



LAW NO. 7/2010

of 7 of July

Law Against Domestic Violence

(Official English Translation)

Preamble

Domestic violence is a long standing problem and perhaps one of the most complex social problems of our time.

In the last three decades, several guidelines arising from international legal instruments have revealed the necessity of preventing and investigating crimes of domestic violence and establishing appropriate remedial measures for victims, particularly in relation to equality and discrimination as in the International Convention on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women ratified by the Timorese State.

The principles of international legal instruments on human rights ratified by Timor-Leste, including the Convention on the Rights of the Child, are reflected in this law that has been approved.

Similarly, in accordance with the Constitution of the Democratic Republic of Timor-Leste, the measures set forth in this law are designed to ensure respect for human rights and integrity of the family as a fundamental social and cultural unit in Timor-Leste and recognize that it is the family that is primarily bound to a special duty of protection and defense of especially vulnerable groups such as women, children, the elderly and disabled from all forms of violence, exploitation, discrimination, neglect, oppression, sexual abuse and other ill treatment.

It is not, however, only within the family that the protection of the most vulnerable must exist, but it is an obligation of all citizens to prevent domestic violence and facilitate assistance to its victims.

Finally, the State also cannot fail to provide protection to its citizens, as it is its role to coordinate all public, private and community leaders in implementing the policies on prevention of domestic violence and victim support.

The National Parliament enacts, in accordance with Article 92 and paragraph 1 of Article 95 of the Constitution of the Republic, as law, the following:

CHAPTER I GENERAL PROVISIONS

Article 1 Objective

This law establishes the legal regime applicable to the prevention of domestic violence and protection and assistance to victims.

Article 2

Definition of domestic violence

1. For purposes of this law, domestic violence is any act or a result of an act or acts committed in a family context, with or without cohabitation, by a family member against any other family member, where there exists influence, notably physical or economic, of one over another in the family relationship, or by a person against another with whom he or she has an intimate relationship, which results in or may result in harm or physical, sexual or psychological suffering, economic abuse, including threats such as acts of intimidation, insults, bodily assault, coercion, harassment, or deprivation of liberty.
2. The following, among others, are considered forms of domestic violence:
 - a) Physical violence is understood as any conduct which offends bodily integrity or physical health;
 - b) Sexual violence is understood as any conduct that induces the person to witness, to maintain or participate in unwanted sexual relations, even within a marriage, through intimidation, threats, coercion or use of force, or which limits or nullifies the exercise of sexual and reproductive rights;
 - c) Psychological violence is understood as any conduct that causes emotional damage and reduced self-esteem in order to degrade or control the actions, behaviors, beliefs and decisions of others by threat, embarrassment, humiliation, manipulation, isolation, constant vigilance, systematic persecution, insult, blackmail, ridicule, exploitation, limiting the right to travel or otherwise adversely affecting psychological health and self-determination;
 - d) Economic violence is understood as any conduct that involves retention, partial subtraction, or total destruction of personal items, working instruments, impeding work inside or outside the home, personal documents, goods, values and rights or economic resources, including those designed to meet the personal needs and the needs of the household.

Article 3

Family

For the purposes of this Act, the following persons shall be considered members of a family:

- a) Spouses or former spouses;
- b) People who live or have lived in conditions similar to that of spouses, even without cohabitation;
- c) Ascendants and descendants of both or only one spouse or whomever is in the situation described in the preceding paragraph, provided they are in the same context of dependency and family economy;
- d) Any other person who is in the same context of dependency or family economy, including whoever carries out continuous and subordinate domestic labor activity.

CHAPTER II FUNDAMENTAL PRINCIPLES

Article 4 Principle of equality

Every individual, regardless of ancestry, nationality, social status, gender, ethnicity, language, age, religion, disability, political or ideological beliefs, cultural and educational level, enjoys the fundamental rights inherent in human dignity and shall be assured equal opportunity to live without violence and the right to preserve his or her physical and mental integrity.

