

# **National Parliament Bulletin**

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## **Section I: Background to the 2012 Elections - Introduction**

### **1. Introduction**

The 2012 elections are very near and the political parties are starting to consolidate their respective supporter bases in order to prepare themselves for the celebration of democracy that will involve all of the eligible citizens of Timor-Leste. The National Parliament and Government have taken part in this process by each drafting proposed amendments to Law No. 7/2006 on the Election of the President and to Law No. 6/2006 on the Election of the Parliament, as well as drafting a proposed new law on the National Electoral Commission.

In order to carry out a democratic election there needs to be strong laws that benefit all actors. Therefore JSMP welcomes the efforts of the National Parliament for starting to put democracy in its rightful place. The National Parliament has made several achievements in beginning this democratic process, namely by providing civil society with an opportunity to express their opinion on these draft laws, through submissions and legal opinions. Although JSMP was only given a very short amount of time, JSMP was able to respond and provide its submission on these draft laws to the National Parliament on 17 March 2011.

### **2. Several problems related to the 2007 elections**

Based on recommendations from the European Union Electoral Observation Mission (EUEOM) and reports from the United Nations Electoral Certification Team and members of the international community who observed the electoral process in 2007, it was noted that a number of failures/errors occurred during the 2007 elections, starting with the campaign process which saw certain parties using state facilities to consolidate their supporters and conduct political campaigns.

A number of supporters for political parties used violence during the period of political campaigning, for example in Viqueque district on 3 June. Also there were problems such as: a lack of security to respond to urgent cases, the lack of logistical support for brigade members from the Technical Secretariat for Electoral Administration (STAE), as well as the public's lack of knowledge about how to submit complaints and have their issues resolved in cases of manipulation or when threats were made against them.

While recognizing that some of issues were resolved some time later, for example relating to logistical support for members of the STAE brigade, JSMP believes it is necessary to provide civic education to all related parties, such as STAE and members of the public, before the elections, so that they will understand how to submit a complaint and seek resolution for problems encountered during the 2012 elections.

### **3. The Importance of Everyone Understanding the Electoral Process**

International standards of democracy decree that everyone should be able to freely participate in the celebration of democracy or general elections to choose their leaders and should not be subjected to intimidation from others when choosing their candidate for President of the Republic or their political party. To guarantee that each person can freely participate in an election it is necessary for everyone to respect the freedom of others to choose their candidate or party from the outset of the process, through party consolidation, during the campaigning period and up until to the day of the election.

As a new country that is building a culture of democracy, Timor-Leste is constantly facing difficulties, however the presidential election, general election and community leader elections have demonstrated sound political will, and although a crisis occurred it was resolved peacefully which is a major development in consolidating the culture of democracy in Timor-Leste. Therefore, JSMP believes that for the smooth running of elections it is necessary to have strong laws that benefit everyone, especially the citizens of Timor-Leste.

## **Section 2: Legal analysis in relation to the National Parliament's revision of two laws and drafting of one new law**

### **1. The Parliament's Current Revision of Two Laws to Respond to Recommendations EUEOM and the NEC Law**

JSMP values and welcomes the efforts of Parliamentary Committee A and the Government who are currently taking part in the process of making amendments to the two laws namely Law No. 7/2006 on the Election of the President and the Law No.6/2006 on the Election of the National Parliament and drafting a new proposed Law on the National Electoral Commission (NEC). These revisions are aimed at responding to recommendations from the EUEOM report on elections, and from the UN Electoral Certification Team and the international community to give better access to everyone so they can have a better understanding about the presidential election and general election that will take place in 2012, as well as the role of the National Electoral

Commission in regards to how to manage the submission of complaints and issuance of sanctions against any person who tries to threaten or coerce another person to follow his/her demands or political party.

These three laws are vital because they need to be understood by many people and will contribute to the implementation of the 2012 elections, starting from the political consolidation process, during political campaigning and up until the day of the elections.

## **2. The Government and National Parliament's Drafts**

JSMP also congratulates and both the Parliament and the Government for their respective drafts of the second amendment to Draft Law No. 7/2006 on the Election of the President, the second amendment to Law No. 6/2006 and the draft law on the National Electoral Commission (CNE). In general, the three laws drafted by each are sound, reflect the current reality and comply with the recommendations from EUEOM and reports on the elections from the UN Electoral Certification Team and internationals which are aimed to strengthen the justice system, the rule of law and help development in Timor-Leste.

According to JSMP, the three draft laws prepared by the National Parliament are preferable when compared to those prepared by the Government because they incorporate all of the recommendations and also because Parliamentary Committee A has tried to have the three laws translated from Portuguese into Tetum which can facilitate everyone's understanding in comparison with the draft laws prepared by the Government on the same issue which were in Portuguese which made it difficult for the public to understand and provide input on this law.

## **3. JSMP's Submissions**

JSMP believes that it is important for civil society to have the opportunity to have contact with these three laws, to discuss the laws and to begin the process of discussing the impact of these laws. For this reasons, JSMP participated in a meeting about the laws that was initiated by FONGTIL and afterwards held an internal discussion within JSMP.

