



European Union Election Observation Mission

TIMOR-LESTE, Presidential and Legislative Elections, 2017

FIRST PRELIMINARY STATEMENT

22 March 2017

Timor-Leste organises well-run and peaceful presidential elections

Summary

- The Timorese electoral authorities demonstrated their ability to organise elections for the first time without international assistance. From the registration of voters and candidates to voting, counting and the tabulation of results, procedures were followed in a transparent manner and with sufficient guarantees. Voters exercised their right to vote in secrecy, free from undue interference and in a peaceful atmosphere. Polling was mostly conducted with transparency and procedures were rigorously followed, although control of indelible ink on voters' fingers as the only safeguard against double voting was not systematic.
- There was gender balance in the composition of polling station members. Candidate agents were observed in all polling stations, and EU observers noted a higher presence of FRETILIN agents. The counting process was well conducted and credible, although the requirements to give a copy of the results protocols to all candidate agents and to post the election results outside the polling centres were not always followed.
- The legal framework provides an adequate basis for the conduct of democratic elections, including sufficient opportunities for electors and candidates to lodge complaints and appeals, but the late introduction of amendments to electoral laws risks creating uncertainty and diminishes confidence. A reduction in the National Election Commission's (CNE) competences, and a shortage of judges to hear appeals against results, does not contribute to enhancing oversight and transparency of the electoral process.
- The two Electoral Management Bodies (the CNE, and the Technical Secretariat for Electoral Administration, STAE) demonstrated competence in their management capacity and delivered a well-administered and inclusive election. There were no unreasonable restrictions to the right to vote, and there was a general acceptance of the inclusiveness and reliability of the voter register. The EU EOM noted that training sessions for election officers were of uneven quality throughout the country, and participation in voter education workshops was low and insufficient, though the information imparted was generally accurate and useful.
- Campaigning was mostly calm and candidates were able to exercise their freedoms of assembly, expression and movement. Political parties in several municipalities signed a pact to promote peaceful elections. The absence of campaign spending limits resulted in a significant disparity in spending between the FRETILIN candidate and other contestants. Contrary to the Constitution and the regulatory framework, state officials were observed campaigning for FRETILIN, and the President of the Republic was criticised by some political parties for setting up a party during his mandate.

- Freedom of expression was respected during the electoral campaign, including in the media. Recent electoral reforms divesting the CNE of some of its media supervisory competences, and assigning these to the Government, contradict international principles according to which media oversight bodies should be independent from political interference. The state-owned TV offered a balanced coverage of the electoral campaign, but the EU EOM noted that it did not provide any election news during election day. Furthermore, the state radio gave unequal free airtime to candidates. The private media monitored by the EU EOM were generally balanced in their coverage, with exceptions such as *Diário Nacional* and, especially, *Radio Maubere*, which offered unbalanced airtime, favouring presidential candidate Lú-Olo.

This Statement is made prior to completion of the election process, including tabulation of results and the handling of any complaints and appeals. The mission's final assessment will reflect observation of the remaining phases of the process, including recommendations for possible improvement of future elections, offered for consideration to the Timorese authorities and other stakeholders.

Preliminary findings

Background

On 20 March the Timorese people went to the polls to elect a President of the Republic for the fourth time in one national constituency and on an uninominal list for a five-year tenure. Only two of the eight presidential candidates ran as political party representatives, namely the former Speaker of Parliament Francisco Guterres (“Lú-Olo”) of FRETILIN (Revolutionary Front for an Independent Timor) and Minister for Education António da Conceição of the Democratic Party (PD). Although some of the remaining six candidates are linked to political parties, they all ran as independents. They were António Maher Lopes, Amorim Vieira, José António de Jesus das Neves, José Luis Guterres, Maria Ângela Freitas da Silva (the only woman on the ballot), and Luís Alves Tilman. The FRETILIN candidate was backed by Xanana Gusmão, leader of the National Congress for Timorese Reconstruction (CNRT). Both parties are in a unity government following a reshuffle in 2015. President Taur Matan Ruak did not seek re-election but will lead the People’s Liberation Party (PLP), which will compete in the parliamentary elections to take place later this year.

Legal Framework

Timor-Leste is a member of the United Nations and has ratified the most relevant international treaties related to human rights and fundamental freedoms. The Constitution guarantees these freedoms and rights and the national legal framework governing presidential elections provides an adequate basis for the conduct of democratic elections.

