

**DEMOCRATIC REPUBLIC OF EAST TIMOR  
NATIONAL PARLIAMENT  
Speaker**

**Law n.º /2002**

**STATUTES OF JUDICIAL MAGISTRATES**

As an emerging nation, East Timor is faced with a particular situation in the establishment of sovereignty organs, especially in relation with Courts.

Defining the statutes of judicial magistrates is, at this juncture of the country's life, an issue of urgency, specially when one bears in mind the need to establish the Superior Council of the Judiciary, which is the managerial and disciplinary body of the judiciary that will select judicial magistrates entering the career, besides outlining the career itself, the rights and duties of judicial magistrates, their disciplinary responsibility and the Judicial Inspection.

There was a need to establish a specific transitional regime, mainly in relation to the Superior Council of the Judiciary and the Court of Appeal, and a need to contemplate rules that will make it possible for the judicial organization in East Timor to continue operating under the current system, pursuant to item 2 of Section 163 of the Constitution, but also a need to put in place mechanisms that will strengthen the newly-born East Timorese judiciary.

The text now being published was a legislative initiative from the Government, and it was submitted by the National Parliament to ample debate within the civil society regarding the matters at issue. It also incorporates a number of suggestions from sectors involved in the administration of justice.

Pursuant to item Section 92, and item 1 of Section 95 of the Constitution, the National Parliament enacts the following that shall have the force of law:

**CHAPTER I  
General Principles**

**Section 1  
Scope of application**

1. The provisions of these Statutes shall apply to judicial magistrates.

2. The Statutes shall also apply to trainee judicial magistrates, prior to their entering the judiciary, and to replacement of judicial magistrates, with the necessary adaptations.

## **Section 2**

### **Composition of the judiciary**

The judiciary shall be composed of professional judges of the Supreme Court of Justice, the High Administrative, Tax and Audit Court and other judicial courts provided for by law.

## **Section 3**

### **Functions of the judiciary**

1. The functions of the judiciary shall be applying the law, administering justice and enforcing its decisions.
2. Judicial magistrates shall not refrain from judging on the grounds of absence, vagueness or ambiguity of law, or on the basis of insurmountable doubt.
3. The duty of allegiance to law shall not be put aside on the pretext that a rule is unfair or immoral.

## **Section 4**

### **Independence**

Judicial magistrates shall adjudicate in accordance with the Constitution, the law and their conscience and they shall not be subject to orders, instructions or directions, except for the duty of lower courts to obey to decisions awarded by higher courts on cases appealed against.

## **Section 5**

### **Non-liability**

Judicial magistrates shall not be made liable for their judgments and decisions, except in cases specifically provided for by law.

## **Section 6**

### **Security of tenure**

Judicial magistrates shall not be reassigned, suspended, promoted, made to retire, removed from office or otherwise have their situation changed, unless in cases provided for by these Statutes.

## **Section 7**

### **Guarantees of impartiality**

Judicial magistrates shall not intervene in cases involving, as a judicial officer, a person to whom they are related by marriage, common life, family or kinship of any degree in the direct line or up to the second degree in the collateral line.

## **CHAPTER II**

### **Superior Council of the Judiciary**

#### **Section 8**

##### **Definition**

1. The Superior Council of the Judiciary is the managerial and disciplinary body of judicial magistrates, which is charged with appointing, assigning, re-assigning and promoting judges.
2. The Superior Council of the Judiciary shall also exercise jurisdiction over judicial officers, as provided for under this Chapter.

#### **Section 9**

##### **Composition**

1. The Superior Council of the Judiciary shall be presided over by the President of the Supreme Court of Justice and composed of the following members:
  - a) One designated by the President of the Republic;
  - b) One elected by the National Parliament;
  - c) One designated by the Government;
  - d) One judicial magistrate elected by his or her peers;
2. The Members of the Superior Council of the Judiciary referred to under paragraphs a), b) and c) of item 1 above shall be jurists with at least five years of relevant professional experience.
3. The Council shall, at its first meeting, elect its Vice-President by secret ballot and simple majority.

#### **Section 10**

##### **Duration of the term of office**

Members of the Superior Council of the Judiciary shall serve a four-year term of office .

#### **Section 11**

##### **Replacement of the President**

The President of the Superior Council of the Judiciary shall be replaced, in his or her non-presence, absence and inability to act, by the Vice-President.

**Section 12**  
**Requirements for designation and election**

Only judicial magistrates definitively appointed and in full exercise of their functions may be elected and designated as members of the Superior Council of the Judiciary.

**Section 13**  
**Election among peers**

1. The election of a judicial magistrate to become a member of the Superior Council of the Judiciary is held by secret ballot of physically present judicial magistrates in full exercise of their functions.
2. Once ballot papers have been counted, the judicial magistrate with the highest number of valid cast votes shall be elected.
3. The position of member of the Superior Council of the Judiciary may not be refused.

**Section 14**  
**Oversight and endorsement**

It shall be incumbent upon the President of the Supreme Court of Justice to ensure oversight of the electoral act, decide on claims that may be submitted and endorse the results of the election referred to under Section 13.

**Section 15**  
**Competencies of the Superior Council of the Judiciary**

1. It shall be incumbent upon the Superior Council of the Judiciary:
  - a) to appoint, assign, re-assign, promote, dismiss and appreciate professional merits of, exercise disciplinary action over, and generally conduct all acts of a similar nature regarding, judicial magistrates;
  - b) to appreciate professional merits of, and exercise disciplinary action over, judicial officers, without prejudice to disciplinary competencies given to judges;
  - c) to appoint the Council Secretary, judicial inspectors, accounting inspectors and inspection secretaries;

- d) to order the conduction of special inspections, investigations and inquiries into courts;
  - e) to prepare and approve the rules of procedure of the Council;
  - f) to advise on retirement requests submitted by judicial magistrates;
  - g) to perform other functions given by law.
2. It is also incumbent upon the Superior Council of the Judiciary to appoint on an exceptional basis assistant judges for courts, where there is a prolonged absence of an incumbent causing serious disruption of services or an excessive accumulation of workload.

