

*CONSTITUTION
OF
THE DEMOCRATIC
REPUBLIC OF EAST
TIMOR*

**CONSTITUENT ASSEMBLY
EAST TIMOR**

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PREAMBLE

Following the liberation of the Timorese People from colonisation and illegal occupation of the Maubere Motherland by foreign powers, the independence of East Timor, proclaimed on the 28th of November 1975 by Frente Revolucionária do Timor-Leste Independente (FRETILIN), is recognised internationally on the 20th of May 2002.

The preparation and adoption of the Constitution of the Democratic Republic of East Timor is the culmination of the historical resistance of the Timorese People intensified following the invasion of the 7th of December 1975.

The struggle waged against the enemy, initially under the leadership of FRETILIN, gave way to more comprehensive forms of political participation, particularly in the wake of the establishment of the National Council of the Maubere Resistance (CNRM) in 1987 and the National Council of Timorese Resistance (CNRT) in 1998.

The Resistance was divided into three fronts.

The armed front was carried out by the glorious Forças Armadas de Libertação Nacional de Timor-Leste (FALINTIL) whose historical undertaking is to be praised.

The action of the clandestine front, astutely unleashed in hostile territory, involved the sacrifice of thousands of lives of women and men, especially the youth, who fought with abnegation for freedom and independence.

The diplomatic front, harmoniously carried out all over the world, enabled the paving of the way for definitive liberation.

In its cultural and humane perspective, the Catholic Church in East Timor has always been able to take on the suffering of all the People with dignity, placing itself on their side in the defence of their most fundamental rights.

Ultimately, the present Constitution represents a heart-felt tribute to all martyrs of the Motherland.

Thus, the Members of the Constituent Assembly, in their capacity as legitimate representatives of the People elected on the 30th of August 2001,

Based on the results of the referendum of the 30th of August 1999 organised under the auspices of the United Nations which confirmed the self-determined will for independence;

Fully conscious of the need to build a democratic and institutional culture proper appropriate to a State based on the rule of law where respect for the Constitution, for the laws and for democratically elected institutions constitute its unquestionable foundation;

Interpreting the profound sentiments, the aspirations and the faith in God of the People of East Timor;

Solemnly reaffirm their determination to fight all forms of tyranny, oppression, social, cultural or religious domination and segregation, to defend national independence, to respect and guarantee human rights and the fundamental rights of the citizen, to ensure the principle of the separation of powers in the organisation of the State, and to establish the essential rules of multi-party democracy, with a view to building a just and prosperous nation and developing a society of solidarity and fraternity.

The Constituent Assembly, meeting in plenary session on the 22nd of March 2002, approves and decrees the following Constitution of the Democratic Republic of East Timor:

CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF EAST TIMOR

PART I

FUNDAMENTAL PRINCIPLES

Section 1 (The Republic)

1. The Democratic Republic of East Timor is a democratic, sovereign, independent and unitary State based on the rule of law, the will of the people and the respect for the dignity of the human person.
2. The 28th of November 1975 is the Day of Proclamation of Independence of the Democratic Republic of East Timor.

Section 2 (Sovereignty and constitutionality)

1. Sovereignty rests with the people, who shall exercise it in the manner and form laid down in the Constitution.
2. The State shall be subject to the Constitution and to the law.
3. The validity of the laws and other actions of the State and local Government depends upon their compliance with the Constitution.
4. The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law.

Section 3 (Citizenship)

1. There shall be original citizenship and acquired citizenship in the Democratic Republic of East Timor.
2. The following citizens shall be considered original citizens of East Timor, as long as they are born in the national territory:
 - a) Children of father or mother born in East Timor;
 - b) Children of incognito parents, stateless parents or parents of unknown nationality;
 - c) Children of a foreign father or mother who, being over seventeen years old, declare their will to become East Timorese nationals.

3. Irrespective of being born in a foreign country, children of a Timorese father or mother shall be considered original citizens of East Timor.
 - a) Children of an East Timorese father or mother living overseas;
 - b) Children of an East Timorese father or mother serving the State outside the country;
4. Acquisition, loss and reacquisition of citizenship, as well as its registration and proof, shall be regulated by law.

Section 4 (Territory)

1. The territory of the Democratic Republic of East Timor comprises the land surface, the maritime zone and the air space demarcated by the national boundaries that historically comprise the eastern part of Timor Island, the enclave of Oecussi, the island of Ataúro and the islet of Jaco.
2. The extent and limits of territorial waters and the exclusive economic zone, and the rights of East Timor to the adjacent seabed and continental shelf shall be laid down in the law.
3. The State shall not alienate any part of the East Timorese territory or the rights of sovereignty over the land, without prejudice to rectification of borders.

Section 5 (Decentralisation)

1. On matters of territorial organisation, the State shall respect the principle of decentralisation of public administration.
2. The law shall determine and establish the characteristics of the different territorial levels and the administrative competencies of the respective organs.
3. Oecussi Ambeno and Ataúro shall enjoy special administrative and economic treatment.

Section 6 (Objectives of the State)

The fundamental objectives of the State shall be:

- a) To defend and guarantee the sovereignty of the country;

- b) To guarantee and promote fundamental rights and freedoms of the citizens and the respect for the principles of the democratic State based on the rule of law;
- c) To defend and guarantee political democracy and participation of the people in the resolution of national problems;
- d) To guarantee the development of the economy and the progress of science and technology;
- e) To promote the building of a society based on social justice, by establishing material and spiritual welfare of the citizens;
- f) To protect the environment and to preserve natural resources;
- g) To assert and value the personality and the cultural heritage of the East Timorese people;
- h) To promote the establishment and the development of relations of friendship and co-operation among all Peoples and States;
- i) To promote the harmonious and integrated development of the sectors and regions and the fair distribution of the national product;
- j) To create, promote and guarantee the effective equality of opportunities between women and men.

Section 7
(Universal Suffrage and multi-party system)

1. The people shall exercise the political power through universal, free, equal, direct, secret and periodic suffrage and through other forms laid down in the Constitution.
2. The State shall value the contribution of political parties for the organised expression of the popular will and for the democratic participation of the citizen in the governance of the country.

Section 8
(International Relations)

1. On matters of international relations, the Democratic Republic of East Timor shall govern itself by the principles of national independence, the right of the Peoples to self-determination and independence, the permanent sovereignty of the peoples over their wealth and natural resources, the protection of human rights, the mutual respect for sovereignty, territorial integrity and equality among States and the non-interference in domestic affairs of other States.

2. The Democratic Republic of East Timor shall establish relations of friendship and co-operation with all other peoples, aiming at the peaceful settlement of conflicts, the general, simultaneous and controlled disarmament, the establishment of a system of collective security and establishment of a new international economic order capable of ensuring peace and justice in the relations among peoples.
3. The Democratic Republic of East Timor shall maintain privileged ties with the countries whose official language is Portuguese.
4. The Democratic Republic of East Timor shall maintain special ties of friendship and co-operation with its neighbouring countries and the countries of the region.

**Section 9
(International law)**

1. The legal system of East Timor shall adopt the general or customary principles of international law.
2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.
3. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

**Section 10
(Solidarity)**

1. The Democratic Republic of East Timor shall extend its solidarity to the struggle of all peoples for national liberation.
2. The Democratic Republic of East Timor shall grant political asylum, in accordance with the law, to foreigners persecuted as a result of their struggle for national and social liberation, defence of human rights, democracy and peace.

**Section 11
(Valorisation of Resistance)**

1. The Democratic Republic of East Timor acknowledges and values the historical resistance of the Maubere People against foreign domination and the contribution of all those who fought for national independence.
2. The State acknowledges and values the participation of the Catholic Church in the process of national liberation of East Timor.

3. The State shall ensure special protection to the war-disabled, orphans and other dependants of those who dedicated their lives to the struggle for independence and national sovereignty, and shall protect all those who participated in the resistance against the foreign occupation, in accordance with the law.
4. The law shall define the mechanisms for rendering tribute to the national heroes.

Section 12
(State and religious denominations)

1. The State shall recognise and respect the different religious denominations, which are free in their organisation and in the exercise of their own activities, to take place in due observance of the Constitution and the law.
2. The State shall promote the cooperation with the different religious denominations that contribute to the well-being of the people of East Timor.

Section 13
(Official languages and national languages)

1. Tetum and Portuguese shall be the official languages in the Democratic Republic of East Timor.
2. Tetum and the other national languages shall be valued and developed by the State.

Section 14
(National symbols)

1. The national symbols of the Democratic Republic of East Timor shall be the flag, the emblem and the national anthem.
2. The emblem and the national anthem shall be approved by law.

Section 15
(National Flag)

1. The National Flag is rectangular and is formed by two isosceles triangles, the bases of which are overlapping. One triangle is black and its height is equal to one-third of the length overlapped to the yellow triangle, whose height is equal to half the length of the Flag. In the centre of the black triangle there is a white star of five ends, meaning the light that guides. The white star has one of its ends turned towards the left side end of the flag. The remaining part of the flag is red.
2. The colours mean:

yellow – the traces of colonialism;
black – the obscurantism that needs to be overcome;
red – the struggle for national liberation;
white – peace.

PART II

FUNDAMENTAL RIGHTS, DUTIES, FREEDOMS AND GUARANTEES

TITLE I

GENERAL PRINCIPLES

Section 16 (Universality and Equality)

1. All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties.
2. No one shall be discriminated against on grounds of colour, race, marital status, gender, ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.

Section 17 (Equality between women and men)

Women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life.

Section 18 (Child protection)

1. Children shall be entitled to special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation.
2. Children shall enjoy all rights that are universally recognised, as well as all those that are enshrined in international conventions commonly ratified or approved by the State.
3. Every child born inside or outside wedlock shall enjoy the same rights and social protection.

Section 19 (Youth)

1. The State shall promote and encourage youth initiatives towards the consolidation of national unity, reconstruction, defence and development of the country.
2. The State shall promote education, health and vocational training for the youth as may be practicable.

Section 20
(Senior Citizens)

1. Every senior citizen has the right to special protection by the State.
2. The old age policy entails measures of economic, social and cultural nature designed to provide the elderly with opportunities for personal achievement through active and dignified participation in the community.

Section 21
(Disabled citizens)

1. A disabled citizen shall enjoy the same rights and shall be subject to the same duties as all other citizens, except for the rights and duties which he or she is unable to exercise or fulfil due to his or her disability.
2. The State shall promote the protection of disabled citizens as may be practicable and in accordance with the law.

Section 22
(East Timorese citizens overseas)

East Timorese citizens who are or live overseas shall enjoy protection by the State for the exercise of their rights and shall be subject to duties not incompatible with their absence from the country.

Section 23
(Interpretation of fundamental rights)

Fundamental rights enshrined in the Constitution shall not exclude any other rights provided for by the law and shall be interpreted in accordance with the Universal Declaration of Human Rights.

Section 24
(Restrictive laws)

1. Restriction of rights, freedoms and guarantees can only be imposed by law in order to safeguard other constitutionally protected rights or interests and in cases clearly provided for by the Constitution.

2. Laws restricting rights, freedoms and guarantees have necessarily a general and abstract nature and may not reduce the extent and scope of the essential contents of constitutional provisions and shall not have a retroactive effect.

Section 25
(State of exception)

1. Suspension of the exercise of fundamental rights, freedoms and guarantees shall only take place if a state of siege or a state of emergency has been declared as provided for by the Constitution.
2. A state of siege or a state of emergency shall only be declared in case of effective or impending aggression by a foreign force, of serious disturbance or threat of serious disturbance to the democratic constitutional order, or of public disaster.
3. A declaration of a state of siege or a state of emergency shall be substantiated, specifying rights, freedoms and guarantees the exercise of which is to be suspended.
4. A suspension shall not last for more than thirty days, without prejudice of possible justified renewal, when strictly necessary, for equal periods of time.
5. In no case shall a declaration of a state of siege affect the right to life, physical integrity, citizenship, non-retroactivity of the criminal law, defence in a criminal case and freedom of conscience and religion, the right not to be subjected to torture, slavery or servitude, the right not to be subjected to cruel, inhuman or degrading treatment or punishment , and the guarantee of non-discrimination.
6. Authorities shall restore constitutional normality as soon as possible.

Section 26
(Access to courts)

Access to courts is guaranteed to all for the defence of their legally protected rights and interests.

Justice shall not be denied for insufficient economic means.

Section 27
(Ombudsman)

1. The Ombudsman shall be an independent organ in charge of examining and seeking to settle citizens' complaints against public bodies, certifying the conformity of the acts with the law, preventing and initiating the whole process to remedy injustice.

2. Citizens may present complaints concerning acts or omissions on the part of public bodies to the Ombudsman, who shall undertake a review, without power of decision, and shall forward recommendations to the competent organs as deemed necessary.
3. The Ombudsman shall be appointed by the National Parliament through absolute majority votes of its members for a term of office of four years.
4. The activity of the Ombudsman shall be independent from any means of grace and legal remedies as laid down in the Constitution and the law.
5. Administrative organs and public servants shall have the duty to collaborate with the Ombudsman.

Section 28
(Right to resistance and self-defence)

1. Every citizen has the right to disobey and to resist illegal orders or orders that affect their fundamental rights, freedoms and guarantees.
2. The right to self-defence is guaranteed to all, in accordance with the law.

TITLE II

PERSONAL RIGHTS, FREEDOMS AND GUARANTEES

Section 29
(Right to life)

1. Human life is inviolable.
2. The State shall recognise and guarantee the right to life.
3. There shall be no death penalty in the Democratic Republic of East Timor.

Section 30
(Right to personal freedom, security and integrity)

1. Every one has the right to personal freedom, security and integrity.
2. No one shall be arrested or detained, except under the terms clearly provided for by applicable law, and the order of arrest or detention should always be presented for consideration by the competent judge within the legal timeframe.
3. Every individual who loses his or her freedom shall be immediately informed, in a clear and precise manner, of the reasons for his or her arrest or detention as well as of

his or her rights, and allowed to contact a lawyer, directly or through a relative or a trusted person.

4. No one shall be subjected to torture and cruel, inhuman or degrading treatment.

Section 31
(Application of criminal law)

1. No one shall be subjected to trial, except in accordance with the law.
2. No one shall be tried and convicted for an act that does not qualify in the law as a criminal offence at the moment it was committed, nor endure security measures the provisions of which are not clearly established in previous law.
3. Penalties or security measures not clearly provided for by law at the moment the criminal offence was committed shall not be enforced.
4. No one shall be tried and convicted for the same criminal offence more than once.
5. Criminal law shall not be enforced retroactively, except if the new law is in favour of the accused.
6. Anyone who has been unjustly convicted has the right to a fair compensation in accordance with the law.

Section 32
(Limits on sentences and security measures)

1. There shall be no life imprisonment nor sentences or security measures lasting for unlimited or indefinite period of time in the Democratic Republic of East Timor.
2. In case of danger as a result of mental illness, security measures may be extended successively by judicial decision.
3. Criminal liability is not transmissible.
4. Persons who are subjected, on conviction, to a sentence or a security measure involving loss of freedom remain entitled to their fundamental rights, subject to the limitations that necessarily derive from that conviction and from the requirements for its enforcement.

Section 33
(Habeas corpus)

1. Everyone who illegally loses his or her freedom has the right to apply for habeas corpus.

2. An application for *habeas corpus* shall be made by the detainee or by any other person in the exercise of his or her civil rights, in accordance with the law.
3. The court shall rule on the application for *habeas corpus* within 8 days at a hearing in the presence of both parties.

Section 34
(Guarantees in criminal proceedings)

1. Anyone charged with an offence is presumed innocent until convicted.
2. An accused person has the right to select, and be assisted by, a lawyer at all stages of the proceedings and the law shall determine the circumstances for which the presence of the lawyer is mandatory.
3. Every individual is guaranteed the inviolable right of hearing and defence in criminal proceedings.
4. Evidence is of no effect if obtained by torture, coercion, infringement of the physical or moral integrity of the individual, or wrongful interference with private life, the home, correspondence or other forms of communication.

Section 35
(Extradition and expulsion)

1. Extradition shall only take place following a court decision.
2. Extradition on political grounds is prohibited.
3. Extradition in respect of offences punishable, under the law of the requesting State, by death penalty or life imprisonment or whenever there are grounds to assume that the person to be extradited may be subjected to torture and inhuman, degrading and cruel treatment, shall not be permitted.
4. An East Timorese national shall not be expelled or expatriated from the national territory.

Section 36
(Right to honour and privacy)

Every individual has the right to honour, good name and reputation, protection of his or her public image and privacy of his or her personal and family life.

Section 37
(Inviolability of home and correspondence)

1. Any person's home and the privacy of his or her correspondence and other means of private communication are inviolable, except in cases provided for by law as a result of criminal proceedings.
2. A person's home shall not be entered against his or her will, except under the written order of a competent judicial authority and in the cases and manner prescribed by law.
3. Entry into any person's home at night against his or her will is clearly prohibited, except in case of serious threat to life or physical integrity of somebody inside the home.

Section 38
(Protection of personal data)

1. Every citizen has the right to access personal data stored in a computer system or entered into mechanical or manual records regarding him or her, and he or she shall have the right to demand the purpose of such data.
2. The law shall determine the concept of personal data, as well as the conditions applicable to the processing thereof.
3. The processing of personal data on private life, political and philosophical convictions, religious faith, party or trade union membership and ethnical origin, without the consent of the interested person, is prohibited.

Section 39
(Family, marriage and maternity)

1. The State shall protect the family as the society's basic unit and a condition for the harmonious development of the individual.
2. Every one has the right to establish and live in a family.
3. Marriage shall be based upon free consent by the parties and on terms of full equality of rights between spouses, in accordance with the law.
4. Maternity shall be dignified and protected, and special protection shall be guaranteed to all women during pregnancy and after delivery and working women shall have the right to be exempted from the workplace for an adequate period before and after delivery, without loss of remuneration or any other benefits, in accordance with the law.

Section 40
(Freedom of speech and information)

1. Every person has the right to freedom of speech and the right to inform and be informed impartially.
2. The exercise of freedom of speech and information shall not be limited by any sort of censorship.
3. The exercise of rights and freedoms referred to in this Section shall be regulated by law based on the imperative of respect for the Constitution and the dignity of the human person.

Section 41
(Freedom of the press and mass media)

1. Freedom of the press and other mass media is guaranteed.
2. Freedom of the press shall comprise, namely, the freedom of speech and creativity for journalists, the access to information sources, editorial freedom, protection of independence and professional confidentiality, and the right to create newspapers, publications and other means of broadcasting.
3. The monopoly on the mass media shall be prohibited.
4. The State shall guarantee the freedom and independence of the public mass media from political and economic powers.
5. The State shall guarantee the existence of a public radio and television service that is impartial in order to, *inter-alia*, protect and disseminate the culture and the traditional values of the Democratic Republic of East Timor and guarantee opportunities for the expression of different lines of opinion.
6. Radio and television stations shall operate only under a licence, in accordance with the law.

Section 42
(Freedom to assemble and demonstrate)

1. Everyone is guaranteed the freedom to assemble peacefully and unarmed, without a need for prior authorisation.
2. Everyone is recognised the right to demonstrate in accordance with the law.

Section 43
(Freedom of association)

1. Everyone is guaranteed freedom of association provided that the association is not intended to promote violence and is in accordance with the law.
2. No one shall be compelled to join an association or to remain in it against his or her will.
3. The establishment of armed, military or paramilitary associations, including organisations of a racist or xenophobic nature or that promote terrorism, shall be prohibited.

Section 44
(Freedom of movement)

1. Every person has the right to move freely and to settle anywhere in the national territory.
2. Every citizen is guaranteed the right to emigrate freely and to return to the country.

Section 45
(Freedom of conscience, religion and worship)

1. Every person is guaranteed the freedom of conscience, religion and worship and the religious denominations are separated from the State.
2. No one shall be persecuted or discriminated against on the basis of his or her religious convictions.
3. The right to be a conscientious objector shall be guaranteed in accordance with the law.
4. Freedom to teach any religion in the framework of the respective religious denomination is guaranteed.

Section 46
(Right to political participation)

1. Every citizen has the right to participate in the political life and in the public affairs of the country, either directly or through democratically elected representatives.
2. Every citizen has the right to establish and to participate in political parties.
3. The establishment and organisation of political parties shall be regulated by law.

Section 47
(Right to vote)

1. Every citizen over the age of seventeen has the right to vote and to be elected.
2. The exercise of the right to vote is personal and constitutes a civic duty.

Section 48
(Right to petition)

Every citizen has the right to submit, individually or jointly with others, petitions, complaints and claims to organs of sovereignty or any authority for the purpose of defending his or her rights, the Constitution, the law or general interests.

Section 49
(Defence of Sovereignty)

1. Every citizen has the right and the duty to contribute towards the defence of independence, sovereignty and territorial integrity of the country.
2. Serving in the army shall take place in accordance with the law.

TITLE III

ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND DUTIES

Section 50
(Right to work)

1. Every citizen, regardless of gender, has the right and the duty to work and to choose freely his or her profession.
2. The worker has the right to labour safety and hygiene, remuneration, rest and vacation.
3. Dismissal without just cause or on political, religious and ideological grounds is prohibited.
4. Compulsory work, without prejudice to the cases provided for under penal legislation, is prohibited.
5. The State shall promote the establishment of co-operatives of production and shall lend support to household businesses as sources of employment.

Section 51
(Right to strike and prohibition of lock-out)

1. Every worker has the right to resort to strike, the exercise of which shall be regulated by law.
2. The law shall determine the conditions under which services are provided, during a strike, that are necessary for the safety and maintenance of equipment and facilities, as well as minimum services that are necessary to meet essential social needs.
3. Lock-out is prohibited.

Section 52
(Trade union freedom)

1. Every worker has the right to form or join trade unions and professional associations in defence of his or her rights and interests.
2. Trade union freedom is sub-divided, namely, into freedom of establishment, freedom of membership and freedom of organisation and internal regulation.
3. Trade unions and trade union associations shall be independent of the State and the employers.

Section 53
(Consumer rights)

1. Consumers have the right to goods and services of good quality, to truthful information and protection of their health, safety and economic interests, and to reparation for damages.
2. Advertising shall be regulated by law, and all forms of concealed, indirect or misleading advertising are prohibited.

Section 54
(Right to private property)

1. Every individual has the right to private property and can transfer it during his or her lifetime or on death, in accordance with the law.
2. Private property should not be used to the detriment of its social purpose.
3. Requisitioning and expropriation of property for public purposes shall only take place following fair compensation in accordance with the law.
4. Only national citizens have the right to ownership of land.

Section 55
(Obligations of the taxpayer)

Every citizen with a certified income has the duty to pay tax in order to contribute to public revenues, in accordance with the law.

Section 56
(Social security and assistance)

1. Every citizen is entitled to social assistance and security in accordance with the law.
2. The State shall promote, in accordance with its national resources, the establishment of a social security system.
3. The State shall support and supervise the activity and functioning of institutions of social solidarity and other non-profit institutions of recognised public interest, in accordance with the law.

Section 57
(Health)

1. Everyone has the right to health and medical care, and the duty to protect and promote them.
2. The State shall promote the establishment of a national health service that is universal and general. The national health service shall be free of charge in accordance with the possibilities of the State and in conformity with the law.
3. The national health service shall have, as much as possible, a decentralised participatory management.

Section 58
(Housing)

Everyone has the right to a house, both for himself or herself and for his or her family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy.

Section 59
(Education and culture)

1. The State shall recognise and guarantee that every citizen has the right to education and culture, and it is incumbent upon it to promote the establishment of a public system of universal and compulsory basic education that is free of charge in accordance with its ability and in conformity with the law.

2. Everyone has the right to equal opportunities for education and vocational training.
3. The State shall recognise and supervise private and co-operative education.
4. The State should ensure the access of every citizen, in accordance to their abilities, to the highest levels of education, scientific research and artistic creativity.
5. Everyone has the right to cultural enjoyment and creativity and the duty to preserve, protect and value cultural heritage.

Section 60
(Intellectual Property)

The State shall guarantee and protect the creation, production and commercialisation of literary, scientific and artistic work, including the legal protection of copyrights.

Section 61
(Environment)

1. Everyone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.
2. The State shall recognise the need to preserve and rationalise natural resources.
3. The State should promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy.

PART III

ORGANIZATION OF POLITICAL POWER

TITLE I

GENERAL PRINCIPLES

Section 62
(Source and exercise of political power)

Political power lies with the people and is exercised in accordance with the terms of the Constitution.

Section 63
(Participation by citizens in political life)

1. Direct and active participation by men and women in political life is a requirement of, and a fundamental instrument for consolidating, the democratic system.
2. The law shall promote equality in the exercise of civil and political rights and non-discrimination on the basis of gender for access to political positions.

Section 64
(Principle of Renewal)

No one shall hold any political office for life, or for indefinite periods of time.

Section 65
(Elections)

1. Elected organs of sovereignty and of local government shall be chosen by free, direct, secret, personal and regular universal suffrage.
2. Registration of voters shall be compulsory and officially initiated, single and universal, to be up-dated for each election.
3. Electoral campaigns shall be governed in accordance with the following principles:
 - a) Freedom to canvass;
 - b) Equality of opportunity and treatment for all candidacies;
 - c) Impartiality towards candidacies on the part of public bodies;
 - d) Transparency and supervision of electoral expenses.
4. Conversion of the votes into mandates shall observe the principle of proportional representation;
5. The electoral process shall be regulated by law.
6. Supervision of voters' registration and electoral acts shall be incumbent upon an independent organ, the competences, composition, organization and functioning of which shall be established by law.

Article 66
(Referendum)

1. Voters who are registered in the national territory may be called upon to express their opinions in a referendum on issues of relevant national interest.
2. A referendum shall be called by the President of the Republic, following a proposal by one third, and deliberation approved by a two thirds majority, of the Members of the National Parliament, or following a well-founded proposal by the Government.

3. Matters falling under the exclusive competence of the Parliament, the Government and the Courts as defined by the Constitution shall not be the subject of a referendum.
4. A referendum shall only be binding where the number of voters is higher than half of the registered electors .
5. The process of a referendum shall be defined by law.

Section 67
(Organs of Sovereignty)

The organs of sovereignty shall comprise the President of the Republic, the National Parliament, the Government and the Courts.

Section 68
(Incompatibilities)

1. The holding of the offices of President of the Republic, Speaker of the National Parliament, President of the Supreme Court of Justice, President of the High Administrative, Tax and Audit Court, Prosecutor-General and member of Government shall be incompatible with one another.
2. The law shall define other incompatibilities.

Section 69
(Principle of separation of powers)

Organs of sovereignty, in their reciprocal relationship and exercise of their functions, shall observe the principle of separation and interdependence of powers established in the Constitution.

Section 70
(Political parties and the right of opposition)

1. Political parties shall participate in organs of political power in accordance with their democratic representation based on direct and universal suffrage.
2. The right of political parties to democratic opposition, as well as the right to be informed regularly and directly on the progress of the main issues of public interest, shall be recognised.

Section 71
(Administrative organisation)

1. The central government should be represented at the different administrative levels of the country.
2. Oecussi Ambeno shall be governed by a special administrative policy and economic regime.
3. Ataúro shall enjoy an appropriate economic status.
4. The political and administrative organisation of the territory of the Democratic Republic of East Timor shall be defined by law.

Article 72
(Local government)

1. Local government is constituted by corporate bodies vested with representative organs, with the objective of organising the participation by citizens in solving the problems of their own community and promoting local development without prejudice to the participation by the State.
2. The organisation, competence, functioning and composition of the organs of local government shall be defined by law.

Section 73
(Publication of legislation and decisions)

1. Legislation and decisions shall be published by the organs of sovereignty in the official gazette.
2. Failure to publish any of the legislation or decisions specified in item 1 above or decisions of a general nature taken by the organs of sovereignty or local government shall render them null and void.
3. The form of publication of other legislation and decisions, and the consequences of the failure to do so, shall be determined by law.

TITLE II

PRESIDENT OF THE REPUBLIC

CHAPTER I

STATUS, ELECTION AND APPOINTMENT

Section 74
(Definition)

1. The President of the Republic is the Head of State and the symbol and guarantor of national independence and unity of the State and of the smooth functioning of democratic institutions.
2. The President of the Republic is the Supreme Commander of the Defence Force.

**Section 75
(Eligibility)**

1. To stand as presidential candidates, East Timorese citizens should meet each of the following requirements cumulatively:
 - a) original citizenship;
 - b) at least 35 (Thirty -five) years of age;
 - c) to be in possession of his or her full faculties;
 - d) to be proposed by a minimum of five thousand voters.
2. The President of the Republic has a term of office of 5 years and shall cease his or her functions with the swearing-in of the new President-elect.
3. The President of the Republic's term of office may be renewed only once.

**Section 76
(Election)**

1. The President of the Republic shall be elected by universal, free, direct, secret, and personal suffrage.
2. The election of the President of the Republic shall be conducted through the system based on the majority of validly expressed votes, excluding blank votes.
3. Where no candidate gets more than half of the votes, a second round shall take place on the 30th day following the first voting.
4. Only the two candidates obtaining the highest number of votes shall be eligible to stand in a run-off election, provided they have not withdrawn their candidacies.

**Section 77
(Inauguration and swearing-in)**

1. The President of the Republic shall be sworn in by the Speaker of the National Parliament and shall be inaugurated in public ceremony before the members of the National Parliament and the representatives of the other organs of sovereignty.

2. The inauguration shall take place on the last day of the term of office of the outgoing President or, in case of election due to vacancy, on the eighth day following the publication of the electoral results.
3. At the swearing-in ceremony, the President of the Republic shall take the following oath:

“I swear to God, to the people and on my honour that I will fulfil with loyalty the functions that have been invested in me, will abide by and enforce the Constitution and the laws and will dedicate all my energies and knowledge to the defence and consolidation of independence and national unity.”

Section 78 (Incompatibilities)

The President of the Republic shall not hold any other political position or public office at the national level, and under no circumstances shall he or she undertake private assignments.

Section 79 (Criminal liability and Constitutional Obligations)

1. The President of the Republic shall enjoy immunity in the exercise of his or her functions.
2. The President of the Republic shall be answerable before the Supreme Court of Justice for crimes committed in the exercise of his or her functions and for clear and serious violation of his or her constitutional obligations.
3. It is the incumbent upon the National Parliament to initiate the criminal proceedings, following a proposal made by one-fifth, and deliberation approved by a two-third majority, of its Members.
4. The Plenary of the Supreme Court of Justice shall issue a judgment within a maximum of 30 days.
5. Conviction shall result in forfeiture of office and disqualification from re-election.
6. For crimes not committed in the exercise of his or her functions, the President of the Republic shall also be answerable before the Supreme Court of Justice, and forfeiture of office shall only occur in case of sentence to prison.
7. In the cases provided for under the previous item, immunity shall be withdrawn at the initiative of the National Parliament in accordance with provisions of item 3 of this Section.

Section 80
(Absence)

1. The President of the Republic shall not be absent from the national territory without the previous consent of the National Parliament or of its Standing Committee, if Parliament is in recession.
2. Failure to observe provision of item 1 above shall imply forfeiture of the office, as provided for by the previous Section.
3. The President of the Republic's private visits not exceeding fifteen days shall not require the consent of the National Parliament. Nonetheless, the President of the Republic should notify the National Parliament of such visits in advance.

Section 81
(Resignation of Office)

1. The President of the Republic may resign from office by message addressed to the National Parliament.
2. Resignation shall take effect once the message is made known to the National Parliament without prejudice to its subsequent publication in the official gazette.
3. Where the President of the Republic resigns from office, he or she shall not be eligible to stand for presidential elections immediately after resignation nor in the regular elections to be held after five years.

Section 82
(Death, resignation or permanent disability)

1. In case of death, resignation or permanent disability of the President of the Republic, his or her functions shall be taken over on an interim basis by the Speaker of the National Parliament, who shall be sworn in by the Speaker a.i. of the National Parliament before the Members of the National Parliament and representatives of the organs of sovereignty.
2. Permanent disability shall be declared by the Supreme Court of Justice, which shall also have the responsibility to confirm the death of the President of the Republic and the vacancy of office resulting therefrom.
3. The election of a new President of the Republic in case of death, resignation or permanent disability should take place within the subsequent ninety days, after certification or declaration of death, resignation or permanent disability.
4. The President of the Republic shall be elected for a new term of office.

5. In case of refusal by the President-elected to take office or in case of his or her death or permanent disability, the provisions of this Section shall apply.

Section 83
(Exceptional Cases)

1. Where death, resignation or permanent disability occur in case of imminent exceptional situations of war or protracted emergency, or of an insurmountable difficulty of a technical or material nature, to be defined by law, preventing the holding of a presidential election by universal suffrage as provided for by Section 76, the new President of the Republic shall be elected by the National Parliament from among its members within the ninety subsequent days.
2. In the cases referred to in the previous item, the President-elect shall serve for the remainder of the interrupted term and he or she may run for the new election.

Section 84
(Replacement and interim office)

1. During temporary impediment of the President of the Republic, the presidential functions shall be taken over by the Speaker of National Parliament or, in case of impediment of the latter, by his or her replacement.
2. The parliamentary mandate of the Speaker of the National Parliament or of his or her replacement shall be automatically suspended over the period of time in which he or she holds the office of President of the Republic on an interim basis.
3. The parliamentary functions of the replacing or interim President of the Republic shall be temporarily taken over in accordance with the Rules of Procedures of the National Parliament.

CHAPTER II

COMPETENCIES

Section 85
(Competencies)

It is exclusively incumbent upon the President of the Republic:

- a) To promulgate statutes and order the publication of resolutions by the National Parliament approving agreements and ratifying international treaties and conventions;
- b) Exercise competencies inherent in the functions of Supreme Commander of the Defence Force;

- c) To exercise the right of veto regarding any statutes within 30 days from the date of their receipt;
- d) To appoint and swear in the Prime Minister designated by the party or alliance of parties with parliamentary majority after consultation with political parties sitting in the National Parliament;
- e) To request the Supreme Court of Justice to undertake preventive appraisal and abstract review of the constitutionality of the rules, as well as verification of unconstitutionality by omission.
- f) To submit relevant issues of national interest to a referendum as laid down in Section 66;
- g) To declare the state of siege or the state of emergency following authorisation of the National Parliament, after consultation with the Council of State, the Government and the Supreme Council of Defence and Security;
- h) To declare war and make peace following a Government proposal, after consultation with the Council of State and the Supreme Council of Defence and Security, under authorisation of the National Parliament;
- i) To grant pardons and commute sentences after consultation with the Government;
- j) To award honorary titles, decorations and merits in accordance with the law.

Section 86
(Competencies with regard to other organs)

It is incumbent upon the President of the Republic, with regard to other organs:

- a) To chair the Supreme Council of Defence and Security;
- b) To chair the Council of State;
- c) To set dates for presidential and legislative elections in accordance with the Law;
- d) To request the convening of extraordinary sessions of the National Parliament, whenever imperative reasons of national interest so justify;
- e) To address messages to the National Parliament and the country;
- f) To dissolve the National Parliament in case of a serious institutional crisis preventing the formation of a government or the approval of the State Budget and

- lasting more than sixty days, after consultation with political parties sitting in the Parliament and with the Council of State, on pain of rendering the dissolution null and void, taking into consideration provisions of Section 100;
- g) To dismiss the Government and remove the Prime Minister from office after the National Parliament has rejected his or her programme for two consecutive times.
 - h) To appoint, swear in and remove Government Members from office, following a proposal by the Prime-Minister, in accordance with item 2, Section 106;
 - i) To appoint two members for the Supreme Council of Defence and Security;
 - j) To appoint the President of the Supreme Court of Justice and swear in the President of the High Administrative, Tax and Audit Court;
 - k) To appoint the Prosecutor-General for a term of four years;
 - l) To appoint and dismiss the Deputy Prosecutor-Generals in accordance with item 6, Section 133;
 - m) To appoint and dismiss, following proposal by the Government, the General Chief of Staff of the Defence Force, the Deputy General Chief of Staff of the Defence Force, and the Chiefs of Staff of the Defence Force, after consultation with the General Chief of Staff regarding the latter two cases;
 - n) To appoint five Members for the Council of State;
 - o) To appoint one member for the Superior Council for the Judiciary and for the Superior Council for the Public Prosecution.

Section 87
(Competencies with regard to International Relations)

It is incumbent upon the President of the Republic, in the field of international relations:

- a) To declare war in case of effective or imminent aggression and make peace, following proposal by the Government, after consultation with the Supreme Council for Defence and Security and following authorisation of the National Parliament or of its Standing Committee.
- b) To appoint and dismiss ambassadors, permanent representatives and special envoys, following proposal by the Government;
- c) To receive credential letters and accredit foreign diplomatic representatives;

- d) Conduct, in consultation with the Government, any negotiation process towards the completion of international agreements in the field of defence and security.

**Section 88
(Promulgation and veto)**

1. Within thirty days after receiving any statute from the National Parliament for the purpose of its promulgation as law, the President of the Republic shall either promulgate the statute or exercise the right of veto, in which case he or she, based on substantive grounds, shall send a message to the National Parliament requesting a new appraisal of the statute.
2. If, within ninety days, the National Parliament confirms its vote by an absolute majority of its Members in full exercise of their functions, the President of the Republic shall promulgate the statute within eight days after receiving it.
3. However, a majority of two-thirds of the Members present shall be required to ratify statutes on matters provided for in Section 95 where that majority exceeds an absolute majority of the Members in full exercise of their functions.
4. Within forty days after receiving any statute from the Government for the purpose of its promulgation as law, the President of the Republic shall either promulgate the instrument or exercise the right of veto by way of a written communication to the Government containing the reasons for the veto.

**Section 89
Powers of an interim President of the Republic**

An interim President of the Republic does not have any of the powers specified in following items f), g), h), i), j), k), l), m), n) and o) of Section 86.

CHAPTER III

COUNCIL OF STATE

**Section 90
(Council of State)**

1. The Council of State is the political advisory body of the President of the Republic and shall be headed by him or herself.
2. The Council of State shall comprise:
 - a) Former Presidents of the Republic who were not removed from office;
 - b) The Speaker of the National Parliament;

- c) The Prime Minister;
- d) Five citizens elected by the National Parliament in accordance with the principle of proportional representation and for the period corresponding to the legislative term, provided that they are not members of the organs of sovereignty.
- e) Five citizens designated by the President of the Republic for the period corresponding to the term of office of the President, provided that they are not members of the organs of sovereignty.

Section 91
(Competence, organisation and functioning of the Council of State)

1. It is incumbent upon the Council of State to:
 - a) Express its opinion on the dissolution of the National Parliament;
 - b) Express its opinion on the dismissal of the Government;
 - c) Express its opinion on the declaration of war and the making of peace;
 - d) Express its opinion on any other cases set out in the Constitution and advise the President of the Republic in the exercise of his or her functions, as requested by the President;
 - e) To draft its Rules of Procedures;
2. The meetings of the Council of State shall not be open to the public.
3. The organisation and functioning of the Council of State shall be established by law.

TITLE III

NATIONAL PARLIAMENT

CHAPTER I

STATUS AND ELECTION

Section 92
(Definition)

The National Parliament is the organ of sovereignty of the Democratic Republic of East Timor that represents all Timorese citizens and is vested with legislative supervisory and political decision making powers.

Section 93
(Election and composition)

1. The National Parliament shall be elected by universal, free, direct, equal, secret and personal suffrage.
2. The National Parliament shall be made up of a minimum of fifty-two and a maximum of sixty-five Members.
3. The law shall establish the rules relating to constituencies, eligibility conditions, nominations and electoral procedures.
4. Members of the National Parliament shall have a term of office of five years.

Section 94
(Immunities)

1. The Members of National Parliament shall not be held liable for civil, criminal or disciplinary proceedings in regard to votes and opinions expressed by them while performing their functions.
2. Parliamentary immunities may be withdrawn in accordance with the Rules of Procedures of the National Parliament.

CHAPTER II

COMPETENCE

Section 95
(Competence of the National Parliament)

1. It is incumbent upon the National Parliament to make laws on basic issues of the country's domestic and foreign policy.
2. It is exclusively incumbent upon the National Parliament to make laws on:
 - a) The borders of the Democratic Republic of East Timor, in accordance with Section 4;
 - b) The limits of the territorial waters, of the exclusive economic area and of the rights of East Timor to the adjacent area and the continental shelf;

- c) National symbols, in accordance with item 2 of Section 14;
- d) Citizenship;
- e) Rights, freedoms and guarantees;
- f) The status and capacity of the person, family law and inheritance law;
- g) Territorial division;
- h) The electoral law and the referendum system;
- i) Political parties and associations;
- j) The status of Members of the National Parliament;
- k) The status of office holders in the organs of State;
- l) The bases for the education system;
- m) The bases for the health and social security system;
- n) The suspension of constitutional guarantees and the declaration of the state of siege and the state of emergency;
- o) The Defence and Security policy;
- p) The tax policy;
- q) The budget system.

3. It is also incumbent upon the National Parliament:

- a) To ratify the appointment of the President of the Supreme Court of Justice and of the High Administrative, Tax and Audit Court;
- b) To deliberate on progress reports submitted by the Government;
- c) To elect one member for the Superior Council for the Judiciary and the Superior Council for the Public Prosecution;
- d) To deliberate on the State Plan and Budget and the execution report thereof;
- e) To monitor the execution of the State budget;

- f) To approve and denounce agreements and ratify international treaties and conventions;
- g) To grant amnesty;
- h) To give consent to trips by the President of the Republic on State visits;
- i) To approve revisions of the Constitution by a majority of two-thirds of the Members of Parliament;
- j) To authorise and confirm the declaration of the state of siege or the state of emergency;
- k) To propose to the President of the Republic the submission to referendum of issues of national interest.

4. It is also incumbent upon the National Parliament:

- a) To elect its Speaker and other members of the Chair;
- b) To elect five members for the Council of State;
- c) To prepare and approve its Rules of Procedure;
- d) To set up the Standing Committee and establish the other parliamentary Committees.

Section 96 (Legislative authorisation)

1. The National Parliament may authorise the Government to make laws on the following matters:
 - a) Definition of crimes, sentences, security measures and their respective prerequisites;
 - b) Definition of civil and criminal procedure;
 - c) Organisation of the Judiciary and status of magistrates;
 - d) General rules and regulations for the public service, the status of the civil servants and the responsibility of the State;
 - e) General bases for the organisation of public administration;
 - f) Monetary system;

- g) Banking and financial system;
 - h) Definition of the bases for a policy on environment protection and sustainable development;
 - i) General rules and regulations for radio and television broadcasting and other mass media;
 - j) Civic or military service;
 - k) General rules and regulations for requisition and expropriation for public purposes;
 - l) Means and ways of intervention, expropriation, nationalisation and privatisation of means of production and land on grounds of public interest, as well as criteria for the establishment of compensations in such cases.
2. Laws authorizing legislation shall define the subject, sense, scope and duration of the authorisation, which may be renewed.
 3. Laws on legislative authorisation shall not be used more than once and shall lapse with the dismissal of the Government, with the end of the legislative term or with the dissolution of the National Parliament.

Section 97
(Legislative initiative)

1. The power to initiate laws lies with:
 - a) The Members of Parliament;
 - b) The parliamentary groups;
 - c) The Government.
2. There shall be no submission of bills, draft legislation or amendments involving, in any given fiscal year, any increase in State expenditure or any reduction in State revenues provided for in the Budget or Rectifying Budgets.
3. Bills and draft legislation that have been rejected shall not be re-introduced in the same legislative session in which they have been tabled.
4. Bills and draft legislation that have not been voted on shall not need to be re-introduced in the ensuing legislative session, except in case of end of the legislative term.

5. Draft legislation shall lapse with the dismissal of the Government.

Section 98
(Parliamentary appraisal of statutes)

1. Statutes other than those approved under the exclusive legislative powers of the Government may be submitted to the National Parliament for appraisal, for purposes of terminating their validity or for amendment, following a petition of one-fifth of the Members of Parliament and within thirty days following their publication. This timeframe shall exclude the days when the functioning of the National Parliament is suspended.
2. The National Parliament may suspend, in part or in full, the force of a statute until it is appraised.
3. The suspension shall lapse after the National Parliament has held 10 plenary meetings without taking a final decision.
4. Where termination of validity is approved, the statute shall cease to be in force from the date of the publication of the resolution in the Official Gazette, and it shall not be published again in the same legislative session.
5. The parliamentary appraisal of a statute shall lapse if, after such a statute has been submitted for appraisal, the National Parliament takes no decision on it, or, having decided to make amendments, it does not approve a law to that effect before the corresponding legislative session ends, provided fifteen plenary meetings have been held.

CHAPTER III
ORGANISATION AND FUNCTIONING

Section 99
(Legislative term)

1. The legislative term shall comprise five legislative sessions, and each legislative session shall have the duration of one year.
2. The regular period of functioning of the National Parliament shall be defined by the Rules of Procedure.
3. The National Parliament convenes on a regular basis following notice by its Speaker.
4. The National Parliament convenes on an extraordinary basis whenever so deliberated by the Standing Committee, at the request of one third of Members or following notice of the President of the Republic with a view to addressing specific issues.

5. In case of dissolution, the elected National Parliament shall commence a new legislative term, the length of which shall be increased by the time needed to complete the legislative session in progress at the date of the election.

**Section 100
(Dissolution)**

1. The National Parliament shall not be dissolved during the 6 months immediately following its election, during the last half-year of the term of office of the President of the Republic or during a state of siege or a state of emergency, on pain of rendering the act of dissolution null and void.
2. The dissolution of the National Parliament does not affect the continuance in office of its Members until the first meeting of the National Parliament after the ensuing election.

**Section 101
(Attendance by Members of the Government)**

1. Members of the Government have the right to attend plenary sessions of the National Parliament and may take the floor as provided for in the rules of procedures.
2. Sittings shall be fixed at which members of the Government shall be present to answer questions from Members of Parliament in accordance with the Rules of Procedure.
3. The National Parliament or its Committees may request members of the Government to take part in their proceedings.

CHAPTER IV

STANDING COMMITTEE

**Section 102
(Standing Committee)**

1. The Standing Committee shall sit when the National Parliament is dissolved or in recession and in the other cases provided for in the Constitution;
2. The Standing Committee shall be presided over by the Speaker of the National Parliament and shall be comprised of Deputy Speakers and Parliament Members designated by the parties sitting in the Parliament in accordance with their respective representation.

3. It is incumbent upon the Standing Committee:
 - a) To follow-up the activities of the Government and the Public Administration;
 - b) To co-ordinate the activities of the Committees of the National Parliament;
 - c) To take steps for the convening of Parliament whenever deemed necessary;
 - d) To prepare and organise sessions of the National Parliament;
 - e) To give its consent regarding trips by the President of the Republic in accordance with Section 80;
 - f) To lead relations between the National Parliament and similar parliaments and institutions of other countries;
 - g) To authorise the declaration of the state of siege or the state of emergency.

TITLE IV
GOVERNMENT

CHAPTER I
DEFINITION AND STRUCTURE

Section 103
(Definition)

The Government is the organ of sovereignty responsible for conducting and executing the general policy of the country and is the supreme organ of Public Administration.

Section 104
(Composition)

1. The Government shall comprise the Prime Minister, the Ministers and the Secretaries of State.
2. The Government may include one or more Deputy Prime Ministers and Deputy Ministers.
3. The number, titles and competencies of ministries and secretariats of State shall be laid down in a Government statute.

Section 105
(Council of Ministers)

1. The Council of Ministers shall comprise the Prime Minister, the Deputy Prime Ministers, if any, and the Ministers.
2. The Council of Ministers shall be convened and chaired by the Prime Minister.
3. The Deputy Ministers, if any, and the Secretaries of State may be required to attend meetings of the Council of Ministers, without a right to vote.

CHAPTER II *FORMATION AND RESPONSIBILITY*

Section 106 **(Appointment)**

1. The Prime Minister shall be designated by the political party or alliance of political parties with parliamentary majority and shall be appointed by the President of the Republic, after consultation with the political parties sitting in the National Parliament.
2. The remaining members of the Government shall be appointed by the President of the Republic following proposal by the Prime Minister.

Section 107 **(Responsibility of the Government)**

The Government shall be accountable to the President of the Republic and to the National Parliament for conducting and executing the domestic and foreign policy in accordance with the Constitution and the law.

Section 108 **(The Programme of the Government)**

1. Once appointed, the Government should develop its programme, which should include the objectives and tasks proposed, the actions to be taken and the main political guidelines to be followed in the fields of government activity.
2. Once approved by the Council of Ministers, the Prime Minister shall, within a maximum of thirty days after appointment of the Government, submit the Programme of Government to the National Parliament for consideration.

Section 109 **(Consideration of the Programme of Government)**

1. The Programme of the Government shall be submitted to the National Parliament for consideration. Where the National Parliament is not in session, its convening for this purpose shall be mandatory.
2. Debate on the programme of the Government shall not exceed five days and, prior to its closing, any parliamentary group may propose its rejection or the Government may request the approval of a vote of confidence.
3. Rejection of the programme of the Government shall require an absolute majority of the Members in full exercise of their functions.

Section 110
(Request for vote of confidence)

The Government may request the National Parliament to take a vote of confidence on a statement of general policy or on any relevant matter of national interest.

Section 111
(Vote of no confidence)

1. The National Parliament may, following proposal by one-quarter of the Members in full exercise of their functions, pass a vote of no confidence on the Government with respect to the implementation of its programme or any relevant matter of national interest.
2. Where a vote of no confidence is not passed, its signatories shall not move another vote of no confidence during the same legislative session.

Section 112
(Dismissal of the Government)

1. The dismissal of the Government shall occur when:
 - a) A new legislative term begins;
 - b) The President of the Republic accepts the resignation of the Prime Minister;
 - c) The Prime Minister dies or is suffering from a permanent physical disability;
 - d) Its programme is rejected for the second consecutive time;
 - e) A vote of confidence is not passed;
 - f) A vote of no confidence is passed by an absolute majority of the Members in full exercise of their functions;

2. The President of the Republic shall only dismiss the Prime Minister in accordance with the cases provided for in the previous item and when it is deemed necessary to ensure the regular functioning of the democratic institutions, after consultation with the Council of State.

Section 113
(Criminal liability of the members of Government)

1. Where a member of the Government is charged with a criminal offence punishable with a sentence of imprisonment for more than two years, he or she shall be suspended from his or her functions so that the proceedings can be pursued.
2. Where a member of the Government is charged with a criminal offence punishable with a sentence of imprisonment for a maximum of two years, the National Parliament shall decide whether or not that member of the Government shall be suspended so that the proceedings can be pursued.

Section 114
(Immunities for members of the Government)

No member of the Government may be detained or imprisoned without the permission of the National Parliament, except for a felonious crime punishable with a maximum sentence of imprisonment for more than two years and in *flagrante delicto*.

CHAPTER III

COMPETENCIES

Section 115
(Competence of the Government)

1. It is incumbent upon the Government:
 - a) To define and implement the general policy of the country, following its approval by the National Parliament;
 - b) To guarantee the exercise of the fundamental rights and freedoms of the citizens;
 - c) To ensure public order and social discipline;
 - d) To prepare the State Plan and the State Budget and execute them following their approval by the National Parliament;
 - e) To regulate economic and social sector activities;

- f) To prepare and negotiate treaties and agreements and enter into, approve, accede and denounce international agreements which do not fall under the competence of the National Parliament or of the President of the Republic;
- g) To define and implement the foreign policy of the country;
- h) To ensure the representation of the Democratic Republic of East Timor in the international relations;
- i) To lead the social and economic sectors of the State;
- j) To lead the labour and social security policy;
- k) To guarantee the defence and consolidation of the public domain and the property of the State;
- l) To lead and co-ordinate the activities of the ministries as well as the activities of the remaining institutions answerable to the Council of Ministers;
- m) To promote the development of the co-operative sector and the support for household production;
- n) To support private enterprise initiatives;
- o) To take actions and make all the arrangements necessary to promote economic and social development and to meet the needs of the Timorese people;
- p) To exercise any other competencies as provided by the Constitution and the law.

2. It is also incumbent upon the Government in relation with other organs :

- a) To submit bills and draft resolutions to the National Parliament;
- b) To propose to the President of the Republic the declaration of war or the making of peace;
- c) To propose to the President of the Republic the declaration of the state of siege or the state of emergency;
- d) To propose to the President of the Republic the submission to referendum of relevant issues of national interest;
- e) To propose to the President of the Republic the appointment of ambassadors, permanent representatives and special envoys;

3. The Government has exclusive legislative powers on matters concerning its own organisation and functioning, as well as on the direct and indirect management of the State.

Section 116
(Competencies of the Council of Ministers)

It is incumbent upon the Council of Ministers:

- a) To define the general guidelines of the government policy as well as those for its implementation;
- b) To deliberate on a request for a vote of confidence from the National Parliament;
- c) To approve bills and draft resolutions;
- d) To approve statutes, as well as international agreements that are not required to be submitted to the National Parliament;
- e) To approve actions by the Government that involve an increase or decrease in public revenues or expenditures;
- f) To approve plans.

Section 117
(Competencies of members of the Government)

1. It is incumbent upon the Prime Minister:

- a) To be the Head of Government;
- b) To chair the Council of Ministers;
- c) To lead and guide the general policy of the Government and co-ordinate the activities of all Ministers, without prejudice to the direct responsibility of each Minister for his or her respective governmental department.
- d) To keep the President of the Republic informed on matters of domestic and foreign policy of the Government;
- e) To perform other duties conferred by the Constitution and the law.

2. It is incumbent upon the Ministers:

- a) To implement the policy defined for their respective Ministries;

- b) To ensure relations between the Government and the other organs of the State in the area of responsibility of their respective Ministries.
3. Government statutes shall be signed by the Prime Minister and the Ministers in charge of the respective subject matter.

TITLE V
COURTS

CHAPTER I
COURTS AND THE JUDICIARY

Section 118
(Jurisdiction)

1. Courts are organs of sovereignty with competencies to administer justice in the name of the people.
2. In performing their functions, the courts shall be entitled to the assistance of other authorities.
3. Court decisions shall be binding and shall prevail over the decisions of any other authority.

Section 119
(Independence)

Courts are independent and subject only to the Constitution and the law.

Section 120
Review of unconstitutionality

The courts shall not apply rules that contravene the Constitution or the principles contained therein.

Section 121
(Judges)

1. Jurisdiction lies exclusively with the judges installed in accordance with the law.
2. In performing their functions, judges are independent and owe obedience only to the Constitution, the law and to their own conscience.

3. Judges have security of tenure and, unless otherwise provided for by law, may not be transferred, suspended, retired or removed from office.
4. To guarantee their independence, judges may not be held liable for their judgments and decisions, except in the circumstances provided for by law.
5. The law shall regulate the judicial organisation and the status of the judges of the courts of law.

Section 122
(Exclusivity)

Judges in office may not perform any other functions, whether public or private, other than teaching or legal research, in accordance with the law.

Section 123
(Categories of courts)

1. There shall be the following categories of courts in the Democratic Republic of East Timor:
 - a) The Supreme Court of Justice and other courts of law;
 - b) The High Administrative, Tax and Audit Court and other administrative courts of first instance;
 - c) Military Courts.
2. Courts of exception shall be prohibited and there shall be no special courts to judge certain categories of criminal offence.
3. There may be Maritime Courts and Arbitration Courts.
4. The law shall determine the establishment, organisation and functioning of the courts provided for in the preceding items.
5. The law may institutionalise means and ways for the non-judicial resolution of disputes.

Section 124
(Supreme Court of Justice)

1. The Supreme Court of Justice is the highest court of law and the guarantor of a uniform enforcement of the law, and has jurisdiction throughout the national territory.
2. It is also incumbent on the Supreme Court of Justice to administer justice on matters of legal, constitutional and electoral nature.

3. The President of the Supreme Court of Justice shall be appointed by the President of the Republic from among judges of the Supreme Court of Justice for a term of office of four years.

Section 125
(Functioning and Composition)

1. The Supreme Court of Justice shall operate:
 - a) In sections, like a court of first instance, in the cases provided for in the law;
 - b) In plenary, like a court of second and single instance, in the cases expressly provided for in the law;
2. The Supreme Court of Justice shall consist of career judges, magistrates of the Public Prosecution or jurists of recognised merit in number to be established by law, as follows:
 - a) One elected by the National Parliament;
 - b) And all the others designated by the Superior Council for the Judiciary.

Section 126
(Electoral and Constitutional Competence)

1. It is incumbent upon the Supreme Court of Justice, on legal and constitutional matters:
 - a) To review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of the State;
 - b) To provide an anticipatory verification of the legality and constitutionality of the statutes and referenda;
 - c) To verify cases of unconstitutionality by omission;
 - d) To rule, as a venue of appeal, on the suppression of norms considered unconstitutional by the courts of instance;
 - e) To verify the legality regarding the establishment of political parties and their coalitions and order their registration or dissolution, in accordance with the Constitution and the law;

- f) To exercise all other competencies provided for by the Constitution or the law.
2. It is incumbent upon the Supreme Court of Justice, in the specific field of elections:
- a) To verify the legal requirements for candidates for the office of President of the Republic;
 - b) To certify at last instance the regularity and validity of the acts of the electoral process, in accordance with the respective law;
 - c) To validate and proclaim the results of the electoral process.

**Section 127
(Eligibility)**

- 1. Only career judges or magistrates of the Public Prosecution or jurists of recognised merit of East Timorese nationality may become members of the Supreme Court of Justice.
- 2. In addition to the requirements referred to in the preceding item, the law may define other requirements.

**Section 128
(Superior Council for the Judiciary)**

- 1. The Superior Council for the Judiciary is the organ of management and discipline of the judges of the courts and it is incumbent upon it to appoint, assign, transfer and promote the judges.
- 2. The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and shall have the following members:
 - a) One designated by the President of the Republic;
 - b) One elected by the National Parliament;
 - c) One designated by the Government;
 - d) One elected by the judges of the courts of law from among their peers;
- 3. The law shall regulate the competence, organisation and functioning of the Superior Council for the Judiciary.

Section 129
(High Administrative, Tax and Audit Court)

1. The High Administrative, Tax and Audit Court is the highest body in the hierarchy of the administrative, tax and audit courts, without prejudice to the competence of the Supreme Court of Justice.
2. The President of the High Administrative, Tax and Audit Court is elected from among and by respective judges for a term of office of four years.
3. It is incumbent upon the High Administrative, Tax and Audit Court as a single instance to monitor the lawfulness of public expenditure and to audit State accounts.
4. It is incumbent upon the High Administrative, Tax and Audit Court and the administrative and tax courts of first instance:
 - a) To judge actions aiming at resolving disputes arising from legal, fiscal and administrative relations;
 - b) To judge contentious appeals against decisions made by State organs, their respective office holders and agents;
 - c) To perform all the other functions as established by law.

Section 130
(Military Courts)

1. It is incumbent upon military courts to judge in first instance crimes of military nature.
2. The competence, organisation, composition and functioning of military courts shall be established by law.

Section 131
(Court Hearings)

Court hearings shall be public, unless the court hearing a matter rules otherwise through a well-founded order to safeguard personal dignity or public morality and national security, or guarantee its own smooth operation.

CHAPTER II

PUBLIC PROSECUTORS

Section 132
(Functions and Status)

1. Public Prosecutors have the responsibility for representing the State, prosecuting, ensuring the defence of the underage, absentees and the disabled, defending the democratic legality, and promoting the enforcement of the law.
2. Public Prosecutors shall be a body of judicial officers, hierarchically graded, and shall be accountable to the Prosecutor-General.
3. In performing their duties, Public Prosecutors shall be subject to legality, objectivity and impartiality criteria, and obedience toward directives and orders as established by law.
4. Public Prosecutors shall be governed by their own statutes, and shall only be suspended, retired or dismissed under the circumstances provided for in the law.
5. It is incumbent upon the Office of the Prosecutor-General to appoint, assign, transfer and promote public prosecutors and exercise disciplinary actions.

Section 133
(Office of the Prosecutor-General)

1. The Office of the Prosecutor-General is the highest authority in public prosecution, and its composition and competencies shall be defined by law.
2. The Office of the Prosecutor-General shall be headed by the Prosecutor-General, who, in his or her absence or inability to act, shall be replaced in accordance with the law.
3. The Prosecutor-General shall be appointed by the President of the Republic for a term of office of four years, in accordance with the terms established by law.
4. The Prosecutor-General shall be accountable to the Head of State and shall submit annual reports to the National Parliament.
5. The Prosecutor-General shall request the Supreme Court of Justice to make a generally binding declaration of unconstitutionality of any law ruled unconstitutional in three concrete cases.
6. Deputy Prosecutors-General shall be appointed, dismissed or removed from office by the President of the Republic after consultation with the Superior Council for the Public Prosecution.

Section 134
(Superior Council for the Public Prosecution)

1. The Superior Council for the Public Prosecution is an integral part of the office of the Prosecutor-General.
2. The Superior Council for the Public Prosecution shall be headed by the Prosecutor-General and shall comprise the following members:
 - a) One designated by the President of the Republic;
 - b) One elected by the National Parliament;
 - c) One designated by the Government;
 - d) One elected by the magistrates of the Public Prosecution from among their peers.
3. The law shall regulate the competence, organisation and functioning of the Superior Council for the Public Prosecution.

CHAPTER III

LAWYERS

Section 135 (Lawyers)

1. Legal and judicial aid is of social interest, and lawyers and defenders shall be governed by this principle.
2. The primary role of lawyers and defenders is to contribute to the good administration of justice and the safeguard of the rights and legitimate interests of the citizens.
3. The activity of lawyers shall be regulated by law.

Section 136 (Guarantees in the activity of lawyers)

1. The State shall, in accordance with the law, guarantee the inviolability of documents related to legal proceedings. No search, seizure, listing or other judicial measures shall be permitted without the presence of the competent magistrate and, whenever possible, of the lawyer concerned.
2. Lawyers have the right to contact their clients personally with guarantees of confidentiality, especially where the clients are under detention or arrest in military or civil prison centres.

TITLE VI
PUBLIC ADMINISTRATION

Section 137
(Public Administration general principles)

1. Public Administration shall aim at meeting public interest, in the respect for the legitimate rights and interests of citizens and constitutional institutions.
2. The Public Administration shall be structured to prevent excessive bureaucracy, provide more accessible services to the people and ensure the contribution of individuals interested in its efficient management.
3. The law shall establish the rights and guarantees of the citizens, namely against acts likely to affect their legitimate rights and interests.

PART IV
ECONOMIC AND FINANCIAL ORGANISATION

TITLE I
GENERAL PRINCIPLES

Section 138
(Economic organisation)

The economic organisation of East Timor shall be based on the combination of community forms with free initiative and business management, as well as on the co-existence of the public sector, the private sector and the co-operative and social sector of ownership of means of production.

Section 139
(Natural resources)

1. The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone, which are essential to the economy, shall be owned by the State and shall be used in a fair and equitable manner in accordance with national interests.
2. The conditions for the exploitation of the natural resources referred to in item 1 above should lend themselves to the establishment of mandatory financial reserves, in accordance with the law.

3. The exploitation of the natural resources shall preserve the ecological balance and prevent destruction of ecosystems.

**Section140
(Investments)**

The State shall promote national investment and establish conditions to attract foreign investment, taking into consideration the national interests, in accordance with the law.

**Section141
(Land)**

Ownership, use and development of land as one of the factors for economic production shall be regulated by law.

***TITLE II
FINANCIAL AND TAX SYSTEM***

**Section 142
(Financial system)**

The structure of the financial system shall be determined by the law in such a way as to guarantee the formation, collection and security of savings, and that the financial resources necessary for economic and social development are provided.

**Section 143
(Central Bank)**

1. The State shall establish a national central bank jointly responsible for the definition and implementation of the monetary and financial policy.
2. The Central Bank functions and its relationship with the National Parliament and the Government shall be established by law, safeguarding the management autonomy of the financial institution.
3. The Central Bank shall have exclusive competence for issuing the national currency.

Section 144
(Tax System)

1. The State shall establish a tax system aimed at meeting the financial requirements of the State and the fair distribution of national income and wealth.
2. Taxes shall be established by law, which shall determine obligation, tax benefits and the guarantees of taxpayers.

Section 145
(State Budget)

1. The State Budget shall be prepared by the Government and approved by the National Parliament.
2. The Budget law shall provide, based on efficiency and effectiveness, a breakdown of the revenues and expenditures of the State, as well as preclude the existence of secret appropriations and funds.
3. The execution of the Budget shall be monitored by the High Administrative, Tax and Audit Court and by the National Parliament.

PART V
NATIONAL DEFENCE AND SECURITY

Section 146
(Defence Force)

1. The East Timor defence force, FALINTIL-ETDF, composed exclusively by national citizens, has the responsibility of providing military defence for the Democratic Republic of East Timor and shall have a single system of organisation for the whole national territory.
2. FALINTIL-ETDF shall guarantee national independence, territorial integrity and the freedom and security of the populations against any aggression or external threat, in respect for the constitutional order.
3. FALINTIL-ETDF shall be non-partisan and shall owe obedience to the competent organs of sovereignty in accordance with the Constitution and the laws, and shall not intervene in political matters.

Section 147
(Police and security forces)

1. The police shall defend the democratic legality and guarantee the internal security of the citizens, and shall be strictly non-partisan.

2. Prevention of crime shall be undertaken with due respect for human rights.
3. The law shall determine the rules and regulations for the police and other security forces.

Section 148
(Superior Council for Defence and Security)

1. The Superior Council for Defence and Security is the consultative organ of the President of the Republic on matters relating to defence and sovereignty.
2. The Superior Council for Defence and Security shall be headed by the President of the Republic and shall include civilian and military entities, the number of civilian entities being higher than the number of military entities.
3. The composition, organisation and functioning of the Superior Council for Defence and Security shall be defined by law.

PART VI
GUARANTEE AND REVISION OF THE CONSTITUTION

TITLE I
GUARANTEE OF THE CONSTITUTION

Section 149
(Anticipatory review of constitutionality)

1. The President of the Republic may request the Supreme Court of Justice to undertake an anticipatory review of the constitutionality of any statute submitted to him or her for promulgation.
2. The preventive review of the constitutionality may be requested within twenty days from the date on which the statute is received, and the Supreme Court of Justice shall hand down its ruling within twenty-five days, a time limit that may be reduced by the President of the Republic for reasons of emergency.
3. If the Supreme Court of Justice rules that the statute is unconstitutional, the President of the Republic shall submit a copy of the ruling to the Government or the National Parliament and request the reformulation of the statute in accordance with the decision of the Supreme Court of Justice.
4. The veto for unconstitutionality of a statute from the National Parliament that has been submitted for promulgation can be circumvented under section 88, with the necessary amendments.

Section 150
(Abstract review of constitutionality)

Declaration of unconstitutionality may be requested by:

- a) The President of the Republic;
- b) The Speaker of the National Parliament;
- c) The Prosecutor-General , based on the refusal by the courts, in three concrete cases, to apply a statute deemed unconstitutional;
- d) The Prime Minister;
- e) One fifth of the Members of the National Parliament;
- f) The Ombudsman.

Section 151
(Unconstitutionality by omission)

The President of the Republic, the Prosecutor-General and the Ombudsman may request the Supreme Court of Justice to review the unconstitutionality by omission of any legislative measures deemed necessary to enable the implementation of the constitutional provisions.

Section 152
(Appeals on constitutionality)

1. The Supreme Court of Justice has jurisdiction to hear appeals against any of the following court decisions:
 - a) Decisions refusing to apply a legal rule on the grounds of unconstitutionality;
 - b) Decisions applying a legal rule the constitutionality of which was challenged during the proceedings.
2. An appeal under paragraph (1) (b) may be brought only by the party who raised the question of unconstitutionality.
3. The regime for filing appeals shall be regulated by law.

Section 153
(Decisions of the Supreme Court of Justice)

Decisions of the Supreme Court of Justice shall not be appealable and shall be published in the official gazette. They shall have a general binding effect on processes of abstract and concrete monitoring, when dealing with unconstitutionality.

TITLE II ***CONSTITUTIONAL REVISION***

Section 154 **(Initiative and time of revision)**

1. It is incumbent upon Members of Parliament and the Parliamentary Groups to initiate constitutional revision.
2. The National Parliament may revise the Constitution after six years have elapsed since the last date on which a law revising the Constitution was published.
3. The period of six years for the first constitutional review shall commence on the day the present Constitution enters into force.
4. The National Parliament, regardless of any timeframe, may take on powers to revise the Constitution by a majority of four-fifths of the Members of Parliament in full exercise of their functions.
5. Proposals for revision should be submitted to the National Parliament one hundred and twenty days prior to the date of commencement of debate.
6. After submission of a proposal for constitutional revision under the terms of item 5 above, any other proposal shall be submitted within 30 days.

Section 155 **(Approval and promulgation)**

1. Amendments to the Constitution shall be approved by a majority of two-thirds of the Members of Parliament in full exercise of their functions.
2. The new text of the Constitution shall be published together with the revision law.
3. The President of the Republic shall not refuse to promulgate a revision law.

Section 156 **(Limits on matters of revision)**

1. Laws revising the Constitution shall respect:

- a) National independence and the unity of the State;
 - b) The rights, freedoms and guarantees of citizens;
 - c) The republican form of government;
 - d) The separation of powers;
 - e) The independence of the courts;
 - f) The multi-party system and the right of democratic opposition;
 - g) The free, universal, direct, secret and regular suffrage of the office holders of the organs of sovereignty, as well as the system of proportional representation;
 - h) The principle of administrative deconcentration and decentralisation;
 - i) The National Flag;
 - j) The date of proclamation of national independence.
2. Paragraphs c) and i) may be reviewed through a national referendum, in accordance with the law.

Section 157
(Limits on time of revision)

No action may be taken to revise the Constitution during a state of siege or a state of emergency.

PART VII
FINAL AND TRANSITIONAL PROVISIONS

Section 158
(Treaties, agreements and alliances)

1. Confirmation, accession and ratification of bilateral and multilateral conventions, treaties, agreements or alliances that took place before the entry into force of the present Constitution shall be decided upon by the respective competent bodies on a case-by-case basis.
2. The Democratic Republic of East Timor shall not be bound by any treaty, agreement or alliance entered into prior to the entry into force of the Constitution which is not confirmed or ratified or adhered to, pursuant to item 1 above.

3. The Democratic Republic of East Timor shall not recognise any acts or contracts concerning the natural resources referred to in item 1 of Section 139 entered into or undertaken prior to the entry into force of the Constitution which are not confirmed by the competent bodies after the Constitution enters into force.

Section 159
(Working Languages)

Indonesian and English shall be working languages within civil service side by side with official languages as long as deemed necessary.

Section 160
(Serious Crimes)

Acts committed between the 25th of April 1974 and the 31st of December 1999 that can be considered crimes against humanity of genocide or of war shall be liable to criminal proceedings with the national or international courts.

Section 161
(Illegal appropriation of assets)

Illegal appropriation of mobile and fixed assets that took place before the entry into force of the present Constitution is considered crime and shall be resolved as provided for in the Constitution and the law.