The electoral laws have undergone numerous amendments, including in the midst of the current electoral period. Late introduction of amendments to electoral laws risks creating uncertainty and diminishes confidence in the legal framework. Avoiding changes to the electoral legal framework in the period immediately prior to election day would constitute good legislative practice and an important safeguard as it would help guarantee legal stability and predictability.

Always on the initiative of the Government, the National Parliament debated on and pushed for approval of many amendments to the election laws. On 22 February, after the announcement of the definitive list of presidential candidates, the fifth amendment to Law No. 7/2006 on Election of the President of the Republic entered into force. While the changes are mostly in relation to updating the law to reflect the introduction of out-of-country voting, a key reform grants the Government competence to regulate Law No. 7/2006. The Government will now regulate, *inter alia*, the presentation of candidates, the election campaign, the functioning of voting centres, the procedures for counting and tabulation of results, and media coverage of the elections.

This amendment creates incoherence with article 8 of Law No. 5/2006 on Election Administration Bodies (as amended in July 2016), which establishes the National Election Commission's (CNE) competence to approve regulation of the above-mentioned processes. This is contradictory and results in the CNE having a competence that it cannot exert in the presidential elections. It is additionally noteworthy that the 2016 amendments to Law No. 5/2006 violated security of tenure by effecting 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.

High-level political decisions to make these amendments have resulted in a more politicised CNE with a reduced supervisory mandate, which has so far not been observed to jeopardise the electoral implementation. Nonetheless, a reduction in the election management body's competencies and influence does not contribute to enhancing independent oversight and transparency of the electoral process.

Election Administration

The 2017 presidential elections were the first entirely conducted by the Timorese Electoral Management Bodies (EMBs). Both EMBs – the National Election Commission (CNE) and the Technical Secretariat for Electoral Administration (STAE) – which have an overall supervisory mandate and an implementing competency respectively, conveyed confidence in their management capacity and delivered a well-administered and inclusive election.

Election Preparations

The EMBs were overall on track with electoral preparations. The STAE was able to establish all 969 polling stations, even though approximately one-fifth of them were classified as being difficult to access. In a positive development, the legal provision for out-of-country voting was for the first time implemented for Timorese citizens living abroad, and three polling centres were set up in Australia (Darwin and Sydney) and Portugal (Lisbon).

In addition to printing voter lists, STAE, in co-operation with the national printing house, efficiently produced 800,000 ballot papers. By 14 March sensitive election materials were sent to Sydney, Darwin, Lisbon, the Oecusse enclave, and municipality warehouses, where ballot papers were batched by *suco* (village) and polling centre for further distribution. The timely deployment of ballot papers and electoral materials throughout the country and abroad was a crucial test, which STAE completed professionally.

In line with international best practice, the electoral law allows mobile voting for registered voters in hospitals and prisons on election day. Eight mobile polling stations (six hospitals

and two prisons) were allocated to these institutions, which identified electors and informed STAE of their voters' lists up to 20 days before election day. Police and civil servants on election duty were allowed to vote at their duty station provided they were registered.

Voter Registration

There are no discriminatory or unreasonable restrictions to the right to vote.

Final voter registration figures stand at 744,613, including 1,762 eligible voters who completed the age of majority, 17 years, by election day. Women comprised 48.3 per cent of the total number of registered voters. Registered out-of-country voters numbered a total of 889 citizens in Australia and 510 in Portugal.

Municipal-level EMBs' representatives expressed some concern regarding lack of information flow from *suco*-level authorities on deceased voters. Yet, there was a good level of confidence in the inclusiveness and reliability of the voter database maintained by STAE, which continues to be the most comprehensive inventory of the adult population in the country.

Candidate Registration

The criteria for candidate eligibility for the presidential election are in line with international obligations for democratic elections and include no discriminatory or excessive restrictions. The Court of Appeal holds the function of screening presidential candidates for eligibility requirements. Candidates must hold original citizenship, be at least 35 years of age, and be proposed by a minimum of 5,000 voters. The deadline for submissions of candidacies to the Court of Appeal was 5 February 2017. Candidate registration was completed on 18 February, and no applications were rejected by the Court.

Training of Polling Staff

STAE trained some 9,440 polling station staff, with co-ordination events held at *suco* level, often attended by national police (PNTL) representatives, municipality administrators, *suco* chiefs and civil society organisations, such as Belun, a national Non-Governmental Organisation (NGO) monitoring violent incidents in the run-up to elections.