## **Section 16**

### **Functioning and frequency of meetings**

1. The Superior Council of the Judiciary shall function in plenary sessions and through a disciplinary panel.
2. The Council shall be convened by its President or at the request of two thirds of its members.
3. The Superior Council of the Judiciary shall convene in ordinary sessions every three months and in special sessions whenever there is a notice to this effect.
4. The Council shall function when two thirds of its members are attending and shall decide by the majority of present voters.
5. Membership to the Superior Council of the Judiciary shall be forfeited if a member fails to attend unjustifiably on two consecutive or intercalated occasions.
6. Members of the Superior Council of the Judiciary shall be issued with a presence voucher for their attendance of meetings, the value of which shall be determined by a joint instruction of the Ministry of Planning and Finance and the Ministry of Justice.

## **Section 17**

### **Forms of deliberation**

Deliberations of the Superior Council of the Judiciary shall be in the form of resolution or instruction, which shall be published in the Official Gazette.

## **Section 18**

### **Competencies of the President**

It shall be incumbent upon the President of the Superior Council of the Judiciary:

- a) to represent the Superior Council of the Judiciary;
- b) to convene and preside over meetings of the Council;
- c) to oversee the administrative services of the Council;
- d) to lead and coordinate Judicial Inspection;
- e) to exercise all other functions given by law.

### **Section 19**

#### **Competencies of the Vice-President**

It shall be incumbent upon the Vice-President to exercise functions delegated to him or her by the President of the Superior Council of the Judiciary and to replace the latter in his or her absences or inability to act.

### **Section 20**

#### **Delegation of powers**

The Superior Council of the Judiciary may delegate to the President, with the authority to sub-delegate to the Vice-President, powers:

- a) to order special inspections;
- b) to initiate inquiries and investigations;
- c) to authorize judicial magistrates or officers to take leave of absence;
- d) to solve any other matters of an urgent nature.

### **Section 21**

#### **Secretariat**

1. The Superior Council of the Judiciary shall have its own secretariat headed by a Secretary appointed from among first class state judges.
2. It shall be incumbent upon the Secretary of the Superior Council of the Judiciary:
  - a) to lead the secretariat services;
  - b) to submit to the President's decision matters requiring deliberation by senior authority;
  - c) to prepare minutes of the Council meetings;
  - d) to execute and enforce execution of the Council deliberations;
  - e) to prepare the Council's draft budgets;

- f) to organize and update personal files, records and CVs of judicial magistrates;
- g) to exercise all other functions given by law.

### **CHAPTER III**

#### **Judicial Inspection**

##### **Section 22**

##### **Structure**

1. Judicial Inspection shall function within the Superior Council of the Judiciary.
2. Judicial Inspections services shall comprise judicial inspectors, accounting inspectors and inspection secretaries.
3. The staffing table of judicial inspectors, accounting inspectors and inspection secretaries shall be determined by an instruction of the Minister of Justice, following a proposal of the Superior Council of the Judiciary.
4. Judicial inspectors shall be appointed from among first class state judges with “Very Good” rating;
5. Accounting inspectors shall be appointed from among judicial secretaries with at least “Good” rating.

##### **Section 23**

##### **Competencies**

1. It shall be incumbent upon Judicial Inspection to inform the Superior Council of the Judiciary on the status, needs and deficiencies of judicial services so that the Council may take required action.
2. It is also incumbent upon Judicial Inspection to gather information regarding performance, merits and professional integrity of judicial magistrates and judicial officers.
3. Inspection intended to gather information regarding performance, merits and professional integrity of judicial magistrates may not be conducted by an inspector holding a position that is equal or lower than that of the judicial magistrate being inspected.
4. It shall also be incumbent upon judicial inspectors to conduct inspections, inquiries, investigations and to initiate disciplinary cases regarding judges, as may be ordered by the Superior Council of the Judiciary.

5. It shall be incumbent upon accounting inspectors to monitor accounting and treasury services.

**Section 24**  
**Inspection report**

1. Once an inspection has been completed, the Inspector shall prepare a detailed report in which he or she shall necessarily address the following issues:
  - a) Court organization;
  - b) Functioning and status of services;
  - c) Service premises;
  - d) Difficulties encountered by persons inspected;
  - e) Merits and demerits of persons inspected.
2. The inspection report shall give general indications aimed to overcome difficulties encountered by persons inspected, without directly interfering with the service.

**CHAPTER IV**  
**Career of judicial magistrates**

**Section 25**  
**Requirements to enter the judiciary**

1. Requirements to be appointed as a judicial magistrate are as follows:
  - a) to be a national citizen;
  - b) to be in full exercise of one's civil and political rights;
  - c) to be older than 25 years of age;
  - d) to have a University degree in law;
  - e) to have gone through a probationary period with "Good" rating;
  - f) to have sat and passed specific exams;
  - g) to meet other requirements as may be established by law for appointment to the public service;
2. The pre-entrance probationary period, which shall last 2 to 3 years, shall be regulated in a separate legal instrument.
3. Trainee judges are not members of the judicial career.



## **Section 26**

### **Career**

1. Judicial career shall comprise the following categories:
  - a) Third-class State Judge;
  - b) Second-class State Judge;
  - c) First-class State Judge;
  - d) Counsellor Judge.
2. Career shall start at the level of third-class state judge.

## **Section 27**

### **Promotion of judges**

1. Third-class state judges with at least three years' practice and 'Good' rating shall be promoted to second-class state judges.
2. Second-class state judges with at least four years' practice, 'Good' rating and who have sat and passed specific exams shall be promoted to first-class state judges.

## **Section 28**

### **Promotion vacancy**

1. Promotion to the next class shall always be conditional upon vacancy availability.
2. Promotion to the immediately higher level to fill vacancies shall always be through written competition among applicants matching the profile outlined under Section 27.
3. For the written competition, due consideration shall always be given to rating achieved at specific exams, performance record and seniority of applicants, by descending order of rates.
4. It shall be incumbent upon the Superior Council of the Judiciary to establish procedures to apply for promotion.

