

DEMOCRATIC REPUBLIC OF TIMOR-LESTE
NATIONAL PARLIAMENT

Law 3/2008

On the regulation of the state of siege and emergency

Explanatory preamble

In all States and at all times, exceptional circumstances and situations of need may occur that result from more or less serious disturbances and that may have an internal or external origin. The occurrence of such extraordinary circumstances forces the authorities to adopt organisational arrangements and measures of an exceptional nature.

The organisational arrangements and provisions for exceptional times are provided for by the Constitution itself and are means to guarantee constitutional order. They are aimed at preserving democratic rule of law and, ultimately, at restoring normalcy.

The Constitution of the Democratic Republic of Timor-Leste provides for exceptional circumstances and situations of need that may have a bearing on fundamental rights, the functioning of organs of sovereignty, the relations with civil and military authorities, the Armed Forces and the courts.

In constitutional law, the state of siege and the state of emergency are the most stringent modalities with respect to a state of need and it is exclusively incumbent upon the National Parliament to regulate them.

Because organs of sovereignty cannot, whether jointly or separately, suspend the exercise of rights, freedoms and guarantees except if a state of siege or a state of emergency is declared pursuant to the Constitution, it is important to regulate such exceptional states by law.

Thus, the under-signed Members of Parliament, pursuant to article 95(2)(n) and article 97(1)(a) and (b) of the Constitution of the Democratic Republic of Timor-Leste, and articles 9(1)(b), 86 and 87(b) of the Rules of Procedure of the National Parliament, have submitted the following bill:

On the rules regulating the state of siege and emergency

**CHAPTER I
General Provisions**

**Article 1
Exceptional states**

1. The state of siege or the state of emergency shall only be declared in cases of an actual or impending attack by foreign forces, a serious disturbance or a threat of a serious disturbance to democratic constitutional order or calamity.

2. The suspension of fundamental rights, freedoms and guarantees can only take place after the state of siege or state of emergency has been declared and in the way provided for in the Constitution and in the provisions of this law.

Article 2

Guarantees regarding citizens' rights

The declaration of a state of siege or emergency shall in no way impair:

- a) the right to life
- b) the right to physical integrity
- c) civil capacity and citizenship
- d) the non-retroactivity of criminal law
- e) the right to defence in a criminal case
- f) freedom of conscience, religion and worship
- g) the right not to be subject to torture, slavery or servitude
- h) the right not to be subject to cruel, inhuman or degrading treatment or punishment
- i) the guarantee of non-discrimination

Article 3

Limits

1. In such cases where the suspension of rights, freedoms and guarantees is to be enforced, said suspension shall in all circumstances respect the principle of equality and non-discrimination and be subject to the following constraints:

- a) The requirement that proof of identity and residence be provided, or the arrest of individuals for infringing the security rules that are in force shall always be reported to the competent judge within 72 hours after the event, and the right to *habeas corpus* shall be applicable;
- b) Any house searches and the collection of other evidence shall be reported in writing, in the presence of two witnesses, who shall be residents in the area whenever possible, and communicated to the investigating judge, together with information about the reasons for such activities and the outcome thereof;
- c) Whenever restrictions or prohibitions are enforced regarding the movement of persons and the traffic of vehicles, it shall be the authorities' responsibility to secure the necessary means to comply with the provisions in such an announcement, namely as regards the transportation, housing and maintenance of any citizens who may be affected by such prohibitions or restrictions;

- d) The publication of any type of printed media, radio and television broadcasts, audiovisual displays and shows may be suspended, and the seizure of any publications may be ordered, but such measures shall under no circumstances include any type of prior censorship.
- e) The meetings of the statutory bodies of political parties, unions and professional associations shall under no circumstances be prohibited, disbanded or submitted to a prior authorisation.

2. The citizens whose rights, freedoms and guarantees may have been violated by the declaration of a state of siege or emergency, or by any provisions adopted while such state is in force, because of their unconstitutional or illegal nature, namely because they were deprived of their freedom illegally or without justification, shall be entitled to a compensation pursuant to the general law.

Article 4 **Proportionality and adequacy of any measures**

1. The suspension of or restrictions to the rights, freedoms and guarantees laid down in articles 9 and 10 shall be limited, as regards their scope, duration and the means used to enforce it, to what is strictly necessary to ensure a swift reestablishment of normalcy.