Article 5 Principle of Consent

1. Without prejudice to any other provisions under the criminal law and criminal procedure, any intervention to support the victim should be made after the victim gives his or her informed consent and shall be limited by full respect of the victim's will.
2. Any support intervention, under the present law, to a young victim of domestic violence, aged 16 years or more, shall depend on his/her consent.
3. Any support intervention, under the present law, to a child or young victim of domestic violence under the age of 16 years, requires the consent of a legal representative, or in his/her absence or if he/she is the perpetrator of the crime, of the entity designated by the law and the consent of the child or young person aged over 12 years.
4. The consent of a child or young person aged between 12 and 16 years is enough to justify support intervention under this law if circumstances prevent the timely reception of a declaration of the consent of the legal representative designated by law or in his/her absence or if he/she is the perpetrator of the crime.
5. Depending on his/her age and maturity, a child or young victim of domestic violence under the age of 12 years shall be entitled to decide on the specific support intervention received under this law.
6. The victim may at any time freely withdraw his/her consent by his/herself or through his/her legal representative.

Article 6 Protection of the victim who lacks capacity to give consent

1. Any intervention made outside the scope of the criminal process to support the victims who lack capacity to give consent can only be made for his or her direct benefit.
2. Where, under the law, an adult lacks the capacity to consent to a support intervention because of mental disorder, illness or similar reason, the support intervention cannot be made without the consent of his representative, or in her or his absence or if this is the perpetrator of the crime, an authority or a person or entity designated according to the law.
3. The victim in question shall, to the extent possible, take part in the authorization process.

Article 7 Principle of information

The State, through the police, prosecutor, public defender's office, and medical and social services, shall ensure that the victim is provided with adequate information to protect his or her rights.

Article 8
Professional obligations and rules of conduct

Any intervention of specialized support to victims should be conducted in compliance with professional standards and obligations, applicable codes of conduct, standard operating procedures, universal principles of human rights as well as any rules of conduct applicable to the case.

Article 9
Raising awareness

The Government shall develop campaigns to raise public awareness through the media to promote a culture of nonviolence and combating stereotypes based on gender, encouraging respect for the rights and duties of individuals, in particular, in order to change behaviors that lead to violence against vulnerable groups.

Article 10
Information

1. The Government shall develop information and training materials on prevention and identification as well as factors related to domestic violence, paying particular attention to materials aimed at professionals and transcription, publication and dissemination of international texts on this issue.
2. The Government shall also prepare and distribute, free of charge, throughout the national territory, a guide for victims of domestic violence, which includes practical information about their rights as well as existing materials at their disposal.
3. The Government shall prepare training and information materials specifically for Heads of Suco and Villages, taking into account the privileged position of community leaders in the dissemination of information.

Article 11
Education

1. The Government, as a way of combating violence, shall incorporate into the school curriculum issues related to human rights, particularly issues relating to gender, including good conduct in relationships, sexuality and the principle of negotiated conflict resolution.
2. It is the responsibility of the Government entity responsible for education to develop relevant school curricula for each teaching cycle.

Article 12
Study and research

The State, by itself or in cooperation with other institutions, shall support and encourage the study and research of the factors underlying physical, psychological, sexual and economic forms of domestic violence.

CHAPTER III
INSTITUTIONAL COOPERATION

Article 13
Intervention of the State

1. It is the responsibility of the Government to promote and develop the National Action Plan on prevention and services in the area of domestic violence, in collaboration with the whole of society, and especially family and local authorities, pursuant to this law.
2. The Government shall coordinate and integrate policies, measures and sectoral activities at the national and community level.
3. The programs under this chapter shall be implemented in stages as defined in the National Action Plan against domestic violence.
4. The services providing medical support, legal aid and police assistance shall be made available as from the entry of force of this law.

Article 14 Coordinating Entities

1. The Government shall ensure the existence of a public entity that assists in defining, coordinating and monitoring the National Action Plan referred to in the preceding article.
2. The public entity mentioned above and the member of Government responsible for promoting equality should collaborate with, among others, members of the Government responsible for the areas of security, health, education, justice and social solidarity.
3. The Government shall produce an annual report on the activities undertaken and programs planned for the coming year and submit it to the National Parliament.

