

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE
GOVERNMENT**

**LAW – 9/2008
ON THE INTELLIGENCE SYSTEM
OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

(EXPLANATORY STATEMENT)

Article 30.1 of the Constitution of the Democratic Republic of Timor-Leste provides that “everyone has the right to personal freedom, security and integrity”.

The fundamental right to security has two dimensions: one negative dimension, meaning a subjective right to security, i.e., a right to defence before possible aggressions by public powers against personal freedom and personal integrity; and one positive dimension, meaning a right to protection, through public powers, against aggressions or threats by a third party.

The positive dimension of the fundamental right to security thus requires the State to define a security policy.

The security policy is two-fold: internal security and external security. External security is linked to national defence, the objective of which is defined in subparagraph a) of article 6 of the Constitution: “to defend and guarantee the sovereignty of the country”.

As regards internal security, Law No. 8/2003 of 8 October defines it as “the task performed by the State in order to ensure public order, security and tranquillity, to protect people and assets, to prevent crime, and to contribute towards ensuring the normal functioning of the democratic institutions, the exercise of the fundamental rights and freedoms of the citizens and the respect for democratic legality”.

The Intelligence System of the Democratic Republic of Timor-Leste inserts itself in the framework of national security as an instrument for action and guarantee against threats to external and internal security. The present proposal entrusts the intelligence services with the task of “ensuring, pursuant to the Constitution and the Law, the production of intelligence necessary to safeguard national independence and guarantee internal security”.

The Intelligence System shall be supplied by intelligence collected, first and foremost, by the National Intelligence Service, but also by intelligence received from intelligence services operating within the Timor-Leste National Police and the Timor-Leste Defence Force. F-FDTL and PNTL shall collect intelligence exclusively necessary to accomplish their specific missions and guarantee military security, and to fight common crime, respectively.

The main entity responsible for the activity of the organs composing the Intelligence System shall be the Prime Minister, whereas the monitoring of the activity of the Intelligence System shall be the responsibility of the National Parliament through a Monitoring Council established by the present law. The organic of the Intelligence System of the Republic shall comprise the following services and organs:

- The Inter-Ministerial Commission on Internal Security;
- The Technical Commission;
- The National Intelligence Service;
- The Monitoring Council.

The Inter-Ministerial Commission on Internal Security is the inter-ministerial organ of consultation of the Prime Minister on internal security matters and, consequently, on intelligence matters. Since the Prime Minister is the highest entity responsible for executing the relevant policy in this area of activity, this inter-ministerial organ has the duty to inform the Prime Minister and advise him insofar as decision-making is concerned.

The essential functions of the Technical Commission are to coordinate and share intelligence on matters of common crime between the central security service, the National Intelligence Service and the PNTL intelligence services, and F-FDTL military intelligence on matters of independence and national sovereignty, i.e., external security. The Technical Commission shall play an essential role in technically coordinating the activities of such services and shall operate directly under the Prime-Minister. It shall be headed by the General Director of the National Intelligence Service and shall be composed of the heads of the PNTL and F-FDTL intelligence services. Other entities, namely the National Director of Customs and the Director of Immigration Services, may be called to collaborate.

The National Intelligence Service shall have the responsibility to collect intelligence necessary to safeguard national independence, national interests and external security, as well as to guarantee internal security in preventing sabotage, terrorism, espionage, organized crime and acts which, by their nature, may alter or destroy the constitutionally established State based on the rule of law. The National Intelligence Service, falling under the Prime Minister, is thus the central organ for collecting intelligence and it is incumbent upon it to systematically conduct research, analyses, processing and storage of intelligence. To that effect, all Timorese Public Administration services at the central and local levels, including public institutes and public companies, have the duty to collaborate with the National Intelligence Service. On its part, the National Intelligence Service should collaborate with the Police and the Defence Force intelligence services, keeping criminal investigation bodies informed of any fact amounting to criminal offence for possible criminal proceeding purposes without prejudice to any matter considered to be State secret pursuant to the law.

In order to counterbalance the activity of the intelligence services and safeguard the protection of the rights, liberties and guarantees of the citizens, a Monitoring Council is established, to be composed of three people elected by the National Parliament. This body will follow up and monitor all the activities of the intelligence services to ensure their compliance with the Constitution and the Law as well as their respect for the rights, liberties and guarantees of the citizens. The Monitoring Council shall depend upon, and be accountable to, the National Parliament, to which it shall submit an annual report on the activities of the intelligence services. Following up and monitoring activities of the intelligence services shall include controlling their respective archives and data centres, as well as the central Database of the National Intelligence Service. Monitoring of the data centres and the Database shall be conducted through regular checking of programmes, data and intelligence supplied by the intelligence services. The Monitoring Council shall also notify the judicial authorities and the National Parliament of any irregularity of violation to the law, and order the cancellation or rectification thereof, where applicable.

