



JUDICIAL SYSTEM MONITORING PROGRAMME

OBSERVERS' REPORT EAST TIMOR CONSTITUENT ASSEMBLY ELECTION 30 AUGUST 2001

POLLING STATION : BECORA PRISON

Summary

The Dili based Judicial System Monitoring Programme (JSMP), observed the elections taking place inside Becora prison 30 August 2001. A number of significant problems were observed, leading to only 47% of the eligible voters being able to cast their votes. As a result, many prisoners voiced their frustration and anger at being effectively disenfranchised through procedural flaws in the electoral process.

Introduction

JSMP is an independent project based in Dili since early 2001 that provides monitoring and analysis of the development of the new East Timorese Justice System using international human rights standards. JSMP's primary activities focus on observing the court hearings of the serious crimes cases before the Special Panel of the Dili District Court and providing analysis and recommendations relating to areas within the justice system which manifest problems.

During the 30 August 2001 election for the Constituent Assembly, prisoners have the same rights as any other citizens to vote in the elections. Section 1.2 of UNTAET Regulation 2001/2 states that the election shall be based on "universal adult suffrage". Pursuant to this, polling stations were set up in each of East Timor's three prisons in Gleno, Baucau and Dili.

JSMP observed the election for a Constituent Assembly taking place at the polling station in Becora Prison, Dili. Two international lawyers, accredited as observers by the Independent Electoral Commission (IEC) as part of the IFET international observer delegation were present from opening until closing. Although a number of other international observers visited the polling station, the JSMP representatives were the only accredited international observers present throughout the day. No national observers nor party agents were present at all. A representative of the UNTAET Human Rights Unit was in attendance, however, UNTAET staff were not permitted to be accredited as observers and therefore could not observe the activities inside the polling station itself. JSMP and other observers were able to perform their duties without obstruction. Both polling staff and the prison authorities welcomed the

1

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presence of observers and provided assistance where needed. On polling day 120 prisoners of the Dili Becora Prison with registration cards had indicated to the prison authorities their intention to vote. One prisoner was found ineligible as he did not satisfy the age requirement, leaving 119 eligible voters.

Polling staff did not arrive at the prison until approximately 8.30am and voting did not commence until shortly after 9am. Voting concluded at approximately 3.40pm and ballot boxes were sealed and the polling station closed at 4.30pm. In total only 56 votes were cast. Polling proceeded at a considerably slower pace than in a normal polling station, due to the particular security constraints of voting within a prison. Prisoners were brought from each cell block to the polling station in groups of between six and ten voters. Although procedures were followed correctly and the polling took place calmly, significant problems were observed that resulted in more than half of the eligible voter prison population being left unable to vote. These problems were due to two main factors. First, inappropriate polling centre allocation of prison voters, and second, polling procedures that did not take into account the particular circumstances of voters in detention.

Polling centre allocation

Out of the total number of 119 eligible voters, approximately 46 prisoners' registration details necessitated confirmation against the district roll as they did not appear on the voters' roll for the polling centre that the polling station was attached to. Of these 46 voters, 37 (or 31% of the total number of eligible voters) were in fact allocated to other polling centres and were therefore unable to vote¹.

JSMP acknowledges that this problem was to some extent inevitable considering that some prisoners were detained in prison after having registered. However, after cross-checking with official Becora prison records, JSMP found that at least 11 of these voters had been in detention in Becora prison during the entire civil registration period, including on 16 June 2001 when registration took place in Becora Prison. JSMP understands that the civil registration data did not specify that these people were registered in prison, but merely that they were part of the general village area in which the prison was located. The polling station in Becora prison was part of polling centre Centro Benamuk, number 102. After the entire population for that area was allocated to polling centres by the IEC, many of the prisoners were allocated to Camea polling centre, number 103.

JSMP noted another 11 prisoners who had also been allocated to Camea, but was unable to cross check them with the prison records as the names of these voters were not recorded.² It is possible that some of these voters were not in detention at the time

¹ See discussion below about IEC procedures relating to circumstances where a voter's name does not appear on the polling centre list of voters.

² For most of the day there was no Dili District Voters' Roll available at the polling station. As the prisoners had to be returned to their cells after each small group had passed through the polling station, a list was kept of the 27 names that needed to be checked against the District roll, as these prisoners may have needed to return to the station to vote if it was confirmed that they were entitled to do so. After the District roll arrived, a further 19 prisoners whose names did not appear on the Polling Centre roll were checked on the spot. As such, JSMP could only check the first 27 names against the prison records.

of registration but had coincidentally registered in the area nearby the prison. It is, however, extremely unlikely that the tiny community of Camea should have produced such a high number of criminals in the short period of time since then, and JSMP considers it reasonable to assume that all 22 prisoners allocated to Camea were in detention at the time of registration and allocation.

Under normal circumstances this relatively minor problem in the voter database would not necessarily have prevented voting, as the voters could have been redirected to the correct polling centre. However, due to the restricted movement of prisoners, the flaws in the voters' roll denied 31% of the eligible voters in Becora Prison the right to participate in the election of the first constituent assembly for East Timor.

Although JSMP was informed by the District Electoral Officer that an inspection of the voters' roll was made available in Becora Prison during the exhibition and challenges period, it is unclear why these discrepancies were not detected at that time, particularly given the particular implications for the voting prison population.