CHAPTER IV SUPPORT AND ASSISTANCE TO VICTIMS

SECTION I Support to Victims

Article 15 Assistance to victims

1. The Government, through the entity responsible for social solidarity, shall establish, manage and oversee the national network of support centers for victims of domestic violence, which shall be responsible for providing direct assistance, shelter and counseling to victims.
2. The support centers shall include reception centers and shelters which shall work in coordination.
3. In districts where there are no shelters, reception centers shall operate in coordination with the nearest shelter.
4. The Government, through the entity responsible for social solidarity, shall formulate a set of operational guidelines to oversee the creation and management of the support centers mentioned in the preceding paragraphs.

Article 16 Objectives of Shelters

1. The following shall be objectives of the shelters:
 - a) Temporarily accommodate victims of domestic violence, with or without minor children, whenever, for security reasons, they cannot remain in their habitual residence;

- b) Ensure psychological and/or medical care, social assistance and legal support appropriate to the situation of the victim;
 - c) Where justified, while they are in the shelter, develop the personal, professional and social skills of the clients which will enable them to avoid possible situations of social exclusion and contribute to effective social reintegration.
2. The Government, through the entity responsible for social solidarity, shall define, through additional legislation, procedures common to all shelters particularly in regards to victims' rights, access to information, admissions, maximum duration of stay and an outpatient regime.

Article 17 Rights and duties

1. Clients and minor children staying in the shelters shall have the following rights:
 - a) Accommodation and food in conditions of dignity;
 - b) Enjoyment of an area of privacy and a degree of autonomy in the conduct of their private life that is appropriate to their age and situation;
 - c) Enjoyment of a safe and healthy space inside the shelter;
 - d) Access to the school closest to the shelter.
2. Clients and minor children staying in shelters have a special duty to comply with the rules of operation.

Article 18 Free of Charge

The services provided through the national network of support centers for victims of domestic violence shall be provided free of charge.

Article 19 Participation

For the purposes of criminal proceedings, the reception centers shall communicate to the National Police of Timor-Leste (PNTL) or to the Public Prosecution Services the circumstances of domestic violence victims brought to their attention. They shall do so in keeping with respect for confidentiality and the privileged nature of information shared between the victim and her counselor, analogous to the relationship established between physician and patient.

SECTION II Assistance to victims

Article 20 Emergency Assistance Services

1. An emergency assistance service shall be established to assist victims of domestic violence with the objective of informing them of the steps that may be taken to address their situation.

2. The emergency assistance service shall provide an emergency telephone hotline which will be anonymous in nature for a period of time and under conditions to be set by ministerial order.
3. In urgent cases, the emergency assistance service will communicate with the competent police authorities the need for immediate intervention and, if appropriate, will refer the victims to shelters.

Article 21
Direct assistance to victims

1. A specialized service shall be established for filing complaints related to crimes of domestic violence and providing assistance and guidance to victims regarding hospital services, the organizations in the referral network of support services and the National Police of Timor-Leste (PNTL).
2. The implementation of the services provided in the preceding paragraph shall be made in a phased manner by joint order of the entities of the Government responsible for domestic violence and for the areas of security, health and social solidarity.
3. The Government, through the entity responsible for social security, shall ensure the availability of information and specialized training of the employees working in the services referred to in paragraph 1.

Article 22
Assistance at hospital services

Whenever a patient reveals her or himself to have been a victim or a clinical diagnosis concludes the patient is a victim of a domestic violence related crime, the specialized hospital services are requested to intervene to:

- a) Provide assistance and medical follow-up for victims of domestic violence while taking into account the needs of victims, particularly children;
- b) Proceed with the preservation of evidence relating to possible crimes committed, including the completion of examinations or forensic tests or taking other precautionary measures appropriate to the case;
- c) Inform the victim of his / her rights and possible remedies and the obligation of the hospital authorities to notify police of the facts of the case;
- d) Immediately report the facts of the case to the police or the Public Prosecutor;
- e) Prepare a report on the situation and the measures taken and send it to the competent authorities;
- f) Refer the victim to a shelter if the situation so warrants and the victim makes such a request.