## **Section 29**

### **Counsellor Judges**

1. The President of the Supreme Court of Justice shall be appointed by the President of the Republic from among judges of the Supreme Court for a four-year term of office, subject to ratification by the National Parliament.
2. Counsellor Judges shall be designated by the Superior Council of the Judiciary and appointed by the President of the Supreme Court of Justice from among first-class state judges with 'Very Good' rating and at least eight years' practice in the class.
3. The National Parliament shall elect one Counsellor Judge from among magistrates and jurists.
4. The Supreme Court of Justice may initially be composed of a minimum of 5 Counsellor Judges.
5. Counsellor Judges shall be in office until such a time as they reach limit age or time of service, except for other reasons as may be provided for by law.

### **Section 30**

#### **Appointment of state judges**

State judges shall be appointed by the Superior Council of the Judiciary.

### **Section 31**

#### **Swearing-in**

Judicial magistrates shall be sworn in as follows:

- a) Counsellor Judges shall be sworn in before the President of the Republic and the Speaker of the National Parliament;
- b) State judges and assistant judges shall be sworn in before the President of the Superior Council of the Judiciary.

### **Section 32**

#### **Oath of office**

Upon being sworn in, judicial magistrates shall take the following oath of office:

*"I, (name), swear to God and I swear on my honour that I will respect and faithfully enforce the Constitution of the Republic and other applicable laws, and administer justice in an impartial and detached manner."*

### **Section 33**

### **Absence from the swearing-in ceremony**

1. An absence from the swearing-in ceremony not justified within prescribed deadlines in case of first appointment shall, without further formalities, cause the appointment to be cancelled and the absentee to be disqualified from being appointed to the same position for the following two years.
2. In other cases, unjustified absence shall be comparable to dereliction of duty.
3. Justification of an absence shall be required within ten days from the date reasonable impediment ceased to exist, along with proof thereof.

## **CHAPTER V**

### **Incompatibilities, duties, rights and benefits**

#### **Section 34**

##### **Incompatibilities**

Judicial magistrates in office may not perform any other functions, whether public or private, other than teaching and scientific, literary or artistic research, subject to prior authorization by the Superior Council of the Judiciary.

#### **Section 35**

##### **Political activity**

It shall be prohibited for judicial magistrates to take political positions or engage in active politics within political parties, or to make public statements of a political nature.

#### **Section 36**

##### **Legal practice**

Judicial magistrates may not provide legal advice other than in a case of their own cause or that of their spouse, descendant or ancestor.

#### **Section 37**

##### **Special duties**

Judicial magistrates shall specially have the following duties:

- a) to discharge their duties with honesty, detachment, impartiality and dignity;
- b) to maintain professional secrecy in accordance with the law;
- c) to have a low profile behaviour in public and private life, in accordance with the dignity and prestige that the office held involves;
- d) to treat with courtesy and respect those involved in cases, especially the Public Prosecution Service, legal professionals and officers;
- e) to report punctually to scheduled acts;
- f) to refrain from giving out by any means opinion on a case pending trial or decision, or judgement on awards, advices, votes, sentences by judicial bodies, except censure in records of a lawsuit in the exercise of judicial duties or in judicial and technical works;
- g) to refrain from advising or instructing parties to a dispute on any pretext, except in cases specifically provided for by procedural laws;
- h) anything else provided for by law.

### **Section 38**

#### **Necessary residence**

1. Judicial magistrates may not take residence outside the area where the court they serve is located, except in duly substantiated cases and authorized in advance by the Superior Council of the Judiciary.
2. For the purpose of the previous item, exception is made to absences on duty, on leave, at weekends and on holidays or in case of an emergency making it impossible to secure authorization in advance.
3. In case of an emergency, the judicial magistrate shall report and justify the absence with the Superior Council of the Judiciary as soon as possible.
4. Absence at weekends and on holidays may not affect performance of urgent activities.
5. Unauthorized absence shall entail, in addition to disciplinary liability, forfeiture of salaries during the period of absence.
6. In case of absence, a judicial magistrate shall indicate where he or she may be located.

### **Section 39**

#### **Professional attire**

1. Judicial magistrates shall wear the gown during solemn acts, especially at hearings for discussion and trial, preliminary hearings, including other solemn ceremonies or public acts related to the judiciary.
2. The gown model shall be approved by the Superior Council of the Judiciary.

**Section 40**  
**Rights and benefits**

1. A Judicial magistrate in full exercise of his or her functions shall be entitled to the following benefits:
  - a) To be treated with the deference required by the function;
  - b) Special treatment in criminal cases where he or she is the defendant and in proceedings of civil liability for acts committed in the exercise of his or her functions or as a result thereof;
  - c) Special personal identity card in a model to be approved by the Superior Council of the Judiciary;
  - d) Special protection for himself or herself, his or her spouse, descendants and property, whenever plausible reasons of security so require;
  - e) Admission to and free movement at all public places by simple production of the personal identity card;
  - f) Residence allowance at a rate to be determined by the State;
  - g) Compensation allowance at a rate to be decided upon by the Government if he or she lives in his or her own dwellings;
  - h) Transport allowance for his or her own personal effects, and those of his or her family, in case of re-assignment not arising out of disciplinary penalty;
  - i) Any other entitlements enshrined in law.
2. Judicial magistrates not in full exercise of their functions shall be entitled to the benefits provided for under paragraphs a), b) and c) of item 1 above.

**Section 41**  
**Entitlements of Counsellor Judges**

1. A Counsellor Judge shall also be entitled to:
  - a) An automobile ;
  - b) A diplomatic passport for himself or herself and his or her spouse;

- c) The right to use, carry and manifest free of charge a defence weapon and acquisition of ammunition therefor;
  - d) Entertainment allowance.
2. Counsellor judges shall generally enjoy the honours, benefits and precedence bestowed to members of sovereignty organs.