2. A declaration of a state of siege or a state of emergency may only alter constitutional normalcy as set forth in the Constitution itself and in this law. In particular, it shall not affect the application of the constitutional provisions regarding the powers and functioning of the organs of sovereignty as well as the rights and immunities of their respective holders.

Article 5 **Territorial scope**

A state of siege or a state of emergency may be declared with respect to all or part of the national territory according to the geographic scope of its determining causes. The declaration of a state of siege or a state of emergency may only be made with respect to such area where its enforcement is deemed necessary to keep or restore normalcy.

Article 6 **Duration**

1. The duration of a state of siege or a state of emergency shall be limited to such time as is necessary to safeguard the rights and interests that the state of siege or emergency aim to protect and to restoring normalcy. The duration of a state of siege or a state of emergency cannot extend thirty days, without prejudice to its renewal for

one or more similar periods, should the causes determining the declaration of a state of siege or a state of emergency persist and when deemed absolutely necessary.

2. The duration of the state of siege or of the state of emergency shall be determined by means of a reference to the day and time of its commencement and termination.

3. The renewal of the declaration of a state of siege shall be replaced by a declaration of a state of emergency whenever circumstances make possible such change.

Article 7

Access to the courts and to the Ombudsperson for Human Rights and Justice

While a state of siege or a state of emergency is in place. Citizens shall retain their full rights of access to the courts and to the Ombudsperson for Human Rights and Justice, pursuant to the general law, to defend their rights, freedoms and guarantees that may have been violated or threatened by any unconstitutional or illegal provisions or measures.

Article 8

Crimes of responsibility

Anyone who infringes the provisions included in the declaration of a state of siege or of a state of emergency or of this law, namely as regards its execution, shall be liable to crimes of responsibility.

CHAPTER II

On the state of emergency and the state of siege

Article 9

State of siege

1. A state of siege shall be declared whenever forceful or insurrectional acts have taken place or are impending that will jeopardize the sovereignty, independence, territorial integrity or constitutional democratic order and which may not be suppressed by the normal means provided for in the Constitution and the Law.

2. Pursuant to the declaration of a state of siege, rights, freedoms and guarantees will be totally or partially suspended or restricted, without prejudice to the provisions in article 2, and civilian authorities shall be placed under or replaced by military authorities.

3. The security forces shall be placed under the command of the Chief of the Defence Force for the duration of the state of siege, through their respective commands.

4. Civilian administrative authorities shall continue to exercise such powers as have not been affected by the powers bestowed upon the military authorities pursuant to

this law and the declaration of a state of siege, but shall in any case supply to the latter any information that they may request.

Article 10
State of emergency

1. A state of emergency shall be declared whenever a less serious situation occurs such as a serious disturbance or a threat of a serious disturbance to law and order or a calamity.

2. A declaration of a state of emergency can only entail the partial suspension of rights, freedoms and guarantees, without prejudice to the provisions in article 2, and with provisions being made for reinforcing the powers of civilian administrative authorities and to secure the support of the Armed Forces to the former, if need be.

CHAPTER III
On the declaration

Article 11
Power to issue a declaration

1. The declaration of a state of siege or of a state of emergency is incumbent upon the President of the Republic, acting upon a proposal from the Government, having heard the Council of State, the Government and the Superior Council of Defence and Security, and with a prior authorization from the National Parliament or, when the latter is not sitting or an immediate meeting cannot be called, of its Standing Committee.

2. Whenever a declaration of a state of siege or of a state of emergency is authorized by the Standing Committee of the National Parliament, it shall have to be confirmed by the Plenary as soon as it can be convened.

3. Neither the National Parliament nor its Standing Committee may, respectively, authorize and confirm an authorization of a declaration of a state of siege or of a state of emergency with amendments.

Article 12
Form

The declaration of a state of siege or of a state of emergency shall take the form of a Presidential Decree.

Article 13
Amendments

In case of a change in the circumstances that determined the declaration of a state of siege or of a state of emergency, the provisions and measures laid down in the declaration may be the object of an adequate extension or reduction, pursuant to article 27.

