

LAW No. 15/2005
LEGISLATIVE AUTHORISATION ON CRIMINAL PROCEDURE MATTERS
Of 16 September

The present law is the outcome of studies and work on the formulation and drafting of the Criminal Procedure Code undertaken by a committee comprised of Timorese and international experts for approximately one year.

The legislative authorisation mechanism provided in paragraph 96.1(b) of the Constitution of the Democratic Republic of Timor-Leste, which is therefore in compliance with the provisions of the fundamental law in force in Timor-Leste, has been chosen.

This chosen mechanism provided for in the Constitution will expedite the legislative process exponentially, making it clear that Parliament refrains completely from intervening in the definition of the legislative policy guidelines that will give shape to the final law, entrusting to the Government the task of dealing with and harmonising aspects relating to the legislative technique in full compliance with the directives issued by the National Parliament. The division of duties and responsibilities assigned to the various constitutional organs with respect to the exercise of legislative powers is taken into account.

The content and scope of the object of this Law on Legislative Authorisation ensures respect for the citizens' fundamental rights, liberties and guarantees in criminal procedure matters.

It should also be pointed out that the present Law on Legislative Authorisation proves to be consistent with the legislative drafting process relating to the draft Penal Code and other complementary legislation currently under preparation.

The approval of the Criminal Procedure implies repealing UNTAET regulations, namely, Regulation No. 30/2000, and the harmonisation of pieces of legislation that have come into force after 20 May 2002, which prove to have a bearing on criminal procedure matters.

Pursuant to paragraphs 96.1(a) and 96.1(b) of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

Article 1
Object

The Government is granted authorisation to approve a Criminal Procedure Code and repeal relevant legislation in force.

Article 2
Meaning and scope

1. The Code to be drafted under the present law on legislative authorisation shall observe the constitutional principles and the norms laid down in international

instruments relating to the rights of the human person and the criminal procedure, which are binding on Timor-Leste.

2. The authorisation referred to in article 1 has the following meaning and scope:
 - (a) set up a procedural system that will enable one to achieve, to the extent possible and as quickly as possible, the goals of administering justice, and of preserving people's fundamental rights and social peace;
 - (b) simplify, de-bureaucratise and expedite procedural steps in a manner consistent with the expected goals;
 - (c) determine the obligation to face legal/criminal consequences arising from the commission of a criminal offence, solely in conformity with the provisions of this Code (principle of legality);
 - (d) give criminal jurisdiction the possibility of admitting all issues even those not criminal in nature that arise during the course of a proceeding (principle of sufficiency), allowing, on an exceptional basis, for the suspension of a proceeding in order to admit a prejudicial matter;
 - (e) establish the principle of indictment in a criminal proceeding mitigated by the judicial investigation principle in the trial phase;
 - (f) establish the public character of a criminal proceeding from the time indictment is presented, and define its content and limits;
 - (g) strictly regulate the jurisdiction of courts in criminal matters, on the grounds of hierarchy, of territory, of relatedness, and of the composition of the court, whether constituted of one or more judges;
 - (h) regulate the establishment of jurisdiction on grounds of relatedness by doing away, for the sake of the principle of natural justice, with discretion over the determination of the competent judge, without prejudice, in accordance with predetermined criteria, to opening either an attached or loose file where there is a reasonable interest on the part of the defendants in doing so, and the relatedness represents a serious risk to the State's punitive intention or to the interests of the aggrieved person(s) or might give rise to significant delays in the proceeding;
 - (i) determine the exclusive jurisdiction of the Public Prosecution Service to initiate a criminal proceeding, exception being made to the regime for semi-public crimes;
 - (j) strictly define when and how to obtain the status of defendant, which shall be irreversible in nature, and concurrently determine the obligation of judicial authorities and the police to explain the rights and duties attached to the status of defendant;
 - (k) underscore the normative distinction between the status of defendant and those of suspect and convict;
 - (l) effectively guarantee free action on the part of the defender, without prejudice to the non-adversarial nature of the enquiry and, in particular, guarantee the defender's right to attend each and every questioning of the defendant, including his or her right to confer with the defendant any time during the course of the proceeding;
 - (m) define the legality and the procedural position of the aggrieved party with the possibility, where the aggrieved party has failed to declare his or her

intention to lodge a civil compensation request in separate, of implying that the aggrieved party opts for a discretionary arbitration regarding compensation in the criminal proceeding and that he or she may, to that effect, be represented by the public prosecutor;