The EU EOM was made aware of delays in the payment transfers to STAE municipal offices. This necessitated schedule rearrangements for polling staff training, which ran from 9-14 March, and some unnecessary hardship for personnel who, nevertheless, remained committed. Training sessions were observed to be of uneven quality throughout the country, at times too formal and lacking instructive materials. Additionally, STAE trained municipal IT officers and directors, these latter acting as presidents of municipal tabulation centres, as well as CNE delegates who oversaw the municipal tabulation process, and Timorese diplomats responsible for out-of-country voting.

Candidate Agents

STAE accredited around 4,200 candidates' agents who followed the voting and counting processes at polling stations throughout the country. With over 1,700 agents, Francisco Guterres (Lú-Olo) was the only candidate with sufficient agents to cover all polling stations. Lú-Olo was also the only candidate to register agents to follow the out-of-country voting.

Some candidates availed of the possibility to accredit agents to the municipal tabulation centres.

Civic Education and Voter Information

In the pre-election period, the CNE was fully engaged in conducting countrywide civic education sessions with a focus on the legal framework and calendar for the elections. The CNE made efforts to communicate with political stakeholders and the broader public through press conferences held at its media centre in Dili.

Apart from voter education and civic information broadcasts by CNE and STAE on national media and community radios, STAE officers offered voter education sessions at *suco* level which, while not uniform in content, covered relevant procedures. Overall, trainers were professional, and information shared was accurate and useful. Notwithstanding, EU observers reported that participation in these sessions was low, and citizens complained of a lack of information in remote areas.

Campaign Environment

The two-week election campaign took place from 3 to 17 March, followed by a two-day silence period. Campaigning was mostly peaceful and low-key. Candidates called for calm and the CNE warned of potential prison terms for electoral offences following a clash in Dili on 3 March between young supporters of FRETILIN and the PD in which several people were hurt and a number of houses burned. There were no other serious incidents. Political parties in several municipalities signed a pact aimed at promoting peaceful elections, and this is expected to be rolled out across all municipalities before the parliamentary polls later this year.

Candidates could campaign freely, and were not constrained in their freedoms of assembly, expression and movement. Only two candidates – FRETILIN's Lú-Olo and the Democratic Party's António da Conceição – held large rallies, while other contestants focused on door-to-door canvassing and meetings at village level. Although campaigning was scheduled to take place in accordance with a calendar co-ordinated by the CNE, several candidates failed to comply with timings and cancelled many events, often due to poor organisation and/or lack of resources.

A number of campaign programmes lacked substance, and several candidates made policy proposals and promises that went beyond presidential functions. A notable feature of the campaign was the influence of *suco* chiefs, who facilitated political party meetings not on the CNE calendar. These were frequently well attended.

Since the 2012 parliamentary elections, and in line with comments contained in the final report of the EU EOM to Timor-Leste in 2012, amendments in 2016 to Law No. 3/2004 on Political Parties established the principle of state funding for election campaigns on the basis of a one-off payment according to the number of votes received.

Existing legislation sets no limits on the funding and services candidates may accept as donations or spend on campaigning. The election was notable for the wide discrepancy in funding available to the FRETILIN candidate compared to other contestants. Reasonable caps on campaign expenditure may be justified where necessary to ensure the free choice of

voters is not undermined or the democratic process is not distorted by disproportionate spending on behalf of any candidate or party.

Contrary to the Constitution and the regulatory framework, high-level government and state administration officials were observed campaigning for the FRETILIN candidate. No action was taken in this regard by the CNE, the supervisory body tasked with enforcing constitutional and legal provisions related to the electoral process. In Oecusse, a ZEESM (special economic area) truck was used to transport voters to and from a FRETILIN campaign event, constituting an abuse of state resources. A promotional video for ZEESM was broadcast during a FRETILIN campaign event, in breach of a ban on the use of names and symbols of state institutions during campaigning.

The emergence of a new party, the PLP, to be led by outgoing President Taur Matan Ruak, also affected the campaign and focused attention on the upcoming legislative elections. The PLP, which will contest elections for the first time this year, backed the PD's Mr Conceição. The President was criticised by some political parties for setting up a party during his presidential mandate.

