling stations and Tabulation assemblies

Article 13

Nature, composition and powers

[Repealed].

Title V

Final and transitional provisions

Article 14

First appointment or election of CNE members

(Repealed)

Article 15

Judicial role

Until such a time as the STJ starts its role, the powers to be exercised in terms of electoral matters shall be exercised by the Court of Appeal.

Article 15-A

Extra allowance

The members of the National Election Commission, the leaders, the heads, employees and agents of the Public Administration that perform functions in Electoral Management Bodies in the context of electoral processes or referendums, are entitled to an extraordinary allowance whose budget and value are fixed by decree-law.

Article 16

Repeal

1. Part V of Law No. 2/2004 of 18 February, comprising articles 29 to 35, is hereby expressly repealed, 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 repealed.

Article 17

Entry into Force

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

Approved on December 6th, 2006.

The President of the National Parliament,
Francisco Guterres "Lu-Olo"

Promulgated on December 19th, 2006.

To be published.

The President of the Republic,
Kay Rala Xanana Gusmão