

DECREE-LAW No. 43/2011

of 21st of September

**LEGAL REGIME ON THE USE OF
FORCE**

Resorting to coercive means is consensually understood as an act outside those of normal social and human relations, nowadays oriented by principles, rules and instruments allowing for the negotiated settlement of disputes.

The Constitution of the Republic of Timor-Leste recommends the peaceful settlement of disputes in international relations and also does so implicitly and when required for internal disputes, to the extent it establishes rights, freedoms and fundamental guarantees of citizens, the respect of which implies consensuality and the denial of physical or psychological violence. It therefore maintains the upholding of freedom of will against illegitimate force, thus engaging the police force and other security forces and services in their duty to attain the fundamental objective of the State, which is to guarantee the fundamental rights and freedom of citizens and the defence of democratic legality.

The police force and public security forces and services have therefore been established as the main bodies by which freedom and rights inherent to the human condition are protected in such a way that the coercive powers of authority granted to them can only be used to eliminate violations against fundamental rights. i.e., force is only admitted when used against another force which is illicit or illegitimate.

International law also states the same by way of the “UN Code of Conduct for Law Enforcement Officers” adopted by the United Nations General Assembly in 1979 and in the “Basic Principles on the Use of Force and Firearms for Law Enforcement Officers” adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders.

The same meaning exists by way of the law governing the organisation and operation of the National Timor-Leste Police Force (PNTL) approved by Decree-Law no. 9/2009 of 18th February, in which were proclaimed the principles of subsidiarity and the absolute necessity for adequacy, sufficiency and proportionality, which orient and set limits on the use of force.

Accordingly, articles 4 and 7 of the National Security Law approved by Law No. 2/2010 of 21st April 2011, and that established by paragraph 4 of article 4 of the Internal Security Law approved by Law no. 4/2010 of 21st of April 2010 gave a renewed impetus to this topic, submitting the use of force to the respect for principles and norms of national and international law, to public and legal control and compliance with the rules of engagement, thus committing government authorities to creating consequent normative acts.

The fact it is indispensable for the police force and public security forces and services to be covered by legal mechanisms, which in exceptional situations grant them the power to use force, determines that they are provided with instruments and equipment, the use of which, if not set to proper limits, may

affect different values with constitutional legal protection. There is therefore an urgent need for the normative clarification of those cases and under which conditions such means can be used, thus suppressing the risk of random choices which may, at an extreme level, lead to the subversion of the nature and the ends of public security.

The present law endeavours to provide an effective response to such a need, at the same time as it seeks legislative adequacy vis-à-vis the already announced legal principles set out in both national and international law, thus establishing the limits from which it is considered an illegal violation of the fundamental rights and freedoms of citizens.

Preliminary reports have been requested from the authorities bound to the mandatory requirement, under the terms of the applicable provisions of the Rules of Procedure of the Council of Ministers, approved by Resolution no. 1/2002 of 27th August 2002.

The Government, under the terms of sub-paragraphs b) and c) of paragraph 1 of article 115 of the Constitution of the Republic, therefore decrees the following:

CHAPTER I

GENERAL RULES ON THE USE OF FORCE

Article 1

Definitions

For the purposes of the present law:

a) *Arm* shall mean any object, instrument, apparatus or substance intended for the purpose of defence or attack;

b) *Containment equipment* shall mean any object or instrument intended for the protection of the user, or the person subject to such equipment, against human attackers;

c) *Law enforcement officers* shall mean any authority or agents of the authority which undertakes the specific activities of the mission, the duties or powers of the police force, public security forces and services, or those belonging to bodies of other public services who ensure that the law is enforced;

d) *Fatality* shall mean the susceptibility to cause death;

e) *Offender* shall mean the individual against whom it was decided to resort to force in order to restore legality;

f) *Affected person* shall mean any person who was or is supposed to have been physically affected by the use of force;

g) *Police force* shall mean the services which perform the constitutional and legal duties of ensuring the enjoyment of the rights, freedoms and guarantees of citizens, the protection of public and

private property, the fulfilment of democratic legality and the prevention and investigation of offences;

h) *Security services and forces* shall mean the public bodies in charge of specific internal security activities as they are defined by law, excluding any other security services belonging to the public or private sector;

i) *Use of force* shall mean the act of compelling a person to act or behave against the express or presumed will of such person, through the use or not of objects, equipment, substances or arms;

j) *Use of firearms* shall mean any type of use of firearm, including the use of a warning shot.

