

**LAW NO. 5/2009
of 15 July**

**First amendment to Law No. 8/2004 of 16 June
(Law that approves the Statute of the Civil Service)**

Five years having elapsed since the approval of the Statute of the Civil Service by Law No. 8/2004 of 16 June, and considering the experience meanwhile acquired, it is important to recognize the need to undertake a partial review of that law by amending those aspects that are less in line with the demands posed by nowadays challenges.

The present statute amends or reformulates some of the solutions provided for in Law No. 8/2004 on matters relating to recruitment and hiring or disciplinary sanctions with a view to an efficient and effective Public Administration capable of providing the citizens with high quality services and ensuring an adequate support to State institutions.

In this connection, the amendments now being introduced also represents an effort aimed at promoting a more transparent and unbiased Public Administration, a condition for the full affirmation of the State based on the rule of law.

Thus, pursuant to articles 92 and 95.1 of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

Article 1

Amendment to Law No. 8/2004 of 16 June

Articles 2, 3, 4, 8, 10, 14, 15, 18, 19, 34, 42, 50, 53, 54, 66, 79, 80, 81, 83, 98, 105 and 119 of Law No. 8/2004 of 16 June shall now read as follows:

“Article 2

Scope of application

1. [...]
2. For the purposes of this Statute, organs of public administration shall refer to ministries, secretariats of State and, subsidiarily, autonomous agencies.

3. This Statute shall also apply to civilian personnel employed by the defense force and the police, and to administrative staff assigned to the Office of the President, the National Parliament, the Courts, Public Prosecution Service, the Public Defenders Office, the Office of the Provedor for Human Rights and Justice and other public institutions.

Article 3

Civil servant and Public Administration agent

1. A “civil servant” is a person recruited and appointed to a permanent position in the Public Administration who has specific duties and rights in conformity with applicable rules.

2. “Public Administration Agent” is a person who, without being a civil servant, is hired on a fixed-term basis to perform functions that are typically public and that are not of an occasional nature.

3. Public Administration Agent shall refer to every person hired on a fixed-term basis who is admitted by a contract which does not exclude such status.

Article 4

Entities not covered by this Statute

1. [...]

2. Until such a time as separate statute is approved, this Statute shall apply, with the required adaptations, to the members of the PNTL and the Public Defender Office.

Article 8

Equality

1. Selection and recruitment of personnel for the civil service shall result from a public competition which shall evaluate the qualifications, experience and professional competence of candidates on a non-discriminatory basis.

2. [...]

3. [...]

Article 10
Conflict of interests

1. [...]
2. [...]
3. [...]
4. In case of suspicion of corruption, fraud, peculation or, in general, misappropriation public property or public monies, the civil servant, in the framework of the relevant proceeding, shall be obliged to make available the access to his or her property before the administrative and judicial authorities who shall act pursuant to the law with the powers to inspect and monitor.

Article 14
Requirements for being recruited

1. Candidates to be recruited for a permanent position in the Public Administration shall meet the following minimum requirements:
 - a) [...]
 - b) [...]
 - c) [...]
 - d) [...]
 - e) [...]
 - f) [...]
 - g) [...]
 - h) [...]

2. [...]

3. [...]

Article 15

Types of competition

1. Public Administration shall have the following types of competition:

a) Public competitions, open to all candidates;

b) Internal competitions, open to all civil servants;

c) [*Revoked*]

2. [...]

Article 18

Appointment of unspecified duration and probationary period

1. [...]

2. [...]

3. [...]

4. During the probationary period the civil servant shall be entitled to 80% (eighty percent) of the remuneration corresponding to his or her category and grade in the career.

5. At the end of the probationary period, a civil servant shall be either admitted as a permanent member of the civil service or rejected on grounds of unsuitability, depending on the behaviour, performance and classification obtained in a final test.

6. Decision on the suitability of a civil servant under probationary regime shall be made by the entity that appointed him or her following well-founded recommendation from his or her hierarchical superior.

7. Admission into the permanent staffing table shall be made through administrative instruction to be published in the Official Gazette, with retroactive effects from the date on which the probationary period began. It shall incumbent upon the Government to regulate the conditions under which a probationer is rejected on grounds of unsuitability.

Article 19
Temporary appointment

1. Temporary appointment shall apply to the holding of managerial and supervisory positions and shall be freely selected by the competent entity, in compliance with requirements set out in job descriptions to be defined by the regimes of managerial and supervisory careers and positions in the Public Administration.
2. [...]

Article 34
Positions

Managerial and supervisory positions shall be held on a temporary basis

Article 42
Prohibitions

Civil servants and Public Administration agents shall not:

- a) [...]
- b) [...]
- c) [...]
- d) [...]
- e) [...]
- f) [...]

g. [...]

h. [...]

i. [...]

j. [...]

k. [...]

l. [...]

m. [...]

n. [...]

o. [...]

p. [...]

q. Hold politico-partisan activities at the workplace, or during working hours, or in such a manner as to interfere with professional activities.

Article 53

Paid leave of absence

Civil servants shall be entitled to the following leaves of absence without discontinuation of their salaries:

a) [...]

b. [...]

c. [...]

d. [...]

e. [...]

f. [...]

g. Paternity leave

2. [...]

3. [...]

4. [...]

5. [...]

6. [...]

7. [...]

Article 54 **Leave without pay**

1. Civil servants pertaining to the permanent staffing table for at least three years may be granted leave without pay by their respective service management for a maximum period of two years, renewable for one year, under terms to be established by the Government.

2. [...]

3. [...]

4. [...]

5. [...]

Article 66 **Salary**

1. The salary shall be established according to category, grade and echelon held by the civil servant or Public Administration agent.

2. [...]

Article 79
Scale of penalties

1. Penalties applying to civil servants and Public Administration agents covered by the present statute shall be as follows:

- a) [Revoked]
 - b) Written reprimand;
 - c) Fine;
 - d) Suspension;
 - e) Removal from active duty;
 - f) Compulsory retirement;
 - g) Dismissal.
2. [Revoked]
3. [...]
4. [...]

Article 80
Characterization of penalties

- 1. [Revoked]
- 2. [...]
- 3. [...]
- 4. The penalty of suspension and the penalty of removal from active duty consist in complete separation of a civil servant or an agent of the public administration from service for the duration of such penalties.
- 5. [...]

6. [...]

7. [...]

8. [...]

Article 81 **Effects of penalties**

1. [...]

2. The penalty of suspension shall determine disqualification from holding a position or exercising a function as well as the forfeiture of as many days as the duration of the suspension for remuneration, seniority, and retirement purposes. The penalty of suspension shall also imply forfeiture of the right to take leave for a period of one year from the date on which the person concerned completed serving the penalty.

3. As long as duly substantiated for service reasons, the penalty of fine or suspension may determine the transfer of the civil servant in order to ensure the normal functioning of the services.

4. [...]

5. [...]

6. [...]

7. [...]

8. The penalty of dismissal shall have the following effects:

a) [...]

b) Disqualification of the civil servant or Public Administration agent concerned from being appointed to or hired for a different position in the civil service, save after his or her rehabilitation, pursuant to article 105.

9. [...]

Article 83

Reprimand

[Revoked]

Article 98

Competence to initiate disciplinary proceedings

1. Officials with a category equivalent to, or above, a national director shall have competence to initiate or cause the initiation of disciplinary proceedings against their respective subordinates.
2. When determining the initiation of a disciplinary proceeding, officials referred to in the preceding paragraph shall appoint an inquirer from among civil servants of the same or a higher category of the accused.
3. It shall incumbent upon the national director, or his or her equivalent, to apply the disciplinary penalties provided for in subparagraphs b) and c) of article 79.1.
4. It shall be incumbent upon the general director, of his or her equivalent, to apply the disciplinary penalties provided for in subparagraphs d) to g) of article 79.1.

Article 105

Rehabilitation

1. [...]
2. A civil servant punished with the penalty of dismissal may request his or her rehabilitation after five years.
3. Rehabilitation shall be granted to those who deserve it for showing good conduct and, to this end, the interested party may bring forward all means of evidence allowed by law.

Article 119
Performance evaluation

1. [Revoked]
2. [...]”

Article 2
Revocation

Subparagraphs c) of article 15.1, subparagraph a) of article 79.1 and article 79.2, article 80.1, article 83, article 119.1 and article 120 are hereby revoked.

Article 3
Republication

Law No. 8/2004 of 16 June is hereby republished, in Annex, which is a part thereof, with the current drafting.