## **Section 42**

### **Titles**

Counsellor judges shall hold the title of Revered (*Venerando*) and they shall be addressed as His or Her Excellency. State judges and other judicial magistrates shall be addressed as His or Her Honourable (*Meretíssimo*).

## **Section 43**

### **Preventive custody**

1. A judicial magistrate may not be arrested or detained without charges, except when caught in the act and the criminal offence carries an imprisonment penalty of more than three years.
2. In case of arrest and detention of a judicial magistrate, he or she shall be immediately taken before a competent judge.
3. Upon detention or arrest, judicial magistrates shall be committed to specific detention centres or put under a regime of separation from other detainees or prisoners.

## **Section 44**

### **Summons to appear**

1. Judicial magistrates may not be summonsed to appear or testify before any authority without prior consent of the Superior Council of the Judiciary.
2. The petition from a requesting entity shall be in writing and duly substantiated.

## **Section 45**

### **Remuneration**

Remuneration regime shall be established by legal instrument, taking into consideration the specific nature of the judicial function, and the concerned judicial magistrate's level and time of service.

**Section 46**  
**Leave of absence**

1. Judicial magistrates shall be entitled to leave of absence during the period of judicial recess.
2. The Superior Council of the Judiciary may authorize on an exceptional basis that a judicial magistrate takes leave of absence outside the period prescribed under item 1 of this section.
3. Leave of absence and the place where it will be taken shall always be notified to the Superior Council of the Judiciary.

**Section 47**  
**Retirement**

Principles and rules legally established for the civil service shall apply to judicial magistrates on matters of retirement.

**Section 48**  
**Retirement for reasons of age and inability**

1. A judicial magistrate is to be considered retired for reasons of age and inability when he or she retires on non-disciplinary grounds.
2. A judicial magistrate retired for reasons of age and inability will continue attached to the court where he or she held office, enjoy the titles, honours and immunities associated to his or her level and may attend solemn ceremonies held at such court, taking a seat on the right hand side of judicial magistrates in active service.
3. Provisions of paragraphs c) and d) of Section 40 shall be extensive to judicial magistrates retired for reasons of age and inability.

**Section 49**  
**Time counting**

For the purpose of retirement, time of service provided to the State before entering the judiciary shall also count.

**Section 50**  
**Resignation**

1. Resignation of a judicial magistrate shall be authorized on duly substantiated grounds, subject to a notice delivered 60 days in advance.
2. Resignation shall take effect from the date the notice on resignation authorization was served.
3. Where a decision has not been made within the deadline provided for under item 1 of this section, the request shall be tacitly considered as granted on the last day of that period.

**Section 51**  
**Assignments and reassignments**

1. Assignments and reassignments of judicial magistrates shall be made after due consideration of service needs and a minimum of disruption to personal and family life of the interested parties.
2. Without prejudice to the provision of the preceding item of this section, service performance record and seniority, in a descending order of preference, shall be decisive for assignments and reassignments.
3. A judicial magistrate may not be reassigned without his or her consent before five years have elapsed from the date he or she started functions at the current court, except for reasons of promotion or on disciplinary grounds.
4. A judicial magistrate who is assigned to a district court at his or her request may not apply for reassignment to another court before five years have elapsed.

**Section 52**  
**Permutations**

Without prejudice to service convenience and rights of third parties, permutations shall be permitted.

**Section 53**  
**Temporary assignments**



Judicial magistrates may be appointed to take up temporary assignments, after consultations with the Superior Council of the Judiciary.

#### **Section 54**

##### **Temporary assignment of judicial nature**

1. The following positions shall be considered as temporary assignments:
  - a) Judicial inspector;
  - b) Magistrate of the Public Prosecution Service;
  - c) Director or lecturer at the Judicial Magistrates Training School;
  - d) Judge at a non-judicial court;
  - e) Head of Department at the Supreme Court;
  - f) Secretary of the Superior Council of the Judiciary;
  - g) Secretary-General of the Supreme Court.
2. Holding any of the positions listed above shall be considered, for all purposes, as actual judicial service.

#### **Section 55**

##### **Temporary assignment of non-judicial nature**

Time of service actually provided as a temporary assignment of non-judicial nature shall be considered for the purposes of counting time.

#### **Section 56**

##### **Evaluation of judicial magistrates**

State judges and assistant judges shall be evaluated by the Superior Council of the Judiciary in accordance with their merit of 'Very Good', 'Good', 'Passable' and 'Failed'.

#### **Section 57**

##### **Criteria and effects of evaluation**

1. Evaluation shall take into consideration the way judicial magistrates exercise their functions, especially their technical knowledge, intellectual ability, detachment, moral and civic reputation.

2. 'Failed' result shall lead to suspension from functions and initiation of an inquiry for unfitness for the function.
3. Where in a disciplinary case initiated on the basis of an inquiry it is concluded that a judicial magistrate no longer qualifies as such but it is possible for him or her to remain in the public service, penalties of compulsory retirement or resignation may, at the request of the interested party, be replaced by resignation.
4. For situations provided for under the preceding item of this section, the case, along with a substantiated advice, shall be referred to the President of the Superior Council for the Judiciary for endorsement and assignment of the interested party to a position in keeping with his or her qualifications.
5. Endorsement of the advice by the President of the Superior Council of the Judiciary shall entitle the interested party to occupy a compatible position in another State service.

### **Section 58**

#### **Elements to be considered for evaluation**

1. Elements to be considered for evaluation shall be results of previous inspections, inquiries, investigations or disciplinary cases, time of service, published works in the area of law, annual reports and any other additional elements in the possession of the Superior Council of the Judiciary.
2. Workload in charge of the judicial magistrate and working conditions shall also be taken into account.
3. It shall be mandatory to hear the judicial magistrate on the inspection report and he or she may provide elements as he or she may consider convenient.
4. Considerations that the inspector may subsequently produce on the replies of the inspected person should be made known to the inspected person and may not refer to new facts to his or her disadvantage.