Article 2

Scope

1. The present diploma shall apply to all bodies and respective members, who perform public duties in which it is permitted to carry and use arms or other instruments, equipment, objects or substances used for passive or active protection.

2. The present diploma shall also be applicable to the military forces and their respective members, whenever acting in situations or circumstances related to the scope of internal security, regardless of whether they are part of their legal duties.

Article 3

Peaceful settlement of disputes

1. Officers responsible for law enforcement shall conduct themselves

oriented by criteria of negotiation, mediation, persuasion and the peaceful settlement of conflicts.

2. The use of force shall only be admitted once the means possible for a non-violent settlement of the dispute have been exhausted.

Article 4

Deployment of force

1. Officers responsible for law enforcement shall only resort to the use of force in situations where the law so permits, namely in legitimate defence or to proceed to a legally permissible arrest.

2. The use of any means of force shall always be preceded by a perceptible request for obedience.

3. Force shall be used only when strictly necessary and only to the extent it is required for the fulfilment of legal duty.

4. The means to be used when resorting to force shall follow the requirements of least intervention and least injury possible, and more serious means may only be used when other less harmful means prove to be inefficient or insufficient.

5. The use of force by resorting to arms, equipment, instruments, objects or substances shall only be admissible when the use of human physical force is not feasible or sufficient.

Article 5

Protection of affected person

1. Law enforcement officers shall guarantee the protection of all persons under their guard.

Whenever law enforcement officers have resorted to the use of force, they shall undertake to:

a) provide the affected person with access to urgent or similar medical aid required to stabilise or re-establish such person's conditions of health;

b) ensure the family of or persons close to the affected person are informed of the occurrence, as quickly as possible, unless there is an express opposition raised by such person and such person is over eighteen years of age;

c) preserve the intimacy and the personal image of the person affected, by notably not divulging any images, unless expressly permitted by such person and when such person is over eighteen of age;

d) provide the person affected with access to person hygiene objects, notably by taking into account the gender, age and physical condition of such person;

e) preserve the property of the affected person who, due to the incapacity provoked by the use of force or due to any other circumstance, such person has been temporarily taken from their guard;

f) take any other suitable measures to preserve the life or lives, the physical integrity or property of the affected

person or of other human beings who are under their guard or under their supervision.

CHAPTER II

RESORTING TO EQUIPMENT AND ARMS

Article 6

Use of equipment, objects or substances

1. The use of force by resorting to equipment, objects or substances to control the offender shall be subsidiary to the use of human physical force, when they are more severe than the latter.

2. No equipment, object or substance to control the situation or control the offender shall be used when other less violent or less harmful means prove to be sufficient.

3. No unnecessarily violent means, vis-à-vis the physical condition or personal image of the offenders to control or contain such offenders shall be permitted.

Article 7

Use of arms

The use of force by way of arms of any kind or nature shall only be permitted when the use of any other less severe means is impossible or proves to be insufficient.

Article 8

Use of highly lethal arms

1. The use of highly lethal arms, notably firearms, shall only be permitted when

there is a serious threat or illicit attack against one's own or someone else's life or physical integrity, personal freedom or when there is armed resistance, and as long as the following cumulative assumptions are ascertained:

a) the threat or illicit attack is still present;

b) there has been a prior, intelligible order demanding an end to the threatening or aggressive behaviour;

c) there has been a clear oral identification and warning of the imminent use of highly lethal arms or, when this is not feasible, by any other perceptible means;

d) all other means of peaceful settlement have been exhausted;

e) use of human physical force is insufficient to overcome the threat or illicit attack;

f) the use of non-lethal or less lethal equipment or objects is clearly inefficient or inadequate.

