

**DEMOCRATIC REPUBLIC OF EAST TIMOR**  
**MINISTRY OF JUSTICE**  
**Office of the Minister**

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**PUBLIC DEFENDER'S OFFICE STATUTE**

Decree-Law No. 38/2008

In its Article 26, the Constitution guarantees the access by all to the Courts for the defense of their legally protected rights and interests, ensuring that Justice is promoted regardless of one's financial position.

At this point in the country's development, it is seen to be necessary to create a Public Defender's Office that allows broad access to the Courts by the great majority of Timorese citizens in the exercise of their constitutionally recognized rights.

Social interests must guide the exercise of legal, judicial and extra-judicial aid, pursuant to Article 135 of the Constitution, and thus be the main principle guiding the Public Defender's Office, essential to good management in the justice system in safeguarding citizens' rights and legitimate interests.

Therefore, it is important for the State to have an institution that ensures technical quality and has a broad roster of incumbencies, guarantees and prerogatives in order to ensure the legal representation of citizens' interests and rights.

It is thus intended to create a contingent of public defenders to reinforce the mechanisms for access to Justice, which must be exercised swiftly and efficiently, qualities that are essential to building a more just and democratic society.

Pursuant to line a) of Article 15 and No. 1 of Article 16 of Decree-Law No. 12/2008, of April 30, the Public Defender's Office is an agency endowed with technical autonomy, subject to the oversight of the Ministry of Justice, responsible for providing full and free judicial and extra-judicial aid to economically underprivileged citizens.

Thus,

The Government decrees the following to be valid as law, pursuant to Article 115, No. 3 of the Constitution of the Republic:

## **PUBLIC DEFENDER'S OFFICE STATUTE**

### **Chapter I**

#### **Miscellaneous Provisions**

##### **Article 1**

##### **Statute**

1. The Public Defender's Office is a public service, responsible for providing full and free legal, judicial and extra-judicial aid to the neediest citizens.
2. Without prejudice to its technical and functional independence, the Public Defender's Office is subject to the oversight of the Ministry of Justice.
3. The Public Defender's Office is governed by this law and by the deontological rules and regulations that it creates for itself within the scope of its functions and incumbencies.

##### **Article 2**

##### **Incumbencies**

1. It is incumbent on the Public Defender's Office to ensure access to the Courts and access to the law to all that seek it out, subject to the terms of this statute.
2. It is incumbent on the Public Defender's Office to exercise and practice the following, subject to the terms of this statute:
  - a) Legal representation of individuals that seek it out in any Court in East Timor, regardless of the type of legal action and regardless of whether the parties are in the plaintiff or defendant position;

- b) Legal representation of citizens that seek it out in any mediation or arbitration proceeding in East Timor;
  - c) Legal representation of citizens that seek it out in any extra-judicial proceeding that would tend to settle legitimate interests in litigation;
  - d) Legal representation of citizens that seek it out in any judicial or extra-judicial proceeding that would tend to promote conciliation of the litigating parties;
  - e) The representation of citizens that seek it out, before any State agencies or services, namely the police force, the prison system, the tax service, the Customs service, the Immigration service, the Social Security service, the registry services, the Notary Public services, and the consumer protection services;
  - f) The functions of representative of one who is absent, whose whereabouts are or incompetent, taking the place of the Public Prosecutor's Office, in those cases provided for in law;
  - g) Legal consulting services.
3. The Public Defender's Office performs its functions through public defenders and as prescribed in this law and in the institution's own rules and regulations.
  4. The Public Defender's Office performs its functions regardless of who the litigating parties are, even if it is the State or some other State-owned entity.

### **Article 3**

#### **Mandatory nature of the services**

The Public Defender's Office may not refuse to provide its services if it is requested to do so.

### **Article 4**

#### **Gratuitous nature**

The services provided by the Public Defender's Office are free of charge.

### **Article 5**

#### **Beneficiaries**

1. Except as provided in law to the contrary, all those who request it from this institution and declare that they do not have the means to bear the expense of a

lawyer have a right to the assistance of the Public Defender's Office, subject to the terms of this statute.