Article 23
Duties of social assistance services

It is the responsibility of the social assistance services to:

- a) Provide services adequate to the needs of victims of domestic violence in accordance with the Code of Professional Ethics and standard operating procedures;

- b) Provide special services for child victims of domestic violence;
- c) Report cases of domestic violence to law enforcement officers in compliance with the Code of Professional Ethics;
- d) Conduct counseling sessions with victims of domestic violence;
- e) Facilitate, if necessary, the removal of the victims to a place that suits their needs, particularly for child victims;
- f) Prepare reports and other documentation for use in cases by the police, prosecutors and courts;
- g) At the request of the victim, provide support and monitor the case in court;
- h) Participate in the promotion and creation of safety networks for domestic violence victims at the community level.

**Article 24
Police Assistance**

1. The specialized police services shall intervene in cases of crimes relating to domestic violence after receiving reports from hospital services and victims support services.
2. The specialized police service located in the PNTL district services have the responsibility to:
 - a) Provide the victim with all necessary assistance, including informing him or her of his or her rights;
 - b) Refer the victim, upon request, to a shelter or support center;
 - c) Whenever necessary, take measures to ensure that the victim receives immediate medical and psychological assistance by specialized staff;
 - d) In the event of possible mental instability, take measures to ensure that a mental health professional undertakes an evaluation of the victim so that the victim may continue to have the necessary support from relevant institutions;
 - e) Prepare a summary report of the observations made, the steps taken and evidence collected to be attached to the criminal complaint and provide it to the prosecutor within five days of the facts being reported;
 - f) If the victim has no financial capacity to retain a lawyer without compromising his/her livelihood, inform the Public Defender through a summary report no later than five days after the facts of the case are reported.

**Article 25
Legal Assistance**

1. In all legal proceedings, the victim must be accompanied by a lawyer or a public defender, regardless of whether the victim has the financial capacity to retain a lawyer.
2. It is the responsibility of the lawyer or public defender to:
 - a) Provide legal advice to victims of domestic violence;

- b) Report the occurrence of domestic violence to the police and the prosecutor where doing so would not result in a breach of confidentiality;
- c) Advise victims, witnesses and family members about the progress of legal proceedings relating to domestic violence cases;
- d) Monitor the attention given to the cases by law enforcement officials and judiciary officials, i.e. the police, prosecutors and courts;
- e) Contact entities, agencies and community groups regarding domestic violence cases;
- f) Advise victims of their entitlement to other necessary services;
- g) Facilitate access by the parties to information related to the cases according to this law and other applicable legal provisions.

Article 26
Measures for the rehabilitation of victims

1. It is the responsibility of the Government to promote and support the establishment and operation of support associations or other organizations where it considers existing mechanisms inadequate.
2. The objective of the support associations is to protect victims of domestic violence while prioritizing programs that address victim's support and monitoring and personal and professional development in accordance with their social needs.

Article 27
Measures to support offenders

The Government, through the entity responsible for promoting equality, shall foster the development of projects of public or private initiative directed towards raising awareness of perpetrators and inducing them to adopt nonviolent behavior.

Article 28
Assistance by the Public Prosecutor

In addition to his/her obligations under criminal procedure, in the context of the fight against domestic violence, the prosecutor must:

- a) Provide direct assistance to victims who seek services and inform them of their rights and how to exercise them, especially through the services of the Public Defender if they do not have resources to hire a lawyer without compromising their ability to provide for themselves and their family;
- b) Refer victims to the hospital or to shelters in cases where referrals have not already been made.

CHAPTER V
MAINTENANCE

Article 29
Right to Maintenance

Where the victim is a spouse or ex-spouse or has lived with the offender in conditions similar to those of spouses, even without co-habitation, or is a descendant or ascendant of the offender, he or she shall be entitled to maintenance as long as he or she proves to be in need of that assistance.