- (n) regulate the rights and duties of the defendant and point out the cases where there is a need for assistance from a defender, as well as the procedural position of the defender;
- (o) give the judge, in a duly regulated manner, wide police powers at the hearing, including power to order a person to remain silent or be taken out of the courtroom, under arrest or otherwise, or to summon a person under arrest whose presence proves necessary and his or her absence from the hearing has not be reasonably justified;
- (p) simplify the notification service, with the possibility of adopting modern communication means or of resorting to the assistance of postal services and of the local administration, guaranteeing an effective communication with the person to be notified and declaring the civil procedure provisions concerning summons and notifications as subsidiarily applicable, with the necessary adaptations;
- (q) strengthen the orality system, with the gradual adoption of equipment for recording procedural acts and the participation of technical assistants in any stage or phase of the proceeding for the purpose of documenting such acts, which shall be given proper probative value;
- (r) strictly regulate matters relating to nullities, flawed procedural acts, and the remedy thereof, special attention being given to the consequences of violating the prohibition of producing evidence and to the determination of its effects on a proceeding; establish the principle of non-occurrence of merely formal flaws contained in acts on the validity of the proceeding;
- (s) determine the procedural acts that are subject to criminal registration, the content of the forms to be sent to the registration services, the cases in which one can opt to not include certain acts in the registration or to cancel such acts;
- (t) define general police powers, the procedural position and functional relationship of the police with judicial authorities, in particular with the public prosecution service;
- (u) create and strictly regulate provisional remedies and police measures for those cases in which, there being a need to maintain perishable means of proof, the intervention of the competent judicial authority and the consequent procedures might cause irreversible damage to the intrinsic goals of the criminal proceeding;
- (v) under the category of the above-mentioned provisional remedies and police measures, strictly characterise clue investigation patterns, keeping people at the crime scene and collecting information, fingerprinting, photographic and other methods, search of persons or items, except home searches, with everything clearly delineated in respect of ordinary means of proof and safeguarded by a validating intervention of the competent judicial authority;
- (w) ensure that identification acts are always committed to writing and that, when necessary, a person's stay in a police station does not exceed the

period of time strictly necessary, and under no circumstance shall it exceed twelve hours, and identification may be conducted through any means of proof, ensuring, to this end, the possibility of the person being identified to communicate with a person he or she trusts;