Article 14 Cessation

1. In case the circumstances that determined the declaration of a state of siege or of a state of emergency cease to exist, the declaration shall be immediately revoked by a Presidential Decree.
2. The state of siege or the state of emergency shall cease automatically to be in force upon the conclusion of the time period set in the declaration and, in the case of an authorization of the declaration by the Standing Committee of the National Parliament, upon the refusal of the Plenary to confirm it.

Article 15 Contents

1. The declaration of a state of siege or of a state of emergency shall contain clearly and expressly the following elements:
 - a) The characterization and justification of the state declared;
 - b) The territorial scope;
 - c) The duration;
 - d) The specification of the rights, liberties and guarantees the exercise of which is suspended or restricted;
 - e) The determination, in a state of siege, of the powers conferred to the military authorities, pursuant to article 9.2;
 - f) The determination, in a state of emergency, of the degree of reinforcement of the powers of civilian authorities and the support to be provided by the armed forces if need be;
 - g) The specification of the crimes that are subject to the jurisdiction of the military courts, without prejudice to the provisions of article 22;
2. The justification shall be made by reference to the determining cases provided for in article 25.2 of the Constitution, as well as to their consequences already verified or anticipated on the state of normalcy.

Article 16 Form of authorization or confirmation

1. The authorization or confirmation of a declaration of the state of siege or of a state of emergency or its refusal by the Plenary of the National Parliament shall take the form of a law.

2. Where the authorization, or its refusal, is decided upon by the Standing Committee of the National Parliament, it shall take the form of a resolution.

Article 17
Contents of the law of authorization or confirmation

1. The law of authorization of the declaration of a state of siege or of a state of emergency shall contain the definition of the state to be declared as well as the detailed delimitation of the authorization granted in relation to each of the elements referred to in article 15.

2. The law of confirmation of the declaration of a state of siege or of a state of emergency shall also contain the elements referred to in the preceding item and shall not restrict the contents of the decree of declaration.

CHAPTER IV
Execution of the declaration

Article 18
Competency of the Government

The execution of the declaration of a state of siege or of a state of emergency is the responsibility of the Government, which shall keep the President of the Republic and the National Parliament informed of its respective acts.

Article 19
Functioning of the organs of management and monitoring

1. In a situation of state of siege or of state of emergency extended to the entire national territory, the Superior Council for Defence and Security shall be kept in permanent session.

2. The Public Prosecution as well as the Office of the Provedor for Human Rights and Justice shall also be kept in permanent session with a view to the full exercise of their competencies of defending the democratic legality and the human rights of the citizens.

Article 20
Competency of the authorities

Without prejudice to the provisions of articles 9 and 10 and the respective declaration, it is incumbent upon the authorities, during a state of siege or a state of emergency, to take the steps and measures necessary to the rapid restoration of normalcy.

Article 21

Government commissaries

Under a state of siege or a state of emergency, the Government may appoint commissaries of its own choice to ensure the functioning, under such circumstances, of essential public institutes, companies and services of vital importance, without prejudice to the provisions of the present law as regards the intervention of the military authorities.

Article 22

Subjection to military jurisdiction

1. Without prejudice to the specification of the crimes which, under the jurisdiction of the military courts, must be subject to the terms of the declaration of a state of siege, it is incumbent upon the military courts to initiate criminal proceedings and to decide on any violation to the provisions contained in that declaration.

2. It is also incumbent upon the military courts, pursuant to item 1 above, to initiate criminal proceedings and to decide on malicious crimes directly related to the causes which, under the respective declaration, characterize and justify the state of siege and are committed while the state of siege is in force, against life, physical integrity and liberty of peoples, the right to information, the security of communications, the property, and the public order and tranquillity.

3. The crimes referred to in item 2 above shall be treated as essentially equivalent to military crimes.

Article 23

Prevalence of civilian jurisdiction

1. Without prejudice to the provisions of the preceding article as well as to any provisions on this matter contained in the declaration of a state of siege or of a state of emergency regarding the rights, liberties and guarantees the exercise of which has been suspended or restricted pursuant to the Constitution and the present law, the common courts shall continue to exercise their full competencies and functions while the state of siege or the state of emergency is in force.

