



SECOND PRELIMINARY STATEMENT

**Timor-Leste organises transparent and well-managed elections
that reflect voters' aspirations in an inclusive process**

Dili (Timor-Leste), 24 July 2017

Summary

- On 22 July the Timorese electoral management bodies (EMBs) demonstrated again their ability to organise well-administered, credible and inclusive elections. Voters could exercise their franchise in a peaceful environment and without undue interference. Voting, counting and tabulation were conducted efficiently and transparently. There was a marked improvement in certain areas since the recent presidential elections, such as verification of ink traces on voters' fingers, the only safeguard against multiple voting.
- The legal framework for elections is in line with international commitments. It allows for inclusive and transparent elections, and provides opportunities for lodging complaints and appeals and for obtaining effective remedy at all stages of the election process. Nonetheless, avoiding late changes to the election laws would have contributed to greater legal certainty and stability. The amendment reducing the CNE's (National Election Commission) competencies does not contribute to enhancing independent oversight of the electoral process and may adversely affect its institutional sustainability.
- The CNE and STAE (Technical Secretariat for Electoral Administration) completed most technical preparations for elections in a timely and efficient manner, including the update of the voter register and the production and distribution of election materials. Training of polling officers was observed to be effective. STAE increased the number of polling centres to offer voters closer access to polling locations. Information made available by the Election Management Bodies (EMBs) was comprehensive, although STAE did not ensure a public display of provisional voter lists and CNE deliberations were not published. The effort to allow Timorese living abroad to vote yielded little more than 2,000 registered voters.
- The campaign was peaceful and low key and the silence period was generally adhered to. Basic freedoms of expression, association and assembly were respected. Parties signed a pledge to hold peaceful elections and complied with campaign rules. Only minor complaints regarding the rearrangement or cancellation of scheduled campaign activities were reported. Misuse of the advantage of incumbency, noted during previous electoral processes, continues to be a problem, and civil servants were observed campaigning. Some cases of voter intimidation during the campaign period were reported to EU observers.
- The criteria for candidate eligibility include no discriminatory or excessive restrictions. The Court of Appeal rejected three candidacies for not fulfilling eligibility requirements. Failure to publish the lists of candidates raised the possibility of voters going to the polls without detailed knowledge of who was running for election. The

absence of spending ceilings and the delivery of subsidies only after elections favours FRETILIN and CNRT, which have considerable financial means compared to other parties, and poses a challenge to parties with fewer resources.

- Efforts to increase the political participation of women through a quota system have resulted in the highest representation of women in Parliament in the Asia-Pacific region. However, women are reportedly overlooked once elected and representation in leadership positions remains low at local levels. The EU noted an absence of women both as speakers and as participants at campaign events.
- Press freedom was respected during the campaign, but a legal provision allowing state-owned media to broadcast paid political advertising resulted in parties' unequal access to public outlets. Public and private media provided ample space for parties to inform voters of their platforms. Coverage was mostly balanced, as established by law, with the main exception of Rádio Maubere. While the Press Council's mediation role in disputes and a requirement for journalists to obtain a professional licence are improvements to the media legal framework, the compulsory registration of all media, including online outlets, is contrary to international good practice. Defamation ('denúncia caluniosa') is a criminal offence, which is not in line with international good practice. *Timor Lorosaae*, *Timor Post* and *Jornal Nacional Diário* did not respect the electoral silence period.

Preliminary Findings

Background

The people of Timor-Leste went to the polls on 22 July 2017 to elect a National Parliament for the third time since the country gained independence in 2002. Twenty parties and one coalition competed in one national constituency for 65 parliamentary seats with a five-year mandate. The contestants included the four incumbent parliamentary parties: CNRT, FRETILIN, the Democratic Party (PD) and Fretili-Mudança, plus five parties competing in elections for the first time, including the People's Liberation Party (PLP), led by former president Taur Matan Ruak. Polling took place four months after FRETILIN's Francisco Guterres 'Lú-Olo' was elected president for a five-year mandate after one round, in which he won 57.1% of valid votes.