Section 162
(Reconciliation)

1. It is incumbent upon the Commission for Reception, Truth and Reconciliation to discharge functions conferred to it by UNTAET Regulation No. 2001/10.
2. The competencies, mandate and objectives of the Commission shall be redefined by the Parliament whenever necessary.

Section 163
(Transitional judicial organization)

1. The collective judicial instance existing in East Timor, composed of national and international judges with competencies to judge serious crimes committed between the 1st of January and the 25th of October 1999, shall remain operational for the time deemed strictly necessary to conclude the cases under investigation.
2. The judicial Organization existing in East Timor on the day the present Constitution enters into force shall remain operational until such a time as the new judicial system is established and starts its functions.

Section 164
(Transitional competence of the Supreme Court of Justice)

1. After the Supreme Court of Justice starts its functions and before the establishment of courts as laid down in Section 129, the respective competence shall be exercised by the Supreme Court of Justice and other courts of justice.
2. Until such a time as the Supreme Court of Justice is established and starts its functions all powers conferred to it by the Constitution shall be exercised by the highest judicial instance of the judicial organization existing in East Timor.

Section 165
(Previous Law)

Laws and regulations in force in East Timor shall continue to be applicable to all matters except to the extent that they are inconsistent with the Constitution or the principles contained therein.

Section 166
(National Anthem)

Until the national anthem is approved by the ordinary law pursuant to item 2 of Section 14 “Pátria, Pátria, Pátria, Timor-Leste a nossa nação “ shall be sung in official ceremonies.

Section 167
(Transformation of the Constituent Assembly)

1. The Constituent Assembly shall be transformed into a National Parliament with the entering into force of the Constitution of the Republic.
2. In its first term of office, the National Parliament shall be comprised of eighty-eight members on an exceptional basis.
3. The Speaker of the Constituent Assembly shall remain in office until such a time as the National Parliament elects its Speaker as provided for in the Constitution.

Section 168
(Second Transitional Government)

The Government appointed under UNTAET Regulation No. 2001/28 shall remain in office until such a time as the first constitutional Government is appointed and sworn in by the President of the Republic, as provided for in the Constitution.

Section 169
(Presidential Election of 2002)

The President elected under UNTAET Regulation No. 2002/01 shall take on the competencies and fulfil the mandate provided for in the Constitution.

Section 170
(Entry into force of the Constitution)

The Constitution of the Democratic Republic of East Timor shall enter into force on the 20th of May of 2002.

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

DECREE-LAW No. 15/2004
01 SEPTEMBER 2004

**RECRUITMENT AND TRAINING FOR THE PROFESSIONAL CAREERS OF
THE JUDICIARY AND THE OFFICE OF THE PUBLIC DEFENDER**

If a new judicial culture entails new work organisation techniques, it is certain that a successful organisation and development of the justice system is predicated on particularly qualified staff.

The norms governing the present decree-law establish transparent rules for selecting and recruiting professionals for the judicial careers and provide for a compulsory two-and-a-half-year period for theoretical and practical training. Such period is deemed sufficient for the acquisition and development of human, ethical and techno-legal knowledge capable of qualifying staff for different judicial functions.

Access to judicial careers will be conditional upon the rigour of the contents of the training to be provided by the Legal Training Centre and the subsequent assessment of the interest and performance shown by candidates.

The structure adopted for in-service training consists of a curricular component common to the various judicial operators and training phases specific to each of the professional careers: the Judiciary, the Public Prosecution, and the Public Defence.

A reassuring factor is introduced into the career of those who, while serving as untenured practitioners, have been fulfilling their functions since the restoration of Timor-Leste's independence, by assuring them the possibility of truly accessing, through a short preparation period, the in-service training that will begin in January 2005, in the event they fail to be immediately admitted into the career.

Pursuant to section 115.3 of the Constitution, the Government enacts the following that shall have the force of law:

SECTION I GENERAL PROVISIONS

Scope 1 Scope

The present decree regulates the competitive selection process for the recruitment of candidates for tenured positions as magistrates and public defenders and establishes the conditions for attending and assessing the in-service training course for the purposes of accessing the respective professional careers.

Article 2 Objectives

The objective of the in-service training course is to help trainees develop the skills necessary for the discharge of their respective functions.

Article 3 Eligibility requirements

1. Candidates for the in-service training course for the career of judicial magistrate, of public prosecutor and of public defender must meet the following requirements:
 - (a) be a Timorese national;
 - (b) hold a degree in law;
 - (c) possess written and spoken knowledge of the country's official languages, namely Portuguese and Tetum;
 - (d) meet all other requirements for admission into the civil service.
2. As proof of the requirement referred to in paragraph (b), the candidate must produce a diploma or certificate stating the subjects studied and the respective marks, or alternatively, the curricular plan of the course.
3. Candidates shall be obligated to produce a translation into either of the official languages of Timor-Leste whenever documents are written in a foreign language.
4. The diploma or certificate attesting to the academic qualifications referred to in this article shall be previously certified by the competent service of the Ministry of Education, Culture, Youth and Sports, under penalty of rejection of one's candidacy.

Article 4 Vacancies and opening of the competitive selection process

1. The Superior Council for the Judiciary, the Office of the Prosecutor-General, and the Office of the Public Defender, shall, by the 1st of July of the year in which the competitive selection process will be opened, inform the Minister of Justice of the estimated number of professionals required, taking into account the duration of the training period.
2. The Minister of Justice shall have a notice on the opening of the competitive selection process published in the Official Gazette by the end of July.
3. Candidates shall lodge their candidacies without having to choose at the time the professional career they wish to take up.

Article 5
Notice on the opening of the competitive selection process

The notice on the opening of the selection process must contain:

- (a) an indication of the positions to be filled in each professional career;
- (b) the examinations to be taken, the lists of the matters to be dealt with in such examinations, and the date and venue for the examinations;
- (c) the composition of the selection panel;
- (d) the deadline for submitting candidacies addressed to the Director of the Legal Training Centre, hereinafter referred to as the CFJ.

Article 6
List of candidates

1. Once the deadline for submitting candidacies has lapsed, the CFJ shall affix to its notice board the list of the selected candidates, including the excluded ones, if any, and the respective decision shall be communicated to each of the candidates, stating that they may lodge a claim with the Minister of Justice within 10 days.
2. Once decisions on claims, which may not be rebutted, are issued, or where no claims have been made, the list of selected candidates shall be published in the Official Gazette.

SECTION II
SELECTION OF CANDIDATES

Article 7
Selection panel

1. The selection panel is comprised of three members and three substitutes appointed by the Minister of Justice on the basis of a proposal made by the CJF Managing Council.
2. Members of the selection panel must have a relevant degree, and the chairperson and his or her substitute shall be designated in their instrument of appointment.

Article 8
Selection tests

1. Selection tests shall include a written and an oral phase.
2. A specific date shall be designated for each test of the written phase, but the oral test shall take place on just one day.

Article 9
Written phase

1. The written phase shall consist of:

- (a) answers to practical questions in the area of criminal law and criminal procedural law and a written assignment about a topic in an official language other than that used in answering the practical questions;
 - (b) answers to practical questions in the area of civil law and civil procedural law and a written assignment about a topic under the same conditions as those referred in the previous paragraph.
2. Each test of the written phase shall last for three (3) hours and the identity of the candidates shall be kept in anonymity.
 3. Each written test shall be marked according to a marking system on a scale of 0 to 20, taking into account the linguistic and techno-legal knowledge demonstrated by the examinees.
 4. Candidates who have obtained not less than 10 marks in each test of the written phase shall be admitted into the oral phase.

Article 10 **Oral phase**

1. In the oral phase, with a sixty-minute duration, the selection panel members shall ask the candidates questions from among the following topics:
 - (a) professional ethics and deontology;
 - (b) civil and criminal law, substantive and adjective;
 - (c) constitutional law and judicial organisation;
 - (d) motivations for the intended professional career.
2. In the oral phase, the selection panel members shall be constituted of examiners who know either Portuguese or Tetum and answers shall be given in the language in which the question was asked.
3. Candidates shall be ranked on a scale of 0 to 20 marks, and such marks shall be entered on the list to be affixed to the notice board at the end of the oral tests taken on a daily basis.

Article 11 **Final mark**

1. The final mark shall correspond to the arithmetic average of the marks obtained in the two written tests and in the oral test and names of the candidates shall be shown in descending order on a final ranking list.
2. The best-ranked candidates shall attend the in-service training course until the vacancies advertised at the opening of the competitive selection process have been filled.

SECTION III **IN-SERVICE TRAINING COURSE**

Article 12
Organisation and duration of the in-service training course

1. The in-service training course shall include an academic component and a practical phase to be organised by the CFJ.
2. Complementary training activities may be included in the in-service training course, notably participation in conferences or study tours, which shall not be subject to assessment.
3. The academic component of the in-service training course shall be common to all trainees and shall have a one-year duration; and the CFJ premises in Dili, or in a place other than the former, to be designated by the Managing Council, shall be its venue.
4. The practical phase shall have a six-month duration and shall be conducted separately according to the professional career to be pursued by the trainees and shall take place in the judicial service as may be suggested by the respective professional bodies and approved by the CFJ Managing Board for that purpose.
5. Seminars covering matters of specific relevance to each of the professional careers may also be organised during the practical phase.

Article 13
Structure of the in-service training course

1. The syllabus contents of the academic component of the in-service training course shall require annual approval by the CFJ Pedagogical Board, and shall be provided by teaching staff and trainers hired by the Centre.
2. The practical phase aims to develop trainees' capacity to functionally apply acquired knowledge by exposing them to various real-life situations they might face while practicing their profession.

Article 14
Assessment of the academic component

1. By the end of the academic phase trainees shall be assessed in a joint meeting of the teaching staff and various trainers who have imparted training, and shall be ranked on a scale of 0 to 20 marks.
2. The following factors relating to each of the training phases shall be taken into consideration in ranking each trainee:
 - (a) written assignments;
 - (b) written tests;
 - (c) oral participation;
 - (d) interest in the learning matters;
 - (e) ease of oral and written expression;
 - (f) other factors of relevance to the performance of the respective judicial function.

3. On the basis of this assessment a ranking list shall be drawn up in accordance with the marks obtained by each candidate and those candidates who have obtained less than 10 marks shall be excluded from the following phase.

Article 15 **Filling of advertised vacancies**

1. Trainees shall, within eight (8) days after the date on which the list referred to in subarticle 14.3 above is affixed, indicate in an application letter addressed to the CFJ Director their preferences in terms of posting to a given professional career.

2. Trainees may, in the application letter referred to in the previous subarticle, only indicate, in order of preference, the professional careers where there are vacancies to be filled.

3. The filling of vacancies by the different professional groups shall be according to the following criteria:

- (a) preference stated by the trainee;
- (b) marks obtained by the trainee in the academic phase.

4. In the case of equal marks, the arithmetic average of the final mark obtained in the phase of selection of candidates and age shall be successively taken into account, with preference being given to older candidates.

Article 16 **Practical training phase**

1. Officers responsible for the coordination of the in-service training courses and, if necessary, trainers shall, for the practical training phase, be appointed in each of the professional careers where there are trainees.

2. Coordinators shall draw up a curricular plan for this training phase to be approved by the Pedagogical Board and shall also monitor trainees technically in the course of this phase, together with trainers, where applicable.

3. At the end of this phase, coordinators and trainers shall jointly prepare a report on the performance and capacity for the function demonstrated by each trainee, and shall propose, for this phase, an arithmetic mark on the scale of 0 to 20.

4. Trainees with an assessment below 10 marks shall be excluded.

5. Marks in this phase shall be subject to endorsement by the Pedagogical Board, which shall reasonably ponder all other informative elements relating to the trainee; and the Board may, on an exceptional basis, vote against the exclusion referred to in the previous subarticle, where the weaknesses evinced by a trainee during the course might be overcome as he or she exercises his or her functions.

Article 17 **Ranking**

Upon completion of the in-service training course trainees shall be ranked in their respective professional career in descending order of the arithmetic mark resulting from the

marks obtained in the academic phase and in the practical phase, and such a list shall be published in the Official Gazette once it has been endorsed by the CFJ Managing Board.

Article 18 **Drop-outs**

1. A trainee may drop out of the in-service training course by filing an application with the CFJ Director to that effect.
2. The Director may, on the basis of an opinion issued by the Pedagogical Board, and once the reasons for such a dropout and other relevant circumstances have been considered, authorise the dropout to attend the next course.

Article 19 **Exclusion**

Trainees with an absenteeism rate corresponding to more than 10% of the total duration, in hours, of any of the phases of the in-service training course shall be excluded.

SECTION IV **PROBATIONARY PHASE**

Article 20 **Probationary phase**

1. Once the in-service training phase is completed, trainees shall be appointed to a probationary phase of exercise of their respective functions by the respective bodies to which they are disciplinarily accountable.
2. During this phase trainees may use one of the following job titles:
 - (a) probational judicial magistrate;
 - (b) probational public prosecutor;
 - (c) probational public defender.
3. The probationary phase shall have a one-year duration and in the course of it trainees shall have the rights, and shall be bound by the specific professional duties and incompatibilities, inherent in the respective career, and shall earn a salary as may be determined by law.

Article 21 **Goals of the probationary phase**

The goals of the probationary phase include:

- (a) deepen knowledge acquired in the previous phase, taking into account the specificities of the respective career;

- (b) familiarise trainees with judicial practice on the grounds of the quality and efficiency that are normally required for the exercise of functions in the beginning of a career;
- (c) sharpen sense of accountability and capacity to ponder and decide of the trainees;
- (d) fill lacunae that may have been detected at the level of legal training and that prove to be of relevance to legal practice;

Article 22
Execution of the probationary phase

1. Each trainee shall, during this phase, be posted to a District Court as the incumbent, where there is no such incumbent, or as an assistant to the incumbent, but exercising, in either case, specific competencies and assisting the incumbent with the distribution of case files.
2. In the exercise of the functions attached to the respective career, trainees shall be assisted by a coordinator designated by each of the Superior Councils or Services, to which they are accountable, but on the latter's own responsibility.
3. Where the elements gathered call into question the suitability of the trainee for the exercise of functions, the respective Superior Council or Service to which he or she is accountable shall order an appraisal of the trainee's performance.
4. Where the appraisal report confirms that the trainee is unfit for the job, he or she shall be notified to rebut the conclusion of the appraisal report within ten (10) days, if he or she so wishes;
5. Exclusion shall be decided upon where the respective Superior Council or Service, to which the trainee is accountable, considers that the determining factors of the trainee's unfitness cannot be rectified.

Article 23
Cooperation with CFJ

During the probationary phase, the CFJ shall, on its own initiative or at the request of Superior Councils or Services to which the trainees are accountable, promote training activities with the aim of guaranteeing updates on the legal knowledge of the beneficiaries and the debate of new problematic issues on legal practice.

Article 24
Permanent posting

Once the probationary phase is over, trainees shall be considered fit or unfit, with the latter being excluded.

SECTION II
COMPLEMENTARY TRAINING

Article 25

Goals

Complementary training aims:

- (a) to exchange individual experiences of the magistrates from a perspective of professional advancement;
- (b) to reflect on data collected while practicing the legal profession, with a view to a better definition, enhancement and harmonisation of criteria in the exercise of their functions;
- (c) to study specialised areas of law;
- (d) to update legal information;
- (e) to follow, and receive training in, legislative reforms.

Article 26

Organisation and annual plan

1. The CFJ shall ensure complementary training activities by drawing up an annual plan and report of those activities.
2. The preparation of the annual plan for complementary training shall be preceded by consultation with the Superior Councils and Services to which the recipients are accountable.
3. The CFJ Managing Board shall approve such plan and circulate it in a timely manner to the Councils and Services in order that the recipients may reconcile their professional agenda with attendance at training sessions.
4. Professionals interested in attending complementary training activities shall register with the CFJ and notify the body to which they are accountable.

Article 27

Assessment of complementary training

1. The CFJ shall issue individual diplomas to participants in complementary training, provided they attend at least 80% of the training time.
2. The Superior Councils and Services to which to which participants in complementary training are accountable shall assess such actions in curricular competitive processes for progressing within the respective careers.
3. The selection of candidates for training to be attended by magistrates and public defenders overseas shall also take into account previously attended training activities.

Article 28

Training for promotion or specialisation

1. At the request of the respective Superior Council or Service, the CFJ shall organise training courses or activities with the aim of providing technical-practical knowledge appropriate for the exercise of functions in higher courts or specialised courts on grounds of the matters being dealt with or in specialised areas of law.

2. The complementary training programme, which is intended for the purposes above, shall be jointly organised by the Superior Council and by the CFJ Pedagogical Board.

Article 29
Other complementary training

1. The CFJ shall cooperate with other institutions, public or private, in organising complementary training courses with the focus being placed on the legal and administrative areas.
2. The conditions of such cooperation are set out in the Memorandum of Understanding to be signed by the CFJ Managing Board and by the management of those bodies or institutions.

SECTION VI
TRANSITIONAL PROVISIONS

Article 30
Exceptional regime for access to in-service training

1. Access to the in-service training course for the judicial magistrate and public defender careers, the start of which is scheduled for 2005, requires attendance in preparatory training sessions during the period between September and November 2004, to be provided at the Legal Training Centre.
2. Preparatory training sessions may be attended by probational judicial magistrates, public prosecutors and public defenders currently exercising their functions, even though they have not yet met, nor will have they met by December 2004, the legal requirements for becoming tenured practitioners in their respective careers.
3. Persons holding a degree in law, whether they have a labour relationship with the civil service or not, shall be eligible to attend the preparatory training sessions.

Article 31
Deadline for applications

Persons having an interest in attending the preparatory training sessions shall apply for enrolment through a letter addressed to the CFJ Managing Board not later than 15 August 2004.

Article 32
Admissibility

1. The probational judicial magistrates, public prosecutors and public defenders referred to in subarticle 30.2 above shall be entitled to attend the preparatory training sessions, provided that they apply for attendance in a timely manner; however, they may drop out of the preparatory training sessions if, in the meantime, they come to meet the conditions for them to be admitted into their respective career as tenured practitioners.
2. Applicants mentioned in subarticle 30.3 above shall submit, attached to the application letter, their "*curriculum vitae*" and any other documents or information deemed relevant.

Article 33
Assessment of applicants

1. Applications referred to in subarticle 32.2 above shall be primarily reviewed and assessed by the CFJ Managing Board members who shall, at the end, prepare a list of selected applicants ranked in descending order.
2. The CFJ Managing Board may, whenever deemed necessary, take action on their own initiative, notably personal interviews with applicants, with a view to properly assessing applications.
3. The fifteen (15) best-ranked applicants shall be allowed to attend the preparatory training sessions.

Article 34
Conditions for attendance

Remuneratory conditions/scholarships:

- (a) probationary judicial magistrates, public prosecutors and public defenders referred to in subarticle 30.2 above shall attend the preparatory training sessions under the same statutory conditions as those under which they have been performing their respective functions, namely at the remuneratory level, until such a time as their admission as tenured practitioners may be determined or not.
- (b) all other applicants who have a labour relationship with the civil service shall attend the preparatory training sessions on temporary assignment and shall retain their respective statutory rights;
- (c) for applicants without any labour relationship with the State, or those who, though included in the previous subarticles, have lost that labour relationship in the meantime, a scholarship for the duration of the preparatory training shall be jointly determined by the Minister of Finance and Planning and by the Minister of Justice.

Article 35
Training subjects

1. The CFJ Managing Board shall approve in August 2004 the syllabus for the preparatory training and the final assessment criteria.

2. The primary goal of training during that period is to develop applicants' capacity in view of the 2005 in-service training, at the linguistic level- Portuguese and Tetum- and in terms of a uniform consolidation of legal concepts and tenets that are characteristic of the civil law system.

Article 36 Assessment

1. An overall test shall be given in the first week of December 2004 in order to assess the achievement of the individuals attending the preparatory training sessions.
2. During that same period each trainer shall hand in an individual assessment form in respect of each trainee in which his or her progress, interest and attitudes toward the subjects taught are reviewed.

Article 37 Managing Board Meeting

The Managing Board shall meet with the trainers in the second week of December and shall, once all assessment elements mentioned in the previous article have been pondered, decide what applicants, if any, cannot be admitted to attending the preparatory training sessions.

Article 38 Subsidiary regime

During the preparatory period, the in-service training and in the ensuing probationary period, the provisions of the present decree-law, duly adapted, and taking into account the exceptional nature of the selection of candidates, shall apply.

Article 39 Trainers and lecturers in 2005/2007

1. In 2005, teaching and training shall be geared toward the capacity building of Timorese lecturers and trainers and provided by international staff with experience in legal systems of a matrix identical to the one that comprises the Timorese normative frameworks.
2. In 2006 and 2007, Timorese staff shall progressively ensure the different training phases even though initially these phases are still under the purview of the international staff referred to in the previous subarticle.

Article 40 Teaching and training team

1. The training to be provided in Timor-Leste shall be ensured by a team of versatile lecturers and trainers comprised of international and Timorese staff selected and coordinated by the CFJ.
2. The overall coordination and assessment of the lecturers and trainers shall be done by a General Coordinator answerable to the CFJ Managing Board.

Article 41
Training for 2004

1. The CFJ Managing Board shall approve in August 2004 a provisional programme for complementary training for the months of October, November and December 2004.
2. Such programme shall select as its preferential objectives for the training activities those areas with the most acute needs at the level of functioning of the legal system and shall cover the most relevant legal instruments, the approval of which is expected to take place in the short run.

Article 42
Subsidiary legislation

The provisions of Sections III and IV of the present decree-law, duly adapted, shall apply to the in-service training and to the probationary period referred to in the exceptional transitional regime.

Article 43
Entry into force

The present decree-law shall enter into force on the day following the date of its publication.

Approved by the Council of Ministers on 28 July 2004

The Prime Minister

[Signed]
(Mari Bim Amude Alkatiri)

The Minister of Justice

[Signed]
(Domingos Maria Sarmiento)

Promulgated on 3 August 2004

To be published.

The President of the Republic

[Signed]
(Kay Rala Xanana Gusmão)

**DEMOCRATIC REPUBLIC OF EAST TIMOR
NATIONAL PARLIAMENT
Speaker**

Law n.º /2002

STATUTES OF JUDICIAL MAGISTRATES

As an emerging nation, East Timor is faced with a particular situation in the establishment of sovereignty organs, especially in relation with Courts.

Defining the statutes of judicial magistrates is, at this juncture of the country's life, an issue of urgency, specially when one bears in mind the need to establish the Superior Council of the Judiciary, which is the managerial and disciplinary body of the judiciary that will select judicial magistrates entering the career, besides outlining the career itself, the rights and duties of judicial magistrates, their disciplinary responsibility and the Judicial Inspection.

There was a need to establish a specific transitional regime, mainly in relation to the Superior Council of the Judiciary and the Court of Appeal, and a need to contemplate rules that will make it possible for the judicial organization in East Timor to continue operating under the current system, pursuant to item 2 of Section 163 of the Constitution, but also a need to put in place mechanisms that will strengthen the newly-born East Timorese judiciary.

The text now being published was a legislative initiative from the Government, and it was submitted by the National Parliament to ample debate within the civil society regarding the matters at issue. It also incorporates a number of suggestions from sectors involved in the administration of justice.

Pursuant to item Section 92, and item 1 of Section 95 of the Constitution, the National Parliament enacts the following that shall have the force of law:

**CHAPTER I
General Principles**

**Section 1
Scope of application**

1. The provisions of these Statutes shall apply to judicial magistrates.

2. The Statutes shall also apply to trainee judicial magistrates, prior to their entering the judiciary, and to replacement of judicial magistrates, with the necessary adaptations.

Section 2 Composition of the judiciary

The judiciary shall be composed of professional judges of the Supreme Court of Justice, the High Administrative, Tax and Audit Court and other judicial courts provided for by law.

Section 3 Functions of the judiciary

1. The functions of the judiciary shall be applying the law, administering justice and enforcing its decisions.
2. Judicial magistrates shall not refrain from judging on the grounds of absence, vagueness or ambiguity of law, or on the basis of insurmountable doubt.
3. The duty of allegiance to law shall not be put aside on the pretext that a rule is unfair or immoral.

Section 4 Independence

Judicial magistrates shall adjudicate in accordance with the Constitution, the law and their conscience and they shall not be subject to orders, instructions or directions, except for the duty of lower courts to obey to decisions awarded by higher courts on cases appealed against.

Section 5 Non-liability

Judicial magistrates shall not be made liable for their judgments and decisions, except in cases specifically provided for by law.

Section 6 Security of tenure

Judicial magistrates shall not be reassigned, suspended, promoted, made to retire, removed from office or otherwise have their situation changed, unless in cases provided for by these Statutes.

Section 7 Guarantees of impartiality

Judicial magistrates shall not intervene in cases involving, as a judicial officer, a person to whom they are related by marriage, common life, family or kinship of any degree in the direct line or up to the second degree in the collateral line.

CHAPTER II

Superior Council of the Judiciary

Section 8

Definition

1. The Superior Council of the Judiciary is the managerial and disciplinary body of judicial magistrates, which is charged with appointing, assigning, re-assigning and promoting judges.
2. The Superior Council of the Judiciary shall also exercise jurisdiction over judicial officers, as provided for under this Chapter.

Section 9

Composition

1. The Superior Council of the Judiciary shall be presided over by the President of the Supreme Court of Justice and composed of the following members:
 - a) One designated by the President of the Republic;
 - b) One elected by the National Parliament;
 - c) One designated by the Government;
 - d) One judicial magistrate elected by his or her peers;
2. The Members of the Superior Council of the Judiciary referred to under paragraphs a), b) and c) of item 1 above shall be jurists with at least five years of relevant professional experience.
3. The Council shall, at its first meeting, elect its Vice-President by secret ballot and simple majority.

Section 10

Duration of the term of office

Members of the Superior Council of the Judiciary shall serve a four-year term of office .

Section 11

Replacement of the President

The President of the Superior Council of the Judiciary shall be replaced, in his or her non-presence, absence and inability to act, by the Vice-President.

Section 12
Requirements for designation and election

Only judicial magistrates definitively appointed and in full exercise of their functions may be elected and designated as members of the Superior Council of the Judiciary.

Section 13
Election among peers

1. The election of a judicial magistrate to become a member of the Superior Council of the Judiciary is held by secret ballot of physically present judicial magistrates in full exercise of their functions.
2. Once ballot papers have been counted, the judicial magistrate with the highest number of valid cast votes shall be elected.
3. The position of member of the Superior Council of the Judiciary may not be refused.

Section 14
Oversight and endorsement

It shall be incumbent upon the President of the Supreme Court of Justice to ensure oversight of the electoral act, decide on claims that may be submitted and endorse the results of the election referred to under Section 13.

Section 15
Competencies of the Superior Council of the Judiciary

1. It shall be incumbent upon the Superior Council of the Judiciary:
 - a) to appoint, assign, re-assign, promote, dismiss and appreciate professional merits of, exercise disciplinary action over, and generally conduct all acts of a similar nature regarding, judicial magistrates;
 - b) to appreciate professional merits of, and exercise disciplinary action over, judicial officers, without prejudice to disciplinary competencies given to judges;
 - c) to appoint the Council Secretary, judicial inspectors, accounting inspectors and inspection secretaries;

- d) to order the conduction of special inspections, investigations and inquiries into courts;
 - e) to prepare and approve the rules of procedure of the Council;
 - f) to advise on retirement requests submitted by judicial magistrates;
 - g) to perform other functions given by law.
2. It is also incumbent upon the Superior Council of the Judiciary to appoint on an exceptional basis assistant judges for courts, where there is a prolonged absence of an incumbent causing serious disruption of services or an excessive accumulation of workload.

Section 16

Functioning and frequency of meetings

1. The Superior Council of the Judiciary shall function in plenary sessions and through a disciplinary panel.
2. The Council shall be convened by its President or at the request of two thirds of its members.
3. The Superior Council of the Judiciary shall convene in ordinary sessions every three months and in special sessions whenever there is a notice to this effect.
4. The Council shall function when two thirds of its members are attending and shall decide by the majority of present voters.
5. Membership to the Superior Council of the Judiciary shall be forfeited if a member fails to attend unjustifiably on two consecutive or intercalated occasions.
6. Members of the Superior Council of the Judiciary shall be issued with a presence voucher for their attendance of meetings, the value of which shall be determined by a joint instruction of the Ministry of Planning and Finance and the Ministry of Justice.

Section 17

Forms of deliberation

Deliberations of the Superior Council of the Judiciary shall be in the form of resolution or instruction, which shall be published in the Official Gazette.

Section 18

Competencies of the President

It shall be incumbent upon the President of the Superior Council of the Judiciary:

- a) to represent the Superior Council of the Judiciary;
- b) to convene and preside over meetings of the Council;
- c) to oversee the administrative services of the Council;
- d) to lead and coordinate Judicial Inspection;
- e) to exercise all other functions given by law.

Section 19

Competencies of the Vice-President

It shall be incumbent upon the Vice-President to exercise functions delegated to him or her by the President of the Superior Council of the Judiciary and to replace the latter in his or her absences or inability to act.

Section 20

Delegation of powers

The Superior Council of the Judiciary may delegate to the President, with the authority to sub-delegate to the Vice-President, powers:

- a) to order special inspections;
- b) to initiate inquiries and investigations;
- c) to authorize judicial magistrates or officers to take leave of absence;
- d) to solve any other matters of an urgent nature.

Section 21

Secretariat

1. The Superior Council of the Judiciary shall have its own secretariat headed by a Secretary appointed from among first class state judges.
2. It shall be incumbent upon the Secretary of the Superior Council of the Judiciary:
 - a) to lead the secretariat services;
 - b) to submit to the President's decision matters requiring deliberation by senior authority;
 - c) to prepare minutes of the Council meetings;
 - d) to execute and enforce execution of the Council deliberations;
 - e) to prepare the Council's draft budgets;

- f) to organize and update personal files, records and CVs of judicial magistrates;
- g) to exercise all other functions given by law.

CHAPTER III

Judicial Inspection

Section 22

Structure

1. Judicial Inspection shall function within the Superior Council of the Judiciary.
2. Judicial Inspections services shall comprise judicial inspectors, accounting inspectors and inspection secretaries.
3. The staffing table of judicial inspectors, accounting inspectors and inspection secretaries shall be determined by an instruction of the Minister of Justice, following a proposal of the Superior Council of the Judiciary.
4. Judicial inspectors shall be appointed from among first class state judges with “Very Good” rating;
5. Accounting inspectors shall be appointed from among judicial secretaries with at least “Good” rating.

Section 23

Competencies

1. It shall be incumbent upon Judicial Inspection to inform the Superior Council of the Judiciary on the status, needs and deficiencies of judicial services so that the Council may take required action.
2. It is also incumbent upon Judicial Inspection to gather information regarding performance, merits and professional integrity of judicial magistrates and judicial officers.
3. Inspection intended to gather information regarding performance, merits and professional integrity of judicial magistrates may not be conducted by an inspector holding a position that is equal or lower than that of the judicial magistrate being inspected.
4. It shall also be incumbent upon judicial inspectors to conduct inspections, inquiries, investigations and to initiate disciplinary cases regarding judges, as may be ordered by the Superior Council of the Judiciary.

5. It shall be incumbent upon accounting inspectors to monitor accounting and treasury services.

Section 24
Inspection report

1. Once an inspection has been completed, the Inspector shall prepare a detailed report in which he or she shall necessarily address the following issues:
 - a) Court organization;
 - b) Functioning and status of services;
 - c) Service premises;
 - d) Difficulties encountered by persons inspected;
 - e) Merits and demerits of persons inspected.
2. The inspection report shall give general indications aimed to overcome difficulties encountered by persons inspected, without directly interfering with the service.

CHAPTER IV
Career of judicial magistrates

Section 25
Requirements to enter the judiciary

1. Requirements to be appointed as a judicial magistrate are as follows:
 - a) to be a national citizen;
 - b) to be in full exercise of one's civil and political rights;
 - c) to be older than 25 years of age;
 - d) to have a University degree in law;
 - e) to have gone through a probationary period with "Good" rating;
 - f) to have sat and passed specific exams;
 - g) to meet other requirements as may be established by law for appointment to the public service;
2. The pre-entrance probationary period, which shall last 2 to 3 years, shall be regulated in a separate legal instrument.
3. Trainee judges are not members of the judicial career.

Section 26

Career

1. Judicial career shall comprise the following categories:
 - a) Third-class State Judge;
 - b) Second-class State Judge;
 - c) First-class State Judge;
 - d) Counsellor Judge.
2. Career shall start at the level of third-class state judge.

Section 27

Promotion of judges

1. Third-class state judges with at least three years' practice and 'Good' rating shall be promoted to second-class state judges.
2. Second-class state judges with at least four years' practice, 'Good' rating and who have sat and passed specific exams shall be promoted to first-class state judges.

Section 28

Promotion vacancy

1. Promotion to the next class shall always be conditional upon vacancy availability.
2. Promotion to the immediately higher level to fill vacancies shall always be through written competition among applicants matching the profile outlined under Section 27.
3. For the written competition, due consideration shall always be given to rating achieved at specific exams, performance record and seniority of applicants, by descending order of rates.
4. It shall be incumbent upon the Superior Council of the Judiciary to establish procedures to apply for promotion.

Section 29

Counsellor Judges

1. The President of the Supreme Court of Justice shall be appointed by the President of the Republic from among judges of the Supreme Court for a four-year term of office, subject to ratification by the National Parliament.
2. Counsellor Judges shall be designated by the Superior Council of the Judiciary and appointed by the President of the Supreme Court of Justice from among first-class state judges with 'Very Good' rating and at least eight years' practice in the class.
3. The National Parliament shall elect one Counsellor Judge from among magistrates and jurists.
4. The Supreme Court of Justice may initially be composed of a minimum of 5 Counsellor Judges.
5. Counsellor Judges shall be in office until such a time as they reach limit age or time of service, except for other reasons as may be provided for by law.

Section 30

Appointment of state judges

State judges shall be appointed by the Superior Council of the Judiciary.

Section 31

Swearing-in

Judicial magistrates shall be sworn in as follows:

- a) Counsellor Judges shall be sworn in before the President of the Republic and the Speaker of the National Parliament;
- b) State judges and assistant judges shall be sworn in before the President of the Superior Council of the Judiciary.

Section 32

Oath of office

Upon being sworn in, judicial magistrates shall take the following oath of office:

"I, (name), swear to God and I swear on my honour that I will respect and faithfully enforce the Constitution of the Republic and other applicable laws, and administer justice in an impartial and detached manner."

Section 33

Absence from the swearing-in ceremony

1. An absence from the swearing-in ceremony not justified within prescribed deadlines in case of first appointment shall, without further formalities, cause the appointment to be cancelled and the absentee to be disqualified from being appointed to the same position for the following two years.
2. In other cases, unjustified absence shall be comparable to dereliction of duty.
3. Justification of an absence shall be required within ten days from the date reasonable impediment ceased to exist, along with proof thereof.

CHAPTER V

Incompatibilities, duties, rights and benefits

Section 34

Incompatibilities

Judicial magistrates in office may not perform any other functions, whether public or private, other than teaching and scientific, literary or artistic research, subject to prior authorization by the Superior Council of the Judiciary.

Section 35

Political activity

It shall be prohibited for judicial magistrates to take political positions or engage in active politics within political parties, or to make public statements of a political nature.

Section 36

Legal practice

Judicial magistrates may not provide legal advice other than in a case of their own cause or that of their spouse, descendant or ancestor.

Section 37

Special duties

Judicial magistrates shall specially have the following duties:

- a) to discharge their duties with honesty, detachment, impartiality and dignity;
- b) to maintain professional secrecy in accordance with the law;
- c) to have a low profile behaviour in public and private life, in accordance with the dignity and prestige that the office held involves;
- d) to treat with courtesy and respect those involved in cases, especially the Public Prosecution Service, legal professionals and officers;
- e) to report punctually to scheduled acts;
- f) to refrain from giving out by any means opinion on a case pending trial or decision, or judgement on awards, advices, votes, sentences by judicial bodies, except censure in records of a lawsuit in the exercise of judicial duties or in judicial and technical works;
- g) to refrain from advising or instructing parties to a dispute on any pretext, except in cases specifically provided for by procedural laws;
- h) anything else provided for by law.

Section 38

Necessary residence

1. Judicial magistrates may not take residence outside the area where the court they serve is located, except in duly substantiated cases and authorized in advance by the Superior Council of the Judiciary.
2. For the purpose of the previous item, exception is made to absences on duty, on leave, at weekends and on holidays or in case of an emergency making it impossible to secure authorization in advance.
3. In case of an emergency, the judicial magistrate shall report and justify the absence with the Superior Council of the Judiciary as soon as possible.
4. Absence at weekends and on holidays may not affect performance of urgent activities.
5. Unauthorized absence shall entail, in addition to disciplinary liability, forfeiture of salaries during the period of absence.
6. In case of absence, a judicial magistrate shall indicate where he or she may be located.

Section 39

Professional attire

1. Judicial magistrates shall wear the gown during solemn acts, especially at hearings for discussion and trial, preliminary hearings, including other solemn ceremonies or public acts related to the judiciary.
2. The gown model shall be approved by the Superior Council of the Judiciary.

Section 40

Rights and benefits

1. A Judicial magistrate in full exercise of his or her functions shall be entitled to the following benefits:
 - a) To be treated with the deference required by the function;
 - b) Special treatment in criminal cases where he or she is the defendant and in proceedings of civil liability for acts committed in the exercise of his or her functions or as a result thereof;
 - c) Special personal identity card in a model to be approved by the Superior Council of the Judiciary;
 - d) Special protection for himself or herself, his or her spouse, descendants and property, whenever plausible reasons of security so require;
 - e) Admission to and free movement at all public places by simple production of the personal identity card;
 - f) Residence allowance at a rate to be determined by the State;
 - g) Compensation allowance at a rate to be decided upon by the Government if he or she lives in his or her own dwellings;
 - h) Transport allowance for his or her own personal effects, and those of his or her family, in case of re-assignment not arising out of disciplinary penalty;
 - i) Any other entitlements enshrined in law.
2. Judicial magistrates not in full exercise of their functions shall be entitled to the benefits provided for under paragraphs a), b) and c) of item 1 above.

Section 41

Entitlements of Counsellor Judges

1. A Counsellor Judge shall also be entitled to:
 - a) An automobile ;
 - b) A diplomatic passport for himself or herself and his or her spouse;

- c) The right to use, carry and manifest free of charge a defence weapon and acquisition of ammunition therefor;
 - d) Entertainment allowance.
2. Counsellor judges shall generally enjoy the honours, benefits and precedence bestowed to members of sovereignty organs.

Section 42

Titles

Counsellor judges shall hold the title of Revered (*Venerando*) and they shall be addressed as His or Her Excellency. State judges and other judicial magistrates shall be addressed as His or Her Honourable (*Meretíssimo*).

Section 43

Preventive custody

1. A judicial magistrate may not be arrested or detained without charges, except when caught in the act and the criminal offence carries an imprisonment penalty of more than three years.
2. In case of arrest and detention of a judicial magistrate, he or she shall be immediately taken before a competent judge.
3. Upon detention or arrest, judicial magistrates shall be committed to specific detention centres or put under a regime of separation from other detainees or prisoners.

Section 44

Summons to appear

1. Judicial magistrates may not be summonsed to appear or testify before any authority without prior consent of the Superior Council of the Judiciary.
2. The petition from a requesting entity shall be in writing and duly substantiated.

Section 45

Remuneration

Remuneration regime shall be established by legal instrument, taking into consideration the specific nature of the judicial function, and the concerned judicial magistrate's level and time of service.

Section 46
Leave of absence

1. Judicial magistrates shall be entitled to leave of absence during the period of judicial recess.
2. The Superior Council of the Judiciary may authorize on an exceptional basis that a judicial magistrate takes leave of absence outside the period prescribed under item 1 of this section.
3. Leave of absence and the place where it will be taken shall always be notified to the Superior Council of the Judiciary.

Section 47
Retirement

Principles and rules legally established for the civil service shall apply to judicial magistrates on matters of retirement.

Section 48
Retirement for reasons of age and inability

1. A judicial magistrate is to be considered retired for reasons of age and inability when he or she retires on non-disciplinary grounds.
2. A judicial magistrate retired for reasons of age and inability will continue attached to the court where he or she held office, enjoy the titles, honours and immunities associated to his or her level and may attend solemn ceremonies held at such court, taking a seat on the right hand side of judicial magistrates in active service.
3. Provisions of paragraphs c) and d) of Section 40 shall be extensive to judicial magistrates retired for reasons of age and inability.

Section 49
Time counting

For the purpose of retirement, time of service provided to the State before entering the judiciary shall also count.

Section 50
Resignation

1. Resignation of a judicial magistrate shall be authorized on duly substantiated grounds, subject to a notice delivered 60 days in advance.
2. Resignation shall take effect from the date the notice on resignation authorization was served.
3. Where a decision has not been made within the deadline provided for under item 1 of this section, the request shall be tacitly considered as granted on the last day of that period.

Section 51
Assignments and reassignments

1. Assignments and reassignments of judicial magistrates shall be made after due consideration of service needs and a minimum of disruption to personal and family life of the interested parties.
2. Without prejudice to the provision of the preceding item of this section, service performance record and seniority, in a descending order of preference, shall be decisive for assignments and reassignments.
3. A judicial magistrate may not be reassigned without his or her consent before five years have elapsed from the date he or she started functions at the current court, except for reasons of promotion or on disciplinary grounds.
4. A judicial magistrate who is assigned to a district court at his or her request may not apply for reassignment to another court before five years have elapsed.

Section 52
Permutations

Without prejudice to service convenience and rights of third parties, permutations shall be permitted.

Section 53
Temporary assignments

Judicial magistrates may be appointed to take up temporary assignments, after consultations with the Superior Council of the Judiciary.

Section 54

Temporary assignment of judicial nature

1. The following positions shall be considered as temporary assignments:
 - a) Judicial inspector;
 - b) Magistrate of the Public Prosecution Service;
 - c) Director or lecturer at the Judicial Magistrates Training School;
 - d) Judge at a non-judicial court;
 - e) Head of Department at the Supreme Court;
 - f) Secretary of the Superior Council of the Judiciary;
 - g) Secretary-General of the Supreme Court.
2. Holding any of the positions listed above shall be considered, for all purposes, as actual judicial service.

Section 55

Temporary assignment of non-judicial nature

Time of service actually provided as a temporary assignment of non-judicial nature shall be considered for the purposes of counting time.

Section 56

Evaluation of judicial magistrates

State judges and assistant judges shall be evaluated by the Superior Council of the Judiciary in accordance with their merit of 'Very Good', 'Good', 'Passable' and 'Failed'.

Section 57

Criteria and effects of evaluation

1. Evaluation shall take into consideration the way judicial magistrates exercise their functions, especially their technical knowledge, intellectual ability, detachment, moral and civic reputation.

2. 'Failed' result shall lead to suspension from functions and initiation of an inquiry for unfitness for the function.
3. Where in a disciplinary case initiated on the basis of an inquiry it is concluded that a judicial magistrate no longer qualifies as such but it is possible for him or her to remain in the public service, penalties of compulsory retirement or resignation may, at the request of the interested party, be replaced by resignation.
4. For situations provided for under the preceding item of this section, the case, along with a substantiated advice, shall be referred to the President of the Superior Council for the Judiciary for endorsement and assignment of the interested party to a position in keeping with his or her qualifications.
5. Endorsement of the advice by the President of the Superior Council of the Judiciary shall entitle the interested party to occupy a compatible position in another State service.

Section 58

Elements to be considered for evaluation

1. Elements to be considered for evaluation shall be results of previous inspections, inquiries, investigations or disciplinary cases, time of service, published works in the area of law, annual reports and any other additional elements in the possession of the Superior Council of the Judiciary.
2. Workload in charge of the judicial magistrate and working conditions shall also be taken into account.
3. It shall be mandatory to hear the judicial magistrate on the inspection report and he or she may provide elements as he or she may consider convenient.
4. Considerations that the inspector may subsequently produce on the replies of the inspected person should be made known to the inspected person and may not refer to new facts to his or her disadvantage.

Section 59

Evaluation of judicial magistrates on temporary assignment

1. Judicial magistrates on temporary assignment of judicial nature shall be evaluated as if they were engaged in active service.
2. As regards judicial magistrates on temporary assignment of non-judicial nature, the latest evaluation shall always be considered updated, but a new evaluation may be requested once the temporary assignment has been completed and six months of actual functions have elapsed.

Section 60
Frequency of evaluations

1. Judicial magistrates shall be evaluated at least every three years.
2. An evaluation result that has been granted for more than three years shall be considered out of date, unless failure to evaluate is not to be blamed on the judicial magistrate.
3. 'Good' evaluation result shall be assumed where a judicial magistrate has not been assessed during the period provided for under item 1 of this section, except if the judicial magistrate requests an inspection, in which case it shall be undertaken on a mandatory basis.
4. Evaluation related to subsequent service shall supersede that related to previous service.

CHAPTER VI
Disciplinary liability

Section 61
Disciplinary infraction

Disciplinary offences are facts which, even if merely blameful, are committed by magistrates in violation of professional duties, as well as acts and omissions of their public life, or with repercussions thereon, that are incompatible with the propriety and the dignity indispensable to the exercise of their functions.

Section 62
Subjection to disciplinary jurisdiction

1. A dismissal or change of status of a magistrate shall not prevent his or her punishment for violations committed in the exercise of his or her functions.
2. A dismissed magistrate shall serve the sentence imposed on him or her should he or she resume the exercise of his or her functions.

Section 63
Autonomy of disciplinary jurisdiction

1. Disciplinary proceedings are independent from criminal proceedings.
2. Where a disciplinary case discloses the existence of a criminal offence, the case shall be notified to the Superior Council of the Judiciary forthwith.

Section 64
Scale of penalties

1. Judicial magistrates shall be subject to the following penalties:
 - a) Warning;
 - b) Recorded admonition;
 - c) Fine;
 - d) Compulsory reassignment;
 - e) Suspension from functions;
 - f) Inactivity;
 - g) Compulsory Retirement;
 - h) Dismissal.
2. Without prejudice to paragraph 4 of this section, penalties applied shall always be put into record.
3. Amnesties shall not destroy the effects resulting from the application of penalties, and they shall be registered in the relevant personal file.
4. The penalty provided for in paragraph 1 a) above may be applied independently of any proceeding, as long as a hearing takes place with the possibility of defence by the accused, and shall not be subject to be put into record.

Section 65
Penalty of warning

1. A penalty of warning shall consist of a mere remark or admonition on the irregularity committed.
2. A penalty of warning shall apply to minor disciplinary offences that should not go without a remark.

Section 66
Penalty of recorded admonition

1. A penalty of recorded admonition shall consist of a written reprimand to warn a judicial magistrate that the nature of the act or omission committed may disturb the exercise of his or her functions or have repercussions thereon in a manner incompatible with the dignity required from him or her.
2. Recorded admonition is made by the Superior Council of the Judiciary .
3. A recorded reprimand penalty shall apply to minor breaches that may disturb the exercise of functions or have repercussions thereon in a manner incompatible with the dignity required from a judicial magistrate.

Section 67
Penalty of fine

1. A penalty of fine shall be fixed at a minimum of three and a maximum of thirty days.
2. A penalty of fine shall imply the deduction from the remuneration of the judicial magistrate of the amount corresponding to the number of days for which he or she has been fined.
3. A penalty of fine shall be applicable to cases of negligence or disinterest in fulfilling the duties inherent in the office.

Section 68

Penalty of compulsory reassignment

1. A penalty of reassignment shall consist of assigning the judicial magistrate to a position of a similar category outside the area of jurisdiction or service in which he or she used to exercise his or her functions.
2. A penalty of reassignment shall also imply the loss of 60 days of seniority.
3. A penalty of compulsory reassignment shall be applicable to offences that involve disruption of the prestige required from the judicial magistrate to remain in the environment where he or she exercises his or her functions.

Section 69

Penalty of suspension from exercise of functions and penalty of inactivity

1. A penalty of suspension from exercise of functions and a penalty of inactivity shall consist of the complete removal from service for the duration of the penalties.
2. A penalty of suspension from exercise of functions may consist of ten to ninety working days.
3. A penalty of inactivity shall not last less than six months nor shall it last more than one year.
4. A penalty of suspension from exercise of functions and a penalty of inactivity shall apply to cases of serious neglect or serious lack of interest for the fulfilment of professional duties or when a magistrate is handed out a prison sentence, except where the sentence imposes a dismissal penalty.
5. The prison term served shall be deducted from the disciplinary penalty.
6. A penalty of suspension from exercise of functions shall imply the loss of the period of time that corresponds to the duration of the suspension for purposes of remuneration, seniority and retirement, and it shall also imply re-assignment to a similar position at a court or service other than the one where the judicial magistrate was exercising his or her functions at the time the offence was committed, when the punished judicial magistrate cannot remain in the place where he or she exercises his or her functions without disrupting the prestige required from him or her, which shall be taken into consideration in the disciplinary decision.
7. A penalty of inactivity shall produce the loss of the period of time that corresponds to the duration of the penalty for purposes of remuneration, seniority

and retirement, and the impossibility of promotion or admittance during one year from the last day of serving the penalty.

Section 70

Penalty of compulsory retirement and penalty of dismissal

1. A penalty of compulsory retirement shall consist of the imposition of retirement and shall imply immediate separation from service.
2. A penalty of dismissal shall consist of the definitive removal of the judicial magistrate, with cessation of any links to his or her functions, and shall imply the loss of the status of judicial magistrate, but shall not imply the loss of the right to retirement, under the terms and conditions provided for by law, nor shall it prevent the magistrate from being appointed for public office or other offices that may be exercised, as long as he or she meets the conditions of dignity and trust necessary to the office from which he or she was dismissed.
3. Penalties of compulsory retirement and of dismissal shall be applicable where the judicial magistrate:
 - a) Reveals permanent incapacity to adapt him or herself to the requirements of his or her functions;
 - b) Reveals dishonesty, serious insubordination, or has an immoral or dishonoured conduct;
 - c) Reveals professional incompetence;
 - d) Has been sentenced for a crime committed *in flagrante delicto* and for serious abuse of his or her function, or for a clear and serious violation of the duties inherent therein.
4. Dereliction of duty shall always correspond to a penalty of dismissal.

Section 71

Promotion of defendant magistrates

1. Where a criminal or disciplinary case is pending, the judicial magistrate is graded for promotion or admittance, but the promotion or admittance shall be suspended, and the respective post shall remain vacant until a final decision is reached.
2. Where the case is closed, or the decision to convict is repealed, or the penalty applied does not affect promotion or admittance, the judicial magistrate shall be promoted or appointed, shall occupy his or her place on the list of seniority, and shall be entitled to receive the balance of his or her remuneration, or, where he or she is to be pretermitted, the procedures pertaining to the post reserved for him or her shall be finalised.

Section 72

Degree of penalty

In determining the degree of penalty due consideration shall be given to the seriousness of the fact, the culpability of the magistrate, his or her personality and the circumstances in favour of or against him or her.

Section 73

Special mitigation of the penalty

A penalty may be mitigated in special circumstances by applying a lighter penalty where circumstances exist, which are anterior to, or posterior to, or contemporaneous with, the violation that considerably reduces the seriousness of the fact or the responsibility of the judicial magistrate.

Section 74

Recidivism

1. Recidivism shall exist where a violation is committed before three years have elapsed after the date on which the judicial magistrate has committed an offence for which he or she has been sentenced to a penalty superior to that of admonition, totally or partially fulfilled, as long as the circumstances of the case reveal absence of preventive effectiveness of the previous condemnation.
2. Where the applicable penalty is any one of those provided for in paragraphs c) and f) of item 1, Section 64, its minimum limit, in case of recidivism, shall be equal to one-third, or one-fourth of the maximum limit, respectively.
3. Where the applicable penalty is other than any one of those referred to in paragraph 2 above, a penalty of an immediately superior scale may be applied.

Section 75

Cumulation of offences

1. There shall be cumulation of offences when a judicial magistrate commits two or more offences before the condemnation for any of these violations becomes unimpugnable.
2. Where a cumulation of offences occurs, only one penalty shall be applied and, where violations attract different penalties, only the strongest penalty shall be applied, which will be in accordance with the cumulation, where this is variable.

Section 76

Substitution of penalties applicable to retirees

A penalty of fine, of suspension from exercise of functions, or of inactivity for a retired magistrate or a magistrate who, for some reason, is not exercising his or her functions, shall be substituted by the loss of pension, or of remuneration, of any nature for the corresponding period of time.

Section 77

Time limitation of penalties

Disciplinary penalties shall become void in the following timeframes, counting from the date on which the decision became unimpugnable:

- a) Six months, for a penalty of warning and for a penalty of fine;
- b) One year, for a penalty of reassignment;
- c) Three years, for a penalty of suspension from exercise of functions and for a penalty of inactivity;
- d) Five years, for a penalty of compulsory retirement and for a penalty of dismissal.

Section 78 Disciplinary proceeding

1. Disciplinary proceeding is the means through which disciplinary liability shall take place.
2. A disciplinary proceeding shall be summary and shall not depend upon special formalities, save the hearing, with possibility of defence, by the defendant.
3. Where the action is explicitly purposeless or dilatory, the investigating judicial magistrate shall reject it by substantiating the rejection.

Section 79 Impediments and suspicion

1. Members of the Superior Council of the Judiciary shall not be allowed to conduct and/or to participate in the deliberation of disciplinary proceedings when they are an interested party to the proceeding, on their own behalf or as representatives of other people, or of their spouse, or when any of these people is a relative or has ties of affinity in the direct line or up to the fourth degree in the collateral line with the defendant.
2. A member of the Superior Council of the Judiciary shall not be allowed to participate when a party to the disciplinary proceeding is a person who has instituted a civil proceeding against that member for compensation for damages, or has instituted a criminal proceeding as a consequence of acts committed in the exercise of, or by virtue of, the member's functions, or when a party to such proceeding is a spouse or a relative in the direct line or up to the fourth degree in the collateral line of that person, as long as the action or charge has already been admitted.
3. Serious enmity or deep intimacy with the defendant shall also prevent a member of the Superior Council of the Judiciary from conducting and/or participating in the deliberation of the respective disciplinary proceedings.

Section 80 Confidential character of the disciplinary proceeding

1. Until a final decision is reached, disciplinary proceedings shall have a confidential character.
2. The issuance of certificates of parts of the proceeding at the substantiated request of the defendant shall be allowed, when designed for the defence of legitimate interests.

Section 81
Timeframe for preparation of a disciplinary case

1. Preparation of disciplinary cases shall take place within a maximum of 30 days.
2. The timeframe provided for in paragraph 1 above may only be exceeded in justified cases.
3. The investigating judicial magistrate shall inform the Superior Council of the Judiciary and the defendant of the date on which preparation of the case commences.

Section 82
Number of witnesses during preparatory stage

1. There shall be no limit to the number of witnesses during the preparatory stage.
2. The investigating judicial magistrate may deny the request for hearing witnesses or deponents when he or she deems that the evidence produced is sufficient.

Section 83
Preventive suspension of defendant

1. A judicial magistrate who is a defendant in a disciplinary proceeding may be preventively suspended from the exercise of his or her functions following proposal by the investigating judicial magistrate as long as there are strong indications that the offence will attract, at least, a penalty of reassignment and that his or her continuation in service may be detrimental to the preparation of the case, to the service, or to the required prestige and dignity of the functions.
2. Preventive suspension shall be executed in order to ensure the protection of the personal and professional dignity of the judicial magistrate.
3. Preventive suspension shall not exceed a period of 60 days, renewable on substantive grounds for an additional period of 30 days, and shall not produce the effects provided for under item 4 of Section 69.

Section 84
Charge

1. Once the preparation is finalised along with the disciplinary registration of the defendant, the investigating judicial magistrate shall lodge a charge within a

- period of ten days by expounding on the circumstantial evidence of the disciplinary offence and on those facts that constitute aggravating or mitigating circumstances and shall indicate the legal provisions applicable to the case.
2. Where sufficient circumstantial evidence on the offence or the responsibility of the defendant is not produced or where the disciplinary proceeding is closed, the investigating officer shall prepare, in ten days, his or her report, followed by the other applicable terms.

Section 85

Notification of the defendant

1. The notification shall be handed over to the defendant, or sent by registered mail, with acknowledgement of receipt, and a deadline given, ranging from 10 to 20 days for presentation of defence.
2. Where the whereabouts of the defendant is unknown, the notification shall be made by notices to be affixed on the last known residence of the defendant.

Section 86

Appointment of legal defender

1. Where the defendant cannot prepare the defence for reasons of absence, sickness, mental abnormality or physical incapacity, the investigating judicial magistrate shall appoint a legal defender.
2. When the legal defender is appointed on a date posterior to the notification referred to in Section 91, the timeframe for the defence shall be reopened upon its notification.

Section 87

Examination of the case

During the period of time for presentation of the defence, the defendant, as well as the appointed legal defender or the designated agent may examine the case at the place where it has been filed.

Section 88

Defence of the defendant

1. With the defence, the defendant may indicate witnesses, gather documents or request actions.
2. The number of witnesses to be presented shall not exceed three for each fact.

Section 89

Final Report

Once the production of evidence is finalised, the investigating judicial magistrate shall prepare, within 15 days, a report, which shall contain the facts, the existence of which is considered proven, its qualification and the applicable penalty.

Section 90

Notification of decision

The final decision, accompanied by a copy of the report referred to under Section 95, shall be notified to the defendant in accordance with Section 91.

Section 91

Nullities and irregularities

1. It shall constitute insurmountable nullity the failure to hear the defendant with possibility of defence and the omission of essential actions for the discovery of the truth that can still be usefully undertaken.
2. The other nullities and irregularities shall be considered resolved if they are not used in the defence or, where they occur *a posteriori*, within five days, starting from the date of its acknowledgement.

Section 92

Report on dereliction of duty

Where a judicial magistrate ceases to report to his or her duty station for ten consecutive working days, thus manifesting expressly his or her intention to relinquish duties, or where he or she is absent without justification for 30 consecutive working days, a report thereon shall be drawn up.

Section 93

Presumption of dereliction of duty

1. Unjustified absence from office for 30 consecutive working days shall constitute presumption of dereliction of duty.
2. Presumption referred to in paragraph 1. above may be rebutted in disciplinary proceeding by any means of proof.

Section 94

Revision

1. Condemnatory decisions handed down in disciplinary proceedings may, at any time, be the object of review whenever there are circumstances or means of proof that may demonstrate the inexistence of the facts which determined the punishment and which could not be utilised in due time by the defendant.
2. The review process shall in no case determine the aggravation of the penalty.

Section 95

Process

1. The revision of the process shall be requested by the interested party to the Superior Council of the Judiciary
2. The petition for revision, to be attached to the disciplinary proceeding, should contain the reasons for the petition and the indication of the means of proof to be produced and should be handled with the documents that the interested party was able to obtain.

Section 96 **Sequence of the process of revision**

Once the petition is received, the Superior Council of the Judiciary shall decide, within 30 days, whether the requirements for the revision have been met.

Section 97 **Justified revision**

1. Where the request for review is deemed justified, the decision pronounced on the revised process shall be repealed or changed.
2. Without prejudice to other rights legally provided for, the interested party shall be compensated for the remuneration that he or she may have ceased to receive due to the revised decision.

Section 98 **Enquiries and investigations**

1. The objective of an enquiry is to investigate a given fact.
2. An investigation shall take place whenever there is news regarding facts that require a general investigation into the functioning of a given service.

Section 99 **Preparation of process**

The provisions relating to disciplinary proceedings shall be applicable, *mutatis mutandis*, to the preparation of the process of enquiry or investigation.

Section 100 **Report**

Once the preparation of the process is complete, the enquirer shall prepare a report thereof proposing the closure of the case or the establishment of a disciplinary proceeding, as the case may be.

Section 101

Conversion into disciplinary proceeding

1. Where the existence of infraction is found, the Superior Council of the Judiciary may deliberate that the process of enquiry or investigation, in which the defendant has been heard, constitutes a part of the preparatory phase of the disciplinary proceeding.
2. In the case provided for in paragraph 1. above, the date of launching the enquiry or investigation shall mark the commencement of the disciplinary proceeding.

Section 102 Subsidiary regime

The civil service regime shall apply on a subsidiary basis to judicial magistrates with respect to all administrative and disciplinary matters.

CHAPTER VII Claims, appeals, charges and prepayment of costs

Section 103 Claims

1. Claims arising out of decisions by the President of the Superior Council of the Judiciary may be lodged with the plenary.
2. On matters concerning judicial officers, claims are restricted to deliberations of disciplinary nature having enforced a penalty as serious as, or more serious than, the penalty of compulsory reassignment.

Section 104 Appeals

1. Decisions by the Superior Council of the Judiciary may be appealed against with the Supreme Court of Justice.
2. To consider appeals, the Supreme Court shall establish a panel of three judges designated, for this purpose, for a period of four years. The panel shall be presided over by the most senior judge.
3. Members of the Superior Council of the Judiciary may not serve on the panel mentioned under item 1 of this section.

Section 105 Timeframe and effect of lodging an appeal

1. The timeframe for claiming or lodging an appeal is 15 days from the date of notification.
2. Lodging an appeal shall only take suspension effect where it is related to disciplinary matters or where serious damages to the person lodging the appeal may result from the execution of the act appealed against.

Section 106

Petition requirements

1. A petition shall mention the deliberation being appealed against, as well as the *de facto* and *de jure* grounds, and such petition shall be drafted in a clear and concise manner.
2. A petition shall be made with a document proving the act being appealed against along with all documentary evidence.
3. Where, on substantiated grounds, it was not possible to secure documents within the timeframes, a request may be made for the documents to be submitted subsequently.

Section 107

Steps of an appeal

1. Upon referral of an appeal to the Supreme Court of Justice, the judge rapporteur may invite the person making the appeal to correct defects in the request.
2. Where the judge rapporteur realizes that the period for lodging an appeal has lapsed, or parties thereto are not legitimate or the appeal is clearly illegal, he or she shall make a brief and substantiated statement and submit the case to the first session for consideration and decision, with no need for individual endorsement by the judges.
3. Should the appeal case proceed, the judge rapporteur shall cause copies thereof to be referred to the Superior Council of the Judiciary so that a reply is given within 10 days and, during the same timeframe, the case is referred to the Supreme Court of Justice.
4. After a reply has been received from the Superior Council of the Judiciary or where the timeframe for a reply to be received has expired, and in cases where the appeal may affect rights of third parties, the judge rapporteur shall summon those third parties so that they may reply within 10 days.
5. After replies have been attached or the respective timeframes have expired, the judge rapporteur shall order the notification of the person lodging the

appeal and then the person being appealed against so that they may reply within 10 days.

6. Once allegations have been attached or timeframes have expired, the case is closed and referred to the judge rapporteur who may requisition documents that he or she deems necessary or notify the parties to submit such documents.
7. The case will thereafter be appreciated by all judges of the panel within 48 hours and then referred to the judge rapporteur for decision, which shall be made within 20 days.

Section 108

Charges

Charges shall be determined by the Supreme Court of Justice between 10 and 100 US dollars until such a time as a code on charges applicable to these matters enters into force.

CHAPTER VIII

Transitional provisions

Section 109

Provisional composition of the Superior Council of the Judiciary

1. Until such time as it is possible to appoint career judicial magistrates and establish the Supreme Court of Justice, the Superior Council of the Judiciary shall be presided over by the President of the Court of Appeal and composed of the following members:
 - a) A jurist designated by the President of the Republic;
 - b) A jurist elected by the National Parliament;
 - c) A jurist designated by the Government;
 - d) A trainee judge elected by his or her peers;
2. The Council, at its first session, shall elect a Vice-President by secret ballot and simple majority.
3. Members of the Superior Council of the Judiciary shall have at least a University degree in law and shall be national citizens.
4. The Superior Council of the Judiciary may, whenever it is deemed necessary, request technical advice from international mentor judges serving in the country.
5. On a transitional basis, until conditions are met to establish and provide the Secretariat of the Superior Council of the Judiciary with the necessary

resources, the functions of the Council shall be carried out by judicial officials designated for the purpose.

Section 110

Court of Appeal

1. The Court of Appeal shall exercise the competencies specifically falling under the purview of the Supreme Court of Justice until such a time as the latter becomes operational.
2. Until such time as the Supreme Court of Justice is established and starts functioning, judicial magistrates for the Court of Appeal shall be appointed by the Superior Council of the Judiciary from among probationary judges, taking into consideration their evaluation or rating. One of the judges shall be elected by the National Parliament, as provided for by item 2, Section 125 of the Constitution.
3. Trainee judges appointed to the Court of Appeal shall maintain their respective level and the positions that they hold shall be advertised three years after their appointment.
4. Where it is not possible, through the judiciary, to fill existing vacancies, Counsellor Judges may be appointed, up to a maximum of two, from among magistrates from the Public Prosecution Service assigned to the Supreme Court, or public defenders of recognized merit holding a University degree in law and at least 10 years' experience of forensic practice, or University lecturers in law with at least 10 years' teaching experience.

Section 111

International Judges

1. The provisions of this law shall apply on a transitional basis, and with the necessary adaptations, to international judges engaged to exercise functions in East Timor pursuant to item 1, Section 163 of the Constitution.
2. The Superior Council of the Judiciary may, in exceptional and substantiated cases, select non-East Timorese judges, by comparing different CVs, with at least 15 years' experience and coming from a civil judicial system, to enter the judiciary of East Timor on a provisional basis.

Section 112

Probationary period

The probationary period applicable on the date of entry into force of this law shall now have duration of 3 to 4 years so that a specific complementary training may be given.

Section 113

Repeals

Legislation contrary to this law is hereby repealed, specially relevant legal provisions contained in Regulations n. 1999/1, 1999/3, 2000/11, 2000/25, 2001/18, 2001/25 and 2001/26 of the United Nations Transitional Administration in East Timor (UNTAET).

Passed on 3 September 2002.

The Speaker of the National Parliament

[signed]

Francisco Guterres 'Lu-Olo'

I promulgate on 9 September 2002

[signed]

Xanana

To be published.

**LAW No. 11/2004
OF 29 DECEMBER 2004**

“AMENDING THE STATUTES OF JUDICIAL MAGISTRATES”

1. The Statutes of Judicial Magistrates, established by Law No. 8/2002, of 20 September, has been confronted with difficulties that need to be overcome as a matter of urgency, for the sake of the effective functioning of the Superior Council for the Judiciary, hereinafter referred to as “the Council”, and the Courts.

2. The current non-existence of a mechanism for substituting members of the Superior Council for the Judiciary in their absences and inability to act prevents the Council from making decisions when the majority of its members is absent or the issues to be considered involve their own interests or those of family members of the majority of Council members.

Therefore, a new item 2 has been added to both article 9 and article 109, both of which providing for the appointment of alternate members of the Superior Council for the Judiciary.

3. The current requirement that members of the Superior Council for the Judiciary be jurists causes this Council to be composed only or largely of new law graduates without the maturity, life experience, and the insight required by judicial practice.

It is necessary that people of recognized merit, and with the maturity, life experience, and the insight required, sit on the Superior Council for the Judiciary in order that this organ may make decisions with insight and independence and in accordance with the country’s interests.

Hence, articles 12 and 109, item 3, have been amended.

4. The current requirement that all of the decisions by the Superior Council for the Judiciary be published, regardless of the importance of the matter to which they are related, leads to a waste of public finances in most cases where such publication is not warranted at all.

Amendment to article 17 comes to limit such publication to decisions by the Council on matters that really warrant the publication thereof.

5. The current concentration of all of the decisions on the Council panel reduces the operationality of this organ in responding to simple questions that require an immediate decision for the smooth running of the system on a day-to-day basis.

There is a need to confer competence on the President of the Superior Council for the Judiciary to decide on urgent issues affecting the smooth running of the Courts, while safeguarding those relating to the issues provided for in article 15, item 1, which must, given their importance, be considered by the Council panel.

This is the purpose of amending articles 18 and 20.

6. The need to regulate the conditions for the exercise of jurisdictional functions by probationary judges, particularly when there are career judges, warrants the amendment to article 25, item 3.

7. As it currently reads, article 29 restricts the possibility of jurists who are not magistrates accessing the Supreme Court of Justice, in contravention of section 127, item 1, of the Constitution, which guarantees, on broad terms, that all jurists of recognized merit have access thereto.

Therefore, article 29 is hereby amended to conform to that constitutional provision.

8. The need to simplify the swearing-in system, which today is unjustifiably cumbersome, leads to the amendment of article 31.

9. The need to avoid judicial magistrates having preference for authorised extrajudicial activities, because these are remunerated, to the detriment of the judicial activity, justifies the amendment of article 34.

10. The need to modify the current system for appealing against Council decisions, in order to make them more effective and more adjusted to the needs for a smooth running of the judicial system, justifies the amendment of articles 104 and 105.

11. The recognised shortage of qualified human resources requires the adoption of transitional measures capable of effectively guaranteeing the smooth running of the Superior Council for the Judiciary and the Courts, by amending articles 109, 110 and 111.

12. The need to clarify in the Statutes of Judicial Magistrates the subsidiary application of the recently promulgated Civil Service Act to judicial magistrates justifies the amendment of article 102.

Accordingly, the Government enacts the following, pursuant to Sections 92 and 95.1 of the Constitution of the Republic, to have the force of law:

Article 1

Articles 9, 12, 17, 18, 20, 25, 29, 31, 34, 102, 104, 105, 109, 110 and 111 of Law No. 8/2002, of 20 September, are hereby amended as follows:

Article 9

Composition

1. The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and composed of the following representative members:
 - a) One designated by the President of the Republic;
 - b) One elected by the National Parliament;
 - c) One designated by the Government;
 - d) One judicial magistrate elected by his or her peers;
2. Each of the entities mentioned in item 1 above shall also either designate or elect an alternate member, who replaces the full member in his or her absences or inability to act.
3. The Council shall, at its first meeting, elect its Vice-President by secret ballot and simple majority.

Article 12
Requirements for designation and election

Judicial magistrates or public prosecutors and other jurists, including personalities of recognised merit, may be elected or designated as members of the Superior Council for the Judiciary.

Article 17
Forms of decision

Decisions of the Superior Council for the Judiciary shall be in the form of resolution or instruction and, where these are related to the appointment, posting, reassignment, promotion or removal of a judicial magistrate or to the application of sentences of suspension from office, removal from active duty, compulsory retirement or dismissal of judicial magistrates, or where the Council so deliberates, shall be published in the Official Gazette.

Article 18
Competencies of the President

It shall be incumbent upon the President of the Superior Council for the Judiciary:

- a) to represent the Council;
- b) to convene and preside over meetings of the Council;
- c) to oversee the administrative services of the Council;
- d) to lead and coordinate Judicial Inspection;
- e) to prepare standing execution orders and perform such urgent acts as may be necessary for the smooth running of the Courts, with the exception of those relating to the issues provided in article 15, item 1.
- f) to exercise all other functions assigned by law.

Article 20
Delegation of powers

The Superior Council for the Judiciary may delegate to the President, with the authority to sub-delegate to the Vice-President, powers:

- a) to order special inspections;

- b) to initiate inquiries and investigations;
- c) to authorise judicial magistrates or officers to take leave of absence;
- d) to authorise judicial magistrates to appear or make statements before any authority.

