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LAW NO. 16/2008, of December 24, 2008
First Amendment to the Military Service Law

This law aims to establish the possibility of performing military service on voluntary basis, which seems appropriate to the Nation's reality.

Considering that the Armed Forces of Timor-Leste (FALINTIL-FDTL) need to have one or two recruitment drafts per year, the number of eligible citizens is too high for recruitment to be made on the basis of compulsory military service, as it is difficult to classify and select thousands of youth, a process requiring very high operating costs. Moreover it is not necessary to force young people into performing military service when other youth are willing to join the army on voluntary basis.

The National Parliament, pursuant to Article 92, paragraph o), and Article 95, paragraph 2, therefore establishes the following to be enforced as law.

Article 1

Amendment to Law no.3/2007, of February 28, 2007

Article 5 and Article 34 of Law no.3/2007, of February 28, 2007, shall henceforth read as follows:

“Article 5

[...]

1 - [...]

2 - [...]

- a) [...]
- b) [...]
- c) [...]
- d) [...]
- e) Active duty performed on voluntary basis.

3 - [...]

4 - [...]

5 - [...]

6 - [...]

7 – Active duty on voluntary basis consists in establishing a voluntary bond to the Armed Forces with a view to performing military service.

8 – [previously number 7]

9 - [previously number 8]

Article 34

[...]

1 - All procedures laid down in this Law for performing military service shall apply to the voluntary military service scheme, with the necessary adaptations, in terms to be regulated by the Government.

2 – [Previous body of the Article]”

Article 2 Republication

Law no. 3/2007, of the 28 February 2007, is attached hereto as Annex and republished as part of this Law, as currently worded.

Article 3 Entry into force

This Law shall enter into force on the day following its publication.

ANNEX

Law no. 3/2007, of the 28 February 2007

Military Service Law

Defending and securing the nation’s sovereignty are two key objectives of the Timorese State, which have been incorporated into the Constitution of the Democratic Republic of Timor-Leste.

Military service is one of the means of defending the motherland and it embodies the values that shape the Timorese nation and citizenship.

All Timorese citizens aged 18 to 30 years-old should contribute to the defence of their nation’s independence, sovereignty and territorial integrity, giving such contribution through its defence and security institutions.

Given the universal nature of military census, this Law foresees the adoption of a rule that prevents citizens who have not performed their military duty from taking jobs in government or public institutions. The social benefits and jobs of those citizens who have performed their military duties may not be harmed.

The National Parliament, pursuant to Article 95, number 2, paragraph (o), of the Constitution of the Republic therefore establishes the following to be enforced as law.

CHAPTER ONE GENERAL PRINCIPLES

Article 1

Notion and objectives of military service

1. All Timorese citizens have the duty of participating in the defence of independence, sovereignty and territorial integrity.
2. Military service is part of a citizen's contribution to the defence of the motherland in military terms, as laid down in this law.
3. Military service, in addition to being an instrument for promoting national unity and developing a patriotic awareness, also enhances the civic, cultural, physical and professional skills of those citizens who perform it.

Article 2

Military service

1. Military service has a universal nature at the census stage. All Timorese citizens aged from 18 to 30 years-old may be called upon to perform the military service and comply with the military duties associated with it.

Article 3

Military service statuses

Military service comprises the following statuses:

- a) Draft reserve;
- b) Active duty;
- c) Active reserve;
- d) Territorial reserve.

Article 4

Draft reserve

Draft reserve is composed of citizens subject to military obligations, from the moment of military census to their incorporation or enlistment in territorial reserve.

Article 5

Active duty

1. Active duty is the status of citizens at the service of the Armed Forces.
2. Active duty comprises:
 - a) Standard active duty;
 - b) Active duty in the permanent staff;
 - c) Contract-based active duty;
 - d) Active duty pursuant to summons or mobilisation;
 - e) Active duty on voluntary basis.
3. Standard active duty exists when citizens subject to military obligations, following their military census, provide service to the Armed Forces, from the moment they join the military until they are assigned the active reserve status.
4. Active duty in the permanent staff exists when citizens enter into a military career and establish a permanent bond to the Armed Forces.
5. Contract-based active duty corresponds to service performed by citizens who remain in service for a limited period of time, to be determined by special legal instrument, with a view to meeting the needs of the Armed Forces or to secure their eventual hiring as permanent staff, in accordance with the established headcount.
6. Active duty pursuant to summons or mobilisation shall be performed as laid down in Article 26 and Article 27 of this law.
7. Active duty on voluntary basis consists in establishing a voluntary bond to the Armed Forces with a view to performing military service.
8. The statute of service members in all active duty statuses shall be defined in a special law.
9. The Defence Minister, in view of the needs identified by the Armed Forces, shall have the power to define the number of staff to be admitted on contract basis every year.

Article 6

Active reserve

1. Active reserve consists of those citizens who performed active duty, from the date in which they ceased to perform such duty until they are 30 years-old.
2. Active reserve means that in the period immediately after the end of their active duty, former service members may increase the headcount of the Armed Forces, by way of summons or mobilisation, up to the required headcount.