ANNEX

Law No. 8/2004 of 16 June

Approving the Statute of the Civil Service

2. Assessment shall be conducted in accordance with rules approved by Government decree and shall necessarily have into consideration the assessed person’s performance, merit or demerit, allegiance to the Government, impartiality and moral suitability.

Article 120
Database

1. Every ministry shall provide the National Directorate for the Civil Service, within three month following the entry into force of this Statute, with the list of people recruited and providing services within the ministry, and such a list shall contain, for each person, the following information:
 - a) Name of level or post;

- b) Academic qualifications;
 - c) Step;
 - d) Seniority at the level;
 - e) Time of service;
 - f) Age.
2. Information referred to under item 1 above shall be entered into a database, to be updated annually.

Article 121

Revocation of previous law

All legislation contrary to the provisions of this Statute is hereby revoked.

Article 122

Entry into force

This Statute shall enter into force 30 days after its publication in the Official Gazette.

ANNEX REFERRED TO UNDER ARTICLE 45 CODE OF ETHICS FOR THE CIVIL SERVICE

A civil servant or an agent of the public administration shall:

1. Attend to the highest interests of the country, defend its national independence proclaimed on 28 November 1975, and respect the moral and cultural values of the people of Timor-Leste;
2. Comply with general laws and specific laws on the civil service;
3. Implement and promote respect for human rights, the rule of law and democratic principles;
4. Be a role model of personal integrity, authenticity and honesty, always seeking to contribute towards the good reputation of the civil service through an exemplary daily behaviour;
5. Serve the public with courtesy and dedication, placing public interest above any private interest;
6. Discharge his or her duties with commitment, intelligence and skill, seeking to improve his or her performance through training and other courses for an efficient execution of the tasks arising from his or her position;

7. Abide by directions and instructions lawfully established by superiors and reject any other instructions, either actual or attempted, from any entity or individual outside the public administration of Timor-Leste to influence his or her official actions;
8. Comply with the law and honour personal obligations, abiding by decisions from courts;
9. Serve the public without any form of discrimination or intimidation, including sexual discrimination, and without verbal or physical abuse in relations at the workplace;
10. Oppose any threat, intimidation or conduct intended to directly or indirectly interfere in the mission of the public administration of Timor-Leste;
11. Correctly explain his or her functions and level, as well as the nature of his or her position in the public administration of Timor-Leste to individuals outside the system;
12. Refuse any favour, offer, remuneration or any other gift being given in return for the execution or omission of an official act;
13. Use property of the public administration of Timor-Leste or information accessed to in his or her official capacity solely for activities related to his or her functions and official obligations;
14. Disclose to the public administration any direct or indirect benefit he or she may derive from any profitable activity, business or company under his or her responsibility or obligations;
15. Contribute to the consolidation of national unity as a sine qua non for the economic and social development of Timor-Leste.

Approved on 19 April 2004

The Speaker of the National Parliament,

[signed]

Francisco Guterres “Lu-Olo”)

Promulgated on 8 June 2004.

To be Published.

[signed] Xanana.

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE
NATIONAL PARLIAMENT**

LAW No. 8/2004

16 JUNE 2004

THAT

APPROVES THE STATUTE OF THE CIVIL SERVICE

The building of an efficient public administration to serve the legitimate interests of the citizen and State institutions is a constitutional requirement and a national desideratum.

In fact, the construction of a functional, effective and participatory State apparatus is a sine qua non of achieving social, harmonious and sustainable development in the country.

Public administration should be structured in order to avoid bureaucracy, to bring services closer to communities, and to ensure the participation of the citizen in the management of public assets.

Administrative organisation should therefore comply with a systematised set of standards, principles and values that emphasise integrity, merit, and excellent discharge of a civil servant's functions, and such standards should assist in achieving the national objectives of progress, social harmony, and fair, balanced development.

The Statute of the Civil Service aims exactly at systematising such standards, and it also defines the duties and rights of civil servants.

Under the terms of Section 92 and sub-section 95.1 of the Constitution, the National Parliament therefore enacts the following that shall have the force of law:

Chapter I General Provisions

Section I Goals and Scope of application

Article 1 Goals

The main goals of the Statute of the Civil Service are:

- a) To build an impartial, efficient and effective public administration to serve the Nation;
- b) To define a legal framework to manage and employ the human resources of the civil service;
- c) To establish rules that may promote the values of integrity, merit and excellent performance of entrusted functions;
- d) To define the rights and obligations of a civil servant.

Article 2 Scope of application

1. This Statute shall apply to civil servants and agents of the public administration carrying out their activities with organs and institutions of the public administration in the country and overseas.
2. For the purposes of this Statute, organs of public administration shall refer to ministries, secretariats of State and, subsidiarily, autonomous agencies.
3. This Statute shall also apply to civilian personnel employed by the defence force and the police, and to administrative staff assigned to the Office of the President, the National Parliament, the Courts, the Office of the Public Defender, and Prosecution Offices.

Article 3
Civil servant and Public Administration agent

1. A “civil servant” is a person recruited and appointed to a permanent position in the Public Administration who has specific duties and rights in conformity with applicable rules.
2. “Public Administration Agent” is a person who, without being a civil servant, is hired on a fixed-term basis to perform functions that are typically public and that are not of an occasional nature.
3. Public Administration Agent shall refer to every person hired on a fixed-term basis who is admitted by a contract which does not exclude such status.

Article 4
Entities not covered by this Statute

1. The following entities and sectors, among others, shall not be covered by this Statute and shall be governed by a separate law:
 - a) The President of the Republic, the members of the Government, the members of the National Parliament and other personalities appointed or elected to political positions;
 - b) Judges and public prosecutors;
 - c) Public defenders;
 - d) Members of FALINTIL-FDTL, the defence force of Timor-Leste;
 - e) Members of the PNTL, the national police force of Timor-Leste;
2. Until such a time as separate statute is approved, this Statute shall apply, with the required adaptations, to the members of the PNTL and the Public Defender Office.

Section II
General principles
Article 5
Discretion and Confidentiality

1. A civil servant shall be under an obligation to maintain professional secrecy regarding documents, facts or information that he or she may become acquainted with in the course of his or her functions, particularly in the following cases:

- a) National security, protection of public order, and financial interests of the State;
- b) Investigation into acts punishable under law;
- c) Medical secrecy;
- d) Rights and liberties guaranteed by the Constitution;
- e) Preparation of decisions by public authorities;
- f) Commercial, industrial or intellectual information of a confidential nature;
- g) Personal files.

2. The provisions of item 1 above shall also apply to civil servants who, for whatever reason, are no longer employed by the public administration.

Article 6
Impartiality

1. A civil servant shall respect the principle of equality of citizens before the law;

2. In the exercise of his or her public functions, a civil servant shall act with full impartiality.

Section 7

Honesty and integrity

In the exercise of his or her functions, a civil servant shall abide by an honest, integral, and ethical conduct under penalty of criminal and disciplinary liability.

Article 8

Gender equality

1. Selection and recruitment of personnel for the civil service shall result from a public competition which shall evaluate the qualifications, experience and professional competence of candidates on a non-discriminatory basis.
2. Civil servants shall all earn the same salary for the same work.
3. No civil servant shall be discriminated against in employment compensations, entitlements, benefits or privileges.

Article 9

Regime of exclusivity

1. A civil servant shall perform the functions arising out of the level or position to which he or she has been appointed under a regime of exclusive commitment, and he or she shall not have various remunerated employments in the civil service nor take up any activity that calls into question his or her independence or that diminishes his or her professional performance as a civil servant.
2. A civil servant may however act as a consultant or advisor to different public bodies, act as a lecturer in his or her area of study, and carry out scientific research, on the understanding that authorisation from the oversight minister or secretary of State directly answerable to the Prime Minister is secured in advance under terms and conditions to be outlined by the Government.

Article 10
Conflict of interests

1. A civil servant shall be barred from having any direct or indirect interest in an organization under the control of, or with commercial relations to, the civil service.
2. A civil servant shall also refrain from having any direct or indirect interest in a public or private organization, where such interest may cause a conflict between the civil servant's private interests and the duties arising from his or her official position.
3. Civil servants and applicants to positions in the civil service shall declare the professional status of their spouses.
4. In case of suspected corruption, fraud, speculation or misappropriation of public property or public monies in general, the civil servant, in the framework of the relevant proceeding, shall be obliged to make available the access to his or her property before the administrative and judicial authorities who shall act pursuant to the law with the powers to inspect and monitor.