These were the first legislative elections organised by the Timorese electoral management bodies (EMBs) since the last United Nations Mission, which lent crucial logistical and operational assistance, departed the country in 2012. Nevertheless, key technical support to the 2017 electoral process and EMBs was still provided by a range of international agencies, facilitating the smooth implementation of the elections¹.

¹ UNDP, funded by the governments of Japan and Korea, supported the Timorese EMBs with voter and civic education, media and legal advice, as well as IT support for counting. Other organisations lending support to the EMBs and/or civil society during the electoral period included Plan International, the National Democratic Institute (NDI), the International Republican Institute (IRI), and the International Foundation for Election Systems (IFES), the latter three funded by USAID.

Legal Framework

The national legal framework is largely in line with international commitments for democratic elections. Timor-Leste has ratified the most relevant treaties related to human rights and fundamental freedoms, and the Constitution guarantees the right to vote as well as freedoms of expression, movement and assembly.

The EU EOM noted the introduction of amendments to electoral laws after the candidate registration period had opened, risking uncertainty and diminished confidence in the legal framework. As observed in the recent presidential elections, the electoral laws were once again subjected to numerous amendments in the midst of the electoral period. Three days into the candidate registration process, the President promulgated the fourth amendment to the Law on Election of the National Parliament, then one week later introduced new regulations, including for presentation of candidate lists, campaigning, out-of-country voting, and voting, counting and results management, media, party agents and observers. Avoiding changes to the electoral legal framework in the period prior to elections would constitute good legislative practice and an important safeguard to guarantee legal stability and predictability.

Amendments to the Law on Election of the National Parliament were promulgated only after the Court of Appeal issued an opinion on the constitutionality of three new provisions that were of concern to the President. The Court found that the mechanism to strip MPs of their mandate for not obeying party bench statutes, the move to criminalise unauthorised use of a party symbol during the campaign period, and the reduction in the independent CNE's mandate with assigning competence to the Government for regulating the election laws were all constitutional.

The amended law also raised the threshold for seat allocation from 3% to 4%. The process for increasing the threshold was not inclusive and was passed during the electoral period without sufficient public debate or consultation with all parties.

The responsibility for validating candidate lists passed from the CNE to the Supreme Court of Justice (Court of Appeal). This brought about consistency between the Law on Election of the National Parliament and the Law on Election of the President of the Republic, but at the same time further diminished the role of the CNE as an independent supervisory body.

The amendment reducing the CNE's mandate creates incoherence with the Law on Election Administration Bodies, which establishes CNE competence to approve regulation of the election laws. This is contradictory and results in the CNE having a competence it could not exert in the legislative elections. It is additionally noteworthy that the 2016 amendments to the Law on Election Administration Bodies violated security of tenure as it prompted a dismissal of CNE commissioners and a reduction in the CNE composition from 15 to seven. The amendments also discontinued appointments to the CNE of civil society representatives, and gave the National Parliament the competence to elect the CNE President.

Political decisions to reduce the CNE's supervisory mandate do not contribute to enhancing independent oversight of the electoral process and adversely affect the election management body's institutional sustainability. Timor-Leste's chosen mixed model of electoral management, with an independent CNE supervising an election implementation body, Technical Secretariat for Electoral Administration (STAE), that falls under the Ministry of State Administration, risks sustainability if, over a series of elections, the Constitution,

electoral laws and regulations become inadequate for the CNE to effectively and efficiently execute its mandate and responsibilities.

Election Administration

The CNE and STAE delivered an effective supervision and administration of the polls, though some shortcomings were observed in certain areas. Elections were inclusive and fundamental freedoms related to the conduct of the elections were respected.

The EMBs showed competence in the implementation of the electoral calendar. CNE management of the campaign schedules was efficient, and fluid communication with stakeholders improved CNE oversight of the process. The CNE made efforts to communicate with political stakeholders and the broader public through frequent meetings and press conferences. The CNE website contains useful information such as key legislation and presidential results published per polling centre. However, no CNE plenary deliberations were published.

The STAE completed technical preparations for the elections in a timely manner, although delays were noted in the publication of voter lists, which were not comprehensively displayed for a verification period as foreseen by law. Ballot paper printing and deployment of electoral materials to polling centres went smoothly. The EU EOM observed good co-operation between the EMBs and security forces in the accomplishment of this task.