Each of these three laws are important, however due to time constraints JSMP has focused on the proposed amendments to the Law on Election of the National Parliament. In relation to this draft law, JSMP will provide recommendations for each article, however for the other two draft laws we are only able to provide general comments.

In the future JSMP hopes that National Parliament will translate the original laws into Tetum, not just the proposed amending laws. For JSMP it is difficult to understand an amending law if the original law is not available in Tetum. JSMP also hopes that in the future more time will be given, so that it will be possible to provide commentary article by article for all draft laws.

**a. JSMP's Opinion on the Second Amendment to the Law No. 6/2006 on the Election of the National Parliament**

JSMP praises Parliamentary Committee A for its initiative in amending Law No. 6/2006. JSMP acknowledges that most of the articles have been amended in a positive way, and we only have a few recommendations for further changes and clarification, including:

- **Article 1 which amends Article 12 in the original law “Organisations’ Lists”:** In relation to the proposed amendment to sub-section (1), we consider this to be a positive amendment because it gives a good opportunity to small parties and new parties to participate in the 2012 elections. This will encourage many more people to participate in this celebration of democracy. JSMP does not have any issues with sub-sections 2 and 3.
- **Article 2 which amends Article 15 of the Original Law “Vacancies in the National Parliament”:** JSMP agrees with the contents of this article; however JSMP wishes to emphasize that CNE should conduct monitoring to ensure that parties adhere to the candidate list. JSMP notes that several parties did not adhere to the list when replacing members of parliament in the National Parliament.
- **Article 3 which amends Article 24 of the Original Law “Admission of Candidates”:** JSMP agrees with the amendment of this article; however JSMP also believes that sub-section (2) should refer to Articles 4 – 7 in the original law which clearly explain the eligibility of candidates.
- JSMP also believes that it would be better for the National Parliament to explain **Article 7 in the Original Law on “Eligibility”**. This article states that civil servants are not allowed to run for National Parliament. However, JSMP believes that it is unclear whether public servants need to resign, or just should not be currently engaged in service.

**Article 7 which amends Article 4 in the Original Law “Polling Center”:** JSMP is concerned that sub-section (b) in this article is unclear. JSMP believes that it is very important that an eligible voter can vote at any polling center. Many people reside in Dili and it will be difficult for them to return to their districts to vote. JSMP also points out the need for polling centers in hospitals, prisons and Timorese embassies overseas so that all Timorese citizens can participate in the elections and so that the right to vote is protected by the State.

- **Article 8 which amends Article 43 in the original law “Voting Method”:** in general JSMP agrees with this amendment, however in regards to sub-sections 3 and 4, JSMP

believes that a slight change is necessary. This is in relation to the competence given to the presiding official. JSMP believes that while it is good that the presiding official can help members of the community to vote; there is the possibility for corruption or manipulation to occur if a person is only assisted by the presiding official. JSMP suggests that if a person wants to be assisted by a presiding official, they should also choose someone to observe the presiding official, for example they can choose an officer or observer to accompany the voter to ensure that the presiding official casts the vote in accordance with the wishes of the illiterate or visually impaired person.

- **Article 10 which amends Article 46 of the Original Law “Counting of Votes”:** In general JSMP agrees with this amendment, however JSMP suggests that it would be better for sub-section (1) to use the sub-section from the previous law so that it is clear that observers and the media can be present during the counting of votes.
- **Article 15 which amends Article 63.A of the Original Law “Sanctions from CNE”:** in general JSMP agrees with this article, however it is necessary to:
  - Explain what the CNE must do when it wishes to instate a fine of \$2000 (for example, Article 58 explains that fines can reach \$2000) or decides that a person must go to prison. JSMP believes that it is important to explain that CNE has the authority to hand over serious cases to the Prosecution Service to be investigated and taken to court. This is very important in the event of an assault or criminal act, as set out in Title V, which are serious, systematic acts that involve high ranking people and are of a complex nature.
  - Explain what will happen if a person does not comply with a decision issued by CNE, including how the CNE will cooperate with the prosecution in relation to such cases.
  - Include fines given to political parties, and not just to individuals, when a party is involved or authorizes a criminal act.
  - Provide the court with an option to increase the maximum fine if the person who commits the criminal act is wealthy. JSMP is concerned that wealthy people will consider \$ 1000 to be an insignificant amount.
- **Article 16 which amends Article 77 of the Original Law “Regulation”:** In relation to this article, JSMP believes that there could be a mistake, because there weren't 77 articles in the Original Law. JSMP believes that article 16 refers to article 65 of the Original Law.

Overall JSMP agrees with the amendments made to other articles because this reflects the real situation in Timor-Leste and encourages all members of the community to participate in the democratic process.

