

LAW No. 8/2009

LAW ON THE ANTI-CORRUPTION COMMISSION

Corruption nowadays is recognised as a complex phenomenon, of multiple dimensions and whose negative consequences go beyond the limits of ethics and morals, having repercussions on social and economic life and jeopardising the Rule of Law.

Experience in several other countries, in relation to the prevention of and fight against corruption has revealed the need to develop a coherent and integrated legislative framework, in accordance with the best standards of good governance, which respects international commitments and is in harmony with the principles set out in the Constitution.

Appropriate solutions must therefore be found within the constitutional and legal framework in force, which will assist in the fight against corruption and will at the same time safeguard the integrity of our institutions, bringing about true cooperation between the authorities and bodies involved, at the same time reflecting the spirit of the United Nations Convention against Corruption.

This purpose of this Law is to provide the independent specialised criminal police force of the State with the means to perform its duties according to criteria of legality and objectivity, in articulation with the competent authorities, as is indispensable for its credibility as a mechanism for the fight against corruption.

CHAPTER I

GENERAL PRINCIPLES, NATURE AND MISSION OF THE ANTI-CORRUPTION COMMISSION

Article 1

Object of the Law

This law forms the Anti-Corruption Commission, hereinafter referred to as Commission

Article 2

Definitions

For the purpose of this Law:

a) Passive corruption for an illicit act means, and pursuant to article 292 of the Criminal Code, an official who by himself or by way of a third party, with his consent or ratification, requests or accepts, for himself or for a third party, without it being due him or her, property or a benefit, or the promise of such property or benefit, resulting from an act or omission, which is contrary to the duties inherent to his or her post, even when preceding that request or acceptance;

b) Passive corruption for a licit act means, and pursuant to article 293 of the Criminal Code, an official who by himself or by way of a third party, with his consent or ratification, requests or accepts, for himself or for a third party, without it being due him or her, property or a benefit, or the promise of such property or benefit, resulting from an act or omission which goes against the duties inherent to his or her post, even when preceding that request or acceptance; and the official who by him or herself or by way of a third party, with his or her consent or ratification, requests or accepts, for him or herself or for a third party, without it being due them, property or a benefit from the person who has been, is or will be accountable to him or her in the exercise of his or her public duties;

c) Active corruption means, and pursuant to article 294 of the Criminal Code, whoever by themselves or by way of a third party, with their consent or ratification, gives or promises to the official, or to a third party with the knowledge of such official, property or a benefit which are not due to them, with the purpose as set out in article 292 or article 293 of the Criminal Code;

d) Embezzlement means, and pursuant to article 295 of the Criminal Code, the official who illegitimately appropriates for his or her own profit or for the profit of a third party, private or public money or property which has been delivered to him or her, in his or her possession or is accessible to him or her for reasons related to his or her duties;

e) Misuse of public material resources and facilities means, and pursuant to article 296 of the Criminal Code, an official who uses or allows others to use vehicles or other property of significant value, for purposes other than those authorised, and which has been delivered to him or her, in his or her possession or is accessible to him or her for reasons related to his or her duties, to obtain either for him or herself or a third party, an illegitimate benefit or to cause damage to someone;

f) Abuse of power, and pursuant to article 297 of the Criminal Code, an official who abuses power or violates rules inherent to his or her duties, with the intention of obtaining for him or herself or for a third party, an illegitimate benefit or cause damage to another person;

g) Financial participation in public affairs means, and pursuant to article 299 of the Criminal Code, an official who, for reasons related to the exercise of his or her public post, shall intervene in contracts or other operations or activities, and takes advantage of this position to obtain for him or herself or for a third party, either directly or through a third party, property or any other form, illicit financial participation and in this way harm public interests which he/she is responsible for managing, inspecting, defending or implementing;

h) Public agent means, and pursuant to article 302 of the Criminal Code, public officials, administrative agents, members of the civil and police forces, as well as all those persons included in sub-paragraphs d), e) and f) and No. 2 of aforementioned article;

i) Person includes individual or legal (including banks and other financial institutions) person, and where a corporation is concerned, includes its directors and those in positions of responsibility;

j) Premises include the interiors and exteriors, as well as the annexes of buildings;

k) Buildings include vehicles, boats, aeroplanes and containers.

Article 3

Nature of the Commission

1. The Commission is a legal person governed by public law, given a legal personality with technical independence and administrative and financial autonomy.
2. The Commission is given the status of an independent, specialised criminal police body and its intervention is governed by criteria of strict legality and objectivity, in accordance with the terms of the law.
3. In its capacity as criminal police body, the Commission shall act under the responsibility of the competent judicial authority under the terms of the law.

Article 4

Mission of the Commission

The mission of the Commission is to undertake preventive action and criminal investigation action against corruption in any of its forms, embezzlement, abuse of power, trafficking of influences and financial participation in public affairs, as defined by penal legislation.

Article 5

Powers of the Commission

1. In terms of criminal prevention the Commission has the power to:
 - a) Gather and analyse information on the causes and the prevention of corruption;
 - b) Undertake awareness raising actions aimed at limiting the practice of acts of corruption, by motivating people to adopt precautions or to reduce those acts and situations which render the occurrence of criminal conduct easier;
 - c) Advise any institution or public authority on ways to prevent and fight against corrupt conduct.
2. In terms of criminal investigation, the Commission has the power to exercise the duties assigned under the terms of the law to the criminal police bodies, notably,
 - a) To conduct the inquiry or practice acts of inquiry delegated to it by the Public Prosecutor's Office;
 - b) To gather news of crimes;
 - c) To discover those agents responsible for practising criminal acts;
 - d) To investigate signs or news of facts which may constitute a crime;
 - e) To proceed to the identification and detention of people;
 - f) To make the necessary notifications by itself or by resorting to another police authority;
 - g) To conduct interrogations within the scope of the investigation and other investigative measures necessary for the performance of their duties;
 - h) To conduct searches and body searches;
 - i) To seize objects and documents;
 - j) To stand on watch;
 - k) To intercept and record conversations or telephone calls, with a court order;

- l) To examine books, documents, records, archives and other pertinent elements in the possession of the entities which are under investigation, as well as other pending offences;
- m) To draw up expert reports, take measurements and gather samples for laboratory exams;
- n) To seal off premises.

3. In terms of criminal investigation, the Commission may also suggest to the public Prosecutor's Office that precautionary measures be adopted under the terms of the applicable penal procedural legislation, notably:

- a) That an order be made to freeze bank accounts when there are strong indications that they contain funds resulting from crimes as set out in article 4;
- b) That an order be made that any assets in the possession, custody or control of a person are not to be used;

4. In order to fulfil its respective duties, the Commission shall give maximum priority to the investigation of those cases of corruption of greater severity or complexity.

5. The special regimes set out in Decrees-Law No. 4/2006 of 1st March and No. 2/2007 of 8th March shall be applicable to the Commission.

6. Acts carried out by the Commission without a court order from the competent judicial authorities, under the terms set out in the law, shall be validated by the competent judicial authority within a maximum time limit of 72 hours, under penalty of it being rendered null and void.

7. The validation shall be requested with urgency by the Public Prosecutor's Office.

CHAPTER II STRUCTURE Article 6 Commission

The Commission shall consist of a Commissioner, Deputy Commissioners and support staff.

Article 7 Commissioner

1. The Commissioner shall be appointed by the National Parliament, by absolute majority of the Members of Parliament as long as at least three quarters of acting Members are present and shall take office before the Speaker.