Article 25
Requirements to enter the judiciary

1. Requirements to be appointed as a judicial magistrate are as follows:
 - a) to be a national citizen;
 - b) to be in full exercise of one's civil and political rights;
 - c) to be older than 25 years of age;
 - d) to have a University degree in law;
 - e) to have gone through a probationary period with "Good" rating;
 - f) to have sat and passed specific exams;
 - g) to meet other requirements as may be established by law for appointment to the public service;
2. The pre-entrance probationary period, which shall last 2 to 3 years, shall be regulated in a separate legal instrument.
3. The Superior Council for the Judiciary may appoint as probationary judges, to exercise jurisdictional functions, those probationers who reveal themselves prepared to do so.
4. Probationary judges are not part of the judicial career and exercise jurisdictional functions until the pre-entrance probationary period has ended, unless otherwise deliberated by the Superior Council for the Judiciary.

Article 29
Counsellor Judges

1. The President of the Supreme Court of Justice shall be appointed by the President of the Republic from among judges of the Supreme Court for a four-year term of office, subject to ratification by the National Parliament.
2. Counsellor Judges shall be appointed by the Superior Council for the Judiciary from among first-class state judges with 'Very Good' rating and at least eight years' practice in the class, and jurists of recognised merit, with at least fifteen years' professional practice in the area of law.
3. The National Parliament shall elect one Counsellor Judge from among magistrates and jurists who meet the requirements set out in tem 2 above.

4. The Supreme Court of Justice may initially be composed of a minimum of 5 Counsellor Judges.
5. Counsellor Judges shall be in office until such a time as they reach limit age or time of service, except for other reasons as may be provided for by law.

Article 31
Swearing-in

Judicial magistrates shall be sworn in as follows:

- a) The President of the Supreme Court of Justice shall be sworn in before the President of the Republic;
- b) All other judicial magistrates shall be sworn in before the President of the Supreme Court of Justice.

Article 34
Incompatibilities

Judicial magistrates in office may not perform any other functions, whether public or private, other than teaching and scientific research or legal activities, subject to prior authorisation by the Superior Council for the Judiciary.

Article 102
Subsidiary regime

The civil service regime shall apply on a subsidiary basis to judicial magistrates with respect to duties, incompatibilities, rights, and disciplinary liability.

Article 104
Appeals

1. Decisions by the Superior Council for the Judiciary may be appealed against to the Supreme Court of Justice.
2. The appeal mentioned under item 1 of this article shall be considered by a panel of three counsellor judges designated, for this purpose, by the President of the Supreme Court of Justice for a period of four years. The panel shall be presided over by the most senior counsellor judge.
3. Members of the Superior Council for the Judiciary may not serve on the panel mentioned under item 2 of this article.

Article 105

Timeframe and effect of lodging an appeal

1. The timeframe for challenging and lodging an appeal is 8 days from the date of notification.
2. Lodging an appeal shall have a devolutive effect.

Article 109

Provisional composition of the Superior Council for the Judiciary

1. Until such time as it is possible to appoint career judicial magistrates and establish the Supreme Court of Justice, the Superior Council for the Judiciary shall be presided over by the President of the Court of Appeal and composed of the latter and the following representative members:
 - a) one designated by the President of the Republic;
 - b) one elected by the National Parliament;
 - c) one designated by the Government;
 - d) a tenured or probationary judge elected by all tenured and probationary judges;
2. Each of the entities mentioned under item 1 of this article shall also either designate or elect an alternate member, who shall replace the full member in his or her absences or inability to act.
3. Without prejudice to paragraph (d) of item 1 of this article, other jurists, as well as personalities of recognised merit, may be elected or designated as members of the Superior Council for the Judiciary.
4. The Superior Council for the Judiciary may, whenever it is deemed necessary, seek technical advice from international judges.
5. On a transitional basis, until conditions are met to establish and provide the Secretariat of the Superior Council for the Judiciary with the necessary resources, the functions of the Council shall be carried out by judicial officials designated for the purpose.
6. The Superior Council for the Judiciary may, whenever it is deemed necessary and convenient, appoint international judges with at least five years' experience and coming from a civil judicial system to serve as the secretary of the Council and as the judicial inspector.

7. The Superior Council for the Judiciary may, whenever it is deemed necessary and convenient, appoint international justice officers with at least five years' experience and coming from a civil judicial system to serve as the accountant inspector and as the inspection secretary.
8. Appeals against decisions by the Superior Council for the Judiciary shall be considered by a panel of three judges designated by the President of the Court of Appeal, from among judges who are not Council Members. The panel shall be presided over by its most senior judge.

Article 110

Court of Appeal

1. The Court of Appeal shall exercise the competencies specifically falling under the purview of the Supreme Court of Justice until such a time as the latter becomes operational.
2. Until such time as the Supreme Court of Justice is established and starts functioning, judges for the Court of Appeal shall be appointed by the Superior Council for the Judiciary from among judges, with a level inferior to that of first-class judges, or probationary judges, taking into consideration their evaluation or rating, or from among jurists of recognised merit with at least eight years' legal practice.
3. One of the judges for the Court of Appeal shall be elected by the National Parliament, as provided for by item 2, Section 125 of the Constitution, from among people who meet the requirements indicated in item 2 above.
4. The President of the Court of Appeal shall be appointed by the President of the Republic from among the judges of the said Court, for a four-year, renewable term of office.
5. Judges with a level inferior to that of first-class judges and probationary judges appointed to the Court of Appeal shall maintain their respective level and the positions that they hold shall be advertised three years after their appointment.
6. The President of the Court of Appeal shall be sworn in before the President of the Republic and all other judges of the said Court shall be sworn in before the President of the Court of Appeal.

Article 111

International Judges

1. By comparing different CVs, the Superior Council for the Judiciary may, whenever deemed necessary and convenient, select international judges with at least 5 years' experience and coming from a civil judicial system, or having

a specialisation in comparative law, to enter the judiciary of Timor-Leste on a provisional basis.

2. The provisions of this law shall apply, with the necessary adaptations, to international judges exercising functions in the judiciary of Timor-Leste.

Article 2

This law shall come into force on the day subsequent to the date of its publication.

Article 3

Law No. 8/2002, of 20 September, with the amendments hereby introduced, is republished as an annex to this law.

ANNEX

Law No. 8/2002, of 20 September

STATUTES OF JUDICIAL MAGISTRATES

As an emerging nation, East Timor is faced with a particular situation in the establishment of sovereignty organs, especially in relation with Courts.

Defining the statutes of judicial magistrates is, at this juncture of the country's life, an issue of urgency, specially when one bears in mind the need to establish the Superior Council for the Judiciary, which is the managerial and disciplinary body of the judiciary that will select judicial magistrates entering the career, besides outlining the career itself, the rights and duties of judicial magistrates, their disciplinary responsibility and the Judicial Inspection.

There was a need to establish a specific transitional regime, mainly in relation to the Superior Council for the Judiciary and the Court of Appeal, and a need to contemplate rules that will make it possible for the judicial organization in East Timor to continue operating under the current system, pursuant to item 2 of Section 163 of the Constitution, but also a need to put in place mechanisms that will strengthen the newly-born East Timorese judiciary.

The text now being published was a legislative initiative from the Government, and it was submitted by the National Parliament to ample debate within the civil society regarding the matters at issue. It also incorporates a number of suggestions from sectors involved in the administration of justice.

Pursuant to Sections 92 and 95.1 of the Constitution, the National Parliament enacts the following, to have the force of law:

CHAPTER I
General Principles

Article 1
Scope of application

1. The provisions of these Statutes shall apply to judicial magistrates.
2. The Statutes shall also apply to trainee judicial magistrates, prior to their entering the judiciary, and to replacement of judicial magistrates, with the necessary adaptations.

Article 2
Composition of the judiciary

The judiciary shall be composed of professional judges of the Supreme Court of Justice, the High Administrative, Tax and Audit Court and other judicial courts provided for by law.

Article 3
Functions of the judiciary

1. The functions of the judiciary shall be applying the law, administering justice and enforcing its decisions.
2. Judicial magistrates shall not refrain from judging on the grounds of absence, vagueness or ambiguity of law, or on the basis of insurmountable doubt.
3. The duty of allegiance to law shall not be put aside on the pretext that a rule is unfair or immoral.

Article 4
Independence

Judicial magistrates shall adjudicate in accordance with the Constitution, the law and their conscience and they shall not be subject to orders, instructions or directions, except for the duty of lower courts to obey to decisions awarded by higher courts on cases appealed against.

Article 5
Non-liability

Judicial magistrates shall not be made liable for their judgments and decisions, except in cases specifically provided for by law.

Article 6
Security of tenure

Judicial magistrates shall not be reassigned, suspended, promoted, made to retire, removed from office or otherwise have their situation changed, unless in cases provided for by these Statutes.

Article 7
Guarantees of impartiality

Judicial magistrates shall not intervene in cases involving, as a judicial officer, a person to whom they are related by marriage, common life, family or kinship of any degree in the direct line or up to the second degree in the collateral line.

CHAPTER II
Superior Council for the Judiciary

Article 8
Definition

1. The Superior Council for the Judiciary is the managerial and disciplinary body of judicial magistrates, which is charged with appointing, assigning, re-assigning and promoting judges.
2. The Superior Council for the Judiciary shall also exercise jurisdiction over judicial officers, as provided for under this Chapter.

Article 9
Composition

1. The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and composed of the following representative members:
 - a) One designated by the President of the Republic;
 - b) One elected by the National Parliament;
 - c) One designated by the Government;
 - d) One judicial magistrate elected by his or her peers;

2. Each of the entities mentioned in item 1 above shall also either designate or elect an alternate member, who replaces the full member in his or her absences or inability to act.

3. The Council shall, at its first meeting, elect its Vice-President by secret ballot and simple majority.

Article 10
Duration of the term of office

Members of the Superior Council for the Judiciary shall serve a four-year term of office.

Article 11
Replacement of the President

The President of the Superior Council for the Judiciary shall be replaced, in his or her non-presence, absence and inability to act, by the Vice-President.

Article 12
Requirements for designation and election

Judicial magistrates or public prosecutors and other jurists, including personalities of recognised merit, may be elected or designated as members of the Superior Council for the Judiciary.

Article 13
Election among peers

1. The election of a judicial magistrate to become a member of the Superior Council for the Judiciary is held by secret ballot of physically present judicial magistrates in full exercise of their functions.
2. Once ballot papers have been counted, the judicial magistrate with the highest number of valid cast votes shall be elected.
3. The position of member of the Superior Council for the Judiciary may not be refused.

Article 14
Oversight and endorsement

It shall be incumbent upon the President of the Supreme Court of Justice to ensure oversight of the electoral act, decide on claims that may be submitted and endorse the results of the election referred to under Article 13.

Article 15

Competencies of the Superior Council for the Judiciary

1. It shall be incumbent upon the Superior Council for the Judiciary:
 - a) to appoint, assign, re-assign, promote, dismiss and appreciate professional merits of, exercise disciplinary action over, and generally conduct all acts of a similar nature regarding, judicial magistrates;
 - b) to appreciate professional merits of, and exercise disciplinary action over, judicial officers, without prejudice to disciplinary competencies given to judges;
 - c) to appoint the Council Secretary, judicial inspectors, accounting inspectors and inspection secretaries;
 - d) to order the conduction of special inspections, investigations and inquiries into courts;
 - e) to prepare and approve the rules of procedure of the Council;
 - f) to advise on retirement requests submitted by judicial magistrates;
 - g) to perform other functions given by law.
2. It is also incumbent upon the Superior Council for the Judiciary to appoint on an exceptional basis assistant judges for courts, where there is a prolonged absence of an incumbent causing serious disruption of services or an excessive accumulation of workload.

Article 16

Functioning and frequency of meetings

1. The Superior Council for the Judiciary shall function in plenary sessions and through a disciplinary panel.
2. The Council shall be convened by its President or at the request of two thirds of its members.
3. The Superior Council for the Judiciary shall convene in ordinary sessions every three months and in special sessions whenever there is a notice to this effect.
4. The Council shall function when two thirds of its members are attending and shall decide by the majority of present voters.
5. Membership to the Superior Council for the Judiciary shall be forfeited if a member fails to attend unjustifiably on two consecutive or intercalated occasions.

6. Members of the Superior Council for the Judiciary shall be issued with a presence voucher for their attendance of meetings, the value of which shall be determined by a joint instruction of the Ministry of Planning and Finance and the Ministry of Justice.

Article 17

Forms of decision

Decisions of the Superior Council for the Judiciary shall be in the form of resolution or instruction and, where these are related to the appointment, posting, reassignment, promotion or removal of a judicial magistrate or to the application of sentences of suspension from office, removal from active duty, compulsory retirement or dismissal of judicial magistrates, or where the Council so deliberates, shall be published in the Official Gazette.

Article 18

Competencies of the President

It shall be incumbent upon the President of the Superior Council for the Judiciary:

- a) to represent the Council;
- b) to convene and preside over meetings of the Council;
- c) to oversee the administrative services of the Council;
- d) to lead and coordinate Judicial Inspection;
- e) to prepare standing execution orders and perform such urgent acts as may be necessary for the smooth running of the Courts, with the exception of those relating to the issues provided in article 15, item 1.
- f) to exercise all other functions assigned by law.

Article 19

Competencies of the Vice-President

It shall be incumbent upon the Vice-President to exercise functions delegated to him or her by the President of the Superior Council for the Judiciary and to replace the latter in his or her absences or inability to act.

Article 20
Delegation of powers

The Superior Council for the Judiciary may delegate to the President, with the authority to sub-delegate to the Vice-President, powers:

- a) to order special inspections;
- b) to initiate inquiries and investigations;
- c) to authorise judicial magistrates or officers to take leave of absence;
- d) to authorise judicial magistrates to appear or make statements before any authority.

Article 21
Secretariat

1. The Superior Council for the Judiciary shall have its own secretariat headed by a Secretary appointed from among first class state judges.
2. It shall be incumbent upon the Secretary of the Superior Council for the Judiciary:
 - a) to lead the secretariat services;
 - b) to submit to the President's decision matters requiring decision by senior authority;
 - c) to prepare minutes of the Council meetings;
 - d) to execute and enforce execution of the Council decisions;
 - e) to prepare the Council's draft budgets;
 - f) to organize and update personal files, records and CVs of judicial magistrates;
 - g) to exercise all other functions given by law.

CHAPTER III
Judicial Inspection

Article 22
Structure

1. Judicial Inspection shall function within the Superior Council for the Judiciary.

2. Judicial Inspections services shall comprise judicial inspectors, accounting inspectors and inspection secretaries.
3. The staffing table of judicial inspectors, accounting inspectors and inspection secretaries shall be determined by an instruction of the Minister of Justice, following a proposal of the Superior Council for the Judiciary.
4. Judicial inspectors shall be appointed from among first class state judges with “Very Good” rating;
5. Accounting inspectors shall be appointed from among judicial secretaries with at least “Good” rating.

Article 23

Competencies

1. It shall be incumbent upon Judicial Inspection to inform the Superior Council for the Judiciary on the status, needs and deficiencies of judicial services so that the Council may take required action.
2. It is also incumbent upon Judicial Inspection to gather information regarding performance, merits and professional integrity of judicial magistrates and judicial officers.
3. Inspection intended to gather information regarding performance, merits and professional integrity of judicial magistrates may not be conducted by an inspector holding a position that is equal or lower than that of the judicial magistrate being inspected.
4. It shall also be incumbent upon judicial inspectors to conduct inspections, inquiries, investigations and to initiate disciplinary cases regarding judges, as may be ordered by the Superior Council for the Judiciary.
5. It shall be incumbent upon accounting inspectors to monitor accounting and treasury services.

Article 24

Inspection report

1. Once an inspection has been completed, the Inspector shall prepare a detailed report in which he or she shall necessarily address the following issues:
 - a) Court organization;
 - b) Functioning and status of services;
 - c) Service premises;
 - d) Difficulties encountered by persons inspected;

- e) Merits and demerits of persons inspected.
2. The inspection report shall give general indications aimed to overcome difficulties encountered by persons inspected, without directly interfering with the service.

CHAPTER IV

Career of judicial magistrates

Article 25

Requirements to enter the judiciary

1. Requirements to be appointed as a judicial magistrate are as follows:
 - a) to be a national citizen;
 - b) to be in full exercise of one's civil and political rights;
 - c) to be older than 25 years of age;
 - d) to have a University degree in law;
 - e) to have gone through a probationary period with "Good" rating;
 - f) to have sat and passed specific exams;
 - g) to meet other requirements as may be established by law for appointment to the public service;
2. The pre-entrance probationary period, which shall last 2 to 3 years, shall be regulated in a separate legal instrument.
3. The Superior Council for the Judiciary may appoint as probationary judges, to exercise jurisdictional functions, those probationers who reveal themselves prepared to do so.
4. Probationary judges are not part of the judicial career and exercise jurisdictional functions until the pre-entrance probationary period has ended, unless otherwise deliberated by the Superior Council for the Judiciary.

Article 26

Career

1. Judicial career shall comprise the following categories:
 - a) Third-class State Judge;
 - b) Second-class State Judge;
 - c) First-class State Judge;

- d) Counsellor Judge.
2. Career shall start at the level of third-class state judge.

Article 27

Promotion of judges

1. Third-class state judges with at least three years' practice and 'Good' rating shall be promoted to second-class state judges.
2. Second-class state judges with at least four years' practice, 'Good' rating and who have sat and passed specific exams shall be promoted to first-class state judges.

Article 28

Promotion vacancy

1. Promotion to the next class shall always be conditional upon vacancy availability.
2. Promotion to the immediately higher level to fill vacancies shall always be through written competition among applicants matching the profile outlined under Article 27.
3. For the written competition, due consideration shall always be given to rating achieved at specific exams, performance record and seniority of applicants, by descending order of rates.
4. It shall be incumbent upon the Superior Council for the Judiciary to establish procedures to apply for promotion.

Article 29

Counsellor Judges

1. The President of the Supreme Court of Justice shall be appointed by the President of the Republic from among judges of the Supreme Court for a four-year term of office, subject to ratification by the National Parliament.
2. Counsellor Judges shall be appointed by the Superior Council for the Judiciary from among first-class state judges with 'Very Good' rating and at least eight years' practice in the class, and jurists of recognised merit, with at least fifteen years' professional practice in the area of law.
3. The National Parliament shall elect one Counsellor Judge from among magistrates and jurists who meet the requirements set out in tem 2 above.

4. The Supreme Court of Justice may initially be composed of a minimum of 5 Counsellor Judges.
5. Counsellor Judges shall be in office until such a time as they reach limit age or time of service, except for other reasons as may be provided for by law.

Article 30

Appointment of state judges

State judges shall be appointed by the Superior Council for the Judiciary.

Article 31

Swearing-in

Judicial magistrates shall be sworn in as follows:

- a) The President of the Supreme Court of Justice shall be sworn in before the President of the Republic;
- b) All other judicial magistrates shall be sworn in before the President of the Supreme Court of Justice.

Article 32

Oath of office

Upon being sworn in, judicial magistrates shall take the following oath of office:

“I, (name), swear to God and I swear on my honour that I will respect and faithfully enforce the Constitution of the Republic and other applicable laws, and administer justice in an impartial and detached manner.”

Article 33

Absence from the swearing-in ceremony

1. An absence from the swearing-in ceremony not justified within prescribed deadlines in case of first appointment shall, without further formalities, cause the appointment to be cancelled and the absentee to be disqualified from being appointed to the same position for the following two years.
2. In other cases, unjustified absence shall be comparable to dereliction of duty.
3. Justification of an absence shall be required within ten days from the date reasonable impediment ceased to exist, along with proof thereof.

CHAPTER V
Incompatibilities, duties, rights and benefits

Article 34
Incompatibilities

Judicial magistrates in office may not perform any other functions, whether public or private, other than teaching and scientific research or legal activities, subject to prior authorisation by the Superior Council for the Judiciary.

Article 35
Political activity

It shall be prohibited for judicial magistrates to take political positions or engage in active politics within political parties, or to make public statements of a political nature.

Article 36
Legal practice

Judicial magistrates may not provide legal advice other than in a case of their own cause or that of their spouse, descendant or ancestor.

Article 37
Special duties

Judicial magistrates shall specially have the following duties:

- a) to discharge their duties with honesty, detachment, impartiality and dignity;
- b) to maintain professional secrecy in accordance with the law;
- c) to have a low profile behaviour in public and private life, in accordance with the dignity and prestige that the office held involves;
- d) to treat with courtesy and respect those involved in cases, especially the Public Prosecution Service, legal professionals and officers;
- e) to report punctually to scheduled acts;
- f) to refrain from giving out by any means opinion on a case pending trial or decision, or judgement on awards, advices, votes, sentences by judicial

- bodies, except censure in records of a lawsuit in the exercise of judicial duties or in judicial and technical works;
- g) to refrain from advising or instructing parties to a dispute on any pretext, except in cases specifically provided for by procedural laws;
 - h) anything else provided for by law.

Article 38

Necessary residence

1. Judicial magistrates may not take residence outside the area where the court they serve is located, except in duly substantiated cases and authorized in advance by the Superior Council for the Judiciary.
2. For the purpose of the previous item, exception is made to absences on duty, on leave, at weekends and on holidays or in case of an emergency making it impossible to secure authorization in advance.
3. In case of an emergency, the judicial magistrate shall report and justify the absence with the Superior Council for the Judiciary as soon as possible.
4. Absence at weekends and on holidays may not affect performance of urgent activities.
5. Unauthorized absence shall entail, in addition to disciplinary liability, forfeiture of salaries during the period of absence.
6. In case of absence, a judicial magistrate shall indicate where he or she may be located.

Article 39

Professional attire

1. Judicial magistrates shall wear the gown during solemn acts, especially at hearings for discussion and trial, preliminary hearings, including other solemn ceremonies or public acts related to the judiciary.
2. The gown model shall be approved by the Superior Council for the Judiciary.

Article 40

Rights and benefits

1. A Judicial magistrate in full exercise of his or her functions shall be entitled to the following benefits:
 - a) To be treated with the deference required by the function;

- b) Special treatment in criminal cases where he or she is the defendant and in proceedings of civil liability for acts committed in the exercise of his or her functions or as a result thereof;
 - c) Special personal identity card in a model to be approved by the Superior Council for the Judiciary;
 - d) Special protection for himself or herself, his or her spouse, descendants and property, whenever plausible reasons of security so require;
 - e) Admission to and free movement at all public places by simple production of the personal identity card;
 - f) Residence allowance at a rate to be determined by the State;
 - g) Compensation allowance at a rate to be decided upon by the Government if he or she lives in his or her own dwellings;
 - h) Transport allowance for his or her own personal effects, and those of his or her family, in case of re-assignment not arising out of disciplinary penalty;
 - i) Any other entitlements enshrined in law.
2. Judicial magistrates not in full exercise of their functions shall be entitled to the benefits provided for under paragraphs a), b) and c) of item 1 above.

Article 41

Entitlements of Counsellor Judges

1. A Counsellor Judge shall also be entitled to:
 - a) An automobile ;
 - b) A diplomatic passport for himself or herself and his or her spouse;
 - c) The right to use, carry and manifest free of charge a defence weapon and acquisition of ammunition therefor;
 - d) Entertainment allowance.
2. Counsellor judges shall generally enjoy the honours, benefits and precedence bestowed to members of sovereignty organs.

Article 42

Titles

Counsellor judges shall hold the title of Revered (*Venerando*) and they shall be addressed as His or Her Excellency. State judges and other judicial magistrates shall be addressed as His or Her Honourable (*Meretissimo*).

Article 43
Preventive custody

1. A judicial magistrate may not be arrested or detained without charges, except when caught in the act and the criminal offence carries an imprisonment penalty of more than three years.
2. In case of arrest and detention of a judicial magistrate, he or she shall be immediately taken before a competent judge.
3. Upon detention or arrest, judicial magistrates shall be committed to specific detention centres or put under a regime of separation from other detainees or prisoners.

Article 44
Summons to appear

1. Judicial magistrates may not be summonsed to appear or testify before any authority without prior consent of the Superior Council for the Judiciary.
2. The petition from a requesting entity shall be in writing and duly substantiated.

Article 45
Remuneration

Remuneration regime shall be established by legal instrument, taking into consideration the specific nature of the judicial function, and the concerned judicial magistrate's level and time of service.

Article 46
Leave of absence

1. Judicial magistrates shall be entitled to leave of absence during the period of judicial recess.

2. The Superior Council for the Judiciary may authorize on an exceptional basis that a judicial magistrate takes leave of absence outside the period prescribed under item 1 of this Article.
3. Leave of absence and the place where it will be taken shall always be notified to the Superior Council for the Judiciary.

Article 47
Retirement

Principles and rules legally established for the civil service shall apply to judicial magistrates on matters of retirement.

Article 48
Retirement for reasons of age and inability

1. A judicial magistrate is to be considered retired for reasons of age and inability when he or she retires on non-disciplinary grounds.
2. A judicial magistrate retired for reasons of age and inability will continue attached to the court where he or she held office, enjoy the titles, honours and immunities associated to his or her level and may attend solemn ceremonies held at such court, taking a seat on the right hand side of judicial magistrates in active service.
3. Provisions of paragraphs c) and d) of Article 40 shall be extensive to judicial magistrates retired for reasons of age and inability.

Article 49
Time counting

For the purpose of retirement, time of service provided to the State before entering the judiciary shall also count.

Article 50
Resignation

1. Resignation of a judicial magistrate shall be authorized on duly substantiated grounds, subject to a notice delivered 60 days in advance.
2. Resignation shall take effect from the date the notice on resignation authorization was served.

3. Where a decision has not been made within the deadline provided for under item 1 of this Article, the request shall be tacitly considered as granted on the last day of that period.

Article 51

Assignments and reassignments

1. Assignments and reassignments of judicial magistrates shall be made after due consideration of service needs and a minimum of disruption to personal and family life of the interested parties.
2. Without prejudice to the provision of the preceding item of this Article, service performance record and seniority, in a descending order of preference, shall be decisive for assignments and reassignments.
3. A judicial magistrate may not be reassigned without his or her consent before five years have elapsed from the date he or she started functions at the current court, except for reasons of promotion or on disciplinary grounds.
4. A judicial magistrate who is assigned to a district court at his or her request may not apply for reassignment to another court before five years have elapsed.

Article 52

Permutations

Without prejudice to service convenience and rights of third parties, permutations shall be permitted.

Article 53

Temporary assignments

Judicial magistrates may be appointed to take up temporary assignments, after consultations with the Superior Council for the Judiciary.

Article 54

Temporary assignment of judicial nature

1. The following positions shall be considered as temporary assignments:
 - a) Judicial inspector;

- b) Magistrate of the Public Prosecution Service;
 - c) Director or lecturer at the Judicial Magistrates Training School;
 - d) Judge at a non-judicial court;
 - e) Head of Department at the Supreme Court;
 - f) Secretary of the Superior Council for the Judiciary;
 - g) Secretary-General of the Supreme Court.
2. Holding any of the positions listed above shall be considered, for all purposes, as actual judicial service.

Article 55

Temporary assignment of non-judicial nature

Time of service actually provided as a temporary assignment of non-judicial nature shall be considered for the purposes of counting time.

Article 56

Evaluation of judicial magistrates

State judges and assistant judges shall be evaluated by the Superior Council for the Judiciary in accordance with their merit of 'Very Good', 'Good', 'Passable' and 'Failed'.

Article 57

Criteria and effects of evaluation

1. Evaluation shall take into consideration the way judicial magistrates exercise their functions, especially their technical knowledge, intellectual ability, detachment, moral and civic reputation.
2. 'Failed' result shall lead to suspension from functions and initiation of an inquiry for unfitness for the function.
3. Where in a disciplinary case initiated on the basis of an inquiry it is concluded that a judicial magistrate no longer qualifies as such but it is possible for him or her to remain in the public service, penalties of compulsory retirement or resignation may, at the request of the interested party, be replaced by resignation.
4. For situations provided for under the preceding item of this Article, the case, along with a substantiated advice, shall be referred to the President of the

Superior Council for the Judiciary for endorsement and assignment of the interested party to a position in keeping with his or her qualifications.

5. Endorsement of the advice by the President of the Superior Council for the Judiciary shall entitle the interested party to occupy a compatible position in another State service.

Article 58

Elements to be considered for evaluation

1. Elements to be considered for evaluation shall be results of previous inspections, inquiries, investigations or disciplinary cases, time of service, published works in the area of law, annual reports and any other additional elements in the possession of the Superior Council for the Judiciary.
2. Workload in charge of the judicial magistrate and working conditions shall also be taken into account.
3. It shall be mandatory to hear the judicial magistrate on the inspection report and he or she may provide elements as he or she may consider convenient.
4. Considerations that the inspector may subsequently produce on the replies of the inspected person should be made known to the inspected person and may not refer to new facts to his or her disadvantage.

Article 59

Evaluation of judicial magistrates on temporary assignment

1. Judicial magistrates on temporary assignment of judicial nature shall be evaluated as if they were engaged in active service.
2. As regards judicial magistrates on temporary assignment of non-judicial nature, the latest evaluation shall always be considered updated, but a new evaluation may be requested once the temporary assignment has been completed and six months of actual functions have elapsed.

Article 60

Frequency of evaluations

1. Judicial magistrates shall be evaluated at least every three years.
2. An evaluation result that has been granted for more than three years shall be considered out of date, unless failure to evaluate is not to be blamed on the judicial magistrate.

3. 'Good' evaluation result shall be assumed where a judicial magistrate has not been assessed during the period provided for under item 1 of this Article, except if the judicial magistrate requests an inspection, in which case it shall be undertaken on a mandatory basis.
4. Evaluation related to subsequent service shall supersede that related to previous service.

CHAPTER VI

Disciplinary liability

Article 61

Disciplinary infraction

Disciplinary offences are facts which, even if merely blameful, are committed by magistrates in violation of professional duties, as well as acts and omissions of their public life, or with repercussions thereon, that are incompatible with the propriety and the dignity indispensable to the exercise of their functions.

Article 62

Subjection to disciplinary jurisdiction

1. A dismissal or change of status of a magistrate shall not prevent his or her punishment for violations committed in the exercise of his or her functions.
2. A dismissed magistrate shall serve the sentence imposed on him or her should he or she resume the exercise of his or her functions.

Article 63

Autonomy of disciplinary jurisdiction

1. Disciplinary proceedings are independent from criminal proceedings.
2. Where a disciplinary case discloses the existence of a criminal offence, the case shall be notified to the Superior Council for the Judiciary forthwith.

Article 64

Scale of penalties

1. Judicial magistrates shall be subject to the following penalties:
 - a) Warning;
 - b) Recorded admonition;
 - c) Fine;

- d) Compulsory reassignment;
 - e) Suspension from functions;
 - f) Inactivity;
 - g) Compulsory Retirement;
 - h) Dismissal.
2. Without prejudice to paragraph 4 of this Article, penalties applied shall always be put into record.
 3. Amnesties shall not destroy the effects resulting from the application of penalties, and they shall be registered in the relevant personal file.
 4. The penalty provided for in paragraph 1 a) above may be applied independently of any proceeding, as long as a hearing takes place with the possibility of defence by the accused, and shall not be subject to be put into record.

Article 65
Penalty of warning

1. A penalty of warning shall consist of a mere remark or admonition on the irregularity committed.
2. A penalty of warning shall apply to minor disciplinary offences that should not go without a remark.

Article 66
Penalty of recorded admonition

1. A penalty of recorded admonition shall consist of a written reprimand to warn a judicial magistrate that the nature of the act or omission committed may disturb the exercise of his or her functions or have repercussions thereon in a manner incompatible with the dignity required from him or her.
2. Recorded admonition is made by the Superior Council for the Judiciary.
3. A recorded reprimand penalty shall apply to minor breaches that may disturb the exercise of functions or have repercussions thereon in a manner incompatible with the dignity required from a judicial magistrate.

Article 67
Penalty of fine

1. A penalty of fine shall be fixed at a minimum of three and a maximum of thirty days.
2. A penalty of fine shall imply the deduction from the remuneration of the judicial magistrate of the amount corresponding to the number of days for which he or she has been fined.
3. A penalty of fine shall be applicable to cases of negligence or disinterest in fulfilling the duties inherent in the office.

Article 68
Penalty of compulsory reassignment

1. A penalty of reassignment shall consist of assigning the judicial magistrate to a position of a similar category outside the area of jurisdiction or service in which he or she used to exercise his or her functions.
2. A penalty of reassignment shall also imply the loss of 60 days of seniority.
3. A penalty of compulsory reassignment shall be applicable to offences that involve disruption of the prestige required from the judicial magistrate to remain in the environment where he or she exercises his or her functions.

Article 69
Penalty of suspension from exercise of functions and penalty of removal from active duty

1. A penalty of suspension from exercise of functions and a penalty of removal from active duty shall consist of the complete removal from service for the duration of the penalties.
2. A penalty of suspension from exercise of functions may consist of ten to ninety working days.
3. A penalty of removal from active duty shall not last less than six months nor shall it last more than one year.
4. A penalty of suspension from exercise of functions and a penalty of removal from active duty shall apply to cases of serious neglect or serious lack of interest for the fulfilment of professional duties or when a magistrate is handed out a prison sentence, except where the sentence imposes a dismissal penalty.
5. The prison term served shall be deducted from the disciplinary penalty.
6. A penalty of suspension from exercise of functions shall imply the loss of the period of time that corresponds to the duration of the suspension for purposes of remuneration, seniority and retirement, and it shall also imply re-assignment to a similar position at a court or service other than the one where the judicial magistrate was exercising his or her functions at the time the offence was committed, when the punished judicial magistrate cannot remain in the place where he or she exercises his or her functions without disrupting the prestige required from him or her, which shall be taken into consideration in the disciplinary decision.
7. A penalty of removal from active duty shall produce the loss of the period of time that corresponds to the duration of the penalty for purposes of remuneration, seniority and retirement, and the impossibility of promotion or admittance during one year from the last day of serving the penalty.

Article 70
Penalty of compulsory retirement and penalty of dismissal

1. A penalty of compulsory retirement shall consist of the imposition of retirement and shall imply immediate separation from service.

2. A penalty of dismissal shall consist of the definitive removal of the judicial magistrate, with cessation of any links to his or her functions, and shall imply the loss of the status of judicial magistrate, but shall not imply the loss of the right to retirement, under the terms and conditions provided for by law, nor shall it prevent the magistrate from being appointed for public office or other offices that may be exercised, as long as he or she meets the conditions of dignity and trust necessary to the office from which he or she was dismissed.
3. Penalties of compulsory retirement and of dismissal shall be applicable where the judicial magistrate:
 - a) Reveals permanent incapacity to adapt him or herself to the requirements of his or her functions;
 - b) Reveals dishonesty, serious insubordination, or has an immoral or dishonoured conduct;
 - c) Reveals professional incompetence;
 - d) Has been sentenced for a crime committed *in flagrante delicto* and for serious abuse of his or her function, or for a clear and serious violation of the duties inherent therein.
4. Dereliction of duty shall always correspond to a penalty of dismissal.

Article 71

Promotion of defendant magistrates

1. Where a criminal or disciplinary case is pending, the judicial magistrate is graded for promotion or admittance, but the promotion or admittance shall be suspended, and the respective post shall remain vacant until a final decision is reached.
2. Where the case is closed, or the decision to convict is repealed, or the penalty applied does not affect promotion or admittance, the judicial magistrate shall be promoted or appointed, shall occupy his or her place on the list of seniority, and shall be entitled to receive the balance of his or her remuneration, or, where he or she is to be pretermitted, the procedures pertaining to the post reserved for him or her shall be finalised.

Article 72

Degree of penalty

In determining the degree of penalty due consideration shall be given to the seriousness of the fact, the culpability of the magistrate, his or her personality and the circumstances in favour of or against him or her.

Article 73

Special mitigation of the penalty

A penalty may be mitigated in special circumstances by applying a lighter penalty where circumstances exist, which are anterior to, or posterior to, or contemporaneous with, the

violation that considerably reduces the seriousness of the fact or the responsibility of the judicial magistrate.

Article 74 Recidivism

1. Recidivism shall exist where a violation is committed before three years have elapsed after the date on which the judicial magistrate has committed an offence for which he or she has been sentenced to a penalty superior to that of admonition, totally or partially fulfilled, as long as the circumstances of the case reveal absence of preventive effectiveness of the previous condemnation.
2. Where the applicable penalty is any one of those provided for in paragraphs c) and f) of item 1, Article 64, its minimum limit, in case of recidivism, shall be equal to one-third, or one-fourth of the maximum limit, respectively.
3. Where the applicable penalty is other than any one of those referred to in paragraph 2 above, a penalty of an immediately superior scale may be applied.

Article 75 Cumulation of offences

1. There shall be cumulation of offences when a judicial magistrate commits two or more offences before the condemnation for any of these violations becomes unimpugnable.
2. Where a cumulation of offences occurs, only one penalty shall be applied and, where violations attract different penalties, only the strongest penalty shall be applied, which will be in accordance with the cumulation, where this is variable.

Article 76 Substitution of penalties applicable to retirees

A penalty of fine, of suspension from exercise of functions, or of removal from active duty for a retired magistrate or a magistrate who, for some reason, is not exercising his or her functions, shall be substituted by the loss of pension, or of remuneration, of any nature for the corresponding period of time.

Article 77 Time limitation of penalties

Disciplinary penalties shall become void in the following timeframes, counting from the date on which the decision became unimpugnable:

- a) Six months, for a penalty of warning and for a penalty of fine;
- b) One year, for a penalty of reassignment;
- c) Three years, for a penalty of suspension from exercise of functions and for a penalty of removal from active duty;

- d) Five years, for a penalty of compulsory retirement and for a penalty of dismissal.

Article 78
Disciplinary proceeding

1. Disciplinary proceeding is the means through which disciplinary liability shall take place.
2. A disciplinary proceeding shall be summary and shall not depend upon special formalities, save the hearing, with possibility of defence, by the defendant.
3. Where the action is explicitly purposeless or dilatory, the investigating judicial magistrate shall reject it by substantiating the rejection.

Article 79
Impediments and suspicion

1. Members of the Superior Council for the Judiciary shall not be allowed to conduct and/or to participate in the decision of disciplinary proceedings when they are an interested party to the proceeding, on their own behalf or as representatives of other people, or of their spouse, or when any of these people is a relative or has ties of affinity in the direct line or up to the fourth degree in the collateral line with the defendant.
2. A member of the Superior Council for the Judiciary shall not be allowed to participate when a party to the disciplinary proceeding is a person who has instituted a civil proceeding against that member for compensation for damages, or has instituted a criminal proceeding as a consequence of acts committed in the exercise of, or by virtue of, the member's functions, or when a party to such proceeding is a spouse or a relative in the direct line or up to the fourth degree in the collateral line of that person, as long as the action or charge has already been admitted.
3. Serious enmity or deep intimacy with the defendant shall also prevent a member of the Superior Council for the Judiciary from conducting and/or participating in the decision of the respective disciplinary proceedings.

Article 80
Confidential character of the disciplinary proceeding

1. Until a final decision is reached, disciplinary proceedings shall have a confidential character.
2. The issuance of certificates of parts of the proceeding at the substantiated request of the defendant shall be allowed, when designed for the defence of legitimate interests.

Article 81
Timeframe for preparation of a disciplinary case

1. Preparation of disciplinary cases shall take place within a maximum of 30 days.
2. The timeframe provided for in paragraph 1 above may only be exceeded in justified cases.
3. The investigating judicial magistrate shall inform the Superior Council for the Judiciary and the defendant of the date on which preparation of the case commences.

Article 82
Number of witnesses during preparatory stage

1. There shall be no limit to the number of witnesses during the preparatory stage.
2. The investigating judicial magistrate may deny the request for hearing witnesses or deponents when he or she deems that the evidence produced is sufficient.

Article 83
Preventive suspension of defendant

1. A judicial magistrate who is a defendant in a disciplinary proceeding may be preventively suspended from the exercise of his or her functions following proposal by the investigating judicial magistrate as long as there are strong indications that the offence will attract, at least, a penalty of reassignment and that his or her continuation in service may be detrimental to the preparation of the case, to the service, or to the required prestige and dignity of the functions.
2. Preventive suspension shall be executed in order to ensure the protection of the personal and professional dignity of the judicial magistrate.
3. Preventive suspension shall not exceed a period of 60 days, renewable on substantive grounds for an additional period of 30 days, and shall not produce the effects provided for under item 4 of Article 69.

Article 84
Charge

1. Once the preparation is finalised along with the disciplinary registration of the defendant, the investigating judicial magistrate shall lodge a charge within a period of ten days by expounding on the circumstantial evidence of the disciplinary offence and on those facts that constitute aggravating or mitigating circumstances and shall indicate the legal provisions applicable to the case.
2. Where sufficient circumstantial evidence on the offence or the responsibility of the defendant is not produced or where the disciplinary proceeding is closed, the investigating officer shall prepare, in ten days, his or her report, followed by the other applicable terms.

Article 85
Notification of the defendant

1. The notification shall be handed over to the defendant, or sent by registered mail, with acknowledgement of receipt, and a deadline given, ranging from 10 to 20 days for presentation of defence.
2. Where the whereabouts of the defendant is unknown, the notification shall be made by notices to be affixed on the last known residence of the defendant.

Article 86
Appointment of legal defender

1. Where the defendant cannot prepare the defence for reasons of absence, sickness, mental abnormality or physical incapacity, the investigating judicial magistrate shall appoint a legal defender.
2. When the legal defender is appointed on a date posterior to the notification referred to in Article 91, the timeframe for the defence shall be reopened upon its notification.

Article 87
Examination of the case

During the period of time for presentation of the defence, the defendant, as well as the appointed legal defender or the designated agent may examine the case at the place where it has been filed.

Article 88
Defence of the defendant

1. With the defence, the defendant may indicate witnesses, gather documents or request actions.
2. The number of witnesses to be presented shall not exceed three for each fact.

Article 89
Final Report

Once the production of evidence is finalised, the investigating judicial magistrate shall prepare, within 15 days, a report, which shall contain the facts, the existence of which is considered proven, its qualification and the applicable penalty.

Article 90
Notification of decision

The final decision, accompanied by a copy of the report referred to under Article 95, shall be notified to the defendant in accordance with Article 91.

Article 91
Nullities and irregularities

1. It shall constitute insurmountable nullity the failure to hear the defendant with possibility of defence and the omission of essential actions for the discovery of the truth that can still be usefully undertaken.
2. The other nullities and irregularities shall be considered resolved if they are not used in the defence or, where they occur *a posteriori*, within five days, starting from the date of its acknowledgement.

Article 92
Report on dereliction of duty

Where a judicial magistrate ceases to report to his or her duty station for ten consecutive working days, thus manifesting expressly his or her intention to relinquish duties, or where he or she is absent without justification for 30 consecutive working days, a report thereon shall be drawn up.

Article 93
Presumption of dereliction of duty

1. Unjustified absence from office for 30 consecutive working days shall constitute presumption of dereliction of duty.
2. Presumption referred to in paragraph 1. above may be rebutted in disciplinary proceeding by any means of proof.

Article 94
Revision

1. Condemnatory decisions handed down in disciplinary proceedings may, at any time, be the object of review whenever there are circumstances or means of proof that may demonstrate the inexistence of the facts which determined the punishment and which could not be utilised in due time by the defendant.
2. The review process shall in no case determine the aggravation of the penalty.

Article 95
Process

1. The revision of the process shall be requested by the interested party to the Superior Council for the Judiciary
2. The petition for revision, to be attached to the disciplinary proceeding, should contain the reasons for the petition and the indication of the means of proof to be produced and should be handled with the documents that the interested party was able to obtain.

Article 96
Sequence of the process of revision

Once the petition is received, the Superior Council for the Judiciary shall decide, within 30 days, whether the requirements for the revision have been met.

Article 97
Justified revision

1. Where the request for review is deemed justified, the decision pronounced on the revised process shall be repealed or changed.
2. Without prejudice to other rights legally provided for, the interested party shall be compensated for the remuneration that he or she may have ceased to receive due to the revised decision.

Article 98
Enquiries and investigations

1. The objective of an enquiry is to investigate a given fact.
2. An investigation shall take place whenever there is news regarding facts that require a general investigation into the functioning of a given service.

Article 99
Preparation of process

The provisions relating to disciplinary proceedings shall be applicable, *mutatis mutandis*, to the preparation of the process of enquiry or investigation.

Article 100
Report

Once the preparation of the process is complete, the enquirer shall prepare a report thereof proposing the closure of the case or the establishment of a disciplinary proceeding, as the case may be.

Article 101
Conversion into disciplinary proceeding

1. Where the existence of infraction is found, the Superior Council for the Judiciary may deliberate that the process of enquiry or investigation, in which the defendant has been heard, constitutes a part of the preparatory phase of the disciplinary proceeding.
2. In the case provided for in paragraph 1. above, the date of launching the enquiry or investigation shall mark the commencement of the disciplinary proceeding.

Article 102
Subsidiary regime

The civil service regime shall apply on a subsidiary basis to judicial magistrates with respect to duties, incompatibilities, rights, and disciplinary liability.

CHAPTER VII
Claims, appeals, charges and prepayment of costs

Article 103
Claims

1. Claims arising out of decisions by the President of the Superior Council for the Judiciary may be lodged with the plenary.
2. On matters concerning judicial officers, claims are restricted to decisions of disciplinary nature having enforced a penalty as serious as, or more serious than, the penalty of compulsory reassignment.

Article 104
Appeals

1. Decisions by the Superior Council for the Judiciary may be appealed against to the Supreme Court of Justice.
2. The appeal mentioned under item 1 of this article shall be considered by a panel of three counsellor judges designated, for this purpose, by the President of the Supreme Court of Justice for a period of four years. The panel shall be presided over by the most senior counsellor judge.
3. Members of the Superior Council for the Judiciary may not serve on the panel mentioned under item 2 of this article.

Article 105
Timeframe and effect of lodging an appeal

1. The timeframe for challenging and lodging an appeal is 8 days from the date of notification.
2. Lodging an appeal shall have a devolutive effect.

Article 106
Petition requirements

1. A petition shall mention the decision being appealed against, as well as the *de facto* and *de jure* grounds, and such petition shall be drafted in a clear and concise manner.
2. A petition shall be made with a document proving the act being appealed against along with all documentary evidence.
3. Where, on substantiated grounds, it was not possible to secure documents within the timeframes, a request may be made for the documents to be submitted subsequently.

Article 107
Steps of an appeal

1. Upon referral of an appeal to the Supreme Court of Justice, the judge rapporteur may invite the person making the appeal to correct defects in the request.
2. Where the judge rapporteur realizes that the period for lodging an appeal has lapsed, or parties thereto are not legitimate or the appeal is clearly illegal, he or she shall make a brief and substantiated statement and submit the case to the first session for consideration and decision, with no need for individual endorsement by the judges.
3. Should the appeal case proceed, the judge rapporteur shall cause copies thereof to be referred to the Superior Council for the Judiciary so that a reply is given within 10 days and, during the same timeframe, the case is referred to the Supreme Court of Justice.
4. After a reply has been received from the Superior Council for the Judiciary or where the timeframe for a reply to be received has expired, and in cases where the appeal may affect rights of third parties, the judge rapporteur shall summon those third parties so that they may reply within 10 days.
5. After replies have been attached or the respective timeframes have expired, the judge rapporteur shall order the notification of the person lodging the appeal and then the person being appealed against so that they may reply within 10 days.
6. Once allegations have been attached or timeframes have expired, the case is closed and referred to the judge rapporteur who may requisition documents that he or she deems necessary or notify the parties to submit such documents.
7. The case will thereafter be appreciated by all judges of the panel within 48 hours and then referred to the judge rapporteur for decision, which shall be made within 20 days.

Article 108

Charges

Charges shall be determined by the Supreme Court of Justice between 10 and 100 US dollars until such a time as a code on charges applicable to these matters enters into force.

Article 109

Provisional composition of the Superior Council for the Judiciary

1. Until such time as it is possible to appoint career judicial magistrates and establish the Supreme Court of Justice, the Superior Council for the Judiciary shall be presided over by the President of the Court of Appeal and composed of the latter and the following representative members:

- a) one designated by the President of the Republic;
- b) one elected by the National Parliament;
- c) one designated by the Government;
- d) a tenured or probationary judge elected by all tenured and probationary judges;

2. Each of the entities mentioned under item 1 of this article shall also either designate or elect an alternate member, who shall replace the full member in his or her absences or inability to act.

3. Without prejudice to paragraph (d) of item 1 of this article, other jurists, as well as personalities of recognised merit, may be elected or designated as members of the Superior Council for the Judiciary.

4. The Superior Council for the Judiciary may, whenever it is deemed necessary, seek technical advice from international judges.

5. On a transitional basis, until conditions are met to establish and provide the Secretariat of the Superior Council for the Judiciary with the necessary resources, the functions of the Council shall be carried out by judicial officials designated for the purpose.

6. The Superior Council for the Judiciary may, whenever it is deemed necessary and convenient, appoint international judges with at least five years' experience and coming from a civil judicial system to serve as the secretary of the Council and as the judicial inspector.

7. The Superior Council for the Judiciary may, whenever it is deemed necessary and convenient, appoint international justice officers with at least five years' experience and coming from a civil judicial system to serve as the accountant inspector and as the inspection secretary.

8. Appeals against decisions by the Superior Council for the Judiciary shall be considered by a panel of three judges designated by the President of the Court of

Appeal, from among judges who are not Council Members. The panel shall be presided over by its most senior judge.

Article 110

Court of Appeal

1. The Court of Appeal shall exercise the competencies specifically falling under the purview of the Supreme Court of Justice until such a time as the latter becomes operational.
2. Until such time as the Supreme Court of Justice is established and starts functioning, judges for the Court of Appeal shall be appointed by the Superior Council for the Judiciary from among judges, with a level inferior to that of first-class judges, or probationary judges, taking into consideration their evaluation or rating, or from among jurists of recognised merit with at least eight years' legal practice.
3. One of the judges for the Court of Appeal shall be elected by the National Parliament, as provided for by item 2, Article 125 of the Constitution, from among people who meet the requirements indicated in item 2 above.
4. The President of the Court of Appeal shall be appointed by the President of the Republic from among the judges of the said Court, for a four-year, renewable term of office.
5. Judges with a level inferior to that of first-class judges and probationary judges appointed to the Court of Appeal shall maintain their respective level and the positions that they hold shall be advertised three years after their appointment.
6. The President of the Court of Appeal shall be sworn in before the President of the Republic and all other judges of the said Court shall be sworn in before the President of the Court of Appeal.

Article 111

International Judges

1. By comparing different CVs, the Superior Council for the Judiciary may, whenever deemed necessary and convenient, select international judges with at least 5 years' experience and coming from a civil judicial system, or having a specialisation in comparative law, to enter the judiciary of Timor-Leste on a provisional basis.
2. The provisions of this law shall apply, with the necessary adaptations, to international judges exercising functions in the judiciary of Timor-Leste.

CHAPTER VIII

Transitional provisions

Article 112
Probationary period

The probationary period applicable on the date of entry into force of this law shall now have duration of 3 to 4 years so that a specific complementary training may be given.

Article 113
Repeals

Legislation contrary to this law is hereby repealed, especially relevant legal provisions contained in Regulations n. 1999/1, 1999/3, 2000/11, 2000/25, 2001/18, 2001/25 and 2001/26 of the United Nations Transitional Administration in East Timor (UNTAET).

Passed on 8 November 2004.

The Speaker of the National Parliament

[Signed]

(Francisco Guterres 'Lu-Olo')

Promulgated on 20 December 2004.-

To be published.

The President of the Republic

[Signed]

(Kay Rala Xanana Gusmão)

**Law No. 11/2008
of 30 July**

**ON THE JURIDICAL REGIME GOVERNING PRIVATE LEGAL PROFESSION AND
LAWYERS TRAINING**

The State has the duty to regulate the exercise of private legal profession to ensure that it contributes towards the good administration of justice and the safeguarding of the rights and legitimate interests of citizens. The exercise of private legal profession should also be guided by the social interest resulting from the nature of the very functions of lawyers, in compliance with the constitutional rule contained in article 135 of the Constitution of the Republic.

It is therefore important to define the statute of private lawyers and to establish the necessary mechanisms for their professional training, and ensure that the exercise of legal profession takes place with due respect for the basic deontological norms.

Independence is one of the *sine-qua-non* conditions for the legal profession to be effectively exercised. As a matter of fact, lawyers cannot be subjected to any form of control whatsoever on the part of the political power on pain of risking to put at stake the public mission entrusted to them. Notwithstanding the acknowledgement that the establishment of a Bar Association at present would be premature, an organ was however established, i.e., the Legal Profession Management and Discipline Council, which will exercise the functions of management and discipline of this professional class.

Thus, pursuant to articles 97.1 and 135 of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Object**

The present statute establishes the rules governing the exercise of private legal profession in Timor-Leste as well as the statute of, and the professional training for, lawyers.

**Article 2
Requirements for registration**

1. Unless otherwise provided, the exercise of the legal profession and the use of the respective title shall be limited to those individuals registered in that capacity with the Legal Training Centre until such time as the Bar Association is established and starts its functions.

2. Registration with the Legal Training Centre to exercise the legal profession shall be open to any individual who, cumulatively:
 - a) Holds a bachelor's degree in Law;
 - b) Has a written and spoken command of at least one of the official languages of Timor-Leste;
 - c) Has attended and successfully passed the training course provided for in the present statute;
 - d) Is an adult, pursuant to the applicable civil legislation;
 - e) Presents a certificate of criminal record to enable to guarantee the moral idoneity of the lawyer for the exercise of the legal profession.
3. Registration to exercise the legal profession shall also be open to any individual who, cumulatively, proves:
 - a) To hold a bachelor's degree in Law;
 - b) To be fully qualified for exercising the legal profession in Timor-Leste or in another civil law country;
 - c) To be acquainted with the legal system applicable in Timor-Leste;
 - d) To have a written and spoken command of at least one of the national languages.
4. For the purposes of subparagraph b) of paragraph 3 above, fully qualified to exercise the legal profession shall mean any national professional who has effectively practiced as a judge, prosecutor, or public defender for a minimum period of four years.
5. For the purposes of subparagraph b) of paragraph 3 above, fully qualified to exercise the legal profession shall also mean any expatriate lawyer who has exercised the legal profession for a minimum period of five years.
6. It shall be incumbent upon the Legal Training Centre to undertake the necessary steps in order to confirm the requirement referred to in subparagraph b) of paragraph 3 above.
7. In order to certify the requirements referred to in subparagraphs c) and d) of paragraph 3 above, candidates shall have to undergo and successfully pass public examinations organized to that end by the Legal Training Centre Pedagogical Board.

Article 3

Restrictions to the right to register

1. Registration shall not be open to any individual who:

- a) Has been convicted by a final sentence of imprisonment for committing an intentional crime;
 - b) Is not fully enjoying his or her civil rights;
 - c) Has been declared by a final sentence to be incapable of administering his or her own person and property;
 - d) Finds himself or herself in a situation of incompatibility with, or is inhibited from, the exercise of the legal profession;
 - e) Being a magistrate, public defender, or civil servant, has been removed, has been retired, or has been placed in a situation of inactivity for lack of moral idoneity.
2. Practicing lawyers and probationary lawyers finding themselves in any of the situations referred to in paragraph 1 above may, depending on the situation, have their registration suspended or cancelled.
 3. Any individual criminally sentenced to effective imprisonment for having committed an intentional crime and whose criminal record has been cancelled may, after 3 years have elapsed from the date of cancellation, apply for his or her registration as a lawyer as long as the competent entity, after undertaking an inquiry and hearing the applicant, concludes that the applicant's behaviour over the previous three years shows that he or she has idoneity to exercise the profession.

Article 4
Proof of holding a bachelor's degree

1. The proof of holding a bachelor's degree referred to in article 2 shall be made through a diploma or certificate of the respective degree describing the subjects constituting the respective training course and respective classification or, alternatively, the curricular plan of the training course.
2. Whenever the documents referred to in the preceding paragraph are not drafted in an official language of Timor-Leste, presenting their respective translation into one of the national languages shall be mandatory.
3. The diploma or certificate bearing proof of completion of a bachelor's degree shall be certified by a competent service to be defined by the Ministry of Education.

CHAPTER II TRAINING

Article 5 Objective

The objective of the training course for the exercise of the legal profession is to provide the candidates with the opportunity to develop technical/professional and deontological skills necessary to enable them to perform the respective functions in an effective manner.

Article 6 Requirements for candidacy

Timorese citizens wishing to be admitted for the training course for the exercise of the legal profession shall meet the following requirements, cumulatively:

- a) To hold a bachelor's degree in Law;
- b) To have knowledge of at least one of the official languages;
- c) To be adult, pursuant to the applicable legislation;
- d) Not to have been sentenced to effective imprisonment for committing an intentional crime, without prejudice to the provision of paragraph 3, article 3, of the present statute;
- e) To be fully enjoying his or her civil rights;
- f) Not to have been declared incapable of administering his or her own person and property by a final sentence.

Article 7 Competitive examination

1. It shall be incumbent upon the Government to determine, by the end of August of every year, the number of seats available in the training course for the exercise of the legal profession.
2. Once the number of available seats has been determined, the notice on the opening of the competitive examination shall be published.
3. The notice on the opening of the competitive examination shall contain:
 - a) The requirements for candidacy referred to in article 6;
 - b) An indication of the number of available seats;
 - c) The tests to be undertaken, the respective subjects, and the date and venue where the tests will take place;
 - d) The deadline for submitting applications;
 - e) The composition of the jury for the competitive examination.

4. Applications for the competitive examination, to be addressed to the Director of the Legal Training Centre, shall contain a statement of honour declaring that the candidate meets the requirements provided for in subparagraphs e), f), and g) of article 7 above, the falsity of which shall entail the exclusion of the candidate from the course or the ineffectiveness of its attendance.

Article 8

Jury

1. The jury of the competitive examination for selecting the candidates shall be composed of three effective members and three alternate members appointed by the Legal Training Centre.
2. The members of the jury shall preferably be selected from among law graduates with professional experience as lawyers, judges, prosecutors, public defenders, teachers of law or teachers of the Legal Training Centre.
3. The instruction confirming the appointment of the jury shall contain the names of its Chairperson and respective substitute.

Article 9

List of candidates

1. Once the deadline for submitting candidacies has ended, the list of admitted and non-admitted candidates, if any, shall be affixed, and claims regarding the decision of the jury can be filed with the Legal Profession Management and Discipline Council within 10 days from the date the list has been affixed.
2. Once the claims have been decided on, or where no claims exist, the final list containing the admitted candidates shall be published.

Article 10

Subsidiary regime for selecting candidates

The norms contained in articles 8 to 11 of Decree- Law no. 15/2004 of 1 September on the Recruitment and Training for Professionals of the Judiciary and of the Office of the Public Defender shall be applied, *mutatis mutandis*, to the candidates selection process and, based on the number of available seats pursuant to article 7, the best classified candidates shall be admitted for attending the course.

Article 11

Training stages

1. The training for the exercise of the legal profession shall be composed of a theoretical learning stage and a probation stage.

2. The theoretical learning stage shall have a 15-month duration and is intended to strengthen the knowledge acquired by the candidates during the graduation course and to enable them to have a command of the matters directly linked to the practice of the legal profession, and shall be administered by teachers and trainers of the Legal Training Centre or appointed by the Managing Board to that effect.
3. The theoretical learning stage shall end with the attribution of a final rating, to be determined on the basis of the evaluation of the trainees by the respective teachers and trainers and taking into account, namely, the written tests and the tasks, the oral performance, the interest demonstrated, the degree of verbal and written fluency in the official languages, as well as other factors relevant to the effective performance of the functions of a legal professional.
4. The criteria described in the preceding paragraph shall be evaluated in a joint meeting by the trainers and teachers, who shall attribute the trainees an arithmetic classification in a 0 to 20 rating scale, and those obtaining a classification equal to, or higher than, 10 shall be considered successful trainees.
5. Candidates failing in the theoretical learning stage shall not be admitted for the probation stage, without prejudice to their possibility to reapply for attending a new training course.
6. The probation stage shall have a nine-month duration and is intended to put the trainees in contact with the reality of the exercise of the legal profession, the judicial system, the services related with administration of justice and the practical use of the acquired theoretical knowledge.
7. The probation stage shall end with the evaluation of the trainees through aggregation tests in which a final test classification will be attributed acknowledging the aptitude or lack of aptitude of the trainees for exercising the legal profession.
8. Trainees obtaining a final classification equal to, or higher than, 10 on a rating scale of 0 to 20 shall be considered to be qualified for the exercise of the legal profession.
9. Candidates not qualified for the exercise of the legal profession shall forfeit the status of probation lawyers, without prejudice to their possibility to attend a new course after successfully passing in a new competitive examination.
10. The programmatic content of the training, both at the theoretical learning stage and at the probation stage, shall include the learning of the official languages and shall be approved by the Legal Training Centre Pedagogical Board on an annual basis.

11. Additionally, complementary training activities can be carried out at any time during the training stages.

Article 12
Probation lawyer

1. Unless they find themselves in a situation of incompatibility, trainees successfully passing the theoretical learning stage and admitted to the probation stage may exercise the functions of probationary lawyers, for which purpose they should request the issuance of the respective professional license. The provisions of Chapter IV shall apply, *mutatis mutandis*.
2. From the time of their registration, probationary lawyers shall mandatorily comply with the norms governing the exercise of the legal profession.
3. During the probation period, probationary lawyers may autonomously practice the following acts proper of the legal profession:
 - a) Exercise of legal profession in criminal proceedings relating to semi-public crimes;
 - b) Exercise of legal profession in non-criminal proceedings the value of which does not exceed \$1,000;
 - c) Legal consultations.
4. Probationary lawyers may also practice acts proper of the legal profession in all other proceedings provided they are duly accompanied by a lawyer who shall ensure the safeguarding of their performance and who has not been punished through a disciplinary penalty higher than a fine;
5. Probationary lawyers should indicate their professional status in all acts proper of the legal profession in which they intervene.

CHAPTER IV
REGISTRATION AND CERTIFICATION

Article 13
Registration and seniority

Candidates successfully completing the training course for the exercise of the legal profession may apply for registration as lawyers and their seniority as lawyers shall count from the date of submission of the application for registration.

Article 14
Application for registration

1. Until such time as the Bar Association comes into existence, applications for registration to exercise the legal profession shall be addressed to the Chairperson of the Legal Profession Management and Discipline Council.
2. As well as the application for registration, candidates shall prove that they satisfy the requirements referred to in article 2 and shall indicate their complete names, including their functions, activities and professional address, and shall also attach their criminal record certificate.
3. The candidates may indicate in the application for registration the short names which they intend to use in the exercise of the legal profession.
4. The need for candidates to provide evidence of meeting the requirements referred to in paragraph 2 above shall be dispensed with in cases where such evidence already exists in the archives of the Legal Profession Management and Discipline Council.

Article 15
Certification and professional license

1. Applicants shall be issued a professional license upon registration.
2. Professional licenses shall be signed by the Chairperson of the Legal Profession Management and Discipline Council and shall contain the commencement date and, where applicable, the ending date of the professional activity, including the following data:
 - a) The cancellation of the professional license and the date of its commencement;
 - b) The suspension of the exercise of legal profession and the date of its commencement;
 - c) Any final disciplinary penalty and the date of the respective decision;
 - d) The lifting or cancellation of the suspension of the registration and the date of commencement of such lifting or cancellation;
 - e) The annotation of other relevant facts, such as change of business address.
3. Registrations and annotations shall be made by the administrative services of the Legal Profession Management and Discipline Council and shall be contained in the individual file organized for each lawyer.
4. Professional licenses may be re-issued in case of loss or inutilization, in which case they shall be endorsed with the words “duplicate”, with the respective charges being borne by the applicant.

Article 16
List of lawyers

Until such time as the Bar Association comes into existence, the services of the Legal Profession Management and Discipline Council shall organize and maintain an updated list of the registered lawyers and shall distribute it annually to the several judicial services and, at request, to other public or private services provided that, in the latter case, the services of the Legal Profession Management and Discipline Council are authorized by the lawyers to that effect.

Article 17
Suspension of registration

1. Registration shall be suspended:
 - a) At the request of applicants intending to interrupt the exercise of the legal profession;
 - b) Where the interested party starts exercising a function that is incompatible with the exercise of the legal profession;
 - c) Where the lawyer has been convicted in a disciplinary penalty of suspension following a decision made in the framework of a final disciplinary proceeding;
 - d) Where the interested party has been suspended from exercising the legal profession by judicial decision;
 - e) In the other cases provided for by law.
2. Suspension from exercising a function that is incompatible with the exercise of the legal profession shall take place following information provided by the lawyer to be suspended or, officiously, after he or she has been heard.
3. Suspension shall always imply the return of the professional license and the interruption of the exercise of legal profession in Timor-Leste for as long as the reason causing the suspension persists, and the judicial authorities shall be informed of such fact.
4. Where the return of the professional license does not take place within a period of 15 days, a request can be made to apprehend it judicially.

Article 18
Lifting of suspension

- 1) Suspension of registration shall be lifted:
 - a) In the case referred to in subparagraph a), paragraph 1, of article 17, at the request of the interested party;

- b) In the case referred to in subparagraph b), paragraph 1, of article 17, whenever the respective cause ceases;
 - c) In the case referred to in subparagraph c), paragraph 1, of article 17, when the respective disciplinary penalty has been undergone;
 - d) In the case referred to in subparagraph d), paragraph 1, of article 17, when the deadline established by the judicial decision has elapsed.
 - e) In the case referred to in subparagraph e), paragraph 1, of article 17, pursuant to the respective law.
2. Lifting of the suspension shall enable the interested party to immediately exercise the legal profession provided it is certified by the competent service.
 3. The judicial authorities shall be immediately informed of the lifting of the suspension.

Article 19 **Cancellation of registration**

- a) Registration shall be cancelled following request by any interested party wishing to abandon the exercise of the legal profession, upon death of the lawyer or probationary lawyer, and in the other cases where, pursuant to the law, cancellation is to take place.
- b) *Mutatis mutandis*, the provisions of paragraphs 3 and 4 of article 17 and paragraphs 2 and 3 of article 18 shall apply to cancellation.

Article 20 **Registration fees**

1. Registration of lawyers, as well as annotations, cancellations and issuance of professional licenses shall require the payment of a fee, the amount of which shall be determined by a joint decision of the Minister of Planning and Finance and the Minister of Justice and shall constitute State revenue.
2. The provisions of paragraph 1 above shall also apply to acts of dismissal.

CHAPTER V
EXERCISE OF THE LEGAL PROFESSION

SECTION I
GENERAL PROVISIONS

Article 21
Principal function

The principal function of lawyers shall be to contribute to the good administration of justice and to safeguard the right and legitimate interests of the citizens.

Article 22
Practicing the legal profession

1. Unless otherwise provided, only individuals authorized to exercise the legal profession pursuant to the present statute may practice it in any jurisdiction, instance, authority, or public or private entity.
2. Without prejudice to provisions contained in any other legislation, acts of the legal profession shall mean:
 - a) The exercise of forensic mandate;
 - b) Legal consultation;
 - c) The exercise of a mandate with powers to negotiate the establishment, change, or extinction of legal relations;
 - d) The preparation of contracts and the practice of preparatory acts for the establishment, change, or extinction of legal business, namely those made with registrars and notary offices;
 - e) Negotiation for collection of credits;
 - f) The exercise of the mandate in the framework of claims or impugnation of administrative or fiscal acts, or before any public corporate body or respective organs or services, even where they raise or discuss mere matters of fact.
 - g) Those acts resulting from the exercise of the right of citizens to accompany themselves by a lawyer before any authority.
3. The following shall be excepted from the stipulations of the preceding paragraphs:
 - a) The exercise of functions of a public defender;
 - b) The preparation of written legal opinions by teachers of the Law Schools or by other jurists of recognized merit; and
 - c) The exercise of legal consultation by jurists of recognized merit and by individuals holding a master's degree or a PhD in Law recognized by the Ministry of Education.

Article 23
Forensic mandate

1. Forensic mandate shall mean the judicial mandate to be exercised in any court, including courts of arbitral commissions, pursuant to the law.
2. Forensic mandate shall not be the object of any measure or agreement impairing or limiting the free choice of the lawyer by the principal.

Article 24
Legal counsel

1. Legal counsel shall mean the activity of legal counseling consisting in the interpretation and application of legal norms at the request of a third party.
2. For the purposes of paragraph 1 above, advisory and consultancy activities practiced directly by holders of a bachelor's degree in law in a public or private institution shall not be considered legal counseling.

Article 25
Freedom of exercise

Forensic mandate, representation, and assistance by lawyers shall always be admissible and shall not be impeded before any jurisdiction, authority, or public or private entity, namely when it is intended for defending rights, representing disputed legal relationships and ascertaining interests, or in cases of mere verification, even where these are of an administrative, unofficial, or of any other nature, within the limits of the law.

Article 26
Treatment and conditions

1. Magistrates, authority agents, and civil servants must accord lawyers, when in the exercise of the profession, a treatment that is compatible with the dignity of the legal profession as well as adequate conditions enabling them to fully perform their functions.
2. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
3. During trial hearings, lawyers shall have their own bench.
4. Whenever possible, court facilities should always make available a working room specifically intended for lawyers.

Article 27
Preference in the treatment

Lawyers, when in the exercise of their functions, shall be afforded preferential attention in any public service.

Article 28
Special protection

Whenever, in the exercise of their functions, ponderous security reasons so determine, lawyers shall enjoy special protection to be provided by the authorities and organs of police.

Article 29
Examination of proceedings, books and documents and requests for certifications

1. In the exercise of their profession, lawyers may request from any court or public department the examination of proceedings, books or documents not considered to be of a restricted or secret nature and that are related with the representation of their clients.
2. In the exercise of their profession, lawyers may also request, verbally or in writing, that photocopies be made or certificates be issued without the need for them to produce a letter of attorney.

Article 30
Applications and right to protest

1. In the course of a hearing or of any other act or service in which they intervene, lawyers shall be allowed, at any time they deem appropriate, to apply, verbally or in writing, for any thing they consider to be convenient to the duty of representation.
2. Where, for any reason whatsoever, a lawyer is not granted the floor, or the petition is not recorded in the minutes, the lawyer may exercise the right to protest, indicating the subject of the petition and the objective that he or she had in mind.
3. The protest shall be recorded in the minutes and shall, for all purposes, be considered as submission of invalidity, pursuant to the law.

Article 31
Right to communicate with the clients

Lawyers are entitled to, pursuant to the law, communicate personally and in a restrict manner with their clients, particularly when the latter are imprisoned or detained in a civil or military facility.