2. Privately held, non-profit organizations may benefit from the assistance of the Public Defender's Office.
3. All those who are referred by the Court for assigned representation also enjoy the right to aid from the Public Defender's Office.
4. Beneficiaries of aid from the Public Defender's Office enjoy exemption from the respective Court costs, unless the judge reasonably decides otherwise.

## **Article 6**

### **Means Test for Users**

1. When it is suspected that the user has the means to bear the expense of a lawyer, the Public Defender's Office invites him/her/it to prove the lack of economic and financial means.
2. When, in view of the proof submitted, the Public Defender's Office still has well-founded suspicions regarding the user's lack of means and the latter continues to insist, the matter is referred to the judge, who shall decide in a non-appealable decision, after requesting other supplementary proof if deemed necessary.
3. The user may employ any evidence-finding procedures allowed by law.
4. Under the circumstances set out in No. 1 above, the obligation of the Public Defender's Office to intervene is suspended, except in the case of a person who is imprisoned or detained.
5. The provisions set out above do not apply to those referred by the Court for assigned representation.

## **Article 7**

### **Right of Complaint**

Any user may present a complaint to the Higher Council of the Public Defender's Office regarding the services provided by the Public Defender's Office.

## **CHAPTER II**

### **Organization**

## **Article 8**

### **Agents of the Public Defender's Office**

The agents of the Public Defender's Office are the following:

- a) The Public Defender General
- b) The District Public Defenders
- c) The Public Defenders
- d) The Intern Public Defenders.

## **Article 9**

### **Offices**

1. In each legal jurisdiction there is an Office of the Public Defender headed by a District Public Defender.
2. Each Office shall have the number of defenders that is set by law, and in the absence of a law, by the Higher Council of the Public Defender's Office after hearing from the Public Defender General.
3. The Office of the Public Defender in Dili is headed by the Public Defender General.

## **Article 10**

### **Appointment of the Public Defender General and of the District Public Defenders**

1. The Public Defender General is appointed and exonerated by the Minister of Justice after hearing the Higher Council of the Public Defender's Office.
2. The term of office of the Public Defender General is four years, renewable just once for an equal period, after hearing from the Higher Council of the Public Defender's Office.
3. Each one of the remaining District Public Defenders is appointed by the Higher Council of the Public Defender's Office.
4. The District Public Defenders are appointed for a term of four years, renewable just once for an equal period.

## **Article 11**

### **The Public Defender General**

1. The Public Defender General represents the Public Defender's Office.

2. In his/her absence or inability to act, the District Public Defender with the most seniority shall act as substitute; in the event seniority is the same, the eldest shall act as substitute.

## **Article 12**

### **Functions of the Public Defender General**

It is incumbent on the Public Defender General to:

- a) Direct the Public Defender's Office;
- b) Represent the Public Defender's Office before the Courts;
- c) Be responsible to the Minister of Justice for the functioning of the Public Defender's Office;
- d) Promote and guarantee the quality of the services provided by the Public Defender's Office;
- e) Coordinate and oversee the activities of the Public Defender's Office and issue the directives, orders and instructions with which the actions of its agents and employees must comply;
- f) Convoke the Higher Council of the Public Defender's Office and preside over the respective meetings;
- g) Inspect or order inspections of the services of the Public Defender's Office and order his/her employees and agents to commence investigations, inquiries, and disciplinary proceedings;
- h) Propose suggestions felt to be appropriate for improving the services provided by the Public Defender's Office to the Minister of Justice and the Higher Council of the Public Defender's Office;
- i) Superintend the inspection services of the Public Defender's Office;
- j) Ensure the management of the human, administrative, and financial resources of the Public Defender's Office;
- k) Perform the other functions that may be assigned him/her by law.

## **Article 13**

### **Higher Council of the Public Defender's Office**

1. The Higher Council of the Public Defender's Office is created, made up of the following:
  - a) The Minister of Justice, who is its chairman

- b) The Public Defender General
  - c) An advocate appointed by the President of the Republic
  - d) An advocate appointed by the National Parliament
  - e) An advocate elected by the agents comprising the Public Defender's Office.
2. The advocates mentioned in lines c) and d) will be appointed from among individuals of widely recognized competence in the legal field and acknowledged moral and ethical integrity.
- a) The advocates' term of office is 4 years.
  - b) Once elected, the defenders may not refuse the position of members of the Higher Council of the Public Defender's Office
  - c) Each one of the entities mentioned in lines 1 c), 1 d), and 1 e) also appoints an alternate advocate to act as the substitute of the regular member in his absences or instances of inability to act.