2. It is particularly incumbent upon them, while a state of siege or a state of emergency is in force, to ensure the observance of the constitutional and legal norms that govern the state of siege or the state of emergency.

CHAPTER V

Declaration procedures

Article 24

Request of authorization from the National Parliament

1. The President of the Republic shall, through a justifying message, request authorization from the National Parliament to declare the state of siege or the state of emergency.

2. The message shall contain the facts justifying the state to be declared, the elements referred to in article 15.1, as well as a mention to the consultation made to the Council of State, the Government, and the Superior Council for Defence and Security, including the response received from these organs.

Article 25

Deliberation by the National Parliament

1. The National Parliament or, where it is not meeting nor is it possible for it to meet immediately, the respective Standing Committee, shall issue an opinion on the request of authorization to declare the state of siege or the state of emergency, pursuant to the Rules of Procedure of the National Parliament and the provisions of article 28.

2. In addition to the provisions of article 11.3, the authorization or the confirmation shall not be conditional, and shall contain all the elements referred to in article 15.1.

Article 26

Confirmation of the declaration by the Plenary

1. Confirmation by the Plenary of the National Parliament of the declaration of the state of siege or of the state of emergency authorized by the Standing Committee of the National Parliament shall take place pursuant to the Rules of Procedure of the National Parliament.

2. For the purposes stated in article 26.1 above, the Plenary of the National Parliament shall be convened at the shortest possible notice.

3. Without prejudice to the provisions of articles 7 and 8, refusal to confirm shall not entail the invalidity of the acts committed pursuant to the non-confirmed declaration and while it is in force.

Article 27

Renewal, modification, and revocation of the declaration

1. Renovation of the declaration of the state of siege or of the state of emergency, as well as its modification to the effect of extending the respective provisions or measures, shall observe the procedures provided for in the initial declaration.

2. Modification of the declaration of the state of siege or of the state of emergency to the effect of reducing the respective provisions or measures, as well as its revocation, shall take place by decree of the President of the Republic, irrespective of the prior

consultation to the Council of State, the Government, and the Superior Council for Defence and Security, and of the authorization of the National Parliament.

Article 28
Urgency character

1. The procedural acts provided for in the preceding articles are of an urgent character and shall prevail over any other acts.
2. For the execution of the same procedural acts, the National Parliament or its Standing Committee shall meet and deliberate under a regime of permanent functioning and the delays provided for in the Rules of Procedure shall be dispensed with.
3. The Law of the National Parliament that grants or refuses the authorization, as well as the decree of the President of the Republic that declares the state of siege, the state of emergency, or the modification of any of such states to the effect of their extension or reduction, shall be published immediately and, to that effect, the services necessary to their publication shall operate under a regime of permanent functioning.

Article 29
Review of the application of the declaration

1. Up to fifteen days following the cessation of the state of siege or the state of emergency or, where a renovation of the declaration has taken place, up to fifteen days following the end of each period, the Government shall provide the National Parliament with a detailed and, to the maximum extent possible, documented report on the steps and measures adopted during the period in which the declaration was in force.
2. The National Parliament, based on such report and on clarifications and documents which it may decide to request, shall review the application of the respective declaration in the form of a resolution to be voted by the respective Plenary. Such resolution shall namely contain the measures deemed necessary and adequate to determine and act upon the possible civil and criminal liability for violations of the declaration of the state of siege or of emergency or of the present law.
3. Where the monitoring competency provided for in the preceding item is exercised by the Standing Committee of the National Parliament, the resolution of the Standing Committee shall be confirmed by the Plenary as soon as it is possible to convene it.

CHAPTER VI
Final and transitional provisions

Article 30
Revocation

Norms contained in previous legislation providing for solutions that are contrary to the solutions provided for in the present law are hereby revoked.

Article 31
Transitional provision

So long as the military courts have not been established, all the powers conferred by the present law to military courts shall be exercised by the highest judicial instance of the judiciary system existing in Timor-Leste.

Article 32
Entry into force

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

The National Parliament, on 22 February, 2008.

Acting President of the National Parliament

Vicente ad Silva Guterres

Promulgated on 22 February, 2008

For publication.

Fernando Lasama de Araujo
Interim President of the Republic