The STAE increased the number of polling centres since the presidential polls. This constituted a positive measure as it allowed centres to be more evenly spread geographically, offering voters improved opportunity to access polling locations. Eight mobile polling stations covering six hospitals and two prisons were again made available for voters registered in these institutions. Police, civil servants and state media employees on election duty had the opportunity to vote at their duty station.

Voter Registration

There are no unreasonable restrictions on the right to vote and the principle of universal suffrage is respected. Citizens are guaranteed the right to register by the age of 16 years and afforded the right to vote at 17.

The EU EOM assesses the STAE voter database to be inclusive and reliable. A voter registration update was conducted during a 63-day period between the two elections, allowing voters to register or change registration details. The process made use of biometric technology. Voters could swiftly register and obtain a voter card on the spot.

The final voter list included 760,907 voters, an increase of around 2.3% compared to the presidential election. Women make up 48% of registered voters and there are 3,951 citizens who are registered but as they are under 17 years of age they are not eligible to vote.

A total of 25,017 new voters registered during the update period and 87,264 requests for changes to the register were recorded, mostly in relation to changes of address. The EU EOM noted a six-day delay in the official publication of the voter register. Registration details, such as information on removed voters and requests for registration transfers, were made available.

The electoral framework requires the voter register to be publicly displayed for a verification period of seven days, after which STAE updates the register with requested changes. The

implementation of this requirement was not entirely consistent and did not adequately grant voters, political parties and civil society organisations the opportunity to inspect and possibly submit an objection regarding an omission or an undue registration.

Some communities of Timorese citizens living abroad had the opportunity to vote. While logistically challenging, out-of-country polling was extended to South Korea and the United Kingdom, in addition to Australia and Portugal where voting took place for the recent presidential elections. A total of 2,125 voters registered abroad in six locations. This amounted to a small number of registrants and voters in relation to expended resources and efforts.

Polling Officers' Training and Accreditation of Party Agents and Observers

STAE undertook a wide-ranging training programme of some 12,000 election officers. The training of polling officers was observed to be effective overall, with only a few reported cases of training being of inadequate quality and shortages or late arrival of supporting materials.

STAE centrally accredited 15,525 party agents, 3,285 national observers from 24 organisations, and 198 international observers from 17 organisations and diplomatic missions, who were unhindered in their ability to follow the voting and counting processes at polling stations and tabulation at municipal centres. Political parties received their accreditations close to election day, which made timely distribution to lower levels difficult.

Registration of Candidates

The criteria for candidate eligibility for legislative elections are in line with international obligations for democratic elections and include no discriminatory or excessive restrictions. Under Timor-Leste's closed list proportional representation system, the parties and coalition were required to submit lists of 65 candidates plus an additional 25 reserve candidates. The Court of Appeal, which since May 2017 is responsible for screening candidates for eligibility requirements, rejected three lists submitted by two parties: the ASDT (Timorese Social Democratic Association, which submitted two rival lists), and PPT (Timorese Popular Party). On 14 June the Court confirmed on appeal the decisions rejecting the three lists, emphasising that the parties had not followed basic rules including a requirement to hold a congress.

A comprehensive list of candidates for each competing party and coalition was not published. This resulted in a lack of transparency and limited voters' right to information. STAE did not comply with its legal obligation to communicate on national radio and other media the definitive list of admitted candidacies once notified of this information by the Court. Parties were allowed until 1 July to make substitutions and finalise their lists, but there was no legal requirement for the final lists to be made public after this substitution period ended. Despite calls by national civil society organisations, the lists were not published.

Campaign Environment

Parties campaigned freely and basic freedoms of expression, association and movement were respected. The 30-day campaign, followed by a two-day silence period, was peaceful and low key, but generally more active than the presidential election campaign in sucos. The most visible parties were FRETILIN and CNRT and, to a lesser extent, PD, KHUNTO and PLP. Relatively few big rallies were held, with party leaders taking part in community dialogues and so-called mini-campaign events. Candidates relied heavily on door-to-door canvassing, and some were active on social media. As for the presidential poll, televised debates were held for the first time and all parties took part.