2. The Commissioner shall:

- a) Carry out Commission business;
- b) Take all the measures and carry out all acts within the power of the Commission and within the scope of criminal prevention, namely to issue recommendations and draw up reports;
- c) Coordinate criminal investigation acts and measures of the responsibility of the Commission;
- d) Distribute the investigations and acts delegated by the Public Prosecutor's Office or assigned by the judge within the scope of the judicial proceedings among the professional investigative staff;
- e) Control the legality of the preventive and criminal investigation acts and measures undertaken by the Commission;
- f) Ensure coordination between the professional investigative staff and the judicial authorities;
- g) Ensure coordination between the Commission and the other criminal police bodies;
- h) Recruit investigative staff and other support staff, as set out under the terms of the law;

- i) Exercise disciplinary power over the staff working for the Commission;
 - j) Draw up an annual report on the Commission's activities, notably as regards the number of enquiries undertaken, to be submitted to the National Parliament;
 - k) To perform other duties assigned by law.
3. The Commissioner may delegate his or her duties to his or her deputies, who in turn may sub-delegate, without prejudice to, at any time, challenging the powers delegated.
4. The powers to issue guidelines where an action may interfere with the rights of privacy or the personal freedom of an individual, drawing up of recommendations and reports shall not be delegated.

Article 8 Eligibility

1. The Commissioner shall be a Timorese citizen, in full possession of his faculties, chosen from among:
- a) Judges;
 - b) Public Prosecutors;
 - c) Public Defenders;
 - d) Lawyers;
 - e) Jurists of recognised merit and with a professional experience of over five years;
 - f) Police agents with professional experience in the career of over five years;
 - g) Criminal investigators with professional experience in the career or in a similar area of over five years;
2. The applicant to the post of Commissioner shall be recognised by his or her high level of independence and impartiality.
3. The Commissioner shall be subject to the sending of the declaration of Register of Interests, pursuant to articles 6 and 8 of Law No. 7/2007 of 25th of July and complementary legislation.

Article 9 Incompatibilities

1. The Commissioner exercises his or her functions on a full time basis and the exercise of his or her functions shall be incompatible with:
- a) the performance of any other public or private function;
 - b) political activities;
 - c) remuneration for any other activity or post;
2. The Commissioner shall cease to exercise any of the above mentioned activities before taking over his functions.

Article 10

Civil and Criminal Liability

1. The Commissioner shall not be held liable under civil or criminal law for acts carried out and opinions issued during office, legal action shall be taken against the State which has the right of redress.
2. The Commissioner is accountable to the National Parliament for offences committed during office and for having violated his or her obligations under the terms of this Law.
3. The National Parliament shall inform the Attorney General when it knows of any crime committed by the Commissioner in the exercise of his or her functions.
4. The National Parliament shall decide on the lifting of the Commissioner's immunity in the case of a crime committed when in office.
5. The lifting of the immunity shall be requested by the competent judge to the National Parliament, the decision being taken however by majority of the Members of Parliament present.
6. The decision not to lift immunity automatically suspends the limitation periods in relation to the complaint as set out in the criminal laws.

Article 11

Term of Office and Procedures

1. The Commissioner shall be elected for a period of four years, being renewable only once, for an equal period of time.
2. The term of office of the Commissioner shall automatically cease:
 - a) At the end of term of office;
 - b) When he/she suffers a permanent physical or mental incapacity which prevents him or her from carrying out his or her functions, attested by a medical Commission appointed by the National Parliament consisting of three National Health Service doctors;
 - c) When he/she accepts or carries out a post, function or activity incompatible with his or her office;
 - d) In case of death;
 - e) In case of resignation
 - f) If /she he is convicted of a crime punishable with a prison sentence with the force of res judicata;
 - g) Dismissal, approved by absolute majority of the Members of Parliament as long as at least three quarters of acting Members are present, by a well-founded proposal of the Prime Minister, in the case of violation of the legal obligations of the Commissioner.
3. Once the proposal for dismissal has been admitted, the Bureau shall proceed to distribute such proposal to the competent Permanent Specialised Commission for its official report to be issued within five days.
4. Before issuing its official opinion, the Commission must hear the Commissioner.
5. The Bureau of the National Parliament shall declare that the term of office shall cease.
6. The Government shall propose the election of a new Commissioner to the National Parliament, which shall occur up to 30 days before the end of the term of office, under the terms set out for the first election.

7. In the case the term of office ceases for reasons other than its end, the Government shall propose to the National Parliament that one of the Deputy Commissioners be appointed as Interim Commissioner.

8. In the event of the occurrence set out in paragraph 8 above, the election of the Commissioner will be of an urgent nature and shall be concluded within two months from the date the term of office ceases.

Article 12 Deputy Commissioners

1. The Commissioner may appoint up to three Deputy Commissioners to assist him or her.

2. Deputy Commissioners may be appointed from graduates, notably in Law, Economics, Management, Accountancy and Public Administration, and if they have at least five years of experience in those areas.

3. The Deputy Commissioners shall be appointed for a term of office of four years, renewable only once for an equal period of time.

4. The Deputy Commissioners are governed by the terms set out in articles 9, 10 and 11 of the present law, with the necessary adjustments.

Article 13 Support Staff

1. The Commissioner shall be supported by professional investigators and other staff required for the full performance of the duties of the Commission.

2. The public service general regime shall be applicable to the support staff and shall also cover recruitment.

3. The position of professional investigator shall be established in separate legislation.

CHAPTER III DUTIES AND GUARANTEES

Article 14 Duty of Secrecy

The regime of protection of investigation secrecy set out in criminal law and criminal procedural law shall govern the investigations and inquiries under the responsibility of the Commission.

Article 15 Confidentiality

Without prejudice to the terms and provisions set out in article 22, the documents, information and evidence gathered by the Commission shall be confidential until the trial in accordance with the regime of secrecy established by law.

Article 16

Interrogations

1. The interrogations conducted by the Commission shall be led by the Commissioner, by a Deputy Commissioner, or by a professional investigator, in accordance with the decision taken by the Commissioner, under the terms of the law.
2. Whoever is notified to appear for interrogation is entitled to be informed, before the interrogation, of the nature of the allegation or the complaint to be investigated, under the terms of the law.
3. Interrogations shall not be public but the presence of a lawyer is permitted, of such right the persons to be interrogated shall be formally and timely notified, under the terms of the law.

Article 17

Guarantees for the pursuit of investigation activities

In the exercise of his or her functions, the Commissioner, his or her deputy and investigation staff shall enjoy the prerogatives of the criminal police authorities, under the terms of the criminal procedural law, with particular reference to:

- a) Rights of access and free transit, under the terms of the law, for the time and schedule required to perform their functions, in all services and premises of public and private bodies and which are considered necessary for the performance of their tasks;
- b) Requesting the collaboration of the police authorities, in the event access is refused or an obstruction is raised vis-à-vis the undertaking of the investigation by the addressees, to remove that obstruction and guarantee that the investigation be carried out in safety;
- c) Use in the places under investigation, leased by the respective authorities under investigation, decent and efficient premises for the performance of his or her functions;
- d) Exchange correspondence, when on duty, with all public or private authorities on matters related to the area of competence.

Article 18

Inviolability of Documents

1. Correspondence, material or information provided, obtained or gathered by the Commission shall be exempt from censorship or any interference.
2. The archives, files, documents, communications, properties, funds and assets of the Commission or in the possession of the Commission shall be inviolable and may only be accessed or made public under the terms of the applicable legislation.

Article 19

Notification

Those who, duly notified by the Commission, do not appear or do not cooperate with the Commission shall be punished under the terms of criminal law and criminal procedural law.

Article 20
Conclusion of the Investigation

1. Once the investigation has been concluded, the Commission shall submit its final report to the Public Prosecutor's Office under the terms of criminal procedural law.
2. When, within the scope of the investigation, the Commission concludes that the facts under investigation are not crimes as set out in article 4, it shall send the corresponding proceedings with due urgency to the competent authorities.
3. When there is no relevant matter for criminal proceedings to be brought, the Commission may issue recommendations aimed at the authorities or persons under investigation in order to improve the procedures.