#### **Article 14**

##### **Duties of the Higher Council of the Public Defender's Office**

1. It is incumbent upon the Higher Council of the Public Defender's Office to:
- a) Appoint, place, transfer, promote, exonerate, evaluate the professional merit of, exercise disciplinary action over, and in general perform all similar acts in relation to the public defenders and district public defenders, with the exception of the Public Defender General;
  - b) Consider the professional merit of and exercise disciplinary action over the employees of the Public Defender's Office;
  - c) Issue and deliberate upon directives in relation to internal organization, management, and staffing;
  - d) Issue directives with which the actions of the public defenders and district public defenders must comply;
  - e) Propose legislative measures to the Minister of Justice aimed at the efficiency of the Public Defender's Office and improvements in judiciary institutions;
  - f) Decide upon the hierarchical complaints provided for in this law and supplementary legislation;
  - g) Approve the annual plan for inspections and order inquiries and inspections to be carried out;

- h) Issue official opinions on matters of judiciary organization and the administration of justice in general;
  - i) Perform the other duties that are attributed to it by law.
2. The meetings of the Higher Council of the Public Defender's Office take place whenever they are convoked by its chairman, on his/her own initiative, at the request of the Public Defender General, or at the request of any three members.
  3. Resolutions shall be carried by a majority vote of the members present, with the Public Defender General casting the deciding vote [in the case of a tie].
  4. Resolutions of the Higher Council of the Public Defender's Office may be appealed to the Supreme Court, with devolutive effect.

## **Article 15**

### **Inspection Services**

1. The Public Defender's Office Inspectorate operates in integration with the Higher Council of the Public Defender's Office and is made up of an inspector or inspectors appointed by the latter from among Public Defenders at the highest career level for public defenders.
2. It is incumbent upon the Public Defender's Office Inspectorate to carry out, in accordance with the law, inspections, inquiries, and investigations into the services of the Public Defender's Office as well as conducting the fact-finding phase of disciplinary proceedings, in conformity with the resolutions of the Higher Council of the Public Defender's Office or on the initiative of the Public Defender General.
3. Supplementally, the inspection services are meant to gather information on the service and on the merit of the defenders.
4. Inspections meant to gather information on the service and on the merit of the defenders, as well as inquiries and disciplinary proceedings, may not be conducted by inspectors belonging to a lower category or having less seniority than the defenders undergoing inspection.

## **CHAPTER III**

### **Public Defender's Office Technical and Administrative Support**

## **Article 16**

### **Charter, staffing and statute**



The charter, staffing, and statute for the Public Defender's Office technical and administrative support services are set by a separate statute after hearing from the Higher Council of the Public Defender's Office.

## **CHAPTER IV**

### **District Public Defender's Office**

#### **Article 17**

##### **Structure**

1. The District Public Defender's Office is directed by a District Public Defender, who is responsible for the direction, coordination and oversight of the activities of the defenders who are on the rolls of the respective district office.
2. The District Public Defender is appointed for three-year periods by the Higher Council of the Public Defender's Office from among the first-class Public Defenders and is replaced during his/her absences or inability to act by the Public Defender from the highest class having the most seniority.

#### **Article 18**

##### **Incumbencies**

It is incumbent on the District Public Defender to:

- a) Coordinate, direct and oversee the activities of the Public Defenders who operate within his/her sphere of authority;
- b) Issue orders and instructions with which the actions of the Public Defenders must comply in the performance of their functions;
- c) Propose to the Public Defender General the implementation of measures that would tend to improve institutional activities;
- d) On a half-yearly basis, forward to the Public Defender General a report on the activities carried out within his/her sphere of authority;
- e) Draw up an annual report of activities and the statistical reports that may prove necessary or that are ordered by a higher level of authority;
- f) Perform any other tasks that are assigned by the Public Defender General within his/her sphere of authority;
- g) Perform the other functions attributed by law.