Article 32
Searches, apprehensions, inventories and similar actions in a lawyer's office

1. Searches, apprehensions, inventories, and similar actions in a lawyer's office or in any other place where lawyers have files can only be ordered and conducted by a judge.
2. Whenever possible, the judge shall convene the interested lawyer to be present during the actions referred to in paragraph 1 above.
3. The judge shall also communicate the Legal Profession Management and Discipline Council of the fact so that, where possible, the presence of its representative can be secured.
4. Whenever they present themselves or are convened by the judge, relatives or employers of the interested lawyer may also be present during the actions referred to in paragraph 1 above.
5. No mail relating to the exercise of the profession can be apprehended, save where such mail is related to a criminal fact in relation to which the lawyer has been made a defendant.
6. Mail referred to in paragraph 5 above shall comprise the following:
 - a) Mail exchanged between the lawyer and the person who has entrusted or intended to entrust him or her a mandate or has requested his or her legal counseling, even where this request has been refused or has not yet been satisfied;
 - b) Written instructions or information about the requested mandate or legal counsel.
7. The service record shall expressly mention the people present at the operations as well as any occurrences that may take place while the operations are taking place.

Article 33
Professional dressing

It shall be mandatory for lawyers, when pleading verbally, to use the gown, the model of which, including of any other accessory of the professional dressing, shall be established by the Legal Profession Management and Discipline Council.

SECTION II
PROTECTION OF EXEMPTION, INDEPENDENCE, AND DIGNITY

Article 34
Work contract and other cases

1. Any form of appointment or contract, either of a public or of a private nature, namely a work contract, under which the lawyer exercises his or her activity, shall observe the principles and rules of a deontological character referred to in the present statute, and shall not affect the lawyer's full exemption and technical independence before the employer.
2. Any contractual stipulations, including any guidance or instructions of the contracting party with a view to restricting the exemption and independence of the lawyer or violating, in any manner whatsoever, the deontological principles of the profession, shall be considered null and void.

Article 35
Incompatibilities

1. The exercise of the legal profession shall be incompatible with the holding of any post or the discharging of any activity or function that diminishes the exemption, independence, and dignity of the profession.
2. Unless otherwise provided, the exercise of the legal professional shall be incompatible with the holding of the following offices, activities or functions:
 - a) Holders or members of organs of sovereignty and respective advisers, members and functionaries or agents of the respective offices, with the exception of the Members of the National Parliament;
 - b) Provider of Human Rights and Justice and respective advisers, members, and functionaries;
 - c) Judicial magistrates, magistrates of the Public Prosecution, public defenders or functionaries of any court or assigned to the respective services;
 - d) Members of executive bodies or of the directorate of local government, their functionaries or agents;
 - e) Notaries or public registrars and functionaries of the respective services;

- f) Leaders, functionaries or agents of any public service at the central or local government level, even where such services are personalized, with the exception of the teachers;
 - g) Members of the defense or security forces on active service;
 - h) Mediators and auctioneers;
 - i) Any other office, activity or functions considered to be incompatible with the exercise of the legal profession by a specific law.
3. Incompatibilities shall not apply to individuals who are retirees, separated from service, reservists, inactive or under leave without pay.

Article 36
Impediments to the exercise of the legal profession

1. Impediments reduce the scope of the exercise of the legal profession and constitute relative incompatibilities of the forensic mandate and the legal counsel in view of a given relationship with the client, with the disputed issues, or by unconciliable availability for the profession.
2. A lawyer shall be prevented from exercising the legal profession when:
- a) The public service in which he or she is a teacher is a part or an intervening party in the cause;
 - b) He or she has intervened in the respective proceeding in his or her capacity as a judicial magistrate or as a magistrate of the Public Prosecution, a defense lawyer, a judicial functionary, a witness, a declarant, or a specialist;
 - c) He or she has aided, advised, or represented the adversary party on the same matter;
 - d) The matter is linked to another matter in which he or she is assisting, advising, or representing, or has assisted, advised, or represented, the opposing party;
 - e) His or her spouse or relative, or akin in the right line or up to the second degree of the collateral line, participates in the judicial proceeding as a magistrate, defender, or bailiff;
 - f) He or she pleads against an employee to which he or she is linked as a subordinate worker.

Article 37
Verification

- a) The Legal Profession Management and Discipline Council may request from the entities having professional relations with lawyers, including the lawyers themselves, the information that it deems necessary in order to check the existence of any incompatibility or impediment.

- b) Where such information is not provided by the lawyer within 30 days from the date of receipt of the request, the Legal Profession Management and Discipline Council may decide on the suspension of the subscription.

Article 38
Obligation to communicate

1. Magistrates, public defenders, and civil servants are obliged to inform the Legal Profession Management and Discipline Council of situations of illegal or irregular exercise of the legal profession that come to their knowledge.
2. Any individual aware of any illegal or irregular exercise of the legal profession may also inform the Legal Profession Management and Discipline Council thereof.

CHAPTER V
PROFESSIONAL DEONTOLOGY

Article 39
Deontological duties

1. In the exercise of the legal profession and outside of it, lawyers should behave as servers of justice and the law and, as such, they shall show themselves as deserving the honor and the responsibilities inherent to them.
2. In the exercise of the legal profession, lawyers shall, irrespective of the circumstances, always maintain the highest independence and exemption and not take advantage of their mandate to pursue objectives other than those of a mere professional nature.
3. Lawyers shall observe punctually and scrupulously the duties provided for in the present statute as well as all those duties imposed on them by the law and the professional praxis vis-à-vis other lawyers, magistracies, public defenders, clients, and any public or private entities.
4. Lawyers should behave with honesty, integrity, rectitude, loyalty, courtesy, and sincerity.

Article 40
Duties vis-à-vis the community

The following shall constitute duties of the lawyer vis-à-vis the community:

- a) Strive for the good enforcement of the laws, for the quick, effective, and good administration of justice, and for the improvement of the juridical culture and institutions;

- b) Protest against violations of human rights and fight any arbitrariness that come to their knowledge in the exercise of the legal profession;
- c) Not to advocate against express law, not to use illegal means or expedients, nor to promote services manifestly dilatory, useless, or prejudicial to the correct enforcement of the law or to the discovery of truth;
- d) Refuse pleading in matters that he or she considers to be unjust;
- e) Refuse any mandate or provision of professional services that, under any circumstance, do not result from a direct and free choice by the mandant of the interested party;
- f) Not to make any publicity nor to ask for clients, either directly or through an intermediary, save in the cases permitted by law;
- g) Refuse to provide services whenever there are serious suspicions that the operation or juridical performance at stake aims at obtaining illicit results and the interested party is not willing to abstain from such operation;
- h) Refuse to receive and manage funds that do not correspond strictly to a matter entrusted to him or her.

Article 41
Professional secrecy

1. Lawyers are obliged to keep professional secrecy with regard to the following:
 - a) Facts relating to professional matters disclosed to them by their clients or on their instructions while in the exercise of the legal profession;
 - b) Facts communicated to them by any colleagues also obliged to keep professional secrecy with respect to the same facts;
 - c) Facts communicated to them by a co-author, co-defendant, or co-interested party of their clients or respective representatives;
 - d) Facts which the clients' opposing party or respective representatives have communicated to them in the course of negotiations for amicable agreement and that are relevant to the claim.
2. Obligation of professional secrecy exists regardless as to whether or not the services requested or entrusted to the lawyer involve any judicial or extra-judicial representation, should or should not be remunerated, or the lawyer has or has not accepted to represent or to execute the service, and the same shall apply to all lawyers who, either directly or indirectly, have had intervention in the service.
3. Professional secrecy shall also be extended to documents or other things having a direct or indirect relation to the facts at stake.
4. Professional secrecy shall cease in relation to everything that is absolutely necessary for protecting the dignity, rights, and legitimate interests of the lawyers themselves and the clients or their representatives upon prior authorization of the Legal Profession Management and Discipline Council.

5. Statements made by lawyers in violation of professional secrecy shall not be used as evidence in court.
6. Without prejudice to the provisions of paragraph 4 above, lawyers may maintain the professional secrecy.
7. The duty to keep professional secrecy in regard to the facts described in paragraph 1 above shall be extensive to individuals collaborating with lawyers in the exercise of their professional activity, and the sanction provided for in paragraph 5 above shall apply in case of violation.
8. The regime provided for in the present article shall not prejudice the provisions contained in the procedure laws.

Article 42
Publicity and public discussion

1. Lawyers shall be barred from making any kind of advertisement through circulars, announcements, the media or placards indicating the exercise of the legal profession or through any other form, either directly or indirectly, of professional publicity, namely divulging the name of their clients.
2. Lawyers shall not promote nor authorize the circulation of news relating to judicial matters or to other professional matters entrusted to them.
3. Lawyers shall not interfere or attempt to interfere, through the media, in the settlement of judicial pleadings or in other pending matters.
4. Lawyers shall not discuss pending matters in public or through the media nor contribute to such discussions.

Article 43
Exceptions

1. For the purposes of article 42 above, the following shall not constitute publicity:
 - a) Indication of academic titles or reference to the lawyers association to which they belong;
 - b) Use of boards outside the offices, insertion of mere announcements in newspapers, and use of visit cards or letter paper as long as they merely indicate the name of the lawyer, the office address, and the working hours.
2. In exceptional cases justified by public interest, the Legal Profession Management and Discipline Council may authorize that statements be made to the media safeguarding, however, the professional secrecy and the independence of the other judicial operators.

Article 44
General duty of civility

In the exercise of the legal profession lawyers shall proceed with civility, namely towards other lawyers, public defenders, magistrates, functionaries, experts, interpreters, witnesses and other involved parties, without prejudice to the duty of adequately protect the interests of their clients.

Article 45
Representation against lawyers, public defenders, or magistrates

Before promoting any judicial, disciplinary, or any other diligence against other lawyers, public defenders or magistrates, lawyers should communicate to them in writing of their intention, providing them with the explanations they deem necessary, save where they are diligences or acts of a secret or urgent nature.

Article 46
Duties towards the client

1. The following shall constitute duties of lawyers vis-à-vis their clients:
 - a) Refuse a mandate or refuse to provide services in the cases referred to in article 36;
 - b) Provide clients with a conscientious opinion on what they are entitled to, and can expect, under the law, as well as, whenever so requested, provide clients with information on the progress of the matters entrusted to them;
 - c) Study carefully and zealously any matter entrusted to them by the clients by using every resources of his or her experience, knowledge and activity;
 - d) Keep professional secrecy;
 - e) Advise on every aspect that they consider to be fair and equitable;
 - f) Indicate, whenever possible, the total estimate amount of the fees he or she intends to charge for the requested services by identifying, in addition to the maximum and minimum value of his or her work per hour, the rules upon which the fees are determined;
 - g) Inform the client of all moneys that he or she has received from him or her, regardless of their origin, and present a note on fees and expenses;
 - h) Put to good use all values, documents, or objects entrusted to him or her;
 - i) Not to enter into contracts on the object of the matters entrusted to him or her for self advantage nor otherwise request or accept participation in the results of the cause;
 - j) Not to abandon the representation of the client or the follow-up of the matters entrusted to him or her without justified reason.

2. Lawyers shall undertake every effort to prevent their clients from exercising any reprisals against the opposing party, the lawyer of the opposing party, public

defender, magistrate, or other intervening party or from being impolite towards them.

3. Even where a justified reason exists, lawyers shall not abandon the representation or the follow-up of the matters at stake in a manner that makes it impossible for the client to obtain assistance from another lawyer in due time;
4. Where there is abandon of representation or of follow-up of the matters at stake and where values have been received in advance or for payment of expenses or of any other charges, any amounts remaining from such advanced values shall be returned to the client as soon as possible.

Article 47 **Value of the fees**

1. When determining the fees, lawyers shall observe the schedule of fees and shall act with moderation by considering the amount of time spent, the difficulty and urgency of the matter, the importance of the services effectively rendered, the results obtained, the degree of intellectual creativity, the economic position of the interested party, as well as other professional usages.
2. Without prejudice to the provision of paragraph 3 below, a prior agreement may be entered into determining a fee schedule, which may take the form of a fixed retribution.
3. Where no prior agreement in writing has been entered into, the lawyer shall present the client with the respective amount of payable fees with a detailed description of the services rendered.

Article 48 **Schedule of fees**

The schedule of fees shall be prepared by the Legal Profession Management and Discipline Council and published in the Official Gazette.

Article 49 **Prohibitions**

Lawyers shall be prohibited from:

- a) Demanding a part of the object of debt or any other thing by way of payment;
- b) Sharing fees, except among colleagues who have collaborated;
- c) Establishing that the right to fees is conditional upon the results of the proceeding or business;

Article 50
Payment of fees

1. Fees shall be paid in money.
2. Lawyers may request advance payments on fees, by way of deposit, and, where this request is not met, they shall have the right to renounce the mandate.

Article 51
Provisions and responsibilities of lawyers for payment of costs and other charges

1. Provisions asked as advance fees or for payment of expenses shall not exceed a reasonable estimate of the likely final fees and expenses.
2. Lawyers may only be held accountable for the provisions that clients have made available for the purpose of paying expenses or any other charges and shall not be obliged to use the provisions they may have received from clients for payment of their fees as long as the clients are aware of the fact that such provisions have been allocated for payment of lawyers' fees.

Article 52
Restitution of documents and values to the client at the end of the mandate

1. Once the representation entrusted to lawyers ceases, lawyers shall return the documents, values or objects that may have been handed over to them and that are necessary for proving the client's case or whose retention may cause serious damages to the client.
2. As regards other values and objects under their custody, lawyers shall enjoy the right of retention in order to guarantee payment of fees and reimbursement of expenses.

Article 53
Duties vis-à-vis magistrates

1. Without prejudice to their independence, lawyers shall always treat magistrates with the respect owed to their function and shall abstain from interfering in their decisions either directly, in conversations or in writing, or through an intermediary, and they shall be considered as being the interested party itself.
2. Lawyers are particularly prevented from sending or causing to send to magistrates any memories or from resorting to disloyal methods for protecting the interests of the parties.

Article 54
Relations with witnesses

Lawyers shall be prevented from establishing contacts with witnesses or other intervening parties to the proceeding with the objective of instructing or influencing them, or otherwise altering their testimonial.

Article 55
Reciprocal duties among lawyers

1. The following shall constitute duties for lawyers in their reciprocal relations:
 - a) To act with the highest correction, civilness, and frankness, abstaining themselves from any personal attack, dishonorable criticism or depressing references;
 - b) Not to make public statements on a matter known to have been entrusted to another lawyer, save in the presence of the latter or with his or her prior consent;
 - c) To act with the highest loyalty, not attempting to obtain illegitimate or undue advantages for their own clients;
 - d) Not to contact or maintain relations, even in writing, with any opposing party represented by a lawyer, save where this has been previously authorized by the latter or is a result of a legal or contractual imposition;
 - e) Not to invoke in public, particularly in court, any failed transactional negotiations, either verbal or written, in which they have intervened as lawyers;
 - f) Not to sign opinions, procedural pieces, or other professional writings not made by them or in which they did not collaborate.
2. The duties referred to in paragraph 1 above shall also apply to lawyers and public defenders in their reciprocal relations.

CHAPTER VI
DISCIPLINE

Article 56
Disciplinary infraction

Lawyers who, by commission or omission, violate maliciously and culpably any of the duties provided for in the present statute and in other applicable legislation, shall be considered as having committed a disciplinary infraction.

Article 57

Legal Profession Management and Discipline Council

1. Until such time as the Bar Association is established, it shall be incumbent upon the Legal Profession Management and Discipline Council to exercise disciplinary power over lawyers.
2. The Legal Profession Management and Discipline Council shall be composed of five members, three of which shall be appointed by the Legal Training Centre, one appointed by the Lawyers Association of Timor-Leste, and one appointed on a rotative basis from among the non-governmental organizations that develop their activities in the area of Justice.
3. The Lawyers Association of Timor-Leste and each of the non-governmental organizations referred to in the preceding paragraph shall nominate one effective member and one alternate member to the Legal Profession Management and Discipline Council. The alternate member shall replace the effective member in the latter's absences or impediments.
4. The members of the Legal Profession Management and Discipline Council shall have a four-year term.
5. The Chairperson of the Legal Profession Management and Discipline Council shall be elected from among the members appointed by the Legal Training Centre.

Article 58

Competences of the Legal Profession Management and Discipline Council

Until such time as the Bar Association is established, it shall be incumbent upon the Legal Profession Management and Discipline Council to undertake the following activities, among other competences established in the present law:

- a) To issue lawyer's professional license at the request of the interested party;
- b) To organize a list of registered lawyers and keep it up-dated;
- c) To determine the professional dressing;
- d) To verify the existence of incompatibilities and impediments, in accordance with articles 36 and subsequent articles;
- e) To authorize the lifting of the professional secrecy, in accordance with article 41;
- f) To authorize that statements be made to the media;
- g) To initiate disciplinary proceedings against lawyers who violate the norms contained in the present law;
- h) To file civil liability suits, in accordance with article 66.

Article 59
Disciplinary action

1. The disciplinary procedure shall be initiated by decision of the Legal Profession Management and Discipline Council based on the knowledge of facts that are likely to amount to a disciplinary infraction.
2. Any lawyer-defendant may be assisted by a lawyer of his or her choice.
3. Until such time as the Bar Association and respective by-laws are established, discipline of lawyers shall be governed, *mutatis mutandis*, by the pertinent norms of the Statute of the Judicial Magistrates, with exception of the provisions of paragraphs 2 and 3 of its article 104.

Article 60
Determination of penalties

1. Lawyers shall be subject to the following penalties:
 - a) Admonition;
 - b) Fine up to 180 days;
 - c) Suspension up to two years;
 - d) Suspension for more than two years and up to fifteen years;
2. Enforced penalties shall always be registered.
3. Amnesties shall not prejudice the effects produced by the enforcement of penalties and they shall be annotated in the respective individual proceeding.
4. The penalty provided for in subparagraph a) of paragraph 1 may be enforced irrespective of the proceeding as long as a hearing has taken place and the person to be penalized has been given the possibility to defend himself or herself.

Article 61
Admonition penalty

The admonition penalty shall apply to offences of little gravity and shall consist in the mere reproof or reprehension for the irregularity committed and is intended to warn the lawyer that the committed action or omission may prejudice the exercise of his or her functions or may reveal itself to be incompatible with the dignity required of him or her.

Article 62
Fine penalty

1. The fine penalty shall apply to cases of negligence or disinterest in complying with the duties of the function which cannot be punished only by the admonition penalty.
2. The fine penalty shall vary between 5 and 50 US dollars per day.

Article 63
Suspension penalty

1. The suspension penalty shall consist in the prohibition to exercise the function of legal profession for a certain period of time.
2. The suspension penalty of up to two years shall apply to cases of serious negligence or serious disinterest in complying with the professional duties.
3. The suspension penalty for a period higher than two years and up to fifteen years shall be applicable where the lawyer, in the exercise of his or her functions:
 - a) Reveals such lack of honesty that seriously prejudices the good administration of justice or the interests of the assisted person;
 - b) Deliberately prejudices, by any means whatsoever, the person he or she is providing assistance for his or her own interest or for a third party's interest;
 - c) Has committed acts amounting to intentional crimes and has manifestly and seriously violated the duties of a lawyer.

Article 64
Appeals

Appeals against final decisions of the organs responsible for registration and certification of the exercise of the legal profession and for the exercise of the disciplinary power over lawyers shall be filed with the Court of Appeals, pursuant to the law.

CHAPTER VII
CRIMINAL AND CIVIL LIABILITY

Article 65
Crime of illicit exercise of the legal profession

1. A penalty of imprisonment of up to 3 years or of fine of up to 360 days shall be imposed on any person who, in violation of article 22:
 - a) Undertakes acts proper of the legal profession; or
 - b) Aids or collaborates in the exercise of acts proper of the legal profession.
2. The same penalty shall be imposed to any person who, without being legally registered and certified to exercise the legal profession, uses any type of identification of, or any reference to, the exercise of the legal profession arrogating to himself or herself, either expressly or tacitly, the quality of a lawyer.

Article 66
Civil liability

1. For purposes of civil liability, any acts committed in violation of article 22 shall be presumed as culpable acts.
2. The Legal Profession Management and Discipline Council has legitimacy to file civil suits in order to obtain compensation for damages against public interests the protection of which falls under its jurisdiction.
3. Compensations provided for in paragraph 2 above shall revert to the State.

CHAPTER VIII
FINAL AND TRANSITIONAL PROVISIONS

Article 67
Execution of a freedom-depriving measure

When serving a freedom-depriving measure lawyers shall be placed in a facility specifically intended for that purpose or under a regime of separation from other freedom-deprived citizens.

Article 68
Transitional period

1. During a transitional period of four years from the date of the publication of the present law, the exercise of the legal profession shall be permitted to individuals holding a bachelor's degree in law who register for that purpose with the Legal Profession Management and Discipline Council and who, regardless of the legal requirements, prove that they have already practiced acts of the legal profession before the entry into force of the present law.
2. For the purposes of paragraph 1 above, registration and proof of having exercised the legal profession shall be made before the Legal Profession Management and

Discipline Council. Proof shall be made upon production of certification issued by the Court certifying the practice of acts of the legal profession.

3. Applicants referred to in the previous paragraphs shall be issued a professional license the validity of which shall terminate at the end of the period referred to in paragraph 1 above.
4. Individuals referred to in the previous paragraphs who, after the timeframe provided for in paragraph 1 above has elapsed, cease to be able to exercise acts of the legal profession, shall inform the respective clients of such fact in order to enable them to obtain the assistance of a lawyer in due time.
5. In the cases referred to in paragraph 5 above, where values have been received in advance as fees or for the payment of expenses or of any other charges, any exceeding part of such values shall be returned to the client on the date in which the relevant clients receive the information referred to in paragraph 5 above.
6. During the transitional period, trainees registering themselves pursuant to paragraph 1 above shall not be subjected to the limitations imposed by paragraphs 3 and 4 of article 12 of the present statute.
7. Individuals referred to in the preceding paragraphs shall be obliged to comply with the provisions contained in any legislation or regulation relating to the exercise of the legal profession for their registration, namely the norms relating to duties and discipline provided for in chapters V and VI of the present statute.

Article 69

Establishment of the Bar Association

1. After the period of 3 years has elapsed and until such time as the Bar Association is established, the Government shall, upon advice of the Legal Training Centre, undertake adequate studies on an annual basis to assess whether the necessary conditions exist for the establishment of the Bar Association.
2. So long as the Bar Association is not established, the norms referring to the Bar Association or to its organs shall be understood as intended to the Legal Profession Management and Discipline Council.
3. The studies and advice referred to in paragraph 1 above shall be forwarded to the National Parliament.

Article 70

Sporadic exercise of the legal profession

1. Lawyers not registered pursuant to the present statute shall be allowed to sporadically exercise the legal profession provided they inform the entity in control of the proceeding that their clients prefer to be represented or assisted by him or her.
2. Sporadic exercise of legal profession shall mean any service not undertaken on a regular basis.

Article 71
Continued training

Continuous training constitutes a duty for lawyers and the Legal Training Centre should promote the organization of seminars, conferences and training courses to ensure the permanent updating of technical/juridical knowledge and deontological principles, including the prerequisites for the exercise of the legal profession.

Article 72
Headquarters and administrative services

1. The Government shall guarantee, from 2009, the necessary budget for the set-up of the headquarters and the functioning of the administrative services of the Legal Profession Management and Discipline Council.
2. Until such time as its headquarters is set-up, the Legal Profession Management and Discipline Council shall operate in the facilities of the Legal Training Centre.

Article 73
Society of Lawyers

The establishment and functioning of societies of lawyers shall be the object of a specific statute.

Article 74
Entry into force

The present statute shall enter into force ninety days after its publication.

Approved on 10 June 2008.

The Speaker of the National Parliament,

Fernando La Sama de Araújo

Promulgated on 14 July 2008

For publication.

The President of the Republic,

Dr. José Ramos-Horta

LAW No. 17/2005
LEGISLATIVE AUTHORISATION ON CIVIL PROCEDURE MATTERS
Of 16 September

The present law is the outcome of studies and work on the formulation and drafting of the Civil Procedure Code undertaken by a committee comprised of Timorese and international experts.

The legislative authorisation mechanism provided in paragraph 96.1(b) of the Constitution of the Democratic Republic of Timor-Leste, which is therefore in compliance with the provisions of the fundamental law in force in Timor-Leste, has been chosen.

This chosen mechanism provided for in the Constitution will expedite the legislative process exponentially, making it clear that Parliament refrains completely from intervening in the definition of the legislative policy guidelines that will give shape to the final law, entrusting to the Government the task of dealing with and harmonising aspects relating to the legislative technique in full compliance with the directives issued by the National Parliament. The division of duties and responsibilities assigned to the various constitutional organs with respect to the exercise of legislative powers is taken into account.

The contents and scope of the object of this Law on Legislative Authorisation ensures respect for the citizens' fundamental rights, liberties and guarantees in civil procedure matters. It should be noted that this branch of law is of paramount importance to the basic structure of any legal system in that it constitutes the subsidiary procedural paradigm of the various forms of special proceedings contemplated in a concrete system.

Consequently, it seems timely to us that the present Law on Legislative Authorisation be concurrently approved, to the extent possible, with the draft criminal procedure code and substantive criminal legislation. Furthermore, it seems to us that imperatives of the judicial functioning call for an expeditious intervention in the drafting of procedural legislation.

It should also be pointed out that the present Law on Legislative Authorisation proves to be consistent with the legislative drafting process relating to the Civil Code and other complementary legislation currently under preparation.

The approval of the Civil Procedure Code implies that the Indonesian Civil Procedure Code will, in due course, cease to be applicable and that legislation that has come into force after 20 May 2002, which proves to have a bearing on civil procedure matters, will be harmonised accordingly.

Pursuant to paragraph 96.1(b) of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

Article 1

Object

1. The Government is granted authorisation to approve a Civil Procedure Code and repeal relevant legislation in force.
2. The legislative authorisation that is the subject of the present law also covers the amendment to or the modification of the laws in force containing provisions that need to be harmonised with the principles or precepts of the future Civil Procedure Code.

Article 2

Meaning and scope

1. The Code to be drafted under the present law on legislative authorisation shall observe the constitutional principles and the norms laid down in international instruments that are binding on Timor-Leste.
2. The authorisation referred to in subarticle 2.1 above has the following meaning and scope:
 - (a) set up a procedural system that will allow the competent authorities to achieve, to the extent possible and as quickly as possible, the goals of administering justice, of establishing the primacy of law and the rule of law, and of preserving people's fundamental rights, and social peace;
 - (b) simplify, de-bureaucratise and speed up the handling of proceedings in accordance with the pursuit of the above-mentioned goals;
 - (c) regulate the structuring principles of civil procedure (prohibition of self-defence, access to law, lawsuits initiated by the parties concerned, the adversarial nature of proceedings, and equality between the parties);
 - (d) strictly define the procedural prerequisites in respect of the parties(personality, legal capacity and legitimacy, legal aid, and the jurisdiction of courts;
 - (e) offer guarantees of impartiality through the strict determination of cases where the judge, public prosecutor or court clerk is disqualified, provide that the judge may file a request for excuse and that any of the parties may raise suspicion;
 - (f) regulate procedural acts in general, acts to be performed by the parties, acts to be performed by magistrates, and secretarial acts. Define rules relating to the public character of proceedings and the access thereto;
 - (g) regulate matters relating to the reporting of acts;
 - (h) regulate the nullity of acts;

- (i) regulate the assignment of lawsuits and appeals and establish a system for serving summons and notices;
- (j) regulate litigations with the reaffirmation of the principle of litigations being initiated by the parties concerned and of the principle of stability of litigations. Provide for the possibility of subjective and objective modifications. Characterise the causes for suspending a litigation, the facts leading to the interruption of a litigation, and the causes for dismissing or dropping a litigation; characterise and regulate each of the extraordinary occurrences in a litigation;
- (k) regulate provisional remedies, establishing, together with an ordinary provisional remedy, seven special provisional remedies (provisional restitution of ownership, suspension of corporate deliberations, provisional alimony, provisional reparation arbitration, seizure, construction embargo, and enlisting);
- (l) provide for two forms of declarative lawsuit (ordinary proceedings and special proceedings). Enumerate and regulate in detail the articulated pleadings (a complaint may be rejected beforehand or be the subject of an order calling on the plaintiff to improve it; plea subject to specific rejection, and the possibility of cross-complaint). Regulate in-absentia trials and the penalising effects thereof; provide for defence through rejection, and defence through exception (dilatory exceptions and peremptory exceptions). Admit a third articulated pleading (answer) limited to cases in which an exception has been adduced, a cross-complaint has been presented or the action is but a negative examination;
- (m) provide for a phase of curative and fact-finding acts, with the possibility of attempting conciliation. Regulate curative acts and organise specifications and questionnaires with the possibility of reference to the articulated pleadings, and waive of specifications and questionnaires in unchallenged or rather uncomplex lawsuits. Regulate the pre-trial investigation of cases with the indication of evidence, the early production of evidence, and the transmission of rogatory letters;
- (n) regulate examining trials by a one-judge court or by a court constituted of more than one judge;
- (o) regulate sentencing, the contents of sentences, conviction limits, flaws, sentence reviews, and sentence effects;
- (p) regulate appeals, making provision for ordinary appeals (appellate review and bill of review) and extraordinary appeals (jurisprudence review and standardisation). Shape the appellate review as an appeal arising from a final sentence and the curative act that determine the grounds of action, and bills of review arising from decisions that may not be appealed against;

- (q) systematise all matters relating to evidence: principles (free examination of evidence, adversary hearing, cooperation in uncovering the truth); burden of proof; presumptions; means of proof (evidence on admission of guilt, witness testimony, documentary evidence, confrontation of witnesses, judicial examination, expert evidence);
- (r) provide for a title on matters relating to costs, fines and compensation for bad-faith litigation;
- (s) regulate in detail a standard execution proceeding only in the form of an ordinary proceeding, with an introductory phase, intervention by a third party, attachment, bankrupt's creditors claims, and payment, and provide that execution debts may be paid in instalments;
- (t) establish and regulate in detail eight special proceedings: prohibitions and disqualifications; reform of records, documents and books; provision of bail; divorce and separation of people; provision of food; review of foreign sentences; inventory; compensation action against magistrates;
- (u) contemplate final and transitional provisions.

Article 3 **Complementary and related legislation**

1. The authorisation granted by this law also covers the drafting of a legislative act that will regulate the procedures and the articulation between administrative authorities and the courts in the execution of procedural acts, namely, summons, citations and orders to appear.
2. Pending a nationwide coverage of the territory of Timor-Leste by the postal services in regard to hand delivery of mail to addressees, a cooperation regime between district and sub-district administrators and the courts regarding the transmission of procedural acts may be established.

Article 4 **Duration**

The duration of the legislative authorisation granted by this law shall be 120 days commencing on the date of its entry into force.

Article 5 **Entry into force**

The present law shall come into force on the day following the date of its publication.

Approved on 26 July 2005.

The Speaker of the National Parliament

[Signed]

Francisco Guterres “Lu-Ólo”

Promulgated on 3 September 2005.

To be published.

[Signed]

Xanana

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE
GOVERNMENT**

DECREE-LAW No. 13/2005

OF

APPROVING THE CRIMINAL PROCEDURE CODE

The collective commitment made by Timor-Leste to assert itself as an independent country has led to a claim for a legal system of its own in which criminal procedure solutions assume a special prominence.

Urgency in the preparation of a criminal procedure codification was also felt, given the national options that find themselves grounded in instruments as the Constitution and the draft Penal Code whose the law authorising its approval has also already be published, which necessarily affect the drafting of the Criminal Procedure Code.

Coupled with these options is also, obviously, the existence of an environment created by the rapid immersion of Timor-Leste into the international commitment it has been assuming, as well as by the options consolidated in relation to the legal system that has been espoused.

On the other hand, attention is paid to the genesis and importance of the panels established by the United Nations Transitional Administration in East Timor (UNTAET) with prosecutorial jurisdiction over cases relating to serious crimes committed between 1 January and 25 October 1999, which are still operational,

Thus:

Pursuant to the legislative authorisation granted under articles 1 and 2 of Law No. 15/2005, of 16 September, and under the terms provided in section 96 of the Constitution, the Government enacts the following that shall have the force of law:

Article 1

Approval of the Criminal Procedure Code

The Criminal Procedure Code published as an annex to this decree-law and as an integral part hereof is hereby approved.

Article 2

Repeal

1. The following legislative acts are repealed:

(a) UNTAET Regulation No. 2000/30, of 25 September, as amended by UNTAET Regulation No. 2001/25, of 14 September, on Transitional Rules of Criminal Procedure;

(b) Sub-article 6.1 and articles 1, 3, 4 and 16 of Decree-Law No. 16/2003, of 1 October.

2. Provisions contained in legislation sanctioning solutions that are contrary to those adopted by the Criminal Procedure Code, notably those of UNTAET Regulation No. 2000/11, of 6 March, as amended by UNTAET Regulations Nos. 2000/14, of 10 May, 2001/18, of 21 July, and 2001/25, of 14 September, is also repealed.

3. Exception is made to the provisions of article 3.

Article 3
Serious Crimes

All provisions regulating cases related to serious crimes committed between 1 January and 25 October 1999 remain in force, notably those contained:

- (a) in sub-articles 9.1, 9.2 and 9.4 of UNTAET Regulation No. 2000/11, of 6 March, as it currently reads;
- (b) in UNTAET Regulation No. 2000/15, of 6 June.

Article 4
Misdemeanours

Until such a time as there are misdemeanours in the Timorese legal system, the provisions of the Code approved by this decree-law shall, with the necessary adaptations and on a subsidiary basis, apply to cases relating to misdemeanours.

Article 5
Entry into Force

This decree-law and the Criminal Procedure Code shall come into force on 1 January 2006.

The Prime Minister
[Signed]
(Mari Bim Amude Alkatiri)

The Minister of the Interior
[Signed]
(Rogério Tiago Lobato)

The Minister of Justice
[Signed]
(Domingos Maria Sarmento)

Promulgated on 22 November 2005

To be published.

The President of the Republic
[Signed]
(Kay Rala Xanana Gusmão)

ANNEX

CRIMINAL PROCEDURE CODE

Preamble

1. The normative framework presented by the Criminal Procedure Code is inspired by and fully consistent with the options enshrined in the Constitution in the area of individual rights, liberties and guarantees of the person, thus confirming the traditional doctrinal statement that the criminal procedure system is true “applied constitutional law”.

Hence, the normative solutions adopted in this Code are primarily aimed at consolidating and regulating what is safeguarded by the Constitution of the Republic on matters of criminal procedure guarantees and other individual rights, limiting the innovative activities of the legislator in order to ensure that “the extent and scope of the essential contents of the constitutional provisions” is not reduced.

2. On the other hand, without losing sight of the thought of a protective nature previously expressed, the criminal procedure legislator has sought to adopt the most adequate procedure mechanisms for an effective fight against the various forms of crime occurring in the Timorese social fabric, which is a sine qua non of the survival of a State based on the rule of law.

We are convinced that the practical concordance among the bare minimum of restrictions on constitutionally supportable individual liberties, but necessary as an essential guarantee of survival of a democratic society, has been reached in this Code in a balanced and proportional fashion.

3. An exhaustive characterisation of procedural participants has been done with regard to their regulation. A rigorous definition has been given of the circumstances and of the time when the perpetrator of a criminal offence assumes the procedural position of suspect, defendant or convict, respectively, as well as the respective procedural duties and rights.

The status of an aggrieved person has been adopted as a mere auxiliary to the public prosecutor in a criminal proceeding. The aggrieved person is represented by the public prosecutor, and civil compensation arising from the commission of a criminal offence may, at the discretion of the latter, be arbitrated in the criminal proceeding, except as otherwise stated by the aggrieved person.

The delimitation of general police powers and the enumeration of police measures and their respective prerequisites are also set out.

4. With respect to evidence, emphasis is placed on the provisions concerning the prohibition of evidence, absolute or relative, and its respective value, in addition to providing, as a general rule, for the obligation to produce or examine the evidence at the trial hearing in order that the formation of an opinion by the court can be sustained. Reference should also be made to the regulation of the means of evidence “searching a crime scene” as a tool of acknowledged importance during the course of the investigation.

5. In regard to the means of obtaining of evidence, nullities, and restrictive and property guarantee measures, a very exhaustive regulation has been effected in order to facilitate the application thereof by the various judicial operators.

6. A pattern of procedural steps as simplified as possible with the objective of favouring procedural expeditiousness as a tool capable of ensuring greater effectiveness in preventing crime. Consequently, there is only one form of ordinary proceeding and one form of expedited proceeding, the latter being intended to handle small and less serious crimes involving *flagrante delicto*.

In the form of ordinary proceeding, the investigation is done through an enquiry conducted by the public prosecutor, and police shall act under the functional purview of the Public Prosecution Service. It is incumbent upon the judge, still in this phase, to either practise or authorise acts that may limit fundamental rights and liberties of the citizen, namely, the judge has the obligation to conduct the first questioning of the detainee within seventy two hours of the time he or she was arrested.

7. Deadlines adequate to the Timorese judicial reality have been set for the duration of pre-trial detention and for conducting an enquiry, particularly where defendants have been placed under pre-trial detention or in particularly complex cases.

8. In relation to sentencing, there is an obligation to present the factual and legal basis for the sentence in an unequivocal manner. Therefore, in addition to the possibility of documenting the evidence obtained at the hearing, factual and legal knowledge during appeal proceedings is ensured, and, through the obligation to present the basis for the sentence, the “monitoring” by the community of the action taken by the organs responsible for the administration of justice is made possible.

9. Finally, jurisdictional competence during the penalty execution phase is assigned to the trial judge.

CRIMINAL PROCEDURE CODE
PART I
ON THE GENERAL PART
TITLE I
PRELIMINARY AND GENERAL PROVISIONS

Article 1
Legal definitions

For the purposes of this Code:

- (a) “Crime” means a set of prerequisites upon which the imposition of a criminal penalty or security measure on the perpetrator depends;
- (b) “Judicial authority” means the judge and the public prosecutor, each one in relation to procedural acts falling under his or her respective competence;
- (c) “Clearly unfounded indictment” means an indictment that does not contain a statement of acts or indications conducive to identifying the defendant, fails to

indicate the applicable legal provisions or the evidence in which the indictment is grounded, or where the stated acts do not constitute a crime;

(d) “Social report” means a document prepared by technical services with competence to assist the courts, with the objective of assisting in the identification of the personality of the defendant, or of the victim, and the provision of elements regarding the living conditions of the latter.

Article 2

Principle of legality

The legal and criminal consequences arising out of the commission of a criminal offence may only be applied in accordance with the provisions of this Code.

Article 3

Filling of lacunae

In cases of omission, where the provisions of this Code may not apply by analogy, the provisions of the civil procedure, which are consistent with the criminal procedure, or, in the absence of the latter, the general principles of the criminal procedure, shall be complied with.

Article 4

Application of the law over time

1. The criminal procedure law shall be immediately applicable, without prejudice to acts practised during the time the previous law was in force.
2. The criminal procedure law shall not apply to proceedings initiated before its entry into force where from its immediate applicability may result.
 - (a) considerable aggravation, which can still be avoided, of the procedural situation of the defendant, namely a limitation on his or her right to counsel; or
 - (b) breach of harmony and unity of the various acts of the proceeding.

Article 5

Territorial application of the law

1. The criminal procedure law applies throughout the territory of Timor-Leste.
2. The criminal procedure law also applies in a foreign territory, under the terms defined in international law treaties, conventions, and rules.

Article 6

Application to other offences

With the necessary adaptations and on a subsidiary basis, the provisions of this Code apply to disciplinary and administrative proceedings.

TITLE II
ON THE COURTS
CHAPTER I
ON JURISDICTION

Article 7

On criminal jurisdiction

1. Only the courts provided in the law on judicial organisation are competent to administer criminal justice.
2. In the exercise of this function, the courts owe obedience only to the law and the rule of law.

Article 8

Cooperation between authorities

1. Every public authority is obliged to cooperate with the courts in the administration of criminal justice, as and when requested.
2. The cooperation referred to in the preceding sub-article takes precedence over any other service.

Article 9

Sufficiency of criminal jurisdiction

1. Except as otherwise stated, every issue relevant to the decision of a case, regardless of its nature, is settled through the criminal procedure.
2. Once the indictment has been presented, at its own request or discretion, the court may suspend the proceeding in order that any issue of a non-criminal nature, essential to the disclosure of the truth, which cannot be properly settled in the criminal proceeding, may be decided in a competent court.
3. Suspension may not exceed the duration of one year and does not impede the carrying out of urgent search to establish evidence.
4. Where a lawsuit has not been filed within thirty (30) days from the date the decision on suspension was made, or once the time limit referred to in the preceding sub-article has expired without a decision on the prejudicial issue, the criminal proceeding shall proceed and the decision must be rendered therein.
5. In the case of suspension, the public prosecutor may intervene in the non-criminal proceeding to seek to expedite it and inform the criminal court.

CHAPTER II

ON JURISDICTION
SECTION I
ON GENERAL PROVISIONS
Article 10
Determining the applicable penalty

1. For the purposes of assessing jurisdiction, the circumstances increasing the legal maximum limit of the penalty that corresponds to the type of criminal offence shall be taken into account in determining the abstractly applicable penalty.
2. In the case of accumulation of criminal offences, the highest penalty, which is abstractly applicable to the most serious crime, shall be imposed.

Article 11
Subsidiary regime

On matters of criminal competence, the laws on judicial organisation apply on a subsidiary basis.

SECTION II
ON SUBJECT MATTER AND FUNCTIONAL JURISDICTION
SUBSECTION I
JURISDICTION ON GROUNDS OF HIERARCHY
Article 12
Jurisdiction of the Supreme Court of Justice

1. On criminal matters, it is incumbent upon the full bench of the Supreme Court of Justice to:
 - (a) try the President of the Republic;
 - (b) adjudicate appeals against decisions that have been handed down, in first instance, by the criminal section of the Supreme Court of Justice;
 - (c) standardise the jurisprudence, under the terms established by article 321 and subsequent articles;
 - (d) exercise such other competencies as assigned by law.
2. On criminal matters, it is incumbent upon the criminal section of the Supreme Court of Justice to:
 - (a) adjudicate cases in connection with criminal offences committed by judges of the Supreme Court of Justice, the Prosecutor-General, and other public prosecutors posted to that court;
 - (b) adjudicate cases in connection with criminal offences committed by judges of first-instance courts or by public prosecutors;
 - (c) adjudicate appeals that are not provided for in sub-article 12.1;
 - (d) admit conflicts of competence between the courts referred to in paragraph 12.1(b);
 - (e) admit <<*habeas corpus*>> motions filed on grounds of unlawful imprisonment or detention;
 - (f) adjudicate judicial cases of extradition;
 - (g) adjudicate cases of review and confirmation of foreign criminal sentences;
 - (h) exercise such other competencies as assigned by law.

Article 13
Jurisdiction of District Courts

It is incumbent upon district courts to:

- (a) adjudicate cases in connection with criminal offences the jurisdiction of which is not assigned by law to any other court;
- (b) adjudicate appeals lodged against decisions by administrative authorities in proceedings of an administrative nature;
- (c) exercise judicial competence in the sentence execution phase;
- (d) exercise jurisdictional competence in the enquiry phase;
- (e) decide all criminal issues, which are not expressly assigned to any other entity or court;
- (f) exercise such other competencies as assigned by law.

SUBSECTION II
JURISDICTION ON GROUNDS OF THE COMPOSITION OF THE COURT
Article 14

Jurisdiction of courts with more than one judge

Courts function collectively, on criminal matters, for the trial of cases in connection with criminal offences the maximum abstract penalty of which exceeds five years' imprisonment.

Article 15
Jurisdiction of one- judge courts

It is incumbent upon one-judge courts, on criminal matters, to try cases in connection with criminal offences that cannot be tried by a court functioning collectively and to exercise such other competencies as set forth in article 13.

SECTION III
ON TERRITORIAL JURISDICTION

Article 16
General rule

1. The court of the jurisdiction where a criminal offence was consummated is the competent court to adjudicate the offence.
2. Where a criminal offence could not be consummated or was consummated through successive or reiterated acts, or through a permanent act, the competent court is the one in whose jurisdiction the last act was practised or where the offence was fully consummated.

Article 17

Criminal offence committed aboard a vessel or aircraft

1. The court in whose jurisdiction the perpetrator disembarks is the competent court to adjudicate an offence practised aboard a vessel or aircraft.
2. Where the perpetrator does not disembark in Timorese territory, the court of the jurisdiction where the vessel or aircraft was registered is the competent court.

Article 18

Criminal offence committed overseas

1. Where a criminal offence is committed overseas, the competent court is the court with jurisdiction over the area, within the territory of Timor-Leste, where the perpetrator was found.
2. Where the perpetrator was not found or he or she remains overseas, the competent court is the court with jurisdiction over the area of his or her last known residence in Timorese territory.

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Subsidiary rule

1. In case a criminal offence is related to places falling within the jurisdiction of more than one court and should there be any doubts as to the determination of territorial jurisdiction, or where the criminal offence was committed in an unknown place, the competent court is the court to which the offence was first reported.
2. In cases other than those foreseen in this section, the competent court is the court to which the criminal offence was first reported.

SECTION IV

ON JURISDICTION ON GROUNDS OF RELATIONSHIP

Article 20

Full relationship

1. A single case file is organised where:
 - (a) the same or different criminal offences have been jointly committed by several perpetrators;
 - (b) the same or different perpetrators have committed various criminal offences through the same conduct, or at the same time or place, or where some of such offences are the cause or effect of others, or where some are meant to carry on or hide others.
2. Where distinct cases have been initiated, all related files shall, at request or on a discretionary basis, be attached as a single file as soon as that relationship becomes known and the records are found to be at the same procedural stage.

Article 21

Partial relationship

1. Even with regard to cases not provided in article 20, case files for trial must be attached together where the same perpetrator is accused of committing several criminal offences.
2. Where the determining reason for relationship becomes known after the trial was held, case files shall be attached together if there is an accumulation of offences.

Articles 22

Limitations on relationship

A jurisdictional relationship becomes ineffective between cases that fall under the jurisdictions of:

- (a) juvenile courts;
- (b) the Supreme Court of Justice functioning as a first-instance court where any of the accused should not be tried in that court.

Article 23

Determining jurisdiction on grounds of relationship

1. Where related proceedings must be under the jurisdiction of courts of a different hierarchy or with a different mode of operation, the court of the highest hierarchy or the court hearing cases of the highest gravity shall be the competent court.
2. Where related proceedings must be under the jurisdiction of various courts, on territorial grounds, the competent court to adjudicate all the proceedings is the one to which corresponds the criminal offence carrying the heaviest penalty, within its maximum limit, or the court to which any of the criminal offences was first reported, in the case of equal maximum limit of the applicable penalties.

Article 24

Extending jurisdiction

A jurisdiction determined on the grounds of relationship is retained even where:

- (a) the separation of proceedings is ordered under the terms of article 25;
- (b) the court pronounces a decision of acquittal in relation to any of the criminal offences;
- (c) the extinguishment of criminal liability occurs in relation to any of the criminal offences;

Article 25

Separation of proceedings

Exceptionally, separation of proceedings is permitted, either at request or on a discretionary basis, where:

- (a) there is a reasonable and agreeable interest of any defendant in separation, particularly in reducing the duration of pre-trial detention;
- (b) relationship may pose a serious risk to the punitive intention of the state or to the interests of the aggrieved persons or
- (c) relationship may result in significant delays in the proceedings.

SECTION V

ON DECLARATION OF LACK OF JURISDICTION

Article 26

General rule

Lack of jurisdiction of a court and the Public Prosecution Service is, respectively, assessed and declared by the latter, either at request or on a discretionary basis.

Article 27

Lack of jurisdiction of a court

Lack of jurisdiction of a court may be required and declared until such a time as a final decision is rendered, except in the case of lack of territorial jurisdiction, in which case it must be declared until trial hearings start.

Article 28

Lack of jurisdiction of the Public Prosecution Service

Lack of jurisdiction on the part of the Public Prosecution Service may be declared until such a time as the indictment is presented.

Article 29

Effects of declaration of lack of jurisdiction

1. A declaration of lack of jurisdiction implies referring the records to the competent entity forthwith.
2. A declaration of lack of jurisdiction on the part of Timorese courts to adjudicate a criminal offence implies dismissing the proceeding, once a final decision thereon has been rendered.

Article 30

Urgent acts

A court or Public Prosecution Service agent, who makes a declaration of lack of jurisdiction, shall perform, however, those procedural acts that are urgent in nature.

Article 31

Validity of prior acts

Evidence adduced, restrictive measures imposed, and all other procedural acts performed before a declaration of lack of jurisdiction is made, retain their validity, except where the competent court deems them unnecessary.

SECTION VI ON CONFLICTS OF JURISDICTION

Article 32

Concept of conflict

There is a conflict of jurisdiction, either positive or negative, where various judicial entities consider themselves, respectively, competent or incompetent to adjudicate the same criminal offence or to perform the same procedural act.

Article 33

Disclosure of conflict

The last judicial entity to declare itself either competent or incompetent reports the situation of conflict immediately to the presiding judge of the higher court or to a superior with competence to settle such a conflict, as the case may be.

Article 34

Competence to settle conflicts

1. Where a conflict arises between courts, the competence to settle the conflict rests with the presiding judge of the higher court.
2. Where a conflict arises between public prosecutors, the competence to settle the conflict rests with a superior common to both of those public prosecutors.

Article 35

Investigating and handling incidents

1. A conflict may arise, either on a discretionary basis or at request, and the report disclosing the conflict must be accompanied by all the elements necessary to the settlement thereof.
2. Once the report disclosing the conflict has been received, the judicial entities which are the parties to the conflict and all other procedural subjects concerned are notified to issue, if they so wish, a pronouncement within five days.
3. Once the deadline set in the preceding sub-article has elapsed, and after the information and evidence necessary to its settlement have been collected, a decision is passed.
4. The decision is communicated to the judicial entities that are the parties to the conflict and to all other procedural subjects.

Article 36

Urgent acts and prior acts

Articles 30 and 31 are correspondingly applicable.

TITLE III

ON PROCEDURAL PARTICIPANTS

CHAPTER I

GENERAL PROVISION

Article 37

Subsidiary norms

In addition to the provisions of this Code, the norms relating to judicial organisation and the various statutory laws concerning the various procedural participants, shall, on a subsidiary basis, apply to the matters regulated in this title.

CHAPTER II

ON JUDGES

Article 38

General rule for intervention of judges

The competent judge in a given criminal proceeding shall stop intervening therein if there are any grounds for disqualification or suspicion.

Article 39

Grounds for disqualification

The grounds for disqualification are as follows:

- (a) to be, or to have been, a spouse, legal representative, or related by blood or affinity up to the third degree to the victim or to the perpetrator of the criminal offence, or to cohabit, or to have cohabited, with either of the latter in a relationship similar to that of spouses;
- (b) to have intervened in the proceeding as a public prosecutor, police officer, judicial agent, public defender, or as an expert;
- (c) to have a spouse or anyone related by blood or affinity up to the third degree, or a person with whom the judge cohabits or has cohabited in a relationship similar to that of spouses, taking part in the proceeding, in any capacity;
- (d) to be, or ought to be, a witness in the proceeding.

Article 40

Grounds for suspicion

A judge raises suspicion where there are strong reasons to call into question his or her impartiality, namely, having expressed opinions revealing a pre-judgement in relation to the object of the proceeding.

Article 41

Reporting an incident

1. Until such a time as a final decision is rendered, as soon as the existence of any grounds likely to legitimise the suspicion or the disqualification is perceived, shall the judge declare it at his or her own discretion.
2. A declaration of disqualification or refusal on grounds of suspicion may be requested by the public prosecutor, the victim or the defendant, within eight days from the date on which the act in which the declaration or refusal is grounded became known.
3. The decision on a declaration of disqualification may only be appealed against if the judge fails to acknowledge himself or herself disqualified.
4. A decision on suspicion falls, at all times, under the competence of a court at the next higher level than that of the court in which the judge is serving or of the full bench of the Supreme Court of Justice, if the judge is posted to the criminal section.

Article 42

Handling an incident of suspicion

1. Where suspicion is raised by the judge, the latter states in the order the grounds and all other elements deemed necessary for the review of the case, and immediately notifies the public prosecutor, the victim and the defendant to make a pronouncement within five days, if they so wish.
2. Where the incident is raised by way of a petition, the petition shall contain the grounds for suspicion and all other elements relevant to the case, and the judge shall then act as stated in the second part of the preceding sub-article and shall, within the same time limit, made a pronouncement on the petition.
3. Once the procedures set out in the preceding sub-articles have been complied with, the case is referred to the competent court for a decision to be pronounced within three days.

Article 43

Validity of performed acts

1. Acts performed before the incident is raised are valid, except where they prove to cause damage to the fairness of the decision.
2. Acts performed after the incident is raised are valid only if they cannot be repeated and cause no damage to the fairness of the decision.

Article 44

Referring a case

A definitive decision on disqualification or suspicion implies referring the case to the competent court forthwith, in conformity with the laws on judicial organisation.

Article 45

Bad faith

1. Where the public prosecutor, the defendant or the victim reports an incident of disqualification or of suspicion after more than eight days have elapsed since he or she became acquainted with the existence of grounds substantiating the incident, the petition is refused and the defendant or the aggrieved person is declared a bad-faith litigant.
2. Refusal of the petition on the grounds of a blatantly baseless allegation also amounts to declaring the petitioner to be a bad-faith litigant.
3. A person declared to be a bad-faith litigant is penalised with a fine to be determined under the terms of the Code of Court Costs.

Article 46

Extent of the regime

The provisions of this chapter apply to experts, interpreters and court clerks, with the necessary adaptations.

CHAPTER III ON JURISDICTONAL COMPETENCE

Article 47

Jurisdictional competence

1. The competence to conduct a trial in a criminal case is exclusive to a judge appointed by a court composed of one or more judges.
2. In the inquiry and sentence execution phases, the judge exercises such competencies as conferred upon him or her by law as a single judge.

CHAPTER IV ON THE PUBLIC PROSECUTION SERVICE

Article 48

Responsibilities of the Public Prosecution Service

1. The Public Prosecution Service is the holder of the criminal action and it is incumbent upon it to cooperate with the court in disclosing the truth and in applying the rule of law by complying, in every procedural intervention, with strict criteria of legality and objectivity.
2. It is specifically incumbent upon the Public Prosecution Service to:

- (a) receive claims, complaints and reports and order the initiation of criminal proceedings, once the requirements for legitimacy have been met;
- (b) conduct the enquiry and take over the procedures it deems advisable to conduct directly in this phase;
- (c) request the intervention of the judge in performing jurisdictional acts during the enquiry;
- (d) present the indictment and sustain it in court;
- (e) lodge appeals;
- (f) promote the execution of court decisions;
- (g) perform such other acts the law considers to be under its competencies.

Article 49
Legitimacy

1. The Public Prosecution Service is legally competent to initiate criminal proceedings, with the limitations contained in the sub-article 49.2.
2. Where a criminal proceeding depends on the lodgement of a complaint, by either the victim or other persons, these persons are required to report the fact to the Public Prosecution Service in order that the latter may initiate the proceeding.
3. A complaint is valid, whether filed with the Public Prosecution Service or the police authorities, who shall report it to the former.

Article 50
Claims

A claim against a decision issued by the Public Prosecution Service, during the enquiry, may only be filed with a superior where expressly stated in the law.

Article 51
Disqualifications and suspicions

1. The provisions concerning disqualifications and suspicions in respect of judges are applicable to public prosecutors, with the necessary adaptations.
2. A claim against a decision in which the public prosecutor fails to acknowledge himself or herself disqualified or in excusatory circumstances arising from suspicion may be filed with his or her superior.

CHAPTER V
ON POLICE

Article 52
General police powers

1. It is incumbent upon police officers, even on their own initiative, to prevent criminal offences from being committed, gather reports thereof, track down their perpetrators, and take the necessary and urgent precautionary acts in order to secure evidence.
2. It is also incumbent upon the police to assist, upon request, judicial authorities in achieving the objectives of the proceeding, particularly the Public Prosecution Service during the enquiry.

Article 53

Identifying a suspect

1. A police officer may request the identity of any person where there is suspicion that such a person is preparing to commit, or has either committed or taken part in, a criminal offence.
2. Where the person is not able to identify himself or herself, or refuses to do so, such a person shall be taken, with urbanity, to the nearest police station where the person shall be furnished with the available means required to render his or her identification possible.
3. Where required, the person may be obliged to subject himself or herself to tests to adequately establish his or her full identification, which do not offend human dignity, notably fingerprint, picture taking or body check.
4. Before twelve hours have elapsed; the person must be restored to full liberty, regardless of the success of the action taken, provided there is no ground for detention.
5. Acts performed in compliance with the preceding sub-articles are put to writing in the form of a report to be conveyed to the Public Prosecution Service forthwith.

Article 54

Frequenting suspected places

Article 53 is correspondingly applicable to a person found at a place open to public access, which is habitually frequented by criminals.

Article 55

Collecting information

1. It is incumbent upon the police to collect information from persons who might facilitate the discovery of the perpetrator of the criminal offence and his or her identification.
2. The information referred to in the previous sub-article is forthwith attached to the case file or conveyed to the Public Prosecution Service where a criminal case has not yet been initiated.

Article 56

Urgent searches, checks and seizures

1. The police may conduct searches, checks or seizures without a court order:
 - (a) In the case of *flagrante delicto* in connection with a criminal offence that carries imprisonment; or
 - (b) where there is strong suspicion that items relating to a criminal offence are hidden and a delay in securing permission to retrieve them might lead to the modification, removal or destruction of such items or pose a danger to the safety of persons and goods.
2. A report of occurrence of any of the acts referred to in the preceding sub-article is prepared and either incorporated into the respective criminal case or conveyed to the Public Prosecution Service where the respective criminal proceeding is not initiated immediately, and the competent judicial authority shall assess the validity of the act.
3. Sub-article 56.2 does not apply to searches or checks in which no items relating to a criminal offence have been found.
4. Sub-article 56.1 does not apply to home searches.

Article 57

Authorities with competence to conduct enquiries

1. The competence to conduct and carry out enquiries rests with the Public Prosecution Service.
2. The Public Prosecution Service may grant the police or court staff competence to carry out inquiries or to perform any acts relating to an inquiry.
3. The provisions concerning disqualifications and suspicions are applicable to police officers and court staff carrying out an enquiry, with the necessary adaptations.

CHAPTER VI ON SUSPECTS, DEFENDANTS AND CONVICTS

Article 58

Suspects

A suspect is considered as every person in regard to whom there are indications that he or she has committed, has taken part in, or is preparing to take part in, a criminal offence.

Article 59

Being declared a defendant

1. The status of defendant is granted to every person against whom an indictment is presented in a criminal proceeding
2. Subject to sub-article 59.1, the status of defendant must be declared as soon as:
 - (a) an investigation is commenced against a particular person and the latter makes a statement before any judicial authority or police entity;
 - (b) a restrictive or property-guarantee measure has to be imposed on any person;
 - (c) a suspect is arrested; or
 - (d) a report stating that a person has committed a crime is prepared, and the person is notified of such a report.
3. The status of defendant is granted through notice, oral or in writing, served to the person concerned by a judicial authority or police entity, informing that that person must consider himself or herself a defendant in a criminal proceeding; the notice shall contain an indication and, if necessary, explanation of that person's procedural rights and duties as a defendant, and identify the case file and the defender, if appointed.
4. Omission or breach of the procedures laid down in sub-articles 59.2 and 59.3 implies that the statements made by the person concerned shall not be used as evidence against him or her.
5. The status of defendant lasts for the duration of the entire proceeding.

Article 60

Rights of the defendant

In addition to other rights enshrined in the law, the defendant enjoys the following rights:

- (a) when under arrest, to be presented to the judge for the first questioning within seventy two hours from the arrest;
- (b) to be informed of the acts being imputed to him or her and of the rights to which he or she is entitled, whenever asked to make statements;
- (c) to freely decide to make or not to make statements and to do it, even at his or her own request, at any stage of the investigation or of the trial hearing, except as provided in paragraph 61(a);

- (d) to be assisted by a defender, where the law determines compulsory assistance or where he or she so requires;
- (e) a defender appointed by the court, in the cases referred to in paragraph 68, if he or she has not done so;
- (f) to freely communicate with the defender, even where the defendant is under arrest or detention;
- (g) to have his or her designated family member informed, when arrested or detained;
- (h) to provide evidence and request any action deemed necessary for his or her defence;
- (i) to appeal, under the terms of the law, against any decision that is unfavourable to him or her.

Article 61 **Duties of the defendant**

In addition to those duties provided in the law, the defendant is subject to the following duties:

- (a) to provide the identification particulars required, when questioned, and, outside the trial, inform about his or her criminal background in a full and truthful manner;
- (b) to appear before the competent authorities, when summoned regularly;
- (c) to subject himself or herself to any search for evidence required for the investigation and trial, to the extent that such a search is not prohibited by law;
- (d) to provide proof of identity and residence as soon as he or she assumes the status of defendant ;
- (e) to subject himself or herself to other restrictive and property-guarantee measures.

Article 62 **General rules for questioning**

1. Even if the defendant is under arrest or detention, he or she shall be released during questioning, exception being made to the strictly necessary precautionary measures to avoid the danger of escape or the practice of any acts of violence;
2. Methods and techniques, which might restrict or impair the freedom of will or of decision, or the ability to recall and reason, shall not be employed, even with the consent of the defendant.
3. Questioning starts with the reading and explanation of the rights and duties of the defendant, with the express warning that failure to comply with paragraph 61(a) may cause him or her to incur criminal liability.
4. The defendant is subsequently informed, in a clear and precise fashion, of the acts being imputed to him or her and, where this might not impact negatively the investigation, of the evidence against him or her; questioning shall then be conducted, should the defendant wish to make any statements, the latter being advised that silence shall not be detrimental to him or her.

Article 63 **Persons to conduct and attend the first questioning of the defendant under arrest**

1. The police authority who arrests a person in flagrante delicto must present that person for the first judicial questioning as soon as possible, but under no circumstances shall they do so after seventy two hours from the arrest.
2. The judge has exclusive competence to conduct the first questioning after the defendant has been arrested, this questioning aiming, above all, to apply the adversarial principle in relation to the prerequisites for the arrest and the conditions for the execution thereof.
3. The questioning is attended by the person conducting it, the public prosecutor, the defender, the interpreter and the official tasked with taking precautionary security measures, when required, in addition to the official entrusted with putting the statements to writing.

Article 64

Further questioning

1. Any further questioning is undertaken by the entity with competence to conduct the procedural phase in which it occurs, or by a person with delegated competence to undertake it.
2. Questioning at the trial hearing shall be in compliance with article 62, in addition to specific provisions on trial hearings.

Article 65

Status of convict

1. The status of convict is assumed by any person against whom a final convicting decision has been pronounced by a court.
2. A convict enjoys the same rights and is subject to the same duties as those of a defendant, except to the extent that they are inconsistent with the fact that he or she has been definitively convicted.

CHAPTER VII ON DEFENDERS

Article 66

The defender

1. A defendant has the right to retain counsel or to have a defender appointed, whether on a discretionary basis or at request.
2. The competence to appoint a defender rests with the judicial authority conducting the respective procedural phase.
3. Should there be no public defender available, the defender shall preferably be appointed from among lawyers or law graduates.
3. The replacement of a defender, on the initiative of the defendant or of the defender himself or herself, by invoking reasoned grounds, is permitted.

Article 67

Responsibilities of the defender

1. The defender assists technically the defendant and exercises the defendant's rights as recognised by law, except those rights that must be exercised by the defendant personally.
2. The defendant may render invalid any act performed by the defender on his or her behalf, provided that the defendant does so in writing before a decision on such an act has been pronounced, through a statement for entry in the minutes or in the records.

Article 68
Compulsory assistance

Assistance by a defender is compulsory:

- (a) in the first questioning of a defendant held under arrest or detention;
- (b) from the time the indictment is presented until such a time as a decision is rendered final, particularly in lodging an appeal;
- (c) in filing claims;
- (d) in such other cases as stated in the law.

Article 69
Assistance to various defendants

1. Where there is more than one defendant in the same case, each one may have his or her own defender or have a common defender, if this does not thwart the work to be carried out by the counsel for the defence;
2. The court may appoint a defender for those defendants who have not retained counsel, from among the counsels retained by the other defendants.

Article 70
Duties of the defender

1. In addition to complying with the provisions regulating this matter, the defender shall at all times act with due respect for the court in any allegations and/or petitions he or she makes.
2. A conduct that runs counter to sub-article 70.1 shall be sanctioned with a warning and, should the defender persists in such a misdemeanour, he or she shall be ordered to remain silent or replaced by another defender.

CHAPTER VIII
ON THE AGGRIEVED PARTY

Article 71
Legitimacy of the aggrieved party

In addition to persons upon whom specific laws confer that right, the aggrieved party in a criminal case is considered to be:

- (a) the victim, construed as meaning the holder of any interests that the law specifically envisaged to protect with the incrimination;
- (b) a person on whose complaint criminal action is dependant;
- (c) any person in a criminal offence involving corruption, embezzlement or abuse of office by a public authority.

Article 72

Procedural positions

1. An aggrieved party is, on criminal matters, a mere assistant to the public prosecutor and assigns all his or her procedural activity to the latter in relation to the presentation of evidence or request for any action relevant to the disclosure of the truth, regardless of the nature of the criminal offence.
2. With respect to civil compensation for damage arising from the commission of a criminal offence, the aggrieved party shall, as soon as the latter becomes known, be informed, even if by way of a public notice, of the rights to which he or she is entitled and, particularly:
 - (a) that he or she may file a civil request separately, if he or she expressly declares his or her intention to do so;
 - (b) that compensation is discretionarily arbitrated in the criminal proceeding where the aggrieved party fails to make a pronouncement on the issue within eight days;
 - (c) that he or she is represented by the public prosecutor in the criminal proceeding.
3. Where the aggrieved party becomes known before the investigation comes to a close, the public prosecutor shall, acting on behalf of the former, include in the indictment the elements required for determining civil liability.
4. The court may, on a discretionary basis or at request, refer the civil compensation case to a civil court for a decision where the issues raised therein render impossible a rigorous decision or are likely to generate incidents that would excessively delay the criminal proceeding.

TITLE IV ON PROCEDURAL ACTS CHAPTER I ON GENERAL PROVISIONS Article 73

Maintaining order in procedural acts

1. It is incumbent upon the person conducting the procedural act, and the official taking part therein, to take action necessary to maintain order.
2. To that effect, a public force, who shall act under the direction of the person conducting the procedural act, may be called in to assist.

Article 74

In-camera proceedings

1. Every procedural participant and any person who, in whatever capacity, come into contact with the proceeding and become acquainted, in entire or in part, with the content thereof, are not allowed to make it public.
2. Persons are prohibited from attending a proceeding in regard to which he or she has not the right or duty to attend, or otherwise from becoming acquainted with the content of the procedural act.

Article 75

Public character of proceedings

1. A criminal proceeding is open to the public from the time the indictment is presented.
2. The public character of a proceeding entails the right of:
 - (a) the media and the general public to attend the proceedings;
 - (b) a detailed account of the content of the proceedings by the media;
 - (c) access to and extraction of copies, abstracts and certificates of any portion of the records under the terms of sub-article 77.1;
3. The reproduction of briefs or of documents attached to the records, and the making of audio and/or video recordings in relation to proceedings, require prior authorisation from the court.

Article 76

Limitations on the public character of proceedings

1. Exceptionally, the court may, in entire or in part, restrict the public character of a proceeding, provided that the specific circumstances surrounding the case so advise, as a way of preserving other values, notably public morals and human dignity.
2. A limitation on the public character of a proceeding shall never cover the reading of a sentence or the decision on an appeal.
3. A decision by the court to bar some people from attending a proceeding, in entire or in part, namely as a way of sanctioning incorrect behaviours or of guaranteeing the security of the venue of the proceeding and/or of the people taking part therein, shall not be taken to be a restriction on the public character of the proceeding.
4. The court may also bar any person aged less than 18 years from attending the proceeding, and this is not to be construed as a restriction on the public character of the proceeding.
5. In the case of a proceeding in connection with a sexual criminal offence against a person aged less than 18 years, the proceeding shall, as a rule of thumb, be devoid of its public character.

Article 77

Access to the records and extraction of certificates

1. Subject to the preceding articles, the public prosecutor, the suspect, the defendant and the aggrieved person may have access to the records and obtain a certificate or copy therefrom.
2. Where it becomes evident that that request may not be attended to from a legal perspective, the performance of such acts shall be dependent upon prior authorisation from the judicial authority conducting the ongoing procedural phase.
3. Subject to the previous articles, access to, and the obtaining of a certificate or copy from, the records by other persons shall require the due demonstration of a legitimate interest and prior authorisation from the judicial authority conducting the ongoing procedural phase.

CHAPTER II ON THE TIME SCHEDULE, FORM AND DOCUMENTATION OF

PROCEEDINGS

Article 78

Time schedule for proceedings

1. Procedural acts are performed on workdays, during office hours of the justice services and outside the period of judicial recess.
2. Excepted from the preceding sub-article are:
 - (a) procedural acts involving persons under arrest or detention, or which are indispensable for guaranteeing the liberty of the persons;
 - (b) investigative and hearing acts, where the initiation, conduct or completion of such acts without such restrictions proves to be a clear advantage.
3. Except in an act following arrest or detention, the questioning of a defendant may not take place from 00:00 to 6:00 a.m., under penalty of irreparable nullity.

Article 79

General rule for time limits

1. Except as otherwise stated in the law, five days is the time limit for carrying out any procedural act.
2. Two days is the time limit for recording the proceeding and for issuing warrants, except where this time limit encroaches upon the duration of the deprivation of liberty, in which case such acts must be performed immediately.

Article 80

Acts relating to persons under arrest or detention

1. The performance of procedural acts relating to cases involving persons under arrest or detention shall take precedence over any other service.
2. Holidays are credited toward the time limits regarding the cases referred to in the previous sub-article.

Article 81

Crediting time limits

1. Time limits for proceedings shall be determined in hours, days, months or years, in accordance with the ordinary calendar.
2. A time limit ending on a holiday, Saturday or Sunday, is extended until the following workday; the same applies in relation to judicial recess where an act is to take place in court.
3. A time limit determined in days runs uninterruptedly.
4. A time limit determined in weeks, months or years, starting from a given date, ends at 24:00 hours of the day that corresponds, within the last week, month or year, to that date; but where there is not a corresponding day in the last month, the time limit ends on the last day of that month.
5. Except as otherwise stated in the law, where the time limit is determined in hours, the day or time at which the event has occurred, and from which the time limit starts to run, is not credited toward any time limit.
6. The time limit for making a statement, filing a document or performing any other act at the court registry is considered to have expired by the time that office closes to the public.

7. In the event that there is not a corresponding day in the last month to which reference is made in sub-article 81.4, the time limit expires on the last day of that month.

Article 82

The language to be used in the acts

1. Under penalty of nullity, procedural acts shall be performed using an official language of Timor-Leste.

Article 83

Appointing an interpreter

1. An interpreter shall be appointed where a person, who does not either know or master the official language in use, is to make a statement.