Article 21
Use of statements, documents and other evidence

The statements, documents or other objects presented by the witness at the interrogation or inquiry before the Commission may be admitted as evidence against any person in any proceedings.

Article 22
Protection of witnesses and Commission assistants

1. The Commissioner may, in accordance with the applicable law, request protection for the witnesses and other persons who assist the Commission.
2. The witnesses and the persons involved in the investigations conducted by the Commission are entitled to request protection, under the terms of the law.

Article 23
Cases of non-punishment

1. The conduct of those who, previously and duly authorised by reasoned order of the competent court, instrumentally accept, themselves or by way of a third party, an illicit request made by a public official or by any other individual is not punishable, as long as it is undertaken as proof before the Commission of any of the crimes within the scope of this law.
2. The instrumental acceptance of bribes may also be authorised, as long as it is undertaken to prove any of the crimes pursuant to article 4 of the present law.

CHAPTER IV
COOPERATION WITH THE COMMISSION

Article 24

Overall duty to cooperate with the Commission

1. The direct, indirect and autonomous administrative services of the State, object of the investigation shall be bound to information and cooperation duties.
2. All individual and legal persons have the duty to collaborate with the Commission, their legitimate rights and interests being fully safeguarded.

Article 25
Special Cooperation Duties

1. The Commission, in the performance of its duties, shall be entitled to cooperation from public authorities and may requisition those public authorities, which are competent in the areas required for any investigation, inquiry, expert analyses, examinations or any other necessary measures.
2. The public authorities are obliged to provide information to the Commission and to provide it with documents and other elements at their disposal, as well as to respond to the requests made by this Commission, a time limit possibly being set for the fulfilment of such task.
3. The Commission, the criminal police bodies and the Public Prosecutor's Office have a special duty to cooperate and coordinate their respective activities, in accordance with criminal procedural legislation.

Article 26
Cooperation with other institutions

The Commission may establish agreements, including memoranda of understanding, whenever necessary, with any national or international, counterpart institution, with a view to:

- a) to cooperate in the performance of its respective duties;
- b) to cooperate in the joint use of premises and staff;
- c) to exchange information.

Article 27
Transmission of materials to other bodies

1. Without prejudice to the overall rule of confidentiality established by Law, the Commission may, before, during or after the investigation of a matter, transmit any matter for investigation or other action to the Attorney General or other legally competent authority.
2. The Commissioner may request information and reports from any authority, vis-à-vis matters concerning the corresponding activity.

CHAPTER V
RESPONSIBILITY TO NATIONAL PARLIAMENT

Article 28
Reports

1. The Commission shall, by 31st of March each year, submit an overall activity report concerning the work of the previous year to the National Parliament.
2. The report referred to in the number above shall contain:
 - a) Description of the type of investigations conducted by the Commission;
 - b) Appraisal of the response of the appropriate authorities to recommendations made by the Commission;
 - c) The overall nature and scope of any information communicated between the Commission and other authorities;
 - d) The number of investigations conducted by the Commission which resulted in lawsuits or disciplinary actions;
 - e) Description of the activities of the Commission during this year in relation to its preventive and educational function; and

f) Any recommended alterations in legislation which the Commission considers should be made as a result of the performance of its functions.

3. The Commission may, whenever it deems fit, submit a special report on any matter of general or administrative policy related to its activities.

4. The National Parliament, through the Bureau, may, whenever it deems fit, request reports to the Commission in relations to its overall corresponding activities, always safeguarding the confidentiality and secrecy of the investigations.

CHAPTER VI

BUDGET

Article 29

Budget

1. The Commission shall have a yearly budget sufficient to cover its operational costs and adequate to maintain its independence, impartiality and efficiency, as set out under the terms of the law.

2. The Commission budget shall be prepared, approved and managed in accordance with the law.

3. The Commission shall be forbidden from receiving funds from other sources.

4. The Commission shall keep accounting records and other records on its functions or activities.

5. The financial statements shall be presented to the National Parliament and audited by the High Court of Administration, Taxation and Accounting or by independent external auditors.

CHAPTER VII

FINAL AND TRANSITIONAL PROVISIONS

Article 30

Amendments to Law No. 7/2004

1. No. 3 of article 5, sub-paragraph a) of No. 1 of article 13, article 23, sub-paragraph a) of article 24, sub-paragraph a) of No. 1 of 25 and No. 1 of article 47 of Law No. 7/2004, of 26th May, which approves the position of Human Rights and Justice Ombudsman shall now have the following wording:

Article 5

Nature

1. [â]

2. [â]

3. The Office of the Human Rights and Justice Ombudsman, hereinafter referred to as Ombudsman's Office, is aimed at preventing bad management and protecting and promoting human rights and the fundamental freedoms of persons, individual and legal, in all national territory.

4. [â]

5. [â]

Article 13
Eligibility Requirements

1. [â]
 - a) Sufficient experience and qualifications to investigate and draw up reports on violations of human rights and bad administration.
 - b) [â]
 - c) [â]
2. [â]

Article 23
Investigation

The Human Rights and Justice Ombudsman shall be responsible for investigating violations of human rights and fundamental freedoms and guarantees, situations of bad administration, illegality, manifest injustice and lack of fair and equitable procedures.

Article 24
Inspection and Recommendation

- [â]
- a) To inspect the functioning of public powers, notably of the Government and its bodies and private authorities which perform public duties and services, inquiries being possibly initiated on systematic and generalised violations of human rights or bad administration;
 - b) [â]
 - c) [â]
 - d) [â]
 - e) [â]

Article 25
Promotion of Human Rights and Good Governance

1. [â]
 - a) To promote a culture of respect for human rights, good governance, in particular through public declarations, information campaigns or any other appropriate means of informing the public at large and Public Administration, and to generalise information on human rights and good governance.
 - b) [â]
- 2 [â]
 - a) [â]
 - b) [â]
 - c) [â]
3. [â]

Article 47
Recommendations

1. The Human Rights and Justice Ombudsman shall identify the causes of violation of human rights, abuse and bad management of a public authority and shall draw up recommendations for their correction, prevention or elimination and for the observance of the highest standards in terms of human rights, principle of legality, ethics and efficiency.
- 2) [â]

- 3) [â]
- 4) [â]â

Article 31 Repeal

Articles 26 and 27 of Law no. 7/2004 of 26th of May shall be repealed.

Article 32 Transitional regime

1. The Commission shall investigate and make enquiries into cases which have emerged once the Commission has commenced its activities.
2. All matters related to crimes, the investigation of which is of the responsibility of the Commission, which come to the knowledge of any State body, namely, the Human Rights and Justice Ombudsman and the State General Inspectorate, once the present law comes into force, shall be forwarded to the Commission.

Article 33 Separate Legislation

1. The Government shall approve legislation concerning the status of professional investigators.
2. Until the approval of the legislation referred to in paragraph 1 above, investigators shall be covered by the regime applicable to the Timor-Leste National Police Force, under the terms to be regulated by the Government.

Article 34 Appointment of the First Commissioner

The Government shall propose to National Parliament that the Commissioner be elected, within 60 days from the date of publication of this law.

Article 35 Republication

Law No, 7/2004 of 26th May, which approves the Status of the Human Rights and Justice Ombudsman, with the amendments introduced, shall be hereby republished with the present wording and attached to this law.

Article 36 Entry into Force

1. This law shall become effective 30 days upon publication.
2. The Commission shall commence its activities 90 days upon publication of this law.

Approved on 29th June 2009

The Speaker of the National Parliament

Fernando La Sama de Araújo

Promulgated on 7th July 2009

To be published.