## **CHAPTER V**

### **Career**

#### **Article 19**

##### **Access to the career of Defender**

1. The following are the requirements for entry to the career path of public defender:
  - a) Be a Timorese citizen;
  - b) Be in full enjoyment of one's civil and political rights;
  - c) Be licensed to practice the Law;
  - d) Have successfully completed the training internship provided for in Decree-Law No. 15/2004 of September 1;
  - e) Have writing and speaking knowledge of the two official languages of East Timor;
  - f) Comply with the other requirements set out in the Civil Service Statute.
  
2. Intern public defenders are not part of the Public Defender's Office career path and perform the jurisdictional function for the duration of the internship, except in the case of a resolution to the contrary by the Higher Council of the Public Defender's Office.

#### **Article 20**

##### **Categories**

1. The public defender career path is made up of the following categories:
  - a) Public Defender 3<sup>rd</sup> class
  - b) Public Defender 2<sup>nd</sup> class
  - c) Public Defender 1<sup>st</sup> class.
  
2. The career path begins with the category of Public Defender 3<sup>rd</sup> class.

#### **Article 21**

##### **Promotion**

1. Public defenders 3<sup>rd</sup> classes are promoted to public defenders 2<sup>nd</sup> class after at least three years' practice in the category and a minimum rating of "Good".

2. Public defenders 2<sup>nd</sup> class are promoted to public defenders 1<sup>st</sup> class after at least four years' practice in the category, a minimum rating of "Good" and a passing grade on specific tests.

## **Article 22**

### **Openings for promotion**

1. Promotion to the next category is always conditioned on the existence of a job opening.
2. Promotion to the next higher category to fill job openings is always done based on documented placement testing of the candidates that fulfill the requirements set out in the previous article.
3. In the documented placement testing, the following are always taken into account: grades on specific examinations, service classification, and seniority of the candidates, in decreasing order of importance.
4. It is incumbent on the Higher Council of the Public Defender's Office to regulate placement testing for promotion purposes

## **Article 23**

### **Category at Entry**

1. Entry into the Public Defender's Office occurs in the category of public defender 3<sup>rd</sup> class.
2. Public defenders may not refuse the placement in the Public Defender's Office accorded them based on the grade order obtained in the entrance course or internship.

## **Article 24**

### **Investiture**

1. The Public Defender General is sworn in before the Minister of Justice.
2. The remaining District Public Defenders and ordinary public defenders are sworn in before the Public Defender General.

## **Article 25**

### **Oath of Office**

The following oath is taken during the swearing in:

*“I, (name), swear on my honor to respect and faithfully apply the Constitution of the Republic and the other laws in force and to faithfully perform the duties of the office in which I am hereby invested.”*

## **Article 26**

### **Professional Dress**

1. Public defenders must wear lawyer’s robes for solemn acts, namely at litigation and judgment hearings and preliminary hearings, as well as for ceremonies or solemn public acts involving the justice system.
2. The style of lawyer’s robes is approved by the Higher Council of the Public Defender’s Office.

## **Article 27**

### **Retirement**

1. The legally established principles and rules for civil servants apply to the retirement of public defenders.
2. Government service time before joining the Public Defender’s Office counts for retirement purposes.

## **Article 28**

### **Exoneration upon Request**

1. Exoneration at the request of the public defender is authorized in duly justified cases, subject to 60 days’ prior notice.
2. The exoneration takes effect as of the notification date of the order granting it.

## **Article 29**

### **Mobility**

1. The placement and transfer of public defenders must be done based on work needs.
2. Service classification and seniority, in decreasing order of preference, are determining factors in placements and transfers.

3. Public defenders may not be transferred without their consent until they have spent five years practicing in the office in which they are placed, except as a result of promotion or for disciplinary reasons.
4. Public defenders who are placed in a particular district office at their request may not request their transfer to another district office until they have practiced for two years in that office.

### **Article 30**

#### **Unremovability**

Public defenders may not be transferred, suspended, promoted, retired, dismissed or undergo any other type of change in status except as provided herein.