- (x) delimitate in-camera proceedings in respect of those taking part in it and other persons coming into contact with the case file and the conditions for accessing a record and extracting a certificate therefrom;
- (y) regulate matters relating to the time schedule, format and documentation of procedural acts, as well as their time limits and the consequences incurred by a person who was due to attend a procedural but fails to do so;
- (z) establish cases of absolute and relative prohibition of evidence and the procedural value thereof, and the principle of free assessment of evidence in a criminal proceeding, enumerating the respective exceptions, including the principle of discretionary investigation due to the non-existence of any burden of proof on the prosecutor or defender, discretionary production of every means of proof required to unfold the truth, and the obligation to declare a "*non liquet*" on matters of evidence shall be decided by the court in favour of the accused;
- (aa) establish, in an autonomous and strict manner, mechanisms for collecting and producing the following means of proof: statements by the defendant, statements by the victim, witness testimonies, proofs by means of recognition, expert proofs, documentary proofs, confrontation of witnesses and judicial examination, and the subsidiary nature of civil procedure provisions in matters relating to proof;
- (bb) the principle of prohibiting a testimony that is not grounded in concrete or direct knowledge, in particular a <<hearsay>> testimony ; establish the principle of non-self-incrimination;
- (cc) specifically regulate production of proof through confrontation of witnesses, whose scope shall be expanded, through recognition of persons or items, through the search or check of persons or items, as well as through reconstitution of acts;
- (dd) strictly regulate the admissibility of audiovisual recordings, interception of mail, and telephone tapping, under the safeguard of prior judicial authorisation and through a restrictive enumeration of the cases of admissibility, and their restrictions with respect to grounds or circumstances, and under no circumstance may such cases cover a defender, except where the latter has taken part in the commission of the crime;
- (ee) in relation to searches, admit an exception to the judicial authorisation required if the parties concerned give duly documented consent thereto or in the case of arrest in flagrante delicto for a crime punishable with imprisonment, in which case the search constitutes a provisional remedy of the proof to be produced subsequent to deprivation of liberty;
- (ff) characterise the period of time during which a home search may be carried out, making sure that it is not conducted at night and restricting the competence to issue the respective authorisation to the investigating judge, except as otherwise consented to by the person concerned;

- (gg) fully restrict the competence to order the seizure of items to the judge or public prosecutor, taking into account the type of items to be seized;
- (hh) regulate examinations as a means of obtaining proof, restricting the need for authorisation to the judge or public prosecutor in the case of examination of persons;
 - (ii) specifically regulate the obtention of expert proof, combining the highest technical and scientific competence of the experts with the adequate protection of the persons' rights, the necessary expeditiousness and, to the extent possible, the collegiality of the organ to which the expert examination is to be referred; make sure that, at any stage of the proceeding, the competent judicial authority may determine, on a discretionary basis or at request, that complementary clarifications be furnished and further examinations be carried out or that previous examinations be done over; with respect to the probative value of expert examinations, define a rule whereby the technical, scientific and artistic judgement inherent in expert examinations is presumed to have been elicited from the magistrate's free conviction, and the obligation to substantiate any discrepancy;
 - (jj) systematise a rule for maintaining professional and state secrecy, regulating the procedural means to assess the legitimacy of the respective allegation and the possibility of a higher court issuing an order to provide a testimony breaching professional secrecy, religious secrecy excepted, and making special provision for the restrictive circumstances under which breach of secrecy may take place with prior consultation with the body representing the respective profession;
- (kk) define the limits of the restrictive and property-guarantee measures the application of which shall be dependant upon a person being brought forward as a defendant, and the introduction of measures less detrimental to that person's fundamental rights while pursuing the intent of the criminal proceeding such as the obligation of that person to be confined to his or her residence or preventative arrest;
- (ll) underscore the provisional and subsidiary nature of pre-trial detention, specify the catalogue of provisional liberty measures and the forms of penalising non-compliance with such measures. Grant the judge the competence to assess the applicability of pre-trial detention to a case in lieu of provisional liberty, always indicating the grounds for such a decision, which shall, in respect of most serious crimes, be in line with a value framework established by law;
- (mm) define time and maximum duration of pre-trial detention, depending on the gravity of the imputed crime, adequately safeguarding extraordinarily procedurally complex cases; establish the impossibility, in either case, of exceeding reasonable time limits to be set by law, between the beginning of the first-instance trial and between that beginning and a final convicting sentence; immediately release every defendant in relation to whom such time limits have elapsed, without prejudice to the possibility of applying provisional liberty measures thereto; guarantee the recourse to habeas corpus by filing an application therefor with the Supreme Court of Justice in a motion to be presented to the authority who has ordered the arrest of the

person concerned, and such motion shall, together with any information relevant to the case, be forthwith sent to the Supreme Court of Justice, which shall decide the case within eight (8) days;

