

UNOFFICIAL TRANSLATION

DRAFT LAW No. /2009

OF

LAW ON INTERNAL SECURITY

EXPLANATORY STATEMENT:

This draft law is submitted for appreciation on the following grounds:

1. There is a need to adopt a more comprehensive notion of Internal Security. Indeed, the traditional separation between Defence (External Security) and Internal Security is becoming increasingly blurred. The two areas are no longer hermetically sealed and that is why an effort should be made to get the most out of the supplementary and subsidiary nature of the different actors in the Security System from an integrated and systemic perspective. Moreover, the two aspects of Internal Security, police work and protection and rescue should be considered on equal terms, in line with the provisions of the National Security Policy.
2. There is a need to structure the Internal Security System in a way that matches the broader perspective mentioned in the previous paragraph and that enables the system to address present-day criminal phenomena.
3. There is a need to include in the system referred in paragraph 2 above the following entities that had previously not been considered, for the reasons presented in said paragraph and for those indicated below:
 - The Armed Forces, whenever the situation so requires, namely when the intensity or nature of a conflict transcends the abilities of the Police, as well as in public interest missions.
 - The Protection and Rescue System (*Sistema de Protecção e Socorro*), for it plays a relevant role in providing assistance and rescuing communities in the event of a conflict or calamity.
 - The Prison Services, bearing in mind the important role played by the prison system in the prevention of and fight against crime.
 - The Maritime Authority.
 - The Civil Aviation Authority.
 - The District Councils for Security should also be included in the system, thus contributing to bridge the gap between communities and the State on matters pertaining to security.

Such an extended composition will enable the system to provide integrated and global responses to the new threats to internal security.

4. There is a need to take into account Decree-Law 2/2007 of 8 March on Special Crime Prevention Operations.
5. It should be borne in mind that civilian security activities of both public and private nature, while outside the formal security system, play an important role in the area of security by protecting individuals and their assets and properties and deterring crime. Hence, such activities are supplementary to the police security system and contribute significantly to an enhanced feeling of security in the communities.
6. There is a need to re-structure the Office for the Coordination of Internal Security (*Gabinete de Coordenação de Segurança Interna*) that will be re-named Integrated Centre for Crisis Management. The office had been inoperative until now and there is a need to re-define the role of its Director as well as to make his/her status equivalent to that of a Secretary of State.
7. There is a need to adapt the Law on Internal Security to the Law on National Security, aligning one with the other and removing from the former the provisions that have been included in the latter in order to avoid having the repetition of similar provisions in the two laws.

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In every sovereign country, guaranteeing internal security by engaging in activities aimed at preventing and fighting crime and safeguarding law and order and public tranquility is a pre-requisite to safeguard peace and stability. Internal security is therefore an activity of paramount importance for the State but in which all sectors of civil society must also be involved.

Indeed, among modern democratic societies, of which Timor-Leste is one by reason of its Constitution, the activity of internal security is no longer the exclusive task of one or two Government departments. Internal security is increasingly perceived as a matter that has to be addressed on an ongoing basis by all public and private institutions and local communities alike.

In the face of the dramatic events that the State of Timor-Leste experienced in the not-so-distant past, beginning in April 2006 with serious conflicts which led to a collapse of law and order that threatened the survival of democratic institutions, and culminating in February 2008, when the holders of two of the most important sovereign organs were exposed to attacks by armed groups that attempted against their lives, it is strongly advisable to adopt preventive measures in the realm of internal security.

Thus, it is essential that the entities that bear responsibilities in ensuring national security be provided beforehand with the necessary material and human resources to respond promptly to any violations of the rule of law, disasters or public calamities, while reporting to a coordination body that will provide guidance and where all those entities shall be represented.

It is also important to draw lessons from the recent joint operation undertaken by the national defence and security forces which led to the breaking up of armed groups that were threatening the legitimate democratic powers. The operation showed how important it is for the Armed Forces to play central role in support of internal security and humanitarian missions, while safeguarding citizens' fundamental rights and freedoms.

The traditional separation between Defence (External Security) and Security (as perceived from an internal perspective) is becoming increasingly blurred and the two areas are no longer hermetically sealed. That is why the various forces and services that make up the National Security System should undertake their activities in a coordinated manner and have a common goal. Moreover, it should be emphasized that internal security has to be addressed both from a police and a protection and rescue perspective.