The President of the Republic

Dr José Ramos Horta

ATTACHMENT

Law No. 7/2004 of 26 May

Approves the Statutes of the Office of the Human Rights and Justice Ombudsman

Taking into account the terms set out in article 27 of the Constitution, which provides for the Human Rights and Justice Ombudsman, as an independent body in charge of examining and seeking to satisfy citizens complaints against public bodies, and also certifying the conformity of the acts with the law. The Human Rights and Justice Ombudsman is also responsible for preventing injustices and initiating the entire process to remedy injustices with the powers to undertake, without power of decision, a review of specific cases and forward recommendations to the competent bodies;

Taking into account Article 150 of the Constitution, which provides for the Human Rights and Justice Ombudsman to request a declaration of unconstitutionality of legislative measures;

Further taking into account Article 151 of the Constitution, which provides for the Human Rights and Justice Ombudsman to request the Supreme Court of Justice to review the unconstitutionality by omission of any legislative measures as deemed necessary to enable implementation of the Constitution;

Emphasizing the need to promote and protect human rights and freedoms and guarantees, and also the need to establish an effective rule of law in Timor-Leste;

Desiring to create and maintain an efficient public administration that is free from corruption and nepotism, and also to increase the community sense of confidence in a just administration;

Further desiring to implement and promote a culture of efficiency, transparency, integrity and accountability in Timor-Leste public authorities and agencies;

Recalling Timor-Leste obligation to defend citizens from any abuse of power by public authorities;

Further recalling Timor-Leste obligation to observe and comply with customary international law and the highest standards of internationally recognized human rights and good governance, as set out in international Human Rights instruments ratified by the Democratic Republic of Timor-Leste;

Recalling the United Nations Principles relating to the Status and Functions of National Institutions for the Promotion and Protection of Human Rights, also referred to as the Paris Principles, which provide for a broad mandate granted to independent national institutions;

For the purpose of establishing the Office of the Human Rights and Justice Ombudsman;

Pursuant to the provisions of articles 27, 92, 150 and 151 of the Constitution of Timor-Leste, the National Parliament enacts the following text that shall have the force of law:

CHAPTER I PRELIMINARY PROVISIONS

Part 1 DEFINITIONS

Article 1:

Terms and expressions

For the purposes of the present legislation, the following words and expressions shall have the following meaning unless the context otherwise requires:

(a) Class action means an action whereby an individual lodges a complaint for the purpose of defending his or her own rights, collective interests, the Constitution, laws or public interests;

(b) Act means an action, decision, proposal or recommendation made by the entities or agencies referred to in Articles 3.1 and 3.2. It does not include an act done in the discharge of a judicial or legislative function as specified in Article 4;

(c) Good governance means the transparent exercise of government powers for the establishment of an impartial fair, efficient and responsible public administration, with respect for the principles of legality and of a democratic State based on the rule-of-law;

(d) Conciliation means a process whereby the parties to a dispute, with the assistance of a neutral third person called a conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator plays an advisory role, giving expert advice on the determination of the issue in dispute and the likely settlement terms and actively encouraging the participants to reach an agreement;

(e) Collusion means a secret agreement or cooperation, wilful and conscious, made for an illegal purpose;

(f) Eliminated;

(g) Fundamental human rights and freedoms means the rights, freedoms and guarantees referred to in Part II of the Constitution and the rights embodied in the United Nations instruments on Human Rights, all interpreted in accordance with the Universal Declaration of Human Rights;

(h) Maladministration means acts and omissions outside the powers conferred, made on the basis of irrelevant considerations, mistake of facts and law or lack of due process, and which disrupt or undermine the effective and proper functioning of the public administration;

(i) Mediation means a process whereby a neutral third person called a mediator acts to facilitate the resolution of a dispute between two or more parties. This informal and non-adversarial process may be undertaken voluntarily, under a Court order, or subject to an existing contractual agreement, and is for the purpose of helping the disputing parties reach a mutually acceptable and voluntary agreement. The mediator has no formal advisory or determinative role in regard to the content of the dispute or the outcome of its resolution but may advise on or determine the issue in dispute and assist in exploring settlement alternatives. The decision-making authority rests with the parties.

(j) Eliminated;

(l) Omission means a refusal or a failure to act where such duty lawfully exists;

(m) International Organisation means an institution formed by way of a formal agreement among States and comprised of standing bodies that act with autonomy in relation to the Member States for the pursuit of common interests; it includes United Nations agencies;

(n) â Public agencies or entities include:

(i) The departments of State and the governmental agencies, including the legislative and administrative branches of the State, the judicial branch only to the extent of its administrative actions, the National Police Force of Timor-Leste referred to as PNTL, and the Falintil-Defence Force of Timor-Leste referred to as F-FDTL;

(ii) the local government administration;

(iii) the governmental committees and agencies;

(iv) state-owned companies;

(v) companies where the Government owns over 50% of the capital;

(vi) any other body as prescribed by law;

(o) Public service or function refers to a service or function that is normally under the responsibility or competence of the Government as set out in Article 115 of the Constitution, national laws and international instruments but which can be delegated or contracted to a private entity;

(p) Eliminated.

SECTION II

GENERAL PRINCIPLES

Article 2

Right of Claim

1. All legal and natural persons may lodge a complaint with the Office of the Human Rights and Justice Ombudsman.
2. Complaints may be lodged individually or collectively, including through class actions.
3. Disputes that are the object of a complaint, with the authorisation of the parties, through mediation or conciliation.

Article 3

Scope of Action

1. The Human Rights and Justice Ombudsman shall exercise his or her functions within the scope of action of public authorities, notably the Government, the PNTL, the Prison Service, and the F-FDTL.
2. The action of the Human Rights and Justice Ombudsman may also focus on the activities of public or private authorities and agencies that, regardless of their origin, fulfil public functions and services or manage public funds or assets.
3. The Office of the Human Rights and Justice Ombudsman shall, subject to Article 37.3, investigate all complaints relating, but not limited to acts or omissions which:
 - (a) are contrary to the law or regulation;
 - (b) are unreasonable, unfair, oppressive or discriminatory;
 - (c) are inconsistent with the general course of a public authority or agencies functions;
 - (d) proceed from mistake of law or an arbitrary, erroneous or mistaken ascertainment of facts;
 - (e) are otherwise irregular and devoid of justification.

Article 4

Limits of action

1. The activities of the National Parliament and the Courts performing their legislative and judicial functions shall not be subject to the investigative and supervising powers of the Human Rights and Justice Ombudsman save insofar as their administrative activities as well as the acts that they perform in supervising the administration are concerned.
2. The Human Rights and Justice Ombudsman may however review the constitutionality of legislative measures in accordance with Articles 150 and 151 of the Constitution.

CHAPTER II

OFFICE OF THE HUMAN RIGHTS AND JUSTICE OMBUDSMAN

SECTION I

PRELIMINARY PROVISIONS

Article 5

Nature

1. The Office shall operate as an independent statutory body and shall not be subject to the direction, control or influence of any person or authority.
2. The Office shall have the power to review complaints, conduct investigations and forward to the competent bodies the recommendations deemed appropriate to prevent or redress illegality or injustice.
3. The purpose of the Office of the Human Rights and Justice Ombudsman, hereinafter referred to as the Office, is to prevent maladministration and protect and promote human rights and fundamental freedoms of natural and legal persons throughout the national territory.
4. The Office shall provide the technical and administrative support for the discharge of the duties of the Human Rights and Justice Ombudsman and for the exercise of his or her functions with independence in relation to the Government and the other bodies of sovereignty, political parties and all other entities and authorities that might affect his or her work.
5. The Office shall have legal powers to enter into contracts, sue and be sued, acquire, hold and dispose of property, as deemed necessary for and incidental to the performance of its functions.

Article 6

Rules of procedure

1. The Office shall be governed by the present law and the rules of procedure necessary for the effective performance of its functions and for the exercise of its powers and duties.
2. The rules of procedure shall be fair and equitable.

Article 7

Office location

The Office shall have its main location in Dili and sub-offices may be established in other parts of Timor-Leste.