2. The shooting of firearms as a means of warning shall only be admissible when those preferred in sub-paragraph c) of the preceding paragraph have proven to be insufficient or inadequate, or only when it is predictable that no third party shall be hit.

3. The mere escape of the suspect or the accused, even when properly detained or arrested with no other form of violent coercion or resistance, does not legitimise the use of highly lethal arms.

4. The use of highly lethal arms shall also be admissible to control or

definitively detain dangerous animals which endanger the health, physical integrity or lives of people or other species, whenever less drastic means are not possible or advisable given the specific circumstances.

CHAPTER III

USE OF FORCE IN KEEPING OR RESTORING PUBLIC ORDER

Article 9

Priority of peaceful means

Law enforcement officers shall give priority to the use of peaceful means when breaking up illegal demonstrations, meetings or processions.

Article 10

Use of force to restore order

1. In the case of an absolute need to break up groups of people, the use of force shall be subject to the general principles and rules of law, and specifically to those set out in the present diploma.

2. The use of force shall comply with the principles and rules of the necessity and proportionality of the means, according to the scale set out in the present diploma and in compliance with the level of threat or illicit attack.

3. It shall be forbidden to use highly lethal arms against an indiscriminate group of people demonstrating. Meeting or parading, even if they are undertaking such action illegally or in disobedience of orders given by the competent authority.

4. The use of highly lethal arms in cases of collective and serious threat against life or human physical integrity, or against personal freedom, shall only take place in observance of general legal rules and may only be directed at those people who in the group constitute the threat or provoke the attack.

CHAPTER IV

KEEPING ORDER AMONG DETAINEES OR INMATES

Article 11

Coercive reestablishment of order and security

1. In those cases where peaceful means of settling disputes have not been successful, it shall be admissible to use force to re-establish order or the secure operating conditions of penitentiaries or detention facilities, whenever the physical integrity or lives of people are under threat or effective injury.
2. The use of force shall follow the principles and rules of the necessity or proportionality of the means, according to the scale set out in the present diploma, in compliance with the proportion and violence of the conflict and the level of threat or illicit attack.

Article 12

Use of lethal arms on detainees or inmates

1. The use of highly lethal arms in cases where there is serious threat against life or human physical integrity or against personal freedom may only take place in compliance with the general principles and rules of the present

diploma and other applicable legislation.

2. The use of the arms mentioned in the preceding paragraph against a group of detainees or inmates may only be directed at those people who in the group represent the threat or attack.

CHAPTER V

SELECTION, RECRUITMENT AND TRAINING

Article 13

Selection, Recruitment

The public services in charge of selection and recruitment of potential law enforcement officers include, in the selection process, evaluation instruments of personality and mental and psychological capacities of the candidates in order to prevent the recruitment of people who are unable to adjust their attitudes and behaviour to the principles and rules governing the use of force and the respect for human rights.

Article 14

Training

1. Training programmes for law enforcement officers give special attention to issues of police ethics and human rights, notably:
 - a) Means of preventing the use of force or firearms;
 - b) Processes and techniques for the peaceful settlement of disputes;

c) Communication, persuasion, negotiation and mediation methods and techniques;

d) Psychology of crowd behaviour;

e) Progressive and integrated operational procedures;

f) Other disciplines of behavioural education.

2. Law enforcement officers shall only be authorised to use and carry arms, equipment or objects specific to the use of force, after having received specific and complete training regarding their use.

CHAPTER VI

EQUIPMENT AND ARMS

Article 15

Selection criteria

1. The nature of the objects, substances, equipment or arms intended for the use of force shall be oriented by minimum injury criteria, preference always being given to less harmful or less lethal means.

2. The allocation of police officers, security forces or services, with the means preferred and mentioned in the preceding paragraph shall be decided by despatch by the member of the Government who is responsible for the body in question, bearing in mind the specificity of their duties and powers.

Article 16

Control

1. The police force, security forces or services shall undertake to establish

strict systems to guard and control the possession of the objects, substances or equipment, instruments or arms intended for the use of force.

2. The directors responsible for each one of the police forces and security forces and services shall be directly responsible for the absence of effective control systems of the means set out in the preceding paragraph.