2. In addition to the situation referred to in the preceding article, the appointment of an interpreter is compulsory:

(a) if it is necessary to translate a document written in a language other than one of the official languages of Timor-Leste or if such a document is not accompanied by a certified translation;

(b) if a hearing-impaired person who cannot read, a speaking-impaired person who cannot write, or a hearing- and speaking-impaired person who cannot either read or write, is to make a statement.

2. The appointed interpreter takes the following oath :<< *I undertake, on my honour, to faithfully fulfil the role that has been entrusted to me* >>

Article 84

Written procedural acts

1. Except as otherwise provided in the law, procedural acts shall be in the written form.

2. Namely, the following are performed in the written form:

(a) decisions by a judge or public prosecutor other than the ones mentioned in Sub-article 85.3;

(b) acts to be performed by court staff in the course of a proceeding;

(c) petitions other than those provided in sub-article 85.3, briefs and expositions.

3. Paragraphs 87.2 (a) and (c) and sub-article 87.3 are correspondingly applicable.

Article 85

Acts in the oral form

1. Statements in a criminal proceeding are made orally and without recourse to previously written documents.

2. The person conducting the act may, exceptionally, authorise the person making a statement to resort to written notes as a reminder, and shall make mention of that fact in the records and, if need be, order that the notes used be attached to the file.

3. Petitions and decisions in a proceeding conducted in the oral form shall also be made orally.

4. Police and disciplinary acts in procedural acts shall be performed orally and need not be entered in the records.

5. Excepted from sub-article 85.1 are the cases in which the law permits one to read out, at the hearing, statements made at an earlier stage and the cases to which reference is made in paragraph 84.2(b).

Article 86

Documenting oral acts

1. Except as otherwise stated in the law, procedural acts in the oral form are documented in a record.
2. The record shall be prepared by the court clerk or by the police officer during the investigation, under the direction of the person conducting the act.
3. It is incumbent upon the person conducting the act to ensure that the record faithfully reflects what has come up and the content of the statements made, and may dictate or permit the procedural participant to dictate his or her own statements.
4. Any inconsistency between the content of the dictation and what has come up must be challenged forthwith or before the record is finalised, after its final reading; the person conducting the act shall make a decision after consultation with the parties concerned and, if need be, write down in the record the position of each of the parties concerned before the decision is made.
5. Either a typewriter or a word processor may be used for preparing the record and the use of previously-printed sample forms or stamps to be completed with the definitive text is also permitted.

Article 87

Elements required for a record

1. The record is a tool for the purpose of attesting to the terms under which the procedural acts it documents have been performed and to make a written note of statements, defence and prosecutorial motions, and oral decisions.
2. The elements required for a record are as follows:
 - (a) indication of the time, day, month and year in which the act was performed;
 - (b) place where the act was performed;
 - (c) identification of the persons taking part in the act;
 - (d) grounds, if known, for the absence of any persons who were required to be in attendance and the indication of the sanctions imposed or other action taken;
 - (e) detailed description of the operations carried out, of the intervention by each of the procedural participant, of the statements made, of the manner in which the statements have been made, and of the circumstances in which the statements have been made, of the documents filed or received, and of the outcomes achieved, in order to guarantee a genuine expression of the occurrence;
 - (f) any other circumstance relevant to the assessment of the evidence or the regularity of the act.
3. The record shall be drafted in a readable fashion, free from blank spaces, erasures, interlineations or amendments that are yet to be crossed out or corrected;

Article 88

Certifying an act

1. At the end of each procedural act, the record prepared shall, even if the procedural act is to be continued on another occasion, be personally signed by the person conducting the act, by the persons whose statements have been documented therein, and by the official that has drafted it.
2. If any of the persons referred to in sub-article 88.1 is unable to sign the record or refuses to do so, mention of this disability or refusal and of the grounds invoked shall be made in the record.

Article 89

Decisions

1. Decisions made by judges shall take on the form of:
 - (a) sentences, when they constitute the final result of the proceeding;
 - (b) orders, they refer to an interlocutory matter or where they bring the proceeding to a close in a manner distinct from the one provided in paragraph (a);
 - (c) rulings, where they refer to a decision made by a collegial court.
2. Decisions made by public prosecutors shall take on the form of orders.
3. The decisions referred to in sub-articles 89.1 and 89.2 meet the formal requirements for written or oral acts, as the case may be.
4. Decisions shall at all times be well-founded, specifying the factual and legal grounds for every decision.

Article 90

Absence from a procedural act

1. At the beginning of any act, the person conducting it shall justify any absences or shall, failing to do so, punish the absentee with a fine, under the terms of the civil procedure law, in addition to any other sanctions of a procedural nature as specifically provided by law.
2. The absence of a counsel shall be reported to the person who has retained that counsel and the absence of the public defender shall be reported to the agency to which the latter is disciplinarily answerable.
3. The absence of the public prosecutor shall be reported to his or her superior.
4. Except in the cases referred to in sub-articles 90.2 and 90.3, the judge may order the arrest of the absentee for the duration strictly necessary to ensure the presence of the person concerned in the procedural act from which he or she has been unjustifiably absent.

CHAPTER III ON NOTIFICATIONS

Article 91

Notices

1. A summons to appear or to take part in a procedural act and the conveyance of the contents of the act performed or of the decision pronounced is made through a notice.
2. In the case of an urgent need to summon a person to a procedural act, the notice may be replaced by a summons served by telephone, telegraphy or by any other means of communication, and a written observation shall be made in the records.
3. A notice is served by a court clerk, police officer or any other law-enforcement agent upon whom the law confers competence to do so and may be either preceded by a decision or ordered at the discretion of the court registry.
4. Summons or communications to any persons present in a procedural act, made by the person conducting the act with the intent of notifying the former, shall be equated with notices, provided that the summons or communications are documented in the records.

Article 92

Forms of notification

1. A notice may be hand-delivered to the person concerned wherever that person is found, served by registered mail or by publication when expressly permitted by law.
2. Except as otherwise stated in the law, a notice of indictment or of dismissal of a case, an order indicating a date for the trial or imposing a restrictive or property-guarantee measure is hand-delivered both to the aggrieved person and the defendant.
3. All other notices may be served through the defender or counsel, respectively, to the defendant or aggrieved person, or through a person residing in the court area, designated by the person concerned for that purpose, and such notices may be in the form of mail.
4. Notices to public prosecutors, defenders and counsels are served by an entry into the records, by an electronic means or by mail.
5. Where the person to be notified is under arrest, the director of the prison institution is requested to notify the person concerned through a hand-delivered notice.
6. Where the person to be notified is a civil servant, the superior of the person concerned is requested to notify the latter, and failure to comply with such a request carries criminal liability.
7. Where the person to be notified is aged less than 14 years or suffers from a mental disorder, the notice shall be served through his or her legal representative.

Article 93

Nullity of notice

A notice is null and void where:

- (a) the notice is drafted in an incomplete fashion, namely fails to indicate the court or the case file to which it refers, fails to indicate the person to be notified or the purpose of the notice or any other element deemed essential from the perspective of the procedural position of the person to be notified;
- (b) a public notice is used in a case other than the ones authorised by law;
- (c) the person notified fails to sign the notice or the mention referred to in sub-article 88.2 is not made;
- (d) in the case of a public notice, the notice is neither posted in public places nor published as required;

(e) the notice is in contravention of article 92.

Article 94

Subsidiary provisions

The provisions of the Civil Procedure Code shall apply to a criminal case on a subsidiary basis and with the necessary adaptations.

CHAPTER IV ON CRIMINAL RECORDS

Article 95

Purpose

1. Criminal identification is intended to collect and keep, in an orderly fashion, extracts of criminal decisions pronounced by Timorese courts against all individuals indicted therein and of all facts affecting such individuals in other than the criminal background of these persons can be known.
2. Extracts of decisions of the same nature pronounced against Timorese citizens by foreign courts are also collected.

Article 96

Elements of a criminal record

The following decisions are subject to entry into a criminal record:

- (a) convicting decisions;
- (b) decisions cancelling the suspension of sentences;
- (c) decisions granting or cancelling parole;
- (d) decisions granting amnesty, pardon or clemency, or commuting sentences;
- (e) extraordinary decisions authorising the review of previous decisions;
- (f) decisions imposing security measures or reviewing, suspending, or cancelling the suspension of, those or other measures in regard to persons immune from criminal culpability;
- (g) decisions regarding the death of convicted defendants;
- (h) decisions cancelling sentences or security measures;
- (i) decisions to not enter certain convictions in a criminal record certificate.
- (j) decisions refusing to grant extradition requests;
- (k) decisions reviewing and confirming convicting decisions by foreign courts.

Article 97

Criminal record forms

1. A criminal record form, also known as CRF, shall contain:
 - (a) the identification of the defendant, the remitting court, and of the case file;
 - (a) a summarised description of the fact to be recorded and of the contents of the decision;
 - (c) the date, name, signature and rank of the staff responsible for its completion;
 - (d) express mention of the impossibility of completing the form in its entirety, where applicable;
2. The identification of the defendant covers his or her name, and the names of his or her parents, nickname, birth of place, sub-district, district, nationality, date of birth, marital

status, occupation, residence, identification number and, where possible, being the defendant present at the trial, his or her fingerprints.

3. The decision shall be annotated with an indication of the date on which it was made and the designation of the crime or contravention committed, and with an indication of the provisions breached, of the penalty imposed, or of the duration of the internment determined.

4. Non-compliance or faulty compliance with the requirements set out in sub-article 97.1 results in the return of the form to the remitting court for due completion.

Article 98

Transmission of forms

1. Criminal record forms are transmitted to the competent services within five days of the date on which a final decision was rendered, of the date on which the fact subject to registration became known, or of the date on which the records were remitted back to the first-instance court.

Article 99

Cancelling a registration

1. The cancellation of a registration is compulsory where:

- (a) conviction to a penalty is declared null and void;
- (b) the time limit for rehabilitation has lapsed;
- (c) a decision is declared null and void by virtue of a legal provision.

2. Any facts or decisions that are a consequence of any decision that must be omitted under the terms of sub-article 99.1 shall also be deleted from the record.

Article 100

Decisions not to be entered in a certificate

A court that passes a sentence of up to one year's imprisonment or a non-custodial sentence may determine, in either the sentence or in a subsequent order, where no danger of occurrence of further criminal offences can be inferred from the circumstances that have surrounded the criminal offence and where the person concerned is a first offender, that the respective sentence be not entered into a certificate that is not meant to prepare a criminal case.

Article 101

Complementary legislation

In addition to the provisions of this chapter, criminal records are regulated by Decree-Law No. 16/2003, of 1 October.

CHAPTER V ON NULLITIES

Article 102

The principle of legality

1. Defects in procedural acts breaching any of the criminal procedure provisions shall generate nullity of the act only where expressly determined by law.
2. In all other cases, an unlawful act generates irregularity.

Article 103

Irreparable nullities

1. In addition to the cases specifically stated in the law, irreparable nullities include:
 - (a) lack or insufficient number of judges to constitute the court, or breach of any of the legal rules for determining the composition thereof;
 - (b) failure by the public prosecutor to prosecute the case or to attend any of the acts in which he or she is required to attend by law;
 - (c) failure to appoint a defender or absence of the latter from any of the acts where he or she is required to attend;
 - (d) absence of the defendant or convict where he or she is required to attend by law;
 - (e) breach of any of the rules on court jurisdiction, subject to the second part of article 27;
 - (f) The use of an expedited proceeding where an ordinary proceeding was to be employed.
2. Subject to the second part of article 27, irreparable nullities are discretionarily established in any phase of the proceeding until such a time as a final decision is rendered.

Article 104

Reparable nullities

1. Reparable nullities are all those that are not expressly stated in the law as irreparable, namely:
 - (a) the use of an ordinary proceeding where an expedited proceeding was to be employed;
 - (b) absence of the aggrieved person from any of the acts due to lack of notification, where he or she is required to attend by law;
 - (c) lack of an interpreter where the appointment thereof is required by law;
 - (d) insufficient inquiry or failure to take any action, during the trial phase, deemed essential for the disclosure of the truth.
2. Reparable nullities may be established only if challenged by procedural participants, within the time limit determined by law, other than the ones who have originated such nullities.

Article 105

Time limit for challenging a nullity

1. The nullities referred to in article 104 must be challenged before the act is finished if the party concerned is attending it or within five days following the date on which the defect affecting the act becomes known if the latter was not attended by the party concerned.

2. A person is presumed to have become acquainted with the defect by the time when he or she is notified of any step in the proceeding, consults the record or intervenes in any act practised in the proceeding.

Article 106
Remedy of defect

1. A defect that is likely to result in the nullity of the act is considered repaired if the parties concerned let elapse the time limits referred to in article 105 without challenging the nullities, expressly waive their challenge to the act, or capitalise on the advantage deriving from the defective act.
2. Failure to notify or to summon to a procedural act, or defective notification or summon thereto, is also considered repaired where the parties concerned either refuse to attend the act or attend on it.
3. Excepted from the final part of sub-article 106.2 are the cases in which the parties concerned attend the act with the sole intent of challenging its nullity.

Article 107
Irregularities

1. Irregular acts shall be declared invalid only where the defect might affect the value of the act practised, in such a way as to undermine the disclosure of the truth, and the time limits set in article 105 have been observed.
2. A decision to repair an irregularity may be made on a discretionary basis as soon as such an irregularity becomes known, provided that the requirements laid down in sub-article 107.1 are met.

Article 108
Declaration of nullity or of irregularity

1. Depending on the procedural phase or the competence to perform the act, only the judge or the public prosecutor may declare the nullity or irregularity of a procedural act.
2. Nullities or irregularities result not only in the invalidity of the defective act but also of any subsequent acts that may have been affected.
3. A declaration of nullity or irregularity determines what acts are to be considered invalid and orders, where necessary and possible, that such acts be performed again, the expenses pertaining thereto being borne by the person who has maliciously caused the defect.

CHAPTER I
GENERAL PROVISIONS

Article 109

Elements of proof

Elements of proof comprise any facts that are legally relevant to the existence or nonexistence of a criminal offence, the punishability or unpunishability of the defendant, and the determination of the sentence, or security measure, or of any civil liability that may arise from the case.

Article 110

Absolute prohibition of evidence

1. Proof obtained through torture or duress in general or by offences against the physical or moral integrity of a person is absolutely prohibited.
2. Offensive to the physical or moral integrity of a person is any proof obtained, even with the consent of the person concerned, by:
 - (a) impairing the free will or the freedom of decision through mistreatment, bodily harm, the employment of methods of any nature, hypnosis or the use of cruel or misleading means;
 - (b) impairing, by any means, the ability to recall or to reason;
 - (c) the use of force in cases other than the ones, and beyond the limits, permitted by law;
 - (d) threatening with a legally inadmissible measure, including refusing or restricting the a benefit contemplated in the law;
 - (e) promising a legally inadmissible advantage.

Article 111

Relative prohibition of proof

Except in the cases provided in the law or where there is the express consent of the respective holder, proof obtained through intrusion into one's private life, domicile, mail or into any other forms of communication is also prohibited.

Article 112

Value of prohibited proof

1. Proof obtained in breach of the previous articles or of any other provision prohibitive of proof is invalid from a procedural standpoint and may only be used for criminally or disciplinarily prosecuting those committing the breach.
2. Removal of any prohibited proof from the records is compulsory, under penalty of irreparable nullity.

Article 113

Free assessment of proof

1. Except as otherwise stated in the law, proof is assessed according to the free conviction of the competent entity, which shall be formed on the basis of rules of experience and logical criteria.

Article 114

Discretionary investigation

1. There is no burden of proof on the defendant in a criminal case.
2. It is incumbent upon the public prosecutor to sustain the indictment in trial and the court may order, either on a discretionary basis or at request, that any evidence the knowledge of which is deemed necessary to uncover the truth and to make a proper decision on the case be produced, namely in respect of civil liability.

Article 115 Subsidiary regime

On matters of evidence, civil procedure provisions shall apply to a criminal case, with the necessary adaptations, except in fields they prove to be inconsistent.

CHAPTER II ON EVIDENCE SECTION I GENERAL PROVISION

Article 116 Admissibility of evidence

1. Any evidence that is not prohibited by law is admissible in a criminal case.
2. Evidence in a criminal case include, namely:
 - (a) statements made by the accused;
 - (b) statements made by the aggrieved party;
 - (c) witness testimonies;
 - (d) identification;
 - (e) expert evidence;
 - (d) documentary evidence;
 - (g) confrontation of witnesses;
 - (h) inspection of the crime scene;
 - (i) reconstruction of the facts.

SECTION II ON STATEMENTS BY THE DEFENDANT

Article 117 General rule

1. Statements by the defendant shall constitute evidence only where, after the latter is advised that he or she may refrain from doing so, the defendant decides to make such statements, which can be made at all times until the closure of the trial hearing.
2. If the defendant decides to make statements, he or she does not take an oath and may, without any justification, refuse to answer some of the questions only.
3. Articles 62 to 64 are correspondingly applicable.
4. Statements by the defendant are assessed at the court's discretion.

SECTION III ON STATEMENTS BY THE AGGRIEVED PERSON

Article 118

General rule

1. The aggrieved person takes an oath and he or she is subject to the duty to truth and the ensuing criminal liability for the breach thereof.
2. Provisions related to the regulation of witness testimony are correspondingly applicable.
3. Statements by the aggrieved person are assessed at the court's discretion.

SECTION IV

WITNESS TESTIMONY

Articles 119

Purpose and limits of depositions

A witness may be questioned about the facts of which he or she may be directly aware and constitute elements of proof.

Article 120

Indirect deposition

1. Where a deposition results from something heard being said to a certain person, the judge may call such a person to give testimony.
2. If the judge fails to call the person referred to in sub-article 120.1 to give testimony, the deposition that has been actually produced may not, to that extent, serve as evidence, except where the investigation of that person is not feasible on grounds of death, mental disorder or special vulnerability, particularly in the case of a sexual criminal offence, or where that person cannot be found.
3. Sub-article 120.2 applies to cases where the deposition results from reading a document written by a person other than the witness.
4. Under no circumstances shall the deposition by a person who refuses or is not in a position to indicate the person or the source whereby he or she has become acquainted with the facts serve as evidence.

Article 121

Public voices and personal convictions

1. The repetition of public opinions or rumours is not admissible as a deposition.
2. The manifestation of mere personal convictions on facts or the interpretation thereof is admissible only in the following cases and to the strict extent indicated therein:
 - (a) where it is not possible to distinguish it from a deposition on concrete facts;
 - (b) where it occurs by means of any science, technique or art;
 - (c) in regard to a subscribing witness.

Article 122

Eligibility and duty to witness

1. Any person who is not impeded to do on grounds of a mental disorder is eligible to serve as a witness and may only refuse to do so in the cases stated in the law.
2. The court checks the physical or mental fitness of any person to give testimony, where this is necessary to appraise his or her credibility and can be done without preventing the proceeding from running smoothly.
3. The check mentioned in sub-article 122.2, to be ordered prior to the deposition, does not impede the latter from being given.

Article 123

General duties of a witness

1. Except as otherwise stated in the law, a witness is required to fulfil the following duties:
 - (a) to appear, on the set date, time and venue, before the court, if lawfully summoned or notified, and to remain at the disposal of the court until such a time as the latter exonerates him or her from that obligation;
 - (b) to take an oath, when being heard by a judicial authority;
 - (c) to act upon the instructions given to him or her as to the way in which he or she is to give the deposition.
2. A witness is not obligated to answer any questions where he or she alleges that such answers might cause him or her to incur criminal liability.

Article 124

Disqualifications

A defendant or aggrieved person is disqualified from deposing as a witness in a case to which he or she is a party.

Article 125

Lawful refusal to give a deposition

1. The persons below may refuse to give a deposition as witnesses:
 - (a) progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, and the spouse of the defendant;
 - (b) a person who has been married to the defendant or who cohabits, or has cohabited, with the latter in a relationship similar to that of spouses, in relation to facts that have occurred during marriage or cohabitation.
2. The authority competent to take the deposition shall, under penalty of nullity, advise the persons referred to in sub-article 125.1 that they are allowed to refuse to give a deposition.

Article 126

Professional secrecy

1. Church or religious ministers, lawyers, medical doctors, journalists, members of credit institutions and other persons allowed or required by law to maintain professional secrecy may refuse to give a deposition on facts covered by that secrecy.
2. In the case of reasonable doubts about the lawfulness of the refusal to give a deposition, the judicial authority before which the incident has been raised carries out the necessary investigations; and if, once such investigations have been completed, the

refusal is considered to be unlawful, the judicial authority orders or requests the court to order that the deposition be given.

3. A court higher than that where the incident has been raised, or its full bench, if the incident has been raised before the Supreme Court of Justice, may decide that a deposition be given by breaking professional secrecy where this proves to be justifiable in the face of the applicable provisions and principles of the criminal law, particularly in view of the principle of prevalence of the predominant interest; and the intervention is initiated by the judge, on a discretionary basis or at request.

4. Sub-article 126.3 does not apply to religious secrecy.

5. In the cases provided in sub-articles 126.2 and 126.3, a decision is made by the court or the Supreme Court of Justice after the agency representative of the profession related to the professional secrecy in question has been heard, under the terms of, and with the effects provided in, legislation applicable to that agency.

Article 127

Employees' secrecy

1. Employees may not be enquired about facts that constitute a secret and with which they have become acquainted in the exercise of their functions.

2. Sub-articles 126.2 and 126.3 are correspondingly applicable.

Article 128

State secret

1. Witnesses shall not be questioned about facts that constitute a state secret.

2. The state secret referred to in the present article covers, namely, the facts the disclosure of which may, even if it does not constitute a crime, cause damage to the internal or external security of the Timorese State or to the defence of the constitutional order.

3. If the witness invokes a state secret, such must be confirmed, through the Minister of Justice, within 60 days from the date on which the Minister was officially notified by the court.

4. If no confirmation is obtained within the deadline set in sub-article 127.3, the deposition must be given.

Article 129

Inquiry rules

1. A deposition is a personal act and as such shall under no circumstances be given through a proxy.

2. A witnesses shall not be asked any suggestive or impertinent questions, or any other questions that might undermine the spontaneity and sincerity in which answers are to be given.

3. The enquiry shall deal primarily with the elements required to identify the witness, on his or her family relationships or common interests with the defendant, the aggrieved person or other witnesses, as well as on any other circumstances relevant to the assessment of the credibility of the deposition.

4. If required to take an oath, the witness shall take it and then give the deposition under the terms and within the limits established by law.

5. Where deemed advisable, a witness may be shown any briefs, documents related thereto, tools used for committing the criminal offence or any other items seized.
6. Where the witness presents any item or document that can serve as proof, mention of its presentation is made and such an item or document is to be properly kept or attached to the records.

Article 130

Immunities and prerogatives

1. Immunities and prerogatives established by the law in respect of the duty to witness and the manner in which and the place where a deposition is to be given are applicable in relation to a criminal proceeding.
2. Where legally applicable, the adversarial principle shall be applied in a case.

Article 131

Probative effect

The probative effect of witness testimony is assessed at the court's discretion.

SECTION V

DOCUMENTARY EVIDENCE

Article 132

Concept of documentary evidence

Documentary evidence is considered to be a statement, sign or notation embodied in writing or any other technical means, under the terms of the criminal law.

Article 133

Time for presentation

1. The document shall be presented in the course of the enquiry or, where this is not feasible, until the adjournment of the hearing.
2. Where legally applicable, the adversarial principle shall be applied in either case, and the court may grant a time limit of no more than eight (8) days for that purpose.
3. Sub-articles 133.1 and 133.2 are correspondingly applicable to opinions by lawyers, legal advisers or paralegals, which may at all times be presented until the closure of the hearing.
4. The provisions of this article do not affect the procedural status of the defendant.

Article 134

Types of written documents

1. A written document may be either authentic or private.
2. An authentic document is a document issued, in accordance with legal procedures, by public authorities within the purview of their competencies or by a notary or other public servant who has been granted full faith and credit, within his or her sphere of activity.
3. Private is any other document that is construed to have been authenticated when confirmed by the parties before a notary under the terms of the notaries laws.

Article 135

Documents issued in a foreign country

1. An authentic or private document issued in a foreign country, in accordance with the relevant law of that country, is as trustworthy as any document of the same nature issued in Timor-Leste.
2. Notarisation may be required where a document has not been notarised under the terms of the procedural law and there are any reasoned doubts as to its authenticity or the authenticity of its certification.

Article 136

Probative value of mechanical reproductions

1. Photographic, film, phonographic or electronic reproductions and, in general, any mechanical reproductions of the facts or things reproduced can be admitted as proof only where such reproductions are not prohibited under the terms of the procedural law.
2. For the purposes of applying sub-article 136.1, any reproductions, particularly mechanical ones, made in compliance with Chapter III of this Title, are not considered to be prohibited.

Article 137

Reproduction of documents

Subject to article 136, where the original of any document cannot be attached to the records or kept therein, but solely its mechanical reproduction, the latter has the same probative value as that of the original if the reproduction has been identified with the original in that or another proceeding.

Article 138

Probative effect

1. An authentic or authenticated document fully attests to a fact said to have been performed by a public authority or official, as well as to the facts attested therein on the basis of a scrutiny by the documenting entity; however, mere personal judgements by the documenting person has only the value of an element subject to a free assessment by the judge.
2. If the document contains amended or truncated words or words written over erasures or interlineations, without proper reference to the fact, the judge shall determine the extent to which the external defects of the document either exclude or reduce its probative effect.
3. Private documents are freely assessed by the court.

Article 139

Forgery

1. The probative effect of an authentic document may only be challenged on the basis of forgery.
2. A document is forged when any fact that has not actually occurred or any act that has not been actually performed is attested therein as having been subjected to a scrutiny by a public authority or official.
3. If the forgery is self-evident in the face of the external signs on the document, the latter may, on a discretionary basis or at request, be declared fake by the court.

4. Where the court only has reasoned suspicion that a particular document has been forged, the fact is reported to the Public Prosecution Service for legal purposes.

SECTION VI CONFRONTATION OF WITNESSES

Article 140

Confrontation of witnesses

In the case of direct contradiction over a certain fact between witness testimonies, between the latter and statements by the aggrieved person or the defendant, between statements by the aggrieved person and the defendant, or between statements by co-defendants, the persons who have given conflicting testimonies or statements may be confronted on a discretionary basis or at request.

Articles 141

Procedural steps

1. Where the persons concerned are present, the confrontation shall be carried out forthwith;
2. Where the persons concerned are not present, a date shall be set for that purpose.
3. If the persons to be confronted have given a testimony or made a statement by means of a rogatory letter filed with the same court, it is incumbent upon the court to which the request has been made to carry out the confrontation, except if the trial judge orders the persons to be confronted to appear before him or her, weighing the sacrifice that such a trip would represent..
4. If the testimonies or statements are to be recorded or written down, the outcome of the confrontation shall also be recorded or written down.

Article 142

Probative value

The outcome of the proof by means of confrontation is assessed at the court's discretion.

SECTION VII INSPECTION OF A CRIME SCENE

Article 143

Object

Proof by means of inspection is intended for a direct perception of facts by the court or the authorities responsible for the investigation.

Article 144

Purpose of inspection

When deemed convenient, a court or a person conducting an investigation may, at his or her own discretion or at the request of the parties concerned, and with due regard, to the extent possible, for personal privacy, inspect items or persons in order to clarify any fact of relevance to the decision, and may, if deemed necessary, visit the crime scene or have the facts reconstructed.

Article 145

Intervention by the defendant or the aggrieved person

The defendant and the aggrieved person are notified of the date and time of the search and may, directly or through their counsels, provide the court with any clarifications it may need, or call the court's attention to any facts deemed relevant to the settlement of the case.

Article 146

Intervention by experts

1. The court is allowed to be accompanied by a person qualified to explain the inspection and interpret the facts it intends to look at.
2. The expert shall be appointed in the decision ordering the inspection and shall attend the trial.

Article 147

Reporting an inspection

A report of the inspection containing all of the elements helpful in making an assessment and decision of the case is prepared, and pictures may be taken and attached thereto.

Article 148

Probative effect

The outcome of the inspection is assessed at the court's discretion.

SECTION VIII EXPERT PROOF

SUBSECTION I

DESIGNATING EXPERTS AND THE OBJECT

Article 149

Object

Expert proof is aimed at scrutinising or assessing facts through experts, where specific knowledge is not possessed by the judges or where the facts, relating to persons, are not the object of a judicial inspection.

Article 150

Competence to authorise and carry out examinations

1. The examination is ordered by the judicial authority.
2. Either the public prosecutor or the judge, depending on the procedural phase, requests an appropriate, official establishment, laboratory or service to carry out the examination or, where such is not feasible or advisable, the examination shall be carried out by a single expert, nominated from among professional and ethical persons with ability in the issue under assessment, subject to the provisions of article 151.
3. Medico-legal examinations are carried out by medico-legal services or by hired medical experts, under the terms established by the legal instrument regulating such examinations.

Article 151

Single-expert or collegial examinations

1. The examination is carried out by a single expert, except as otherwise stated in a court decision.
2. The examination is carried out by more than one expert, up to a maximum of three, on a collegial or interdisciplinary basis where:
 - (a) the examination is of a particular complexity or requires knowledge of multidisciplinary subjects;
 - (b) the examination is requested by the public prosecutor, the defendant or by the aggrieved person on grounds that justify the employment of more than one expert.
3. In the case provided in paragraph 151. 2(b), both the defendant and the aggrieved person may appoint an expert, being the responsibility of the court to appoint the expert who will preside over the examination.

Article 152

Serving as an expert

1. An expert is obligated to fulfil with diligence the task for which he or she has been appointed, and may be punished with a fine in the case of breach of his or her duties to cooperate with the court.
2. An expert may be removed or dismissed by the appointing authority, if he or she fulfils in a negligent manner the task he or she has been entrusted with in a negligent manner, namely where the expert fails to submit or, by inertia, renders impossible the submission of the expert report within the set deadline.

Article 153

Obstacles in appointing experts

1. The regime on disqualifications and suspicions for judges is applicable to experts, with the necessary adaptations.
2. Barred from serving as an expert are the incumbents of the organs of sovereignty, as well as those who have been granted a similar status by law, public prosecutors in the full exercise of their functions and diplomats from foreign countries.
3. Any person who requires not to serve as an expert may ask to not intervene as an expert, taking into consideration the personal reasons invoked.

Article 154

Appointment of new experts

Where the appointment of a new expert as a result of the identification of any of the obstacles provided in article 153, of the removal or dismissal of the originally appointed expert or of a subsequent inability for the latter to carry out the examination, for reasons imputable to the expert nominated by the party, the judicial authority has the competence to appoint a new expert.

Articles 155

Determining the object of an expert examination

1. The decision ordering the expert examination shall also determine the object and queries to be dealt with.
2. Should the expert examination be carried out at the request of the defendant or at the suggestion of the aggrieved person, the defendant or aggrieved person may indicate the issues he or she deems relevant for the expert examination to look into.

SUBSECTION II CARRYING OUT AN EXPERT EXAMINATION

Article 156

Determining the date for an expert examination

1. The same decision which orders the expert examination and appoints the experts shall also indicate the date and venue for the beginning of the examination, and the parties concerned shall be notified thereof.
2. Where the examination is to be carried out in a public institute or establishment, the director of such an institute or establishment is requested to carry out the examination, with an indication of the object of the examination, the queries, and the deadline for submitting the expert report.

Article 157

Pledge by experts

1. An appointed expert makes a pledge to perform the task that has been entrusted to him or her, except in the case of a public servant carrying out the examination while exercising his or her functions.
2. The pledge referred to in sub-article 157.1 is made at the beginning of the examination where the entity that has ordered is present.
3. Where the entity referred to above is not present at the examination, the pledge mentioned in sub-article 157.1 may be made through a written statement signed by the expert and optionally attached to the expert report.

Article 158

Expert report

1. The result of the expert examination is conveyed by means of a report in which the expert(s) issues a well-founded opinion on the object and queries of the examination.
2. In the case of lack of unanimity in a collegial examination, the dissenting expert adduces the reasons for his or her disagreement.

SUBSECTION III CLARIFYING OR REPEATING AN EXPERT EXAMINATION

Article 159

Clarifications

1. The competent judicial authority may, at any stage of the proceeding, determine, on a discretionary basis or at request, where such is deemed to be of relevance to the disclosure of the truth, that the experts be summoned to provide complementary clarifications, namely where the expert report contains deficiencies, obscurities or contradictions or its conclusions are not duly substantiated.

2. Once a decision has been made that complementary clarifications should be provided, the experts shall be notified of the date, time and venue where such clarifications are to be given.

Article 160

Second expert examination

1. A second examination is ordered where the action referred to in article 159 proves to be insufficient, whenever the expert report contains deficiencies, obscurities or contradictions or where its conclusions are not duly substantiated.

2. The purpose of the second expert examination is to ascertain the same facts as those dealt with in the first examination and is intended to correct any inaccuracies in the results of the first examination.

3. The second examination shall analyse the conclusions made by the experts who took part in the first examination and, where there is a difference of opinion, substantiate the grounds for such a difference of opinion.

Article 161

Rules for conducting a second expert examination

1. The second examination is governed by the provisions applicable to the first examination, with the following exceptions:

(a) an expert who has taken part in the first examination may not take part in the second one;

(b) the second examination shall generally be a collegial one.

SUBSECTION IV

PROBATIVE VALUE

Article 162

Probative value of an expert examination

1. The technical, scientific or artistic judgment inherent in the expert examination is presumed to be elicited from the free assessment made by the judge.

2. Where the conviction of the judge diverges from the judgement contained in the report of the experts, the judge shall substantiate the reasons for his or her dissenting opinion.

3. In the case of a second examination, the court may give substantiated reasons for opting for a dissenting expert opinion and may, on the basis of knowledge of equal value to that required for the examination in question, reasonably diverge from any conclusions in which regard there has been no disagreement or over which no repetition has been ordered.

SECTION IX

ON IDENTIFICATION

Article 163

Recognising a person

1. Where a person who is to recognise another person fails to fully identify him or her by describing that person's characteristics, a physical identification of the latter shall be done.
2. Except in the case of a trial hearing, the validity of this means of evidence requires that the person to be recognised be placed in the midst of various others with identical physical characteristics and way of dressing, and the person who is to physically identify another person shall state whether any of the present is the person to be identified and, if so, which one.
3. Should there be more than one person to be identified, the procedure described in Sub-articles 163.1 and 163.2 shall apply separately to each of them.
4. Where there is reason to believe that the person called to physically identify another person might be intimidated or harassed for doing so and the identification is not done at the hearing, it shall be done, where feasible, without the former being seen by the latter.

Article 164

Identifying items

The provisions of article 163 are correspondingly applicable to the identification of items, with the necessary adaptations.

Article 165

Probative value

The court shall assess at its own discretion the result of the proof obtained by means of identification.

SECTION X RECONSTRUCTION

Article 166

Reconstructing an act

1. Reconstruction of an act is admissible where there is a need to determine whether an act could have occurred in a certain way.
2. Reconstruction of an act consists of reproducing as faithfully as possible the conditions under which the fact is said or supposed to have occurred and of repeating the way in which the act was committed.
3. The decision ordering the reconstruction of an act must contain a succinct indication of its object, date, time and venue where and how it is going to be reconstructed, possibly with recourse to audiovisual means; and an expert to execute certain operations may be designated in the same ruling.
4. Subject to the provisions of Chapter I, Title IV, the public character of the action must be avoided to the extent possible.

Article 167

Probative value

The probative value of the reconstruction of the act is assessed at the court's discretion.

CHAPTER III ON THE MEANS OF OBTAINING PROOF

SECTION I ON SEARCH OF PERSONS AND PLACES

Article 168 Concept

1. A body search shall be carried out where there is a need to seize any items related to a crime or that may serve as a means of evidence, which someone is carrying or hiding on himself or herself.
2. A search is carried out, in a reserved place or a place that is not freely accessible to the public, where:
 - (a) items referred to in sub-article 168.1 are to be seized;
 - (b) any person is to be arrested.

Article 169 Formalities

1. Except as otherwise stated in the law, the search of persons and items are authorised through an order issued by the judge, who may direct the search if he or she deems it advisable.
2. The search of persons and items are carried by the police bodies responsible for carrying out the inquiry or by a person specifically appointed by the Public Prosecution Service for that purpose.
3. The dignity and sense of decency of the person concerned shall be respected while the search is being carried out.
4. Articles 87 and 88 are correspondingly applicable and the person concerned must sign the report that is required to be prepared during the search.
5. A duplicate of the order authorising the search shall be provided to the person concerned in the act of executing the respective search.
6. In the case of urgency or danger posed by a delay in securing authorisation, police bodies may carry out a search without prior authorisation from the judicial authority, but they shall immediately report the fact to the latter.

Article 170 Search of houses

1. The search of an inhabited house or of one of its outbuildings may only be carried out between 6 am and 8 pm, except as otherwise provided in sub-article 171.2.

Article 171

Relevance of consent

1. An order issued by the judge authorising a search can be dispensed with where the person concerned consents, in writing, to the carrying out of the search.
2. Consent with regard to a home search may also cover the period of time stated in the previous article.

SECTION II

SEIZURES

Article 172

Seizing items

1. Except as otherwise stated in the law, the seizure of an item relating to a criminal offence or that may serve as a means of evidence must be authorised by the judge.
2. In the case of urgency or danger posed by a delay in securing authorisation, police bodies may carry out a seizure without prior authorisation, but they shall immediately report the fact to the competent judge, with the aim of having the seizure validated.
3. Items seized are attached to the records or, where necessary, placed in the care of a trustee who may be the clerk of the section.
4. Where the object of the seizure is any hazardous or perishable item, the judge shall order that the necessary measures be taken to preserve or maintain such item or to destroy, sell or use it for a socially useful purpose, after an examination and evaluation report has been prepared.
5. Articles 87 and 88 are correspondingly applicable, and the person concerned must sign the report that is required to be prepared during the seizure.

Article 173

Disposal of seized items

1. Seized items are restituted to their rightful owners if such items are not to be declared forfeited to the State.
2. Restitution is ordered as soon as seizure for the purpose of proof becomes unnecessary or after a final decision has been handed down by the court.
3. The decision ordering restitution is notified to the owner of the items in question; and the items are declared forfeited to the State by the judge if they are not collected within 60 days of notification.
4. The public prosecutor shall be heard before the decision referred to in sub-article 173.3 is issued.

SECTION III

Checks

Article 174

Concept and prerequisites

1. Checks of persons, premises and items are used to examine any clues that may have been left behind in the course of committing a crime and that may indicate how and where it was committed, the person(s) who committed it or the person(s) upon whom it was inflicted.
2. As soon as a criminal offence is reported, action is to be taken in order to avoid, where

feasible, the changing or effacing of clues before they are examined; and, if need be, the entry or movement of aliens into and across the crime scene, or any acts that might undermine the disclosure of the truth, may be prohibited.

3. Where the clues left behind by the perpetrator of a crime are found to have changed or effaced themselves, the state in which the persons, the premises and the items are found shall be described, seeking, where feasible, to reconstruct them and to describe how, when and why such clues have changed or effaced themselves.

4. Pending the arrival of the competent judicial authority in the crime scene, it is the responsibility of any law-enforcement agent to take the precautionary measures referred to in sub-article 174.2, where the obtaining of proof would otherwise be at immediate risk.

Article 175

Subjection to checks

1. Where a person wishes to refuse or obstruct any required check or refrains from handing over an item that is to be examined, he or she may be compelled to do so by a decision from the competent judicial authority.

2. A check that is likely to offend people's sense of decency must respect the dignity and, to the extent possible, the sense of decency of the person undergoing it.

3. The check referred to in sub-article 175.2 may be attended only by the person conducting it and the competent judicial authority, and, where there is no danger posed by a delay in doing the check, the person to be checked may be accompanied by a person he or she trusts, and must be informed of the right to do so.

4. The check of a person is contingent upon authorisation from the competent judicial authority, except where the person concerned gives his or her consent.

Article 176

People at the crime scene

1. The competent judicial authority may determine that one or more persons do not leave the place where the check is to be conducted and, if need be, compel, with the assistance of a public force, those trying to leave the place, whose presence is required, to stay there for the duration of the check.

2. Sub-article 174.4 is correspondingly applicable.

SECTION IV

TELEPHONE TAPPING

Article 185

Prerequisites

1. The tapping or recording of telephone conversations or communications may be ordered

or authorised by a court decision only where this action is necessary for the disclosure of the truth in connection with criminal offences:

(a) punishable by a prison sentence exceeding three years;

(b) abusive language, threat, duress, intrusion into one's private life, disruption of peace and tranquillity, when committed on the telephone, if there is any reason to believe that this action will prove to be of great importance to the disclosure of the truth or

to the obtaining of proof.

2. The tapping or recording of telephone conversations or communications between the defendant and the defender, except if there are strong indications that the latter may be involved in the criminal offence, is not permitted.

4. Failure to comply with the provisions of this article renders invalid the tapping or recording obtained as a means of evidence.

Article 178

Procedures

1. Once a telephone conversation has been tapped or recorded, a report of how, when and where it was conducted is prepared, and alongside with the recorded tapes or similar elements passed on to the competent judge, with a mention of this fact being made in the file.

2. The judge reviews the elements gathered, and if he or she finds them relevant to the proof, orders that such elements be attached to the records or otherwise have them destroyed.

3. The public prosecutor may, at any stage of the proceeding, order or require that the entire or part of the recording be committed to writing if such is deemed to be of relevance to the smooth running of the proceeding.

4. The defendant and the persons whose conversations have been tapped may check the contents thereof, once the investigation is over.

Article 179

Recordings made at the request of or by any of the parties

1. A recording made by one of the parties or addressees of the communication or conversation is valid as a means of evidence if prior judicial authorisation has been granted for that purpose, provided that the prerequisites and requirements referred to in the preceding articles have all been met.

2. Such a recording has no value as a means of evidence if the conversation or communication has been prompted by the person who recorded it or requested the recording for that purpose.

Article 180

Similar cases

The provisions of the preceding articles are correspondingly applicable to conversations or communications transmitted by any other technical means distinct from telephone.

TITLE VI

ON RESTRICTIVE AND PROPERTY-GUARANTEE MEASURES

CHAPTER I

COMMON PROVISIONS

SECTION I

GENERAL RULES

Article 181

Principle of legality

1. Only a defendant may be subject to restrictive or property-guarantee measures.
2. Applicable restrictive and property-guarantee measures are exclusively those provided in the law and may only be applied to meet procedural requirements of a preventive nature.
3. The obligation of any citizen to identify himself or herself before an authority competent to demand it is not considered to be a restrictive measure.

Article 182

Choosing a given measure

In choosing a restrictive or property-guarantee measure to be actually imposed, the following shall be taken into consideration:

- (a) conform the measure to the procedural needs that are expected to be safeguarded;
- (b) take a measure proportionate to the gravity of the crime and the penalties that are likely to be imposed in the given case;
- (c) give preference to the measure that, being adequate to the preventive requirements, interferes the least with the normal exercise of the fundamental rights of the citizen.

Article 183

General requirements

With the exception of the provision of proof of identity and residence, the imposition of any other restrictive measure is contingent upon meeting, at least, one of the following requirements:

- (a) escape of the defendant or reasonable fear that he or she might escape;
- (b) reasonable fear that the investigation or trial hearing might be disrupted, namely for fear that the obtaining, conservation or veracity of the proof might be negatively impacted; or
- (c) reasonable fear that the criminal activity might be pursued or that public order and peace might be disrupted as a result of the nature of the criminal offence and the circumstances surrounding it, as well as of the offender's personality.

Article 184

Legitimacy to impose measures

1. The public prosecutor or any police entity responsible for conducting an inquiry may, in the course of the inquiry, require the provision of proof of identity and residence.
2. The remaining restrictive measures are imposed by the judge at the request of the public prosecutor, in the course of the inquiry, and by the judge, in any other procedural phase, after consultation with the public prosecutor.
3. The imposition of any restrictive measure must, where feasible and convenient, be preceded or followed by hearing the defendant.

Article 185

Accumulation of measures

1. Restrictive and property-guarantee measures may be cumulatively imposed on the same person.
2. The provision of proof of identity and residence may be cumulative with any other measure, whereas pre-trial detention excludes the imposition of any other restrictive measure, except for the provision of proof of identity and residence.
3. Bail and the obligation to appear before the competent authority may be cumulative one with another.

CHAPTER II

RESTRICTIVE MEASURES

SECTION I

APPLICABLE MEASURES AND RESPECTIVE RULES

Article 186

Proof of identity and residence

1. Every person who is declared to be a defendant must provide proof of identity and residence, even where he or she is placed under pre-trial detention or is subjected to any other restrictive or property-guarantee measure.
2. Provision of proof of identity and residence by a defendant means:
 - (a) truthfully providing his or her full identification, home and office address, and the address at which notices can be served to him or her in the course of the proceeding;
 - (b) being warned that he or she must appear before the competent authority or to remain at the disposal of the latter as required by law or when notified for that purpose;
 - (c) being warned that he or she must report any change of residence or of the address at which he or she may be contacted, where the defendant changes residence or is absent from it for more than fifteen days;
 - (d) being warned that failure to comply with the paragraphs (b) and (c) legitimises the defender to represent him or her in any procedural acts he or she had the right to attend or was required to do so, and also legitimises public notification of the date set for the trial hearing foreseen in article 257 and the holding of the hearing in his or her absence even if the defendant has justified any absence prior to the hearing.
3. Proof of identity and residence shall be prepared in duplicate and signed by the defendant, to whom one of the copies is to be handed over, and shall contain the particulars and warnings referred to in sub-article 186.2

Article 187

Bail

1. The defendant may be granted bail if the criminal offence imputed to him or her is punishable with imprisonment.
2. The amount of the bail depends on the socioeconomic status of the defendant, the damage caused, the gravity of his or her criminal conduct and on the objectives of a preventive nature being pursued.
3. Bail can be paid by means of a bank deposit, lien, pledge, or bank or personal surety, if requested by the person concerned upon the terms to be established by the competent authority.
4. The payment of bail is entered in the file.
5. Bail can be increased or modified, upon the payment thereof, should new circumstances justifying or requiring such an increase or modification arise.

Article 188

Substituting a bail

If the defendant proves that he or she does not have the means to pay the bail or that it causes him or her very serious difficulties or inconveniences, the bail shall be substituted for another measure, except pre-trial detention.

Article 189

Breaking a bail

1. A bail is declared broken through the issuance of a court order where the defendant fails to comply with the procedural obligations arising out of the restrictive measure imposed or to attend a procedural act without a justification.
3. Where a bail is broken, the amount paid accrues to the State.

Article 190

Removing a bail

1. Once the final decision has been pronounced by the court, and the defendant is sentenced to imprisonment, where there is any ground for exonerating the defendant from criminal liability or, for any reason, the bail becomes unnecessary, the court shall, at own its discretion, remove the bail through a court order.
2. The court order removing the bail entails cancelling the registration of the lien or restituting the deposit or pledged assets or also exonerating the bailee from liability.

Article 191

Obligation to periodically appear before the competent authority

1. If a crime is punishable with imprisonment exceeding one year, the defendant may be obligated to appear before a judicial authority or police entity on days and time previously set on the basis of the working requirements and the area of residence of the defendant.

2. The entity before whom the defendant appears shall fill in a proper form of appearances and submit it to the court for attachment to the file, once the measure has finished.
3. Failure to appear on the part of the defendant shall be reported to the court within five (5) days of the date the defendant should have appeared before the competent authority.

Article 192

Prohibition on travel

In the case of crimes punishable with imprisonment exceeding three years, the defendant may be prohibited from:

- (a) travelling overseas, or travelling without authorisation, by seizing his or her passport and notifying the passport issuing authority and the border control authorities of the fact;
- (b) leaving, or leaving without authorisation, his or her area of residence.

Article 193

Prohibition against leaving residence

Where there are strong indications that a criminal offence punishable by imprisonment exceeding three (3) years has been committed, the judge may prohibit the defendant from leaving, or leaving without authorisation, his or her residence.

Article 194

Pre-trial detention

1. In addition to meeting one of the requirements provided in article 183, the imposition of pre-trial detention depends cumulatively on the existence of the following prerequisites:
 - (a) strong indications that a crime punishable with imprisonment exceeding three years has been committed;
 - (b) inadequacy or insufficiency of any other restrictive measure provided in the law.
2. Pre-trial detention may also be imposed on a person who unlawfully enters or remains on the national territory or against whom an extradition or expulsion process has been initiated, under the terms to be regulated by a specific law.
3. The imposition of pre-trial detention must, where feasible, be preceded or followed by hearing the defendant, allowing him or her to challenge the existence of the prerequisites of the said measure.
4. A person suffering from a mental disorder shall, where the requirements for the imposition of pre-trial detention are met and as long as such a disorder persists, be preventively admitted to a psychiatric hospital or other appropriate establishment, for the period of time deemed necessary for the imposition of such a provisional measure.

Article 195

Duration of pre-trial detention and other measures

1. Pre-trial detention may not exceed, from its beginning:
 - (a) one year without the presentation of an indictment;
 - (b) two years without a first-instance conviction;
 - (c) three years without a final conviction except that an appeal is filed over

constitutionality matters, in which case the time limit is extended to three and a half years.

2. The abovementioned time limits are also increased by six months where the case proves to be exceptionally complex, and a substantiated order in this respect shall be issued by the judge.

3. Once the time limits mentioned in the previous sub-articles have elapsed, the defendant must be released immediately, except where the defendant is due to remain in prison on account of another case.

4. The restrictive measures provided in articles 192 and 193 shall lapse where, from the beginning of their execution, the time limits referred to in sub-article 195.1, increased twice as much, have expired.

Article 196

Review of prerequisites

1. The judge shall review the prerequisites that form the basis for maintaining the defendant under pre-trial detention every six months of the duration thereof, and the defendant and the public prosecutor may issue an opinion ten days before that period of time elapses.

2. During the investigation, the public prosecutor submits the records to the competent Judge ten days before the six-month period referred to in sub-article 196.1 elapses.

Article 197

Overriding pre-trial detention

1. If requested or at his or her own discretion, the judge may override pre-trial detention and determine that the defendant be released where it is established that pre-trial detention has been imposed in cases and conditions other than those provided in the law or where the circumstances that led to pre-trial detention have ceased to exist.

Article 198

Suspending pre-trial detention

1. Pre-trial detention may be suspended on grounds of serious disease, labour pains or pregnancy for such a period as deemed necessary by the judge, depending on the probable duration of these circumstances.

2. During suspension, pre-trial detention may be substituted for another restrictive measure that is generally consistent with the situation in question.

Article 199

Substituting pre-trial detention

1. In the situation provided in the sub-article 194.4 and also in the event that the defendant suffers from a serious mental disorder that does not manifest itself continually, the judge may, on an exceptional basis, order that the defendant be admitted to hospital, with or without police surveillance, in substitution for pre-trial detention.

2. Where there is a mitigation of the provisional requirements that have resulted in the imposition of pre-trial detention, the judge may substitute it for a lesser measure, after consultation with the public prosecutor and the defendant, on a discretionary basis or at request.

Article 200

Deducting pre-trial detention

1. The period of time in pre-trial detention spent by a defendant in a case where he or she is convicted is deducted from the term of imprisonment imposed.
2. Where a penalty of fine is imposed, pre-trial detention is deducted at the rate of one day of fine for, at least, one day of imprisonment.

Article 201

Crediting pre-trial detention

For procedural purposes, the period of time in detention spent by a defendant is credited towards the duration of pre-trial detention.

Article 202

Substituting restrictive measures

1. Sub-article 198.2 is correspondingly applicable to any other restrictive measure.
2. In case of failure to fulfil the obligations imposed by means of a restrictive measure, other measure(s) may be imposed, or the original measure substituted, depending on the circumstances.

Article 203

Lapse of restrictive measures

1. Restrictive measures lapse immediately after:
 - (a) a case is dismissed for lack of indictment;
 - (b) an order rejecting an indictment is rendered final;
 - (c) a sentence of acquittal of acquittal is handed down, even though an appeal has been lodged against it;**
 - (d) a convicting decision is rendered final;
2. Pre-trial detention as a measure shall also lapse immediately after a convicting sentence is handed down, even though an appeal has been lodged against it, where the imposed penalty does not exceed the period of time the defendant has spent in pre-trial detention.
3. The lapse of pre-trial detention shall result in the immediate release of the defendant.
4. If, in the case of paragraph 203.1(c), the defendant is convicted in connection with the same case, the latter may, as long as the convicting sentence is not rendered final, be subjected to any of the legally admissible restrictive measures.
5. Where the restrictive measure is bail and the defendant is convicted to imprisonment, the restrictive measure shall lapse only after the penalty begins to be executed.

SECTION II

REFUTING IMPOSED RESTRICTIVE MEASURES

Article 204

Refuting a restrictive measure

With the exception of the proof of identity and residence, all other restrictive measures may be refuted by lodging an appeal.

Article 205

Habeas corpus

1. Any person who finds himself or herself under unlawful arrest or detention may, directly or through any other person fully exercising his or her political rights, request the Supreme Court of Justice to grant him or her a writ of *habeas corpus*.
2. In order for the arrest or detention of a person to be considered unlawful, it must be based on one of the following facts:
 - (a) be carried out or ordered by an entity not having the competence to do so;
 - (b) be motivated by a fact in which regard arrest or detention is not permitted by law;
 - (c) expiry of the time limits for the duration thereof, namely the seventy-two-hour deadline for the presentation of the person under arrest or detention for his or her first judicial questioning;
 - (d) the person is kept on premises other than the ones permitted by law.

Article 206

Procedural steps in handling an incident

1. The motion, to be addressed to the President of the Supreme Court of Justice, is prepared in duplicate and filed with the authority in whose custody the person under arrest or detention is held, who shall forward it to the Supreme Court of Justice within 24 hours of its receipt, together with information concerning the circumstances surrounding the arrest or detention and whether that person is still under arrest or detention.
2. Upon receipt of the motion, the President of the Supreme Court of Justice shall order that the Public Prosecution Service be notified to issue an opinion within 48 hours and shall appoint a defender for the person under arrest or detention if the latter has not yet retained counsel .
3. Once the necessary action has been taken, a decision shall be pronounced on the motion within five days of its receipt.
4. It is incumbent upon the criminal section presided over by the President of the Supreme Court of Justice to hand down the decision.

Article 207

Enforcing a decision

If the decision by the Supreme Court of Justice holds that the arrest or detention is unlawful, it shall be forthwith communicated to the entity in whose custody the person under arrest or detention is held, who shall release the latter immediately, under penalty of incurring criminal liability.

CHAPTER III

PROPERTY-GUARANTEE MEASURES

SECTION I

APPLICABLE MEASURES AND RULES

Article 208

Pecuniary deposit

1. Should there be reasonable fears about lack of, or a significant reduction in, guarantees for payment of a pecuniary penalty, court fees, or of any other debt with the Sate,

pertaining to a criminal case or the compensation owed by the damage caused by the crime, the defendant shall be ordered, on a discretionary basis or at request, to make a pecuniary deposit.

2. The pecuniary deposit shall remain distinct and separate from the bail referred to in article 187 and shall continue until a final decision of acquittal is handed down or the obligations lapse.

Article 209

Preventive attachment

1. If the deposit imposed under the terms of article 208 is not made, the substitution of that deposit for attachment, as regulated in the civil procedure law, may be ordered.

2. The attachment referred to in this article may be ordered even in relation to a trader.

3. Once the pecuniary deposit imposed has been made, the revocation of the attachment becomes compulsory.

PART II

ON ORDINARY PROCEDURES

TITLE I

ON INVESTIGATION

CHAPTER I

GENERAL PROVISIONS

SECTION I

REPORTING A CRIME

Article 210

Obtaining a report of a crime

1. The report of a crime is obtained through:

(a) personal knowledge of the person that is to initiate the investigation, be it the Public Prosecution Service or the police;

(b) notification of the occurrence of the crime given by the police or other authorities;

(c) accusation filed by any citizen in the case of a public crime;

(d) accusation filed by any person who holds the right to complain in crimes of a semi-public nature.

2. The report of a crime is forthwith communicated to the Public Prosecution Service if the investigation has not been ordered by the latter.

Article 211

Notification

1. Any police officer who learns that a crime has been committed must immediately prepare a notification.

2. Sub-article 211.1 is correspondingly applicable to any civil servant, public manager or any other public agent or authority who, in the exercise of his or her functions or as a result there from, learns that a crime has been committed.

3. In the event of a crime of a semi-public nature, the initiation of the criminal proceeding depends on the exercise of the right to complain, and the proceeding is dismissed if such a right is not exercised within fifteen days following the preparation of the written notice.

4. Sub-article 211.3 does not prejudice the exercise of the right to complain within the time limits and under the terms established by law.

Article 212
Written notices

1. A written notice consists of:
 - (a) the identifying elements that could be collected regarding the defendant and the aggrieved person;
 - (b) the facts that constitute the crime;
 - (c) the date, time, place and the circumstances in which the crime could have been committed;
 - (d) the means of evidence already known;
 - (e) if the report of the crime has not been obtained by the person giving the notice himself or herself, the manner in which the latter got the report;
 - (f) the date and signature of the person giving the notice.
2. Where the person giving the notice has witnessed the commission of the crime, the notice is referred to as a *< flagrante delicto crime notice >>*
3. In the cases of relationship provided in article 20 a single notice shall be prepared.

Article 213
Accusation

1. An accusation may be made by any citizen in connection with a public crime and may be filed with the Public Prosecution Service or with a police officer, who shall convey it to the Public Prosecution Service.
2. A written accusation shall contain such elements as enumerated in sub-article 212.1 and, when made orally, it is incumbent upon the person receiving the accusation to commit it to writing, which shall be signed by the person making the accusation and by the drafter thereof.

SECTION II
ON COMPLAINTS

Article 214
Persons holding the right to complain

1. Where a criminal proceeding depends on the lodgement of a complaint, any of the persons indicated below have legitimacy to lodge it, regardless of an agreement between them:
 - (a) any person under any of the situations described in article 71;
 - (b) if the victim dies without having lodged or waived the complaint, the right to complain shall belong to the surviving spouse or a person with a similar status granted by law, to the descendants or, in the absence thereof, to the progenitors, siblings and their progenitors, except where any of these persons has taken part in the crime;
 - (c) where the victim is unable to exercise the right to complain on grounds of a mental disorder or for being aged less than 16 years, that right shall belong to his or her legal representative or, in the absence thereof, to any of the persons referred to in paragraph 214.1 (b), under the terms set forth therein.

2. Where, under the terms of paragraph 214.1(c), the perpetrator of the crime is the respective legal representative, the Public Prosecution Service may initiate the proceeding if the safeguard of the interests of the victim so requires.
3. A complaint lodged against any of the persons involved in a crime implies initiating a criminal proceeding against them all.

Article 215

Lapse of the right to complain

1. The right to complain lapses after six months from the date the person holding that right becomes acquainted with the act and the authors thereof, from the date the victim dies, or from the date the victim becomes legally competent to do so.
2. The deadline is counted separately with regard to the various persons holding the right to complain.

Article 216

Waiving or withdrawing a complaint

1. An explicit or implied waiver of the right to complain precludes the exercise thereof at a later stage, and withdrawal of a complaint prevents that same complaint from being lodged anew.
2. Withdrawal of a complaint is admissible until such a time as the first-instance sentence is handed down, and no opposition having been filed by the defendant is a condition for validating the withdrawal.
3. Where the withdrawal becomes known during the investigation, it is the responsibility of the public prosecutor to validate it, and this responsibility rests with the presiding judge of the court where the withdrawal becomes known during the trial.
4. The judicial authority competent to validate the withdrawal notifies the defendant, as soon as it becomes acquainted with the withdrawal, requesting the defendant to state, within five days, whether he or she opposes the withdrawal, and silence on the part of the defendant in this respect shall be regarded as no opposition.
5. Where the defendant does not have an appointed defender and his or her whereabouts is not known, the notice referred to in sub-article 216.4 is given by publication.
6. A withdrawal deemed valid entails the acquittal of the defendant and of any co-participants that may benefit from such a withdrawal.
7. In order for a waiver or withdrawal to be valid where the right to complain is, or could have been, exercised by more than one person, there needs to be an agreement among all such persons.

SECTION III

DETENTION

Article 217

Purpose

1. Detention as referred to in the following articles is carried out for the purpose of:
 - (a) within seventy two hours, bringing the person under detention to court in an expedited proceeding or presenting that person to the judge for his or her first judicial questioning or for the imposition of a restrictive measure; or
 - (b) ensuring that the person under detention is immediately brought before the judicial authority in a procedural act or, this not being feasible, at the earliest opportunity, but under no circumstances shall it be done after the seventy-two-hour deadline.

2. The judge may order the detention of any procedural participant other than a legal practitioner, magistrate or public defender as a means of ensuring the immediate appearance of that person in a procedural act from which he or she has been absent without justification.

Article 218

Arrest in flagrante delicto

1. In the case of *flagrante delicto* in connection with a criminal offence punishable by imprisonment, any police authority may carry out the arrest.

2. If no police authority can carry out the arrest, any person witnessing the *flagrante delicto* offence may do so.

3. The person carrying out the arrest shall immediately hand the detainee over to the nearest police authority, who shall prepare a handover note containing such elements as referred to in article 220, in addition to the captor's identification and the circumstances surrounding the capture.

4. In the case of a criminal offence the prosecution of which is dependant on the lodgement of a complaint, the arrested person shall be kept under arrest only where, immediately after the arrest, the right to complain is exercised by the person who holds that right, and the complaint shall be entered in the records.

Article 219

Flagrante delicto

1. *Flagrante delicto* refers to any crime that is in the process of being committed or that has just been committed.

2. *Flagrante delicto* applies to any case in which the perpetrator is, as soon as the crime has been committed, tracked down by any person or found with items or indications that clearly show that he or she has just committed the crime or has taken part in it.

3. In the case of an ongoing crime, the *flagrante delicto* status continues as long as there are any indications showing that the crime is in the process of being committed and the perpetrator is taking part in it.

Article 220

Arrest other than in flagrante delicto

1. With the exception of *flagrante delicto*, an arrest may only be carried out following a warrant issued by the judge.

2. Police authorities and the Public Prosecution Service, or other agencies with a similar status, may order the arrest of the defendant other than in *flagrante delicto* where:

(a) pre-trial detention is admissible;

(b) there exist strong indications that the defendant is preparing to escape legal action;

(c) in an emergency and dangerous situation, the judge's intervention would come too late.

Article 221

Arrest warrants

1. Subject to sub-article 220.2, an arrest other than in *flagrante delicto* may be carried out only through a warrant the duplicate of which shall be handed over to the person to be

arrested.

2. An arrest warrant must contain:

(a) the identification of the person to be arrested and the capacity in which he or she is intervening in the case;

(b) brief indication of the grounds for the arrest and its purpose;

(c) identification and number of the case file regarding the arrest.

3. The warrant is written in triplicate, one of the duplicates being attached to the records once the arrest has been certified, the other kept in the files of the arresting entity, and the original handed over to the person to be arrested, in the act of his or her capture.

4. An arrest that is not in compliance with this and the preceding article is unlawful.

Article 222

Notifying an arrest

An arrest must be immediately notified to:

(a) the judge who has ordered the arrest if the arrested person is not immediately presented to the former;

(b) the public prosecutor in any other cases.

Article 223

Releasing an a person under arrest

1. Any entity who has ordered an arrest or to whom the person under arrest has been delivered shall release the latter immediately:

(a) as soon as it becomes evident that the arrest was carried out in a situation of mistaken identity;

(b) if it has been carried out outside the cases and the conditions provided in the law, namely in the cases where the 72-hour period to present the detainee has been exceeded;

(c) as soon as such order becomes unnecessary.

2. Release is preceded by a writ if the arrest has been ordered by the public prosecutor or the judge and, in the case of another entity, through the subsequent preparation of a report to be attached to the case file.

3. Any release carried out on the initiative of any police entity, before the person under arrest has been presented to the judge, must be notified to the public prosecutor, under the penalty of disciplinary liability.

CHAPTER II

ON ENQUIRES

SECTION I

ACTS OF ENQUIRY

Article 224

Starting an enquiry

The enquiry starts when the report of the crime is brought to the notice of the entity responsible for conducting it.

Article 225

Purpose

The enquiry is the investigative procedural phase intended to collect proofs and take the action required to demonstrate that a crime has been committed, hold its perpetrators liable, and secure any elements of relevance in determining the damage caused by the crime and the compensation amount, where the perpetrators are not to be tried in an expedited proceeding.

Article 226

Acts under judicial jurisdiction

The following acts are under the exclusive jurisdiction of the judge of the area where the enquiry is being conducted:

- (a) to carry out the first questioning of an arrested defendant;
 - (b) to conduct the committal of statements to writing for future use;
 - (c) to decide about the search of items and/or persons, where the law reserves the judge the competence to do so, namely the search of a lawyer's or doctor's office, a bank or other credit institution;
 - (d) to authorise telephone tapings;
 - (e) to authorise the seizure of mail and become acquainted with its contents before any other entity does, as well as to seize any items from a lawyer's or doctor's office, bank or other credit institution, examining any records deemed necessary for that purpose;
 - (f) to perform such other acts as may be assigned by the law.
2. The acts referred to in sub-article 226.1 are performed at the request of the public prosecutor.
 3. Where the person under arrest cannot be presented to the judge referred to in sub-article 226.1, within seventy two hours, for his or her first questioning, the former must, on an exceptional basis, be presented to the judge of the area where the arrest was carried out, but under no circumstances shall the presentation occur beyond the seventy-two-hour period.
 4. The search of, or the seizure of any items from, a lawyer's or doctor's office, a bank or other credit institution, as referred to in paragraphs 226.1 (c) and (e), shall be carried out by the judge personally.

Article 227

Acts under the jurisdiction of the public prosecutor

In addition to assuming a leadership role in any enquiry that the public prosecutor is not carrying out directly, it is the responsibility of the public prosecutor to perform or authorise any acts, where the law reserves the public prosecutor the competence to do so.

Article 228

Carrying out an enquiry

1. The police entity may carry out any other procedural acts to be carried out in the course of the enquiry.
2. For the purposes of sub-article 228.1, territorial jurisdiction is determined by the decree setting out the organic structure of the police entity.

Article 229

Enquires against magistrates

1. Where a magistrate is the subject of the report of a crime, a magistrate with a category or seniority that is equal to or higher than that of the defendant is appointed to conduct the enquiry.
2. Where the subject of the report of a crime is the Prosecutor General, a judge from the Supreme Court of Justice, who shall not take part in the trial phase, shall be appointed by the drawing of a lot.

Article 230

Statements for future use

1. Statements and confrontation of witnesses may take place beforehand where there are substantiated grounds for doing so, particularly in the case of a victim of a sexual crime, or in the case of an imminent overseas trip by a person who is to give testimony as a witness, victim, aggrieved person, expert, technical consultant or take part in a confrontation of witnesses that is likely to prevent him or her from appearing at the trial.
2. Early statements under the terms of sub-article 230.1 shall be taken by the territorially competent judge, following a request by the public prosecutor, the aggrieved person or the defendant, and committed to writing.
3. The procedural participants referred to in sub-article 230.2 may attend the hearing where the statements are made and may request the judge to ask any questions deemed necessary.
4. Statements for future use shall be freely assessed in trial.

Article 231

Inquiry against a particular person

1. After an enquiry against a particular person has commenced, the questioning of that person becomes compulsory
2. Exception to sub-article 231.1 is made where:
 - (a) the defendant resides overseas;
 - (b) the defendant resides in an area under the jurisdiction of a court other than the one where the inquiry is taking place;
 - (c) the defendant cannot be found for notification purposes.

Article 232

Duration of an inquiry

1. Six months is the time limit for conducting an inquiry where there are any defendants held under pre-trial detention.
2. In cases of great complexity during the investigation phase, the time limit referred to in Sub-article 232.1 may be extended, only once, for another six months, through an order issued by the public prosecutor.
3. The time limits referred to in sub-articles 232.1 and 232.2 are doubled where there are no defendants held under detention.

Article 233

Reporting the outcome of search for proof in writing

The outcome of the search for proof undertaken in the course of an enquiry must be committed to writing.

SECTION II ON CLOSURE OF ENQUIRY

Article 234

Final report

1. Where an enquiry has been completed under sub-article 57.2, the entity tasked with carrying out the inquiry prepares a final report and submits the records to the Public Prosecution Service.
2. The Public Prosecution Service may order further action and set a time limit for the completion thereof if it deems such action necessary for the disclosure of the truth.

Article 235

Dismissing a case

1. Once the provisions of article 234 have been complied with or the enquiry closed, the Public Prosecution Service shall issue an order of dismissal:
 - (a) if sufficient evidence amounting to a crime has not been gathered;
 - (b) if the perpetrator of the crime remains unknown;
 - (c) if the criminal proceeding is legally inadmissible.
2. Dismissal may be total or partial.
3. Where new elements of relevance to the investigation arise, an enquiry dismissed on the grounds referred to in sub-articles 235.1 and 235.2 must be reopened on a discretionary basis or at request.
4. The immediate superior may order the indictment on a discretionary basis or at the request of the aggrieved person; otherwise the case shall be placed on the files of the Public Prosecution Service.

Article 236

Order of indictment

1. If sufficient evidence amounting to a crime and leading to the identification of the perpetrator thereof has been gathered during the enquiry, the Public Prosecution Service shall issue a writ of indictment within fifteen days.
2. Evidence is considered to be sufficient where a penalty or security measure may be reasonably imposed on the defendant in trial by virtue of such evidence.
3. Under the penalty of nullity, the writ of indictment shall contain:
 - (a) elements conducive to the identification of the defendant;
 - (b) the account of the facts that constitute the crime or are of relevance to the determination of the penalty or security measure;
 - (c) the indication of the applicable substantive provisions;
 - (d) the date and signature.
4. In the case of relationship between cases a single writ of indictment is issued.
5. The indictment also indicates the roll of witnesses and any other proofs to be presented at the hearing.

Article 237

Notification

1. The order of dismissal or the writ of indictment is notified to both the defendant and the aggrieved person.
2. Where notifying the defendant personally proves to be of no avail, a notice by publication may be given to the defendant informing him or her of the order of dismissal or of the writ of indictment referred to in sub-article 237.1

Article 238

Referral to trial

Subject to sub-articles 14.2 and 14.3, the records are referred to the trial court for distribution once the writ of indictment has been notified by the Public Prosecution Service.

TITLE II

ON TRIALS

CHAPTER

ON THE PREPARATION OF A TRIAL

Article 239

Assessing an indictment

1. Once the records have been received by the court, the judge shall:
 - (a) assess the jurisdiction, legitimacy, nullities and other exceptions or any prior issues that are likely to impede an immediate assessment of the grounds of action;
 - (b) issues a rejection order, where the indictment is deemed to be blatantly groundless;
 - (c) admit the indictment and set a trial date, if the judge is of the opinion that the case must proceed to trial.

