



**DEMOCRATIC REPUBLIC OF TIMOR-LESTE  
MINISTRY OF JUSTICE**

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**DRAFT LAW \_\_/\_\_\_\_**

**of \_\_\_\_\_**

**Legal Framework for Legal Aid**

In constructing a State governed by the rule-of-law, ensuring access to the courts is critical, and the State should assist citizens in overcoming such financial, social or cultural obstacles as may hinder the exercise of this constitutional principle.

This legal framework on legal aid sets forth a number of measures aimed at facilitating and assisting citizens in their access to the courts, so as to ensure that nobody is denied the right to either enforce or defend their rights in a court of law due to economic insufficiencies or by reason of their social or cultural status.

Three methods for assisting citizens are created and seek to bridge some of the greatest difficulties, such as obtaining legal representation in court, payment of legal fees, and transportation, accommodation and meals for citizens visiting the courts.

Citizens may benefit from free legal assistance; those benefitting from legal aid are exempt from paying legal fees in court; and transportation, accommodation and meal allowances are granted whenever they prove to be necessary when individuals are visiting the courts.

With regard to free legal assistance, in addition to the currently existing services provided by the Office of the Public Defender, the possibility of citizens benefitting from free legal representation by a lawyer or trainee lawyer of their choice is also provided for, so as to ensure greater proximity and trust between citizens and those providing free legal assistance.

Now, therefore,

TRANSLATION

Pursuant to Articles 97.1(c) and 115.2(a) of the Constitution, the Government submits the following Draft Law to the National Parliament:

**CHAPTER I**  
**Object and Definitions**

**Article 1**  
**Legal Aid**

Legal aid consists of protective and assistive measures for citizens, aimed at promoting access to the judicial system so as to ensure that nobody is deprived from or hindered in knowing, enforcing or defending their rights in a court of law, by reason of either their social or cultural status or economic insufficiencies.

**Article 2**  
**Legal Aid Services**

- 1 Legal aid is comprised of the following services:
  - (a) Free legal assistance;
  - (b) Exemption from payment of official fees, charges and court fees;
  - (c) Assistance with transportation, accommodation and meals.
- 2 Legal aid applicants may benefit from either one or more of the abovementioned services.

**Article 3**  
**Free Legal Assistance**

Legal aid applicants may benefit from free legal representation by a public defender designated by the Office of the Public Defender, or by a lawyer or trainee lawyer of their choice and who shall be subsidized by the State, under the terms hereof.

**Article 4**  
**Exemption from Official Fees, Charges and Court Fees**

Legal aid applicants may be excused from the payment of official fees, charges and court fees in legal proceedings.

**Article 5**

**Assistance with Transportation, Accommodation and Meals**

- 1 Legal aid applicants may benefit from assistance with transportation, accommodation and meals whenever they are summoned to report to the competent court in connection with the proceedings in which the application is made.
- 2 Pursuant to Articles 10 and 11, and without prejudice to the provisions of the Code of Civil Procedure, witnesses summoned for the proceedings who demonstrate economic insufficiencies may also benefit from the aid referred to in the preceding paragraph.

**CHAPTER II**

**General Provisions**

**Article 6**

**Scope**

- 1 The legal aid regime is applicable in all courts, regardless of the form of proceedings.
- 2 The legal aid regime is also applicable with due adaptations to misdemeanor proceedings.

**Article 7**

**Beneficiaries**

The following persons benefit from legal aid:

- (a) Individuals with economic insufficiencies;
- (b) Individuals or legal persons acting in the interest and on behalf of a minor, or an incompetent or incapable person in a legal action;
- (c) Individuals acting on their own behalf and in their exclusive interest in a legal action, and who financially depend on third parties;
- (d) Foreigners or stateless persons that demonstrate economic insufficiency;
- (e) Public non-profit legal persons that demonstrate economic insufficiency.

**Article 8**  
**Legitimacy**

- 1 Legal aid may be requested by:
  - (a) Whomever has an interest in it being granted;
  - (b) The Public Prosecutor's Office, on behalf of the interested party;
  - (c) A public defender, on behalf and at the request of the interested party;
  - (d) A lawyer or trainee lawyer, on behalf and at the request of the interested party;
- 2 Whenever the request is made by the persons referred to in paragraph (d) above, it shall be presumed that the request includes legal assistance and the acceptance of legal representation in the proceedings for which legal aid was requested.