Party leaders used strong statements to counter anonymous provocative references to electoral violence on social media, and repeatedly called for a calm election process. Frequent allegations of money politics and vote-buying also circulated on social media. The parties signed a pledge to hold peaceful elections, and on 17 June candidates and party activists, religious leaders and members of the public took part in a march promoting peaceful elections, organised in Dili by the Catholic Diocese. Parties largely followed a recommendation by police not to transport voters across municipality borders in order to avoid clashes between supporters.

Parties submitted schedules to the CNE ahead of the campaign, and these were supplemented as events were added. Complaints were few and relatively minor, with most resolved at municipal level in a spirit of co-operation between parties, the CNE and PNTL.

A major electoral issue was government spending on big infrastructure projects in Oecusse and Suai, which drew criticism and negative campaigning by the PLP and the BUP coalition. Both parties, along with KHUNTO, campaigned heavily against corruption. Most parties campaigned on a similar, wide-ranging list of issues, such as health, veterans' welfare and access to veterans' pension lists, agriculture, education, corruption and promoting peace, but offered little substance beyond promising to bring about improvements in all areas.

Misuse of the advantage of incumbency was reported by the 2012 EU EOM and has continued to be a problem in the 2017 elections. No measures to regulate this area have been introduced. Inaugurations by CNRT and FRETILIN leaders of several major infrastructure projects held days before and on the first day of the campaign did not contribute to a level playing field. The Special Administrative Region (RAEOA) in Oecusse erected billboards promoting these projects and offering a discount to households that topped up their electricity account. Within the electoral context, such discounts could be construed as a misuse of state resources. Civil servants, who are required to take professional leave in order to campaign, were widely observed actively campaigning while still in their jobs, with some claiming to do so only after working hours. Distribution by many parties of fuel vouchers, which breached the campaign rules, was also observed.

Some cases of intimidation were reported to the EU EOM in Oecusse, where employees and potential employees of RAEOA were allegedly threatened with losing their jobs or denied work if they did not support FRETILIN, and where teachers were reportedly transferred to remote villages or demoted if they expressed preferences for a different party. FRETILIN denied it had issued threats or employment refusals, and explained that transfers or the rotation of teachers to other areas were necessary to guarantee consistency in the quality of education.

A heavy presence of CNE monitors was reported at most campaign events, though in some cases these were described by observers as passive and unengaged.

Campaign Finance

The legal framework for campaign finance does not ensure a level playing field. The EU EOM 2012 recommended more effective enforcement and accountability regarding campaign finance, but seemingly little has been accomplished in this area. An investigation into CNRT campaign funding dating back to the 2012 election has still not been dealt with by the courts. As for the presidential elections, parties must submit their campaign accounts to the CNE within 30 days of elections. The CNE is mandated to publish audited accounts within 45 days of receiving them from the parties. This was not complied with for the presidential elections.

While donations are forbidden from a number of sources, including foreign parties, the law establishes no ceiling on funds or services that may be received from eligible donors, or on campaign spending. This issue was highlighted by the EU EOM following the 2017 presidential election. With the exception of CNRT and FRETILIN, the competing parties and coalition said financing a competitive campaign was a major challenge. Reasonable caps on donations and campaign expenditure may be justified to ensure a more level playing field.

Parliamentary parties are entitled to an annual state subsidy. As a means of providing campaign funding, an amendment to the law now provides for parties and coalitions to receive between US\$1 and US\$10 per vote obtained. This entails payments being made after elections which a number of parties said negatively affected their ability to campaign.

Media

While the constitutionally guaranteed freedom of expression was upheld, defamation ('denúncia caluniosa') remains a criminal offence, contrary to good practice and to international obligations. The fact that the Press Council will have a role in mediating litigation cases involving media and journalists represents a useful approach for resolving conflicts.

Despite their restricted technical capacity and financial constraints, media outlets at national level managed to inform voters and raise awareness of political parties' platforms through various kinds of programmes. However, local community radios were generally not used by political parties to communicate their platforms, nor were they an important information source regarding elections.

The electoral law allows for paid political advertising in state-owned media during election campaigns. This led to parties getting unequal access to public media, given the discrepancy in funding available between political contestants. Only FRETILIN, CNRT, PLP and, to a lesser extent, PD and PR (Republican Party) bought airtime on state-owned Televisão de Timor-Leste (TVTL).