### **Article 31**

#### **Exchanges**

Without prejudice to the progress of services and the rights of third parties, exchanges are authorized.

### **Article 32**

#### **Tour of Duty**

Public defenders may be appointed to exercise tours of duty, after hearing from the Higher Council of the Public Defender's Office.

### **Article 33**

#### **Classification of Public Defenders**

Public defenders are classified by the Higher Council of the Public Defender's Office based on merit as "Very Good", "Good", "Satisfactory", and "Mediocre".

### **Article 34**

#### **Criteria and effects of the classification**

1. The classification should consider the way in which the public defenders perform their functions, namely their technical training, intellectual capacity, impartiality, and moral and civic integrity.
2. A classification of "mediocre" entails suspension from practice, without loss of pay, and the commencement of an inquiry due to unfitness for the job.

3. If in a disciplinary proceeding begun based on the inquiry, it is concluded that the public defender is unfit but that it is possible to remain in the civil service, the penalty of mandatory retirement or dismissal may, at the request of the interested party, be replaced by exoneration.
4. Under the circumstances set out in the item above, the case file, together with a well-grounded opinion, is sent to the Chairman of the Higher Council of the Public Defender's Office for ratification.
5. Ratification of the opinion by the Chairman of the Higher Council of the Public Defender's Office makes the interested party eligible for entry into a compatible position in other Government services.

### **Article 35**

#### **Elements to be considered in the classification**

1. The classifications consider the results of prior inspections, inquiries, investigations, or disciplinary proceedings, service time, work published in the field of law, annual reports and any supplementary elements that the Higher Council of the Public Defender's Office has in its possession.
2. The public defender's work load and working conditions are likewise taken into account.
3. The public defender must mandatorily be heard in regard to the inspection report and may provide any information s/he deems appropriate.

### **Article 36**

#### **Classification of public defenders on duty tours**

Public defenders who are on duty tours may request may request a new classification six months after taking up the post.

### **Article 37**

#### **Interval between classifications**

1. Public defenders are classified at least every three years.
2. A classification conferred more than three years previously is considered to be outdated, unless the lack of classification is not the public defender's fault.

3. The classification is considered to be “Good” if the public defender has not been evaluated within the period set out in No. 1 above, unless the public defender requests an inspection, in which case it is mandatory.

## **CHAPTER VI**

### **Rights, duties, and guarantees**

#### **Article 38**

##### **Statute**

Defenders enjoy the benefits of a special statute as provided in this law, and the civil service system is applied in all instances that are not contrary to the provisions hereof.

#### **Article 39**

##### **Rights of the Public Defender General**

In addition to the items set out in the following article, the Public Defender General has a right to:

- a) a service vehicle;
- b) a diplomatic passport for him/herself and his/her spouse;
- c) the use, license to carry, and free display of a weapon for personal defense and the acquisition of the respective ammunition;
- d) an entertainment allowance compatible with the position.

#### **Article 40**

##### **Rights of the Public Defenders**

The following are rights of the public defenders:

- a) the right to progress on a career path;
- b) the right to compensation;
- c) the right to a paid annual vacation;
- d) the right to ongoing professional education;
- e) any other rights provided for in law.

#### **Article 41**

##### **Compensation of Public Defenders**

The compensation table for public defenders shall be set based on the principle of parity with the compensation of members of the Public Prosecutor’s Office.

## **Article 42**

### **Vacations**

1. Defenders are entitled to 24 business days' paid vacation for each year of work, whether consecutive or alternating.
2. The vacation time corresponding to each year may be taken during that year at the rate of two business days for each month of work performed, but they may not be taken after the year immediately subsequent.
3. It is incumbent on the District Public Defenders to authorize requests for vacation based on the needs of the service and the legitimate interests of the various defenders making up the respective office.
4. Defenders may not be obliged to use their vacation credits in periods of less than one week.

## **Article 43**

### **Expenses arising from changes in assignment**

When placed in or transferred to a judicial district different from that of their residence, for reasons of a non-disciplinary nature, defenders have the right to reimbursement of the expenses arising from their move and that of their family, including transport of the furnishings from the home where they reside.