Article 11
Kinship

1. People related by marriage or who are parent and child between them shall only be assigned to the same section, department or ministry if one is not directly answerable to the other.
2. On an exceptional basis and whenever weighty reasons so justify, civil servants related by kinship under the terms of item 1 above shall be authorised to be co-located, even when one is answerable to the other, subject to specific approval from the competent entity.

Chapter II

Establishment of labour relations

Section I Modalities

Article 12 Establishment

1. Juridical labour relations in the public administration shall be established by appointment or contract subject to verification of legality and publication in the Official Gazette, as provided for in law.
2. An appointment or contract inconsistent with legal requirements shall be considered null and void and shall result in disciplinary and criminal liability for the person who gives effect to such appointment or contract.

Article 13 Meeting permanent needs

The performance of professional activities arising from permanent needs of services requiring professional qualifications or specific training shall be guaranteed by appointment of personnel under a career regime, without prejudice to provisions regarding appointment to managerial or supervisory positions.

Article 14 Requirements for recruitment

1. Candidates to be recruited for a permanent position in the Public Administration shall meet the following minimum requirements:
 - a) To be a citizen of Timor-Leste;
 - b) To be aged 17 or more, but not older than 50;
 - c) To not have committed a criminal offence carrying an actual imprisonment sentence of two or more years or other acts that should

be taken into consideration and that imply incompatibility with the exercise of functions in the public administration;

- d) To hold the qualifications required by regulations and job descriptions;
- e) To not have been dismissed from a State institution;
- f) To be always ready to be assigned anywhere on the national territory or at accredited representative offices overseas;
- g) To be in good health and to be physically and mentally fit for the function applied for;
- h) To meet the special requirements of particular rules enforced by the organ applied to;

2. Documentary proof of the requirements listed under item 1 above shall be as follows:

- a) Birth certificate – subparagraphs a) and b);
- b) Up-dated criminal record check– subparagraph c);
- c) Certificate of academic or professional qualifications – subparagraph d);
- d) Proof of not having been dismissed from a public organ and a declaration accepting assignment anywhere on the national territory or at representative offices overseas – subparagraphs e) and f);
- e) Medical attestation statement – subparagraph c);
- f) Documents required by specific regulations – subparagraph h).

3. Loss of citizenship or final conviction for a serious criminal offence, as contemplated under paragraph c), item 1, of this Article, shall cause the civil servant to be immediately dismissed without there being the need to observe the regular formalities governing disciplinary proceedings.

Article 15
Types of competition

1. Public Administration shall have the following types of competition:
 - a) Public competitions, open to any candidate;
 - b) Internal competitions, open to any civil servant;
 - c) [*Revoked*]
2. The Government shall regulate the rules and procedures for the holding of competitions.

Section II
Appointment

Article 16
Concept

1. Appointment is a unilateral act by the public administration through which a vacant post is filled with a view to ensuring its permanent functioning in a professional manner.
2. Authority to appoint shall be defined in a Government decree.

Article 17
Appointment modalities

The establishment of labour relations by appointment shall follow either the modalities of unspecified duration assignment or the modalities of temporary assignment.

Article 18
Appointment of unspecified duration and probationary period

1. Appointment of unspecified duration in lieu of admission to the civil service shall be considered probationary for a period of twelve months.

2. The probationary period is a time for experience gaining, orientation, and assessment during which a civil servant should prove that he or she is suitable and professionally qualified for a career in the civil service, and prove that he or she has the skills, expertise and dedication appropriate for a specific function.
3. The purpose of the probationary period is also to make a civil servant familiar with the civil service culture, by giving him or her the necessary information for a dedicated and efficient performance of his or her functions.
4. During the probationary period the civil servant shall be entitled to 80% (eighty percent) of the remuneration corresponding to his or her category and grade in the career.
5. At the end of the probationary period, a civil servant shall be either admitted as a permanent member of the civil service or rejected on grounds of unsuitability, depending on the behaviour, performance and classification obtained in a final test.
6. Decision on the suitability of a civil servant under probationary regime shall be made by the entity that appointed him or her following well-founded recommendation from his or her hierarchical superior.
7. Admission into the permanent staffing table shall be made through administrative instruction to be published in the Official Gazette, with retroactive effects from the date on which the probationary period began. It shall incumbent upon the Government to regulate the conditions under which a probationer is rejected on grounds of unsuitability.

Article 19

Temporary appointment

1. Temporary appointment shall apply to the holding of managerial and supervisory positions and shall be freely selected by the competent entity, in compliance with requirements set out in job descriptions to be defined by the regimes of managerial and supervisory careers and positions in the Public Administration.
2. A civil servant appointed on a temporary basis shall retain his or her career position in the staffing table of origin.

Article 20
Acceptance

1. Appointment shall be conditional upon its acceptance by the appointee within thirty business days from the date of appointment.
2. An appointee shall express his or her acceptance by signing a letter of appointment and taking the following oath:

“I swear to God [or “swear on my honour”] that I will comply with the Constitution and will be loyal to the State and the Government in the performance of my functions as a civil servant.

I swear that I will comply with applicable laws and regulations and will perform the official functions entrusted to me with full impartiality, dedication and responsibility, and will always have in due consideration the interests of the State, the Government’s Programme, and the values of the civil service, without looking to my personal interests as an individual or member of any group.

I swear that I will maintain secrecy regarding all data and documents, which I become acquainted with by virtue of my functions, and which should be kept confidential.

I swear that I will work in defence of public property and serve the community and the people without fear or favour, honesty, professionalism and correctness, safeguarding the highest interests of the Nation”.

3. The Government shall determine by regulation the formalities of the acceptance process.

Article 21
Refusal to accept

Refusal to accept an appointment shall imply a waiver of the right to fill a position and the subsequent disqualification from being appointed to any other post within the succeeding 12 months.

Article 22 Promotion

“Promotion” is the nomination of a civil servant to a step higher than his or her current one, based on merit criteria and subject to a specific competitive application.

Article 23 Review of redundant staff

1. Despite the permanent nature of employment in the civil service, whenever there is a need to massively downsize the number of employees for reasons of governmental or budgetary policy, the ministry concerned may, taking into account the opinion of the National Directorate for the Civil Service:

- a) Issue a circular announcing the downsizing or review of planned positions, explaining the main reasons underlying such a measure:
- b) Define, as soon as possible, the positions to be targeted by such a decision.

2. Where there is a need to downsize the number of employees in accordance with the provisions of item 1 above, seniority, qualifications and merit of affected staff shall be taken account of.

Section 24 Compensatory indemnities

1. In case of downsizing as provided for under Article 23 of this Statute, all employees shall be entitled to compensation equivalent to the value of the monthly salary for the last month of service multiplied by the number of years of service provided, plus the amount equivalent to the salary for accumulated days of unused absence of leave at the time of being downsized.

2. Employees on probation shall not be covered by the provisions of item 1 above.

Section III
Contracts of personnel

Article 25
Modalities and effects

1. Contracts of personnel shall adhere to the following modalities:
 - a) Administrative employment contracts of unspecified duration;
 - b) Fixed-term work contracts.
2. An administrative employment contract of unspecified duration shall confer the capacity of administrative agent upon the person recruited.
3. A fixed-term contract shall not confer the capacity of administrative agent.

Article 26
Administrative Employment Contract

An administrative employment contract is a bilateral agreement whereby a person not included in the staffing table ensures, under a regime of subordination, the exercise of functions inherent in the public service, subject to the juridical regime of the civil service.

Article 27
Fixed-term contract

A fixed-term contract is a bilateral agreement whereby a person not included in the staffing table ensures, under a regime of subordination, the provision of limited-duration services to meet transitional needs.

Article 28
Regulations on recruitment by contract

The Government shall approve the rules and procedures for work contracts.

Chapter III
Modification of juridical labour relations

Article 29

Modification

1. A juridical labour relationship established by appointment may, at any time and without prejudice to the employment status of origin, be temporarily modified by appointment as a replacement.
2. Juridical labour relations of civil servants in general may also be modified by:
 - a) Transfer;
 - b) Exchange;
 - c) Requisition or secondment.

Article 30

Appointment as a replacement

Appointment made on a transitional basis to a managerial or supervisory position for the duration of a vacancy, or in the absence of or inability to act by the incumbent shall be considered as a replacement.