- (nn) establish adversarial discussion over any request for extending pre-trial detention;
- (oo) regulate the conditions for overturning, suspending and substituting pre-trial detention and the obligation to review the prerequisites therefor within reasonable periods of time at the initiative of court;
- (pp) establish modalities for applying property-guarantee measures, autonomous and distinct from restrictive measures, and determine prerequisites for their applicability;
- (qq) determine the existence of only two forms of proceeding: ordinary and expedited proceedings; the criminal investigation phase in the form of an ordinary proceeding shall consist of the enquiry, under the direction of the public prosecution service, assisted by police organs, with the aim of investigating the crime report and taking appropriate action to uncover that crime and hold its perpetrators liable before indictment;
- (rr) where the performance of acts directly related to people's fundamental rights becomes necessary, such acts shall be led, performed or authorised by the judge, who shall have the police organs at his or her disposal to that effect;
- (ss) place the police organs, within the scope of criminal procedure matters, under the guidance and functional purview of the public prosecution service, and of the judge, in relation to acts falling under their competence;
- (tt) establish the powers and duties of the police organs to gather crime reports, to prevent their consequences, to the extent possible, and to perform the necessary and urgent acts in securing all means of proof;
- (uu) establish the obligation of the police organs to immediately report to the public prosecution service any crimes over which an enquiry has been initiated, to indicate the means of proof that have been gathered and to make available to the public prosecution service, as soon as possible, persons under arrest, but under no circumstance shall the arrest exceed 72 hours, under penalty of disciplinary and criminal proceeding;
- (vv) demarcate the jurisdiction between a court with more than one judge and a one-judge court, depending on the gravity of the imputed crime, with crimes punishable by more than five (5) years' imprisonment falling under the jurisdiction of the former and the remaining ones under the jurisdiction of the one-judge court;
- (ww) establish the principle of not holding a trial in the absence of the defendant, without prejudice to the possibility of the defendant being taken out of the courtroom on grounds of grave indiscipline, and provide for adequate measures impacting either the defendant himself or herself or his or her property as a way to constrain the defendant to appear at the trial;
- (xx) strengthen the principles of orality, immediacy and concentration of the trial hearing; drastically reduce the possibilities of postponing or adjourning the hearing;

- (yy) set forth provisions exonerating the defendant, on an exceptional basis, from appearing at the hearing and provide for in absentia trials proper;
- (zz) discourage repeated absences from a trial in order to ensure the effectiveness and expeditiousness of the proceeding;
- (aaa) prohibit, except in exceptional cases, any proofs from being weighted at the hearing that might not allow for the observance of the adversarial nature of the hearing, namely, expanding the number of situations in which the reading of investigation dockets containing statements by aggrieved defendants or witnesses who are absent from the trial hearing is prohibited;
- (bbb) regulate cases of amendment to indicting facts arising during the course of the hearing, once the defence guarantees, the adversarial nature of the hearing and, in principle, the bill of indictment that comprises the criminal proceeding have been taken into account
- (ccc) simplify the preparation of the sentence, while ensuring that the legal provisions and legal grounds are read out publicly on the same occasion;
- (ddd) strictly define the terms under which the decision-making process among the judges comprising the court shall be conducted;
- (eee) structure the expedited proceeding on similar terms to those provided for in the law in force, for the trial of persons arrested in flagrante delicto for a crime punishable by imprisonment the maximum limit of which is not in excess of five (5) years;
- (fff) establish the possibility of a total and unreserved admission of guilt by the defendant - made at the beginning of the trial on terms that do not raise any doubts over the authenticity thereof- to preclude the production of proof, thus allowing the hearing to move immediately on to the determination of the penalty;
- (ggg) introduce the principle of unitary handling of all kinds of appeal and provide, in relation to every kind of appeal, for the possibility to reject such appeal beforehand on the grounds of the non-existence of a legal basis;
- (hhh) ensure that, in relation to every kind of ordinary appeal filed against a final decision, the adversarial nature of the appeal is taken into account, while ruling out the possibility to challenge appeals that are of an exclusively legal nature;
- (iii) define a regime for the referral of appeals filed against interlocutory decisions along with appeals lodged against final decisions, except in the case of decisions handed down in regard to provisional release from prison;
- (jjj) with respect to the discipline applicable to criminal procedure matters, regulate, in autonomous and possibly broad terms, appeals for establishing jurisprudence or appeals in the interests of the law;
- (kkk) adequately define the forms of documenting oral statements at the hearing, with an ever-increasing adoption of audio or audiovisual recording equipment in order to replace written reproduction forms;
- (lll) modernise the equipment used for drafting procedural acts that need to be performed in writing, and allow it to be used for drafting the very court orders sentences or decisions; adopt abbreviations of an unequivocal meaning; provide for the use of digits for writing dates and numbers, without prejudice to writing in full penalties, compensation amounts and other elements whose