Article 8

Scope

1 All legal and natural persons in Timor-Leste may benefit from the services provided by the Office.

2 The Human Rights and Justice Ombudsman shall ensure that the most vulnerable and disadvantaged persons such as detainees, women, children and minority groups, including persons in special needs such as culture, language and health, and those with disabilities are able to benefit from the services provided by the Office.

7.3. The services of the Office shall be rendered free of charge.

SECTION II

STAFF

Article 9

Composition

The Office shall be composed of the Human Rights and Justice Ombudsman, Deputy Ombudsmen, a Chief of Staff, Officers and other staff members as deemed necessary to provide the Office with the necessary technical and administrative support.

Article 10

Status of Personnel

1. The Human Rights and Justice Ombudsman shall be empowered to perform any act relating to the appointment and to the professional situation of the staff of the Office in accordance with the Public Service Act, with the necessary adaptations, and other applicable laws, and to exercise disciplinary powers in relation to such staff.

2. The staff of the Office shall be appointed on the basis of their qualifications and taking into consideration the gender balance and ethnic and religious representativeness within the Office.

3. All positions in the Office shall be incompatible with a remunerated activity in a private company or body, or any employment as a public servant under the Public Service Act of Timor-Leste.

4. The employees of the Office shall always act in accordance with the law and shall give their duty and loyalty to the Human Rights and Justice Ombudsman.

5. The employees of the Office shall not receive instructions from any other entity, unless such entity has been delegated powers by the Human Rights and Justice Ombudsman for that purpose.

6. The Human Rights and Justice Ombudsman and the employees of the Office shall act on the duty of confidentiality, under the present law, in relation to all matters that come to their knowledge in the performance of their functions and duties.

7. The duty of confidentiality shall be owed after separation from Office.

SECTION III

FUNDING

Article 11

Adequacy of funding

1. The Office shall have an annual budget sufficient to ensure its operation, and adequate to maintain its independence, impartiality and efficiency. Such budget shall be appropriated in accordance with the law.

2. The budget for the Office shall be prepared, approved and managed in accordance with the law.

3. The funds of the Office shall consist of all budgetary appropriations for the Office and all other funds lawfully received by the Office.

4. The Office shall not receive funds from a source and in circumstances that could compromise its independence and integrity and any investigation.

5. The Office shall keep proper books of account and other records in relation to its functions or activities, and shall be accountable under the law.

6. The Offices statements of accounts shall also be submitted to the National Parliament, and may be audited by the High Administrative, Tax and Audit Court or shall, pending the creation of the latter, be subject to independent external auditing.

CHAPTER III

STATUTE

SECTION I

APPOINTMENT OF THE HUMAN RIGHTS AND JUSTICE OMBUDSMAN

Article 12

Procedure

1. The National Parliament shall appoint the Human Rights and Justice Ombudsman through absolute majority votes of its members on active duty.
2. The appointment may only fall upon a citizen who fulfils the conditions set out in the following article.
3. The National Parliament shall publicly call for candidacies within one (1) month of promulgation of the present law, or within one (1) month of vacation of the position of Human Rights and Justice Ombudsman.
4. The National Parliament shall consider all the candidacies, in a plenary session, and shall alternately take a vote on each of the candidacies.
5. The National Parliament may call for candidacies before the deadline set out in paragraph 3 above but the appointment process shall be completed within the time limit stipulated under the present law.

Article 13

Eligibility requirements

- A person shall not be qualified for appointment as Human Rights and Justice Ombudsman, unless he or she has:
- (a) sufficient experience and qualifications in order to investigate and report on human rights violations and malpractice in the administration;
 - (b) proven integrity;
 - (c) a sound knowledge of the principles of human rights, good governance and public administration.
2. A person applying for the position of Human Rights and Justice Ombudsman shall also be recognized for his or her standing in the community, as well as his or her high level of independence and impartiality.

Article 14

Declaration of income

The Human Rights and Justice Ombudsman shall forward to the National Parliament a declaration enumerating all his or her assets and any other income earned before taking up functions. Such declaration shall be confidentially kept by the Speaker of the National Parliament.

Article 15

Taking-up of functions

1. The Human Rights and Justice Ombudsman shall take up functions before the Speaker of the National Parliament, and make the following oath or solemn declaration:

I swear (or solemnly declare) that in carrying out the functions entrusted to me as Human Rights and Justice Ombudsman, I will perform my duties independently and impartially. I will, at all times, act in accordance with the dignity and the integrity that the performance of my functions requires. In the performance of my functions, I will seek to defend and promote respect for human rights, good governance and peace. I will carry out my functions without discrimination on any ground such as colour, race, marital status, gender, sexual orientation, ethnic or national origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.

2. The Human Rights and Justice Ombudsman may delegate his or her powers in part.

Article 16

Deputy Ombudsmen

1. The Human Rights and Justice Ombudsman may appoint two (2) or more Deputies.

2. The Deputy Ombudsmen shall be appointed on the basis of transparent and objective criteria, giving consideration, notably, to their integrity, independence, impartiality and qualifications.

3. The Deputy Ombudsmen shall be appointed for a renewable four (4) years period.

4. The term of office of the Deputy Ombudsmen shall cease with the end of the term of office of the Human Rights and Justice Ombudsman, under Article 19.5.

5. The Deputy Ombudsmen shall take up functions before the Speaker of the National Parliament, and shall make the following oath or solemn declaration:

I swear (solemnly declare) that in carrying out the functions entrusted to me as Deputy Ombudsman, I will perform my duties independently and impartially. I will, at all times, act in accordance with the dignity and the integrity that the performance of my functions requires. In the performance of my functions, I will seek to defend and promote respect for human rights, good governance and peace. I will carry out my functions without discrimination on any ground such as colour, race, marital status, gender, sexual orientation, ethnic or national origin, language, social

or economic status, political or ideological convictions, religion, education and physical or mental condition.

6. The Deputy Ombudsmen shall be removed from office by the Ombudsman for Human Rights and Justice.

Article 17

Incompatibilities attached to the function

1. The position of Human Rights and Justice Ombudsman and Deputy Ombudsman shall be full-time positions and incompatible with:

(a) the holding of a representative office or the exercise of functions in any other constitutional body;

(b) political activities such as an office in a political party or in a public office;

(c) any remunerated activity or position in any other body;

(d) the management or control of a body corporate, or any other body carrying on business for profit;

(e) the exercise of leadership or employment in a trade union, association, foundation or religious organisation;

(f) the performance of the duties of a Judge, Prosecutor-General, Defender or Prosecutor;

(g) the exercise of functions in any entity under the scope of action of the Ombudsman for Human Rights and Justice.

2. The Human Rights and Justice Ombudsman must cease any of the above activities within fifteen (15) days before taking up functions.

Article 18

Privileges and Immunities attached to the function

1. The Human Rights and Justice Ombudsman and the Deputy Ombudsmen shall enjoy such rights, honours, precedence, rank, remuneration and privileges as the Prosecutor-General and the Deputy Prosecutor-General, respectively.

2. Neither the Human Rights and Justice Ombudsman nor the Deputy Ombudsmen shall be civilly or criminally liable for any act done or omitted, observation made or opinion issued, in good faith in the exercise of their functions.

3. The Human Rights and Justice Ombudsman and the Deputy Ombudsmen shall be answerable before the National Parliament for offences committed in the exercise of their functions and for clear and serious violation of their obligations arising from the present law.

4. The National Parliament shall decide on the lifting of the immunities of the Ombudsman for Human Rights and Justice or of the Deputy Ombudsmen in case of an offence committed in the exercise of their functions.

5. The National Parliament shall remit to the Prosecutor-General any criminal offence committed by the Human Rights and Justice Ombudsman or by the Deputy Ombudsmen outside the exercise of their functions.