**Article 9**  
**Extension of the Request**

- 1 Legal aid shall be granted regardless of the applicant's procedural position and of legal aid already having been granted to the counterparty.
- 2 Legal aid may be requested at any time during the proceedings and shall remain in effect for the purposes of appeal regardless of the decision on the merits of the case, and shall extend to all proceedings appended to that for which legal aid was granted.
- 3 In case the proceedings are segregated by virtue of a court ruling having the condition of *res judicata*, the legal aid granted to the applicant shall be maintained and a certificate of the decision granting such aid shall be filed with the segregated proceedings.

**Article 10**  
**Economic Insufficiency**

- 1 Individuals or legal persons that demonstrate not to possess sufficient economic means to pay attorneys' fees or to bear the standard fees incurred with legal proceedings, in whole or in part, are deemed to be in a situation of economic insufficiency.
- 2 When evaluating economic insufficiency, the applicant's income, property and fixed expenses which are necessary for supporting the applicant's household shall be taken into account.

TRANSLATION

- 3 The applicant's economic insufficiency may be proven by any means deemed appropriate by the court.

**Article 11**

**Presumption of Economic Insufficiency**

In addition to what is established in special laws, the following persons benefit from a presumption of economic insufficiency:

- (a) Whomever has a monthly income equal to or of less than 500.00 United States dollars;
- (b) Whomever meets the requirements for State subsidies as a result of their low income.

**Article 12**

**Decision Powers**

- 1 The judge responsible for the proceedings in relation to which the request is made, or the administrative entity responsible for filing the proceedings in case of misdemeanor, shall have powers to decide on the granting of legal aid.
- 2 The request referred to in the preceding paragraph is deemed a procedural incident, and is therefore subject to opposition by the counterparty.

**CHAPTER III**

**Procedure**

**Article 13**

**Request**

- 1 The request for legal aid shall be made:
  - (a) In the initial written motion or application for the action to which it relates;
  - (b) In the written motions subsequent to the initial application for the action to which it relates; or
  - (c) In an autonomous application whenever it is submitted after the written motions or in the event the cause does not allow for the submission of written motions.

TRANSLATION

- 2 If the request for legal aid includes free legal assistance and no public defender, lawyer or trainee lawyer was appointed to the applicant, the request may be made by way of a simple application addressed to the court, which shall identify the proceedings to which it relates.
- 3 The applicant shall summarily allege the facts and state the legal grounds which are relevant to the request, and shall immediately offer all evidence.
- 4 In the request, the applicant shall mention all income and remunerations they receive, as well as their personal and family expenses, and contributions and taxes paid.

**Article 14**

**Consequences of the Submission of the Request**

- 1 The submission of the request for legal aid determines:
  - (a) The immediate release from the payment of any legal fees;
  - (b) The stay of the proceedings when the request is made within a written motion that does not allow for a response, or when written motions are not allowed in the proceedings.
- 2 If the applicant has not identified a public defender, lawyer or trainee lawyer in the request for legal aid, any time periods underway at the time the request is made are suspended as a result of the submission of the request and shall resume as from notification of the decision regarding the granting of legal aid and the designation of the appointed public defender.
- 3 In criminal proceedings, and whenever defendants are imprisoned, the proceedings are not stayed.

**Article 15**

**Decision-Making Process**

- 1 Upon submission of the request for legal aid, the judge shall immediately issue a preliminary decision.
- 2 The request for legal aid shall be preliminarily rejected when it is evident that the applicant's request for legal aid should not be accepted.
- 3 If the request is not rejected, the counterparty shall be served notice to oppose.
- 4 If legal aid is requested in the initial written motion or application, the notice referred to in the preceding paragraph shall be served together with the summons for the action or procedure.

TRANSLATION

- 5 The summons or notification shall not be served for as long as the action or procedure does not allow for an intervention from the counterparty.

**Article 16**  
**Opposition to the Request**

- 1 The opposition to the request for legal aid shall be submitted within five days, in the written motion following the request or in a separate application if the cause does not allow for a subsequent written motion.
- 2 All evidence shall be submitted together with the opposition.

**Article 17**  
**Evidence Procedures**

- 1 The judge may order all such procedures as they deem required for deciding on the incident of legal aid.
- 2 No entity, whether public or private, may refuse to provide urgent information that the court requires concerning the economic status of the legal aid applicant.
- 3 The documents aimed at substantiating the request for legal aid shall expressly refer their purpose.