The present law is the first step towards the establishment of an Intelligence System in Timor-Leste, a service considered to be essential for maintaining a sovereign and independent State on the one hand, and for maintaining the foundations of a Democratic State based on the Rule of Law, on the other hand. In designing the Intelligence system, efforts were made to establish it as a very light structure, building upon the Inter-Ministerial Commission of Internal Security, a body already existing within the Internal Security structure to support and advise the Prime Minister.

The Inter-Ministerial Commission of Internal Security, together with the National Intelligence Service, which is the central intelligence collection service, the Technical Commission, which articulates the activity and exchange of intelligence between the National Intelligence Service and the respective services within PNTL and F-FDTL, and the Monitoring Council, which monitors all the activities of these services and ensures their respect for the rights, freedoms and guarantees of the citizens, constitute the components of the Intelligence System of the Democratic Republic of Timor-Leste believed by the Government to be adequate for assisting it in maintaining the Democratic State based on the Rule of Law.

The Prime Minister
[signed]
Kay Rala Xanana Gusmão

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

IV CONSTITUTIONAL GOVERNMENT

INTELLIGENCE SYSTEM OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

**CHAPTER I
GENERAL PRINCIPLES**

**Article 1
Object**

The present law establishes the general bases of the Intelligence System of the Democratic Republic of Timor-Leste.

**Article 2
Objectives**

1. The objectives of the Intelligence System of the Democratic Republic of Timor-Leste shall be materialized through the competencies of the organs and services provided for in the present law.
2. It is incumbent upon the intelligence service to ensure, in compliance with the Constitution and the Law, the production of intelligence necessary to safeguard national independence and guarantee internal security.

**Article 3
Military and police intelligence**

The provisions of the present law shall apply to intelligence collection activities conducted by F-FDTL and PNTL necessary to accomplish their specific missions and to guarantee military security and fight common crime, respectively.

**Article 4
Limits to the activities of the intelligence services**

1. Nothing in the present law shall allow the development of activities of research, processing and dissemination of intelligence involving any threat or offence to the rights, freedoms and guarantees provided for in the Constitution and the Law.
2. Intelligence services shall only be allowed to develop research and data processing activities relating to their specific competencies, without prejudice to their obligation to mutually share data and intelligence which, in addition to being of interest to their specific competencies, may contribute to achieving the objectives of the Intelligence System of the Democratic Republic of Timor-Leste.

Article 5
Delimitation of scope

1. Functionaries or civilian, police or military agents of the intelligence services provided for in the present law shall not exercise powers, undertake actions, or develop activities falling in the scope or specific competence of courts or entities with police functions.
2. Without prejudice to the provisions of the criminal procedural law, functionaries and civilian or military agents of the intelligence services shall be expressly prohibited to arrest any individual or initiate criminal proceedings.
3. Although maintaining their links with their original institutions, police and military members at the service of the National Intelligence Service shall not exercise functions or undertake actions of a police or military nature.

CHAPTER II
ORGANIC OF THE INTELLIGENCE SYSTEM

SECTION I

Article 6
Organs

1. The Intelligence System of the Democratic Republic of Timor-Leste shall be composed of the following organs:
 - a) The Intelligence System Monitoring Council of the Democratic Republic of Timor-Leste, hereinafter referred to as the Monitoring Council;
 - b) The Technical Commission;
 - c) The National Intelligence Service, hereinafter referred to as SNI;
 - d) The Inter-Ministerial Commission on Internal Security.

SECTION II
MONITORING

Article 7
Monitoring Council

1. The monitoring of the activities and the database of the intelligence services shall be ensured by the Monitoring Council, without prejudice to the monitoring powers of the National Parliament provided for in the Internal Security Law.
2. The Monitoring Council shall be composed of three citizens of recognized idoneity and fully enjoying their civil and political rights, with one of them being nominated by the President of the Republic and the remaining two elected by secret vote of a two-third majority of the members of the National Parliament in full exercise of their functions.

Article 8
Competence

1. It shall be incumbent upon the Monitoring Council to follow up and monitor the activity of the intelligence services, ensuring its compliance with the Constitution and the Law and, particularly, its respect for the rights, freedoms and guarantees of the citizens.
2. The Monitoring Council shall submit an annual report on the functioning of the National Intelligence Service to the National Parliament which will subsequently forward it to the President of the Republic and the Prime Minister.
3. The Monitoring Council shall have the right to request the directorate of the National Intelligence Service as well as the Chief of General Staff of the Defence Force and the General-Commander of PNTL to provide it with clarifications it may deem necessary to the exercise of its monitoring powers.

Article 9
Term of office

1. The members of the Monitoring Council shall have a term of office of five years.
2. The members of the Monitoring Council shall take office before the Speaker of the National Parliament.

Article 10
Duties

1. The following shall constitute special duties of the members of the Monitoring Council:
 - a) To exercise their functions with independence and impartiality;

- b) To keep secrecy on matters that come to their knowledge.
2. The duty of secrecy referred to in the preceding paragraph shall continue to be observed after the cessation of their functions.

