

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)