Article 31

Transfer

1. Transfer consists in the appointment of a civil servant without a competitive examination to a vacancy on the staffing table of another service or organ, where such vacancy matches the previous level and career, or to a different career provided that, in the latter case, there is a relationship or affinity between the functional contents and similar education requirements of the previous and the new level or career.
2. Transfer shall be carried out at the request of the civil servant concerned or for convenience of service, stating the substantive reasons of such a transfer.

Article 32

Exchange

1. Exchange is a reciprocal and simultaneous appointment of civil servants belonging to staffing tables of different services or organs.

2. Exchange shall be made between civil servants belonging to the same level and career at the request of the interested parties or on the initiative of the public administration, with the consent of the interested parties.

Article 33

Requisition and secondment

1. Requisition and secondment shall be understood as being the performance of functions on a transitional basis by a civil servant inside State institutions or outside the State apparatus but in its interest and in a service or organ other than the one the civil servant belongs to, whereby expenses shall be met by the recipient service in the case of requisition, and by the service of origin in the case of secondment.

2. As a rule, requisition and secondment shall last for up to 2 years and may be extended on the basis of well-founded and accepted reasons.

3. The duration of service provided in a situation of requisition or secondment shall count towards all legal purposes.

Chapter IV

Positions and professional careers

Article 34

Positions

Managerial and supervisory positions shall be held on a temporary basis.

Article 35

Professional careers

1. Professional career is the hierarchical set of levels matching functions of the same nature to which a civil servant shall have access in accordance with his or her seniority and professional merit.

2. Level is the position that a civil servant occupies within the framework of a career, which is fixed according to the job description and type of function or functions.

Article 36
Establishment and structuring of positions and careers

The Government shall approve the establishment and structuring or termination of positions and professional careers in the civil service.

Article 37
Admission and forms of access

1. Admission and access to professional careers shall be based on the criterion of merit and, as a general rule, shall be made by public competitive applications to assess how candidates' knowledge and experience matches the requirements to assume the responsibilities of the function.
2. Access may be affected by progression or promotion.
3. Progression is the horizontal movement of a civil servant from one position to another, and promotion is the assignment of a civil servant to a category immediately superior to the one he or she belonged to previously.
4. The Government shall approve the rules and procedures for promotion and progression.

Article 38
Staffing tables

1. The Government shall approve the staffing tables and the structure of such tables in accordance with rules to be defined in specific legislation.
2. The number of positions for the different careers and positions shall be determined on the basis of approved organizational charts.

Article 39
Job descriptions

All levels and positions shall have job descriptions and an indication of requirements that will govern recruitment and serve as benchmarks to identify performance standards for the assessment of civil servants.

Chapter V

Duties of a civil servant

Article 40

General duties

1. The duty of a civil servant or an agent of the public administration shall generally be to act for the sake of promoting trust by the general public in the actions of the public administration.
2. The following shall be considered as general duties of a civil servant or an agent of the public administration:
 - a) The duty of loyalty that consists in performing functions according to institutional service objectives and the pursuit of public interest;
 - b) The duty of obedience that consists in obeying and complying with orders from superiors, provided that such orders are consistent with service objectives and given in a lawful manner;
 - c) The duty of zeal that consists in becoming familiar with the legal regulatory rules and instructions from superiors for an efficient and correct execution of functions.
 - d) The duty of confidentiality that consists in keeping the professional secrecy covering facts that a civil servant has become acquainted with as a result of his or her functions, and that are not supposed to be in the public domain;
 - e) The duty of probity that consists in refusing direct or indirect advantages, money or other benefits from civil service functions, and in acting independently of particular interests or pressures of any kind from a perspective of respect for equality of citizens;
 - f) The duty of attendance that consists in reporting to the workplace regularly and continuously;
 - g) The duty of punctuality that consists in reporting to the workplace within the legally established working hours.

Article 41

Special duties of a civil servant or an agent of the public administration

The following shall be special duties of a civil servant or an agent of the public administration:

- a) To respect and honour the Constitution, the national symbols, the laws, and the principles of the Government of the Democratic Republic of Timor-Leste;
- b) To actively use and promote Portuguese and Tetum as the languages of the public administration;
- c) To execute functions in an efficient, impartial, professional and courteous manner;
- d) To report to the workplace dressed as appropriate;
- e) To place the interests of the Nation above personal or group interests;
- f) To give emphasis to the dignity of the Government and public administration;
- g) To act upon the Government's requirements in a timely manner as and when requested;
- h) To use his or her position in the civil service and advantages arising out of such a position, including information and property, solely for professional purposes;
- i) To ensure transparency in the performance of functions;
- j) To be administratively and financially accountable in the exercise of functions;
- k) To work in an honest, orderly, competent and efficient manner by protecting the State's interests and strictly observing the working hours;
- l) To maintain and improve unity, integrity, solidarity, and harmony in the civil service;

- m) To immediately report to the direct supervisor any and every information that may be detrimental to the State, especially with regard to security, financial issues, and assets; discrimination;
- o) To create and maintain a good working environment;
- p) To provide the best service to the community;
- q) To act in an assertive and fair manner with subordinates;
- r) To provide employees with guidelines on how to perform functions;
- s) To set a good example and to be a role model for subordinates;
- t) To give subordinates an opportunity to advance within their respective careers, in accordance with service interests;
- u) To comply with all applicable regulations and official instructions from competent superiors;
- v) To take oath of office and comply with the oath for the civil service;
- w) To maintain professional secrecy in order to protect the State's confidential matters;
- x) To examine and consider attentively all reports received regarding disciplinary offences.

Article 42 Prohibitions

Civil servants and Public Administration agents shall not:

- a) Conduct activities that may affect the honour and dignity of the State;
- b) Abuse power;
- c) Become a civil servant of another country without permission from the Government;
- d) Use assets, funds or other property of the State in an abusive manner;

- e) Illegally possess, buy, sell or lease assets, documents or correspondence belonging to the State;
- f) Conduct activities in conjunction with fellow-workers, superiors or subordinates, inside or outside the sector they work in, for the benefit of personal interests or that directly or indirectly bring disadvantages to the State;
- g) Conduct negative activities with an intention of taking revenge on subordinates or other individuals, either inside or outside the working environment;
- h) Receive from any person gifts or mementos that may be suspected as being connected to his or her official functions;
- i) Be at places that may tarnish the honour or dignity of the civil service, except when performing his or her official functions;
- j) Act in an arbitrary manner towards a subordinate;
- k) Fail to act or act in such a way that another party may not secure the required assistance, putting such party at a disadvantage;
- l) Obstruct the results of the department;
- m) Use State secrets he or she becomes acquainted with for personal or group advantages;
- n) Act as an intermediary in favour of traders to win contracts for the provision of goods or services;
- o) Own shares or capital stock in companies whose activities are carried out in the sector he or she works in;
- p) Own shares or capital stock in companies whose activities are not carried out in the sector he or she works in, but that allows him or her to exert direct control over such companies.
- r) Hold politico-partisan activities at the workplace, or during working hours, or in such a manner as to interfere with professional activities.

Article 43
Compliance with instructions

1. A civil servant or an agent of the public administration shall comply with the instructions and directions from his or her superior.
2. Disrespect for a superior's instructions shall be considered as an offence subject to disciplinary action.
3. Under no circumstances shall instructions and directions related to service be contrary to law and regulations, or to professional ethics governing the civil service.
4. A civil servant who considers instructions or directions from his or her superior as being contrary to law and regulations or to professional ethics governing the civil service may ask his or her superior to commit such instructions or directions to paper.

Article 44
Compliance with working hours

1. A civil servant or an agent of the public administration shall perform his or her tasks and duties in a regular and continued manner, with due respect for rules regarding the working hours of the civil service, and his or her professional group in particular.
2. An unjustified absence shall constitute an offence subject to disciplinary action.
3. An unjustified absence shall be considered as being the failure to report to the workplace without a supervisor's permission.

Article 45
Code of ethics

A civil servant shall, in his or her acts, abide by the Code of Ethics of the Civil Service, which is an annex to this Statute.

Article 46
Concealment and removal of documents

1. Concealment or removal of documents, or obstruction of legal proceedings in the exercise of public functions, shall be strictly prohibited.
2. Acts referred to under item 1 above shall be considered as offences and shall be subject to disciplinary action, without prejudice to criminal proceeding that they may impose.

Article 47
Taking up functions

1. A civil servant shall be under an obligation to take up the functions to which he or she has been assigned within 30 days from the date of appointment.
2. Refusal to take up the functions to which a civil servant has been appointed shall constitute a disciplinary offence.