Thus, mechanisms should be established that will ensure that internal security activities, which are of national interest and are vital importance for the survival of democratic institutions and the safety of citizens and assets, take place in a clearly defined legal framework that guarantees the efficiency and effectiveness of the system.

The Government, pursuant to articles 97(1)(c) and 115(2)(a) of the Constitution, submits the following draft law to the National Parliament:

CHAPTER I GENERAL PRINCIPLES

Article 1 Definitions

1. Internal security is the activity undertaken by the State to guarantee law and order, public safety and tranquility, to protect citizens and their property and assets, to ensure that citizens can enjoy their fundamental rights and freedoms, to prevent crime and guarantee the normal operation of democratic institutions.
2. The internal security policy is the set of principles, guidelines and measures aimed at achieving the policy's own goals.

Article 2 Principle of legality

Internal security is an activity that is undertaken in accordance with the Constitution and the laws, in particular the criminal and criminal procedural laws and the law regulating the activities of the police forces and security services.

Article 3 Objectives

The measures provided in this law are especially aimed at protecting life, limb, peace and democratic law and order from violent and organised crime, namely terrorism, sabotage and espionage, and at preventing and minimising the effects of natural catastrophes, protecting the environment and preserving public health.

Article 4
Fundamental principles

1. Internal security is an activity that abides by the general rules observed by the police , respecting the rights, liberties and fundamental guarantees of citizens and observing the principles of a democratic state under the rule of law .
2. Police measures (*medidas de polícia*) and special crime prevention measures (*medidas especiais de prevenção criminal*) are specific measures provided in the legislation and should not be used beyond what is strictly necessary.
3. The prevention of crimes, including the prevention of crimes against the security of the State, shall be undertaken while observing the general rules followed by the police and respecting the rights, freedoms and fundamental guarantees of citizens.
4. The use of force shall be subject to political and legal control by means of rules of engagement that shall be drafted by the member of the Government with responsibility over security matters and shall be approved by the Council of Ministers. The weapons to be used shall be appropriate to the fulfilment of the missions assigned for the security forces.

Article 5
Private security

1. The possibility of developing activities that are subsidiary or supplementary to those of the Security Forces and Services as defined in article 14 below may be assigned by law to other public or private entities.
2. The entities referred in the paragraph above shall not, under any circumstances, engage in activities aimed at performing functions that correspond to the exclusive powers of the judicial, police, intelligence and security authorities of the State.
3. If required, and at the request of police authorities, the entities referred in 5(1) above shall make their staff available to them.

Article 6
Scope of internal security activities

Internal security activities are undertaken across the whole national territory. The Security Forces and Services may engage in activities beyond the national borders in the framework of international commitments and applicable international law, namely in cooperation with agencies and services of foreign states or international organisations of which the Democratic Republic of Timor-Leste is a member.

Article 7
Duty to collaborate

1. Citizens have a duty to collaborate with the staff and agents of the security forces and services, obeying their legitimate orders and warrants and in no way hindering the normal performance of their roles.
2. Civil servants and State agents or the staff and agents of legal persons governed by public law, as well as the members of the management bodies of State-owned companies, have a special duty to collaborate with the Security Forces and Services, in accordance with the law.

3. Civil servants who have directing, managing, inspecting or supervising responsibilities have a duty to immediately convey to the Security Forces and Services any facts of which they become aware in the pursuit of their functions that are related to the preparation, attempt or undertaking of crimes of espionage, sabotage or terrorism .
4. Failure to comply with the provisions in article 7(2) and 7(3) shall result in liability to disciplinary and criminal action in accordance with the law.

Article 8
Cooperation between the Security Forces and Services

The Security Forces and Services shall cooperate with one another, namely by exchanging data that is not subject to any special restrictions or protection and that may be necessary to the fulfilment of their respective roles.

CHAPTER II
INTERNAL SECURITY POLICY AND THE COORDINATION OF ITS IMPLEMENTATION

Article 9
Powers of the National Parliament

1. The National Parliament shall contribute, within the scope of its political and legislative powers, to create an adequate framework for the internal security policy and to oversee its implementation.
2. The National Parliament shall be regularly informed by the Government about the main issues pertaining to the security policy.
3. The National Parliament shall discuss the annual report on the situation in the country with regard to internal security, as well as the report on the activities of the Security Forces and Services, to be submitted by the Government in the first quarter of every year.