6. All correspondence addressed or material and information furnished to, obtained or collected by the Human Rights and Justice Ombudsman or his or her staff shall be immune from any kind of censorship or other interference.

7. The premises of the Office shall be inviolable. The archives, files, documents, communications, property, funds and assets of the Office or in possession of the Human Rights and Justice Ombudsman, wherever located and by whoever held, shall be inviolable and immune from search, seizure, requisition, confiscation or any other form of interference.

SECTION II

TENURE OF OFFICE

Article 19

Term of office

1. The Human Rights and Justice Ombudsman shall be elected for a period of four (4) years and may seek re-election only once, for an equal period of time.

2. The Human Rights and Justice Ombudsman shall inform in writing the Speaker of the National Parliament, no less than three (3) months before the expiration of his or her term of office, of his or her decision to apply for a second mandate.

3. A vote, under the terms of Article 12.3, shall be called for within thirty (30) days of the expiration of the term of office of the Human Rights and Justice Ombudsman.

4. Once appointed, the Human Rights and Justice Ombudsman shall remain in office until expiration of his or her mandate except in the cases provided for in the following article.

5. The mandate of the Human Rights and Justice Ombudsman is deemed to have expired in the following cases:

- (a) expiration of the term of his or her mandate;
- (b) death;
- (c) resignation;
- (d) mental or physical incapacity to carry out his or her duties, attested by a medical panel;
- (e) final conviction for a criminal offence that carries a prison sentence exceeding one (1) year;
- (f) final conviction for a criminal offence punished by actual imprisonment;
- (g) removal from office under the terms of Article 21.

6. For the purposes of the preceding sub-article, the medical panel shall be composed of three practitioners from a public hospital, who may be assisted by specialists practising medicine outside the public sector.

Article 20

Vacation of office

1. In the event of vacation of office for any reason other than expiration of the term of office or in the event the Human Rights and Justice Ombudsman is suspended from office under the terms of Article 22, the National Parliament shall, as soon as possible and for such time as it may decide, appoint a Deputy Ombudsman as interim Human Rights and Justice Ombudsman.

2. In any event, the National Parliament shall appoint a new Ombudsman for Human Rights and Justice within two (2) months of such vacation.

Article 21

Removal from Office

1. The Human Rights and Justice Ombudsman can be removed from office by a two-third (2/3) majority in the National Parliament, on the grounds of:

- (a) acceptance and performance by the Human Rights and Justice Ombudsman of an office, function or activity that is incompatible with his or her mandate, as set out under Article 17 above;
- (b) permanent physical or mental incapacity preventing him or her from performing his or her functions, attested by a medical panel under the terms of Article 19.6
- (c) incompetence;
- (d) Definite conviction for a criminal offence that carries a prison sentence of less than one year;
- (e) acts or omissions in contradiction with the terms of his or her oath.

2. Any motion for the removal from office of the Human Rights and Justice Ombudsman must have the support of one-fifth (1/5) of the Members of Parliament;

3. The National Parliament shall set up an ad hoc enquiry committee to review and investigate the matter that is the object of the motion for removal.

4. The findings of the ad hoc enquiry committee provided for in the preceding paragraph shall, as soon as possible, be reported to the Human Rights and Justice Ombudsman, who has the right of appeal to the Plenary. Such appeal shall be dealt with in a plenary session specifically scheduled to take a vote on the removal.

5. The findings of the ad hoc enquiry committee shall not be voted on until the appeal lodged has been reviewed and the Human Rights and Justice Ombudsman heard.

Article 22

Suspension from office

Where the Human Rights and Justice Ombudsman is indicted for an offence that carries a penalty exceeding one (1) years imprisonment, the National Parliament shall decide through a two third (2/3) majority of its Members whether or not to suspend him or her from office.

CHAPTER IV COMPETENCIES, POWERS AND DUTIES

SECTION I COMPETENCIES

Article 23

Investigation

The Human Rights and Justice Ombudsman shall be empowered to investigate violations of fundamental human rights, freedoms and guarantees, maladministration, illegality, manifest injustice and lack of due process.

Article 24

Monitoring and Advice

The Ombudsman for Human Rights and Justice shall, within the scope of his or her monitoring powers, be empowered to:

- (a) oversee the functioning of public authorities, notably the Government, its agencies and private entities fulfilling public functions and services and may conduct enquiries into systematic or widespread violations of human rights or maladministration;
- (b) submit to the Government, the National Parliament or any other competent body, on an advisory basis, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights and good governance;
- (c) request the Supreme Court to declare the unconstitutionality of legislative measures, including unconstitutionality through omission in accordance with Sections 150 and 151 of the Constitution of Timor-Leste;
- (d) monitor and review regulations, administrative instructions, policies and practices in force or any draft legislation for consistency with customary international law and ratified human rights treaties;
- (e) recommend the adoption of new legislation, and propose the amendment of legislation in force and the adoption or amendment of administrative measures.

Article 25

Promotion of human rights and good governance

1. The Ombudsman for Human Rights and Justice shall, within the scope of his or her action to promote human rights and good governance, be empowered to:
 - (a) promote a culture of respect for human rights, good governance and fight against corruption, notably by making public statements, conducting information campaigns or by other appropriate means to inform the general public and public administration, and disseminate information regarding human rights, good governance and fight against corruption;
 - (b) make recommendations on the ratification of, or accession to, international human rights instruments, monitor the implementation of those instruments, and recommend that reservations to those instruments be either withdrawn or raised.
2. The Human Rights and Justice Ombudsman may also:
 - (a) advise the Government on its reporting obligations within the framework of international human rights instruments;
 - (b) contribute to the reports that Timor-Leste is required to submit to United Nations bodies and committees, and to regional institutions;
 - (c) express an independent opinion on the Governments reports.
3. The Human Rights and Justice Ombudsman may seek leave of the Court to intervene in legal proceedings in cases that involve matters under his or her competence, notably through the expression of opinions.

Article 26

Fight against corruption

[Revoked]

Article 27

Fight against influence peddling

[Revoked]

SECTION II POWERS

Article 28

Scope

For the purpose of performing his or her functions under Articles 23 to 25, the Human Rights and Justice Ombudsman shall have the following powers:

- (a) to receive complaints;
- (b) to investigate and inquire into matters under his or her competence;

- (c) to decide not to take any further action on, or dismiss, complaints brought before him or her, pursuant to Article 37.3 below;
- (d) to order a person to appear before him or her or at another place deemed more appropriate where it appears that person may have information relevant to an investigation initiated or to be initiated;
- (e) to have access to any facilities, premises, documents, equipment, goods or information for inspection and interrogate any person to whom the complaint relates somehow;
- (f) to visit any place of detention, treatment or care in order to inspect the conditions therein and conduct a confidential interview of the persons in detention;
- (g) to refer a complaint to a competent jurisdiction or another recourse mechanism;
- (h) to seek leave of the National Parliament to appear before a court, arbitration tribunal or an administrative enquiry committee;
- (i) to act as a mediator or conciliator between the complainant and the agency or entity which is the subject of a complaint, where the parties agree to submit to such a process;
- (j) to make recommendations for redress in complaints brought before him or her, notably by proposing remedies and reparations;
- (l) to provide advice including opinions, proposals and recommendations for the purpose of improving respect for human rights and good governance by the entities within his or her jurisdiction;
- (m) to report to the National Parliament in relation to the findings of an investigation or in relation to his or her recommendations.

Article 29

Limits of powers

The Human Rights and Justice Ombudsman shall not be empowered:

- (a) to make decisions which dispose of fundamental human rights or freedoms;
- (b) to set aside, revoke or modify the decisions of the agencies or entities affected, or make compensation orders;
- (c) to investigate the exercise of judicial functions or challenge a decision issued by a Court; or
- (d) to investigate the exercise of legislative functions, except through the means of monitoring constitutionality under the Sections 150 and 151 of the Constitution of Timor-Leste;
- (e) to investigate a matter that is already subject of an action before a Court, and has not yet been determined.