Article 7

Territorial reserve

Territorial reserve consists of those citizens who did not perform active duty, but remain subject to military obligations.

CHAPTER TWO MILITARY DRAFT

SECTION ONE GENERAL PROVISIONS

Article 8

Military draft definition and operations

1. Military draft is the set of operations required to secure the human resources for the Armed Forces.
2. Military draft comprises the following operations:
 - a) Military census;
 - b) Classification and selection;
 - c) Distribution and enlistment.

Article 9

Definition of the number of staff to be drafted

The Council of Ministers, by proposal of the Defence Minister, shall

- a) Define the number of staff to be annually incorporated into the Armed Forces;
- b) Guide, approve and co-ordinate general affairs pertaining to military draft.

SECTION TWO DRAFT

Article 10

Military census

1. Military census is the draft operation aimed at obtaining, every year, information on all citizens who become of age, in terms of military duties.
2. All citizens must, in person or via their legal representative, fulfil their obligation of presenting themselves to military census in the year of their 18th birthday.
3. The media should advertise that it is every citizen's duty to present oneself to military census. This duty should be advertised, to the largest extent possible, at the following government bodies:
 - a) Competent bodies of the Defence Ministry;
 - b) District administrations;
 - c) Embassies and Consulates of Timor-Leste.

Article 11

Military census venues

Citizens, in person or through their legal representative, shall present themselves to military census at the following venues:

- a) Head office of district administrations;
- b) Regional delegations of the Defence Ministry, if any;
- c) Consular mission of the place of residence, for citizens living abroad.

Article 12

Information to be provided when citizens present themselves to military census

Citizens, when they present themselves to military census, should be informed of the objectives of military service and duties associated with it.

Article 13

Failure to present oneself to military census

Citizens failing to present themselves to military census at the prescribed time and venue should address the competent census body or the respective consular mission, depending on whether they live home or abroad, to settle their military status. If they do not submit justification of their absence within 30 days after the census deadline they shall be deemed faulty.

Article 14

Classification and selection

1. Censuses' citizens shall be summoned, at least 45 days in advance, to perform classification and selection tests aimed at evaluating their physical and psycho-technical abilities.
2. Classification and selection tests shall aim to
 - a) Determine the level of psychic and physical fitness of citizens for the purpose of performing military duties, of which one of the following ratings will result:
 - I – Fit
 - II – Unfit
 - III – Awaiting classification.
 - b) Group citizens classified as fit into specialties or classes, according to their physical, psychic, technical, professional or other skills, with a view to subsequently distribute them to the branches, echelons, specialties or classes of the Armed Forces.
3. Citizens classified as fit may supply information concerning their preference, in terms of branch, specialty and geographical area in which they will perform their military duties. Such information shall be taken into account whenever it is not contrary to the needs of the Armed Forces.
4. An appeal may be lodged against the classification referred to in number 2, paragraph a), in the conditions laid down in specific regulations.
5. At the end of the classification and selection tests, citizens classified as fit to perform military service shall be proclaimed recruits.
6. For the purpose of the provisions laid down in number 2, paragraphs a) and b), public and private entities are obliged to relieve from duty the drafted citizens working for them.

Article 15

Failure to present oneself to classification and selection tests

Citizens failing to present themselves to the classification and selection tests which they have been summoned to perform and do not submit a justification within 30 days, or refuse to perform any of such tests, shall be deemed compelled to perform military service and will perform their full standard duties in case they are classified as fit.

Article 16

Distribution

Distribution shall consist in quantitatively and qualitatively assigning the recruits to the branches of the Armed Forces, according to their requirements, taking into account whenever possible the provisions of Article 14 number 3.

Article 17

Enlistment

1. Enlistment is nominal assignment of the citizens to each branch of the Armed Forces, or the territorial reserve.
2. Criteria for determining which citizens enlisted in the territorial reserve shall be established in specific regulations.

Article 18

Postponement of military duties

Classification and selection tests may be postponed on the following grounds:

- a) Attending a course at a higher education (or officially considered equivalent) school, in the country or abroad, will allow for postponement until the 31 December of the year in which the citizen completes his 28th birthday;
- b) Having legal residence abroad, permanently and continuously, if this occurred prior to the year in which the citizen completes his 18th birthday;
- c) Alleging a quality whose legal status determines such postponement.

Article 19

Leave from and exemption of military duties

The following citizens may request exemption from military service and shall be directly enlisted on the territorial reserve:

- a) Children or brothers of citizens killed in the line of military duty;
- b) Single children of physically- or mentally-disabled parents;
- c) Citizens who are single providers of spouse, ascendant or descendant, brother or nephew under 18 or person who they raised and educated;
- d) Citizens affected by long-term illness that is duly certified by public competent authority.

Article 20

Temporary exclusion

Citizens may be temporarily excluded from performing their military duties if they serve time in prison or are subject to security measures which, due to their nature, are not compatible with being in ranks.