According to the 2014 Media Law and the recently approved Media Registration Regulation, registration is compulsory for all outlets, including those online. This general requirement is restrictive and not in line with international best practice. The establishment of a professional working licence for journalists is a positive step but the requirement that freelance journalists obtain a licence is vague and could lead to arbitrary decisions by the Press Council. These measures are impractical given the absence of enforcement mechanisms.

A government decree provides mobile voting rights for state media employees but does not accord the same rights to journalists working for private media outlets.

Media Monitoring

Electoral coverage by state-owned Rádio e Televisão Timor-Leste (RTTL) was generally balanced. All contestants were granted a segment of its total airtime, ranging from 3% to 6% for each contestant and which was observed to be of a neutral tone. State-owned radio and TV complied with their obligation to provide equal free airtime to every contestant by broadcasting interviews with their representatives. Nevertheless, office holders used public resources to advertise in state-owned media. While TVTL represented a useful platform to disseminate voter education messages, which amounted to 4% of monitored airtime, Rádio Timor-Leste's

(RTL) share of civic education airtime was 2%. As during the presidential elections, TVTL broadcast no electoral content on election day until the evening.

Private Rádio Maubere's coverage was biased, allocating 84% of its editorial time to FRETILIN, thus infringing the principle of equal opportunity and treatment to all candidacies, as required by law. Further, there was little distinction between Rádio Maubere's editorial content and advertising.

The private TV GMN's election coverage was balanced, allocating space to all political contestants in a neutral tone. The TV was pro-active in providing abundant information on political parties to voters through interviews. However, the outlet was extensively used by CNRT's office holders, who bought airtime to publicise their performance in government.

Although TV Educação offered ample interview space to several parties, its limited news content was unbalanced, with 51% and 19% granted to FRETILIN and PLP respectively.

All newspapers monitored by the EU EOM, namely *Suara Timor Lorosae*, *Timor Post* and *Jornal Nacional Diário*, offered balanced and generally neutral coverage of the campaign, having granted all parties a segment of their news space, ranging from 3% to 13%. However, they did not respect the electoral silence period.

Despite its supervisory mandate over the campaign, the CNE took no action regarding the non-compliance by media with the principles of equal treatment and impartiality during elections, revealing a limited capacity to supervise media during elections.

Participation of Women

Only two parties, KHUNTO (Party for the Enhancement of Timorese National Unity) and PTD (Timorese Democratic Party), were headed by a woman. While a one-in-three quota has improved gender representation in the National Parliament – 25 out of 65 MPs (38%) are women, the largest representation in the Asia-Pacific region – there remains a persistently low participation of women in leadership positions at local levels. There are also few incentives encouraging and stimulating the political participation of women beyond the quota system. Of the 760,907 eligible voters, 48% are women. For the presidential election, female voter turnout was 63% compared to 78% for men.

An active civil society centred around the Women's Network (*Rede Feto*) umbrella organisation focuses on, among other issues, women's participation in politics. In the lead-up to elections they hosted and/or attended a busy schedule of workshops, seminars and debates, sometimes with support from the electoral management bodies as well as international organisations including the United Nations Development Programme (UNDP), the National Democratic Institute (NDI), Plan International and the International Republican Institute (IRI). Women candidates and experienced MPs expressed the view that the patriarchal nature of society in Timor-Leste made it difficult for women to get involved in politics, and that, if there were no quota, they would probably not be on the list. Women with experience in parliament reported frequently being overlooked as politicians.

There was a marked lack of women speakers at campaign meetings, reflecting the low level of political weight attributed to female candidates regardless of their positioning on party lists. Low numbers of women were also reported at many campaign events. While there is no legal ban on children attending campaign meetings, the CNE issued what it called a prohibition

against children being used for campaign purposes. Safety concerns prompted some party coordinators to interpret this as an outright ban on children at campaign events, and instructed the public to take their children home. This invariably resulted in fewer women being present.