### **Section 59**

#### **Evaluation of judicial magistrates on temporary assignment**

1. Judicial magistrates on temporary assignment of judicial nature shall be evaluated as if they were engaged in active service.
2. As regards judicial magistrates on temporary assignment of non-judicial nature, the latest evaluation shall always be considered updated, but a new evaluation may be requested once the temporary assignment has been completed and six months of actual functions have elapsed.

**Section 60**  
**Frequency of evaluations**

1. Judicial magistrates shall be evaluated at least every three years.
2. An evaluation result that has been granted for more than three years shall be considered out of date, unless failure to evaluate is not to be blamed on the judicial magistrate.
3. 'Good' evaluation result shall be assumed where a judicial magistrate has not been assessed during the period provided for under item 1 of this section, except if the judicial magistrate requests an inspection, in which case it shall be undertaken on a mandatory basis.
4. Evaluation related to subsequent service shall supersede that related to previous service.

**CHAPTER VI**  
**Disciplinary liability**

**Section 61**  
**Disciplinary infraction**

Disciplinary offences are facts which, even if merely blameful, are committed by magistrates in violation of professional duties, as well as acts and omissions of their public life, or with repercussions thereon, that are incompatible with the propriety and the dignity indispensable to the exercise of their functions.

**Section 62**  
**Subjection to disciplinary jurisdiction**

1. A dismissal or change of status of a magistrate shall not prevent his or her punishment for violations committed in the exercise of his or her functions.
2. A dismissed magistrate shall serve the sentence imposed on him or her should he or she resume the exercise of his or her functions.

**Section 63**  
**Autonomy of disciplinary jurisdiction**

1. Disciplinary proceedings are independent from criminal proceedings.
2. Where a disciplinary case discloses the existence of a criminal offence, the case shall be notified to the Superior Council of the Judiciary forthwith.

**Section 64**  
**Scale of penalties**

1. Judicial magistrates shall be subject to the following penalties:
  - a) Warning;
  - b) Recorded admonition;
  - c) Fine;
  - d) Compulsory reassignment;
  - e) Suspension from functions;
  - f) Inactivity;
  - g) Compulsory Retirement;
  - h) Dismissal.
2. Without prejudice to paragraph 4 of this section, penalties applied shall always be put into record.
3. Amnesties shall not destroy the effects resulting from the application of penalties, and they shall be registered in the relevant personal file.
4. The penalty provided for in paragraph 1 a) above may be applied independently of any proceeding, as long as a hearing takes place with the possibility of defence by the accused, and shall not be subject to be put into record.

**Section 65**  
**Penalty of warning**

1. A penalty of warning shall consist of a mere remark or admonition on the irregularity committed.
2. A penalty of warning shall apply to minor disciplinary offences that should not go without a remark.

**Section 66**  
**Penalty of recorded admonition**

1. A penalty of recorded admonition shall consist of a written reprimand to warn a judicial magistrate that the nature of the act or omission committed may disturb the exercise of his or her functions or have repercussions thereon in a manner incompatible with the dignity required from him or her.
2. Recorded admonition is made by the Superior Council of the Judiciary .
3. A recorded reprimand penalty shall apply to minor breaches that may disturb the exercise of functions or have repercussions thereon in a manner incompatible with the dignity required from a judicial magistrate.

**Section 67**  
**Penalty of fine**

1. A penalty of fine shall be fixed at a minimum of three and a maximum of thirty days.
2. A penalty of fine shall imply the deduction from the remuneration of the judicial magistrate of the amount corresponding to the number of days for which he or she has been fined.
3. A penalty of fine shall be applicable to cases of negligence or disinterest in fulfilling the duties inherent in the office.

### **Section 68**

#### **Penalty of compulsory reassignment**

1. A penalty of reassignment shall consist of assigning the judicial magistrate to a position of a similar category outside the area of jurisdiction or service in which he or she used to exercise his or her functions.
2. A penalty of reassignment shall also imply the loss of 60 days of seniority.
3. A penalty of compulsory reassignment shall be applicable to offences that involve disruption of the prestige required from the judicial magistrate to remain in the environment where he or she exercises his or her functions.

### **Section 69**

#### **Penalty of suspension from exercise of functions and penalty of inactivity**

1. A penalty of suspension from exercise of functions and a penalty of inactivity shall consist of the complete removal from service for the duration of the penalties.
2. A penalty of suspension from exercise of functions may consist of ten to ninety working days.
3. A penalty of inactivity shall not last less than six months nor shall it last more than one year.
4. A penalty of suspension from exercise of functions and a penalty of inactivity shall apply to cases of serious neglect or serious lack of interest for the fulfilment of professional duties or when a magistrate is handed out a prison sentence, except where the sentence imposes a dismissal penalty.
5. The prison term served shall be deducted from the disciplinary penalty.
6. A penalty of suspension from exercise of functions shall imply the loss of the period of time that corresponds to the duration of the suspension for purposes of remuneration, seniority and retirement, and it shall also imply re-assignment to a similar position at a court or service other than the one where the judicial magistrate was exercising his or her functions at the time the offence was committed, when the punished judicial magistrate cannot remain in the place where he or she exercises his or her functions without disrupting the prestige required from him or her, which shall be taken into consideration in the disciplinary decision.
7. A penalty of inactivity shall produce the loss of the period of time that corresponds to the duration of the penalty for purposes of remuneration, seniority

and retirement, and the impossibility of promotion or admittance during one year from the last day of serving the penalty.