SECTION III DUTIES

Article 30

Duty to keep the public informed

The Human Rights and Justice Ombudsman shall keep the public informed of the activity and mandate of its Office, and be accessible to any person who wishes to bring information, lodge a complaint or seek clarification on a matter.

Article 31

Duty to maintain confidentiality

1. Records and information collected by the Office shall be confidential throughout the investigation;
2. Records and information shall be kept confidential after the completion of the investigation where required to protect the privacy of persons, minors in particular, or in other cases where the Human Rights and Justice Ombudsman considers the protection of privacy is necessary.
3. The Human Rights and Justice Ombudsman and the employees of the Office shall preserve and aid in preserving the confidentiality of matters that come to their knowledge in the performance of their functions and duties as established by the present law.
4. The duty to maintain confidentiality shall apply after separation from Office but does not prevent the Human Rights and Justice Ombudsman from exercising duties under Article 33.4.
5. The provisions of the preceding paragraph shall not be so construed that the Ombudsman for Human Rights and Justice or any employee of the Office shall be compelled to produce any book, voucher or other document or to answer questions in any proceedings in a court of law or before any body or institution in connection with information which came to his or her knowledge.

Article 32

Duty to keep the parties informed

Where the Human Rights and Justice Ombudsman decides to conduct an investigation under this law, he or she shall inform:

- (a) the complainant, pursuant to Article 37.4;
- (b) the aggrieved person;
- (c) the person to whom the investigation relates;
- (d) the head of department, in relation to an investigation relating to a public entity or agency.

Article 33

Duty to cooperate with other entities

1. The Human Rights and Justice Ombudsman shall maintain close liaison with similar institutions, bodies or authorities from within Timor-Leste in order to foster common policies and practices, and to promote mutual cooperation.
2. The Human Rights and Justice Ombudsman shall also cooperate with the Office of the Prosecutor-General where the latter, following a request by the National Parliament, undertakes an investigation into the acts or omissions of the Human Rights and Justice Ombudsman.
3. Where the Human Rights and Justice Ombudsman deems that an effective and adequate judicial or gratuitous remedy is available to the complainant, the Ombudsman for Human Rights

and Justice may limit his or her intervention to directing the complainant to the competent authority.

4. Where information received by the Human Rights and Justice Ombudsman gives rise to a belief that a crime has been committed or the commission of a crime is imminent, the Human Rights and Justice Ombudsman may refer the case to the Office of the Prosecutor-General and share any information or documents in his or her possession, which may contribute to uncovering the truth.

5. In the event of paragraph 4 above, the Human Rights and Justice Ombudsman shall notify the complainant immediately and in writing.

6. The Human Rights and Justice Ombudsman shall maintain close contact, consult and cooperate with other persons and bodies or organisations concerned with the promotion and protection of human rights and justice and the protection of vulnerable groups.

Article 34

Duty to report

1. The Human Rights and Justice Ombudsman shall report annually to the National Parliament on the performance of his or her functions.

2. Where circumstances so require, the Human Rights and Justice Ombudsman may decide to address the public directly or to issue communiqués or publish information on his or her opinions, recommendations and reports on specific cases or on his or her activity.

3. Any publicity issued by the Human Rights and Justice Ombudsman shall be balanced, fair and true.

CHAPTER V

PROCESS

SECTION I

PROCESSES AND PROCEDURE

Article 35

Initiative

The Human Rights and Justice Ombudsman shall act on the basis of a complaint or representation, individual or collective, or on his or her own initiative.

Article 36

Lodgement of complaints

1. Any natural or legal person may, directly or through their representative, address complaints to the Human Rights and Justice Ombudsman about violations and infringements as set out in Articles 23 to 25 of the present law.
2. Complaints shall be made orally or in writing, and shall include the complainant's identity and contact address.
3. Where a complaint is made in writing, it shall be signed by the complainant, if he or she is able to sign, or by his or her legal representative or agent.
4. Where a complaint is made orally, it shall be reduced to writing and signed by the person to whom the complaint is made and by the complainant, if he or she is able to sign; where the complainant is not able to sign, his or her fingerprint shall be taken.
5. Except as otherwise provided, where a letter written by a person held in any place of detention or a patient in a hospital or other institution is addressed to the Human Rights and Justice Ombudsman, it shall be immediately forwarded in a sealed envelope, unopened and unaltered by the person in charge of the place or institution where the writer of the letter is detained or in which he or she is a patient.
6. Where a person who may have laid a complaint under this law has died or is for any reason unable to act for himself or herself, the complaint may be continued by a member of his or her family, by his or her legal representative or other individual suitable to represent him or her.
7. Complaints can only be lodged in connection with acts or omissions, which were committed after the entry into force of the present law.
8. Complainants shall not be required to pay a fee, compensation, tax or charge in respect of the lodgement of a complaint, or in respect of the handling of such complaint or services provided by the Office.

Article 37

Preliminary Assessment

1. The Human Rights and Justice Ombudsman shall, within ten (10) days of a complaint being lodged with his or her Office, notify the complainant, in writing, of the receipt of the complaint.
2. The Human Rights and Justice Ombudsman shall, within thirty (30) days of the complaint being lodged with his or her Office, make a preliminary assessment of the complaint with a view to deciding whether to take action or not on the complaint.

3. The Human Rights and Justice Ombudsman may decide to dismiss the complaint or not to take further action where:
 - (a) the complaint is anonymous;
 - (b) the complaint is made in bad faith, unfounded or patently frivolous or vexatious;
 - (c) under the law or existing administrative practice, there is adequate remedy for the complaint, whether or not the complainant has availed himself or herself of it;
 - (d) the complaint is not within the mandate of the Human Rights and Justice Ombudsman;
 - (e) the complaint is in connection with acts or omissions that were committed before the present law came into force;
 - (f) the complaint was lodged after the period provided in the present law;
 - (g) the complaint has been manifestly delayed too long to justify an investigation;
 - (h) the alleged damage has been effectively and adequately redressed;
 - (i) the matter or substantially the same matter has already been addressed, or is currently being addressed by the Human Rights and Justice Ombudsman or another competent body;
 - (j) having regard to all the circumstances of the case, any further investigation is unnecessary.
4. The Human Rights and Justice Ombudsman shall, within forty-five (45) days of a complaint being lodged with his or her Office, notify the complainant, in writing, of his or her decision to investigate or not to take further action on the complaint or to dismiss the complaint.
5. The decision not to take further action on, or to dismiss, the complaint or to proceed with investigations shall be substantiated.
6. Without prejudice to paragraph 3 above, the Human Rights and Justice Ombudsman may, on his or her own initiative, decide to investigate the matter that is the object of a complaint.
7. The Human Rights and Justice Ombudsman may re-open the case if, within one (1) year after he or she has dismissed the complaint or decided not to take further action on it, fresh evidence in favour of the complainant becomes available.

Article 38

Mediation and Conciliation

1. The Human Rights and Justice Ombudsman may act as a mediator and a conciliator in a dispute between the complainant and the entity or agency the subject of a complaint, where both parties agree to submit to such a process.
2. Where one of the parties rejects mediation or conciliation, the Human Rights and Justice Ombudsman shall conduct a full investigation and make recommendations on the case.

SECTION II

INVESTIGATION

Article 39

Self-incrimination

Except for the purposes described in Articles 48 and 49, no statement made in the course of an investigation conducted by the Human Rights and Justice Ombudsman or in any other proceedings being conducted by the latter shall be admissible as evidence in court, enquiry or any other procedure, nor shall such a statement be used against the person who made it.