Article 30
Amount of the maintenance

The amount of the maintenance due shall be established by taking into account the capacity of the person responsible to pay and the needs of those entitled to maintenance while taking into consideration the ability of the entitled party to partially provide for his or her own maintenance.

Article 31
Type of obligation

1. The amount of the maintenance due may be defined by written agreement between the person responsible for payment and the entitled party, or their legal representative in the case of a minor or disabled person, or it may be determined by the court.
2. If, having determined the amount by agreement or court order, the circumstances change, the amount of the maintenance may be increased or reduced by agreement or court order.

Article 32
Provisional maintenance

1. The court may at any time, ex officio or upon request of the victim or prosecutor, grant provisional maintenance.
2. Under no circumstance shall there be restitution of provisional maintenance already granted.
3. Where there is economic insufficiency on the part of the defendant, the Services of the Ministry of Social Solidarity shall provide support regarding the maintenance due.

Article 33
Social Reintegration

1. The ministry responsible for social services shall support the victims in the process of social reintegration as well as in the provision of maintenance whenever deemed necessary.
2. The scope and nature of the support to be provided shall be defined by a decree issued by the Government entity responsible for Social Solidarity.

Article 34
Proceeding

1. The request for provision of maintenance may be attached to the corresponding criminal proceeding.
2. In all other cases, the provisions contained in articles 831 and subsequent articles of the Civil Procedure Code shall apply.

CHAPTER VI CRIMINAL ISSUES

Article 35 Crimes of domestic violence

For the purposes of this law, the following are considered crimes of domestic violence:

- a) The types of crime provided for in articles 153, 154, 155 and 156 of the Criminal Code;
- b) The types of offenses in articles 138, 141, 145, 146, 167, 171, 172, 175, 177, 178 and 179 are crimes of domestic violence where, in addition to satisfying the typical elements of the crime, the acts also occurred in the circumstances described in Article 2 of this Act.

Article 36 Public nature of the crimes of domestic violence

The domestic violence crimes referred to in Article 35 are all public crimes.

Article 37 Coercive measures

In addition to the coercive measures provided for in the Criminal Procedure Code, in the case of a domestic violence crime, the perpetrator may be subjected, by determination of the trial judge, to the measure of coercive removal from the place of family residence, including prohibition of contact with the complainant, whenever there are signs of violence which are reasonably foreseeable as acts of aggression which may occur again in a manner that creates danger to the life or the physical, psychological or sexual integrity of the victim.

Article 38 Choice and determination of the sentence

1. The court may substitute the penalty of imprisonment with a penalty of a fine provided the prerequisites provided for in article 67 of the Criminal Code have been met, the security of the victim has been guaranteed, the perpetrator agrees to undergo treatment, or follow-up support services for the victim and such a measure would benefit the preservation of the family unit.
2. The defendant may further be sentenced to an additional penalty prohibiting contact with the victim for a maximum period of 3 years whenever it is considered that the application of the principal penalty is insufficient to prevent the repetition of similar acts.

Article 39 Witness Protection

Whenever deemed necessary, the competent court shall apply procedural measures to protect witnesses and victims in domestic violence cases and people with knowledge of the facts constituting the object of the proceeding or of other information deemed relevant for the decision pursuant to the applicable law.

Article 40 Professional Confidentiality

1. The technical and non-technical staff working at reception centers, shelters and specialised assistance services shall be subject to professional confidentiality regarding any facts revealed to them solely by virtue of their professional interaction with the victims under their care.
2. Once the consent of the victim has been requested and the victim has given the consent of his or her free will, the professional confidentiality of the personnel referred to in the preceding paragraph ceases in the event they are called by judicial entities to testify or furnish other information.

CHAPTER VII FINAL PROVISIONS

Article 41 Regulation

The Government shall adopt the necessary rules for the implementation and development of this law within 180 days.

Article 42 Entry into force

This Act comes into force the day following its publication.

Approved May 3 in 2010.

The president of the National Parliament,

Fernando La Sama de Araújo

Promulgated in 21/6/2010.

Publish.

President of the Republic,

Dr. José Ramos Horta