### **Section 70**

#### **Penalty of compulsory retirement and penalty of dismissal**

1. A penalty of compulsory retirement shall consist of the imposition of retirement and shall imply immediate separation from service.
2. A penalty of dismissal shall consist of the definitive removal of the judicial magistrate, with cessation of any links to his or her functions, and shall imply the loss of the status of judicial magistrate, but shall not imply the loss of the right to retirement, under the terms and conditions provided for by law, nor shall it prevent the magistrate from being appointed for public office or other offices that may be exercised, as long as he or she meets the conditions of dignity and trust necessary to the office from which he or she was dismissed.
3. Penalties of compulsory retirement and of dismissal shall be applicable where the judicial magistrate:
  - a) Reveals permanent incapacity to adapt him or herself to the requirements of his or her functions;
  - b) Reveals dishonesty, serious insubordination, or has an immoral or dishonoured conduct;
  - c) Reveals professional incompetence;
  - d) Has been sentenced for a crime committed *in flagrante delicto* and for serious abuse of his or her function, or for a clear and serious violation of the duties inherent therein.
4. Dereliction of duty shall always correspond to a penalty of dismissal.

### **Section 71**

#### **Promotion of defendant magistrates**

1. Where a criminal or disciplinary case is pending, the judicial magistrate is graded for promotion or admittance, but the promotion or admittance shall be suspended, and the respective post shall remain vacant until a final decision is reached.
2. Where the case is closed, or the decision to convict is repealed, or the penalty applied does not affect promotion or admittance, the judicial magistrate shall be promoted or appointed, shall occupy his or her place on the list of seniority, and shall be entitled to receive the balance of his or her remuneration, or, where he or she is to be pretermitted, the procedures pertaining to the post reserved for him or her shall be finalised.

### **Section 72**

#### **Degree of penalty**

In determining the degree of penalty due consideration shall be given to the seriousness of the fact, the culpability of the magistrate, his or her personality and the circumstances in favour of or against him or her.

### **Section 73**

#### **Special mitigation of the penalty**

A penalty may be mitigated in special circumstances by applying a lighter penalty where circumstances exist, which are anterior to, or posterior to, or contemporaneous with, the violation that considerably reduces the seriousness of the fact or the responsibility of the judicial magistrate.

### **Section 74**

#### **Recidivism**

1. Recidivism shall exist where a violation is committed before three years have elapsed after the date on which the judicial magistrate has committed an offence for which he or she has been sentenced to a penalty superior to that of admonition, totally or partially fulfilled, as long as the circumstances of the case reveal absence of preventive effectiveness of the previous condemnation.
2. Where the applicable penalty is any one of those provided for in paragraphs c) and f) of item 1, Section 64, its minimum limit, in case of recidivism, shall be equal to one-third, or one-fourth of the maximum limit, respectively.
3. Where the applicable penalty is other than any one of those referred to in paragraph 2 above, a penalty of an immediately superior scale may be applied.

### **Section 75**

#### **Cumulation of offences**

1. There shall be cumulation of offences when a judicial magistrate commits two or more offences before the condemnation for any of these violations becomes unimpugnable.
2. Where a cumulation of offences occurs, only one penalty shall be applied and, where violations attract different penalties, only the strongest penalty shall be applied, which will be in accordance with the cumulation, where this is variable.

### **Section 76**

#### **Substitution of penalties applicable to retirees**

A penalty of fine, of suspension from exercise of functions, or of inactivity for a retired magistrate or a magistrate who, for some reason, is not exercising his or her functions, shall be substituted by the loss of pension, or of remuneration, of any nature for the corresponding period of time.

### **Section 77**

### **Time limitation of penalties**

Disciplinary penalties shall become void in the following timeframes, counting from the date on which the decision became unimpugnable:

- a) Six months, for a penalty of warning and for a penalty of fine;
- b) One year, for a penalty of reassignment;
- c) Three years, for a penalty of suspension from exercise of functions and for a penalty of inactivity;
- d) Five years, for a penalty of compulsory retirement and for a penalty of dismissal.

### **Section 78 Disciplinary proceeding**

1. Disciplinary proceeding is the means through which disciplinary liability shall take place.
2. A disciplinary proceeding shall be summary and shall not depend upon special formalities, save the hearing, with possibility of defence, by the defendant.
3. Where the action is explicitly purposeless or dilatory, the investigating judicial magistrate shall reject it by substantiating the rejection.

### **Section 79 Impediments and suspicion**

1. Members of the Superior Council of the Judiciary shall not be allowed to conduct and/or to participate in the deliberation of disciplinary proceedings when they are an interested party to the proceeding, on their own behalf or as representatives of other people, or of their spouse, or when any of these people is a relative or has ties of affinity in the direct line or up to the fourth degree in the collateral line with the defendant.
2. A member of the Superior Council of the Judiciary shall not be allowed to participate when a party to the disciplinary proceeding is a person who has instituted a civil proceeding against that member for compensation for damages, or has instituted a criminal proceeding as a consequence of acts committed in the exercise of, or by virtue of, the member's functions, or when a party to such proceeding is a spouse or a relative in the direct line or up to the fourth degree in the collateral line of that person, as long as the action or charge has already been admitted.
3. Serious enmity or deep intimacy with the defendant shall also prevent a member of the Superior Council of the Judiciary from conducting and/or participating in the deliberation of the respective disciplinary proceedings.

### **Section 80 Confidential character of the disciplinary proceeding**



1. Until a final decision is reached, disciplinary proceedings shall have a confidential character.
2. The issuance of certificates of parts of the proceeding at the substantiated request of the defendant shall be allowed, when designed for the defence of legitimate interests.

### **Section 81**

#### **Timeframe for preparation of a disciplinary case**

1. Preparation of disciplinary cases shall take place within a maximum of 30 days.
2. The timeframe provided for in paragraph 1 above may only be exceeded in justified cases.
3. The investigating judicial magistrate shall inform the Superior Council of the Judiciary and the defendant of the date on which preparation of the case commences.

### **Section 82**

#### **Number of witnesses during preparatory stage**

1. There shall be no limit to the number of witnesses during the preparatory stage.
2. The investigating judicial magistrate may deny the request for hearing witnesses or deponents when he or she deems that the evidence produced is sufficient.