People with Disabilities

The Constitution enshrines the rights of disabled people but Timor-Leste has yet to ratify the Convention on the Rights of Persons with Disabilities, and has been under increasing pressure from national civil society groups to do so. The government needs to collect reliable data to ensure accurate statistical information on the number and distribution of persons with disabilities. Voting regulations provide for blind and other special needs voters to request the assistance of another elector of their choice. The National Disabled People's Organisation (RHTO-DPO) fielded observers across the country on election day to monitor accessibility to polling stations.

Civil Society and Domestic Observers

National observer groups participating in election observation were the Catholic Church's OIPAS with around 837 observers, Belun with 115, RHTO-DPO (Ra'es Hadomi Timor Oan, Disabled Persons' Organisation) with 130 observers, the Ombudsman's Office (Provedoria dos Direitos Humanos e Justiça PDHJ) with 44 human rights monitors, the Anti-Corruption Commission (KAK), the NGO Women's Caucus, the Asia Justice and Rights (AJAR) with 24, La'o Hamutul with 8, and C-DESK with 686 observers, amongst others.

Polling, Counting and Tabulation

On election day, EU observers visited 135 polling stations (PS) in all 13 municipalities. A well-administered distribution of electoral material and early arrival of the designated polling staff allowed the on-time opening of all observed PSs. Election officers were observed to follow opening procedures which were evaluated as good or very good by EU observers.

Voting took place in a calm atmosphere and in an orderly manner. Polling staff efficiently processed voters who turned up in numbers comparable to the presidential elections. Women accounted for approximately one-third of Polling Centre (PC) presidents and PS secretaries. The strong presence of party agents assured a broad oversight of the whole process. The EU also noted national observers in 84% of visited polling stations, almost half of whom were women. Voting procedures were assessed as transparent, and votes were cast in secrecy. Compared to past elections, the EU noted a more comprehensive checking of fingers for indelible ink, the only safeguard against multiple voting. The voting process was evaluated as good or very good in the majority of observations.

During counting, the EU EOM noted that polling officers experienced difficulties that often led to recounts and caused minor procedural challenges in ballot reconciliation and completion of results protocols. Counting procedures took place in full view of all present, lending transparency to the process. Party agents received results protocols, however these were observed to be posted outside only half of visited centres. Closing and counting procedures were evaluated positively in 80% of observed centres. Results were promptly relayed to municipal tabulation centres.

The municipal tabulation process was well-managed and no technical problems were reported. Reception of electoral material and protocols was efficient and carried out in clear view of party representatives and observers. The set-up of some municipal tabulation centres did not allow for a close scrutiny of the digitalisation of results protocols. Nevertheless, tabulation was

assessed by EU observers as good or very good in the majority of cases. Few complaints were registered in the observed locations. The EU EOM will continue to follow the tabulation of national results.

Electoral Disputes

The legal framework and regulations provide sufficient opportunity for electors and candidate representatives to lodge complaints and appeals during all stages of the electoral process, from voter and candidate registration through to final results.

The legislative campaign period was fundamentally peaceful and calm with a limited number of formal complaints lodged with the CNE and few electoral crimes reported to the PNTL or Public Prosecutors Office. The minor nature of complaints did not indicate any widespread problems or organised intention to upset the process.

The European Union was invited by the Government of Timor-Leste to observe the 2017 presidential and legislative elections, and the EU signed Memoranda of Understanding with the Government of Timor-Leste and the National Election Commission (CNE) on 8 February and 9 February 2017, respectively. The EU EOM is led by Izaskun Bilbao Barandica, a member of the European Parliament from Spain. For the legislative elections, the mission comprised a core team of seven analysts who were deployed to Timor-Leste on 3 June, and 26 Long Term Observers (LTOs), who arrived on 24 June and were deployed to the country's 13 municipalities on 26 June after a two-day training in Dili. In addition, the mission was joined by 3 Local Short Term Observers from the diplomatic community and a 4-person delegation of Members of the European Parliament, led by Ana Gomes MEP from Portugal. Overall observers are drawn from 25 EU member States as well as Norway and Switzerland.

The EU EOM remains in country to observe post-election developments. It will publish a final report, containing detailed recommendations for future electoral process, within two months of the conclusion of the electoral process. The EU EOM assesses the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Timor-Leste. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2015.

The English language version of the EU EOM preliminary statement is the only official version

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