Media

The media covered the electoral campaign in an environment of press freedom, a right protected under Articles 40 and 41 of the Timorese Constitution. Harsh financial conditions and limited technical capacity affected most private and community media outlets' ability to provide extensive electoral coverage. On election day, the state-owned television broadcasted no electoral content until well after the official closing of polls, providing an insufficient public service to Timorese citizens.

Government decree No. 10/2017, promulgated in February 2017, represents a significant regression regarding the supervisory function of the media coverage of elections. Regulations now provide the STAE, which is under the Ministry of State Administration, with a discretionary decision-making power over which media outlets will be accredited. The CNE loses this competency while the government is granted authority that allows it to potentially interfere in the selection and removal of media covering elections. This provision is not line with international principles according to which media oversight bodies should be independent, impartial and protected from interference.

The state-owned media, Rádio e Televisão de Timor-Leste (RTTL) offered voters a useful platform of information on the candidates, airing special electoral-related programmes during the campaign. Both public media outlets presented a balanced coverage of the electoral campaign, granting the eight candidates a proportional share of airtime in a neutral tone. In addition, all the candidates were also allocated free airtime, produced by RTTL based on inputs and documents provided by the candidates. Although the effort to have the state media involved in the production of campaign-related information for all candidates can be considered reasonable under the current financial circumstances, Radio Timor-Leste did not comply with the legal requirements since the allotted time for this purpose was not equal for all candidates.

Privately owned Radio Maubere's coverage of the electoral process offered unbalanced coverage favouring FRETILIN's presidential candidate, Lú-Olo, to whom it granted all its campaign-related airtime, including news and analysis. The radio offered voters limited information on the electoral process as there was a slight, and at times even absent, line of

separation between the party's campaigning and the news service. In so doing, Radio Maubere went against the principle of equal opportunity and treatment to all candidacies, established by Government Decree No. 5/2017, art. 6.1b, as well as the principle of impartiality, covered by Government Decree No. 10/2017, art. 7.g. The channel also broadcasted on a regular basis a pre-recorded speech by the Oecusse president, thus breaching campaign rules stipulating that public officials cannot be used as tools of electoral propaganda (Government Decree No. 5/2017, art. 6.1i). The silence period was not respected by Radio Maubere, which aired electoral ads for Lú-Olo.

While private TV Educação began transmissions of election-related information late in the campaign, it made a positive effort to broadcast interviews with the presidential candidates in a partnership with non-governmental organisation La'ó Hamutuk. This represented a useful platform for information about the candidates' programmes. The tone of the TV Educação programming was neutral, and its campaign coverage generally balanced.

Radio Klibur devoted a limited share of airtime to the presidential elections. Only a few of its news programmes offered campaign coverage, and these referred to only six candidates. Coverage was presented in an unbalanced manner, with José Luis Guterres being granted more than one third of the time allocated to all the candidates (44%), followed by Ângela Freitas (19%), and Lú-Olo (18%). The tone of coverage was, however, neutral.

All newspapers monitored by the EU EOM (*Diário Nacional*, *Suara Timor Lorosae* and *Timor Post*) generally presented the eight candidates in a neutral tone. However, *Diário Nacional* was biased in favour of Lú-Olo, having allocated him more than one-third of the total space devoted to candidates (37%), followed by António Conceição (21%) and José Luís Guterres (9%). The newspapers *Suara Timor Lorosae* and *Timor Post* gave candidates a balanced share of space.

Media outlets scarcely ran any voter or civic education content. The state-owned television broadcast three episodes of informative and entertaining dramas covering these areas, produced by STAE and UNDP and, at a very late stage, CNE's civic education spots.

The CNE, as the campaign supervisory body, took no action regarding media coverage of elections, revealing a limited ability to efficiently supervise the media conduct during electoral periods.

Citizens' Groups and Observation

In an inclusive and timely manner, the STAE accredited civil society organisations (CSO). National observer groups participating in election observation were the Catholic Church's OIPAS, Belun, RHTO-DPO (Ra'es Hadomi Timor Oan -- Disabled Persons' Organisation), the Ombudsman's Office (Provedoria dos Direitos Humanos e Justiça, PDHJ), and the NGO umbrella group FONGTIL. A shortage in funding resulted in a reduction of national observation efforts when compared to 2012 elections. Some organisations plan to focus instead on the upcoming parliamentary elections.