Article 48
Reporting irregularities

1. A civil servant who learns about any case that may be construed as a violation of this Statute or any other applicable regulation shall be under an obligation to report the case to his or her supervisor.

Chapter VI
Rights and benefits of a civil servant or an agent of the public administration

Section I
Rights of a civil servant or an agent of the public administration

Article 49
Rights

A civil servant or an agent of the public administration shall enjoy the following rights:

- a) To carry out the functions to which he or she has been appointed;
- b) To earn the legally established salary and allowances;
- c) To enjoy appropriate work and protection conditions;
- d) To have a daily break for food and rest;
- e) To have weekly rest;
- f) To take leaves of absence as provided for in this Statute;
- g) To be periodically assessed for his or her performance;
- h) To attend vocational training and refresher courses;
- i) To be allowed access to his or her respective career as provided for in regulations;
- j) To be treated with correctness and respect;
- k) To be entitled to family allowances and per diems as provided for in law;
- l) In case of transfer or secondment required by service, to be entitled to transport for him or her and his or her dependent relatives, including luggage, under the terms of this Statute;
- m) To be entitled to medical care for him or her and his or her dependent relatives as provided for in specific legislation;

- n) To retire and to be entitled to pension provided for in law;
- o) To be heard prior to any punishment;

- p) To report to the immediately superior entity whenever he or she believes that his or her rights have been infringed upon.

Article 50

Working hours and weekly rest

1. A civil servant or an agent of the public administration shall observe a mandatory minimum of forty-four hour's work per week.

2. A civil servant or an agent of the public administration shall be entitled to a period of weekly rest.

Article 51

Official holidays

1. There shall be mandatory remuneration for official holidays.

2. A civil servant or an agent of the public administration required to work on an official holiday shall be entitled to an allowance to be defined in a Government decree.

3. The provision of item 2 above shall not apply to work in shifts or to work delivered by essential services.

Article 52

Access to personal files

A civil servant or an agent of the public administration shall, through established procedures, have the right of access to his or her personal file, of making copies of personal documents kept in the file at his or her own expenses, and of being informed of particulars contained in the files, as well as particulars stored in an electronic database.

Section II
Leave of absence

Article 53
Paid leave of absence

1. Civil servants shall be entitled to the following leaves of absence without discontinuation of their salaries:
 - a) Annual leave;
 - b) Sick leave;
 - c) Bereavement leave;
 - d) Maternity leave;
 - e) Marriage leave;
 - f) Study leave;
 - g) Paternity leave.
2. The duration of, and other specific rules for, each category of leave shall be established in a Government decree.
3. An agent of the public administration shall not exercise the right contemplated under paragraph f), item 1 above, under the same terms as a civil servant.
4. A civil servant who takes paid leave for a period not exceeding six months shall retain the position he or she held when the leave of absence began.
5. In case of paid leave exceeding six months, a civil servant holding a managerial or supervisory position shall forfeit that position.
6. A civil servant in a situation contemplated under item 5 above shall be reinstated into the civil service at the same level or step as the one he or she held before the leave of absence began.

7. Where the duration of a training course has exceeded two years, a civil servant may be reinstated into a level higher than the one he or she held before going on leave of absence, taking into account the relevance of the course of study done and the degree achieved.

Article 54 **Leave without pay**

1. Civil servants pertaining to the permanent staffing table for at least three years may be granted leave without pay by their respective service management for a maximum period of two years, renewable for one year, under terms to be established by the Government.

2. A civil servant on special leave without pay not exceeding three months shall retain the level he or she held when the leave of absence began.

3. In case of leave without pay exceeding three months, a civil servant holding a managerial or supervisory position shall forfeit that position.

4. The civil servant shall be reinstated into the civil service with the same level as the one he or she held before the leave of absence began.

5. The beginning and end of a civil servant's leave without pay shall take effect on the basis of an administrative instruction from the competent Government member, to be published in the Official Gazette.

Article 55 **Special leave without pay**

1. A civil servant who is elected or appointed to a senior political position, such as a member of the National Parliament or the Government, shall be entitled to special leave without pay for the duration of his or her term in office.

2. A civil servant who contests an election of the National Parliament may be granted special leave without pay during the legal period of the electoral campaign.

3. A civil servant elected as Member of the National Parliament shall request the suspension of his or her functions in order to enter upon the office to which he or she has been elected.

4. A civil servant on special leave without pay not exceeding three months shall retain the level he or she held when the leave of absence began.
5. In case of special leave without pay for a period exceeding three months, a civil servant holding a managerial or supervisory position shall forfeit that position.
6. A civil servant holding a political position shall be barred from applying for vacancies in the civil service during the period of his or her leave without pay.
7. The civil servant shall be reinstated into the civil service with the same level as the one he or she held before the leave of absence began.
8. The beginning and end of a civil servant's special leave without pay shall take effect on the basis of an administrative instruction from the competent Government member, to be published in the Official Gazette.

Article 56

Effects of leave of absence

1. Leave without pay shall imply full forfeiture of remuneration and reduction in seniority for the purposes of career, retirement and survival, except where such leave is requested under the terms of items 1 and 2, Article 55, of this Statute, in which case there shall be no reduction in seniority for the purposes of career, retirement and survival.
2. A civil servant on leave without pay may not be recruited to posts in staffing tables of services and agencies covered by the scope of application of this Statute for the duration of such a situation.

Section III

Working conditions, work accidents and retirement pension

Article 57

Safe workplace

1. A civil servant or an agent of the public administration shall have the right to work at places that are considered as safe from hazards to health.
2. The Government shall regulate special cases of hazardous professions.

Article 58
Work accidents

The Government shall define by decree compensation for work accidents.

Article 59
Retirement pension

The rules governing retirement pension shall be established in a separate regulation.

Section IV
Absences
Article 60
Concept of absence

Absence shall be considered as failure by a civil servant or an agent of the public administration to report to his or her workplace during all or part of the regular working period as he or she is required to do, or unauthorized absence during regular business hours, including failure to report to any other place for service purposes.

Article 61
Types of absence

Absences by a civil servant or an agent of the public administration shall be either justified or unjustified.

Article 62
Justified absences

1. Absences resulting of the following shall be considered as justified:
 - a) Marriage;
 - b) Mourning;
 - c) Maternity;
 - d) Medical examination;
 - e) Illness;
 - f) For keeping company to children or relatives admitted to hospital, where the hospital so determines;
 - g) Summons by judicial or police authorities;
 - h) Taking of a competitive examination;
 - i) When authorized in advance or afterwards by a supervisor, where the

absences can be charged to annual leave if they exceed one absence per month;

j) For inability to perform a service due to reasons that cannot be blamed on the civil servant or agent of the public administration concerned, notably in situations caused by natural disasters;

k) Taking of mandatory exams for civil servants and agents of the public administration at teaching institutions;

l) Discharge of duties of a political interest, provided that such duties have been authorized by the competent authorities in advance or after reporting back to the workplace.

2. A civil servant or an agent of the public administration shall justify the absences referred to under item 1 above in writing prior to the absence or within five days after reporting back to the workplace.

Article 63

Unjustified absences

1. The following shall be considered as unjustified absences:

a) All absences for reasons not contemplated under Article 62;

b) Absences not justified in conformity with Article 62.

2. Unjustified absences, besides the disciplinary consequences they may carry, shall always determine forfeiture of remuneration corresponding to the days of absence, shall not count towards seniority purposes, and shall be deducted from the annual leave of the following year.

3. A civil servant or an agent of the public administration who invokes false reasons as justification for his or her absences may also be subject to criminal liability for false statements.

Chapter VII

Distinctions and awards

Article 64

Distinctions and awards

1. Civil servants shall be honoured with the following distinctions and awards for exemplary fulfilment of their obligations, increased work efficiency, professional dedication, labour innovations, and other merits:
Distinctions:

- a) Written appreciation;
- b) Public commendation;
- c) Entering a civil servant's name onto an honours list;
- d) Granting of a diploma of honour;

Awards:

- a) Preference in the granting of scholarships or selection for training and refresher courses, as well as other upgrading initiatives;
 - b) Granting of monetary or material prizes.
2. The Government shall define the criteria for the granting of distinctions and awards.

Chapter VIII Remuneration

Article 65 Components of remuneration

1. A civil servant or an agent of the public administration shall be entitled to remuneration for his or her work.
2. Remuneration for a civil servant or an agent of the public administration shall consist of salary, which may be supplemented by other allowances, as provided for in law.