Article 11
Rights and privileges

1. The members of the Monitoring Council shall not be impaired in their professional activity by virtue of exercising the mandate conferred upon them by the National Parliament.
2. The members of the Monitoring Council shall be entitled to subsistence allowances similar to those established for the members of the National Parliament corresponding to the days of activity.
3. Expenses resulting from the activity of the members of the Monitoring Council shall be borne by the budget of the National Parliament.

SECTION III
EXECUTIVE AND COORDINATION ORGANS

Article 12
Technical Commission

1. The Technical Commission shall be the organ of operational coordination on matters of intelligence among services and security forces.
2. The Technical Commission shall be composed as follows:
 - a) The General Director of SNI, who shall preside it;
 - b) The Director of the Police Intelligence Service;
 - c) The Chief of F-FDTL Military Intelligence Service.
3. In addition to the entities provided for in the preceding paragraph, the chairperson of the Technical Commission may convene the following entities whenever he or she considers it to be relevant due to the nature of the matters to be dealt with:
 - a) The Director of the Migration Service;
 - b) The General Director of Customs.

4. Exceptionally, the chairperson of the Technical Commission may also convene other entities whenever he or she considers it to be relevant due to the nature of the matters to be dealt with.
5. The Technical Commission shall meet fortnightly on regular sessions and extraordinarily whenever convened by its chairperson.

Article 13
National Intelligence Service

1. It shall be incumbent upon SNI to produce intelligence that contributes towards the safeguarding of national independence, national interests and external security, including the guarantee of the internal security in preventing sabotage, terrorism, espionage, organized crime and actions that, by their nature, may alter or destroy the Rule of Law constitutionally established.
2. SNI shall be a public service depending upon the Prime Minister and shall be administratively and financially autonomous.
3. The organic structure of SNI shall be contained in a Decree-Law to be approved by the Government.

Article 14
Inter-Ministerial Commission on Internal Security

1. The Inter-Ministerial Commission on Internal Security shall be the Inter-ministerial organ of consultation of the Prime Minister on matters of intelligence.
2. The Inter-Ministerial Commission on Internal Security shall be governed by the provisions of the present law and the Internal Security Law.

CHAPTER III
DATA

Article 15
Database

The intelligence services may possess data centres compatible with the nature of their work, which shall have the responsibility to process and store in magnetic files the data and intelligence collected in the framework of their activities.

Article 16
Database

The National Intelligence System and the remaining intelligence services may possess autonomous databases, but no computer inter-connection shall exist among them.

Article 17
Conditions of access

1. The criteria and technical norms necessary to the functioning of the data centres and the central Database of SNI, as well as the regulations necessary to ensure the security of collected intelligence, shall be prepared by the Technical Commission and approved by the Council of Ministers following prior advice from the Inter-Ministerial Commission on Internal Security.
2. Functionaries or civilian or military agents exercising functions within organs of criminal police shall not have access to data and intelligence of the Intelligence System of the Republic unless they are authorized by instruction of the competent member of Government, and the use of such data or intelligence for purposes other than those provided for in the law or other than to fight crime shall be prohibited.
3. Any functionary or civilian or military agent who communicates or uses data or intelligence in violation of the provision contained in the preceding paragraph shall be punished under the criminal law, irrespective of the applicable disciplinary.

Article 18
Cancellation and rectification of data

1. Where an error is found in imputing data or intelligence or where irregularities are found in the processing of such data or intelligence, the data processing entity shall be obliged to inform the Monitoring Council of the fact.
2. Any person who, by act of any functionary or agent of the intelligence services or in the course of a judicial or administrative proceeding, comes across data of his or her interest that he or she considers to be incorrect, irregularly obtained, or in violation of his or her rights, freedoms and guarantees, may request the Monitoring Council to undertake the necessary verification and order its cancellation rectification.

Article 19
State secrecy

1. State secrecy shall apply to data and intelligence the dissemination of which is susceptible of causing damage to the unity and integrity of the State, to the defence of the democratic institutions provided for in the Constitution, to the free exercise of their respective functions by the organs of sovereignty, to the internal security, to national independence, and to preparations for military defence.
2. Registrations, documents, files and archives of the intelligence services relating to matters referred to in the preceding paragraph shall be covered by the State secrecy and shall not be the object of requisition or examination by any entity alien to the services, except the members of the Monitoring Council in exercise of functions.
3. Intelligence and evidence material relating to facts pointing to the commitment of crimes against the security of the State shall be communicated to the competent authorities for their investigation or criminal proceeding.

Article 20
Entry into force

The present law shall enter into force on the day immediately after its publication.

Approved by the Council of Ministers on 13 December 2007.

For publication.

The Prime Minister

[signed]

Kay Rala Xanana Gusmão