Article 40

Victimisation

1. No person shall be liable to prosecution for an offence committed by reason of his or her compliance with a requirement of the Human Rights and Justice Ombudsman under this law.
2. Absence from work shall be deemed justified where it stems from the duty to appear before the Human Rights and Justice Ombudsman.
3. No person, or a relative or associate to that person, shall be unfairly treated in their employment or be discriminated against by any other means by reason of his or her lodging a complaint, his or her cooperation with the Human Rights and Justice Ombudsman, or by reason of his or her taking any action under this law.

Article 41

Investigation procedure

1. The investigation shall be conducted with due respect of the rights and liberties of the persons involved.
2. Any investigation under this law shall be conducted in private.
3. A person who has been required to appear before the Human Rights and Justice Ombudsman shall be permitted to appear with, or be represented by, a legal representative with the leave of the Human Rights and Justice Ombudsman.
4. The Human Rights and Justice Ombudsman may hear the entities or persons concerned.
5. The Human Rights and Justice Ombudsman may also hear the person(s) the subject of a complaint, allowing him or her, or his or her representative, to provide the necessary clarifications

and answer the allegations made against him or her in the complaint, within a reasonable deadline as determined by the Ombudsman.

6. In conducting investigations, the Human Rights and Justice Ombudsman shall not be bound by the rules of civil and criminal procedure and evidence, but shall act objectively and fairly at all times.

Article 42

Investigation-related powers

1. An investigation shall consist of requests for information, inspections, examinations, inquiries or any other procedures that do not impinge upon the fundamental rights of legal and natural persons.

2. The Human Rights and Justice Ombudsman shall not investigate:

- (a) a matter which is already pending before a Court;
- (b) a matter involving the relations or dealings with another State or an international organisation;
- (c) a matter relating to the grant of pardons or commutation of sentences, as per Article 85 (i) of the Constitution of Timor-Leste.

3. Where he or she considers relevant to an investigation, the Ombudsman for Human Rights and Justice may, by notice in writing, require a person:

- (a) to appear before him or her, on a date and at the time and place specified in the notice;
- (b) to disclose truthfully, frankly and fully information within his or her knowledge;
- (c) to produce any object or item including documents and records, namely electronic data, in his or her possession, custody or control;
- (d) to allow the Human Rights and Justice Ombudsman complete access, inspection and examination to any premise, document, equipment or asset.

4. In the exercise of his or her competencies under Articles 23 to 25 above, the Ombudsman for Human Rights and Justice or any delegated employee of the Office may request, in accordance with the law, a Prosecutor to obtain search and seizure warrants to enable the Ombudsman or a delegated employee, in conjunction with the PNTL, to search premises and seize particular items considered relevant to an investigation conducted by the Office.

Article 43

Duty of non-interference

The Courts shall not arbitrarily interfere with, nor shall issue any writ of injunction to delay, an investigation being conducted by the Human Rights and Justice Ombudsman, unless there is prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Human Rights and Justice Ombudsman or if there is mala fide or conflict of interest.

Article 44

Duty to cooperate

1. Any person, including any civil servant, any administrative official or any incumbent of any body both civil and military, shall cooperate with the Human Rights and Justice Ombudsman and provide all information that the latter might request while performing his or her functions.
2. The duty to cooperate, as set out in paragraph 1 above, shall not prevail where legal restrictions in respect of privileges, immunities and duty of confidentiality apply to these entities.
3. Non-compliance with the duty to cooperate without lawful excuse shall constitute an offence, as provided for in Article 48.1 of the present law.
4. The Human Rights and Justice Ombudsman shall establish in the Rules of Procedure of the Office the conditions under which he or she may pay to a person who has cooperated with the Office in an investigation, such amounts in respect of expenses properly incurred having regard to the rates applicable to the Courts.

SECTION III

REPORTING AND RECOMMENDATIONS

Article 45

Final investigation report

1. The Human Rights and Justice Ombudsman shall, after completing any investigation and before publishing a report, provide the complainant and the person or entity against whom the complaint was made with a draft report on the findings of such investigation and his or her points of view, conclusions and recommendations.
2. The parties to the complaint shall provide their comments within fifteen (15) days after receiving the draft report.
3. The Human Rights and Justice Ombudsman may make known to other person's findings, points of view, conclusions or recommendations in respect of a matter he or she investigated.

Article 46

Progress Report

1. The Human Rights and Justice Ombudsman shall, not later than 30 June of each year, submit to the National Parliament a detailed report of his or her activities, initiatives, statistics on cases and the results obtained during the calendar year ending on the preceding 31 December.

2. The report shall make recommendations concerning reforms and other measures, whether legal, political or administrative, which could be taken to achieve the objectives of the Office, prevent or redress human rights violations and promote fairness, integrity, transparency, responsibility and accountability in public administration.
3. The annual report shall be published through any means accessible to the general public.
4. The Human Rights and Justice Ombudsman may submit to the National Parliament special reports on cases or matters of a serious nature, if deemed fit or necessary.
5. The Human Rights and Justice Ombudsman may, from time to time, in the public interest or in the interest of any person or entity, publish reports on the exercise of his or her functions or on any particular cases or situations investigated under this law.

Article 47

Recommendations

1. The Human Rights and Justice Ombudsman shall determine the causes of human rights violations, abuse and mismanagement in a public entity, and make recommendations for their correction, prevention or elimination and the observance of the highest standards of respect for human rights, rule of law, ethics and efficiency.
2. The recommendations made by the Human Rights and Justice Ombudsman shall be addressed to the body that has the power to correct or redress the irregular act or situation.
3. The body to which a recommendation is addressed must, within sixty (60) days, inform the Human Rights and Justice Ombudsman of the extent to which the recommendation has been acted upon or implemented.
4. Where the recommendation has not been acted upon or implemented, the Human Rights and Justice Ombudsman may report such failure to the National Parliament as provided for in Articles 34 and 46 above.

SECTION IV

OFFENCES

Article 48

General Offences

1. It shall be an offence for any person to:
 - (a) without reasonable excuse, fail to comply with an order issued by the Ombudsman for Human Rights and Justice to appear or answer questions at a specified place, date and time;

(b) without reasonable excuse, fail to comply with an order issued by the Ombudsman for Human Rights and Justice to produce any object or item in his or her possession, custody or control;

2. Any natural person who commits any of the acts listed in Article 48.1 above shall be liable to a fine not to exceed US\$ 500.

3. Any legal person who commits any of the acts listed in Article 48.1 above shall be liable to a fine not to exceed US\$ 5,000.

Article 49 Other Offences

1. It shall be a serious offence for any person to:

(a) disclose any confidential information in contravention of the present law;

(b) act by malice or gross bad faith while filing a completely unwarranted or false complaint against any government official or civil servant;

(c) perform any act for the purpose of improperly influencing the work of the Office;

(d) hinder the Office in the fulfilment or execution of its obligations, powers and duties under the present law;

(e) threaten, intimidate or improperly influence any person who has complained to or cooperated with the Office or is intending to complain to or cooperate with the Office in accordance with Article 35 of the present law;

(f) threaten, intimidate or improperly influence the employees of the Office.

2. Any person who commits any of the acts listed in Article 49.1 above shall be liable to a fine not to exceed US\$ 3,000 and a term of imprisonment not to exceed one (1) year, where the act does not carry a heavier fine or term of imprisonment by virtue of other legal provisions.

3. Any attempt to commit any of the acts listed in Article 49.1 above shall be punished by reducing the maximum applicable penalty to one-third (1/3).

4. Any delay or refusal to comply with the request of the Human Rights and Justice Ombudsman shall constitute ground for disciplinary action against the government official or public servant to whom it was addressed.

CHAPTER VI

FINAL PROVISIONS

Article 50

Implementation

Any supplementary provisions, necessary to give effect to the provisions of this law, shall be regulated by Government decree.

Article 51

Entry into Force

The present law shall enter into force the day following its publication.