Article 66 Salary

1. The salary shall be established according to category, grade and echelon held by the civil servant or Public Administration agent.
2. Salaries shall be defined by the Government, which shall also approve the organization of pay scales for the different careers.

Article 67
Salary supplements

1. Salary supplements shall be paid as follows:
 - a) Per diems;
 - b) Work in shifts;
 - c) Overtime;
 - d) Overnight work.
2. The Government may determine other salary supplements as provided for in law.

Article 68
Per diems

1. Per diems shall be paid in case of travel by a civil servant or an agent of the public administration within the national territory or overseas on official business.
2. Travel by a civil servant or an agent of the public administration within the national territory or overseas on official business shall always be subject to authorization by the competent manager.

Article 69
Per-diem table

The Government shall approve the tables of per diems, and procedures for the processing of, and reporting on, such per diems.

Article 70
Work in shifts

1. Work in shifts shall be understood as work performed in a staggered way, due to the requirement of providing services on a twenty-four hour basis.
2. A shift shall not exceed the maximum working period established for regular daily work.

3. The Government shall determine the rate of payment for work in shifts.

Article 71 Overtime

1. Remuneration for overtime shall be authorized whenever there are valid reasons to undertake such work.

2. Working overtime shall be subject to prior authorization by the competent manager.

3. Officials of the State apparatus holding senior positions and directors shall not benefit from salary supplements for overtime.

4. The Government shall determine a remuneration scale for overtime, including the rules governing the granting of such remuneration.

Article 72 Overnight work

1. For remuneration purposes, overnight work shall be understood as work carried out during the period between 08:00 pm of a given day and 06:00 am of the day after.

2. Remuneration for each hour of overnight work shall be determined by the Government.

Chapter IX Disciplinary liability

Section I Offences and penalties

Article 73 General principles

1. A civil servant or an agent of the public administration who breaches his or her duties, abuses his or her functions or otherwise undermines the prestige of the State shall be subject to disciplinary punishment, without prejudice to criminal or civil action.

2. Malicious or negligent breach of duties, by either action or omission, shall be liable to punishment, whether or not such breach results in disruption of service.

Article 74

Disciplinary liability

In disciplinary cases, a civil servant or an agent of the public administration shall be accountable to his or her supervisor for offences he or she may commit.

Article 75

Disciplinary offences

1. A disciplinary offence shall be understood as any act, even if merely out of negligence, by a civil servant in violation of his or her general or special duties arising from his or her function.

2. A civil servant or an agent of the public administration in the exercise of his or her functions is solely at the service of the public interest, and he or she shall reject any external interference.

Article 76

Time limit for disciplinary proceeding

1. The right to bring a disciplinary action shall be time-barred by statute of limitation 2 years after the date on which the offence was committed.

2. A disciplinary case shall also become time-barred if, once the manager of the service concerned has learned of the offence, no disciplinary action is brought forward within 3 months.

3. In cases provided for under item 2 above, responsibility for the offence shall fall on the manager concerned.

4. Where the fact qualified as a disciplinary offence is also considered a criminal offence and the time limit for criminal proceedings is more than 2 years, the time limit established in the penal law shall apply to the disciplinary proceeding.

5. Where any other acts with the same influence on a case have been committed before the end of the time limit mentioned under item 1 above, time limit shall count as from the day when the last act took place.

Article 77
Subjection to disciplinary authority

1. A civil servant or an agent of the public administration shall be subject to disciplinary authority from the date he or she takes up functions.
2. Resignation or change of status shall not prevent a civil servant or an agent of the public administration from being punished for offences committed in the exercise of his or her functions.
3. The penalties contemplated under paragraphs b) to e), item 1, of Article 79, shall be enforced, where the involved civil servant or agent of the public administration resumes his or her activities or retires.

Article 78
Exemption from disciplinary liability

1. A civil servant or an agent of the public administration who acts in compliance with orders or instructions from his or her lawful supervisor and where such orders or instructions are related to official business shall be exempt from disciplinary liability:
 - a) Where the civil servant or agent of the public administration considers an order received as being unlawful, in which case he or she shall specifically mention such fact when filing a complaint or requesting that the order be transmitted or confirmed in writing;
 - b) Where the transmission of the written order does not occur in time.
2. Where an order is given with a note for immediate compliance, without prejudice to the provisions of paragraphs a) and b) of item 1 above, transmission referred to in 1b) above shall be made after the order has been complied with.
3. The duty of obedience shall cease whenever compliance with an order or instruction implies committing a crime.

Section II
Disciplinary penalty and its effects

Article 79
Scale of penalties

1. Penalties applying to civil servants and Public Administration agents covered by the present statute shall be as follows:

- a) [Revoked]
- b) Written reprimand;
- c) Fine;
- d) Suspension;
- e) Removal from active duty;
- f) Compulsory retirement;
- g) Dismissal.

2. The penalty of compulsory transfer shall apply as an accessory penalty where an offence carries one of the penalties provided for in subparagraphs c) and d), item 1 above, whenever such arrangement proves convenient to the regular progress of service.

3. Penalties shall be registered in the personal file of the civil servant or agent of the public administration concerned.

4. Amnesties shall not eliminate the effects already produced by the application of a penalty, but they shall be registered in the personal file of the civil servant or agent of the public administration concerned.

Article 80 **Characterization of penalties**

- 1. [Revoked]
- 2. The penalty of written reprimand is a warning, in writing, from a superior to a civil servant or an agent of the public administration for committing an irregularity.
- 3. The penalty of fine shall be set at the right amount and shall not exceed the sum corresponding to all fixed and permanent remunerations for one month, excepting supplementary allowances due to a civil servant or an agent of the public administration at the time of being notified of the incriminating decision.

4. The penalty of suspension and the penalty of removal from active duty consist in complete separation of a civil servant or an agent of the public administration from service for the duration of such penalties.

5. The penalty of suspension may be:

a) From 20 to 120 days;

b) From 121 to 240 days.

6. The penalty of removal from active duty shall not be less than 1 year or more than 2 years.

7. The penalty of compulsory retirement consists in imposing the status of retiree on a civil servant, thereby terminating the labour relationship.

8. The penalty of dismissal consists in permanent separation of a civil servant or an agent of the public administration from service, thereby terminating the labour relationship.

Article 81 **Effects of a penalty**

1. A disciplinary penalty shall produce only the effect provided for under this Statute.

2. The penalty of suspension shall determine disqualification from holding a position or exercising a function as well as the forfeiture of as many days as the duration of the suspension for remuneration, seniority, and retirement purposes. The penalty of suspension shall also imply forfeiture of the right to take leave for a period of one year from the date on which the person concerned completed serving the penalty.

3. As long as duly substantiated for service reasons, the penalty of fine or suspension may determine the transfer of the civil servant in order to ensure the normal functioning of the services.

4. The penalty of suspension from 121 to 240 days shall imply, apart from the effects provided for under the preceding items, disqualification from promotion during one year from the date on which the person concerned finished serving the penalty, and upon return to activities he or

she shall be assigned to a different service of the organic unit, whenever possible.

5. The penalty of removal from active duty shall imply, apart from the effects provided for under items 2 and 3 above, disqualification from promotion during 2 years from the date on which the person concerned finished serving the penalty, and upon return to activities he or she shall be assigned to a different service of the organic unit, whenever possible.

6. During suspension and removal of a person from active duty, his or her position may be filled by substitution.

7. The penalty of compulsory retirement shall imply the retirement of the person concerned under terms and conditions to be established in law.

8. The penalty of dismissal shall have the following effects:

a) Forfeiture of all rights provided for in law for civil servants and agents of the public administration;

b) Disqualification of the civil servant or Public Administration agent concerned from being appointed to or hired for a different position in the civil service, save after his or her rehabilitation, pursuant to article 105.

9. In particularly serious cases and by decision of a court, a dismissed civil servant may also forfeit the right to retirement pension, in which case the amounts corresponding to assessments charged shall be repaid to him or her.

Article 82

Concurrence and accumulation of offences

A civil servant or an agent of the public administration shall not be punished with more than one disciplinary penalty for each offence or for accumulated offences considered concurrently.

Section III
Application of disciplinary penalties

Article 83
Reprimand

[Revoked]

Article 84
Written reprimand

The penalty of written reprimand shall apply to those minor disciplinary offences committed by civil servants or agents of the public administration for which verbal reprimand is insufficient.