## **Article 44**

### **Expense Allowances**

Whenever they travel on business outside the judicial district where they are located and where they practice, defenders are entitled to expense allowances.

## **Article 45**

### **Residential housing**

1. In locations where it is necessary, and whenever possible, the Ministry of Justice places a furnished home at defenders' disposal during the performance of their functions, in return for monthly consideration to be set by the Ministry of Justice, after hearing from the Higher Council of the Public Defender's Office, which amount may not exceed one-tenth of their compensation.



2. Defenders who do not have residential housing provided as per the item above have the right to a monthly housing subsidy, the amount of which is set by the Ministry of Justice, after hearing from the Higher Council of the Public Defender's Office.

## **Article 46**

### **Duties of defenders**

1. The following are the duties of the defenders:
  - a) To defend the legitimate rights and interests of users impartially, diligently and equitably;
  - b) To contribute to the swift and effective administration of justice;
  - c) To clearly and objectively inform users regarding their rights and obligations and about the foreseeable results of various legal options that might be chosen in the particular circumstances;
  - d) Act assiduously and zealously;
  - e) Scrupulously respect professional secrets;
  - f) Recuse themselves from cases where they consider it appropriate;
  - g) Prefer non-judicial channels for the resolution of conflicts;
  - h) Avoid future conflict situations;
  - i) Promote their ongoing professional education;
  - j) Facilitate access of all users to the Public Defender's Office, without prejudice to the provisions of Article 6.

## **Article 47**

### **Prohibitions**

Defenders are prohibited from:

- a) Practicing law privately, except on their own behalf, that of their spouse or companion, parents or children, or their companion or spouse's parents or children;
- b) Performing in a case or taking part in proceedings in which s/he her/himself is a party, or in which her/his spouse or companion, relative, etc. is a party, to the second degree of direct or collateral kinship;

- c) Requesting, advocating or performing acts, in Court or outside it, that in any way conflict with the functions inherent to the position they hold or with the ethical principles of their job;
- d) Receiving at any pretense or under any pretext professional fees or compensation other than those provided for herein.

## **Article 48**

### **Guarantees and prerogatives of public defenders**

1. Public defenders enjoy the same guarantees and prerogatives that other lawyers enjoy.
2. The State also guarantees public defenders the following:
  - a) Independence in the performance of their functions and personal protection whenever strong reasons of security so require;
  - b) Freedom of opinion, association, and assembly, including the freedom to participate in public debates on issues relating to the law and the administration of justice;
  - c) Unrestricted access to their clients;
  - d) Respect for professional confidentiality in relations with users, as well as protection of sources;
  - e) The right to demand from their superiors that their instructions be set out in writing whenever they appear illegal or contrary to the institution's own rules;
  - f) The acquisition of any documents, certificates or information held to be necessary or useful in performing their functions from any public authority or its agents, including the police;
  - g) Freedom from arrest, except on written judicial orders, except *in flagrante delicto*, in which case the Public Defender General must be immediately notified.
3. All State authorities must cooperate with the Public Defender's Office in the pursuit of its purposes.

## **CHAPTER VII**

### **Discipline**

#### **Article 49**

##### **Accountability**

1. Violations in regard to the duties set out herein, the rules of deontology accepted by the Public Defender's Office, the instructions of the Public Defender General, or the duties imposed by the law in general will result in disciplinary accountability.
2. The procedural progress of disciplinary proceedings, inquiries and investigations follow the rules applicable to magistrates, with the necessary adaptations.

#### **Article 50**

##### **Disciplinary infractions**

Disciplinary infractions are those acts that, even when involuntary, are committed by public defenders in violation of professional duties, and those acts or omissions in their public life that reflect in a way that is incompatible with the decorum and dignity indispensable to the exercise of their functions.

#### **Article 51**

##### **Submission to disciplinary jurisdiction**

1. Exoneration or change of status is not an impediment to punishment for infractions committed in the course of performance of a defender's functions.
2. An exonerated public defender serves her/his sentence if s/he returns to inactive duty.