Article 240

Setting a date for trial

1. The order admitting the indictment and setting a trial date must also contain:
 - (a) the appointment of a defender, if counsel has not yet been retained or appointed for the entire proceeding;
 - (b) the decision on any restrictive or property-guarantee measures to be imposed on the defendant or the review of the imposed ones;
 - (c) the request for a criminal record check.
2. The order, accompanied by a copy of the indictment, is notified to the public prosecutor, the defendant, and his or her defender, and the aggrieved person.

Article 241

Rebuttal and roll of witnesses

1. Within fifteen days of notification of the order setting the trial date, the defendant shall present, if he or she so wishes, his or her rebuttal, the roll of witnesses and any other proofs to be produced.
2. The motion is filed in the written form and is not subject to any procedures, with a duplicate attached thereto to be handed over to the public prosecutor.

Article 242

Endorsement

Where the trial is to be held in a court with more than one judge, the records are afterwards referred to each of the assistant judges for consultation and endorsement.

Article 243

Statements for future use or taken in the domicile

1. At the request of the public prosecutor, of the victim or of the defendant, the court may take statements from any of the procedural participants referred to in sub-articles 236.5 and 241.1 in their domicile where, on substantiated grounds, they are not able to appear at the hearing.
2. The procedures set for hearings, except with regard to the public character thereof, are observed while taking statements.
3. Statements are committed to writing.

Article 244

Rogatory letters

1. The issuance of rogatory letters is not permitted in connection with the taking of statements from procedural participants who have been heard during the inquiry.
2. On an exceptional basis, persons who have not been heard through statements during the inquiry, residing outside of the territorial jurisdiction of the court and having serious difficulties or inconveniences in making a trip to appear before the court, may be questioned by means of a rogatory letter at the request of either the prosecution or the defence.

CHAPTER II ON HEARINGS

SECTION I

GENERAL PROVISIONS

Article 245

Conduct and order at hearings

1. The conduct of the hearing and the order of business are the responsibility of the judge, who shall adopt such measures as deemed appropriate and necessary for the smooth running of the hearing, to the extent that they are not inconsistent with any expressed law.
2. Sub-article 73.2 is correspondingly applicable.
3. Decisions relating to the order of business and the conduct of the hearing may be pronounced orally and without following any specific procedures.

Article 246

The adversarial nature of proceedings

The court shall ensure the observance of the adversarial nature of the proceeding, namely before a decision on incidental matters is made and in relation to the presentation or examination of any proofs at the hearing, under the penalty of nullity.

Article 247

Public character of hearings

1. Hearings shall have a public character, under the penalty of irreparable nullity.
2. Articles 75 and 76 are correspondingly applicable.

Article 248

Oral character of hearings

Except as otherwise stated by the law, the proceedings and the production of proofs at the hearing are conducted orally before the court.

Article 249

Documenting acts performed at hearings

1. A court clerk shall prepare the minutes of the hearing containing:
 - (a) the indication of the venue, date, opening and closing time and the number of hearing sessions;
 - (b) the name of the judge and of the public prosecutor;
 - (c) the identification of the defendant and his or her counsel or defender;
 - (d) the identification of the deposing witnesses, experts, technical consultants, and interpreters;
 - (e) the recording of any motions made orally, the stance of the other procedural participants in regard to such acts and the decisions made thereon, including the record of any challenges made at the hearing;
 - (f) the terms of conciliation or withdrawal, if any;
 - (g) any other decisions and indications determined by the law;
 - (h) the signature of the presiding judge and of the court clerk who prepared the minutes;
2. Statements made before the court are committed to writing in the absence of video or audio recording equipment.
3. The judge may determine that the acts referred to in paragraph 249.1(e) be recorded in writing at the end of the production of proofs where an immediate writing thereof might disrupt the smooth running of the proceedings.

Article 250

Uninterrupted character of hearings

1. A hearing proceeds without interruption, except in the case of adjournment or interruption provided by law.
2. The judge shall determine the adjournment of the hearing for such a duration as deemed necessary for the rest and refreshment needs of the participants.
3. The hearing shall be adjourned until the following workday where it cannot be concluded on the day it started.

4. The judge shall order the interruption of the hearing after it has started if:
 - (a) a person who cannot be immediately replaced and whose presence is indispensable, by operation of the law or of a court decision, fails to appear at the hearing or becomes unable to attend it;
 - (b) it is absolutely necessary to produce further evidence, which is unavailable at the time the hearing is in progress;
 - (c) any prejudicial or incidental matter, the settlement of which is essential for a proper adjudication of the case and that renders the continuation of the hearing highly inconvenient before that matter is settled, arises.
5. An interrupted or adjourned hearing is resumed from the last procedural act performed; however, any proofs produced lose validity where the resumption of the hearing is not feasible within 30 days.

Article 251

Postponing the date set for a hearing

1. The inability of constituting a court and failure to take any of the steps set out in article 244 are the grounds on which to postpone the date set for the hearing.
2. The absence of procedural participants before the hearing has started may result in a postponement only when and as determined by the law.

Article 252

Investigation principle

At its own discretion or if requested to do so, the court shall issue a writ ordering the production of every evidence the knowledge of which proves to be essential for the disclosure of the truth and for a proper adjudication of the case, while observing the adversarial nature of the proceedings.

Article 253

Attendance of defendants

1. The presence of the defendant at the hearing is compulsory, except as otherwise stated in the law.
2. It is the responsibility of the judge to take the appropriate and necessary action to prevent the defendant from leaving the hearing before it comes to a close.
3. Once the defendant has been questioned about his or her identification, he or she may be removed from the courtroom on the grounds of repeated breaches of the rules of conduct at the hearing.
4. The defendant may also be removed from the courtroom for a period of time deemed necessary when his or her presence may contribute to inhibiting or intimidating a person who is to make statements.
5. Even if the defendant is removed from the courtroom, he or she must hear the reading of the sentence.

SECTION II PRELIMINARY ACTS

Article 254

Calling the roll

1. At the time set for the beginning of the trial, the court clerk shall, publicly and loudly,

identify the case and call the procedural participants.

2. Should any procedural participant be absent, a second call shall be made after fifteen minutes have elapsed.

3. Once these procedures have been complied with, the court clerk shall inform the presiding judge of the persons present and/or absent.

Article 255

Starting or postponing a hearing

1. Where all the procedural participants are present or where, though a person is absent, the hearing is not postponed, the court calls the hearing to order and starts the trial.

2. Otherwise, the court sets a new date for the trial.

3. The postponement of the hearing and the grounds therefore, including the position of the public prosecutor and of the defendant are entered in the postponement minutes.

Article 256

Absence of defendants

1. Where the defendant fails to appear at the hearing, having been duly notified, the hearing shall be postponed before proofs begin to be presented.

2. Failure to justify the absence within five days implies the payment of a fine and the issuance of an arrest warrant in order to ensure the defendant's presence at the hearing to be held on the reset date.

3. Should the defendant justify his or her absence, he or she shall be notified of the reset date for the trial with the warning that, in the case of a new absence, the trial shall be held in absentia and that he or she shall, for all possible purposes, be represented by his or her defender.

Article 257

Impossibility of notifying or arresting a defendant

1. Where the defendant has provided the proof of identity and residence and he or she cannot be either arrested in order to ensure his or her presence at the hearing or notified personally of the writ setting the date for the trial, a public notice shall be affixed at the residence indicated in his or her proof of identity and residence.

2. A public notice thus served shall be affixed no later than twenty days before the reset date for the trial and with the warning that the trial shall be held as if the defendant were present and that he or she shall, for all possible purposes, be represented by the defender.

3. The use of a public notice does not preclude a detention or arrest warrant from being simultaneously issued.

Article 258

Waiving the attendance of a defendant

Where a defendant is practically unable to appear at the hearing due to advanced age, serious disease or residence overseas, he or she may request or agree that the hearing be held in his or her absence, in which case the defendant shall be represented by his or her defender for all possible purposes.

Article 259

Other cases of impossibility of notifying or arresting a defendant

1. Apart from the cases provided in sub-article 257, where the defendant has not provided a proof of identity and residence, the police shall be requested to investigate and report about the whereabouts of the defendant in order that he or she can be given the notice.
2. Should the impossibility of notifying the defendant in the case referred to in sub-article 259.1 persists in that his or her whereabouts remains unknown, the court may order the arrest of the former in order to ensure his or her appearance in court.

Article 260

Absence of the public prosecutor or defender

1. The absence of either the public prosecutor or the defender shall not justify the postponement of the hearing.
2. The public prosecutor shall be replaced by his or her legal substitute and the defender by a competent person, preferably a lawyer or law graduate, under the penalty of irreparable nullity.
3. Substitutes shall be given the time required for them to prepare for the trial, namely for the perusal of the records and contact with the defendant.

Article 261

Absence of the victim, witnesses, experts or technical consultants

1. The absence of the aggrieved person, witness, expert or technical consultant may justify the postponement of the hearing on one occasion only and only if the court believes that his or her presence is essential for the discovery of the truth and that the presence of the absentee on the new date to be set for the hearing is likely to be ensured.
2. Where any of the aforementioned persons is likely to still appear in the course of the hearing or such a hearing shall require more than one session, the court shall initiate the trial and shall allow that person to give his or her testimony as soon as he or she arrives at the hearing; otherwise, sub-article 261.1 shall apply.

SECTION III

ON PRODUCTION OF PROOFS

Article 262

Attempts at conciliation

1. Where proof has commenced to be produced, in a crime the criminal proceeding of which depends on the lodgement of a complaint, the judge may seek to reach conciliation between the defendant and the aggrieved person.
2. If conciliation is reached, mention of this fact shall be made in the minutes and the judge shall, after consultation with the public prosecutor, endorse the agreement reached.

Article 263

Keeping away a person who is to make statements

1. While proof is being produced, every person who is to make statements is excluded from the courtroom without access to any information about what is occurring inside the courtroom.
2. It is the responsibility of the court clerk to ensure that sub-article 263.1 is complied with before and after the production of proof commences.

Article 264
Information

The production of proof is preceded by the reading and explanation of the contents of the indictment by the judge to the defendant.

Article 265
Order followed in the production of proof

1. The order in which proof is produced is as follows:
 - (a) statements by the defendant;
 - (b) evidence presented by the public prosecutor;
 - (c) evidence presented by the defendant;
 - (d) other evidence the court deems necessary.
2. Lastly, proof produced beforehand by way of documents attached to the records shall be examined, provided that any of the parties concerned so requires.
3. If the court deems it convenient for the discovery of the truth, the aforementioned order of production of proof may be altered, except with regard to statements by the defendant who is the first person to intervene in this respect, and the latter may make further statements at any stage of the hearing.

Article 266
Evaluation of proof

1. The court's opinion may only be based on proof that has been either produced or examined at the hearing.
2. Excepted from sub-article 266.1 is the following proof, which may be used even without having been examined at the hearing, where no one has required the examination thereof:
 - (a) records relating to statements for future use or taken in a person's domicile, or by means of a rogatory letter, in an act conducted by a judge;
 - (b) enquiry records to the extent that they contain statements by the defendant, the aggrieved person or by witnesses heard before a judicial authority;
 - (c) any documents compiled in the course of the enquiry or presented with the rebuttal;
 - (d) records prepared in the course of the enquiry, which do not contain statements by any of the persons referred to in paragraph 266.2(b).

Article 267
Prohibited reading of statements

1. With the exception of the cases provided in article 266, records of statements made during the inquiry may not be used at the hearing.
2. Exceptionally, the records of statements referred to in sub-article 267.1 may be used at the hearing but only for substantiating the opinion of the court where there is a noticeable contradiction or discrepancy between those statements and the ones made at the hearing by the same person, which cannot be otherwise clarified.

3. The use of the prerogative granted in sub-article 267.2 must be mentioned in the hearing minutes in the form of a writ authorising it and pointing out the contradiction or discrepancy that requires clarification.
4. Proof obtained in breach of the foregoing sub-articles of this article is not valid.

Article 268

Statements by the defendant

1. The questioning of the defendant begins with questions relating to his or her identification, preceded by the warning referred to in paragraph 60 (c) and sub-article 62.3.
2. Article 62 is correspondingly applicable to the questioning of the defendant at the hearing.
3. Where the defendant wishes to make statements as to the grounds of the action, the judge shall ask him or her whether he or she admits or denies the facts set forth in the indictment.
4. Where the court is satisfied that the admission of guilt is free and genuine, the questioning, including the remaining production of proof, is limited to the facts and circumstances that have not been sufficiently clarified
5. Where the defendant denies the facts set forth in the indictment, the court shall hear him or her in all that is of relevance to the case.
6. The public prosecutor and the defender shall, following this order and through the presiding judge, ask any questions deemed necessary for the clarification of the truth.
7. The defendant may, spontaneously or on the recommendation of the defender, refuse to respond to some or all of the questions asked, without detriment to himself or herself.

Article 269

Several defendants

1. In the event of several defendants, the judge determines whether these should be heard in each other's presence or separately.
2. In the case of a separate hearing, the judge shall, after hearing all the defendants, inform them on what has occurred in their absence, under the penalty of nullity.

Article 270

Statements by the aggrieved person

The judge or, through him or her, the public prosecutor and the defender may, following this order, ask the aggrieved person any questions.

Article 271

Statements by witnesses

1. Witnesses are questioned, one after the other, by the order in which they have been indicated, unless the judge reasonably decides otherwise.
2. A witness is questioned by the person who has indicated him or her, and shall then be cross-examined by the remaining procedural participants. The witness may be questioned again if issues that have not been addressed in the initial questioning arise during the cross-examination.

3. The judges may, at all times, ask any questions deemed relevant to the discovery of the truth.
4. The witnesses indicated by a defendant may only be questioned by the defenders of the other defendants if those defenders request the judge to do so and the latter deems it necessary for a reasonable adjudication of the case.

Article 272

Statements by experts and technical consultants

Any questions addressed to an expert or technical consultant are asked by the judge or, through him or her, by the public prosecutor and the defender.

Article 273

Non-substantial amendments to the facts set forth in the indictment

1. If any facts that are not set forth in the indictment but are clearly relevant to the adjudication of the case, and do not imply an aggravation of the maximum limit of the applicable penalty, come up while proof is being produced, the court shall, on one's own initiative or at request, report those facts to the public prosecutor and the defender, giving them, if required, time for preparing their procedural position.
2. Sub-article 273.1 does not apply where an amendment results from facts alleged by the defence.

Article 274

Changing legal qualification

Where the court believes that the facts contained in the indictment must have a legal qualification different from the one stated therein, even though this results in an increase in the maximum limit of the applicable penalty, the court shall report it to the public prosecutor and the defender, giving them, if requested, a deadline for preparing their procedural position.

Article 275

Substantial amendments to the facts of an indictment

1. If during the production of proof facts that are not contained in the indictment arise, which amount to imputing to the defendant a more serious crime or the aggravation of the maximum limit of the applicable penalty, the court shall, on a discretionary basis or at request, report such facts to the public prosecutor and the defender.
2. The trial shall proceed if the public prosecutor and the defendant agree that it should proceed with the inclusion of the new facts and such new facts do not fall outside the jurisdiction of the court.
3. Where the trial proceeds, the court shall give the public prosecutor and the defender a deadline not exceeding 10 days for preparing their procedural position, if requested, and shall postpone the hearing, if necessary.
4. In the absence of the agreement referred to in sub-article 275.2, the notice of amendments given to the public prosecutor is equated with an advice for him or her to proceed in accordance with the new facts.
5. In the event that the new facts fall outside the jurisdiction of the court, the records are referred to the competent court for trial.

Article 276
Oral allegations

1. Once proof has been produced, the right to be heard is successively given to the public prosecutor and the defender for them to orally present their factual and legal conclusions, for a period of time not exceeding thirty minutes, which may be extended by the judge in particularly complex cases.
2. A response to refute arguments that have not been previously discussed is admissible, following that same order, for a period of time not exceeding fifteen minutes.

Article 277
Final statements by the defendant

Before the hearing is declared closed, the judge shall ask the defendant whether he or she has any further allegations to make in favour of his or her defence, and shall take note of anything said by the defendant that substantiates his or her defence.

Article 278
Decision-making process

1. The closing of the discussion is followed by a decision-making process involving all the judges who constitute the court.
2. The decision is made through a simple majority of votes.
3. The court begins by examining incidental or prior issues falling under its jurisdiction, which are yet to be decided: if the case is to proceed, questions are asked about the facts contained in the indictment, and in the defendant's initial reply, or arising from the arguments of the case, which are of relevance in deciding the matters referred to in sub-article 278.8.
4. Even if defeated in a previous matter, each member of the court has the obligation to take part in the deliberations and vote on subsequent matters, and the prevailing opinion is presumed to have been adhered to.
5. Judges may not, under the penalty of incurring disciplinary and criminal liability, disclose anything related to the case, which has occurred during the deliberation, namely publicise any voting direction.
6. Abstention is not admissible.
7. Substantiation of proved and unproved facts, through an account as complete as possible of the grounds on which the opinion of the court was based while assessing, examining or identifying the proof, is required while responding to the questions.
8. The court shall afterwards decide, taking into account the proved facts:
 - (a) whether the elements that constitute the type of crime have been identified;
 - (b) whether the defendant has committed or taken part in the crime;
 - (c) whether the defendant has acted with guilt;
 - (d) whether any reason for excluding the illegality or guilt has been identified;

- (e) whether any other legal prerequisites for rendering the perpetrator punishable or for imposing a security measure thereon have been identified;
- (f) on the choice and specific extent of the penalty;
- (g) whether the prerequisites for civil compensation arbitration have been identified.

Article 284

Preparing and reading out a sentence

1. Once the decision-making process has been completed, the judge or his or her substitute, where the former has been defeated in the matter of law, shall prepare the sentence in keeping with the prevailing opinions.
2. The sentence is signed by the judge and the assistant judges, who may issue statements of vote concerning any issues related to the legal provisions applied and the choice and extent of the penalty.
3. The sentence shall be read out and explained publicly by the judge at the hearing, within fifteen days.
4. The reading is tantamount to notifying the persons who are or are to be considered present at the hearing.

Article 280

Exhortation to the defendant

Upon reading out the sentence, the judge may address the defendant explaining to him or her the sense of the decision and exhorting him or her to correct himself or herself, if convicted.

Article 281

Elements required for a sentence

1. The sentence begins with a report containing:
 - (a) the identifying elements of the defendant;
 - (b) an indication of the crime(s) imputed to the defendant;
 - (c) a summary of the conclusions contained in the defendant's initial reply, if any;
 - (d) an indication of the amendments to the facts of the indictment, if any;
2. The report is followed by a rationale enumerating the proved and unproved facts and containing the substantiation of facts referred to in sub-article 278.7, with reference thereto if required, as well as an account as accurate and concise as possible of the legal and factual grounds on which the decision is based.
3. The sentence ends with an opinion containing:
 - (a) the applicable legal provisions;
 - (b) the convicting or decision of acquittal, including the one on civil compensation;
 - (c) the indication of how the items and objects related to the crime are to be disposed of;
 - (d) the order to refer the criminal record to the criminal registry;
 - (e) the date and signatures of the court members, with mention of the declaration of vote, if any
4. The sentence shall be in compliance with the provisions of this Code and of the Code of Court Costs concerning costs.

Article 282

Convicting sentence

The court shall, in a convicting sentence, specify the grounds on which the choice and extent of the penalty applied are based, indicating, where applicable, when and how the sentence is going to be served, other duties imposed upon the convict and the duration thereof, as well as the status of the convict in regards to any restrictive measures.

Article 283

Sentence of acquittal

1. A sentence of acquittal shall declare the extinction of any restrictive measure and order the immediate release of a defendant held under pre-trial detention; however, the defendant may remain in prison on account of another case.
2. If the crime has been committed by a person immune from criminal culpability, a sentence of acquittal together with the imposition of a security measure shall be equivalent to a convicting sentence for the purpose of applying article 282.

Article 284

Deciding on a request for compensation

1. A sentence of acquittal may also punish the defendant with the payment of compensation where losses and the liability of the defendant have been ascertained and assessed.
2. Where the amount of the compensation cannot be assessed or other relevant elements cannot be ascertained, the court shall refer the matter to a civil court for a decision thereon, even though in part.

Article 285

Correcting a sentence

1. The court shall, on a discretionary basis or at request, proceed with the correction of a sentence where:
 - (a) apart from the cases provided in article 286, the provisions of articles 281 to 284 have not been complied with or have not been fully complied with;
 - (b) the sentence contains an error, lapse, obscurity or ambiguity the elimination of which does not amount to a change in its essence.
2. Where an appeal has already been filed, the correction is made, where feasible, by the court competent to adjudicate the appeal.
3. Sub-articles 285.1 and 285.2 are correspondingly applicable to court orders.

Article 286

Nullity of sentence

1. A sentence is null where:
 - (a) it does not contain the factual and legal rationale, the indication of the rationale of the court's opinion on the proved and unproved facts, even though by reference thereto, and the convicting or decision of acquittal;
 - (b) it convicts the defendant of facts other than those set forth in the indictment or in the amendment thereto, if any.
 - (c) it is pronounced by a court with no criminal jurisdiction;

(d) it is not put to writing, subject to sub-article 349.4.

**TITLE III
ON APPEALS
CHAPTER I
ON ORDINARY APPEALS
SECTION I
ON GENERAL PRINCIPLES
Article 287**

Principles of maximum admissibility of appeals

1. Where it is not expressly prohibited by law, court orders, sentences and decisions may be appealed against in entire or in part.
2. The appeal may cover both matters of fact and matters of law.

Article 288

Decisions not subject to appeal

An appeal is not admissible against:

- (a) routine orders;
- (b) decisions ordering the execution of acts that depend on the court's discretion;
- (c) sentences containing civil compensation where the amount of the compensation falls within the jurisdictional limit of the court appealed against and the decision challenged is unfavourable to the appellant in an amount lower than one half of that limit;
- (d) in any other cases provided by law.

Article 289

Persons eligible to appeal

Only a person interested in acting may appeal, namely:

- (a) the public prosecutor, against any decision, even though he or she does it in the defendant's exclusive interest;
- (b) the defendant, against any decision pronounced against him or her or in relation to the part which is against him or her;
- (c) a person who has been punished with the payment of any amount of money or who has to defend any right affected by the decision.

Article 290

Scope of appeal

1. An appeal lodged against a sentence covers the entire decision.
2. Except if based upon strictly personal grounds, an appeal lodged by one of the defendants, in the case of co-participation, shall include the other defendants.

Article 291

Degrees of appeal

1. Every final criminal decision pronounced by a district court is appealable to the Supreme Court of Justice.
2. A criminal decision pronounced in the first instance by the criminal section of the Supreme Court of Justice is appealable to the full bench of that court.
3. The Supreme Court of Justice shall adjudicate matters of fact and matters of law.

Article 292

Limitation of appeal

1. An appeal is limited to one part of the decision where the part appealed against may be separated from the part that has not been appealed against, in order to render possible a separate review and decision, is admissible, without prejudice to any consequences imposed by law in regard to the entire decision appealed against if the appeal is deemed granted.
2. For the purpose of applying sub-article 292.1, a separate part means the part of the decision referring to:
 - (a) criminal matters as opposed to the part relating to civil matters;
 - (b) each of the crimes, in the case of accumulation of crimes;
 - (c) the issue of culpability as opposed to the part relating to the issue of determining the penalty;
 - (d) each of the penalties or security measures, within the scope of the issue of determining the penalty.
3. Where the appellant limits the scope of the appeal to one part that the higher court believes it is not susceptible to be adjudicated and decided separately, a decision shall be made against the adjudication of the appeal.
4. The appellant may, by means of a request filed within five days of the date on which the partial adjudication of the appeal was rejected, amend the particulars of the appeal subject by expanding its object.

Article 293

Prohibition of *reformatio in pejus*

1. Where the defendant alone lodges an ordinary appeal against the final decision, the higher court may not impose a penalty that might be regarded as heavier in nature or degree than that set out in the appealed decision.
2. Sub-article 293.1 also applies where the appeal has been lodged by the public prosecutor alone or by the public prosecutor and the defendant, but in the exclusive interest of the defence.

Article 294

Waiving or withdrawing an appeal

1. The right to lodge an appeal against a particular decision may be waived.
2. The withdrawal of an appeal is admissible through a motion or request on the court record, before a decision on the appealed matter has been pronounced.

Article 295

Remitting an appeal to a higher court

1. Remitted in the records themselves are the appeals lodged against decisions bringing a

case to a close and those that must be remitted together with the records.

2. Appeals other than those referred to in sub-article 295.1, which are to be remitted immediately, are remitted separately.

Article 296

Appeals to be remitted immediately to the higher court

1. The following appeals are immediately remitted to the higher court:

- (a) against a decision bringing a case to a close and against any decision pronounced thereafter;
- (b) against a decision imposing or maintaining a restrictive measure, except proof of identity and residence;
- (c) against a decision by the judge punishing the defendant with the payment of any amount of money under the terms of this code;
- (d) against an order in which the judge does not recognise himself or herself as a disqualified judge;
- (e) against an order rejecting an indictment.

2. Any appeal the retention of which would render it absolutely useless is also immediately remitted to the higher court.

Article 297

Appeals to be remitted at a later stage

Any appeal that is not remitted immediately is remitted, processed and adjudicated along with the appeal against the final decision.

Article 298

Effects of appeals

1. An appeal lodged against a final convicting decision has a suspensive effect.

2. The effects of the appealed decision are suspended by:

- (a) an appeal lodged against a decision punishing the defendant with the payment of any amount of money under the terms of this code, if the appellant makes a deposit of that amount within seven days of the lodgement of the appeal;
- (b) an appeal lodged against a court order declaring a bail broken;

3. Any other appeals shall be merely devolutive in their nature.

SECTION II ON APPEALS

Article 299

Scope of the powers of cognition

1. An appeal may be predicated on a disagreement with the decision made or on the omission of a decision relating to an issue that was expected to be adjudicated.

2. Even though an appeal is limited to matters of law, the court shall, on a discretionary basis or if requested to do so, adjudicate any defects that clearly amount to:

- (a) insufficient matter of fact held as proved for a decision;
- (b) an irreparable contradiction of the rationale or between the rationale and the

decision on the matter of fact held as proved;
(c) a blatant error in assessing the proof;
(d) the omission of any action that could have been taken at the trial hearing and that ought to be considered essential to the discovery of the truth.

Article 300

Time limit for lodging an appeal

1. An appeal shall be lodged within fifteen days of notification of the decision or of the date from which it should be considered as having been notified.
2. An appeal is lodged by way of a motion or by way of a simple statement entered in the minutes, if related to a decision pronounced at a hearing.
3. An appeal motion shall at all times be lodged on substantiated grounds; otherwise, the appeal shall not be admitted.
4. Where the appeal is lodged by way of a statement entered in the minutes the substantiation of the appeal may be presented within fifteen days from the date on which the appeal was lodged.

Article 301

Substantiation of an appeal

1. The substantiation of an appeal specifies the grounds for the appeal and ends with a presentation of conclusions, set out article by article in which the appellant summaries the grounds for the motion.
2. With respect to matters of law, the conclusions shall also state the following elements, under the penalty of rejection;
 - (a) the provisions that have been breached;
 - (b) the sense in which, in the opinion of the appellant, the appealed court has interpreted each provision or what it has been applied with, and the sense in which it should have been interpreted or what it should have been applied with; and
 - (c) in the case of error in determining the applicable provision, the legal provision that, in the opinion of the appellant, should be applied.
3. With respect to matters of fact, the appellant must specify;
 - (a) the points of fact that he or she believes have been wrongly adjudicated;
 - (b) the proof that leads to a decision distinct from the one that is being appealed against;
 - (c) the proof that needs to be renewed.

Article 302

Notification and reply

1. The appeal motion and the substantiation of the appeal shall be notified to the other procedural subjects affected by the appeal and shall therefore be accompanied by the number of copies required.
2. The procedural subjects affected by the appeal may reply within fifteen days from the date the notice referred to in sub-article 302.1 was given.
3. The reply shall be notified to the procedural subjects concerned, in conformity with Sub-article 302.1 with regard to the number of copies.

Article 303

Remitting an appeal

Once the appeal has been lodged and all other procedures complied with by the court registry, the appeal is immediately remitted to the higher court.

Article 304

Admitting an appeal

1. Once the appeal has been received, the higher court assesses all prior or incidental issues that might impede the adjudication of the grounds of action.
2. The higher court shall not adjudicate the appeal where the decision may not be appealed against, where the appeal has been lodged beyond the time limit, where the appellant does not meet the requirements for lodging the appeal or in the absence of substantiation.
3. It is incumbent upon the rapporteur to draft the decision on the appeal, whether the appeal is to proceed or to be rejected.

Article 305

Endorsement by the assistant judges

Where proof needs not be produced, the records are referred, for a 5-day period, to each of the assistant judges, along with the draft decision.

Article 306

Deliberation and decision

1. The trial judge and two assistant judges shall make a deliberation and decide by a simple majority of votes.
2. Where proof needs not be renewed, deliberation is made collectively; however, the court may previously listen to the prosecution and the defence in oral allegations in a hearing session, if the court deems it necessary for a proper adjudication of the appeal
3. The decision is drafted by the trial judge or, where the latter is defeated, by his or her substitute, and the dissenting opinion is admissible.
4. The decision is notified to the appellants, the respondents, and the public prosecutor.

Article 307

Renewal of proof

1. Where a matter of fact and a matter of law are to be adjudicated, the court admits the renewal of proof if any of the defects referred to in sub--article 299.2 has been identified and there is a reason to believe that the renewal of proof shall prevent the case from being returned.
2. The decision admitting or rejecting the renewal of proof shall determine the terms and the extent to which the proof produced in the first instance may be renewed.
3. Proof is renewed at a hearing.
4. The defendant shall at all times be summoned to the hearing, but, if he or she has been regularly summoned, his or her absence does not imply the postponement of the hearing, except as otherwise decided by the court.

Article 308

Amending a decision that has been appealed against

1. Subject to article 299, a decision by a first-instance court on a matter of fact may be amended where:
 - (a) the records contain all the elements of proof on which the decision was based;
 - (b) where documented proof is challenged under the terms of sub-article 301.3;
 - Or (c) the proof has been renewed.

Article 309

Proceeding with a case

1. Where the case is to proceed, the judge shall make the conclusions, set a date for the hearing, determine the persons to be summoned, and shall have the endorsements completed, where applicable.
2. The public prosecutor and the defender shall at all times be summoned to the hearing.

Article 310

Postponing a hearing

1. The absence of a person summoned shall result in the postponement of the hearing only where the court deems it indispensable for the administration of justice.
2. Where the defender fails to appear before the hearing and the hearing cannot be postponed, the court shall appoint a new defender and shall give the latter the time required for him or her to consult with the defendant and to examine the records, if required.
3. Postponing a hearing more than once is not permitted.

Article 311

Hearing

1. Once the hearing has been called to order, the judge shall initiate the discussions with a brief statement on the object of the appeal, in which he or she enunciates the matters the court believes to deserve a special examination.
2. The statement shall be followed by the renewal of proof, where applicable.
3. Afterwards, the public prosecutor and the defender are given the floor to make allegations, each for a period of time not exceeding thirty minutes.
4. The provisions relating to hearings in first-instance trials are correspondingly applicable.

Article 312

Deliberation

Once the hearing has come to a close, the court shall meet to deliberate over the case, in

compliance with article 306.

Article 313

Returning a case for a new trial

1. Where the cause of action cannot be determined, the court of appeal shall decide that the case be returned for a new trial in regard to the totality of the object of the case or to any matters that have been specifically identified in the decision ordering the return thereof.

CHAPTER II ON EXTRAORDINARY APPEALS

SECTION I EXISTENT APPEALS

Article 314

Types of extraordinary appeals

Extraordinary appeals may be considered for a review or for the establishment of jurisprudence.

Article 315

Grounds for a review and the admissibility thereof

1. The review of a final sentence rendered by the court is admissible where:
 - (a) another final sentence rendered by the court has considered false any of the elements of proof upon which such a decision was determined;
 - (b) another final sentence rendered by the court proves that a judge has committed a crime related to the exercise of his or her functions in the case;
 - (c) the facts upon which the conviction was established are inconsistent with the data as proved in another sentence and serious doubts arise from this contradiction as to the fairness of the conviction;
 - (d) newly disclosed facts or elements of proof that, per se or combined with those that have been assessed in the case, raise doubts as to the fairness of the conviction, except if the sole purpose of such facts or elements of proof is to correct the specific extent of the penalty.
2. For the purpose of applying sub-article 315.2, the order that has brought a case to a close is equated with a sentence.
3. Review is admissible even though the proceeding has abated or the penalty has either lapsed or been served.

Article 316

Legitimacy

1. Review may be requested by the public prosecutor and, in a convicting sentence, by the convicted person.
2. Where the convicted person is deceased, review may be requested by a spouse,

descendant, progenitor or anyone related by blood or affinity up to the fourth degree in the collateral line.

Article 317

Procedures for submitting and handling a petition for review

1. A petition for review shall be filed with the court that has handed down the sentence to be reviewed.
2. A petition for review is attached to the record where the sentence to be reviewed was issued.
3. It is incumbent upon the aforementioned court to process the review file by taking any action deemed necessary and ordering that any documents relevant to the decision be attached to the file.
4. The production of proof by means of statements shall always be documented.
5. Upon completion of the necessary action or after thirty days have elapsed from the date on which the petition for a review is submitted, the referral of the file to the full bench of the Supreme Court of Justice, along with information from the investigating judge regarding the grounds of action, is ordered.

Article 318

Procedures for handling and deciding review

1. Upon receipt by the Supreme Court of Justice, the file is submitted to the judge.
2. The judge shall, within fifteen days, draft the decision to be submitted for endorsement as an attachment to the file, if he or she deems it necessary that any action be taken before the decision is rendered.
3. The decision to grant or reject the review is pronounced within fifteen days of the date on which the last endorsement was affixed to the file and is made by the judge and two assistant judges.
4. Where the Supreme Court of Justice authorises a review, it designates, for the purpose of holding a new trial, a court with the same rank and composition as those of the court that has handed down the decision to be reviewed.

Article 319

New trial

1. In order to proceed with the review of the decision as soon as it receives the file, the designated court shall set a date for the trial and follow all other procedures as if in an ordinary proceeding.
2. The decision handed down in this new trial may not be subjected to further review, except as provided in paragraph 315.1(b).

Article 320

Compensation

1. Where the reviewed decision has been one of conviction and the review court acquits the defendant, the latter has the right to compensation for losses suffered and to a refund of any amount of money paid as a fine, tax costs, and court costs.
2. The review court has the competence to decide on the compensation and may, in the absence of particulars, submit it for settlement during the execution of the sentence.
3. The State is responsible for the payment of the assessed amounts.

SECTION III ESTABLISHING JURISPRUDENCE

Article 321

Grounds for lodging an appeal

1. Where, within the scope of the same legislation, the Supreme Court of Justice renders two decisions that, being related to the same matter of law, are predicated on conflicting reasoning, either the public prosecutor or the defendant may appeal to the full bench of that court against the decision rendered last.
2. Decisions are considered to have been rendered within the scope of the same legislation where no legislative modifications have impacted, whether directly or indirectly, on the settlement of the controverted matter of law between the times such decisions were rendered.
3. Only a previous final decision may serve as the basis for an appeal.

Article 322

Lodging an appeal and the effect thereof

1. An appeal to establish jurisprudence shall be lodged within thirty (30) days from the date on which the last final decision was rendered and it does not have suspensive effect.
2. The appellant shall identify in the petition the decision that is in contradiction with the appealed decision and, if the latter has been published, the place of its publication, and demonstrate the contradiction causing the jurisprudential conflict.
3. The appeal to establish jurisprudence is binding on all courts of Timor-Leste upon publication in the Official Gazette.

Article 323

Subsidiary regime

The provisions relating to ordinary appeals shall apply on a subsidiary basis to appeals to establish jurisprudence, with the necessary adaptations.

TITLE IV ON EXECUTION CHAPTER I ON GENERAL PROVISIONS

Article 324

Executive force of criminal decisions

1. Decisions of criminal conviction shall have executive force nationwide as soon as they become final, and it is the responsibility of the Public Prosecution Service to enforce them.

2. Decisions of final acquittal shall be executed as soon as they are handed down.
3. The executive force of criminal decisions handed down by courts in Timor-Leste is extensive to a foreign territory in conformity with treaties, conventions, and the norms of international law.

Article 325

Decisions that may not be executed

The following are decisions that shall not be executed:

- (a) criminal decisions handed down by a court with no criminal jurisdiction;
- (b) decisions imposing a penalty or measure that is non-existent in the Timorese law;
- (c) decisions that fail to specifically determine the imposed penalty or measure;
- (d) decisions that have not been put to writing.

Article 326

Executive competence

1. Executive competence rests with the first-instance court where the case has been handled.
2. Where the Supreme Court of Justice has intervened as a first instance court, executive competence lies with the first instance court of the area where the domicile of the convicted person is located.
3. The execution of a penalty is dealt with in the records themselves, and it is the responsibility of the public prosecutor to take any action necessary to correctly execute the penalty.
4. A court that declares a penalty or security measure to cease shall notify the defendant and, where applicable, the prison service or other competent service of the fact.

Article 327

Suspending an execution process

1. Where a case is initiated against a magistrate, court clerk, witness or expert in connection with facts that may have resulted in the conviction of the defendant, the suspension of the execution process is ordered pending the adjudication of that case.
2. The request to suspend an execution process is filed with the Supreme Court of Justice, sitting in full bench, which has the competence to determine the restrictive measure that may be applied to the convict during the suspension.

CHAPTER II ON THE EXECUTION OF A PRISON SENTENCE

Article 328

Beginning and end of imprisonment

1. A convicted person punished with imprisonment begins serving the sentence upon his or her admission to the prison establishment and such a sentence ends with his or her release on the morning of the last day of the sentence.

2. In order to start or finish serving his or her sentence, a convicted person is admitted to or discharged from a prison establishment by means of a writ issued by the trial judge.

Article 329

Suspending execution on grounds of escape

1. The suspension of a prison sentence occurs where a convict escapes from prison or fails to report back after an exit from prison and the execution of the prison sentence shall be resumed when the convicted person is either captured or reports back to prison.
2. Interspersed periods of time are added up for the purpose of crediting imprisonment.

Article 330

Crediting imprisonment

1. Years, months and days are computed on the basis of the following criteria for the purpose of crediting imprisonment:
 - (a) imprisonment determined in years ends on the day, within the last year, that corresponds to the beginning of the crediting and, in the absence of a corresponding day, on the last day of the month;
 - (b) imprisonment determined in months is credited with each month being considered as a period ending on the corresponding day of the following month, or in the absence thereof, on the last day of the month;
 - (c) imprisonment determined in days is credited with each day being considered as a 24-hour period, subject to article 331, which provides for the time of release.
2. Where imprisonment is not served on a continued basis, to the day figured out on the basis of the criteria set out in sub-article 330.1, is added the day that corresponds to the interruptions.

Article 331

Parole

1. Where the imposed prison sentence exceeds six months, and once one half of the sentence has been served, the court shall, if requested to do so or at its own discretion, request the public prosecutor, the prison service, and other services referred to in the sentencing law, to issue an opinion on the granting of parole.
2. Opinions shall be issued within thirty days.
3. Once the opinions referred to in sub-article 331.1 have been compiled, the judge issues an order deciding whether to grant parole or not.
4. The granting of parole may be subject to the fulfilment of the same duties as those upon which the suspension of the execution of a prison sentence is dependant.

Article 332

Requirements for granting parole

1. The granting of parole depends on the convicted person's good behaviour in prison and strong capacity and willingness to readapt himself or herself to society and on other requirements as provided in the sentencing law.
2. The granting of parole, regardless of the requirements referred to in sub-article 332.1, is compulsory after the convict has served five-sixths of the sentence, where it has not been granted at an earlier stage.

Article 333

Revocation of parole

1. Parole is revoked where the convicted person commits, during the course of the period of parole, a crime punishable with imprisonment and is convicted of such a crime and punished with imprisonment.
2. If during the course of the period of parole, the convicted person is punished for another crime or breaches the duties upon which parole is dependant, the judge may, as the case may be:
 - (a) solemnly warn him or her;
 - (b) extend the period of parole for another year;
 - (c) revoke parole.
3. Revocation of parole implies the execution, in entire or in part, of the imprisonment yet to be served, without prejudice to the convict being granted parole again, after one year has elapsed.

Article 334

Exit from prison while serving a sentence

A convicted person may be authorised to exit prison for periods of short or medium duration, to be regulated by specific decree.

CHAPTER III

ON THE EXECUTION OF PENALTY OF FINE

Article 335

Voluntary payment

1. A fine may be paid within fifteen days from the date on which the decision imposing it has become final, in an amount determined therein.
2. A request may, within the same deadline, be filed for the payment of the fine to be made in instalments.
3. Sub-article 335.1 does not apply in the event that the payment of a fine in instalments has been authorised.

Article 336

Property execution

1. Property execution shall, at the request of the public prosecutor, apply where the deadline for paying a fine, or some of its instalments, has expired or the convicted person has ceased doing the work he or she is required to carry out in lieu of the fine.
2. Property execution shall be initiated with the motion by the public prosecutor indicating any sufficient and unencumbered assets owned by the convicted person and the latter may, within the same deadline as in which he or she could have voluntarily paid the fine, indicate any assets to be garnished in lieu of those mentioned in the initial motion filed by the public prosecutor.
3. Property execution shall follow the terms of an ordinary execution proceeding, with the necessary adaptations, and shall be dealt with as an attachment to the records in which the conviction was passed.

Article 337

Alternative imprisonment

1. In the event a fine is not paid or where property execution is not feasible, the serving of a prison sentence may be imposed as an alternative.
3. Upon being arrested to serve an alternative prison sentence, the convicted person may avoid the execution of the arrest by paying the fine in its entirety to the official tasked with executing the warrant of arrest. The latter shall issue a receipt acknowledging receipt of the corresponding amount of money and certify the reason why the warrant has not been executed.

CHAPTER IV ON THE EXECUTION OF A SUSPENDED SENTENCE

Article 338

Changing duties and extending the period of suspension

An order changing any duties upon which the suspension of the execution of a prison sentence or the extension of the period of suspension is dependant shall be preceded by hearing the convicted person and the public prosecutor and by collecting proof relating to the circumstances determining the failure to fulfil such duties.

Article 339

Revoking a suspension

The court shall proceed in accordance with article 338, except where the revocation of the suspension derives from the commission of a crime during the period of suspension.

Article 340

Pardoning a suspended sentence

The pardoning of a prison sentence the execution of which is suspended occurs if and when the suspension is revoked.

Article 341

Declaring the lapse of a suspended sentence

1. A sentence is declared lapsed where the period of suspension has elapsed without a reasonable justification for determining the revocation or extension of the suspension.
2. Where the case is pending due to a crime that might lead to the revocation of the suspension or procedural incident that might result in the revocation or extension of the suspension, the sentence may not be declared lapsed until after a decision thereon is handed down.

CHAPTER V ON THE EXECUTION OF THE PENALTY OF COMMUNITY LABOUR

Article 342

Execution

1. The public agency where the convicted person is required to provide community labour shall, on a quarterly basis or whenever the circumstances so justify, inform the court of the manner in which the sentence is being served.
2. Refusal to deliver services or a deficient delivery thereof shall be reported to the court that shall, before issuing a decision, proceed in accordance with articles 332 and 333.

3. Once the period of delivery of services has elapsed and the report from the agency where the services have been provided is attached to the records, the court shall declare the sentence to have lapsed.

CHAPTER VI
ON THE EXECUTION OF SECURITY MEASURES
Article 343

Deciding on the execution of a security measure

1. The decision imposing any security measure shall determine the form of its execution.
2. During the execution of a security measure, the court shall decide on what appropriate action to take with regard to the execution phase, after consultation with the public prosecutor and the convicted person or his or her defender and, where the court deems it necessary, the medical expert.

Article 344

Internment as a security measure

1. When a security measure consists of interning the convicted person, the establishment where he or she is interned shall organise a personal file containing:
 - (a) communications from and/or to the court;
 - (b) periodic evaluation reports on the internee's situation;
 - (c) mental examinations relating to the danger that the convict might pose;
 - (d) any other elements required to evaluate the internee's situation from the perspective of his or her rehabilitation.
2. The internee's situation shall be re-evaluated every six months and the corresponding report submitted to the court for that purpose.
3. Yearly re-evaluations shall be preceded by hearing the public prosecutor and the convicted person or his or her defender.

Article 345

Suspending or prohibiting the practice of a profession

1. The court shall request the employer concerned to execute any penalty or measure that consists of suspending or prohibiting the exercise of any professional activity.
2. For the purposes of applying sub-article 345.1, the court shall submit a copy of the decision to the agency tasked with executing the measure.
3. Sub-articles 345.1 and 345.2 are correspondingly applicable to the execution of any other accessory penalties and measures.

PART III
EXPEDITED TRIAL

Article 346

When expedited trial takes place

1. A person arrested in flagrante delicto, in connection with a crime carrying a prison sentence of up to five years, shall be judged by an expedited trial.
2. The trial hearing shall be initiated within seventy-two hours following his or her arrest.
3. Where the trial hearing may not be initiated within the 72-hour period, the proceeding shall, in accordance with article 348, retain its expedited nature until its closure.

Article 347

Referring a person under arrest to trial

1. The police entity that has carried out the arrest or the person to whom the person under arrest has been delivered shall forthwith refer him or her to the Public Prosecution Service or, in a case of urgency, directly to the competent court for trial, and shall notify the Public Prosecution Service concurrently.
2. The indictment shall be replaced with a report prepared by the public prosecutor before the hearing begins, after consultation with the arresting entity.

Article 348

Notification

1. Where the trial cannot be initiated within seventy-two hours following the arrest or, having the defendant been brought to court, the trial cannot take place immediately, the person under arrest is released on the basis of proof of identity and residence.
2. In the case referred to in sub-article 348.1, the defendant and the other procedural participants shall be notified of the date on which the trial hearing shall be held.
3. Upon the arrest or delivery of the detained person, the police entity shall notify the witnesses of the crime and the aggrieved person to appear at the hearing and inform the defendant that he or she may present up to three witnesses at the trial hearing.
4. All preceding information shall be contained in the report of arrest *in flagrante delicto*.

Article 349

Procedures for conducting an expedited trial

1. Proof shall be documented in accordance with article 249.
2. The court shall, where feasible, hear the aggrieved person with regard to damage suffered as a consequence of the crime and decide the respective compensation on a discretionary basis.
3. A rebuttal may be submitted in writing at the beginning of the trial hearing.
4. The sentence shall have a simplified format and may be handed down orally and dictated into the minutes soon after the trial hearing ends, but where its complexity so justifies, the sentence may be handed down in writing within five days of the date on which the hearing was held.
5. The provisions relating to trial hearings in an ordinary proceeding are correspondingly applicable, with the necessary adaptations.

Article 350

Appeals

In an expedited proceeding only an appeal against the sentence or the order closing the case is admissible.

**PART IV
ON FINAL PROVISIONS
Article 351**

Compensation for deprivation of liberty

1. A person who has been unlawfully arrested or placed under pre-trial detention may ask for compensation for the losses suffered as a result of deprivation of liberty.
2. Deprivation of liberty is presumed to be unlawful where the entity who has carried out or ordered it fails to prepare a record, report or writ stating the prerequisites for carrying out the arrest or detention.
4. The deadline for filing a compensation request for damage suffered as a result of deprivation of liberty shall be one (1) year, counted from the date on which the arrest or detention was carried out or the person concerned was released.

Article 352

Need to review and confirm a sentence passed by a foreign court

1. Where, by virtue of the law, treaty or convention, a criminal sentence imposed by a foreign court is to be valid in the Democratic Republic of Timor-Leste, its enforceability is contingent upon prior review and confirmation by the Supreme Court of Justice.
2. At the request of the person concerned, a civil compensation order contained in a sentence imposed by a foreign court may be confirmed in the same proceeding of review and confirmation of that sentence.
3. Sub-article 355.1 does not apply where the sentence imposed by a foreign court is invoked in the courts of the Democratic Republic of Timor-Leste as an element of proof.

Article 353

Legitimacy

The public prosecutor and the defendant are the persons with legitimacy to lodge a petition for the review and confirmation of a criminal sentence imposed by a foreign court.

Article 354

Requirements for confirmation

1. In order for a criminal sentence imposed by a foreign court to be confirmed, the following requirements need to be met:
 - (a) that, by virtue of the law, treaty or convention, the sentence may be enforced in the territory of Timor-Leste;
 - (b) that the fact that has served as a basis for the conviction is also punishable by the

Timorese law;

(c) that the sentence has not imposed any penalty or security measure prohibited by the Timorese law;

(d) that the defendant has been assisted by a defender and, where the defendant was not familiar with the language used in the proceeding, also by an interpreter;

(e) that, except as otherwise stated in a treaty or convention, the sentence is not related to a crime that can be described, in accordance with the Timorese law or that of the country where the sentence was rendered, as a crime against the state security.

2. Where the criminal sentence imposed by a foreign court has imposed a penalty that is not provided in the Timorese law or a penalty provided in the Timorese law but to an extent greater than the maximum admissible under law, the sentence is confirmed, but the penalty imposed shall be either converted to the extent that corresponds to such a case under the Timorese law or reduced up to the appropriate limit.

3. A sentence imposed by a foreign court may be confirmed even though its minimum limit is below the one admissible under the Timorese law.

Article 355

Excluding enforceability

Where all requirements for the confirmation of a sentence have been met, but the criminal proceeding or the penalty has lapsed under the Timorese law on the grounds of a statute of limitations, amnesty or otherwise, the sentence shall be confirmed but the enforceability of the penalty or security measure imposed is overruled.

Article 356

Executing a sentence

The execution of a criminal sentence passed by a foreign court and confirmed by the Supreme Court of Justice of Timor-Leste may not be initiated unless the convicted person has served the sentence or security measure of a similar nature of which he or she may have been convicted by a Timorese court.

Article 357

Relations with foreign authorities

Relations with authorities of a foreign country, in the area of criminal justice administration, are regulated by international treaties and conventions and any other loose legislation on judicial cooperation.

Article 358

Liability to pay court costs and procedural fees

1. Where the defendant is found guilty, the court may also punish the defendant with the payment of the court costs and other procedural fees if the court believes that the economic status of the defendant allows him or her to bear such expenses.

2. Execution in connection with court costs shall follow the civil procedure rules and is dealt with as an attachment to the records in which the sentence was handed down, under the responsibility of the public prosecutor.

Article 359

Disposing of criminal fines

Article 31 of the Code of Court Costs is correspondingly applicable to the disposal of criminal fines.

**DECREE LAW No. 19/2009
APPROVES THE PENAL CODE**

Addressing the need to construct its legal system, the preparation and approval of the Penal Code of Timor-Leste was raised by its elected politicians as one of the legislative priorities to ensure fundamental rights and freedoms enshrined in the Constitution of the Democratic Republic of Timor-Leste.

This present legal document is the result of work conducted by a commission of Timorese and international experts who acted under government guidance and in compliance to the limits and content established in the law of legislative authorization on criminal matters approved in the National Parliament.

The rules adopted and enshrined herein, in addition to respecting the specific social and cultural realities of Timorese society, likewise have embraced suggestions put forth by national and international organizations, contributions from diverse legal entities active in Timor-Leste as well as teachings gleaned from comparative law.

We wish to highlight that this approved Penal Code, more than an end in itself, is primarily a fundamental step in the construction of the Timorese legal system, and is thus open to future enhancements that advances in international law, judicial practice and lessons from law may recommend.

Therefore, In the use of the legislative authorization granted within the scope of articles 1 and 2 of Law no. 13/2008, of 13 October and under the terms of article 96 of the Constitution, the Government does hereby decree that the following shall be valid as law:

Article 1 Approval of the Penal Code

The Penal Code published and attached and that is an integral part of this present law is hereby approved.

Article 2 Act of repeal

1. The Indonesian Penal Code, in force within the legal system under the terms of provisions in article 1 of Law 10/2003 is hereby repealed.
2. All isolated legal provisions present in legislation are hereby repealed that: a) Provide for and establish penalties for acts defined as crimes in the Penal Code herein approved; b) Enshrine provisions contrary to those adopted in the General Part of the Penal Code.

Article 3 Entry into force

The present law and Penal Code shall enter into force on the 60th day after publication of the same. Approved by the Council of Ministers on March 18, 2009

Prime Minister,

(Kay Rala Xanana Gusmão)

Minister of Justice,

(Lúcia M. B. F. Lobato)

Promulgated on

To be published.

President of the Republic,

(José Ramos Horta)

ANNEX

PENAL CODE

I - The restoration of independence and approval of the Constitution of the Democratic Republic of Timor-Leste in 2002 resulted in the need for the country to adopt its own legal system, one that is modern and enshrines fundamental rights as described in constitutional precepts and reflecting the social reality of the country. It was necessary to maintain the Indonesian Penal Code in force to provide the State with a valid criminal law, although the same proved to be inadequate to the new reality of the country and in many cases, called for legal remedies contrary to the new constitutional principles adopted.

As the Timorese people have their own specificities and identity, there was a compelling need to prepare its own Penal Code, with its own intrinsic philosophy based on principles and values inherent to modern societies and that addresses current requirements faced by the country.

A commission of Timorese and international experts was established by the 1st Constitutional Government, which proceeded to prepare a Draft Law for the Penal Code, which, even though the Law of Legislative Authorization on penal matters was approved, was unable to promulgate the former before the end of its legislative term.

In early 2008, with a new executive, a new proposal for a Law of legislative authorization was presented to the National Parliament for approving the Penal Code and work to review the draft law of the Penal Code was restarted, the same having undergone amendments and been subject to broad public discussion. After approval of the legislative authorization, it fell to the Council of Ministers of the IV Constitutional Government to approve the Penal Code.

II - The General Part constitutes Book I of the Penal Code, and integrates the fundamental principles of criminal law enshrined in the Constitution of the Democratic Republic of Timor-Leste, with international conventions, treaties and agreements adopted by the Timorese domestic legal system.

As this code is based on the Democratic Rule of Law, in the General Part enshrines the principle of human dignity, respect for individual freedoms of each citizen and the responsibility of the State to intervene only when unsupportable harm to legal interests fundamental to life in society is observed. In such events, the State assumes the right to mete punishment and the social duty to reintegrate the offender into society. Equally the reflections of the Rule of Law are the principles of legality, culpability and humanity. The enshrinement of the principle of legality, as the fundamental principle of Criminal Law, provided for in article 31 of the Constitution, determines that any act or omission may only be considered a crime and punished as such, when and if provided for in law. Adherence to this principle results in disallowing any use of analogy when qualifying a crime, so that the Court cannot qualify any specific act as a crime, nor define danger to self and others or determine a penalty or security measure by applying an analogous interpretation of rules contained in the Penal Code.

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The principle of non-retroactivity of criminal law forbids retroactive application of criminal law, except in cases where the same is concretely demonstrated to be more lenient to the accused. This is also correlated with the principle of legality.

The principle of humanity, in turn, enshrined in articles 29 and 32 of the Constitution, is the guiding principle upon which is based the prohibition against applying the death penalty as well as ordering penalties or security measures of a perpetual nature or of unlimited or indefinite duration.

The guiding principles for selecting the rules that form this present Code are those of need, proportionality and suitability, and form the foundation for applying each penalty or security measure. The aim is always the protection of legal interests essential to life in society and the social reintegration of the offender.

The principle of culpability has been followed, as an assumption for applying penalties, ensuring that there can be no penalty without guilt (***nulla poena sine culpa***). This principle places a form of limitation on the power of the State, insofar as the measure of punishment can never exceed the measure of guilt. The principle of guilt or culpability is also reflected in the treatment given to errors regarding unlawfulness, providing exemption from criminal liability due to age or if any psychological disturbance is confirmed, which diminishes criminal liability of the perpetrator due to lack of culpability.

With regards to legal consequences of punishable acts, observe that penalties are always executed as a teaching or re-socializing tool, with different means of applying sanctions presented in the Code that do not involve institutionalization.

Whenever either a liberty-depriving or non-liberty depriving penalty is alternatively applicable, the court must give preference to the non-liberty depriving penalty, whenever this adequately and sufficiently fulfils the purpose of the punishment and meets the requirements for reproofing and preventing crime (article 62).

Therefore alternative penalties are given pre-eminence, particularly in situations of petty or less serious crimes. Specifically, penalties such as fines and community service have been enshrined as means to best ensure intended social reintegration of the offender.

Penalties of fines are set in days, thus enabling them to better adapt to the guilt of the perpetrator and his or her economic and financial conditions, varying the amount set for each day of fine according to the economic and financial status of the convict and his or her personal expenses.

On the other hand, different rules for converting fines into days of imprisonment are established in the event of failure to pay fines, in order to differentiate penalties of fines that are the primary penalty from fines that are substitution for imprisonment. Regarding community service as a sanction not involving institutional confinement, the Code took care to clarify and systematize certain fundamental aspects of this option, leaving its further development and concrete application to an autonomous law.

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The penalty of imprisonment then should only be applied when the others have shown themselves to be inadequate to fulfil the objectives of preventing and reprobating crime. Minimum and maximum duration of the penalties of imprisonment have been established from between 30 days and 25 years, with the possibility of extending the maximum limit to 30 years in cases specifically provided for in law.

Corollary to social reintegration of offenders is the provision of suspending execution of a prison sentence, applicable in cases where the concrete measure of the punishment does not exceed 3 years and no outstanding need for prevention of future crimes disallows it. Suspension of execution of a prison sentence may be conditioned to performance of certain duties or rules of conduct or subject to monitoring by reintegration services.

Security measures of limited duration have been adopted for those exempt from criminal liability by reason of mental disorder, particularly internment measures, whenever danger to self and others warrants. Life sentences are not permitted, and security measures must be terminated whenever the danger to self and others that legitimated them ends, allowing, in the case of foreigners, that said orders may be substituted by deportation from the country.

The Penal Code, in its defense of values and legal interests essential to life in society, has distinguished crimes of a public nature, which must be warded by the State, from those less serious crimes, which depend upon the exercise of the right to file complaint by the bearer of the right, pursuant to provisions already adopted in criminal procedural legislation. Whenever the exercise of the right to file complaint is provided in the description of the legal definition of the crime in the Special Part of the Penal Code, the same are considered as semi-public crimes.

With regards to extinguishment of criminal liability and the effects thereof, the General Part of the Code sets statutes of limitations for criminal prosecution, penalties, security measures and accessory penalties, as well as defines situations where suspension may be warranted. Nevertheless, the decision was made to have no statute of limitation for criminal prosecution and related penalties when dealing with war crimes, crimes against peace or crimes against humanity and freedom.

Lastly, the Code provides for other cases leading to extinguishment of liability, such as death of the perpetrator, amnesty or pardon.

III - It is acknowledged that the Special Part of Penal Codes is the part that causes the greatest impact on public opinion, insofar as it selects certain assets, interests and values that a given society and a certain time in history deem to warrant protection under criminal law, thus, raising the same to the category of criminal legal interests. In the specific case of the Penal Code of Timor-Leste, the legislature sought to base the articles adopted herein on options that the Constitution had already previously enshrined as being the collective will of Timorese society.

The systematization adopted in this Part is an affirmation of the moment in history of the country and reflects the fundamental interests and values that have constructed this fledgling nation. It is therefore no surprise that the first title of this book respectively addresses protection of peace, humanity and freedom as cornerstone

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values in a democratic society, regarding the hierarchy of values described in the Fundamental Law whilst also addressing international obligations assumed by the country when it subscribed to and ratified the Statute of the International Criminal Court.

Title II describes crimes against individuals, providing special protection to eminently personal legal interests, particularly protection of life, physical integrity, personal freedom, sexual freedom and protection of privacy.

Voluntary termination of pregnancy is described as a punishable crime under the terms of provisions in article 145 of this Code.

This title in general and particularly in the provisions on crimes against physical integrity, special relevance is given to the introduction of crimes of mistreatment of minors and spouses, fundamental provisions to the affirmation of the rule of law and protection of human rights in Timorese society.

Equally highlighted is the qualification of the practice of slavery and human trafficking as a criminal offense, fruit of the humanist concept that guided the preparation of this Code.

Title III describes crimes against life in democratic society, highlighting crimes against public order, state security and life in society, as well as electoral crimes and crimes against public authority.

This Title in general, and within the scope of crimes against life in society, include provisions for specific definitions of crimes against the environment, a reflection of the increasing concern by society in preserving natural resources and protecting the environment, punishing unsustainably harmful practices involving fauna, flora and natural habitats.

Protection of assets is addressed in Title IV of this Book, where a system of standards is constructed upon the legal definition of the most common crimes found in diverse laws, such as larceny, theft, robbery, abuse of trust and property damage. These crimes are legally defined as being either simple or aggravated, weighing circumstances such as value, nature of the item taken, ways and means of commission, whether violence was present, and other circumstances that could significantly increase the guilt or unlawfulness of the perpetrator.

Crimes of obstruction of justice and crimes committed in performance of public office are listed in Titles V and VI where punishment for falsity in procedural acts, forms of obstruction of justice, failure to perform and to deny justice are provided for, as are others, such as bribery, malfeasance of magistrates or public servants and attorneys and public defenders.

Other acts of assisting offenders within the domain of justice are criminalized, as are classic crimes of defamatory false information, simulation of crime and failure to report crime.

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Within the general performance of public duties, the Code criminalizes conduct by public officials who commit crimes of corruption, embezzlement, abuse of power or public force or unlawful involvement in public affairs by anyone holding public office. This Penal Code broadens the concept of public official to include other analogous situations such as officials of international organizations, foreign public officials performing activities in the country or any person called to perform or participate in an activity included in public administrative or juridical office.

Title VII provides a legal definition of crimes of forgery of documents, technical reports, currency and stamps or franks, weights and measures, office stamps, currency plates and paper, describing the respective penalties according to the nature, evidentiary or trust value or public use or disposal of the forged objects, providing for seizure and forfeiture and loss of objects used for said purpose.

Lastly, Title VIII defines crimes against the economy, providing for criminalization of money laundering, following the most recent doctrine on criminalization of anti-economic activities, tax fraud and smuggling and evasion of duties, regarding customs or border issues. The Code maintains criminal punishment for disobedience of requisition of assets ordered by the Government as well as behavior likely to disturb, harm or hinder performance of certain public acts such as public competitive exams, tenders or court auctions.

Throughout this Code, there is an attempt to strike a balance between the abstract criminal framework, addressing the type of crime and its severity, with the hierarchy of legal interests protected by each article and the maximum limits established for prison sentences.

Another factor characterizing the legislative alternatives chosen in the Penal Code is the differentiated treatment given to more serious crimes, where, generally speaking, the only penalty provided is a prison sentence.

As a rule, for less serious crimes, on the other hand, the definition of the crime usually enables the court, according to the circumstances, to decide on either the alternative of imprisonment or penalty of fine, enshrining as criminal guidance policy the acknowledgment of a fine as an autonomous penalty and not complementary to the main penalty.

The approval of this present Code provides the Timorese State with yet another modern and adequate legal instrument to provide criminal law services of the highest quality whilst respecting fundamental rights of its citizens, obliging magistrates, public defenders, attorneys, court officers and other legal actors who make these legal instruments the tools of their daily work to engage in ongoing education, strengthening the national legal system and the Democratic Rule of Law.

BOOK I
GENERAL PART
TITLE I
APPLICATION OF CRIMINAL LAW
SINGLE CHAPTER
GENERAL PRINCIPLES

Article 1. Principle of legality

1. No act or omission may be qualified as crime unless it was defined as such by law before it was committed, with the respective punishment described.
2. Security measures may only be applied to cases of danger to self and others, with the conditions thereof previously determined by law.

Article 2. Prohibition of analogy

No act or omission may be qualified as a crime, in defining danger to self and others or in determining the corresponding legal consequences, through the use of analogy.

Article 3. Applicability of criminal law over time

1. No person may be punished for an act defined as a crime at the time of its commission if a subsequent law no longer considers it as such.
2. In such a case, if a decision convicting the person has already been rendered, execution of said decision and its penal effects shall cease, even when the decision rendered is final.
3. The law subsequent to the commission of the crime shall apply to previous conduct whenever the same proves to be more lenient to the perpetrator and, in the case of a final decision, if any benefit may still be obtained.

Article 4. Exceptional or temporary law

Exceptional or temporary law shall remain applicable to acts committed while such law was in force, even though its duration has expired or its determinant circumstances have ceased.

Article 5. Time of commission of the act

An act is considered as committed at the time of the act or omission, regardless of the time when the typical result occurs.

Article 6. Place of commission of the act

An act is considered to have been committed in the place where, by any means, the action or omission occurred, wholly or in part, as well in wherever the typical result has or should have been caused.

Article 7. Principle of territorial applicability

Except as otherwise provided in international treaties and conventions, and regardless of the nationality of the perpetrator Timorese criminal law is applicable to crimes committed in the territory of Timor-Leste and aboard vessels and aircraft with Timorese registration or under Timorese flag.

Article 8. Crimes committed outside national territory

Except as otherwise provided in treaties and conventions, Timorese criminal law is applicable to acts committed outside of the national territory of Timor-Leste in the following cases:

- a) They constitute crimes provided for in articles 196 to 206, 229 to 242 and 307 to 313;
- b) They constitute crimes described in articles 123 to 135, 161 to 169 and 175 to 178, as long as the perpetrator is found in Timor-Leste and cannot be extradited or a decision has been made not to do so;
- c) They are committed against Timorese nationals, so long as the perpetrator normally lives and is found in Timor-Leste;
- d) They are committed by Timorese or foreigners against Timorese nationals, so long as the perpetrator is found in Timor-Leste, the acts are equally punishable by the legislation of the place in which the acts were committed and they constitute a crime which allows for extradition and it cannot, in the particular case, be granted;
- e) They refer to crimes that the Timorese State has an obligation to try pursuant to any international convention or treaty.

Article 9. Restrictions on application of Timorese law

1. The application of Timorese criminal law to acts perpetrated abroad only occurs when the perpetrator has not been tried with a final decision rendered in the place where the act was committed, or when the perpetrator has wholly or partially evaded execution of the sentence.

2. Though Timorese criminal law may be applied under the terms of the previous subarticle, the act shall be tried according to the law of the country where the act was committed whenever this is more lenient to the perpetrator.

3. In the cases referred to in the previous subarticle, the applicable punishment is converted to that which corresponds to the Timorese system or, if there is no direct correspondence, to that which the Timorese law provides for said act.

4. In the event the perpetrator is tried in Timor-Leste and has been previously tried in the place where the act was committed, the sentence already served outside of Timor-Leste shall be taken into consideration.

5. The provisions described in subarticle 2 are not applicable to crimes identified in lines a) and b) of previous article.

Article 10. Subsidiary application of the law

Unless provided otherwise, provisions in this Code apply to acts made punishable in specific legislation.

**TITLE II
ON CRIME
CHAPTER I
GENERAL ASSUMPTIONS**

Article 11. Commission by action and omission

1. Whenever a legal definition of a crime includes a certain result, the act comprises not only the specific action required to produce it, but the omission of any specific action that would avoid it as well, unless when intention of the law is otherwise.
2. A result caused by omission is only punishable when the perpetrator thereof is under a legal duty that personally obliges the perpetrator to avoid said result.
3. In the case described above, punishment may be extraordinarily mitigated.

Article 12. Criminal liability

1. Only individuals are held criminally liable for offenses described in this Code and this is non-transferable.
2. Corporate entities are criminally liable only for offences provided in this Code or in specific legislation whenever and as expressly established in law.

Article 13. Liability for action on behalf of another party

Any person who acts as the head of a corporate entity, even by mere de-facto association, or as a representative of another party, is punishable even if the conditions, description or relationships provided in the respective definition of a crime are not found in said person but rather in the person he or she represents.

Article 14. Intent and Negligence

Only acts committed with intent, or, in cases specifically prescribed in law, with negligence, are punishable.

Article 15. Definitions of Intent

1. Any person who commits an act with the intention to do so, and said act is defined as a crime, acts with intent.
2. Furthermore, any person who commits an act that constitutes a defined crime as the necessary consequence of his or her conduct, acts with intent.
3. Whenever an act that constitutes a defined crime is committed as a possible consequence of the conduct of a perpetrator, and the perpetrator acts while accepting said possibility, he or she acts with intent.

Article 16. Definitions of Negligence

1. Any person who fails to proceed with caution to which, according to the circumstances, the same is obliged and capable of proceeding, acts with negligence, if the perpetrator:
 - a) acts in such a manner that commission of a defined crime is a possibility, yet acts without accepting said result; or
 - b) Does not even realize the possibility of committing said act.
2. The type of negligence referred to in the preceding subarticle shall take on the form of gross negligence whenever circumstances reveal that the perpetrator acted with levity or temerity and failed to observe elementary duties of prudence required in such a case.

Article 17. Error regarding circumstances of the act

1. Error regarding elements of the law or acts related to a legally defined crime or prohibition that would reasonably be considered essential for the perpetrator to have knowledge of in order to comprehend the unlawfulness of the act excludes intent.
2. The system described in the previous subarticle includes error regarding existence of assumptions of a cause for exclusion of unlawfulness or guilt.
3. Negligent conduct shall be punishable whenever provided for by law and the respective assumptions are present.

Article 18. Error regarding unlawfulness

1. Lack of knowledge of the law does not exclude the unlawfulness of any conduct that violates it.
2. An error regarding unlawfulness, if unavoidable, excludes guilt.
3. A penalty may be considered extraordinarily mitigated when the error regarding unlawfulness is avoidable.

Article 19. Aggravation due to results

When the penalty applicable to an act is aggravated according to the result caused, said aggravation is always conditioned by the possibility of attributing said result to the perpetrator at least through negligence.

Article 20. Exemption from criminal liability by reason of age

1. Minors under 16 are exempt from criminal liability.
2. For persons over 16 years of age and less than 21, the law shall determine specific provisions concerning application and execution of criminal penalties in any and all cases not provided for in specific legislation.

Article 21. Exemption from criminal liability by reason of insanity

1. A person is exempt from criminal liability if, due to a mental disorder, he or she is incapable, at the time of committing the act, to comprehend its unlawfulness or to decide accordingly.
2. A person may be declared exempt from criminal liability when, by force of a mental disorder, has, at the time the crime is committed, significantly diminished capacity to appreciate the unlawfulness of such an act or to act accordingly.
3. The proven inability of the perpetrator to be influenced by penalties may be an indication of the situation provided for in the subarticle above.
4. Criminal liability is not excluded when the mental disorder was caused by the perpetrator with the intent to commit the act.

**CHAPTER II
FORMS OF CRIME**

Article 22. Preparatory acts

Preparatory acts are not punishable, except as otherwise provided in the law.

Article 23. Attempt

A crime is attempted whenever the person who has decided to commit it initiates its execution by undertaking, wholly or in part, the acts objectively required to cause the

result, which fails to take place only for reasons beyond the control of the perpetrator.

Article 24. Punishability of attempt

1. An attempt is punishable only in connection with crimes of intent carrying a maximum prison sentence of more than 3 years and in all other cases expressly determined by law.

2. Except where otherwise provided, an attempt is punishable with an extraordinarily mitigated penalty in comparison to the consummated crime.