Article 85
Fine

The penalty of fine shall apply to a civil servant or an agent of the public administration in the following cases of negligence:

- a) Disobedience of orders from a superior;
- b) Failure to report offences he or she may have become acquainted with in the exercise of his or her functions to the competent authorities;
- c) Lack of commitment towards service resulting in defective compliance with legal and regulatory provisions or orders from a superior.

Article 86
Suspension

1. The penalty of suspension shall apply to a civil servant or an agent of the public administration in case of negligence or failure to comply with professional duties where:

- a) He or she provides his or her superior with wrong information;
- b) He or she reports to his or her workplace in a state of intoxication or under the influence of narcotic drugs;

- c) He or she demonstrates lack of awareness about essential rules governing the service in a manner that may affect public administration;
- d) He or she gives preferential treatment to a specific person, organization or company;
- e) He or she fails to conclude his or her obligations within the required timeframes without justification;
- f) He or she breaks the rule of secrecy by disclosing facts or documents related to service or the public administration in general;
- g) He or she blatantly disobeys orders from a superior in public.

2. In case of offences provided for under paragraphs a) to e) of item 1 above the applicable penalty of suspension shall be from 20 to 120 days, and in case of offences provided for under paragraphs f) and g) of item 1 above the applicable penalty of suspension shall be from 121 to 240 days.

Article 87

Removal from active duty

The penalty of removal from active duty shall apply to a civil servant or an agent of the public administration in case of behaviour seriously tarnishing the dignity and prestige of the function, notably where:

- a) He or she assaults, insults or seriously disrespects his or her superior, fellow-employee, subordinate, or a citizen inside or outside service premises for reasons related to the exercise of his or her functions;
- b) He or she receives funds, charges revenue or collects amounts that he or she does not report about within the required deadlines;
- c) He or she violates the duty of impartiality in the exercise of his or her functions;
- d) Except in cases provided for in law, he or she holds various posts or public positions or carries out private activities after being informed by a substantiated memorandum from his or her superior of the incompatibility between such activities and his or her legally established duties;
- e) He or she makes false statements in a disciplinary proceeding or in connection with a justification of absence;

- f) He or she uses or allows a third party to use any property of the public administration under his or her custody for unauthorized purposes.

Article 88

Compulsory retirement and dismissal

1. The penalties of compulsory retirement and dismissal shall in general apply to disciplinary offences that, by their gravity, disrupt or prevent the continuation of a labour relationship.
2. The penalties provided for under item 1 above shall apply to a public servant or an agent of the public administration where:
 - a) After having been punished with the penalty of removal from active duty in accordance with paragraph a), Article 87, he or she once again assaults, insults or seriously disrespects a superior, fellow-employee, subordinate, or a citizen in a public institution;
 - b) He or she commits acts of serious insubordination or acts that dishonour institutions and principles of the State;
 - c) He or she fails to report to his or her workplace on 21 consecutive occasions without justification;
 - d) Within a period of 12 months of service, he or she fails to report to his or her workplace on 30 interspersed occasions without justification;
 - e) He or she violates the duty of professional secrecy or discloses a secret fact, resulting in material or moral damage to the public administration;
 - f) As a result of his or her position, he or she directly or indirectly receives gifts, gratifications, profit dividends or other property benefits with a view to accelerating or delaying a service;
 - g) He or she participates in an offer or negotiation of public employment;
 - h) He or she is found involved in acts of corruption, favouritism or nepotism;
 - i) For his or her illicit economic benefit, he or she fails to face the obligations of his or her position, notably by destroying, obstructing,

- doctoring or misplacing documents or by manipulating computer data to the detriment of the State's interests;
- j) On a regular basis he or she immoderately takes alcoholic beverages, or takes, or traffics in, narcotic drugs or psychotropic substances.
3. The penalties of compulsory retirement and dismissal shall also apply in case of proven professional incompetence or moral unsuitability for the exercise of functions.

Article 89
Measure and graduation of a penalty

A penalty shall be imposed taking into account general criteria, such as the nature of the service, the level of the civil servant or agent of the public administration concerned, his or her degree of guilt and responsibility, and all other circumstances in which the offence has been committed.

Article 90
Mitigating circumstances

1. Mitigating circumstances in a disciplinary proceeding shall be as follows:
- a) Provision of relevant services to society;
- b) Provision of more than 5 years of service with good behaviour;
- c) Spontaneous confession of the offence;
2. Where there are mitigating circumstances that substantially reduce the degree of guilt, the penalty may be brought down by applying the immediately lesser one.

Article 91
Aggravating circumstances

Aggravating circumstances in a disciplinary proceeding shall be as follows:

- a) Determined willingness of achieving damaging results to the civil service;

- b) Actual achievement of damaging results to the civil service;
- c) Premeditation, which consists in established intent twenty-four hours before committing the offence;
- d) Conspiracy with other people to commit the offence;
- e) The fact of committing the offence while serving a disciplinary penalty or during a period of suspended penalty;
- f) Recidivism, which consists in committing an offence before a year has elapsed from the last day of serving a penalty imposed in connection with a previous offence;
- g) Accumulation, which consists in committing two or more offences on the same occasion or when one is committed before punishment for the previous offence has been meted out.

Article 92
Exculpatory circumstances

Exculpatory circumstances in a disciplinary proceeding shall be as follows:

- a) Physical coercion;
- b) Legitimate defence, self-defence or defence of a third party;
- c) Exercise of a right or compliance with a duty.

Article 93
Time limitation on a penalty

A disciplinary penalty shall be time-barred by statute of limitation after the periods that follow, which shall be counted from the day a ruling became unappealable:

- a) 6 months for penalties of written reprimand and fine;
- b) 1 year for penalties of suspension and removal from active duty;

Section IV
Disciplinary proceeding

Article 94
Initiation

Disciplinary proceedings shall in general be initiated with the report of a case by the competent service.

Article 95
Forms of proceeding

1. Disciplinary proceedings may be either ordinary or special.
2. Special disciplinary proceedings are those specifically provided for as such in law.

Article 96
Confidential nature of proceedings

1. Disciplinary proceedings shall be of a confidential nature until formal accusation is brought forward. The accused may however, at his or her request, be allowed to examine the case on the understanding that he or she does not disclose its contents.
2. An accused who discloses confidential matter in a case shall be subject to a new disciplinary proceeding.
3. Under the general terms of law, an accused may apply for the appointment of a lawyer or paralegal, at any stage of the proceeding, to be present at interrogation sessions.

Article 97
Mandatory nature of disciplinary proceedings

1. The penalty of written reprimand shall be applied following a mandatory hearing where the accused shall have the right to counsel.
2. The penalties of fine, suspension, removal from active duty and dismissal may only be applied after confirmation of facts in a disciplinary proceeding, as provided for by the articles below.

3. At the request of the interested party, a report on the legal procedures shall be drawn up in the presence of two witnesses designated by the accused.
4. The accused shall present his or her written defence within 5 business days.

Article 98

Competence to initiate disciplinary proceedings

1. Officials with a category equivalent to, or above, a national director shall have competence to initiate or cause the initiation of disciplinary proceedings against their respective subordinates.
2. When determining the initiation of a disciplinary proceeding, officials referred to in the preceding paragraph shall appoint an inquirer from among civil servants of the same or a higher category of the accused.
3. It shall incumbent upon the national director, or his or her equivalent, to apply the disciplinary penalties provided for in subparagraphs b) and c) of article 79.1.
4. It shall be incumbent upon the general director, of his or her equivalent, to apply the disciplinary penalties provided for in subparagraphs d) to g) of article 79.1.

Article 99

Report

1. Once the investigation of a case has been finalised within 10 days, the inquirer shall prepare a complete and concise report containing material proof of the offence, its qualification and gravity, indication of the amount that may have to be refunded, the disposal of such amount, the penalty that he or she deems fit, or a proposal to dismiss the case on grounds of inconsistent charges.
2. Where the complexity of a case so requires, the entity with authority to decide upon such a case may extend the established deadline up to a maximum of 20 days.

3. Upon preparation of the report, the case shall be transmitted to the entity that initiated it within two business days.

Article 100 Decision

1. The competent entity shall make a decision by examining the case, and endorse or reject the conclusions of the report, and it may order new legal procedures to be carried out within the timeframe established for such purposes.

2. Prior to a decision, the competent authority may request the production of an opinion by the supervisor of the accused, and such opinion shall be produced within 10 days.

Article 101 Appeals

Decisions made in relation to a disciplinary proceeding may be subject to an appeal with the superior authority or a contentious appeal.