#### **Article 52**

##### **Autonomous nature of disciplinary jurisdiction**

1. Disciplinary proceedings are independent of criminal proceedings.
2. When in the course of disciplinary proceedings, the existence of a criminal infraction is discovered, the Higher Council of the Public Defender's Office must be notified immediately.

## **Article 53**

### **List of Penalties**

1. Defenders are subject to the following penalties, in order of gravity:
  - a) Warning;
  - b) Written reprimand;
  - c) Fine;
  - d) Mandatory transfer;
  - e) Suspension from practice;
  - f) Removal from active duty;
  - g) Mandatory retirement;
  - h) Dismissal.
2. With the exception of the penalty provided for in line a) above, the penalties applied are always registered in writing.
3. Amnesties do not extinguish the effects produced by application of the penalties but should be noted in the appropriate individual file.
4. The penalty provided for in line 1 a) above may be applied independent of formal proceedings, provided there is a hearing and the possibility of defense for the alleged offender.

## **Article 54**

### **Warning**

1. The penalty of a warning consists of a simple remark or admonishment for the irregularity committed, intended to warn the defender that the action or omission is one that could disrupt the performance of his/her functions or reflect on him/her in a way that is incompatible with the dignity required of him/her.
2. The penalty of a warning is applied for minor misconduct that should not be allowed to pass without remark.

## **Article 55**

### **Written reprimand**

1. The penalty of written reprimand consists of censure in writing intended to warn the defender that the action or omission is one that could disrupt the performance of his/her functions or reflect on him/her in a way that is incompatible with the dignity required of him/her.

2. The penalty of written reprimand is applicable to minor offenses liable to cause disruptions in the performance of the defender's functions or reflect on him/her in a way that is incompatible with the dignity required of him/her.

### **Article 56**

#### **Fine**

1. The penalty of a fine is set in days, with a minimum of three and a maximum of thirty.
2. The penalty of a fine entails a deduction from the defender's earnings of an amount corresponding to the number of days' fine imposed.
3. The penalty of a fine is applicable to cases of negligence or disinterest in fulfilling the duties inherent to the office.

### **Article 57**

#### **Mandatory transfer**

1. The penalty of mandatory transfer consists of placement of the defender in a position in the same category, outside the area of the circuit or service where s/he previously practiced.
2. The penalty of mandatory transfer also entails the loss of 60 days of seniority.
3. The penalty of mandatory transfer is applicable to infractions that involve a breach of the decorum required of a magistrate to enable him/her to continue in practice.

### **Article 58**

#### **Suspension from practice and removal from active duty**

1. The penalties of suspension from practice and removal from active duty consist of complete withdrawal from service during the penalty period.
2. The penalty of suspension from practice may be for a period of 10 to 90 days.
3. The penalty of removal from active duty may not be for less than six months nor more than one year.
4. The penalties of suspension from practice and removal from active duty are applicable in cases of serious negligence or serious disinterest in fulfilling the duties inherent to the office or when defenders are sentenced to imprisonment, except if the sentence entails the penalty of dismissal.

5. Prison time served is deducted from the disciplinary penalty.
6. The penalty of suspension from practice entails loss of the time corresponding to its duration for purposes of remuneration, seniority and retirement, and transfer to an equivalent position in a different service from that in which the defender practiced when the infraction was committed, when the defender who has been punished cannot remain in the environment where s/he practiced without a breach of the decorum required, which will be stated in the disciplinary decision.
7. The penalty of removal from active duty results in loss of the time corresponding to its duration for purposes of remuneration, seniority and retirement, as well as the impossibility of promotion or access for one year as of the penalty period served.

## **Article 59**

### **Mandatory retirement and dismissal**

1. The penalty of mandatory retirement consists of imposed retirement and entails the immediate termination of the defender's functions.
2. The penalty of dismissal consists of permanent removal of the defender, with all ties to the function ceasing, and entails loss of coverage by the defenders' statute granted by this law, but does not entail loss of the right to retirement, pursuant to the terms and conditions established in law, nor does it bar the defender from being appointed to public office or other positions, provided s/he embodies the qualities of dignity and trust required.
3. The penalties of mandatory retirement and dismissal are applicable when the defender:
  - a) Demonstrates definitive inability to adapt to the requirements of the position;
  - b) Demonstrates a lack of honesty or serious insubordination or displays immoral or dishonorable conduct;
  - c) Demonstrates professional unfitness;
  - d) Has been sentenced for a crime committed *in flagrante delicto* and serious abuse of his/her position, or clear and serious violation of the duties inherent to it.
4. The penalty of dismissal is always applicable to abandonment of one's position.