## **b. JSMP's Opinion on the 2 amendment to Law No. 7/2006 on the Election of the President of the Republic**

Generally JSMP agrees with the majority of articles in this draft law. JSMP believes that this law can provide clarification to some of the articles in the Original Law which were unclear and thus can uphold democracy in Timor-Leste. Nevertheless, JSMP has some general comments, as follows:

- In some of the amendments made to this law the Supreme Court is replaced with the National Electoral Commission, for example Article 4 of the law which replaces the Supreme Court with the CNE in Article 16 of the original law in relation to the place for presentation. JSMP agrees with these amendments, however in several articles of the amended law, the Supreme Court has not been replaced with CNE. JSMP believes that this might be a mistake. JSMP believes that the Supreme Court should be replaced with the CNE in the original law, particularly in articles 19, 20, 25 and 26.
- In relation to **Article 10 which amends Article 40 of the Original Law “Voting Centers”** JSMP has the same comments in relation to this article as those expressed above on the amendment to the Law on the Election of the National Parliament (Article 7 which amends Article 41 in the Original Law)
- In relation to **Article 17 which amends Article 64 of the Original Law “Electoral Offences and Sanctions”**, in principle JSMP agrees, but wishes to make the following comments:
  - This article in sub-sections (1)-(14) inserts additional electoral crimes in relation to the election of the President of the Republic. JSMP believes that it is very important to include these offences; however the most important thing is to have consistency between the crimes in the Law on the Election of the President of the Republic and those in the Law on the Election of the National Parliament. The law should provide the same treatment for the same actions, or otherwise this could threaten the stability of the rule of law itself. For example, if a person sells alcohol near a voting center during the election of the National Parliament. This is not a criminal act. However, if he or his friend sell alcohol near a voting center during the election of the President of the Republic the police can arrest them and charge them with committing an offence. If the offences or crimes aren't consistent between these two laws, JSMP is concerned that this will lead to confusion and may trigger conflict.
  - JSMP believes the number of crimes in the electoral laws is increased, it would be better to draft a new article for each new crime. This system would follow the system in the original laws, and could use symbols such as 64A, 64B, 64C etc.

- Sub-section (15) in this article refers to the authority of CNE to issue sanctions; JSMP also thinks that it would be better to draft a new article to deal with this issue. If it is integrated in the existing article with the new crimes then has the potential to cause confusion for those who will have to implement the law.
- Concerning sub-section (15), JSMP would also like to convey the same comments as above in relation to the Law on the Election of the National Parliament (Article 15 which amends Article 63A of the Original Law “Sanctions of CNE”).

### **c. JSMP’s Opinion on the Law on the National Electoral Commission**

In general JSMP is pleased with the Law on the National Electoral Commission which was prepared by the National Parliament. JSMP is particularly pleased that this law moves STAE from the Ministry of State Administration to the CNE, and that CNE is independent and reports directly to the National Parliament.

JSMP is also happy that this draft law reduces the number of commissioners from 15 to 3. JSMP believes that this has improved the transparency and accountability of the commissioners. However, JSMP would like to stress that there should be a minimum of 1 female commissioner. JSMP also believes that at the moment article 5 is unclear because it initially refers to three commissioners but then refers to two who are nominated by the President of the Republic, one of which must be a woman. JSMP recommends that Committee A clarify this article.

In relation to Article 7, there is a mistake because it describes the Ombudsman for Human Rights and Justice as a civil servant, however according to the Ombudsman’s Statute this is an independent institution. JSMP recommends for Committee A to correct this article.

JSMP is happy that Committee A of the National Parliament has given an opportunity to civil society, including JSMP, to make submissions to National Parliament on these three draft laws. JSMP is also happy to be able to participate in this process.

### **4. JSMP analysis on all of the draft laws**

JSMP also believes that just because these laws have been amended by the National Parliament and Government, this doesn’t mean that everything is perfect, however the contents of these laws have generally responded to all of the recommendations of EUEOM and all of the reports about the elections from the UN Electoral Certification Team and the international community. JSMP congratulates all of the state institutions for strengthening and advancing democracy and the law by involving civil society. JSMP wishes to emphasize that in order to value law and democracy it is necessary to have sound laws and ensure that their implementation can benefit all parties.

### **5. Recommendations**

JSMP recommends that after the National Parliament and the Government have finished amending Law No. 7/2006 on the Election of the President, draft Law No. 6/2006 on the Election of the National Parliament, as well as the draft Law on the National Electoral Commission, then awareness raising efforts need to be conducted for the benefit of the entire community so that they can participate in the implementation of all of these laws as part of the 2012 electoral process.

JSMP would also like to recommend that when the National Parliament or Government draft a law or amend any law translations should be provided in Tetum so that all members of the community can have access and gain an understanding so that everyone can provide input.

JSMP also continues to encourage the National Parliament and Government to keep on improving the legislative system in order to value and respond to all recommendations, as they are currently doing by responding to the recommendations from EUEOM and all of the reports about the elections from the UN Electoral Certification Team and the international community which we believe will strengthen the legal system, the rule of law and democracy, as well as assisting development in Timor-Leste.

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