Article 102 Appeal to superior authority

1. The accused and the complainant in a case may lodge an appeal with the superior authority against decisions not related to routine office work, which have been made by a civil servant or an agent of the public administration.

2. A penalty may only be aggravated or replaced by a heavier one as a result of an appeal by a complainant.

Article 103 Contentious appeal

An incriminating decision by a superior or other competent entity shall be subject to contentious appeal under the terms of law.

Article 104
Review and effect of a penalty application

1. Review of a disciplinary case shall be permitted whenever circumstances and evidence may demonstrate the inexistence of the facts that determined a conviction, where such circumstances and evidence could not be produced by the accused during the proceedings.
2. Review may lead to overturn or change of the decision made previously on a case, and under no circumstances shall the penalty be made worse.
3. An outstanding appeal to a superior authority shall not affect a request for review of a disciplinary case.
4. The review of a case shall not suspend the application of a penalty.

Article 105
Rehabilitation

1. A civil servant or an agent of the public administration punished with fine, suspension or removal from active duty may be rehabilitated irrespective of the review of the disciplinary proceeding, and the entity with authority to apply the penalty or the hierarchically superior entity shall be competent for such purposes.
2. A civil servant punished with the penalty of dismissal may request his or her rehabilitation after five years.
3. Rehabilitation shall be granted to those who deserve it for showing good conduct and, to this end, the interested party may bring forward all means of evidence allowed by law.

Article 106
Disposal of fines

A fine levied on a civil servant or an agent of the public administration shall accrue to State revenue.

Chapter X
Guarantees of legality
Section I
Administrative and legal appeal

Article 107
Violation of rights

Where a civil servant or an agent of the public administration feels aggrieved as a result of a violation of his or her rights by public authorities, he or she shall have the right to an appeal in accordance with specific established legislation, to recognition of the invoked right, to annulment of the act, and to relief for damage, as the case may be and as required by applicable law.

Article 108
Internal appeal

An internal appeal shall be lodged with the authority that made the decision appealed against or with the relevant superior authority for such purposes.

Article 109
Contentious appeal

A contentious appeal shall be lodged with appropriate authorities or jurisdictions under the terms and conditions that govern such type of appeal.

Article 110
Right to appeal against recruitment process

A candidate applying for recruitment to the civil service shall have the same rights as a civil servant where such candidate believes that there were irregularities or illegalities in the procedures and criteria for the competitive recruitment examinations.

Section II
Guarantees of protection and security

Article 111
Protection against abuse

1. Every civil servant or agent of the public administration shall have the right to adequate protection against threats, abuse, insults or defamation that may be directed at him or her in the exercise of his or her functions.
2. Public authorities shall be under an obligation to ensure effective protection against any abuse directed at a civil servant or an agent of the public administration in the exercise of his or her functions, and necessary action shall be taken to repair any damage resulting from any such abuse, as required by applicable rules.

Article 112
Civil liability action

1. In the event of charges pressed by a third party against a civil servant or an agent of the public administration in relation to an act performed in the exercise of his or her functions or the omission of an act required from him or her in the exercise of his or her functions, it shall be incumbent upon the Government to assure the defence of the civil servant or agent of the public administration, except in cases where he or she has committed an offence carrying a disciplinary penalty heavier than written reprimand.
2. For all legal purposes, action provided for under item 1 above shall be considered as civil liability action against the State whenever it is proved that there is a causal link between the act of which the civil servant or agent of the public administration is accused and the activities directly related to the exercise of his or her official functions.

Article 113
Right of redress

1. Review of a disciplinary proceeding shall be admitted at all times whenever there are circumstances or means of evidence that may demonstrate the existence of facts or information provided under coercion or in bad faith.

2. Proof of existence of any of the factors provided for under item 1 above shall render a disciplinary proceeding null and void, and any decision made in connection with such a proceeding shall be overturned.
3. The overturning of a decision shall produce the following effects:
 - a) Cancellation of the sentence registration in the personal file of the civil servant concerned;
 - b) Annulment of the sentence effects.
4. The civil servant concerned shall also have the right to his or her career reconstitution, and all expectations of promotion that have not been met because of the sentence application shall be considered, without prejudice to compensations that he or she may be entitled to as a result of the sustained moral and material damage.

Article 114

Report against a superior or fellow-employee

1. A civil servant or an agent of the public administration that reports a violation committed by a superior or a fellow-employee in the light of Article 48 of this Statute shall not be liable to any type of penalisation, threat or discrimination, whether the alleged facts are proved or not, except where it is established beyond reasonable doubt that the report was made in bad faith with a deliberate damaging intent.
2. Where a civil servant reports an irregularity in the light of this Article, his or her identity shall be kept in confidence by the entity receiving the report, unless the provisions of item 3 below apply.
3. A civil servant who, with bad faith and damaging intent, allegedly reports against his or her superior or fellow-employee in the light of Article 48 of this Statute shall be liable to the appropriate disciplinary proceeding.

Article 115

Right of membership to a trade union

1. A civil servant shall have the right of membership to a trade union for employees of the civil service or to any other organisation representing the interests of civil servants.

2. The establishment and functioning of trade unions shall be regulated by a Government decree-law.

Chapter XI

Termination of a labour relationship

Article 116

Termination of a labour relationship

1. A labour relationship in the public administration shall cease upon death, resignation, lay-off, retirement or dismissal.
2. A contract shall come to an end upon completion of its duration, termination, cancellation, or death, retirement, or application of a dismissal penalty.

Article 117

Resignation

1. A civil servant may resign at any time, complying with the deadlines for advance notice to be established by the Government.
2. Resignation shall be tendered by a letter addressed to the competent manager.

CHAPTER XII

Final and transitional provisions

Article 118

Participation in the national liberation struggle

The period during which a State employee served in the National Liberation Struggle with due placement shall count towards the time of service provided to the State under the terms of special legislation to be approved by the National Parliament.

Article 119

Age limit and assessment

1. [Revoked]

2. Assessment shall be conducted in accordance with rules approved by Government decree and shall necessarily have into consideration the assessed person's performance, merit or demerit, allegiance to the Government, impartiality and moral suitability.

Article 120
Database

1. [Revoked]
2. [Revoked]

Article 121
Revocation of previous law

All legislation contrary to the provisions of this Statute is hereby revoked.

Article 122
Entry into force

This Statute shall enter into force 30 days after its publication in the Official Gazette.

Approved on 13 May 2009

The Speaker of the National Parliament,

Fernando La Sama de Araújo

Promulgated on 3 July 2009.

For publication.

The President of the Republic,

Dr. José Ramos-Horta

ANNEX REFERRED TO UNDER ARTICLE 45

CODE OF ETHICS FOR THE CIVIL SERVICE

A civil servant or an agent of the public administration shall:

1. Attend to the highest interests of the country, defend its national independence proclaimed on 28 November 1975, and respect the moral and cultural values of the people of Timor-Leste;
2. Comply with general laws and specific laws on the civil service;
3. Implement and promote respect for human rights, the rule of law and democratic principles;
4. Be a role model of personal integrity, authenticity and honesty, always seeking to contribute towards the good reputation of the civil service through an exemplary daily behaviour;
5. Serve the public with courtesy and dedication, placing public interest above any private interest;
6. Discharge his or her duties with commitment, intelligence and skill, seeking to improve his or her performance through training and other courses for an efficient execution of the tasks arising from his or her position;
7. Abide by directions and instructions lawfully established by superiors and reject any other instructions, either actual or attempted, from any entity or individual outside the public administration of Timor-Leste to influence his or her official actions;
8. Comply with the law and honour personal obligations, abiding by decisions from courts;
9. Serve the public without any form of discrimination or intimidation, including sexual discrimination, and without verbal or physical abuse in relations at the workplace;
10. Oppose any threat, intimidation or conduct intended to directly or indirectly interfere in the mission of the public administration of Timor-Leste;
11. Correctly explain his or her functions and level, as well as the nature of his or her position in the public administration of Timor-Leste to individuals outside the system;
12. Refuse any favour, offer, remuneration or any other gift being given in return for the execution or omission of an official act;
13. Use property of the public administration of Timor-Leste or information accessed to in his or her official capacity solely for activities related to his or her functions and official obligations;

14. Disclose to the public administration any direct or indirect benefit he or she may derive from any profitable activity, business or company under his or her responsibility or obligations;
15. Contribute to the consolidation of national unity as a sine qua non for the economic and social development of Timor-Leste.