Article 25. Unpunishability of attempt

An attempt is not punishable whenever the inappropriateness of the means employed or absence of an essential element to consummate the crime is manifest.

Article 26. Voluntary desistance

An attempt ceases to be punishable if the perpetrator voluntarily desists from proceeding to perform the crime, prevents its consummation, or prevents obtaining its result, or who puts forth serious efforts to hinder either.

Article 27. Cases of joint commission

In the event of joint commission, the attempt of a person shall not be punishable, if the same voluntarily desists from proceeding with commission of the crime, or hinders or voluntarily desists in realizing its result, or earnestly endeavors to hinder either, even if other coparticipants proceed with execution or commission of the act.

Article 28. Remorse

In crimes without violence or serious threat against persons, if the damage has been remedied, the object returned or the situation legalized before the crime is reported or the information or a complaint received, the penalty shall be extraordinarily mitigated or, depending on the circumstances, the agent shall be exempt from any penalty.

**CHAPTER III
PERPETRATORS OF CRIME**

Article 29. Perpetrators

Participation in the commission of a crime may take on the form of principal authorship, instigation or complicity and there can be various joint participants in the same act.

Article 30. Authorship

1. A principal is the person who commits the act either directly or through a third party who serves as an instrument for the former.

2. Coprincipals of an act are any persons who, by expressed or tacit agreement, take direct part in commission of a crime or join forces in commission of the same crime.

Article 31. Instigation

A person is punishable who, directly and maliciously, instigates another person to commit the crime, if said crime is actually committed or initiated.

Article 32. Complicity

1. A person is punishable as an accomplice who, with intent, materially or morally aids another person to commit a crime.
2. In the case of an accomplice, the penalty prescribed for the unlawful act is extraordinarily mitigated.

Article 33. Guilt in joint participation

Each individual participant is punishable according to his or her guilt, regardless of the penalty or degree of guilt of the others.

Article 34. Unlawfulness in joint participation

1. If the unlawfulness or degree of unlawfulness of an act is dependent on certain qualities or special relationships of the perpetrator, it is sufficient that such qualities or special relationships are reflected in any one of the joint participants, for the respective penalty to be applicable to them all, unless specific law provides otherwise.
2. Whenever, pursuant to the rule provided in the previous subarticle, a more serious penalty is applicable to any of the joint participants, said penalty may be replaced by the penalty that would apply if the rule had not intervened, depending on circumstances of the case.

**CHAPTER IV
JOINDER AND CONTINUOUS CRIMES**

Article 35. Joinder of crimes

1. The number of crimes is considered the number of legally defined types of actually committed crimes, or by the number of times that the same type has been committed through the conduct of the perpetrator.
2. For the purpose of applying the following article, joinder is whenever the perpetrator, having committed a crime, commits another crime before final sentence is rendered.

Article 36. Penalty in case of joinder of crimes

1. A single penalty shall be imposed in the case of joinder of crimes, the minimum limit corresponding to the highest penalty concretely imposed for those crimes, the maximum limit corresponding to the total sum of the different separate penalties.
2. Whenever the material sum of the separate penalties exceeds 600 days of fine or 30 years imprisonment, the maximum limit of the scope of joinder shall not exceed this legal limit.
3. In determining a single penalty, the court jointly considers the acts and personality of the perpetrator.

Article 37. Accumulation of penalties

1. Whenever the penalties imposed consist in both fines and imprisonment, the separate nature of these is retained.
2. Accessory penalties and security measures are retained, even when provided in only one of the applicable laws or in only one of the previous decisions.

Article 38. Prison sentence with suspended execution in accumulation of penalties

A prison sentence with suspended execution can only be cumulated with other prison sentences when:

- a) The other prison sentences are equally so suspended in their execution and said accumulation does not hinder continued suspension of the individual penalty;
- b) Accumulation is with effective prison sentences, and circumstances exist that determine revocation of suspended execution of the penalty, regardless of said accumulation;
- c) The cumulated suspended penalties have different suspension periods or, being equal, are at different stages of being served, the court shall establish a single suspension period pursuant to general prevention requirements and circumstances of the case.

Article 39. Subsequent disclosure of joinder of crimes

Whenever, after a final decision has been rendered, but before the corresponding sentence is served, statute of limitations expires or is extinguished, it becomes known that the perpetrator fulfilled any of the circumstances described in the previous articles; the rules set out therein shall apply.

Article 40. Crime and other offences

Whenever the same act simultaneously constitutes a crime and a lesser offense, the perpetrator shall be punished for having committed the crime, without prejudice to any applicable accessory penalties for the other offenses. Article 41 Continuous crime

1. Except in the event of crimes committed to protect eminently personal interests, the repeated commission of the same defined crime or various defined crimes to basically protect the same legal interests, executed in an essential homogeneous manner and prompted by the external situation that considerably diminishes the guilt of the perpetrator, constitutes one continuous crime
2. Continuous crime is punishable by the penalty applicable to the most serious conduct that comprises the continuum.

Article 42. Concurrence of provisions

Except in the situations described above, whenever more than one legal provision may wholly or partially apply to an act that can be described as a crime, only one legal provision may be applied to the same, pursuant to the following rules:

- a) The specific provision shall apply with prejudice to the general provision;
- b) The main provision takes precedence over the subsidiary provision;
- c) The broadest and most complex provision supersedes that which provides for acts that can be subsumed thereunto.

CHAPTER V
CAUSES FOR EXCLUSION
SECTION I
CAUSES FOR EXCLUSION OF UNLAWFULNESS

Article 43. Exclusion of unlawfulness

1. When the unlawfulness of an act, considered in its entirety, is excluded by the legal system, the same shall not be liable to criminal punishment.
2. Specifically, any act committed in exercise of a right or performance of a duty, in legitimate defense, a state of justifying need or with consent, is not unlawful.

Article 44. Legitimate defense

An act constitutes legitimate defense when committed as the necessary means to repel an imminent or present unlawful attack on legally protected interests of the perpetrator or of a third party.

Article 45. State of justifying need

An act is not unlawful when committed as an appropriate means to avert a present danger that threatens legally protected interests of the perpetrator or of a third party, if the following requisites are met:

- a) There is significant superiority of the interest to be safeguarded in relation to the interest sacrificed; and
- b) It is reasonable to impose the sacrifice of the interest of the victim, considering the nature or value of the interest endangered.

Article 46. Conflict of duties

1. It is not unlawful for a person to commit, in the case of conflict in performance of legal duties or legitimate orders from an authority, a duty or order of equal or superior value to that sacrificed.
2. Duty to obey hierarchical superiors ceases when the same leads to commission of a crime.

Article 47. Consent

1. In addition to special cases provided for in law, consent excludes unlawfulness when it refers to freely available legal interests and the act does not offend social mores.
2. Consent may be expressed by any means revealing a free, honest and informed will of the holder of the protected legal interest, and it may be freely withdrawn at any time before the execution of the act.
3. Consent is effective only if it has been given by someone who is over 16 years of age and has the necessary discernment to judge its meaning and scope, at the moment it is given.
4. If consent is not known to the perpetrator, he or she shall be punishable with the penalty applicable to attempt.
5. Effective consent will be considered equivalent to presumed consent, when the situation, in which the perpetrator is acting, reasonably permits one to suppose that the holder of the legally protected interest would have effectively given consent to the act, if the same had known the circumstances in which it was committed.

**SECTION II
CAUSES FOR EXCLUSION OF GUILT**

Article 48. Excess of legitimate defense

1. Means which, given their nature or extent of use, are excessive to those required for the defensive action taken by the perpetrator may result in special mitigation of the penalty that the crime would otherwise carry.
2. The perpetrator is not punishable if the excess of means used in legitimate defense are due to a justifiable disturbance, fear or surprise.

Article 49. Exculpatory state of need

1. Any person who commits an unlawful act required to avert a real danger, which cannot be otherwise removed, which threatens the life, physical integrity, honor or freedom of the perpetrator or a third party, where, depending on the circumstances of the case, it is not reasonable to require any different behavior of the same, acts without guilt.
2. Whenever the danger threatens legal interests other than those referred to in the preceding subarticle, and the assumptions mentioned therein are met, the penalty may be extraordinarily mitigated or the perpetrator may be held exempt from punishment.

Article 50. Exculpatory undue obedience

A public servant who obeys an order not knowing that it leads to commission of a crime, acts without guilt, if the unlawfulness of the act is not evident from the circumstances surrounding it.

**TITLE III
CIRCUMSTANCES
SINGLE CHAPTER
GENERAL RULES**

Article 51. Determination of the measure of penalty

1. Measure of penalty is determined according to the perpetrator's guilt and prevention requirements, within limits defined by law.
2. In determining a specific penalty, the court shall consider all circumstances that are not part of the defined crime but that either aggravate or mitigate the perpetrator's acts.
3. The court ruling shall explicitly mention the grounds for the measure of penalty adopted.

Article 52. General aggravating circumstances

1. General circumstances aggravating the responsibility of the perpetrator are all those prior to, during or after the fact that, although not part of the legal description of the act, yet reveal a higher degree of unlawfulness of the act, conduct or guilt of the perpetrator, thus increasing the need for punishment.

2. General aggravating circumstances may include the following:

- a) The crime is committed with disloyalty, as occurs in cases of betrayal, ambush, waiting or disguise
- b) The crime is committed against persons using means or ways that directly or indirectly seek to ensure execution without the danger that could result from possible defense of the victim.
- c) The crime is committed by fraud, deceit, abuse of power or authority, or by taking advantage of circumstances of place and time.
- d) The crime is committed for payment or to receive a sum or reward.
- e) The crime is motivated by racism, or any other discriminatory sentiment on grounds of gender, ideology, religion or beliefs, ethnicity, nationality, sex, sexual orientation, illness or physical disability of the victim.
- f) The perpetrator has the special duty to not commit the crime, to hinder its commission or to take action to punish the same, or takes advantage, for commission of the crime, of public authority that the same holds or invokes.
- g) Not being a case of recurrence, the perpetrator has committed one or more crimes of a similar nature in the course of three years prior to the time the crime for which the same is being tried was committed, regardless of the time when judgment is rendered.
- h) The crime is committed at the same time as another crime in order to facilitate the execution of one or more other crimes;
- i) Commission of the crime was facilitated by the perpetrator's entrance or attempted entrance into the victim's residence or using poison, flooding, fire, explosion; sinking or damaging a vessel or using a weapon;
- j) The commission of the crime or the use of its consequences having been facilitated by cooperation of two or more persons;
- k) The perpetrator intentionally and inhumanely increases the victim's suffering, causing the latter unnecessary suffering for consummation of the crime, or any other acts of theft, cruelty or destruction also unnecessary for commission of the crime.
- l) The victim is or was a spouse or is in a de-facto relationship identical thereto, or is a parent or descendant, sibling, adoptee or adopter of the perpetrator.
- m) The victim is particularly vulnerable by reason of age, illness or physical or mental disability, whenever said circumstance is not part of the definition of the crime itself.

Article 53. Recurrence

1. Any person who commits a crime of intent individually or under any form of joint participation that is punishable with effective imprisonment superior to 6 months, after having received final sentence of an effective penalty of imprisonment superior to 6 months due to a previous crime of intent, and it be found that, according to the circumstances of the case, the previous sentence or sentences have failed to serve as sufficient warning against crime to the perpetrator, the same shall be considered a repeat offender.

2. There is no recurrence if, between the commissions of one and the other crime, more than four years have elapsed, not considering the time that the perpetrator has been subject to a procedural measure, penalty or security measure involving deprivation of liberty.

3. In the event of recurrence, the minimum limit of the penalty applicable to the crime is increased by one-third and the maximum limit remains unchanged, however the aggravation cannot exceed the measure of the heaviest penalty applied in previous convictions.

Article 54. Habitual criminality

1. Whenever any person commits a crime of intent, and an actual prison sentence exceeding one year should be applied, and cumulatively, the following requirements are met:

- a) The perpetrator has previously committed three or more crimes of intent and has been punished by effective imprisonment;
- b) Less than three years having elapsed between each of the crimes;
- c) Assessment of both the acts and personality of the perpetrator reveals a strong or dangerous tendency toward crime;

The applicable penalty will be that for the crime committed with its minimum and maximum limits increased by one-third.

2. Provisions of this law shall prevail over any specific rules for punishing recurrence.

Article 55. General mitigating circumstances

1. Any circumstances that preceded, accompanied or occurred after commission of the crime and that reflect favorably on the perpetrator are considered general mitigating circumstances of the liability of the same.

2. General mitigating circumstances may include, inter alia, the following:

- a) The causes of exclusion referred to in the previous chapter, whenever not all of the requirements provided are met for the cause for exclusion to produce effect.
- b) The perpetrator acts in consequence of incidents that cause violent emotion, obsession or other emotional state of a similar passion, or reacts to provocation by means of an immediate act.
- c) The perpetrator appears before the authorities voluntarily, before knowing of the existence of a criminal proceeding against him or her.
- d) The perpetrator spontaneously confesses having committed the crime or decisively contributes to ascertaining the circumstances in which the criminal act occurred.
- e) Presence of acts demonstrating sincere repentance of the perpetrator;
- f) Low intensity of intent or negligence.
- g) Reconciliation between victim and perpetrator.

Article 56. Extraordinarily mitigating circumstances

1. Apart from the cases expressly provided in the law, the penalty provided in the definition of the crime is extraordinarily mitigated, whenever any circumstances have arisen prior to, concurrently with or after commission of the crime that, jointly or individually, reduce, to a large extent, the unlawfulness of the perpetrator's conduct, guilt or need for penalty.

2. The following circumstances may, among others, be considered for the purpose of the previous subarticle:

- a) The perpetrator's actions were influenced by a serious threat or orders from another person on whom the perpetrator is dependant or to whom obedience is due;
- b) The perpetrator's conduct was prompted by an honorable reason, by a strong solicitation or temptation from the victim him or herself or by unjust provocation or unwarranted offense;
- c) The perpetrator makes reparation of damage caused or diminishes its effects, at any time in the proceeding but before the date of the first trial hearing;
- d) The perpetrator has maintained good conduct long after the crime was committed;
- e) The perpetrator has a noticeably diminished criminal liability.

Article 57. Degrees of extraordinarily mitigating circumstances

1. Whenever special mitigation of the penalty occurs, it does so relatively to the limits of the applicable penalty:

- a) The maximum limit of the penalty of imprisonment shall be reduced by one third;
- b) If the minimum limit of imprisonment is equal to or greater than three years, said limit shall be reduced to one-fifth and, to the minimum established by law if the minimum limit of imprisonment less than three years;
- c) The maximum limit of the penalty of fine shall be reduced by one third and the minimum limit reduced to the legal minimum;
- d) If the maximum limit of the penalty of imprisonment does not exceed 3 years, the penalty of imprisonment may be replaced by a penalty of fine within general limits.

2. An extraordinarily mitigated penalty that was specifically set may generally be replaced or even suspended.

Article 58. Concurrent circumstances

1. Any circumstances that alter the abstract scope of the definition of the crime shall result in application of the extraordinary mitigation provided for in the article above.

2. If two or more de facto circumstances occur that alter the abstract scope of the type of crime, only one shall be considered pursuant to provisions of the subarticle above, the remaining circumstances being considered as circumstances of a general nature when determining the penalty.

**TITLE IV
LEGAL CONSEQUENCES OF CRIME
CHAPTER I
GENERAL PROVISIONS**

Article 59. Penalties and security measures

1. No death penalty or sentence of deprivation of liberty or security measure of a perpetual nature or unlimited or indefinite duration shall be applied.

2. Simultaneous application of a sentence and security measure involving incarceration in connection with the same act is prohibited.

Article 60. Limit of penalties and security measures

1. The penalty shall never exceed the extent of guilt.
2. A security measure is grounded in the danger posed by the perpetrator of an act defined as a crime and lasts for the duration of such danger, and shall not have a duration exceeding the maximum limit of the penalty corresponding to said crime.

Article 61. Purpose of penalties and security measures

The purpose of applying penalties and security measures is to protect legal interests essential to life in society and the perpetrator's reintegration into the same.

Article 62. Determination of penalties and security measures

1. Whenever a sentence of deprivation of liberty and another penalty that does not involve deprivation of liberty are alternatively applicable, the court shall give preference to the latter, whenever the latter adequately and sufficiently fulfils the purpose of the penalty.
2. In determining the type of security measure to be applied to a perpetrator whose danger is procedurally established, the personality of the perpetrator and appropriate treatment of the case shall be considered.

Article 63. Effects of penalties and security measures

No penalty or security measure results, as a necessary effect, in the forfeiture of civil, professional or political rights.

Article 64. Execution of penalties or imprisonment measures

1. A perpetrator convicted and sentenced to effective imprisonment or subject to an internment measure may be granted parole or probation.
2. Except where otherwise provided, once the convict has served five-sixths of the imposed sentence, the same must be released on parole.
3. Except as described in the previous subarticle, parole cannot be granted without consent of the convict.
4. Specific legislation shall establish the pre-requisites and conditions for granting parole, as well as the rights and duties of inmates and pre-requisites and conditions under which an effective prison sentence may be served at large.

Article 65. Accumulation of penalties and liberty-deprivation measures

1. When a perpetrator is convicted and sentenced to effective imprisonment sentence and subject to an internment measure, the latter is first served and deducted from the prison sentence.
2. The court shall release the perpetrator on parole as soon as the internment measure is to cease, if the same has served a period corresponding to half of the sentence and release is demonstrated to be compatible with protecting legal order and maintaining social peace.

CHAPTER II SENTENCE OF IMPRISONMENT

Article 66. Duration of a prison sentence

1. A prison sentence shall have a minimum duration of 30 days and a maximum of 25 years.
2. In special cases provided for by law, the maximum duration of a prison sentence shall be 30 years.
3. Under no circumstances may the maximum duration referred in the above subarticle be exceeded.

Article 67. Substitution of prison sentence for fine

1. Application of a prison sentence not exceeding twelve months is substituted for a fine for equal length of time, not exceed the legal limit, whenever the requirement for preventing future crimes does not require that said prison sentence be served and, in light of the circumstances surrounding the case, the court believes that execution of the sentence should not be suspended altogether.
2. Unjustified failure to pay a substitute fine or any installment immediately implies serving the originally imposed prison sentence. Serving of the sentence may be suspended by immediately paying the fine or by designating property as a guarantee. Paid instalments shall always be deducted.
3. The court shall provide grounds for any decision when substitution is not performed when the law allows it to do so.

Article 68. Suspension of execution of a prison sentence

1. Whenever the prison sentence applied does not exceed three years, the court may suspend execution thereof for a period to be set between one and five years, to be counted from the time the final decision was rendered.
2. The decision must contain the grounds for the suspension, such as the personality of the perpetrator, the circumstances under which the crime was committed, previous behaviour and living conditions, and most importantly the perpetrator's likely conduct in the future.
3. The court shall provide grounds for any decision when substitution is not performed when the law allows it to do so.

Article 69. Suspension of a prison sentence on condition that certain duties be performed

1. The court may condition suspended execution of a prison sentence upon performance of certain non-humiliating duties destined to redress harm caused by the crime.
2. Suspension may be conditioned specifically upon the following duties:
 - a) To make or ensure reparation of the damage caused by the crime within a given deadline;
 - b) To publicly make apologies to the victim;
 - c) To perform certain tasks in connection with the crime committed;
 - d) To provide a sum of money to the State or to a charity institution of importance to the reintegration of the convict.

3. Duties imposed may not, under any circumstances, be those whose performance cannot reasonably be expected from the convict.
4. Any duties imposed may be modified at any time before completion of the suspension period whenever relevant supervening circumstances occur or of which the court only becomes aware of at a later date.
5. Subarticle 2 of the previous article is correspondingly applicable.

Article 70. Rules of conduct

1. The court may impose compliance with certain rules of conduct on the person sentenced for the duration of the suspension with a view to promoting the person's reintegration into society, namely:
 - a) To not exercise certain professions;
 - b) To not visit certain places;
 - c) To not reside in certain places or regions;
 - d) To not accompany, give abode or entertain certain persons;
 - e) To not visit certain associations or take part in certain meetings;
 - f) To not have in the person's possession, certain objects that can potentially facilitate the commission of crime;
 - g) To periodically appear before a court, social reintegration officer or non-police entities.
2. The court, having obtained prior consent from the convict, may further order that said person shall be subject to medical treatment or healing in an appropriate institution.
3. Subarticles 3 to 5 above are correspondingly applicable.

Article 71. Suspension of a prison sentence with monitoring

1. Whenever a simple or conditional suspension of prison sentence is insufficient to ensure rehabilitation of the delinquent and to maintain him or her from criminal activities, the court may order suspension and subject the convict to monitoring by reintegration services for the duration of the suspension period. Whenever possible, consent of the convict should be obtained.
2. It is incumbent upon reintegration services, the Office of the Public Prosecutor and the trial judge, once the convict has been heard, to prepare a social reintegration plan that shall, following approval by the court, be performed with assistance of said official or reintegration service.
3. The social reintegration plan must contain all duties to which the convict is subject and, the court may also impose duties and rules of conduct cited in articles 69 and 70 or other obligations of interest to the reintegration plan, specifically:
 - a) Obtain treatment or internment in an adequate establishment, whenever required by circumstances
 - b) Respond to notices from the magistrate responsible for execution of the sentence and the social reintegration officer
 - c) Receive visits from the social reintegration officer and inform the same regarding means of subsistence
 - d) Inform the social reintegration officer regarding change of residence and employment, as well as any travel from said residence for more than 8 days
 - e) Obtain prior consent from the responsible magistrate for traveling abroad
4. Subarticle 68.2 above is correspondingly applicable.

Article 72. Amendment to the suspension

If, during the period that the prison sentence is suspended, the convict fails to perform the duties imposed or is tried and convicted of another crime, the court may, taking circumstances into account, amend the initially established suspended execution, alter the duties imposed or solemnly admonish the convict, according to circumstances of the case.

Article 73. Revocation of a suspension

1. If, during the period that the prison sentence is suspended, the convict is tried and convicted of another crime or is a recurrent offender with intent, or fails to comply with the rules or duties imposed, and the amendment of the initially established suspended execution is either impossible or is shown to be insufficient, the court shall revoke the suspension.

2. Suspension shall always be revoked if, during its period of duration, the convict commits a crime of intent for which the same is punishable with an effective prison sentence.

3. Revocation of the suspension does not grant the convict the right to claim reimbursement of installments paid during and in connection with the suspension.

Article 74. Extinguishment of a prison sentence

Unless suspension of a prison sentence is revoked, the sentence and its effects are extinguished, upon expiration of the period of suspension.

**CHAPTER III
PENALTY OF FINE**

Article 75. Duration of the penalty of fine

1. The penalty of fine ranges from a minimum of 10 to a maximum of 360 days, except where otherwise provided in law.

2. Each day of fine corresponds to an amount ranging from 50 cents to 200 US dollars, which the court shall determine depending on the economic and financial status of the convict and his or her personal expenses.

3. Whenever circumstances surrounding the case so justify, the court may authorize the payment of the fine within the period of 1 year, or allow payment in installments, with the final installment due no later than two years after the date of rendering of the final decision.

Article 76. Imprisonment as alternative to fine

The decision that directly applies the penalty of fine shall determine imprisonment as an alternative to the length of time corresponding to the fine, reduced to two-thirds.

Article 77. Exemption or reduction of the penalty of fine

1. If a convict punished with a penalty of fine fails to carry out the sentence due to circumstances occurring after conviction, that make compliance to the same impossible or difficult and said circumstances are not attributable to the convict, the court may order a reduction or exemption of the penalty.

2. The previous subarticle is applicable to the penalty of fine as a substitute for imprisonment.

CHAPTER IV PENALTY OF COMMUNITY SERVICE

Article 78. Community Service

1. Community service consists in providing services free of charge to a public agency or other entity that the court deems to be of community interest, as long as consent of the convict has been obtained.
2. Duration of the work to be provided by the convict is determined by the court, substituting one day of incarceration set in the sentence for one hour of work that may never exceed 240 hours.
3. The work may be provided within or after regular business hours, whether on a continuous basis or otherwise, and may not exceed the allowed amount per day according to rules regarding overtime and always in such a manner that the livelihood of the convict and family members is not affected.
4. Unjustified refusal to perform the community service entails serving the originally imposed sentence, deducting the days already worked, pursuant to subarticle 78.2 above.

Article 79. Requirements

1. The court may apply a sentence of community service as a substitute for a prison sentence not exceeding one year or for a sentence of a fine, whenever it is concluded that in this manner the purpose of the punishment is adequately and sufficiently achieved, and, in the case of imprisonment, crime prevention imperatives advise against suspended execution or substitution for a fine.
2. Application of community service always requires consent of the convict and, in the case of substitution for a fine, it may be ordered in the sentence or in a subsequent decision, provided this is made following a petition filed by the convict with attachment of property in an execution proceeding initiated in connection with failure to pay the fine.
3. Provisions in subarticle 67.3 are correspondingly applicable.

Article 80. Exemption from or suspension or reduction of a penalty

If the convict fails to perform the services due to circumstances that, after the alternative sentence was decreed, render performance difficult or impossible, and the same are not ascribable to the convict, the provisions of article 77 above shall be applicable.

Article 81. Complementary legislation

Specific legislation shall regulate all other conditions for application of the penalty of community services and performance of the same.

CHAPTER V. PENALTY OF ADMONISHMENT

Article 82. Admonishment

If the perpetrator is found guilty of committing a crime that carries an abstract prison sentence not exceeding three years or a fine, the court may limit itself to admonishing the individual, provided that, cumulatively:

- a) Reparation has been made for the damage caused by the criminal conduct;
- b) The perpetrator is a first time offender;
- c) Admonishment is by itself sufficient to prevent crime and to rehabilitate the offender.

Article 83. Execution of the penalty of admonishment

Admonishment consists in a solemn and adequate oral reprimand made by the court to the convict, performed at a public hearing, once the final decision applying it has been rendered.

CHAPTER VI ACCESSORY PENALTIES

Article 84. General Principle

1. The law may determine that certain crimes result in the prohibition of exercising certain rights or practicing certain professions.
2. Accessory penalties are cumulative with one another and may only be applied concurrently with a primary penalty. Duration of the same must be set as a function of the degree of guilt.

Article 85. Temporary suspension from holding public office

1. The court that convicts a person who holds public office of a crime carrying an effective prison sentence shall order suspension of said person from office for the period in which the sentence is served, if the convict has not been removed as a disciplinary measure.
2. The effects provided in the respective legislation that accompany the disciplinary measure suspending the perpetrator from holding office remain in effect during the period the suspension is in force.
3. Provisions in the previous subarticles are correspondingly applicable to professions or activities the exercise of which depends on public title or authorization or homologation from a public authority.

Article 86. Prohibition from holding office

1. A public officeholder, civil servant or Public Administration agent, who, while performing the duties for which they were elected or appointed, is convicted of a crime carrying a prison sentence exceeding three years, may be prohibited from holding such an office for a period from 2 to 5 years, whenever any of the following circumstances are present:

- a) The act has been committed with blatant and serious abuse of that office and with clear and serious violation of the duties inherent to that office;

- b) The perpetrator is manifestly undignified or unfit to hold such an office;
 - c) The nature of the act implies a loss of trust required to the holding of such an office.
2. The previous subarticle is correspondingly applicable to professions or activities the exercise of which depends on public title or authorization or homologation from a public authority.
3. The time during which the convict is deprived of liberty as a consequence of a coercive or security measure is not credited towards the period of prohibition.
4. The accessory penalty provided in this article is not applicable when the security measure under article 100 is applied in connection with the same acts.
5. Application of the provisions of this article requires the court to notify the public authority to which the official is answerable regarding the court conviction.

Article 87. Deportation

1. Foreign citizens convicted of a crime with a corresponding prison sentence exceeding 3 years may be deported from national territory if they have resided therein for less than 15 years:
- a) For a period of up to 2 years if resident for more than 10 years;
 - b) For a period of up to 5 years if resident for more than 5 years and less than 10;
 - c) For a period of up to 10 years if resident for less than 5 years.
2. The deportation described in the previous subarticle is applied whenever a specific case so requires for reasons of domestic security, public health, or to avert continued criminal activity.
3. The penalty of deportation shall be executed regardless of the partial or total enforcement of the primary sentence.

Article 88. Prohibition from driving

1. A person may be prohibited from driving for a period to be determined between 3 months and 2 years if sentenced:
- a) For committing any crime pursuant to articles 207 to 209,
 - b) For committing a crime with the use of a motor vehicle in which the commission was significantly facilitated by the use of said vehicle;
or
 - c) For a crime of disobedience committed by refusal to undergo legally established tests for detection of driving motor vehicles under the influence of alcohol, narcotic, psychotropic drug or product with analogous effect that disturbs an individual's physical, mental or psychological fitness.
2. Provisions in subarticle 86.3 are correspondingly applicable.

Article 89. Cancellation of permit to carry a weapon

1. In the event of conviction for a crime of intent committed with the use of a weapon, the court may, once the circumstances and gravity of such conduct have been weighed, order the cancellation of the license to use and carry a weapon for a period of 2 to 8 years.
2. Provisions in subarticle 86.3 are correspondingly applicable.

CHAPTER VII DETERMINATION OF PENALTIES

Article 90. General principles

1. Whenever the law establishes a penalty, it refers to the crime in its consummated form.
2. The concrete extent of the penalty within the scope of the abstract penalty shall be determined in the following manner:
 - a) Any modifying aggravating circumstances of recurrence and habitual criminality, as described in articles 53 and 54, shall be applied to the abstract penalty corresponding to the consummated crime;
 - b) Any extraordinarily mitigating circumstances shall be taken into consideration, in the absence of any modifying circumstances, if provisions in the previous paragraph have been met or based on the abstract penalty for the consummated crime.

Article 91. Determination of a specific penalty

1. Once the abstract scope of the penalty has been determined under the terms of the previous article, the court shall assess all circumstances that, not forming part of the legal definition itself nor having been weighed in light of the previous article, either aggravate or mitigate the liability of the convict.
2. Upon weighing these latter circumstances, the court shall determine the exact extent of the penalty deemed necessary to protect legal interests essential to life in society and to reintegrate the perpetrator into society within the limits established in the definition of the crime or resulting from application of the previous article.
3. Under no circumstance may the extent of the penalty applied to the convict exceed the limit befitting the guilt.

Article 92. Special case of the penalty of fine

In the event of the penalty of fine, the provisions of this chapter are applicable in determining the duration of the fine without prejudice to provisions in subarticle 75.2 for calculating the amount corresponding to each day of fine.

CHAPTER VIII SECURITY MEASURES SECTION I INTERMENT MEASURES

Article 93. Assumptions

Whenever an act described as a defined crime is committed by a person exempt from criminal liability under article 21, that person shall be interned in an appropriate establishment, whenever, due to a mental disorder and the nature and gravity of the act committed, the court has reason to believe that the perpetrator may commit other like acts corresponding to crimes against individuals or crimes posing collective danger.

Article 94. Duration

1. If the act committed by a person exempt from criminal liability is punishable with imprisonment not exceeding three years, internment shall have a maximum duration of one year.
2. If the act committed by a person exempt from criminal liability corresponds to a crime against persons or a crime of collective danger punishable with imprisonment equal to or exceeding 5 years, internment shall have a minimum duration of 3 years except if release of said person is deemed compatible with safeguarding of law and order and maintaining social peace.
3. If the act committed by a person exempt from criminal liability corresponds to a crime punishable with imprisonment exceeding 8 years and the danger of new acts of the same type being committed is so grave that release is not advisable, internment may be extended for successive periods of 2 years until such time when it is verified that the initial criminal danger has ceased to exist.
4. Internment may not exceed the maximum limit of the penalty applicable in the description of the crime that was committed by the person exempt from criminal liability.

Article 95. Cessation of a measure

1. A measure ceases with the end of the state of criminal danger which originated it or, should such a danger to self and others remain unchanged, when the maximum duration limit of the measure is reached, except under circumstances described in subarticles 94.3 and 94.4.
2. Internment measures must be subject to review every 12 months.
3. The court may at any time review an internment decision should a justifiable cause for cessation of internment be submitted.

Article 96. Substitution of the measure of internment

1. Internment as a measure may be substituted for probation or deportation from the country when applied to foreigners.
2. In the event of deportation from the country, provisions in article 87 are correspondingly applicable.

Article 97. Probation

1. If the review referred to in article 95 above finds that there are reasons to believe that the purpose of the measure can be achieved at large, the court shall release the interned person on probation.
2. The period of probation shall be from a minimum of 2 years and a maximum of 5 years, and shall under no circumstances exceed the maximum limit provided for in article 94.4.
3. The decision to grant probation to an interned person entails rules of conduct that the person interned is obliged to follow, under terms corresponding to those described in article 70, aimed at preventing a situation of criminal danger, as well as the duty to submit to appropriate outpatient treatment and to examinations and observations at specified locations.
4. The perpetrator whose internment is suspended shall be placed under the ward and surveillance of social reintegration services.
5. If no motives exist to revoke the probation, once the probation period is over, the internment measure shall be declared void.
6. If, at the end of the probation period, another case or incident is found pending that could lead to its revocation, the measure shall be considered as concluded

whenever the case or incident run their course and there is no longer any reason for revocation.

Article 98. Revocation of probation

1. Probation shall be revoked whenever:
 - a) The behavior of a person exempt from criminal liability shows that internment is indispensable; or
 - b) The person exempt from criminal liability is sentenced to internment and the requirements for suspension of execution pursuant to subarticle 68.1 are not met.
2. Revocation shall result in re-incarceration and provisions in articles 94 and 95 shall be correspondingly applicable.

Article 99. Suspension of sentence of internment

1. The court may decide to suspend internment if it can reasonably expect that such suspension may serve the purpose of the security measure and said suspension is compatible with upholding of law and order and maintaining social peace.
2. Provisions in subarticles 97.3 and 97.4 are correspondingly applicable to the suspension of internment.
3. Suspended execution of internment shall not be declared if the perpetrator is concurrently sentenced to internment and the pre-requisites for suspending execution of the latter, pursuant to subarticle 68.1, are not present.
4. Duration and termination of suspended internment shall be pursuant to provisions in articles 94 and 95, respectively.
5. Provisions of article 98 shall apply to revocation of the decision to suspend internment.

**SECTION II
OTHER SECURITY MEASURES**

Article 100. Measure barring the practice of a profession

1. Whenever a person exempt from criminal liability by reason of insanity commits an act described as a defined crime related to the perpetrator's professional activity and whenever there are reasons to believe that the perpetrator may continue committing similar acts so long as he or she continues practicing such an occupation, the court may bar that person from exercising such an activity for a period from 1 to 5 years, considering the circumstances of the case and personality of the person exempt from criminal liability.
2. The term of the prohibition period is suspended during the time the freedom of the perpetrator is deprived due to a procedural coercion measure, penalty or security measure.

Article 101. Prohibition from driving and cancellation of license to carry a weapon

1. Any person exempt from criminal liability who commits acts described in subarticle 88.1 may be subject to a prohibition from driving a motor vehicle for a period from 2 to 6 years, whenever the person's nature raises reasonable fears that the perpetrator may commit additional acts of the same nature.
2. In the event that a person exempt from criminal liability commits a crime using a weapon, the court may order the cancellation of the license to bear and use

weapons for a period from 5 to 10 years, whenever the personality of the perpetrator raises reasonable fears that the same may commit additional acts of the same nature,

3. Provisions in subarticle 86.3 are correspondingly applicable

CHAPTER IX OTHER CONSEQUENCES OF CRIME

Article 102. Forfeiture of objects of the crime

1. Objects that were used or destined to be used in the commission of a crime, or were results from the same, shall be forfeited to the State, whenever, due to their nature or the circumstances surrounding the case, the same may endanger the security of persons or public order, or pose serious risk of being used in the commission of further crimes.

2. Rights shall be safeguarded regarding objects belonging to any victim or third party, who has not participated in their use or production nor taken advantage thereof.

3. The court shall determine the disposal of objects declared forfeited whenever not specified in law, and may order the partial or complete destruction thereof or to remove them from circulation.

4. Provisions in subarticle 102.1 shall apply even when no specific person can be punished for the crime.

Article 103. Forfeiture of benefits

1. All items, rights or benefits directly or indirectly acquired as a result of the commission of a crime shall be declared forfeited to the State, without prejudice to the rights of any victim or third parties acting in good faith.

2. If said items, rights or benefits cannot be appropriated in kind, their forfeiture shall be compensated through payment of their respective value to the State.

Article 104. Civil liability arising from crime

1. Compensation for losses and damage resulting from a crime is obligatory and shall be assessed and arbitrated by the court, whenever the same have been appraised and quantified, except in the event the aggrieved party expresses, under terms of criminal procedural law, an intention to file suit separately.

2. The prerequisites and calculation of compensation are regulated by rules of civil law.

3. The person liable to pay compensation may effect the transaction for said compensation and report this to the court, under penalty of the act being declared null.

Article 105. Preferential credit of the aggrieved party

Credit arising from the right of the aggrieved party to compensation for losses and damages resulting from a crime is given preference over any other arising after the act was committed, including the costs and amount related to the fine.

**TITLE V
RIGHT TO FILE COMPLAINT**

Article 106. Nature of the crime

1. For the purpose of exercising the right to file complaint, crimes may be of a public or semi-public nature.
2. Public crimes are those the criminal prosecution of which does not depend on a complaint being filed.
3. Semi-public crimes are those the prosecution of which may only be initiated after the right to file complaint has been exercised.
4. The right to file complaint consists in the right-bearer expressing the intent to initiate criminal proceedings.

Article 107. Bearers of the right to file complaint

Whenever criminal proceedings depend on the filing of a complaint, those described as bearing said right in criminal procedural law shall have standing to do so.

Article 108. Statute for exercising the right

The statute for exercising the right to file complaint is six months and is counted separately for each person bearing the right to file complaint.

Article 109. Waiving or withdrawing a complaint

Waiving or withdrawing a complaint or failure to exercise the right to file complaint against any joint participant in the crime benefits the others, in cases where these also cannot be prosecuted without a complaint being filed.

**TITLE VI
PRESCRIPTION OF CRIMINAL LIABILITY
CHAPTER I
EXPIRATION OF STATUTE OF LIMITATION ON CRIMINAL PROSECUTION**

Article 110. Statute of Limitation

1. Criminal proceedings are prescribed, by effect of expiration of the statute of limitations, whenever the following limitations have expired counted from the date the crime was committed:
 - a) Twenty years, in the case of crimes punishable with a maximum prison sentence limit exceeding twelve years;
 - b) Fifteen years, in the case of crimes punishable with a maximum prison sentence exceeding seven, but not exceeding twelve years;
 - c) Eight years, in the case of crimes punishable with a maximum prison sentence exceeding three, but not exceeding seven years;
 - d) Four years, in all other cases.
2. Whenever the law establishes either a prison sentence or, alternatively, a fine for any crime, only the former is considered for the purpose of determining the limitations on respective criminal prosecution.

Article 111. Counting the limitation

1. 1 – The statute of limitation for criminal prosecution runs from the date the act was committed or from the date of the last act of execution in the case of an un consummated crime, continued crime or habitual crime.
2. 2 - Limitation in permanent crimes runs from the date the consummation ceases.
3. 3 - The act of the principal shall be considered in the case of complicity.

Article 112. Suspension of limitations

1. Limitation for criminal prosecution is suspended, in addition to cases specifically provided for in law, whenever:
 - a) Prosecution may not legally be initiated or proceed due to lack of legal authorization or due to a sentence pronounced by a non-criminal court, or due to a return of a prejudicial matter to the non-criminal proceeding;
 - b) The delinquent serves, overseas, a sentence or security measure involving internment;
 - c) Criminal proceedings are pending, from the time the formal suspect is notified of the charges.
2. Limitation begins again from the date the cause for suspension ceases.
3. Under no circumstance may the cause for suspension exceed one half of the limitation provided for in article 110.

**CHAPTER II
PRESCRIPTION OF SENTENCES AND SECURITY MEASURES**

Article 113. Prescriptions of sentences

1. Statutes on sentences expire within the following limitations:
 - a) 25 years if the sentence exceeds 12 years imprisonment;
 - b) 20 years if sentence exceeds 8 but is less than 12 years imprisonment;
 - c) 12 years if sentence exceeds 4 but is less than 8 years imprisonment;
 - d) 8 years for all other prison sentences;
 - e) 4 years in cases with penalties of fine.
2. Prescription of a sentence counts from the date the final decision applying the same is rendered.

Article 114. Prescription of accessory penalties

Prescription of accessory penalties is subject to the application of the primary penalty.

Article 115. Limitations on security measures

Statutes on security measures expire in the following cases:

- a) 15 years in the case of sentences involving internment;
- b) 5 years in the case of sentences not involving internment;
- c) 2 years in all other cases.

Article 116. Suspension of limitations

1. Limitation on sentences and security measures is suspended, in addition to cases specifically provided in law, during the period in which:
 - a) By force of law, execution of the penalty cannot begin or proceed;

- b) Upon escape of the convict as long the same is not recaptured;
 - c) The convict is serving another sentence or security measure involving internment;
 - d) There is a delay in paying the fine;
 - e) The convict is temporarily hindered from providing community services.
 - f) Execution has yet to occur.
2. Limitation begins again from the date the cause for suspension ceases.
 3. Provisions in subarticle 112.3 are correspondingly applicable.

CHAPTER III EXEMPTION FROM STATUTE OF LIMITATIONS

Article 117. Crimes of genocide, crimes against peace and humanity and war crimes

There is no prescription on criminal prosecution and sentences relating to crimes of genocide, crimes against peace and humanity and war crimes.

CHAPTER IV OTHER CAUSES FOR EXTINGUISHMENT

Article 118. Other causes

In addition to cases specifically provided in law, liability is extinguished upon death of the perpetrator, amnesty and pardon.

Article 119. Death of the perpetrator

The death of the perpetrator extinguishes the criminal proceeding, as well as any criminal sentence applied to the same.

Article 120. Amnesty

Amnesty extinguishes criminal prosecution and halts execution of a sentence yet to be served in whole or in part, as well as its effects and accessory penalties to the extent possible.

Article 121. Amnesty and accumulation of crimes

Except as otherwise provided, amnesty is applicable to each crime part of the joinder.

Article 122. Pardon

Pardon extinguishes the sentence in whole or in part, or replaces it with another provided for in law more lenient to the convict.

BOOK II
SPECIAL PART
TITLE I
CRIMES AGAINST PEACE AND HUMANITY
CHAPTER I
CRIMES OF GENOCIDE AND CRIMES AGAINST HUMANITY

Article 123. Genocide

1. Any person who, with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, commits any of the following:

- a) Homicide or offence against the physical or mental integrity of members of the group;
- b) By whatever means, acts that prevent members of the group from procreating or giving birth;
- c) Rape, sexual enslavement, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of comparable seriousness;
- d) Separation of members of the group into another group by violent means
- e) Acts that prevent the group in a violent manner from settling or remaining in a geographic space that is, by tradition or historically, recognized as their own;
- f) Subjection of the group to cruel, degrading or inhumane conditions of existence and treatment, which may cause its total or partial destruction;
- g) Widespread confiscation or seizure of property owned by members of the group;
- h) Prohibition of members of the group from carrying out certain trade, industrial or professional activities;
- i) Spread of an epidemic that may cause the death of members of the group or offences to their physical integrity;
- j) Prohibition, omission or hindrance by any means from providing members of the group with humanitarian assistance required to combat epidemic situations or severe food shortages; is punishable with 15 to 30 years imprisonment.

2. Any person who, publicly and directly, incites the commission of any of the aforementioned acts is punishable with 5 to 15 years imprisonment.

Article 124. Crimes against humanity

Any person who, within the context of a widespread or systematic attack against any civilian population, commits acts that result in:

- a) Homicide or serious aggression to physical or mental integrity;
- b) Extermination, construed as subjection of the whole or part of a population to adverse living conditions, such as deprivation of access to food and medicine, apt to cause death of one or more persons;
- c) Enslavement;
- d) Forcible deportation or transfer of a population, construed as unlawful displacement of one or more persons to another State or place by expulsion or other coercive act;

- e) Imprisonment or any other coercive form of depriving a person of physical liberty, in violation of the standards and principles of international law;
- f) Torture, construed as infliction of severe pain or suffering, whether physical or mental, upon a person in custody or under control of the perpetrator;
- g) Rape, sexual enslavement, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of comparable seriousness;
- h) Persecution, construed as deprivation of the exercise of fundamental rights contrary to international law against a group or a collective entity due to politics, race, nationality, ethnicity, culture, religion, gender or for any other reason universally recognized as unacceptable under international law;
- i) Enforced disappearance of persons, construed as arrest, detention or abduction of persons by, or with authorization, support or acquiescence of, a State or political organization, followed by a refusal to acknowledge said deprivation of freedom or to provide information regarding the fate or whereabouts of said persons, with the intention of denying them protection of the law for a prolonged period of time;
- j) Apartheid, construed as any inhumane act committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health; is punishable with 15 to 30 years imprisonment.

CHAPTER II WAR CRIMES

Article 125. War crimes against individuals

1. Any person who, within the context of an armed conflict of an international or noninternational nature, commits against a person protected by international humanitarian law:

- a) Homicide;
- b) Torture or cruel, degrading or inhumane treatment, including biological experiments;
- c) Acts causing serious suffering or serious aggression to physical integrity;
- d) Taking of hostages;
- e) Compels a person to serve in a hostile army or conscripts or enlists children under the age of 18 into the armed, military or paramilitary forces of a State, or into armed groups other than the armed, military or paramilitary forces of a State, or uses them to participate in hostilities;

- f) Serious, prolonged and unjustified restrictions on the liberty of persons;
 - g) Deportation or transfer or unlawful confinement;
 - h) Unjustified appropriation or destruction of property of high value;
 - i) Renders and executes sentences, without previous fair and impartial trial;
 - j) Commits acts offensive to human dignity, in particular by means of humiliating and degrading treatment;
 - k) Kills or wounds a combatant who, having laid down his or her arms or having no longer any means of defense, has unconditionally surrendered or otherwise been removed from combat;
 - l) Any of the acts described in paragraph (g) of the previous article;
 - m) Subjects persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither motivated by any medical, dental or hospital treatment of the persons concerned, nor performed in their interest, and which cause death to or seriously endanger the health of such persons; is punishable with 12 to 25 years imprisonment.
2. The limits of the sentence are increased by one-fifth whenever the acts referred to in the previous subarticle are committed against members of a humanitarian institution.
3. Any person who, within the context of an armed conflict of an international nature:
- a) Transfers, directly or indirectly, as an occupying power, parts of its own civilian population into the territory it occupies, or transfers all or parts of the population of the occupied territory within or outside this territory;
 - b) Compels a prisoner of war or other protected person to serve in the armed forces of a hostile power;
 - c) Delays, after cessation of hostilities, and without a justified reason, repatriation of prisoners of war; is punishable with 15 to 30 years imprisonment.

Article 126. War crimes committed using prohibited methods of warfare

Any person who, within the context of an armed conflict of an international or noninternational nature:

- a) Conducts widespread attacks against the civilian population or against individual civilians not taking direct part in hostilities;
- b) Attacks civilian assets, that is, assets that are not military objectives;
- c) Attacks by whatever means, human settlements, dwellings or buildings which are undefended and not military objectives;
- d) Launches an indiscriminate attack that affects a civilian population or assets in the knowledge that such an attack will cause excessive loss of human life or injury to civilians or damage to civilian assets;
- e) Utilizes the presence of civilians or other protected persons to shield certain points, areas or military forces from becoming targets of military operations;
- f) Intentionally uses starvation of civilians as a method of warfare by depriving them of goods indispensable to their survival;

- g) Declares or threatens, in the capacity of an officer, that no quarter will be given;
- h) Treacherously kills or injures hostile combatants;
- i) Launches an attack while capable of knowing that such an attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- j) Commits perfidy, construed as the act of killing, wounding or capturing an adversary by appealing to good faith, with the intention to deceive, leading the same to believe that he or she is entitled to, or is obliged to accord, protection under the rules of humanitarian international law; is punishable with 15 to 30 years imprisonment.

Article 127. War crimes committed using prohibited means of warfare

1. Any person who, within the context of an armed conflict of an international or noninternational nature, employs weapons, projectiles and materials and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or to cause indiscriminate effects, in violation of international law applied to armed conflict, is punishable with 12 to 25 years imprisonment:

2. The previous subarticle covers, namely, the use of:

- a) Poison or poisoned weapons;
- b) Asphyxiating, toxic or other similar gases, and all analogous liquids, materials or devices;
- c) Projectiles that expand or flatten easily inside the human body, such as hollow-pointed jacketed bullets or those with incisions;
- d) Antipersonnel landmines;
- e) Chemical weapons;
- f) Weapons whose major effect is to cause wounds with shrapnel which cannot be located by x-ray in the human body;
- g) Incendiary weapons;
- h) Laser weapons causing blindness;

3. The weapons, instruments and products referred to in the previous subarticle correspond to the definitions set out by international law.

Article 128. War crimes against assets protected by insignia or distinctive emblems

Any person who, in the context of an armed conflict of an international or non-international nature, directs attacks against:

- a) Personnel, facilities, material, units or vehicles involved in humanitarian assistance or peace-keeping missions in accordance with the Charter of the United Nations, whenever the same are entitled to protection given to civilians or civilian assets under international humanitarian law;
- b) Buildings, facilities, material, units or vehicles visibly displaying the distinctive emblems of the Geneva Conventions or personnel using such emblems; is punishable with 10 to 20 years imprisonment.

Article 129. War crimes against property

Any person who, within the context of an armed conflict of an international or noninternational nature:

- a) Seizes, destroys or damages property on a large scale or of high value, with no military need to do so or in an arbitrary or illegal manner;
- b) Attacks, destroys or damages buildings dedicated to religion, education, art, science or charitable purposes, historic or cultural monuments, archaeological sites, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- c) Pillages a town or site, even when taken by assault; is punishable with 5 to 15 years imprisonment.

Article 130. War crimes against other rights

Any person who, within the context of an armed conflict of an international or noninternational nature, declares any rights and proceedings of the nationals of the hostile party to be abolished, suspended or inadmissible in a court of law is punishable with 5 to 15 years imprisonment.

**CHAPTER III
CRIMES AGAINST PEACE AND FREEDOM**

Article 131. Terrorist organizations

1. A terrorist group, organization or association is the grouping of two or more persons who, in order to pursue political, ideological, philosophical or denominational goals, act in a coordinated manner with a view to undermining national integrity or independence; hindering, altering or subverting the operation of national or international institutions, intimidating or compelling public authorities, international organizations or certain persons, groups of persons or the population in general, to act, abstain from acting or tolerating the practice of an act, by means of the commission of serious crimes:

- a) Against life, physical integrity or freedom of individuals;
- b) Against the safety of transport and communications, including telegraphic, telephone, radio or television communications;
- c) Of maliciously causing collective danger, through arson, explosion, release of radioactive substances or toxic or asphyxiating gases, flooding or avalanches, demolition of buildings, contamination of foodstuffs and drinking water or dissemination of disease, plague or dangerous plants or animals;
- d) That use nuclear energy, firearms, explosive substances or devices, incendiary means of any kind, booby-trapped packages or letters;
- e) Acts that temporarily or permanently, partly or totally, destroy or prevent operation or deviate from normal usage, means of communication, public service facilities or international installations or installations destined to provide and address vital needs of populations;

- f) Research and development of biological or chemical weapons.
2. Any person who promotes or establishes a terrorist group, organization or association, joins, participates in or supports the same shall be punishable with 12 to 25 years imprisonment.
 3. Any person who leads or directs a terrorist group, organization or association shall be punishable with 15 to 30 years imprisonment.
 4. Whenever a terrorist group, organization or association, or the persons referred to in subarticles 131.2 and 131.3 possess any of the means listed in subarticle 131.1(d) above, the minimum and maximum limits of the penalty shall be increased by one-third.
 5. The minimum and maximum limits of the penalty for preparatory acts to the establishment of a terrorist group, organization or association shall be reduced by one half.
 6. The referred penalties may be extraordinarily mitigated, or punishment may not take place, if the perpetrator voluntarily abandons said activities, prevents or strives to prevent the dangers associated to it or the continuation of terrorist groups, organizations or associations, or informs the authorities about their existence so that the latter may prevent the commission of crimes.

Article 132. Terrorism

1. Any person who commits any of the crimes provided for in subarticles 131.1(a) to (c) and (e), or any other crime by employing the means referred to in subarticles 131.1(d) or (f) with the intent referred therein, shall be punishable with 12 to 25 years imprisonment, or the penalty corresponding to the crime committed, with maximum and minimum limits thereof increased by one third, if said penalty is equal or longer.
2. The penalty may be extraordinarily mitigated, or punishment may not take place if the perpetrator voluntarily abandons said activities, removes or reduces considerably the dangers associated to it, prevents the outcome that the law aims to prevent, or actually assists in the gathering of decisive evidence for the identification and arrest of other elements responsible for the act.

Article 133. Funding of terrorism

Any person who, by whatever means, directly or indirectly and with intent, supplies, collects or holds funds or assets of any type, as well as products or rights that may be converted into funds and attempts to do so, with a view to be used or knowing that they may be used, totally or partially, in the planning, preparation or commission of the acts referred to in subarticle 131.1, or commits such acts with the intent referred to in subarticle 132.1, shall be punishable with 12 to 25 years imprisonment.

Article 134. Incitement to war

1. Any person who, by whatever means, publicly and repeatedly, incites hatred against a race, people or nation, with the intention to provoke war or prevent peaceful fellowship among different races, peoples or nations, is punishable with 2 to 8 years imprisonment.
2. Any person who induces or enlists Timorese or foreign nationals to, in the service of a foreign group or power, wage war against a State or overthrow the legitimate Government of another State through violent means, is punishable with 5 to 15 years imprisonment.

Article 135. Religious or racial discrimination

1. Any person who establishes or constitutes an organization or develops activities of organized propaganda inciting or encouraging religious or racial discrimination, hatred or violence, or takes part in the organization or carrying out of the activities referred to in the previous paragraph, or provides assistance thereto, including funding, is punishable with 4 to 12 years imprisonment

2. Any person who, at a public meeting, through written medium destined for dissemination or in the media, provokes acts of violence against a person or group of people on grounds of race, color, ethnic origin or religion, with the intent to incite or encourage racial or religious discrimination, is punishable with 2 to 8 years imprisonment.

**CHAPTER IV
COMMON PROVISIONS**

Article 136. Responsibility of military commanders and other superiors

1. A military commander or person acting as such, aware that the forces under his or her effective command and control or effective responsibility or control are committing any of the crimes provided in this title, fails to adopt all necessary and appropriate measures to prevent or deter the commission of such acts or to immediately report them to competent authorities, is punishable with the sentence corresponding to the crime(s) that has (have) actually been committed.

2. The provision of the previous subarticle is, mutatis mutandis, applicable to a superior in connection with control of subordinates under his or her effective authority and control.

Article 137. Definitions

For the purposes of this Title, the following definitions are considered:

- a) "**Armed conflict of an international character**" is that which:
 - i) Occurs between States, even when there is no formal declaration of war, even though a state of war is not recognized by either State; ii) Corresponds to a situation of partial or total occupation of the territory of a State, even if such an occupation finds no military resistance; iii) Includes a situation in which peoples fight against colonial domination, foreign occupation or against a segregationist regime, in the exercise of the right of peoples to self-determination, as enshrined in the Charter of the United Nations and in the declaration relative to the principles of international law concerning friendly relations and cooperation among States.
- b) "Armed conflict of a non-international nature" is one which is fought within the territory of a State, is of a prolonged nature, where there is opposition between governmental authorities and organized armed groups, or a conflict fought among the latter, exception being made to situations of internal unrest or tension, such as sporadic or isolated acts of violence or others of a similar nature;
- c) "Protected persons" i) In armed conflicts of an international character, it means protected persons in the sense of the 1949

Geneva Convention and the Additional Protocol I, namely those who are wounded, sick, shipwrecked, prisoners of war, health workers or religious staff and civilian population; ii) In an armed conflict of a non-international nature, those who are wounded, sick, stranded, as well as persons who do not take an active part in the hostilities and are held by the enemy; iii) In an armed conflict of an international nature and in an armed conflict of a non-international nature, members of the armed forces and combatants of the enemy side that have put down their weapons or do not have other means of defense.

**TITLE II
CRIMES AGAINST INDIVIDUALS
CHAPTER I
CRIMES AGAINST LIFE**

Article 138. Homicide

Any person who kills another person is punishable with 8 to 20 years imprisonment.

Article 139. Aggravated homicide

If homicide is committed under circumstances that are particularly reprehensible or reflect a particular degree of perversity:

- a) Through employment of poison, torture, asphyxia, fire, explosive or by another insidious means or that translates into the commission of a crime of collective danger or, with another act of cruelty to inflict greater suffering to the victim;
- b) Through treachery or disguise or another means or recourse that renders the defense of the victim difficult or impossible;
- c) Out of greed, pleasure in killing, seeking of excitement or satisfaction of a sexual nature, through payment or reward or promise of payment or reward, or for any other superfluous or insidious reason;
- d) For the purpose of preparing, executing or covering up another crime, facilitating escape or ensuring impunity of the perpetrator of a crime;
- e) Out of racial, religious or political hatred;
- f) With premeditation, construed as cold-bloodedness, giving forethought to the means of performing the crime or delaying intent to kill for more than 24 hours;
- g) If the victim is a spouse, descendant, parent, collateral or similar relation to the second degree, a person adopted by the perpetrator or a person living with the perpetrator under analogous conditions where a hierarchical, economic or labor dependency exists;
- h) If the victim is particularly vulnerable by reason of age, illness or physical or mental disability;
- i) If the victim is a member of an organ of national sovereignty and constitutional political body, member of a local government body, magistrate, public defender, attorney, court clerk, public servant or any other person responsible for a public service, provided that

the crime is committed while performing or because of performance of his or her duties;

- j) If the victim is a witness, declarant, expert, aggrieved party or victim and the crime is committed with the purpose of impeding the deposition, informing or filing of a complaint or because of the person's involvement in the proceedings, the perpetrator shall be punishable with 12 to 25 years imprisonment.

Article 140. Manslaughter

- 1. Any person who, by negligence, kills another person is punishable with up to 4 years imprisonment or a penalty of fine.
- 2. In cases where the perpetrator has acted with gross negligence, the same is punishable with up to 5 years imprisonment.

Article 141. Termination of pregnancy

- 1. Any person who, by any means and without consent of the pregnant woman, causes an abortion shall be punishable with a prison sentence between 2 and 8 years.
- 2. Any person who, by any means and with the consent of the pregnant woman, causes an abortion shall be punishable with a prison sentence not exceeding 3 years.
- 3. Any pregnant woman, who consents to an abortion committed by a third party or, by her own actions or those of a third party, causes an abortion, shall be punishable with a prison sentence not exceeding 3 years.
- 4. The provisions in the previous subarticles shall not be applicable in the event that the termination of pregnancy constitutes the only means of removing the pregnant woman or fetus from danger of death or serious and irreversible harm to body or physical or mental health, as long as performed pursuant to authorization and supervision of a medical panel, professional physician or health professional in a public health institution and with consent of the pregnant woman and/or the spouse.
- 5. Provisions in subarticle 4 of this present article are correspondingly applicable

Article 142. Infanticide

A mother who kills her child during childbirth or soon thereafter and while still under the disturbing influence thereof, is punishable with 3 to 10 years imprisonment.

Article 143. Abandonment or exposure

- 1. Any person who, intentionally, endangers the life of another person by:
 - a) Exposing said person in a place where the same is placed in a situation where he or she is unable to protect him or herself single-handed; or
 - b) Abandoning the person defenseless by reason of age, physical impairment or illness, when the perpetrator is responsible for protecting, caring for or assisting said person; Is punishable with 1 to 6 years imprisonment.
- 2. If the act results in:
 - a) Serious harm to physical integrity, the perpetrator is punishable with 2 to 8 years imprisonment;
 - b) Death, the perpetrator is punishable with 5 to 15 years imprisonment.

3. If the victim is a spouse, descendant, parent or collateral kin to the second degree, a person who has adopted or is adopted by the perpetrator or a person cohabiting with the perpetrator in conditions analogous to those of spouse, the limits to the penalties referred to in the previous subarticles shall be increased by one-third.

Article 144. Incitement or aiding suicide

1. Any person who incites another person to commit suicide, or provides assistance for said purpose, if the suicide is actually attempted or consummated, is punishable with up to 3 years imprisonment or a penalty of fine.

2. If the acts described in the previous subarticles are committed against any of the persons referred to in subarticle 143.3 or a minor below the age of 17 or a person whose ability to assess and decide is significantly impaired, the same is punishable by up to 5 years imprisonment.

3. Any person who, by any means, repeatedly and publicly advocates suicide is punishable with up to 2 years imprisonment or a fine.

**CHAPTER II
CRIMES AGAINST PHYSICAL INTEGRITY**

Article 145. Simple offences against physical integrity

1. Any person who causes harm to the body or health of another person is punishable with up to 3 years imprisonment or a fine.

2. Prosecution depends on the filing of a complaint.

Article 146. Serious offences against physical integrity

Any person who causes harm to the body or health of another person with the purpose of:

- a) Depriving such person of an important organ or limb;
- b) Seriously or permanently disfiguring said person;
- c) Seriously affecting, for a long period of time or definitively, a person's working capacity, intellectual faculties, or capacity to procreate;
- d) Causing permanent illness or incurable mental disorder to such a person; or
- e) Endangering the life of said person;

is punishable with 2 to 8 years imprisonment.

Article 147. Aggravation

1. Any person who, with the sole intent to cause harm to the body or health of another person:

- a) causes any of the results provided in article 146 is punishable with up to 5 years imprisonment;
- b) causes death by negligence is punishable with 1 to 6 years imprisonment;

2. If, with intent to cause any of the offenses provided in article 146, causes death by negligence, is punishable with 4 to 12 years imprisonment;

3. If the victims of the crimes referred to in the two previous articles are any of the persons mentioned in article 139, paragraph (i), because of or while performing their

aforementioned duties, the limits of the penalty shall be increased by one-third, where no heavier penalty is applicable by force of another legal provision.

Article 148. Negligent offences against physical integrity

1. Any person who, by negligence, causes harm to the body or health of another person is punishable with up to 1 year imprisonment or a fine.
2. In the case of gross negligence, the penalty shall be up to 2 years imprisonment or a fine.
3. If the act results in serious bodily harm, the perpetrator shall be punishable with up to 3 years imprisonment or a fine.
4. Prosecution depends on the filing of a complaint.

Article 149. Medical-surgical procedures and treatments

1. Medical procedures and other treatments that the state-of-the-art and medical experience show to be adequate and are performed or provided according to the *leges artis* by a medical professional or another legally certified person with a view to preventing, diagnosing, curing or reducing a disease, suffering, lesion or bodily fatigue or mental disorder are not considered bodily harm.
2. If the violation of the *leges artis* results in danger to the body, health or life of the patient, the perpetrator is punishable with imprisonment of up to 3 years or fine.
3. Prosecution depends on the filing of a complaint.

Article 150. Offences caused by poisonous substances

1. Any person who causes harm to the body or health of another person by giving the same substances poisonous or harmful to his or her physical or mental health is punishable with up to 5 years imprisonment.
2. If any of the consequences provided in article 146 or the death of the victim occurs, the perpetrator is punishable with 2 to 6 years or 4 to 12 years imprisonment, respectively.

Article 151. Reciprocal offences against physical integrity

1. Whenever two persons cause reciprocal harm to the body or health of the other, with neither acting in legitimate defense and none of the effects provided in article 146 nor the death of any intervening party occurring, the same are punishable with up to 2 years imprisonment or a penalty of fine.
2. Prosecution depends on the filing of a complaint.

Article 152. Affray

1. Any person who intervenes or takes part in an affray involving two or more persons, which results in death or serious bodily harm, is punishable with up to 3 years imprisonment or a fine, if said results may not be imputed as being of malicious intent.
2. Participation in an affray is not punishable when the reason for said involvement is irreproachable, namely with the aim of responding to aggression, defending another person or attempting to separate the participants.

Article 153. Mistreatment of a disabled person

1. Any person who has guardianship or custody, or is responsible for the education of a disabled person, even as a subordinate under employment, who is particularly vulnerable by reason of illness, advanced age, pregnancy, physical or mental

impairment, and causes harm to said person's body or health, or inflicts physical or mental mistreatment or cruel treatment, is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

2. If the victim is a descendent, collateral kin, family or similar to the second degree, a person who has adopted or been adopted by the perpetrator or person cohabiting with the perpetrator under similar conditions, the limits of the sentence shall be increased by one third.

Article 154. Mistreatment of a spouse

Any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment if no heavier penalty is applicable by force of another legal provision.

Article 155. Mistreatment of a minor

1. Any person who provides guardianship or custody, or is responsible for the upbringing of a minor aged less than 17 years, or does so under employment, and:

- a) Causes harm to the minor's body or health, or inflicts physical or mental mistreatment or cruel treatment;
- b) Subjects the minor to economic exploitation, hazardous work or work capable of compromising his or her education or physical, mental, spiritual, moral or social development;
- c) Subjects the minor to any form of slavery or analogous practice;
- d) Uses, recruits or offers the minor for purposes of prostitution, production of pornographic material or pornographic shows; or
- e) Uses, recruits or offers the minor for practicing unlawful acts or activities, namely production and trafficking in narcotics as defined by international conventions, is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

2. Any person who, under similar circumstances, uses a minor for begging is punishable with up to 3 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

3. If the victim is a descendant, collateral kin, relative or similar to the second degree, has adopted or been adopted by the perpetrator or a person cohabiting with the perpetrator under similar conditions, the limits to the penalties referred to in the preceding subarticles shall be increased by one third.

Article 156. Aggravation due to results

If, as a consequence of mistreatment described in articles 153 to 155, any of the effects referred to in article 146 occurs, the perpetrator is punishable with 3 to 10 years imprisonment and if death is caused by such mistreatment, then the perpetrator is punishable with 5 to 15 years imprisonment.

CHAPTER III
CRIMES AGAINST PERSONAL LIBERTY
SECTION I
PERSONAL AGGRESSIONS

Article 157. Threats

1. Any person who, by any means, threatens another person with commission of a crime in order to cause fear or unrest or to undermine that person's freedom of decision-making is punishable with up to 1 year imprisonment or a fine.
2. Prosecution depends on the filing of a complaint.

Article 158. Coercion

1. Any person who, by means of violence or threat of serious harm, compels another person to commit an act or omission, or to accept an activity under duress is punishable with up to 2 years imprisonment or a fine.
2. Prosecution depends on the filing of a complaint.

Article 159. Serious coercion

If the coercion is exercised:

- a) Through the threat of a crime punishable with penalty of imprisonment exceeding 3 years;
- b) By an official seriously abusing his or her office;
- c) Against a person who is particularly defenseless, by virtue of age, deficiency, illness or pregnancy;
- d) Against any of the people referred to in subparagraph i) of article 139, the perpetrator is punishable with up to 3 years imprisonment or a fine.

Article 160. Kidnapping

1. Any person who, apart from cases provided in criminal procedural law, detains, arrests, maintains in detention or confinement another person, or otherwise deprives said person of liberty, is punishable with up to 3 years imprisonment or a fine.
2. The penalty is 2 to 8 years imprisonment if the deprivation of liberty:
 - a) lasts for more than seventy-two hours;
 - b) is committed by means of an offence against physical integrity, torture or any other cruel, degrading or inhumane treatment;
 - c) causes, by negligence of the perpetrator, the death of the victim or leads the latter to commit suicide;
 - d) is imposed upon a victim who exercises public, religious or political authority;
 - e) Is promoted, authorized or endorsed by a public perpetrator or member of a political organization.

Article 161. Abduction

1. Any person who, by means of violence, threat or deceit, transfers another person from one place to another with the intention to:
 - a) Subject the victim to extortion;
 - b) Commit crime of sexual exploitation, assault or abuse;
 - c) Obtain ransom or reward; or

- d) Compel public authorities or any third party to commit or refrain from committing an act, or to coercively accept an activity, is punishable with 4 to 12 years imprisonment.
2. If any of the circumstances provided in subarticle 2 of article 160 occurs, the applicable penalty is 5 to 15 years imprisonment.

Article 162. Enslavement

1. Any person who, by any means, places a fellow human being in a situation of enslavement or makes use of a person in such a condition is punishable with 8 to 20 years imprisonment.
2. The consent of the victim is irrelevant if any of the means referred to in the following article were used.
3. For purposes of application of provisions in this article, a person is considered to be in a condition of enslavement whenever, even if only de facto, said person is under submission to powers corresponding to those of property rights, or to any concrete right, or is bound to the disposal of any thing.

Article 163. Human trafficking

1. Any person who recruits, assigns, purchases, transports, transfers, houses or receives persons, through use of threats, force or other forms of coercion, kidnapping, fraud, trickery, abuse of power or situation of vulnerability, or by means of delivery or acceptance of payments or benefits, to obtain the consent of a person with authority over another, for purposes of exploitation, shall be punishable with 8 to 20 years imprisonment.
2. The penalty referred to in the subarticle above shall apply to any person who recruits, transports, transfers, houses or receives a minor under the age of 17 for the purpose of exploiting the same, even if none of the means referred to in the subarticle above are involved.
3. For the purpose of applying the provisions of this article, exploitation shall include but is not limited to exploitation through prostitution of another person or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or extraction of organs.
4. Consent of the victim is irrelevant, if any of the means referred to in subarticle 1 were employed.

Article 164. Aggravation

If the acts described in articles 162 and 163 are committed:

- a) As a means to facilitate sexual exploitation or use of the victim, by the perpetrator or a third party;
- b) The victim is a minor under the age of 17;
- c) The victim is in a foreign country or travelling to a foreign country;
- d) The victim is used, against his/her will, in the commission of crimes; or
- e) The perpetrator is engaged in an activity that grants the same public or religious authority before a group, region or entire country;

Said perpetrator shall be punishable with 12 to 25 years imprisonment.

Article 165. Trafficking in human organs

1. Any person who obtains, sells, assigns, purchases, transports or transfers tissues, organs, substances or parts of the human body of third parties without consent or through use of threats, force or other forms of coercion, kidnapping, fraud, deceit, abuse of authority or situation of vulnerability, or by means of delivery or acceptance of payments or benefits, or assists in the collection, transaction, transport or storage of the above shall be punishable with 3 to 10 years imprisonment.
2. If commission of any of the acts mentioned in the subarticle above results in any of the effects provided for in article 146 or the death of the victim, the perpetrator shall be punishable with 4 to 12 years imprisonment and 5 to 20 years imprisonment, respectively.
3. Consent of the victim is criminally irrelevant, if any of the means referred to in subarticle 1 were used.