- security needs to be ensured; reduce the number of signatures required to be affixed to the minutes of the trial hearing and other documents the authenticity of which may be ensured by the judge;
- (mmm) regulate remedies for miscarriages of justice;
 - (nnn) restructure the penalty execution system in light of the criminal policy principles to be enshrined in the future Penal Code, namely, the participation of the services responsible for social reintegration in respect of the regime for provisional liberty, proof production, and other penalty execution modalities that are not of a fully liberty-depriving nature;
 - (ooo) establish a regime for determining the duration of, and prerequisites for, arrest in flagrante delicto;
 - (ppp) limit arrest in flagrante delicto and any other arrest conducted by a police authority or by the public prosecution service to a 72-hour period, the arrestee being released where such arrest fails to get judicial validation within the said period of time, and clearly establish, within the limits set by the constitution, a regime applicable to situations of urgency and danger in dealing with delays occurred with respect to certain serious crimes.

Article 3

Complementary and related legislation

1. The Government is also authorised to legislate a special regime for cases of terrorism and violent or highly organised crime with the following content and scope:
 - (a) define a special regime that does not require prior judicial authorisation for home searches, checks, seizures and arrests other than those in flagrante delicto in cases of terrorism, violent or highly organised crime, if there are well-founded indications that a crime that might pose a danger to the life or physical integrity of any person is about to be committed, in which case the action taken shall be forthwith reported to the investigating judge who shall validate it, under penalty of nullity;
 - (b) define a special regime for monitoring communications to and/or from suspects, in the case of terrorism or violent or highly organised crime, to be requisitioned by the police from the competent investigating judge, ensure the ongoing functioning of the system, and define, in conformity with their objectives, each other's respective territorial jurisdiction, the general regime being applicable to all other cases.
2. The legislative authorisation that is the subject of the present law also covers any amendment to or modification of the laws in force that contain provisions that need to be harmonised with the principles or precepts of the future Criminal Procedure Code.

Article 4

Pending Proceedings

To pending proceedings upon the entry into force of the Criminal Procedure Code, the criminal procedure law in force at the date when such proceedings were initiated shall remain applicable, except if the new law turns out to be of benefit to the suspect, defendant

or convict and, in this concrete case, if the harmony and unity of subsequent procedural acts are ensured.

Article 5
Construction with the Review of the Penal Code

Pending the entry into force of the Criminal Procedure Code the drafting of which is authorised by this law, the drafting of the Penal Code of Timor-Leste shall be finalised and approved in order that both codes may come into force on the same date.

Article 6
Duration and extension

The duration of the legislative authorisation granted by this law shall be 120 days commencing on the date of its entry into force.

Article 7
Entry into force

The present law shall come into force on the day following the date of its publication.

Approved on 28 July 2005.

The Speaker of the National Parliament

[Signed]
Francisco Guterres “Lu-Ólo”

Promulgated on 3 September 2005.

To be published.

[Signed]
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