## **Article 60**

### **Promotion of accused defenders**

1. While a criminal or disciplinary proceeding is pending, the defender is graded for promotion or access, but these are held suspended and the respective opening is reserved until a final decision is handed down.
2. If the proceeding is dismissed, the sentence revoked, or a penalty is applied that does not negatively impact promotion or access, the defender is promoted or appointed and will occupy his/her place on the seniority list, with the right to receive differences in remuneration or, if s/he must be passed over, placement is completed for the opening which had been reserved for her/him.

## **Article 61**

### **Extent of the penalty**

1. In determining the extent of the penalty, attention must be paid to the gravity of the fact, the culpability of the agent, his/her personality and the circumstances that weigh in favor of or against him/her.
2. The penalty may be especially attenuated, imposing a lesser penalty, when circumstances exist prior to or after the infraction, or concurrent with it, that substantially diminish the gravity of the fact or the culpability of the agent.

## **Article 62**

### **Repeat offense**

1. A repeat offense is considered to have occurred when an infraction is committed within three years of the date of the first infraction for which the agent has been penalized with more than a warning, whether the penalty has been fully or partially discharged, provided the circumstances reveal a lack of preventive efficacy of the prior penalty.
2. Where the penalty applicable is either of those set out in Article 53, No. 1c) and 1f), in the event of repeat offense the lower limit will be equal to one third or one fourth of the upper limit, respectively.
3. In the case of a penalty other than that referred to in the previous item, the next higher penalty on the scale may be applied.

## **Article 63**

### **Concomitant infractions**

1. Concomitant infractions are considered to have occurred when the defender commits two or more infractions before the timeframe for appeal of the sentence has elapsed on either one of them.
2. In the event of concomitant infractions, a single penalty is imposed and when the penalties for the infraction are different, the more severe one is imposed and increased as a result of the concomitance, if it is variable.

## **Article 64**

### **Prescriptive period for penalties**

1. The prescriptive periods for disciplinary penalties are the following, counted from the date on which the decision can no longer be appealed:
  - a) Six months for the penalties of warning, written reprimand, and fine;
  - b) One year, for the penalties of mandatory transfer;
  - c) Three years for the penalties of suspension from practice and removal from active duty;
  - d) Five years for the penalties of mandatory retirement and dismissal.

## **CHAPTER VIII**

### **Final and temporary provisions**

## **Article 65**

### **Non-Timorese public defenders and inspectors**

1. Whenever it is seen to be necessary and appropriate, the Higher Council of the Public Defender's Office may, based on résumés submitted, select judges, prosecutors, public defenders or attorneys who are not Timorese but have a minimum of five years' experience and come from civil legal systems to practice as public defenders or inspectors of the Public Defender's Office in the Timorese judicial system.
2. This statute applies temporarily and with the appropriate adaptations, to non-Timorese public defenders recruited to practice in East Timor.



## **Article 66**

### **Higher Council of the Public Defender's Office**

For all purposes, namely those set out in the previous Article and those involving the organization of new examinations for admission to the position, the Higher Council of Magistrates shall perform the functions of the Higher Council of the Public Defender's Office until nine defenders are appointed.

## **Article 67**

### **Other Applicable Law**

Insofar as it is not contrary to this law, the Public Prosecutor's Office Statute approved by Law No. 14/2005 of September 16 is also applicable.

## **Article 68**

### **Revocation**

All legislation that conflicts with this law is hereby revoked, namely UNTAET Regulation 24/2001 of September 5.

## **Article 69**

### **Effective Date**

This statute takes effect ten days after its publication.

Examined and approved in Cabinet Meeting on 3<sup>rd</sup> of September 2008

The Prime Minister,

(Kay Rala Xanana Gusmão)

The Minister of Justice

(Lúcia M.B.F. Lobato)

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