Article 166. Sale of persons

1. Any person who, apart from the cases provided in article 163, by any act or other means of transaction, transfers a person, or group of persons, to another person or group of persons against payment of any sum or any other exchange, reward or advantage, is punishable with 2 to 8 years imprisonment.
2. If the acts referred to in the previous subarticle are committed:
 - a) Against a minor aged less than 17 years;
 - b) Through abuse of authority arising from a family relationship, ward or guardianship, or hierarchical, economic or labor-related dependence;
 - c) Through taking advantage of any office or authority held, in any capacity, in a prison, educational or correctional establishment, hospital, mental institution, rest home, clinic or other health establishment or establishment intended to provide assistance or treatment; or
 - d) Upon an unconscious or incapable person who is particularly vulnerable by virtue of disease, physical or mental deficiency;Said perpetrator is punishable with 4 to 12 years imprisonment.
3. Consent of the victim or third party who exerts any form of power over the victim is criminally irrelevant.

Article 167. Torture or other cruel, degrading or inhuman treatment

1. Any person who, having the duty to prevent, investigate and decide on any types of offence, and to enforce the respective penalties, or to protect, guard, conduct surveillance on or monitor any persons who have been detained or arrested and commits torture or cruel, degrading or inhumane treatment, in order to
 - a) obtain from that person or from another person a confession, deposition, statement or information;
 - b) punish that person for an act actually or allegedly committed by the same or another;
 - c) intimidate that person or another person is punishable with 2 to 8 years imprisonment.
2. The penalty provided for in the preceding paragraph shall also be imposed to any person who, on his or her own initiative, orders from a superior or in accordance with any authority competent to perform the duties described in the previous subarticle,

commits any of the acts described therein while de facto assuming performance of these duties.

3. Torture or cruel, degrading or inhumane treatment means any act consisting in inflicting severe physical or psychological suffering, acute physical or mental strain or employing chemical products, drugs and other means, whether natural or artificial, with the intent to disrupt the victim's decision-making capacity or free expression of will.

Article 168. Aggravation

1. Any person who, under the terms and conditions described in the previous article:
 - a) Causes serious bodily harm as provided for in article 146;
 - b) Employs means or methods of torture which are particularly grievous, namely beatings, electric shock, simulated execution, hallucinogenic substances, sexual abuse or serious threat against family members;
 - c) Commits such acts as a means of hindering or rendering difficult the free exercise of political or trade union rights established by the Constitution;
 - d) Habitually commits the aforesaid acts; is punishable with 5 to 15 years imprisonment.
2. If the acts referred to in this article or in the preceding article result in the suicide or death of the victim, the perpetrator is punishable with 5 to 20 years imprisonment.

Article 169. Failure to denounce

1. Any hierarchical superior who, aware of the commission, by a subordinate, of any of the acts described in articles 167 and 168, fails to inform of such an act within three days from the date of becoming aware of the commission thereof, is punishable with 1 to 6 years imprisonment.
2. Any person who, in his/her professional capacity, becomes officially aware of any of the acts described in articles 167 and 168 and fails to immediately report the same to his/her immediate superior, or to denounce it, is punishable with the penalty, extraordinarily mitigated, as determined in the previous subarticle.

Article 170. Freedom of assembly or demonstration

1. Any person who interferes with a lawfully authorized gathering or demonstration being held in a public place or open to the public by hindering or attempting to hinder it from being held is punishable with up to 2 years imprisonment or a fine.
2. Any law enforcement official who hinders or attempts to hinder, outside of legal limits, the exercise of the right to assembly or to demonstrate described in the preceding subarticle is punishable by up to 3 years imprisonment.

**SECTION II
SEXUAL AGGRESSION**

Article 171. Sexual coercion

Any person who, by means of violence, serious threat, or after having made, for the purpose of compelling another person to endure or to practice with the same or a third person any act of sexual relief, such a person unconscious or placed the same

in a condition where resistance is impossible, is punishable with 2 to 8 years imprisonment.

Article 172. Rape

Any person who, by the means referred to in the previous article, practices vaginal, anal, or oral coitus with another person or forces the same to endure introduction of objects into the anus or vagina is punishable with 5 to 15 years imprisonment.

Article 173. Aggravation

If the sexual offenses referred to in articles 171 and 172 are committed:

- a) Through abuse of authority arising from a family relationship, ward or guardianship, or hierarchical, economic or labor-related dependence;
- b) Through taking advantage of duties exercised or office held, in any capacity, in a prison, educational or correctional establishment, hospital, mental institution, rest home, clinic or other health establishment or establishment intended to provide assistance or treatment; or
- c) Upon an unconscious or incapable person who is particularly vulnerable by virtue of disease, physical or mental deficiency;
- d) Against a victim aged less than 17 years;

The perpetrator is punishable with 4 to 12 years imprisonment in the case of article 171 and 5 to 20 years imprisonment in the case of article 172.

**SECTION III
SEXUAL EXPLOITATION**

Article 174. Sexual exploitation of a third party

1. Any person who, with intent to derive profit or any person who makes a livelihood from, promotes, facilitates, or by any other means, contributes toward engaging another person in prostitution or other sexual acts, is punishable with 3 to 10 years imprisonment.

2. The perpetrator is punishable with 4 to 12 years imprisonment, if any of the following circumstances arises:

- a) Exploitation of the situation of abandonment or economic necessity of the victim;
- b) Use of violence, serious threat or coercion over the victim;
- c) Displacing the victim to a country different from where the victim was born or was resident;
- d) Withholding any identification document belonging to the victim.

Article 175. Child prostitution

1. Any person who, even with consent of the victim, practices any of the acts of sexual exploitation referred to in the preceding article against a minor aged less than 17 years, is punishable with 4 to 12 years imprisonment in the case of subarticle 1 and 5 to 15 years imprisonment in cases where any of the circumstances described in subarticle 2 occur.

2. Any person who offers, obtains, seeks or delivers a minor aged less than 17 years for purposes of child prostitution is punishable with 4 to 12 years imprisonment if no heavier penalty is applicable by force of another legal provision.

Article 176. Child pornography

1. Any person who, for predominantly sexual purposes, uses, exposes or represents a minor aged less than 17 years performing any sexual activity, whether real or simulated, or by any other means, exhibits the sexual activity or sexual organs of a minor, is punishable with 3 to 10 years imprisonment;

2. The same penalty is applicable to any person who produces, distributes, disseminates, imports, exports, offers, sells or possesses any medium of communication, instrument, document or record for the purposes referred to in the previous subarticle or with the aim of disseminating such acts.

**SECTION IV
SEXUAL ABUSE**

Article 177. Sexual abuse of a minor

1. Any person who practices vaginal, anal or oral coitus with a minor aged less than 14 years is punishable with 5 to 20 years imprisonment.

2. Any person who practices any act of sexual relief with a minor aged less than 14 years is punishable with 5 to 15 years imprisonment.

Article 178. Sexual acts with an adolescent

Any person who, being an adult and apart from situations provided in this section, practices any relevant sexual act with a minor aged between 14 and 16 years, taking advantage of the inexperience of the same, is punishable with up to 5 years imprisonment.

Article 179. Sexual abuse of a person incapable of resistance

Any person, who practices any relevant sexual act with an unconscious or incapable person particularly vulnerable by virtue of illness, physical or mental deficiency, taking advantage of said situation of incapacity, is punishable with 4 to 12 years imprisonment.

Article 180. Sexual fraud

1. Any person who fraudulently takes advantage of mistaken identity, and practices vaginal, anal or oral coitus with another person is punishable with up to 3 years imprisonment.

2. Prosecution depends on the filing of a complaint.

Article 181. Sexual exhibitionism

1. Any person who publicly disturbs another person by committing acts of a sexual nature is punishable with up to 3 years imprisonment or a fine.

2. Any person who, in the presence of others, practices vaginal, anal or oral coitus, against the will of the latter, even if this occurs in private, incurs the same penalty.

3. The attempt is punishable. 4. Prosecution depends on the filing of a complaint.

SECTION V COMMON PROVISIONS

Article 182. Aggravation

1. The penalties prescribed from Section II to Section IV of this chapter shall have their minimum and maximum limits increased by one third if:

- a) The victim is less than 12 years of age at the time the act was committed;
- b) The perpetrator has transmitted to the victim any venereal disease, syphilis or AIDS;
- c) Due to the act, the victim attempts or commits suicide or the same results in death.
- d) The victim is a descendent, collateral, relative or similar to the second degree, a person adopted by or who has adopted the perpetrator or a person cohabiting with the perpetrator under similar conditions or there is a hierarchical, economical or work-related dependence;

2. Whenever more than one of the circumstances described in the preceding subarticle are present, only one may be evoked as a modifying circumstance and those remaining shall be weighed in determining a specific penalty.

CHAPTER V VIOLATION OF PRIVACY

Article 183. Public disclosure of private information

1. Any person who, by any means, even if lawful, becomes privy to facts regarding the private or sexual life of another person and, without consent of the latter, publicly circulates the same without just cause, is punishable with up to 1 year imprisonment or a fine.

2. Prosecution depends on the filing of a complaint.

Article 184. Breach of secrecy

1. Any person who, without consent, discloses a secret of a third party which he or she became privy to by reason of status, occupation, employment, profession or art, is punishable with up to 1 year imprisonment or a fine.

2. If the secret is relating to any commercial, industrial, professional or artistic activity, which the perpetrator became privy to under the circumstances described above, and causes loss to another person or to the State, the penalty is 2 years imprisonment or a fine.

3. Prosecution depends on the filing of a complaint.

Article 185. Unlawful entry

1. Any person who, without consent, enters the dwelling of another person, or having been authorized to do so, remains therein once requested to leave, is punishable with up to 2 years imprisonment or a fine.

2. If the perpetrator, in order to more easily commit the crime, takes advantage of night, the fact that the dwelling is located in a secluded area, or that the act is being

committed by 3 or more persons, or uses a weapon, resorts to violence or threat of violence or uses scaling, breaking into or employs a lockpicking device, the same is punishable with up to 3 years imprisonment or a fine.

3. If there are people inside the dwelling when the perpetrator commits the crime, the limit to the penalty provided for in previous subarticle shall apply, increased by one third.

4. The attempt is punishable.

5. Prosecution depends on the filing of a complaint.

Article 186. Trespassing on sites restricted from public access

1. Any person who practices any of the acts described in subarticles 1 and 2 of the previous article in connection with any other place closed to or restricted from public access or not freely open to public access, is punishable with, respectively, the penalties referred to in those subarticles, with their maximum limits reduced by one half.

2. Prosecution depends on the filing of a complaint.

Article 187. Tampering with correspondence or telecommunications

1. Any person who, without consent or apart from any procedurally admissible case, opens a parcel, letter or any other written document addressed to another person, or becomes privy to its contents, or prevents it from being received by its addressee, is punishable with up to 2 years imprisonment or a fine.

2. Any person who, under the same circumstances, tampers with or becomes privy to contents of a communication made by telephone, telegraph or by any other means of telecommunication, incurs the same penalty.

3. Any person who discloses the contents of a letter, parcel, closed written document, telephone call or any of the other communications referred to in the previous subarticles, is punishable with up to one year imprisonment or a fine, even if said person became privy to its contents in a lawful manner.

4. If any of the acts referred to in the previous subarticles is committed by an employee of a post office or telegraph, telephone or telecommunication service, the limits of the penalties shall be increased by one third.

5. Prosecution depends on the filing of a complaint.

**TITLE III
CRIMES AGAINST DEMOCRATIC PRACTICE
CHAPTER I
CRIMES AGAINST PUBLIC PEACE**

Article 188. Criminal association

1. Any person who promotes or establishes a group, organization or association the purpose or activity of which is the commission of crimes, is punishable with 2 to 8 years imprisonment.

2. Any group, organization or association shall be considered criminal if it consists of two or more persons who, for a period of time and in a concerted manner, seek to commit or incite the commission of crimes with intent to disturb public order or directly or indirectly obtain benefit or advantage.

3. Any person who joins, supports or participates in any of the activities conducted by said criminal group, organization or association is punishable with 2 to 6 years imprisonment.

4. The head or leader of any group, organization or association referred to in the previous subarticles is punishable with 4 to 12 years imprisonment.

5. The penalties referred to in the preceding subarticles may be extraordinarily mitigated if the perpetrator hinders or makes serious efforts to hinder continuation of the group, organization or association, or communicates to authorities regarding existence of such a group so as to prevent the commission of crime.

Article 189. Instigation to commit a crime

1. Any person who publicly and by any means, incites the commission of a crime is punishable with up to 3 years imprisonment or a fine.

2. Any person who, in private or publicly, commends or rewards a person who has committed any crime in order to, through such conduct, incite the commission of identical crimes, is punishable with up to 2 years imprisonment or a fine.

3. Whenever, in the case of the previous subarticles, the crime instigated by the perpetrator is actually committed, the applicable penalty, unless said crime carries a heavier penalty by force of another legal provision, is 2 to 5 years imprisonment.

Article 190. Participation in a riot

1. Any person who participates in a public riot, during which violence is collectively committed against persons or property, is punishable with up to 1 year imprisonment or a fine, if no heavier penalty for participation in the crime committed is applicable.

2. If the riot was prompted or directed by the perpetrator, the same is punishable with a penalty of up to 3 years imprisonment.

3. In the event of an armed riot, the limits to the penalties referred to in the previous subarticles are doubled.

Article 191. Hindering the exercise of political rights

Any person who hinders, by means of violence or threat, the exercise of a person's political rights is punishable with up to 1 year imprisonment or a fine.

Article 192. Traffic of influence

1. Any person who, directly or through a third person, and with his or her consent or endorsement, asks for or accepts, for him or herself or a third party, any material or other gain or promise thereof, to abuse his or her influence, whether actual or supposed, in relation to any public entity, is punishable:

a) With 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision, if the purpose is to obtain any unlawful favorable decision;

b) With up to 1 year imprisonment or a fine, if no heavier penalty is applicable by force of another legal provision, if the purpose is to obtain any favorable lawful decision.

2. Any person who, directly or through a third person, and with his or her consent or endorsement, gives or promises material or other gain to the persons referred to in the preceding subarticle for the purposes described in subparagraph a) of the preceding subarticle, is punishable with up to 4 years imprisonment or a fine.

Article 193. Disobedience to an order of dispersal

1. Any person who fails to obey a lawful order to withdraw from a public gathering or meeting issued by a competent authority, with the warning that failure to obey constitutes a crime, is punishable with up to 2 years imprisonment or a fine.
2. If the disobedient person is the promoter of the meeting or gathering, the same is punishable with up to 3 years imprisonment or a fine.

Article 194. Abuse of public signals or uniform

1. Any person who abusively utilizes a warning or distress signal or call, or pretends that outside assistance is needed due to a disaster, danger or situation of collective necessity, is punishable with up to 1 year imprisonment or a fine.
2. Any person who unduly or abusively uses a uniform, attire or insignia which identifies a public or international activity, authority or institution, as a means to more easily commit any unlawful act, incurs the same penalty.

Article 195. Usurpation of office

1. Any person who, without authorization, holds any office or performs any acts expected to be exercised or performed solely by a public official, military commander or law enforcement officer, assuming said office to him or herself either expressly or tacitly, is punishable with up to 3 years imprisonment.
2. The same penalty shall apply to any person who exercises a profession for which law requires title or fulfilment of certain requirements, assuming to him or herself, either expressly or tacitly, the holding of such a title or fulfilment of said requirements when, in fact, they do not.
3. The same penalty shall be applied to any person who continues to exercise public duties after having been officially notified of dismissal or suspension from office.

**CHAPTER II
CRIMES AGAINST STATE SECURITY**

Article 196. High Treason

Any person who, by means of violence, threat of violence, usurpation or abuse of office of sovereignty, hinders or attempts to hinder the exercise of national sovereignty on the whole or part of the territory of Timor-Leste or poses danger to the integrity of national territory as a form of subjecting or delivering it to foreign sovereignty, is punishable with 15 to 30 years imprisonment.

Article 197. Providing services to or collaborating with hostile armed forces

1. Any Timorese citizen who collaborates with a foreign country or group or representatives thereof, or who serves under the flag of a foreign country during a war or armed action against Timor-Leste, is punishable with 12 to 25 years imprisonment.
2. Preparatory acts relating to any of the cases described above carry a penalty of 5 to 15 years imprisonment.
3. Any person who, being a Timorese national or resident of Timor-Leste, commits any acts required to aid or facilitate any armed action or war against Timor-Leste by a foreign country or group, is punishable with 10 to 20 years imprisonment.

Article 198. Sabotage against national defense

Any person who, with intent to harm or endanger national defense, totally or partially destroys, damages, or renders unserviceable:

- a) Works or materials pertaining or assigned to the armed forces;
- b) Roads or means of communication or transport;
- c) Any other facilities related to communications or transportation; or
- d) Factories or depots,

is punishable with 5 to 15 years imprisonment.

Article 199. Campaign against peace efforts

Any person who, being a Timorese national or resident of Timor-Leste, at a time of preparation for war or being at war, by any means disseminates or makes public, rumors or statements, of his or her own or of another party, in the knowledge that these are wholly or partially false, seeking to disrupt peace efforts being made by Timor-Leste or to assist a hostile foreign power, is punishable with 5 to 15 years imprisonment.

Article 200. Breach of State secrets

1. Any person who, jeopardizing interests of the Timorese State concerning its foreign security or conduct of its foreign policy, conveys or renders accessible to an unauthorized person or makes public any fact, document, plan, object, knowledge or any other information that should, due to said interest, have been maintained in secret, is punishable with 3 to 10 years imprisonment.

2. Any person who collaborates with a foreign government or group with intent to commit any of the acts referred to in the previous subarticle or to enlist or aid another person charged with committing the same, is punishable with the same penalty provided for in the previous subarticle.

3. If the perpetrator of any of the acts described in the previous subarticles holds any political, public or military office who should have, due to the nature thereof, refrained said person from committing such an act more than any ordinary citizen, the same is punishable with 5 to 15 years imprisonment.

Article 201. Diplomatic disloyalty

Any person who, officially representing the Timorese State, with intent to harm national rights or interests:

- a) Conducts State affairs with a foreign government or international organization; or
- b) Makes commitments on behalf of Timor-Leste without being duly authorized to do so;

is punishable with 5 to 15 years imprisonment.

Article 202. Violation of the Rule of Law

1. Any person who, by means of violence, threat of violence or incitement to civil war, attempts to overthrow, change or subvert constitutionally established rule of law, is punishable with 5 to 15 years imprisonment.

2. If the act described above is committed by means of armed violence, the penalty is 5 to 20 years imprisonment.

3. Public incitement or distribution of weapons to be used for committing any of the acts described above carries, respectively, the penalty that corresponds to an attempt.

Article 203. Attempt against the highest representative of an organ of national sovereignty

1. Any person who attempts against the life, physical integrity or liberty of the highest representative of an organ of national sovereignty or any person substituting the same pursuant to the Constitution or any person elected or appointed to said organ, even if not yet sworn in, is punishable with 8 to 20 years imprisonment.

2. In the case of a consummated crime against life, physical integrity or liberty, the perpetrator is punishable with 12 to 25 years imprisonment.

3. The penalties provided in the previous subarticles are correspondingly applicable, whenever the acts described therein are committed against foreign persons in the situation referred to subarticle 1 above, ambassadors and heads of international organizations while in Timor-Leste.

Article 204. Coercion against constitutional bodies

1. Any person who, by means of violence or threat of violence, hinders or restricts the free performance of duties of an organ of national sovereignty is punishable with 3 to 10 years imprisonment.

2. If the acts described in the preceding subarticle are conducted against a district or local government authority, the penalty is 2 to 6 years imprisonment.

3. If said acts referred in subarticle 1 above are committed against members of those agencies, limits to the penalty provided for in subarticles 1 and 2 shall be reduced by one half.

Article 205. Disrupting operation of a constitutional body

Any person who, by means of riot, disorderly conduct or jeering, unlawfully disrupts the operation of any organ referred to in the previous article or performance of duties of any person member of the same, is punishable with up to 1 year imprisonment or a fine.

Article 206. Disrespect for national symbols

Any person who publicly, by word, gesture or dissemination of writing, or by another means of public communication, disrespects the national flag or anthem, coat of arms or emblems of Timorese national sovereignty or fails to show due respect to the same, is punishable with up to 3 years imprisonment or fine.

**CHAPTER III
CRIMES AGAINST LIFE IN SOCIETY
SECTION I
CRIMES POSING COLLECTIVE DANGER**

Article 207. Driving without a license

Any person who uses a motor vehicle without having a license as required by law, is punishable with up to 2 years imprisonment or a fine.

Article 208. Driving under the influence of alcohol or psychotropic substances

1. Any person who, at least by negligence, drives a motor vehicle with more than 1.2 mg of alcohol per liter of blood is punishable with up to 2 years imprisonment or a fine.

2. The same penalty shall apply to any person who, at least by negligence, drives a motor vehicle unable to do so safely due to being under the influence of any narcotic, psychotropic substance or product with analogous effect likely to disturb the person's physical, mental or psychological fitness.

Article 209. Hazardous driving

1. Any person who drives any vehicle on a public road and, being unable to do so safely or doing so in gross violation of road traffic rules, thereby posing danger to the life or physical integrity of another party is punishable with 1 to 4 years imprisonment.

2. Negligence regarding said conduct or danger carries a penalty of up to 2 years imprisonment or a fine.

Article 210. Attempt against public transportation safety

1. Any person who commits any act likely to diminish or cause lack of safety in a means of public transportation, thereby posing a danger to the life or physical integrity of another party, is punishable with 2 to 8 years imprisonment.

2. Subarticle 2 of the previous article is correspondingly applicable.

Article 211. Prohibited weapons

1. Any person who, except under legal circumstances, manufactures, imports, transports, sells or assigns to another party any firearm, chemical, biological weapon or nuclear weapon, munitions of said weapons, substances to manufacture or operate the same or any other type of explosive, is punishable with 2 to 6 years imprisonment.

2. Whenever the acts described in the previous subarticle are for the purpose of warfare, the penalty is 2 to 8 years imprisonment.

3. Mere possession, use or bearing of firearms without lawful authorization is punishable with up to 2 years imprisonment or a fine

Article 212. Drunkenness and intoxication

1. Any person who, at least by negligence, places him or herself in a state of incapacity due to ingestion or consumption of alcoholic beverage or toxic substance and, in such a state, commits any act defined as unlawful, is punishable with up to 5 years imprisonment or a fine.

2. The penalty cannot be higher than the one provided for the unlawful act committed. 3. Prosecution depends on the filing of a complaint.

Article 213. Qualification for the practice of certain activities

1. Any person who, not being legally authorized to do so, habitually sells, administers, prescribes or by any other means provides to any other person, pharmaceutical or other products that may only be sold or prescribed by health professionals or other duly licensed authorities, is punishable with up to 3 years imprisonment or a fine.

2. If the life of another person is endangered from any of the above acts, the penalty is 1 to 4 years imprisonment.

Article 214. Tampered or deteriorated products

1. Any person who sells, administers or provides, by any means, any person with food or pharmaceutical products that, due to being either deteriorated, tampered with, or contaminated, are likely to endanger life, is punishable with 2 to 8 years imprisonment.
2. Whenever death is caused by commission of the acts described above due to consumption of said products, the penalty is 3 to 12 years imprisonment.

**SECTION II
CRIMES AGAINST THE ENVIRONMENT**

Article 215. Crimes against the environment

1. Any person who, failing to comply with legal or regulatory provisions intended to protect the environment, directly or indirectly causes or is responsible for emissions, dumping, radiation, mining or excavations, grounding, noise, vibrations, injections or deposits in the atmosphere, soil, subsoil or river, sea or underground waters, including in transnational zones, or at water intake points, in such a manner that may seriously harm the equilibrium of natural ecosystems, is punishable with up to 3 years imprisonment or a fine.
2. If the perpetrator intentionally releases, emits or introduces ionizing radiation or other substances in the air, on land or in river, ocean, surface or underground waters in quantities that ultimately cause death or serious bodily harm to any person to an extent that requires medical or surgical treatment or produces irreversible consequences, is punishable with 2 to 8 years imprisonment and if death occurs, the sentence shall be from 5 to 15 years in prison.

Article 216. Aggravation

1. If any of the acts or activities described in the preceding article are committed by an industrial or commercial establishment and any of the following circumstances occur:
 - a) The industry or commercial activity operates clandestinely without the required license or administrative authorization;
 - b) When the perpetrator has failed to comply with expressed orders from competent administrative authorities to correct or suspend the activities referred to in the preceding article;
 - c) When security rules or procedures described in legal or regulatory provisions have not been heeded;
 - d) When, by any means, the inspection process by the competent administrative authority has been intentionally hindered or information on environmental consequences of industrial or commercial activity has been omitted or falsified;
 - e) When a situation of irreversible or catastrophic environmental deterioration has been caused the minimum and maximum limits of the penalties in the preceding subarticle are increased by one third.
2. Pursuant to the preceding subarticle, the individual owner, legal representatives, or those acting in representation of the corporate body responsible for the industrial

or commercial establishments, including shareholders or members who authorize them to act, in the event the same is not lawfully incorporated, are criminally liable.

Article 217. Crimes against fauna or flora

1. Any person who causes serious harm to the environment through slashing, burning, uprooting, collecting or illegally trafficking any species of flora or seeds thereof, classified as endangered or at risk of extinction, destroying or seriously altering their natural habitat, is punishable with up to 3 years imprisonment or a fine.

2. The same penalty shall apply to any person who introduces or facilitates the entry of exotic species of flora or fauna so as to harm the biological equilibrium, violating laws or general legal provisions intended to protect fauna or flora species.

Article 218. Crimes against endangered species or species at risk of extinction

1. Any person who hunts or fishes endangered species or species at risk of extinction or performs any activity that hinders their development or renders reproduction difficult, violating laws or general legal provisions to protect wild fauna species, or trades or traffics such species, in whole or in part, is punishable with up to 3 years imprisonment or a fine.

2. If the acts referred to in the preceding subarticle are committed:

- a) In land or maritime areas declared to be natural protected areas;
- b) Against species or subspecies classified as being endangered of extinction, the perpetrator is punishable with up to 5 years imprisonment or fine.

Article 219. Illegal fishing

1. Any person who fishes in national maritime waters without a duly authorized fishing permit obtained from the competent administrative organ is punishable with up to 3 years imprisonment or a fine.

2. If the perpetrator is a corporation, under the terms of the preceding subarticle, the legal representatives or those who act in representation of said corporation, including shareholders or members who authorize them to act, if unlawfully established, shall be held criminally liable.

3. Fishing practiced for household subsistence is not punishable under the terms of subarticle one.

Article 220. Unlawful means of fishing

Any person who uses firearms, explosives, toxic substances or other similar instruments or devices of a destructive nature to maritime fauna for fishing in national river or ocean waters is punishable with up to 5 years imprisonment or a fine.

Article 221. Prohibited burning

1. Any person who sets fire during prohibited burning season or without an administrative permit when required, resulting in destruction of forest cover, plantation or cropland, is punishable with up to 2 years imprisonment or a fine.

2. If the fire is legally set but, by negligence, the perpetrator causes damage referred to in the previous subarticle, the penalty is up to 1 year imprisonment or a fine.

SECTION III OTHER CRIMES

Article 222. Hindering or disturbing a funeral procession, ceremony or worship

1. Any person who hinders or disturbs a funeral procession or ceremony or a religious worship service by means of violence or threat of violence or any other means of coercion, is punishable with up to 2 years imprisonment or a fine.
2. Prosecution depends on the filing of a complaint.

Article 223. Profane an object or place of worship

1. Any person who, in order to cause alarm or social unrest, profanes an object of worship or religious veneration, is punishable with up to 2 years imprisonment or a fine.
2. Any person who offends or insults another person on grounds of religious belief or office in order to cause alarm or social unrest incurs the same penalty.
3. Prosecution depends on the filing of a complaint.

Article 224. Destruction, theft, hiding or profaning of a corpse

1. Any person who, against or without the will of the party concerned and except for cases authorized by law, steals, destroys or hides cadavers or parts thereof, or ashes of a deceased person, is punishable with up to 2 years imprisonment or a fine.
2. The same penalty shall apply to any person who profanes cadavers, parts thereof, or ashes of deceased persons by committing acts that are offensive to the respect due the deceased.
3. The attempt is punishable.
4. Prosecution depends on the filing of a complaint.

Article 225. Failure to fulfill an obligation to provide food assistance

1. Any person who has an obligation to provide food assistance, and being in a position to do so fails to fulfill such an obligation, in such a manner that jeopardizes the basic food security of the beneficiary, is punishable with up to 3 years imprisonment or a fine, even if assistance provided by another party removes said danger.
2. Prosecution depends on the filing of a complaint.

Article 226. Abduction of a minor

1. Any person who abducts or refuses to deliver a minor to the person entrusted with custody of the same, or who orders the minor to run away, is punishable with up to 3 years imprisonment or a fine.
2. Whenever any of the acts above is committed with violence or threat of violence, the penalty is 1 to 4 years imprisonment.
3. Prosecution depends on the filing of a complaint.

Article 227. Failure to provide assistance

1. Any person who, in the event of serious need, namely caused by disaster, accident, public calamity or situation of collective danger threatening the life, physical integrity or freedom of another person, fails to provide the same with

necessary assistance to remove said danger, be it by personal action, or calling for rescue, is punishable with up to 1 year imprisonment or a fine.

2. If the situation referred to in the preceding subarticle has been prompted by the person who fails to provide necessary assistance, said person is punishable with up to 2 years imprisonment or a fine.

3. Failure to assist is not punishable if a serious risk to the life or physical integrity of the person failing to assist exists or where, for another relevant reason, the assistance to be provided cannot be demanded from said person.

4. Prosecution depends on the filing of a complaint.

Article 228. Refusal to provide medical assistance

Any medical doctor or health professional who refuses to provide assistance in his or her professional capacity in a case involving risk of life or serious danger to the physical integrity of another person that cannot be otherwise addressed, is punishable with up to 3 years imprisonment or a fine,

**CHAPTER IV
ELECTORAL CRIMES**

Article 229. Registration fraud

1. Any person who hinders another person from registering, knowing that said person has the right to do so, records facts knowing the same to be untrue, omits facts that should be recorded, or otherwise falsifies electoral registration, is punishable with up to 3 years imprisonment or a fine.

2. If a person is hindered from registering or persuaded to register by means of violence or cunningly devised deceit, the applicable penalty is 2 to 6 years imprisonment.

3. The attempt is punishable.

Article 230. Obstructing a candidacy

Any person, who, by any means, hinders another person, political party or force from running in an election, knowing that the same has the right to do so, is punishable with 2 to 8 years imprisonment.

Article 231. Ineligible candidate

1. Any person who, knowing that he or she is ineligible to run for election, presents his or her candidacy, is punishable with up to 1 year imprisonment or a fine.

2. The attempt is punishable.

Article 232. Lack of electoral rolls

Any person who, in order to hinder the holding of an election, being responsible for preparing or correcting an electoral roll, fails to do so or hinders their legal substitute from doing so, is punishable with up to 3 years imprisonment or a fine.

Article 233. Unlawful electoral canvassing

1. Any person who uses a means of canvassing prohibited by law, or continues canvassing beyond the set deadline or at a prohibited place is punishable with up to 1 year imprisonment or a fine.

2. Any person who hinders the exercise of the right to electoral canvassing or unlawfully destroys canvassing material, is punishable with up to 2 years imprisonment or a fine.

Article 234. Obstructing freedom of choice

1. Any person who, by means of violence, threat of violence or through fraudulent deceit, compels another person to not vote or to vote in a certain manner or to buy or sell votes, is punishable with up to 3 years imprisonment or a fine.

2. Any person who, having been asked to aid a sight-impaired person to vote, or having the legal right to do the same, disregards the choice of the vote communicated by said person, incurs the same penalty.

3. The attempt is punishable.

Article 235. Disrupting an election

1. Any person who, by any means, disrupts the operation of a voting center, is punishable with up to 1 year imprisonment or a fine.

2. The perpetrator is punishable with 2 to 6 years imprisonment if the disturbance results from:

a) Violence or threat of violence;

b) Riot or gathering of a mob near a voting center;

c) Intentional cut of electrical power;

d) Absence of someone indispensable to the election and that seriously affects the initiation or continuation of the same.

3. The previous subarticles are correspondingly applicable if the acts are committed at the time of tallying the results after voting has been concluded.

Article 236. Obstructing the monitoring of an election

1. Any person who, by any means, hinders the representative of any political party or force, legally established and running in the election, from exercising monitoring duties, is punishable with up to 3 years imprisonment or a fine.

2. The attempt is punishable.

Article 237. Voter fraud

1. Any person who votes without the right to do so or votes more than once in the same election is punishable with up to 3 years imprisonment or a fine.

2. Any person who intentionally allows the acts referred to in the previous subarticle to be committed incurs the same penalty.

3. The attempt is punishable.

Article 238. Vote-counting fraud

1. Any person, who, by any means, alters the counting of votes while electoral results are being tallied or published, is punishable with 2 to 6 years imprisonment.

2. Any person who, with fraudulent intent, replaces, destroys, suppresses, removes, tampers with, biases or forges ballot papers or vote tallying records, or documents relating to the election, incurs the same penalty.

Article 239. Refusing an electoral post

Any person who is appointed to serve as an electoral official and unjustifiably refuses to assume or ceases to perform said duties, is punishable with up to one year imprisonment or a fine.

Article 240. Breach of voting secrecy

Any person who, in an election held by secret ballot, breaches said secrecy, either by becoming privy to or making others privy to the voting intention of another person, is punishable with up to 1 year imprisonment or a fine.

Article 241. Duty of neutrality and impartiality

Officials of the electoral administration or those collaborating with the same who breach the duties of neutrality and impartiality are punishable with up to 2 years imprisonment or a fine.

Article 242. Aggravation

Any person who commits any of the crimes described in this chapter and holds public office, namely in the Government, Parliament, the Armed Forces, as a judicial magistrate or Public Prosecutor, in any law enforcement or other administrative organ, shall have the limits to the penalties provided herein doubled.

**CHAPTER V
CRIMES AGAINST PUBLIC AUTHORITY**

Article 243. Obstructing public authority

1. Any person who, by means of violence or serious threat of violence against an officer or agent of military, militarized or police forces, acts to oppose performance of his or her duties or compels the same to commit any act contrary to said duties is punishable with 2 to 6 years imprisonment.
2. If the act referred to in the previous subarticle is effectively committed or prevented, the penalty is 2 to 8 years imprisonment.

Article 244. Disobedience

1. Any person who fails to obey or persists in disobeying a lawful order or warrant properly communicated and issued by a competent authority, is punishable with up to 3 years imprisonment or a fine if:
 - a) Any legal provision so determines; or
 - b) If said person has been warned that his or her conduct is criminally liable and the authority or government official has duly communicated the same.
2. Whenever any legal provision defines the act as a specifically defined disobedience, the penalty is from 1 to 4 years imprisonment.
3. Disobedience to a specific prohibition or interdiction ordered in a criminal sentence, as well as to any accessory penalty or commitment-related order not involving deprivation of liberty, is punishable by the penalty referred to in subarticle 1 above.

Article 245. Release of prisoners

1. Any person who, by unlawful means, releases or, by any means, aids in the escape of a person lawfully deprived of liberty, is punishable with 2 to 6 years imprisonment.
2. If the acts are committed using violence, employing weapons or with collaboration of more than two persons, the penalty is 2 to 8 years imprisonment.

Article 246. Escape

1. Any person who escapes being lawfully deprived of liberty is punishable with 1 to 4 years imprisonment.
2. If the escape is made possible by using any of the means described in subarticle 2 above, the penalty is 2 to 6 years imprisonment.

Article 247. Aid by an officer in escape

1. Any correctional officer who helps commit any of the acts described in the previous articles is punishable with the penalty prescribed therein, with the limits increased by one third.
2. If the correctional officer was responsible for guarding or surveillance of the escaped detainee and, nonetheless, aided in commission of any of abovementioned acts, the limit of the penalty described shall be increased by one half.
3. If the escape results from gross negligence on the part of the correctional officer charged with watching over the escapee, the penalty is up to 3 years imprisonment or a fine.

Article 248. Prison riot

1. Any person who, in a situation of lawful incarceration, concertedly and jointly with another person in the same situation, attacks or threatens with violence the person charged with guarding or watching over them, in order for them or a third person to escape, or to commit, or refrain from committing any act, is punishable with 2 to 8 years imprisonment.
2. If commission of the acts described above achieves the intent of escape of the person or any other, the penalty is 3 to 10 years imprisonment.

Article 249. Purloining or destruction state-owned assets

Any person who wholly or in part destroys, causes damage to or renders unserviceable, or by any means misappropriates any document or other moveable property owned or held by the State or subject to the same, including any seized or attached property or object of a provisional remedy, is punishable with 2 to 6 years imprisonment, whenever no heavier penalty is applicable by force of another provision.

Article 250. Tampering of marks, seals and notices

1. Any person who wholly or partially breaches or defaces any mark or seal lawfully posted by a competent official, to identify or maintain inviolable any object, or to certify that the same has been either attached, seized or under provisional remedy, is punishable with up to 3 years imprisonment or a fine.
2. Any person who, by any means, intentionally hinders an addressee from becoming informed of a notice posted by a competent official is punishable with up to 2 years imprisonment or a fine.

**TITLE IV
CRIMES AGAINST ASSETS
CHAPTER I
CRIMES AGAINST PROPERTY**

Article 251. Larceny

1. Any person who, with unlawful intent to appropriate for him or herself or another party, takes a moveable object belonging to another, is punishable with up to 3 years imprisonment or a fine.
2. The attempt is punishable.
3. Prosecution depends on the filing of a complaint.

Article 252. Aggravated larceny

1. Any person who commits the acts referred to in the preceding article is punishable with 2 to 8 years imprisonment if:
 - a) The moveable property belonging to the other party is of high scientific, artistic or historical value or is of importance to economic or technological development;
 - b) The moveable property belonging to the other party is a vehicle, is carried in a public transportation vehicle or by a passenger in a public transportation vehicle, or is at a pier or departure or arrival terminal;
 - c) The moveable property belonging to the other party is used for religious worship or veneration of the memory of the deceased and is found at a place of worship or a cemetery;
 - d) The perpetrator commits the act at night to more easily commit the act of larceny;
 - e) The victim suffers considerable loss as a result of said appropriation;
 - f) The perpetrator enters a home, public facilities, commercial or industrial establishment with the intent to commit larceny;
 - g) The perpetrator employs lockpicking, scaling or breaking in to achieve said purpose;
 - h) The perpetrator takes advantage of a situation of special vulnerability of a victim of a disaster, accident or calamity;
 - i) The perpetrator takes advantage of the existence of a special relationship of trust with the victim or with the owner of the site where the property to be stolen is located;
 - j) The perpetrator commits larceny as a livelihood;
 - k) The crime is committed by 3 or more persons, including the perpetrator;
 - l) The value of the property stolen exceeds US\$ 1,000.00, but is less than US\$5,000.00.
2. If the value of the property taken exceeds US\$ 5,000.00, the penalty shall be 3 to 10 years imprisonment.
3. Whenever more than one of the circumstances described in the previous subarticles occur, only one shall be considered for effectively determining the applicable scope of the specific crime defined in law, and it shall be the one having the greatest effect, while the others shall be weighed as general circumstances in determining the penalty.

4. If the value of the stolen object is less than US\$ 50.00, the circumstances referred to in subarticle 1 above shall only be considered as aggravating circumstances of a general nature.

Article 253. Robbery

1. Any person who, with unlawful intent to appropriate for him or herself or any other person, takes someone else's moveable property or compels said person to deliver the same, by means of violence against said person or threat of imminent danger to said person's life or physical integrity, or makes it so that said person is unable to resist, shall be punishable with a penalty of 3 to 10 years imprisonment.

2. If any of the circumstances described in subarticle 1 of the previous article are present, during conduct of said perpetrator, the penalty shall be from 4 to 12 years imprisonment.

3. If the conduct of the perpetrator endangers the life of the victim or causes serious harm to the victim's physical integrity, the perpetrator is punishable with 5 to 15 years imprisonment.

4. If the act results in death of the victim, the perpetrator is punishable with 5 to 20 years imprisonment.

Article 254. Violence during commission of larceny

Any person who, if caught in the act of larceny, reacts by any of the means described in the preceding article for the purpose of retaining the appropriated object or hindering restitution thereof, is punishable with the penalties respectively corresponding to the crime of robbery.

Article 255. Vehicle theft

1. Any person who uses a car or other motor vehicle, aircraft, vessel or bicycle without authorization of the owner thereof, is punishable with up to 2 years imprisonment or a fine.

2. The attempt is punishable.

3. Prosecution depends on the filing of a complaint.

Article 256. Appropriation through abuse of trust

1. Any person who unlawfully appropriates moveable property placed in his or her custody yet without transfer of title to said property, is punishable with up to 3 years imprisonment or a fine.

2. The attempt is punishable.

3. Prosecution depends on the filing of a complaint.

Article 257. Aggravated appropriation through abuse of trust

1. Whenever the moveable property is valued at more than US\$ 1,000.00, the perpetrator is punishable with 2 to 8 years imprisonment.

2. The minimum and maximum limits to the penalties provided for in the previous subarticle and in article 256 are increased by one third if the perpetrator has received the property under trusteeship by order of law, due to occupation, employment or profession, or in any capacity as custodian, curator or trustee.

Article 258. Property damage

1. Any person who wholly or partially destroys, causes damage to, defaces or renders unusable the property of another is punishable with up to 3 years imprisonment or a fine.
2. The attempt is punishable.
3. Prosecution depends on the filing of a complaint.

Article 259. Aggravated property damage

Any person who wholly or partially destroys, damages, defaces or renders unusable the property of another:

- a) Destined for public use or utility;
- b) Possessing high scientific, artistic or historical value or is of great importance to technological or scientific development;
- c) Is a means of communication or transportation of great social importance;
- d) Causes losses over US\$ 1,000.00;
- e) Pertains to another and is used for religious worship or venerating the memory of the deceased and is at a place of worship or in a cemetery, is punishable with 2 to 8 years imprisonment.

Article 260. Property damage with use of violence

If the acts described in articles 258 and 259 are committed with violence against a person or with threat of imminent danger to the life or physical integrity of said person, placing the same in a situation where he or she cannot resist, said conduct is punishable with 4 to 12 years imprisonment.

Article 261. Usurpation of property

1. Any person who, by means of violence or serious threat against another person, invades or occupies property of another person with the intent to exercise right of ownership, possession, use or easement not granted by law, sentence, agreement or administrative act, is punishable with 1 to 4 years imprisonment.
2. If the means employed constitute a crime punishable by a penalty heavier than that prescribed in the previous subarticle, the heavier penalty shall apply.

Article 262. Alteration of property boundary markings

1. Any person who, with the intent to wholly or partially appropriate property of another, for him or herself or another party, removes or changes the position of boundary markers or any other sign destined to set the boundaries of any property is punishable with up to 1 year imprisonment or a fine.
2. Prosecution depends on the filing of a complaint.

Article 263. Arson

1. Any person who, intentionally sets fire to a house, building, establishment, means of transportation, forest, plantation or any other property, imperiling the life or physical integrity of any person or any property valued at over US\$ 5,000.00, is punishable with 2 to 8 years imprisonment.
2. If the acts described in the preceding subarticle relate to public property or in which public services are provided, the penalty is 2 to 10 years imprisonment.

3. The perpetrator is punishable with up to 3 years imprisonment or a fine if the acts are committed with negligence, whenever no heavier penalty is applicable by virtue of another legal provision.
4. If the danger referred to in subarticle 1 is caused by negligence, the penalty is 2 to 6 years imprisonment.
5. In cases provided for in subarticle 4, prosecution depends on the filing of a complaint.

Article 264. Active repentance

Whenever, after commission of any of the crimes described in articles 251, 252, 256 to 261 and 263.4, but before trial hearings are initiated, the perpetrator performs any act aimed at fully or partially restituting the property or repairing the damage caused, the penalty may be extraordinarily mitigated.

Article 265. Definitions

For the purposes of the provisions in this present Code:

- a) "Breaking and entering" means totally or partially breaking, cracking or destroying any device designed to lock or prevent entrance to a house or an enclosed place annexed to the same, whether said device be inside or outside the premises.
- b) "Scaling" means entering a house or an enclosed place annexed to the same, through a passage not normally used as an entrance or through any other device designed to lock or prevent entrance or passage.
- c) "Lockpicking" means:
 - i) Any imitation, counterfeit or forged key;
 - ii) The genuine key whenever the same is by chance or design, not in possession of its rightful user; and
 - iii) Any passkey or tool that may be used to open locks or any other security devices.

**CHAPTER II
CRIMES AGAINST ASSETS IN GENERAL**

Article 266. Fraud

1. Any person who, with intent to obtain unlawful gain for him or herself or a third party, by means of error or deceit over acts he or she has cunningly committed, and thus leads another person to act in such a manner that causes property loss to said person or any third party, is punishable with up to 3 years imprisonment or a fine.
2. The attempt is punishable.
3. Provisions in article 264 are correspondingly applicable.
4. Prosecution depends on the filing of a complaint.

Article 267. Aggravated fraud

1. Any person who, as a result of conduct described in the preceding article:
 - a) Causes loss in excess of US\$ 2,000.00;
 - b) Makes his or her living from practicing fraud;
 - c) Places the aggrieved party in a situation of economic difficulty;Shall be punishable by 3 to 10 years imprisonment.

2. Provisions in article 264 are correspondingly applicable.

Article 268. Computer fraud

1. Any person who, with intent to obtain unlawful gain for him or herself or a third party, causes loss to the property of another by interfering with the results of computer data processing or through improperly structuring a computer program, improperly or partially using data, using unauthorized data, or by any other unauthorized tampering with data processing, is punishable with up to 3 years imprisonment or a fine.

2. The attempt is punishable.

3. Prosecution depends on the filing of a complaint.

Article 269. Aggravated online fraud

A perpetrator is punishable with 3 to 10 years imprisonment if any of the circumstances described in article 267.1 above occur as a result of the conduct described in the preceding article.

Article 270. Extortion

1. Any person who, with intent to obtain unlawful gain for him or herself or a third party, compels another, by means of violence or threat of serious harm, to dispose of any property, thus causing loss to said or to any other party, is punishable with 2 to 6 years imprisonment.

2. Whenever any of the circumstances described in article 252 occurs, the conduct of the perpetrator is punishable with the penalty prescribed therein.

3. Prosecution depends on the filing of a complaint.

Article 271. Simple reception of stolen goods

1. Any person who, without ensuring in advance the lawful origin thereof, acquires or receives, in any capacity, any goods that, given the nature or capacity of the person holding or offering them or, given their sale value or conditions under which such goods are being sold or offered, raise suspicion to a reasonably diligent person that they originate from criminal conduct against the property of a third party, is punishable with up to 2 years imprisonment or a fine.

2. Prosecution depends on the filing of a complaint.

Article 272. Aggravated reception of stolen goods

1. Any person who, with intent to obtain any material benefit for him or herself or for a third party, hides goods obtained by another through a crime against property, receives, pledges, acquires by any means, holds, retains, conveys or helps convey said goods, or otherwise secures, for him or herself or a third party, possession of the goods or the amount or proceeds directly arising therefrom, is punishable with 2 to 8 years imprisonment.

2. The perpetrator is punishable with 3 to 10 years imprisonment for the acts described above if:

- a) The same makes his or her living from reception of stolen goods or practices it habitually;
- b) The goods, amounts or proceeds are valued at over US\$ 2,000.00;
- c) At the time of reception of the stolen goods, the person receiving them is aware that the crime was committed with any of the circumstances referred to in article 253.1 having occurred.

Article 273. Aiding a criminal

1. Any person who, after a crime has been committed against property, aids the perpetrator of said crime to make use of any asset thus obtained or any benefit directly arising from the appropriated asset, is punishable with up to 1 year imprisonment or a fine.
2. Prosecution depends on the filing of a complaint.

Article 274. Intentional mismanagement

1. Any person who is in charge of disposing of or managing interests, services or assets of another party, even though partner of the company or corporate entity that owns said assets, interests or services, and does intentionally violate rules of control and management or act in serious breach of the duties inherent to his or her office, causing significant economic equity loss, is punishable with 1 to 4 years imprisonment.
2. If the assets, interests or services referred to in the preceding subarticle are owned by the State, a public utility company, cooperative or people's association, the perpetrator is subject to an applicable penalty of 2 to 6 years imprisonment.
3. The same penalties are applicable to any person who misappropriates, or allows misappropriation of property that were only to be disposed of within the scope and for the specific purposes of managing property of a third party.

Article 275. Negligent mismanagement

1. Any person who, being under the conditions described in subarticle 1 of the previous article, causes serious equity loss for having failed to act diligently as obligated to and capable of, is punishable with up to 1 year imprisonment or a fine.
2. A penalty of up to 2 years imprisonment or a fine is applicable if any of the situations described in subarticle 2 of the preceding article relate to said assets or interests.
3. Prosecution depends on the filing of a complaint.

Article 276. Intentional bankruptcy or insolvency

1. Any person who, by any means, leads a company to bankruptcy or places him or herself in a situation of insolvency with the intent to cause loss to creditors, is punishable with 2 to 8 years imprisonment if said bankruptcy or insolvency is declared.
2. If the acts described in the preceding subarticle relate to public companies or cooperatives, the minimum and maximum limits to the penalty are increased by one third.

Article 277. Negligent bankruptcy or insolvency

1. Any person who causes bankruptcy or insolvency by serious recklessness or imprudence, waste or excessively high expenses, or through gross negligence in performance of his or her duties is punishable with up to 2 years imprisonment or a fine if bankruptcy or insolvency is declared.
2. Prosecution depends on the filing of a complaint.

**TITLE V
CRIMES OF OBSTRUCTION OF JUSTICE**

Article 278. Perjury or providing false information

1. Any person who is called to depose as party to a legal proceeding, and provides false information regarding acts on which he or she is to depose, after having taken an oath and having been warned of the criminal consequences arising from such an act, is punishable with up to 3 years imprisonment or a fine.
2. The same penalty shall apply to suspects or defendants regarding statements on their identity and criminal record.
3. If any person is deprived of liberty as a consequence of the perpetrator committing any of the acts described above, the same is punishable with 2 to 8 years imprisonment.

Article 279. Bearing false witness, providing false expert opinion, interpretation or translation

1. Any person who, acting as a witness, expert, technician, translator or interpreter before a court or competent official that is to receive any statement, report, information or translation as evidence, and provides a false statement, reports, information or translation, is punishable with up to 4 years imprisonment or a fine.
2. The same penalty shall apply to any person who, without just cause, refuses to make a statement, present a report, information or translation.
3. If the perpetrator commits the act referred to in subarticle 1 after having taken an oath and having been warned of the criminal consequences arising from such an act, the penalty is up to 5 years imprisonment.
4. If any person is deprived of liberty as a consequence of the perpetrator committing any of the acts described above, the same is punishable with 2 to 8 years imprisonment.

Article 280. Equivalence to desistance

Repentance or retraction on the part of the perpetrator who has committed any of the acts described in the preceding article before the effects of the falsity have been considered in the ruling or caused loss to another person, is equivalent to desistance.

Article 281. Bribery

1. Any person who persuades or attempts to persuade another person by means of a gift or promise of material or other gain to practice any of the acts referred to in articles 278 or 279 is punishable with up to 4 years imprisonment or a fine, if such an act is committed.
2. Whenever the acts referred to in articles 278 and 279 do not actually occur, the perpetrator is punishable with up to 3 years imprisonment or a fine.

Article 282. Denial of justice

1. Any official who, within the scope of a procedural inquiry or court proceeding regarding a disciplinary matter or contravention, wilfully decides or fails to decide, promotes or fails to promote, investigates or fails to investigate, or to practice any act in performance of his or her duties, that is against justice, is punishable with up to 3 years imprisonment or a fine.

2. If the act described in the preceding subarticle is committed with intent to cause harm or benefit to any person, said official is punishable with up to 5 years imprisonment.

3. If the conduct described in the preceding subarticles results in deprivation of liberty of a person, the penalty is 2 to 8 years imprisonment.

4. If the conduct described above is committed with gross negligence, the minimum and maximum limits penalties are reduced by half.

Article 283. Coercion against a magistrate

1. Any person who, by means of violence, threat to cause serious harm, or by any other means, acts in such a manner as to prevent a judge or public prosecutor from freely performing his or her duties, is punishable with 1 to 4 years imprisonment.

2. If the perpetrator commits the act by taking advantage of holding a political, public, military or law enforcement office, the penalty is 2 to 8 years imprisonment.

3. If, as a consequence of any conduct described in the previous subarticles, the magistrate commits any omission or act in blatant violation of the law resulting in harm to any third party, the penalty is 3 to 10 years imprisonment.

Article 284. Obstruction of a judicial act

1. Any person who, by any means, opposes, renders difficult or hinders execution or enforcement of any final decision issued by a court of law, is punishable with 2 to 5 years imprisonment.

2. If the perpetrator who has committed any act described above holds a political, public or military office, and, due to the nature of the office, he or she should refrain from committing such acts, the same shall be punishable with 2 to 8 years imprisonment.

Article 285. Defamatory false information

1. Any person who, by any means, before authorities or publicly, and aware of the falsity of the accusation, informs or casts suspicion on a certain person regarding commission of a crime, with the intent of having criminal proceedings initiated against said person, is punishable with up to 3 years imprisonment or a fine.

2. Whenever the false accusation refers to an unlawful act of an administrative or disciplinary nature, the penalty shall be extraordinarily mitigated.

3. Whenever any of the acts described above are intentionally promoted by an official charged with initiating said proceeding, the maximum limit of the applicable penalty shall be increased by one third.

Article 286. Failure to report

Any person who, being aware of the commission of a public crime, and having the obligation to report it, fails to do so, is punishable with the penalty that corresponds to said unreported crime with its minimum and maximum limits decreased by two thirds.

Article 287. Malfeasance by a magistrate or official

1. Any judge, public prosecutor or official who, at any stage of a court proceeding, and with intent to benefit or cause harm to any other person, wilfully and unlawfully performs an act within the scope of the official powers invested in the same or fails to do so, being required to perform it, is punishable with 2 to 6 years' imprisonment.

2. If any of the acts described above result in deprivation of liberty of any person or cause a situation of unlawful arrest or detention, the penalty is 3 to 10 years imprisonment.

Article 288. Malfeasance by an attorney or public defender

1. Any attorney or public defender who intentionally compromises a case entrusted to him or her is punishable with 1 to 4 years imprisonment.
2. Any attorney or public defender who, in said case, serves as a defender or counsel to parties in a dispute, with intent to act for the benefit or detriment of any of the same, is punishable with 2 to 6 years imprisonment.

Article 289. Crime simulation

1. Any person who, without accusing a particular person of a crime, either informs competent authorities or raises suspicion that a crime has been committed, while knowing that it has not, is punishable with up to 2 years imprisonment or a fine.
2. If the act refers to an infringement or unlawful act of an administrative or disciplinary nature, the perpetrator is punishable with up to 1 year imprisonment or a fine.
3. If any of the acts described in the previous subarticles is committed by an official charged with initiating the respective proceeding, the minimum and maximum limits of the applicable penalty shall be increased by one third.

Article 290. Assisting a criminal

1. Any person who, wholly or partially hinders, frustrates or misleads investigative or preventative action by competent authorities with knowledge or intent to avert enforcement of a penalty or security measure upon a person who has committed a crime, is punishable with up to 3 years imprisonment or a fine.
2. The attempt is punishable.
3. If said assistance is provided by an official involved or with power of involvement in the case or responsible for executing said penalty or security measure, or to order execution thereof, the same is punishable with 2 to 5 years imprisonment.
4. The commission of the crimes described in subarticle 1 shall not be punishable whenever:
 - a) In committing the act, the perpetrator seeks simultaneously to avoid enforcement of a penalty or security measure on him or herself;
 - b) The perpetrator is a spouse, descendent, parent, has adopted or been adopted by, relative or similar to up to the second degree of the person for whom the act was committed or with whom the perpetrator lives in a situation analogous to that of spouse.

Article 291. Violation of judicial confidentiality

1. Any person who, in violation of a legal order and without just cause, discloses contents of a criminal proceeding protected by confidentiality or where a decision has been issued to forbid disclosure, is punishable with 1 to 4 years imprisonment.
2. If the violation is committed through any media service, the penalty is 2 to 6 years imprisonment.

TITLE VI
CRIMES COMMITTED IN THE PERFORMANCE OF PUBLIC FUNCTIONS

Article 292. Passive corruption for an unlawful act

1. Any official who, directly or through a third party endorsed by the former, requests or accepts, for him or herself or any third party, any undue material or immaterial benefit, or promise thereof, in exchange for an act or omission contrary to the duties attached to the office, even if prior to said request or acceptance, is punishable with 3 to 15 years imprisonment.

2. Whenever the perpetrator, before commission of the act, voluntarily repudiates the offer or promise accepted, or returns the benefit, or, when a fungible item, restitutes its value, the same shall not be punished.

3. The penalty is extraordinarily mitigated whenever the perpetrator assists in collection of decisive evidence for identification or capture of other persons responsible.

Article 293. Passive corruption for a lawful act

1. Any official who, directly or through a third party endorsed by the former, requests or accepts, for him or herself, any undue material or immaterial benefit, or promise thereof, in exchange for an act or omission not contrary to the duties attached to the office, even if prior to said request or acceptance, is punishable with up to 3 years imprisonment or a fine.

2. The same penalty shall apply to any official who, directly or through a third party endorsed by or with consent of the former, requests or accepts, for him or herself or a third party, any undue material or immaterial benefit from a party who has, has had or will have any interest that depends on performance of the his or her official duties.

Article 294. Active corruption

1. Any person who, directly or through a third party with consent or endorsement of the former, gives or promises an official or third party who knows the official, any material gain or other benefit not due to said official, for the purpose described in article 292, is punishable with 3 to 10 years imprisonment.

2. If the purpose of the conduct described in the preceding subarticle is identical to that described in article 293, the perpetrator thereof is punishable with up to 2 years imprisonment or a fine.

Article 295. Embezzlement

1. Any official who unlawfully appropriates, for his/her own use or that of another, money or any moveable property, public or private, which has been placed in his/her custody, possession or is accessible by virtue of his or her office, is punishable with 3 to 10 years imprisonment if no heavier penalty is applicable by virtue of another legal provision.

2. If any official lends, pledges or, by any other means, encumbers said value or property referred to in the preceding subarticle, the same is punishable with up to 3 years imprisonment or a fine if no heavier penalty is applicable by virtue of another legal provision.

3. If the value or property referred to in the previous subarticles exceeds US\$ 5,000.00, the penalties shall respectively be from 4 to 12 years or 2 to 5 years imprisonment.

4. If the value or property referred to in subarticle 1 is less than US\$ 50, the perpetrator is punishable with up to 3 years imprisonment or a fine.

Article 296. Misappropriation of public assets

Any official who uses or allows another to use any vehicle or other moveable asset of significant value in his or her responsibility or possession or to which he or she has access due to the office held, for purposes other than those intended, to obtain for him or herself or any third party, any unlawful benefit or to cause loss to another, is punishable with up to 2 years imprisonment, if said assets were in possession of the official or accessible by reason of his or her office.

Article 297. Abuse of power

Any official who abuses powers or violates duties inherent to his or her office with intent to obtain, for him or herself or any third party, any unlawful benefit or to cause loss to another, is punishable with 1 to 4 years imprisonment if no heavier penalty is applicable by virtue of another legal provision.

Article 298. Abusive use of public force

Any official who, having authority to employ, requisition or order deployment of a public force, does so to hinder enforcement of the law, a valid warrant from the court or lawful order issued by a public authority, is punishable with up to 3 years imprisonment, if no heavier penalty is applicable by virtue of another legal provision.

Article 299. Economic involvement in business

1. Any official who, due to holding public office, should be involved in a contract or other transaction or activity, and takes advantage of said position to obtain, for him or herself or another, directly or through a third party, any material gain or any other unlawful economic share, thereby harming public interests that he or she is charged to manage, oversee, protect or perform, is punishable with 2 to 8 years imprisonment.

2. If the conduct above results in losses to the State exceeding US\$ 10,000, the penalty is 3 to 15 years imprisonment.

Article 300. Refusal to cooperate

An official who, having been lawfully requested by competent authorities to provide due cooperation to enforce justice or provide any other public service, refuses to do so or fails to do so without justification, is punishable with up to 3 years imprisonment or a fine.

Article 301. Aggravation

1. If the crimes referred to in this Title are committed by political officeholders or magistrates, the maximum limit of the applicable penalty shall be increased by one third.

2. Specific legislation shall determine non-criminal and procedural effects regarding situations described in the preceding subarticle.

Article 302. Concept of official

1. For the purposes of the criminal law, an official shall be considered as any of the following:

- a) Civil servant;
- b) Administrative officer;
- c) Member of the armed and law enforcement forces;
- d) Any person who, even provisionally or temporarily, with or without remuneration, voluntarily or compulsorily has been called to perform or to participate in performance of an activity within civil administrative or court service or, under similar circumstances, performs duties or participates in any agency of public utility.
- e) A foreign public servant who holds a legislative, executive, administrative or judicial position in a foreign country, having been assigned or taken office or any person holding a public office for a foreign country, including in a public agency or state-run company.
- f) Employee of a public international organization to whom said organization has authorized to act on its behalf

2. For effects of criminal law, the provisions in this Title apply to anyone performing political, government or legislative duties.

**TITLE VII
CRIMES OF FORGERY
CHAPTER I
FORGERY OF DOCUMENTS**

Article 303. Forgery of documents or technical report

1. Any person who, with intent to cause loss to another person or the State, or to seek unlawful benefit for him or herself or another person:

- a) Forges a document or technical report, falsifies or alters a document or another person's signature to produce a false document;
- b) Falsely includes any legally relevant fact in a document or technical report;
- c) Falsely bears witness, based on his or her professional, technical or scientific knowledge, to the mental or physical condition or fitness of another person, animal or object;
- d) Uses any document or technical report or recording referred to in the previous paragraphs that have been produced, forged, counterfeited or issued by another, is punishable by up to 3 years imprisonment or a fine.

2. Any action that disrupts any automatic reporting or recording device, thereby influencing the results of the same, shall be considered equal to forgery of said recording or report.

3. The attempt is punishable.

Article 304. Aggravated forgery

1. If the acts described in subarticle 1 of the preceding article pertain to an authenticated document or one with equal force, a closed will, postal money order,

bill of exchange, check, other commercial document tradable through endorsement or technical report regarding complete or partial identification of a motor vehicle, aircraft or vessel, the perpetrator is punishable by imprisonment from 2 to 6 years.

2. If the acts described in the previous subarticle or subarticle 1 of article 309 are committed by an official while in the performance of his or her duties, the penalty is from 2 to 8 years imprisonment.

Article 305. Forgery of a public document

Any official who, in the exercise of his or her duties, with intent to cause loss to another person or the State or to obtain unlawful benefit for him or herself or another party:

- a) Omits any fact that a document considered legally valid is meant to certify or authenticate; or
- b) Inserts any act or document in an official record, register or book without complying with legal procedures, shall be punishable by 2 to 6 years imprisonment.

Article 306. Use of another person's identification document

Any person who, with intent to cause loss to another person or the State, uses an identification document belonging to another, shall be punishable by imprisonment not exceeding 1 year or a fine.

**CHAPTER II
FALSIFICATION OF CURRENCY**

Article 307. Counterfeiting of currency

1. Any person who counterfeits currency or alters metallic currency of legal tender, with intent to place it into circulation as true currency shall be punishable by imprisonment from 3 to 10 years.

2. Whenever the perpetrator, in addition to committing any of the acts described in the preceding subarticle, actually places such counterfeit currency into circulation, the maximum limit of the penalty shall be increased by one third.

3. Any person who, by agreement with the counterfeiter, offers for sale, places into circulation or otherwise disseminates said counterfeit currency, shall be punishable by between 3 and 10 years imprisonment.

Article 308. Circulation of counterfeit currency

Any person who, outside of the cases provided for in the preceding article, acquires counterfeit or altered currency with intent to place the same in circulation, or actually does so, sells or otherwise disseminates it as if it were true currency, shall be punishable by between 2 and 6 years imprisonment.

Article 309. Counterfeiting of stamps and franks

1. Any person who, with intent to sell or use stamps or franks or by any other means places the same into circulation as legitimate stamps or franks, counterfeits or falsifies stamps or franks, the production and supply of which are exclusive to the Timorese State, shall be punishable by 2 to 8 years imprisonment.

2. Any person who commits any of the described acts in connection with postage stamps or any other means of postage used by the Postal Service of Timor-Leste shall be punishable by up to 3 years imprisonment or a fine.
3. Any person who uses any of the forged items described in the previous subarticles, knowing them to be counterfeit, shall be punishable by up to 2 years imprisonment or a fine.
4. The attempt is punishable.

Article 310. Counterfeiting of seals, stamps, marks or watermarks or similar

1. Any person who acquires counterfeits or falsifies a seal, office stamp, mark or watermark or signet of any authority or public service, with intent to use the same as authentic or valid, shall be punishable by 2 to 6 years imprisonment.
2. Any person who, knowingly or without proper authorization, uses any of the items cited in the previous subarticle, with intent to cause loss to another person or the State, shall be punished by up to 3 years imprisonment or a fine.
3. If the person using any of said items is the actual forger, the maximum limit of the penalty under subarticle 1 shall be increased by one third.
4. The attempt at committing the acts described in subarticle 2 is punishable.

Article 311. False weights and measurements

1. Any person who, with intent to cause loss to another or the State, falsifies or by any other means alters or uses, after said alteration, weights, measurements, scales or other measurement devices, is punishable by up to 3 years imprisonment or a fine.
2. The attempt is punishable

Article 312. Seizure and forfeiture

Any and all counterfeited, forged or altered coins and similar items, as well as weights, measurements or other devices designed to commit any of the crimes described in this Title shall be seized and removed from circulation or destroyed.

**TITLE VIII
CRIMES AGAINST THE ECONOMY**

Article 313. Money laundering

1. Any person who, knowing that assets or products are proceeds from any form of participation in the commission of crimes of terrorism, trafficking in arms or nuclear products, human trafficking, child pornography, corruption, fraud or extortion, tax fraud, trafficking in protected species or human organs or tissues or any other serious crime carrying a maximum sentence of over 4 years imprisonment:
 - a) Converts, transfers, assists or facilitates any transaction of conversion or transfer of said assets or products, wholly or in part, directly or indirectly, with the aim of hiding or disguising their illicit origin or aiding any party involved in the commission of any of said crimes to avoid the legal consequences of his or her acts; or
 - b) Hides or disguises the true nature, origin, location, disposition, movement or properties of said assets or proceeds or rights related thereto;

- c) Acquires or receives said gain under any wise or uses or holds or maintains the same, shall be punishable by 4 to 12 years imprisonment.
- 2. Punishment for the acts described in subparagraphs a) to c) of the preceding subarticle are applicable even when the acts related to the originating crime were committed outside Timor-Leste or where the place of commission of the act or identity of the principals are unknown.
- 3. Knowledge, intent or purpose, required as elements constituting the crime, may be construed from effective and concrete factual circumstances.
- 4. No prior sentencing of the perpetrator for committing the originating crime is required to prove illicit origin of the proceeds.
- 5. Originating crime shall include any crime committed outside Timor-Leste whenever said act is considered a crime in the State where committed and within Timor-Leste.
- 6. The person who committed the originating crime shall not be punishable for crime of money laundering.
- 7. Attempted money laundering is punishable and may be subject to a reduced penalty under general terms.
- 8. The punishment provided for commission of unlawful acts described in subparagraphs a) to c) of the preceding subarticle shall not exceed the maximum limit provided for the corresponding originating offences.

Article 314. Tax fraud

- 1. Any person who, with intent to evade payment or enable a third party to evade payment, wholly or in part, of any tax, fee or other pecuniary tax obligation due to the State, by:
 - a) Failing to declare taxable items or facts required for the payment of said tax;
 - b) Inaccurately declaring facts used as the basis for assessment; or
 - c) Hinders, by any means, or withholds necessary information for proper monitoring of any activity or fact subject to taxation, shall be punishable by 2 to 6 years imprisonment.
- 2. If the amount due and unpaid exceeds US\$ 5,000.00, the perpetrator shall be punishable by 2 to 8 years imprisonment.

Article 315. Illegal import and export of goods or merchandise

- 1. Any person who, without a license, exports or imports, goods or merchandise for which, by law, a license is necessary from any agency or, any person who avoids having said goods or merchandise pass through customs, is punishable by up to 3 years imprisonment or a fine.
- 2. If said acts are committed through negligence, the penalty shall not exceed 1 year of imprisonment or a fine.

Article 316. Smuggling

- 1. Any person who imports or exports goods or merchandise without clearing the same through customs or other mandatory control systems for said goods or merchandise entering or exiting Timor-Leste, shall be punishable by 2 to 6 years imprisonment or a fine.

2. Whenever the value of said goods or merchandise exceeds US\$ 10,000.00, or the perpetrator habitually commits any of the acts described in the previous subarticle, the penalty shall be 2 to 8 years imprisonment or a fine.

3. Whenever the conduct described in the preceding subarticles pertain to goods or merchandise that require a license or for which import or export is prohibited, the maximum limit of the penalty described in the previous subarticles shall be increased by one third.

Article 317. Avoidance of customs duties

1. Any person who imports or exports goods or merchandise and fully or partially avoids payment of customs duties or fees due for entry or exit of the same is punishable by 1 to 4 years imprisonment or a fine.

2. If the value of said goods or merchandise exceeds US\$ 10,000.00, or if the perpetrator commits any of the acts described in the preceding subarticle habitually, the penalty is 2 to 6 years imprisonment or a fine.

Article 318. Exemption from punishment

The perpetrator of any of the acts described in the preceding articles may be exempted from punishment if the same voluntarily pays the assessed customs duties or fees, and said conduct is an isolated case.

Article 319. Mismanagement of public funds

1. Any person who uses public funds differently than as established by law is punishable by up to 2 years imprisonment or a fine.

2. If funds are misused for other than public purposes established by law, the penalty is 2 to 6 years imprisonment.

Article 320. Failure to comply with a requisition of goods

1. Any person, who fails to comply with a government requisition for goods considered as indispensable for continuance of economic activities or for public consumption, is punishable by 1 to 4 years imprisonment or a fine.

2. Negligent conduct is punishable by up to 1 year imprisonment or a fine.

Article 321. Destroying assets relevant to the economy

1. Any person who, by any means, destroys, damages or renders unusable any assets of inherent relevance to the national economy, or otherwise prevents the same from fulfilling any legal duties imposed by virtue of the national economy, is punishable by up to 3 years imprisonment or a fine.

2. Negligent conduct is punishable by up to 1 year imprisonment or a fine.

Article 322. Illegal gambling

1. Any person who, by any means, exploits games of fortune or chance outside of locations legally authorized and without due legal authorization to operate the same, or ensures the outcome of the same through illicit intervention, deceit or use of any equipment, shall be punishable with up to 3 years imprisonment or a fine.

2. Games of fortune or chance are those whose outcomes are uncertain due to being wholly or essentially based on luck.

Article 323. Disruption of a public act

Any person who, with intent to hinder or negatively impact a court-ordered auction or results of the same or any public examination or tender, through gift, promise, violence or threat, manages to prevent another from offering a bid or participating or, if offering a bid or participating, does so not under free conditions, is punishable by up to 3 years imprisonment or a fine.

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