Article 10
Powers of the Government

1. It shall be incumbent upon the Government to guide the internal security policy.
2. It shall be incumbent upon the Council of Ministers:
 - a) To define the general guidelines of the Government's policy on internal security as well as their implementation;
 - b) To programme and secure the resources required to implement the internal security policy;
 - c) To adopt a command, coordination and cooperation plan for the forces and services that are legally responsible for internal security and to ensure the normal operation of their respective systems;
 - d) To draft laws on the rules for classifying and for the circulation of documents and the accreditation of individuals that can have access to classified documents.

Article 11
Powers of the Prime Minister

1. It shall be incumbent upon the Prime Minister:
 - a) To coordinate and guide the activities of Government members with regard to internal security;
 - b) To convene and chair the meetings of the Inter-Ministerial Committee on Security;
 - c) To guide inter-ministerial activities aimed at adopting adequate measures in the event of a serious threat to internal security. These will include, if necessary, the combined operational deployment of personnel, equipment, facilities and other resources assigned to each of the security forces and services;
 - d) To make sure that the necessary intelligence to safeguard national independence and guarantee internal security is obtained through the National Intelligence Service, in respect of the Constitution and the law;
 - e) To keep the President of the Republic abreast of all the matters relating to the policy on internal security.

Article 12 Structure of the Internal Security System

The Internal Security System comprises the following organs:

- a) The Inter-Ministerial Committee on Security;
- b) The Integrated Centre for Crisis Management;
- c) The Security Forces and Services;
- d) The agencies that have supplementary roles in the realm of internal security.

Article 13 District Councils for Security

District Councils for Security shall be established by means of specific legislation and shall have the following goals:

- a) To contribute to a deeper understanding of the security situation in the respective district by consulting with all the entities that are represented in the Council;
- b) To propose solutions to address crime and safety issues affecting citizens in their respective districts and to take part in preventive actions;
- c) To promote debates around measures aimed at combating crime and social exclusion in their respective districts;
- d) To adopt opinions and requests deemed to be timely and directly related to issues of safety and social integration;
- e) To promote harmony and to address conflicts according to Timorese traditions and customs without jeopardizing the legal and constitutional principles and as long as the parties involved agree to such an approach.

Article 14 Security Forces and Services

1. The Security Forces and Services are public entities that are strictly non-partisan

and that contribute to safeguard Internal Security in the country.

2. The following have a role in Internal Security:
 - a) The National Police of Timor-Leste (*Polícia Nacional de Timor-Leste*, PNTL);
 - b) The National Intelligence Service (*Serviço Nacional de Inteligência*, SNI);
 - c) The Immigration Service (*Serviço de Migração*, SM);
 - d) The agencies that make up the Protection and Rescue System .

Article 15 **Supplementary roles in internal security**

The following entities engage in supplementary activities within the realm of internal security:

- a) The Armed Forces, under exceptional circumstances;
- b) The Maritime Authority;
- c) The Civil Aviation Authority;
- d) The National Directorate for Customs;
- e) The Prison Services;
- f) The civilian, public and private entities that provide security services.

Article 16 **Organization, roles and powers**

The organisation, roles and powers of the Security Forces and Services and of the agencies that engage in supplementary activities within the realm of internal security shall be defined by their respective organic laws and other supplementary legislation, except for private security companies whose activity shall be regulated in specific legislation.

Article 17 **Police authorities**

For the purposes of this law, the following are considered police authorities within the scope of their respective powers:

- a) The Commander-General of PNTL;
- b) The Deputy Commander-General of PNTL;
- c) The Commanders of PNTL's Units;
- d) The District Commanders of PNTL;
- e) The Director of the Immigration Service;
- f) The National Director of Customs.

Article 18 **Police measures**

1. In pursuing Internal Security activities, the police authorities may, in line with their specific powers, decide on the application of police measures (*medidas de polícia*).