### **Section 83**

#### **Preventive suspension of defendant**

1. A judicial magistrate who is a defendant in a disciplinary proceeding may be preventively suspended from the exercise of his or her functions following proposal by the investigating judicial magistrate as long as there are strong indications that the offence will attract, at least, a penalty of reassignment and that his or her continuation in service may be detrimental to the preparation of the case, to the service, or to the required prestige and dignity of the functions.
2. Preventive suspension shall be executed in order to ensure the protection of the personal and professional dignity of the judicial magistrate.
3. Preventive suspension shall not exceed a period of 60 days, renewable on substantive grounds for an additional period of 30 days, and shall not produce the effects provided for under item 4 of Section 69.

### **Section 84**

#### **Charge**

1. Once the preparation is finalised along with the disciplinary registration of the defendant, the investigating judicial magistrate shall lodge a charge within a

- period of ten days by expounding on the circumstantial evidence of the disciplinary offence and on those facts that constitute aggravating or mitigating circumstances and shall indicate the legal provisions applicable to the case.
2. Where sufficient circumstantial evidence on the offence or the responsibility of the defendant is not produced or where the disciplinary proceeding is closed, the investigating officer shall prepare, in ten days, his or her report, followed by the other applicable terms.

### **Section 85**

#### **Notification of the defendant**

1. The notification shall be handed over to the defendant, or sent by registered mail, with acknowledgement of receipt, and a deadline given, ranging from 10 to 20 days for presentation of defence.
2. Where the whereabouts of the defendant is unknown, the notification shall be made by notices to be affixed on the last known residence of the defendant.

### **Section 86**

#### **Appointment of legal defender**

1. Where the defendant cannot prepare the defence for reasons of absence, sickness, mental abnormality or physical incapacity, the investigating judicial magistrate shall appoint a legal defender.
2. When the legal defender is appointed on a date posterior to the notification referred to in Section 91, the timeframe for the defence shall be reopened upon its notification.

### **Section 87**

#### **Examination of the case**

During the period of time for presentation of the defence, the defendant, as well as the appointed legal defender or the designated agent may examine the case at the place where it has been filed.

### **Section 88**

#### **Defence of the defendant**

1. With the defence, the defendant may indicate witnesses, gather documents or request actions.
2. The number of witnesses to be presented shall not exceed three for each fact.

### **Section 89**

#### **Final Report**

Once the production of evidence is finalised, the investigating judicial magistrate shall prepare, within 15 days, a report, which shall contain the facts, the existence of which is considered proven, its qualification and the applicable penalty.

### **Section 90**

#### **Notification of decision**

The final decision, accompanied by a copy of the report referred to under Section 95, shall be notified to the defendant in accordance with Section 91.

### **Section 91**

#### **Nullities and irregularities**

1. It shall constitute insurmountable nullity the failure to hear the defendant with possibility of defence and the omission of essential actions for the discovery of the truth that can still be usefully undertaken.
2. The other nullities and irregularities shall be considered resolved if they are not used in the defence or, where they occur *a posteriori*, within five days, starting from the date of its acknowledgement.

### **Section 92**

#### **Report on dereliction of duty**

Where a judicial magistrate ceases to report to his or her duty station for ten consecutive working days, thus manifesting expressly his or her intention to relinquish duties, or where he or she is absent without justification for 30 consecutive working days, a report thereon shall be drawn up.

### **Section 93**

#### **Presumption of dereliction of duty**

1. Unjustified absence from office for 30 consecutive working days shall constitute presumption of dereliction of duty.
2. Presumption referred to in paragraph 1. above may be rebutted in disciplinary proceeding by any means of proof.

### **Section 94**

#### **Revision**

1. Condemnatory decisions handed down in disciplinary proceedings may, at any time, be the object of review whenever there are circumstances or means of proof that may demonstrate the inexistence of the facts which determined the punishment and which could not be utilised in due time by the defendant.
2. The review process shall in no case determine the aggravation of the penalty.

### **Section 95**

## **Process**

1. The revision of the process shall be requested by the interested party to the Superior Council of the Judiciary
2. The petition for revision, to be attached to the disciplinary proceeding, should contain the reasons for the petition and the indication of the means of proof to be produced and should be handled with the documents that the interested party was able to obtain.

## **Section 96** **Sequence of the process of revision**

Once the petition is received, the Superior Council of the Judiciary shall decide, within 30 days, whether the requirements for the revision have been met.

## **Section 97** **Justified revision**

1. Where the request for review is deemed justified, the decision pronounced on the revised process shall be repealed or changed.
2. Without prejudice to other rights legally provided for, the interested party shall be compensated for the remuneration that he or she may have ceased to receive due to the revised decision.

## **Section 98** **Enquiries and investigations**

1. The objective of an enquiry is to investigate a given fact.
2. An investigation shall take place whenever there is news regarding facts that require a general investigation into the functioning of a given service.

## **Section 99** **Preparation of process**

The provisions relating to disciplinary proceedings shall be applicable, *mutatis mutandis*, to the preparation of the process of enquiry or investigation.

## **Section 100** **Report**

Once the preparation of the process is complete, the enquirer shall prepare a report thereof proposing the closure of the case or the establishment of a disciplinary proceeding, as the case may be.

## **Section 101**

### **Conversion into disciplinary proceeding**

1. Where the existence of infraction is found, the Superior Council of the Judiciary may deliberate that the process of enquiry or investigation, in which the defendant has been heard, constitutes a part of the preparatory phase of the disciplinary proceeding.
2. In the case provided for in paragraph 1. above, the date of launching the enquiry or investigation shall mark the commencement of the disciplinary proceeding.

### **Section 102 Subsidiary regime**

The civil service regime shall apply on a subsidiary basis to judicial magistrates with respect to all administrative and disciplinary matters.

## **CHAPTER VII Claims, appeals, charges and prepayment of costs**

### **Section 103 Claims**

1. Claims arising out of decisions by the President of the Superior Council of the Judiciary may be lodged with the plenary.
2. On matters concerning judicial officers, claims are restricted to deliberations of disciplinary nature having enforced a penalty as serious as, or more serious than, the penalty of compulsory reassignment.