CHAPTER VII

LIABILITY

Article 17

Criminal liability

1. Law enforcement officers shall be criminally liable, under the terms of the provisions set out in the Timorese Penal Code, for violations to that established in the present law and other complementary legislation.

2. Whenever there is any criminal association by the commander or director of the organic group which acted collectively in the improper use of force, such commander or director shall be punished with a penalty applicable to the crime considered in its abstract form, to which shall be added a third of its minimum and maximum limits, if such person has not received a more serious penalty by way of other legal provisions.

Article 18

Disciplinary liability

Without prejudice to any possible criminal liability, the non-fulfilment of the principles and rules established in

the present diploma is also an offence, under the terms of applicable disciplinary regulations.

Article 19

Civil liability

1. Criminal or administrative liability does not preclude compensatory civil liability for the improper use of force.
2. For the purposes of the provisions set out in the preceding paragraph, the State shall be jointly and severally liable for law enforcement officers who have been prosecuted, without prejudice to rights of recourse.

CHAPTER VIII

PROCEDURAL PROVISIONS

Article 20

Allocation of arms

1. Objects, substances, equipment, instruments, arms or munitions shall only be allocated to duly identified officers in hierarchical order, accompanied by a document containing a full description of the nature, serial numbers, quantity, quality and conditions of the materials.
2. Without prejudice to criminal liability, the delivery, reception or possession of objects, substances, equipment, instruments, arms or munitions without their simultaneous documentary registration constitutes a severe disciplinary offence, punishable with a penalty rendering the continuation of their profession unviable.

Article 21

Immediate return

1. Immediately after the use of a highly lethal arm against persons, and regardless of the result of their use, law enforcement officers shall return the arm to their immediate superior, or whoever is indicated by such superior, for the purposes of controlling its use and submission to exams or expert opinions which prove to be necessary for procedural purposes.
2. In the cases set out in the preceding paragraph the immediate superior who issues the order shall also issue the receipt, not subject to any specific formality, and shall order that the registration take place in the shortest time possible, never exceeding twenty-four hours.

Article 22

Documents regarding the facts

1. Whenever force has been used, regardless of its intensity and means used, the notice shall be drawn up containing the information set out in article 212 of the Code of Criminal Procedure, namely a description of the factual and legal reasons which legitimised the use of force and an indication of all the available evidence.
2. Whenever the use of arms of any kind has been ascertained, a report shall be drawn up which shall explain the facts and circumstances which legitimised the use of such means, indicate the possible existence of physical injuries or damage to property

and also the aid provided to the persons affected.

3. The notice set out in paragraph 1 above shall be forwarded to superiors and to the Public Prosecutor's Office within a maximum time limit of twenty-four hours for the purposes of administrative and judiciary control.

4. In the cases set out in paragraph 2, the report shall be forwarded to superiors who, indicating the measures taken in the meantime regarding the present diploma and other applicable legislation, shall submit it to the member of the Government responsible for the body in question.

5. Whenever people have been injured or human lives have been lost as a result of the intervention, the member of the Government shall submit the report to the appraisal of the National Parliament.

Article 23

Paper-based support models

Different paper-based support documents required for the execution of the present law shall be approved by way of dispatch of the member of the Government responsible for internal security.

CHAPTER IX

FINAL PROVISIONS

Article 24

Complementary regulations

1. Complementary regulations on techniques regarding the use of material means intended for the use of force shall be approved by way of dispatch by

the member of the Government responsible for security, at the proposal of the heads of security forces and services covered by the provisions set out in the present Decree-Law.

2. The regulations set out in the preceding paragraph shall in no event contain provisions contradicting the principles and rules set out in the present law.

Article 25

Repeal

With the entry into force of the present Decree-Law any other legal norms or diplomas with the same object shall be repealed.

Article 26

Entry into force

The present Decree-Law shall enter into force on the thirtieth day following its publication in the Official Journal.

Approved by Council of Ministers on 17th August 2011

The Prime Minister

Kay Rala Xanana Gusmão

The Minister of Defence and Security

Kay Rala Xanana Gusmão

Promulgated on 19/09/2011

To be published

The President of the Republic

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