2. Police measures are those measures provided by law which are applicable pursuant to and under the conditions provided in the Constitution, namely:
 - a) To demand that an individual who is or moves about in a public place or a place subject to police surveillance identifies himself/herself;
 - b) To carry out surveillance operations targeting individuals, buildings and premises for specific periods of time;
 - c) To temporarily seize weapons, ammunitions and explosives;
 - d) To prohibit the entry into the country of undesirable foreigners or those travelling without documents;
 - e) To take the necessary steps to expel foreigners from the country;
 - f) To close down the activities of businesses, groups, organisations or associations that are dedicated to highly organised criminal activities, such as sabotage, espionage ou terrorism or to the training or recruitment of individuals to perform such activities;
 - g) To define and circumscribe security zones for purposes that are related to the fulfilment of its mission and for the minimum period that may be required .
3. Whenever individuals are arrested or objects or documents are seized in the pursuit of any of the aforementioned police measures, the police authorities shall proceed according to the provisions in the criminal procedural legislation.
4. The measures provided in paragraph 2(f) shall be communicated to the competent court and assessed by a judge who shall decide on their validity within at most 48 hours. Failure to comply with this provision shall render such measures void.

Article 19 **Special crime prevention measures**

1. The Security Forces may plan and undertake special crime prevention operations (*medidas especiais de prevenção criminal*) in circumscribed geographical locations with a view to monitoring, detecting, locating and preventing the introduction, ensuring the removal or checking the legal status of weapons, their components or ammunition or explosive or toxic substances or products, thus lowering the risk of occurrence of any of a range of offences usually associated to such materials, or else whenever there is a suspicion that any of such crimes may have been committed in order to carry out or hide other crimes.
2. The geographical areas to be circumscribed for the purpose of undertaking special crime prevention may include:
 - a) Check-points controlling the access to locations where it is a crime to possess or carry weapons, devices, products or substances listed in the law that regulates weapons and ammunitions;
 - b) Public transport terminals, as well as the vehicles themselves, and also ports, airports, public roads and other public places, and the access routes to them, that are used by individuals who, for reasons that are related to surveillance or patrolling operations or police intelligence may be suspect of committing any of the offences mentioned in the previous paragraph.
3. The special crime prevention operations may comprise, as required:

- a) The identification of the individuals found in the geographical area where the operation takes place;
 - b) The search of individuals, vehicles or equipment;
 - c) Searches of the places where such individuals are found, whenever there are indications that crimes pursuant to paragraph 1 above may have been committed, or there is a risk of resistance or disobedience to public authorities, or when the individuals have to be taken to a police station because it is not possible to identify them adequately and there are suspicions that that may have committed a crime.
4. The operations may be continued beyond the geographical and time boundaries that were originally set, if the activities to be undertaken are a consequence of special crime prevention operations that were launched pursuant to this article.

Article 20

Legal oversight of special crime prevention measures

1. The Public Prosecution Service shall always be informed of any special crime prevention operations through the District Prosecutor who has territorial jurisdiction over the area that is of interest for the operation.
2. The information shall be conveyed by the Commander-General of PNTL in good time and shall specify the geographic limits and time limits of the special measures being foreseen.
3. The operations may be accompanied by a magistrate who will be responsible for any acts that may be required and for which the Public Prosecution Service is responsible, without prejudice to the technical and tactical autonomy of the Security Forces and Services.
4. In a special crime prevention operation, whenever a house search or other acts are required for which the competent judge is exclusively responsible, the necessary measures shall be adopted so that there is adequate accompaniment by the magistrate.
5. Whenever the operation is undertaken in more than one judicial district (*comarca*), the intervening judge is the judge who would be competent pursuant to the law in the judicial district where the operation was started.

Article 21

Duty to identify oneself

The police agents or other staff who are not in uniform and who are required, pursuant to the law, to order individuals to identify themselves or to issue any other legitimate order or serve a legitimate warrant, shall identify themselves beforehand.

Article 22

Monitoring of communications

1. The judge, at the request of the Public Prosecution Service, may authorise the monitoring of communications, pursuant to the law.
2. The request for a monitoring operation of communications to take place must be duly substantiated and must be submitted in accordance with the criminal procedural laws.

3. The criminal investigation unit of PNTL or SNI shall be solely responsible for the monitoring of communications duly authorised by a judicial authority.

Article 23
Repeal

Law no. 8/2003, of 8 October (Law on Internal Security) and Decree-Law no. 2/2007, of 8 March, on special crime prevention operations are hereby repealed.

Article 24
Entry into force

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

Approved by the Council of Ministers on 10 June 2009.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Defence and Security,

Kay Rala Xanana Gusmão