Procedures inappropriate for detainees

JSMP recorded approximately 15 prisoners who most likely had registered in Dili District *before* being detained, and that were allocated to a range of other polling centres in Dili than the Becora Prison³ For these cases, the IEC Polling Centre Manual states that:

- "If the voter's name is not on the voters' list the following procedures apply..*
- 2) if the person is found on the district voters' roll as being assigned to vote at a different polling centre, s/he will be redirected to that polling centre."*

As stated above, the limited freedom of movement for prisoners prevented them from travelling to any other polling station than the one in Becora Prison, rendering this procedure useless.

Similarly, 25 prisoners (or 21% of the total eligible voters) presented registration cards that showed they had registered in districts *outside* of Dili. These prisoners were also probably not in detention at the time of registration, but by virtue of their subsequent detention were unable to vote. Section 4.1 of UNTAET Regulation 2001/2 states that:

"Only residents of a given district, who registered as such in that district and are present in that district on polling day, shall be allowed to vote for that district's representative."

Furthermore, the IEC Polling Centre Manual states that:

"if the person is not found at all on the district voters' roll and if the person has a proof of registration and if that person's proof of registration shows the person to have an address in that district, and to have been born on or before 23.6.1984, then the person will be issued with a certificate (IECP65) by the Inquiry Officer stating these facts." (Amendment 4).

³ JSMP's assumption is based on the fact that these prisoners had been allocated to polling centres other than either Centro Benamuk or Camea, as well as through checking prison detention records.

As these prisoners also had addresses in another district than Dili, they did not satisfy the address requirement and could therefore not vote. As in fact, the IECP65 procedure was only used on three occasions at the polling station observed. Only three prisoners had registration cards indicating that they were resident in Dili district, but who did not appear on the district roll. They were allowed to vote following the IECP65 procedure.

Section 4.1 referred to above did directly apply to 25 of the voters at the prison, who had registered in Dili but had given their addresses as being outside Dili. Many of these prisoners had been in detention at the time of registration and since they had not given their address as Becora prison, they were not considered residents of Dili and could only vote for the national candidates.

In the design of the procedures manual and polling laws, the special circumstances in prisons where people are unable to travel to either the districts or villages where they registered have obviously not been taken into consideration. Furthermore, the registration in Becora prison took place during one day only, 16 June 2001. It is not clear whether prisoners detained after this date, but who had not already registered elsewhere, were offered the opportunity to register. Indeed, out of a total prison population on 30 August 2001 of 187, only 120 advised prison staff that they had registered.⁴

Implications and conclusion

While in many countries prisoners do not have a right to participate in public elections, it was clear that the importance of this election in East Timor justified extending participation to all members of the community. The only eligibility requirements were that a person had to be at least 17 years of age, East Timorese (or married to or a child of an East Timorese person) and present in East Timor for the elections. The IEC Polling Centre Manual also made special provision for polling stations within the three prisons. JSMP understands that a voter education officer had attended Becora prison in the lead up to 30 August 2001. The UNTAET Human Rights Unit had also answered questions from prisoners about their right to vote on polling day. Nevertheless, out of 119 eligible voters in Becora prison with valid proof of registration, 63 (53%) were ultimately not able to vote at all.

Not surprisingly, many prisoners were confused, frustrated and angry at their disenfranchisement. Those prisoners with registration cards showing they had registered in districts other than Dili were rejected when they first presented to the identification officer and given explanations as to why they could not vote. However, the 46 prisoners whose names did not appear on the polling centre roll and who had to return to their cells while a copy of the Dili district roll was obtained, were left wondering what the problem was. Once it was confirmed that 27 of these could not vote because they had been allocated to other polling centres, the prison authorities requested the District Electoral Officer to accompany them to the cellblocks to

⁴ JSMP acknowledges that some of the remaining 63 prisoners assumed to be unregistered may have either chosen not to vote, or indeed have chosen not to register, as in the case of approximately 13 CPD-RDTL supporters currently detained.

explain the situation to the prisoners affected. An UNTAET human rights officer accompanied the DEO and provided translation for the DEO. It was no easy task for the DEO to explain to the prisoners the complexities of an electoral process and the reasons why the majority of them could not vote despite no fault of their own. In any event, the explanations could not satisfy the seemingly random nature of why, for example, some of those who had registered while in prison were able to vote and some could not. Furthermore, it was clear that many of them would have been able to vote if they were not in detention and had the freedom of movement to attend the correct polling centre in the correct district.

Many prisoners questioned whether they were really considered citizens of East Timor at all. Others declared the entire process discriminatory in that they were not able to enjoy the same rights as other voters in the community. Many were particularly angry that the issue of their stated place of residence, and the implications for their votes, had not been checked and rectified earlier. In addition, one prisoner said that he saw no-one taking responsibility for the situation, despite the fact that citizens' rights had effectively been removed as they were not allowed to vote. Others made the point that they are still East Timorese and yet were prevented from joining with the political leaders in participating in the future of their country; that the crimes they committed were separate from these issues.

The JSMP observers undertook to convey the prisoners' concerns about the process to those involved in conducting this election as well as to those who may be involved in future East Timorese elections. To this end, JSMP makes the following recommendations:

1. That prisoners continue to be eligible to vote in future elections in East Timor;
2. That special provision be made for prisoners to vote outside their registered address or polling centre
3. That future polling procedures be designed with the special circumstances of prisoners, who are detained by the State, in mind.

JSMP offers this report to all interested parties in the hope of constructively contributing to an assessment of the conduct and design of the Constituent Assembly election.

JSMP
Dili, 31 August 2001.