Gender

There was only one woman candidate, Maria Ângela Freitas da Silva, who chose to run independently. While a one-in-three quota has improved gender representation in the national Parliament – 25 out of 65 MPs (38 per cent) are women, the largest representation

in the Asia-Pacific region – there remains a persistently low participation of women in leadership positions at local levels. Of the 744,613 eligible voters, 48.3 per cent are women. Dili and Aileu municipalities recorded a slightly lower registration of around 46 per cent. The remaining municipalities show a more balanced registration in terms of gender. Women's participation at election campaign events varied from around half of supporters at some meetings to only five or ten per cent at others. There was a marked lack of women speakers at campaign meetings.

People with Disabilities

Timor-Leste has yet to ratify the Convention on the Rights of Persons with Disabilities (CRPD), but has been under increasing pressure from national civil society groups to do so. There is no accurate data on people with disabilities in Timor-Leste. While the 2010 national census identified 48,000 people (4.6 per cent of the population), the 2015 census identified only 35,000, revealing the non-inclusive nature of the survey. In its report to the Election Management Bodies on the 2016 *suco* elections, the National Disabled People's Organisation (RHTO-DPO) recommended that in all future censuses the government implement the internationally agreed Washington Group Short Set of Six questions related to disability. The government needs to collect reliable data to ensure accurate statistical information on the number and distribution of people with disability in Timor-Leste. The National Disabled People's Organisation (RHTO-DPO) once again observed the presidential elections, with 20 observers in Dili.

Polling and Counting

In line with the operational calendar and one day before elections, STAE distributed sensitive electoral materials to the polling centres where they were safely stored overnight. On election day, opening preparations were conducted in a transparent manner and all 16 observed polling stations opened on time.

The EU observers visited in total 121 polling stations throughout the election day. Opening, voting and counting procedures were assessed in practically all observations as very good (2/3) or good (1/3).

Voters turned out in large numbers and could exercise their right to vote in secrecy, free from any undue interference and in a peaceful atmosphere. Women represented approximately half of the experienced polling officers and managed to process voters swiftly. EU observers reported longer queues in morning hours especially in large urban *sucos*. In general, the polling was conducted in a transparent way and the procedures were rigorously followed with the only exception being the non-systematic control of indelible ink on voters' fingers before voting, which is the only real mechanism against double voting.

Candidate agents (*fiskais*) were observed in all polling stations. EU observers noted, however, a disproportionate presence of FRETILIN agents, who covered virtually all polling stations, while no other candidate managed to assure their representation in more than a quarter of visited polling stations. National observers were present in almost a third of polling stations visited. No formal complaints were registered in any of the visited polling locations.

Counting was observed in 11 polling stations. EU observers reported a well-conducted and credible counting process. However, the requirement to post the election results outside the

polling centre and to provide copies of the results protocols to candidate agents was not always followed. This impacted the overall transparency of the election process.

The polling centre results were promptly transferred for tabulation at the municipal level. As reported by EU observers, this process was in some instances delayed by technical problems or interrupted during the night to allow personnel to rest or for the retrieval of electoral material from more remote areas. While the reception of the electoral material and protocols was carried out in clear view of candidate representatives and observers, the set-up of most municipal tabulation centres did not allow for close scrutiny of the digitalisation of results protocols.

Within 24 hours after polls closed, STAE published provisional results relating to tabulation of 95 per cent of polling centres. The EU EOM will continue to observe the national tabulation of results in the coming days.

Complaints and Electoral Offences

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. In practice, however, a petition against a decision of the Court of Appeal regarding final results is not possible due to a continued shortage of sitting judges. Until now, the CNE reports having received only a handful of complaints, mostly in relation to destruction of campaign materials and provocative acts undertaken during campaign events. The Attorney General's Office has prioritised investigation of electoral offences, and only a few cases are under investigation.

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 Electoral 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. The mission comprises a core team of seven analysts who have been in Timor-Leste since 13 February, and 16 Long Term Observers (LTOs), who have been present since 21 February. In addition, the mission is joined by one Local Short Term Observer from the diplomatic community and a seven-person delegation of Members of the European Parliament, led by Ana Gomes MEP from Portugal. Overall observers are drawn from 18 EU member States as well as Norway.

The EU EOM remains in country to observe the legislative elections as well as post-election developments. The EU EOM will publish a final report, containing detailed recommendations, 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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