### **Section 104 Appeals**

1. Decisions by the Superior Council of the Judiciary may be appealed against with the Supreme Court of Justice.
2. To consider appeals, the Supreme Court shall establish a panel of three judges designated, for this purpose, for a period of four years. The panel shall be presided over by the most senior judge.
3. Members of the Superior Council of the Judiciary may not serve on the panel mentioned under item 1 of this section.

### **Section 105 Timeframe and effect of lodging an appeal**

1. The timeframe for claiming or lodging an appeal is 15 days from the date of notification.
2. Lodging an appeal shall only take suspension effect where it is related to disciplinary matters or where serious damages to the person lodging the appeal may result from the execution of the act appealed against.

### **Section 106**

#### **Petition requirements**

1. A petition shall mention the deliberation being appealed against, as well as the *de facto* and *de jure* grounds, and such petition shall be drafted in a clear and concise manner.
2. A petition shall be made with a document proving the act being appealed against along with all documentary evidence.
3. Where, on substantiated grounds, it was not possible to secure documents within the timeframes, a request may be made for the documents to be submitted subsequently.

### **Section 107**

#### **Steps of an appeal**

1. Upon referral of an appeal to the Supreme Court of Justice, the judge rapporteur may invite the person making the appeal to correct defects in the request.
2. Where the judge rapporteur realizes that the period for lodging an appeal has lapsed, or parties thereto are not legitimate or the appeal is clearly illegal, he or she shall make a brief and substantiated statement and submit the case to the first session for consideration and decision, with no need for individual endorsement by the judges.
3. Should the appeal case proceed, the judge rapporteur shall cause copies thereof to be referred to the Superior Council of the Judiciary so that a reply is given within 10 days and, during the same timeframe, the case is referred to the Supreme Court of Justice.
4. After a reply has been received from the Superior Council of the Judiciary or where the timeframe for a reply to be received has expired, and in cases where the appeal may affect rights of third parties, the judge rapporteur shall summon those third parties so that they may reply within 10 days.
5. After replies have been attached or the respective timeframes have expired, the judge rapporteur shall order the notification of the person lodging the

appeal and then the person being appealed against so that they may reply within 10 days.

6. Once allegations have been attached or timeframes have expired, the case is closed and referred to the judge rapporteur who may requisition documents that he or she deems necessary or notify the parties to submit such documents.
7. The case will thereafter be appreciated by all judges of the panel within 48 hours and then referred to the judge rapporteur for decision, which shall be made within 20 days.

### **Section 108**

#### **Charges**

Charges shall be determined by the Supreme Court of Justice between 10 and 100 US dollars until such a time as a code on charges applicable to these matters enters into force.

## **CHAPTER VIII**

### **Transitional provisions**

#### **Section 109**

##### **Provisional composition of the Superior Council of the Judiciary**

1. Until such time as it is possible to appoint career judicial magistrates and establish the Supreme Court of Justice, the Superior Council of the Judiciary shall be presided over by the President of the Court of Appeal and composed of the following members:
  - a) A jurist designated by the President of the Republic;
  - b) A jurist elected by the National Parliament;
  - c) A jurist designated by the Government;
  - d) A trainee judge elected by his or her peers;
2. The Council, at its first session, shall elect a Vice-President by secret ballot and simple majority.
3. Members of the Superior Council of the Judiciary shall have at least a University degree in law and shall be national citizens.
4. The Superior Council of the Judiciary may, whenever it is deemed necessary, request technical advice from international mentor judges serving in the country.
5. On a transitional basis, until conditions are met to establish and provide the Secretariat of the Superior Council of the Judiciary with the necessary

resources, the functions of the Council shall be carried out by judicial officials designated for the purpose.

### **Section 110**

#### **Court of Appeal**

1. The Court of Appeal shall exercise the competencies specifically falling under the purview of the Supreme Court of Justice until such a time as the latter becomes operational.
2. Until such time as the Supreme Court of Justice is established and starts functioning, judicial magistrates for the Court of Appeal shall be appointed by the Superior Council of the Judiciary from among probationary judges, taking into consideration their evaluation or rating. One of the judges shall be elected by the National Parliament, as provided for by item 2, Section 125 of the Constitution.
3. Trainee judges appointed to the Court of Appeal shall maintain their respective level and the positions that they hold shall be advertised three years after their appointment.
4. Where it is not possible, through the judiciary, to fill existing vacancies, Counsellor Judges may be appointed, up to a maximum of two, from among magistrates from the Public Prosecution Service assigned to the Supreme Court, or public defenders of recognized merit holding a University degree in law and at least 10 years' experience of forensic practice, or University lecturers in law with at least 10 years' teaching experience.

### **Section 111**

#### **International Judges**

1. The provisions of this law shall apply on a transitional basis, and with the necessary adaptations, to international judges engaged to exercise functions in East Timor pursuant to item 1, Section 163 of the Constitution.
2. The Superior Council of the Judiciary may, in exceptional and substantiated cases, select non-East Timorese judges, by comparing different CVs, with at least 15 years' experience and coming from a civil judicial system, to enter the judiciary of East Timor on a provisional basis.

### **Section 112**

#### **Probationary period**



The probationary period applicable on the date of entry into force of this law shall now have duration of 3 to 4 years so that a specific complementary training may be given.

### **Section 113**

#### **Repeals**

Legislation contrary to this law is hereby repealed, specially relevant legal provisions contained in Regulations n. 1999/1, 1999/3, 2000/11, 2000/25, 2001/18, 2001/25 and 2001/26 of the United Nations Transitional Administration in East Timor (UNTAET).

Passed on 3 September 2002.

The Speaker of the National Parliament

[signed]

Francisco Guterres 'Lu-Olo'

I promulgate on 9 September 2002

[signed]

Xanana

To be published.