CHAPTER THREE ACTIVE DUTY IN THE ARMED FORCES

Article 21

Standard active duty

Standard active duty consists of

- a) Incorporation;
- b) General military preparation;
- c) Time in ranks.

Article 22

Incorporation

1. Incorporation takes place when recruit citizens present themselves at the military units and establishments of the Armed Forces' branches in which they have been enlisted.
2. Incorporation normally takes place in the year of the citizen's 20th birthday.
3. Recruit citizens who do not present themselves for incorporation at the military unit or establishment for which they were summoned and fail to justify their absence within a 30-day deadline shall be considered absentee.

Article 23

General military preparation

1. General military preparation consists in providing basic training to the incorporated recruits, consistent with the specificity of each branch of the Armed Forces, and it ends with the pledge to the flag act.
2. The pledge to the flag is a solemn act, with the troops on parade, which always takes place before the National Flag.

Article 24

Time in ranks

Time in ranks begins with incorporation and covers the entire general military preparation, and the complementary preparation, when applicable, and the service performed at the military units or establishments.

Article 25

Duration of standard active duty

1. Standard active duty lasts 18 months and begins with the incorporation act, notwithstanding the provisions of numbers 2 to 4 below.
2. Transfer to active reserve of classes, categories or specialties of which there is a surplus number in the ranks may take place ahead of time, in conditions to be established by regulations.
3. By proposal of the Defence Minister the Council of Ministers may exceptionally determine, whenever national defence requirements are not sufficiently met by the set of active duty schemes referred to above, that the standard active duty period laid down in number 1, above, be extended for a maximum time of 12 months.
4. For the purpose of the previous number, the criterion for determining which citizens shall remain in ranks beyond the period established in number 1 above excludes those who are:
 - a) Married;
 - b) Responsible as family providers.
5. If choices have to be made within each group referred to in paragraphs a) and b) of the previous number, the age criterion shall be adopted and the oldest shall be given preference over the youngest.

Article 26

Active duty pursuant to summons

1. Citizens in active reserve may be summoned to perform active duty in the following cases:
 - a) For the purpose of recycling, drills, exercises or military manoeuvres;
 - b) In situations where there is a danger of imminent or real war or aggression by foreign forces, until general military mobilisation is not decreed.
2. In addition to cases covered by specific legislation, citizens performing functions legally considered indispensable for the functioning of key public services and private activities indispensable to the Nation's livelihood may be exempted from performing active duty.
3. During the time served pursuant to number 1, paragraph a), citizens shall preserve all their rights at their job, including the right to compensation and to holidays.

Article 27

Active duty pursuant to military mobilisation

1. Citizens in active reserve may be mobilised to perform active duty at the Armed Forces if the state of siege is declared.
2. Number 2 of the previous article shall apply to citizens covered by active duty pursuant to military mobilisation.

CHAPTER FOUR

Complementary provisions

Article 28

General obligations of the citizens

As long as they remain subject to the military obligations defined in this law, citizens aged from 18 to 30 years-old shall have the following duties:

- a) Inform the military entity to which they belong when they change residence;
- b) Report to the entity referred to in the previous paragraph any newly acquired training, or technical, professional and other skills associated with the acquisition of knowledge potentially interesting to the Armed Forces;
- c) Present themselves on the days, hours and places legally determined by the competent military authority.

Article 29

Other rights and duties

1. No citizen can suffer any loss in connection with his placement, social benefits or job for having complied with his military duties laid down in this law.
2. Citizens performing active duty shall be recognised other rights and duties laid down in the respective statute.

Article 30

Job-getting restrictions

Citizens who have failed to comply with the rules laid down in this law shall not be admitted to, or access jobs in, government institutions or other public agencies.

Article 31

Exemption from fees

Acts required to set up files necessary for military purposes, including those performed by schools and public services, shall be exempted from fee payment.

Article 32

Civil and criminal status

Civil and criminal record offices should provide to the competent entities the data they may request for the purposes laid down in this law.

Article 33

Pledge to the flag

Citizens incorporated into military service shall perform a pledge to the flag that binds them, both in active duty and in active reserve, according to the following formula:

“I _____ swear by God and by my honour to devote all my energies and my life to defend the motherland, the Constitution of the Republic and national sovereignty”.

CHAPTER FIVE

Final and transitional provisions

Article 34

Regulations

1 - All procedures laid down in this Law for performing military service shall apply to the voluntary military service scheme, with the necessary adaptations, in terms to be regulated by the Government.

2 – Government shall be responsible for regulating this law.

Article 35

Revoked legislation

All laws containing provisions contrary to this law are hereby revoked.

Article 36

Entry into force

This law shall enter into force sixty days after its publication.

Approved on the 4 November 2008.

The Speaker of the National Parliament

Fernando La Sama de Araújo

Enacted on the 11 December 2008.

To be published.

The President of the Republic

José Ramos-Horta