**Article 18**  
**Decision**

- 1 The decision shall be issued within 15 days of the date on which the request is made.
- 2 The decision granting legal aid shall specify the services that the applicant benefits from.
- 3 In ruling, the judge shall consider the consequences that a potential order to pay legal fees may have on the applicant's and their household's property.
- 4 If legal aid is denied, the applicant shall be notified to pay the legal fees and such other payments as they were excused from paying, within the time periods and subject to the sanctions set forth in the legislation on legal fees, as well as, if applicable, to appoint a lawyer or trainee lawyer to represent them within the time period set forth by the judge.

**Article 19**  
**Termination of Legal Aid**

- 1 Legal aid shall be withdrawn:
  - (a) If the applicant acquires sufficient means to do without it;
  - (b) When new documents demonstrate that the grounds on which the legal aid was granted no longer subsist;
  - (c) If the documents on the basis of which legal aid was granted are declared false by a court ruling having the condition of *res judicata*;
  - (d) If in the process of appeal, the applicant's conviction as bad faith litigator is confirmed;
  - (e) If in an action for temporary alimony the applicant is awarded an amount for purposes of covering costs associated with the proceedings.
- 2 In the case of paragraph (a) above, the applicant shall report that legal aid is no longer needed as soon as this event occurs. Failure to do so shall subject the applicant to the sanctions provided for bad faith litigation.
- 3 Any form of legal aid may be withdrawn *ex officio* by the judge responsible for the proceedings, or at the request of the Public Prosecutor, the counterparty, or of the public defender, lawyer or trainee lawyer appointed, in which case Article 18.4 shall apply.
- 4 Legal aid applicants shall always be heard before a decision on termination of legal aid is made.
- 5 If legal aid is withdrawn under paragraph 3 above and if the applicant is represented by the Office of the Public Defender, the Judge shall notify the decision to the President of the General Council of the Office of the Public Defender, so that appropriate measures be taken for the purposes of substituting the public defender as provided for in the relevant regulations.

**Article 20**  
**Expiry**

Legal aid shall expire upon the death of the individual, or the extinction or dissolution of the legal person to whom it was granted, except if their successors in the proceedings also request legal aid when filing their application on entitlement of heirs and legal aid is granted to them.

**Article 21**  
**Contestation**

Decisions issued on legal aid shall always be subject to appeal, regardless of their value. The appeal shall have suspensive effect when filed by the legal aid applicant, and a merely devolutionary effect in any other case.

**Article 22**  
**Legal Fees**

- 1 Legal fees for legal aid requests are borne by the defeated party.
- 2 Legal fees are not due when legal aid requests have been granted without opposition.

**Article 23**  
**Exemption**

- 1 Written motions, applications, certificates and any other documents, including notary's and registry acts requested to substantiate the legal aid request, are exempt from taxes, official fees and charges.
- 2 The procedural incident of legal aid is exempt from the preliminary court fee.

**Article 24**  
**Collection Claim**

- 1 If it is demonstrated that the legal aid applicant had, at the time of the application, sufficient means to pay attorney fees, expenses, costs, official fees, charges and any other fees the payment of which the applicant was declared to be excused from, or if during the proceedings and up to the final ruling becoming *res judicata* the applicant acquires such means, a collection claim shall be filed.
- 2 The amounts collected shall revert to the Justice Treasury and the State treasuries, pursuant to the laws in force.
- 3 The provisions of paragraphs 1 and 2 above shall not apply when by virtue of the proceedings damages are awarded to the applicant.
- 4 The provisions of the preceding paragraphs shall not prevent the filing of criminal proceedings if, in order to benefit from legal aid, the applicant committed a crime set forth in criminal law.

**CHAPTER IV**  
**Legal Assistance**

**Article 25**  
**Legal Representation**

Free legal assistance is ensured through legal representation by a public defender designated by the Office of the Public Defender, or through a lawyer or trainee lawyer of the applicant's choice and appointed by the court.

**Article 26**  
**Appointment**

- 1 When legal aid is granted in the form of free legal assistance and the applicant has not designated a lawyer or trainee lawyer to be appointed, the judge shall request the Office of the Public Defender with territorial jurisdiction to designate a public defender.
- 2 The court must be notified of the abovementioned designation within five days.
- 3 If no designation has been made and the public defenders in the court's attendance schedule have impediments, free legal representation may be exercised by a lawyer or trainee lawyer beyond the scope of their own powers.

**Article 27**  
**Notice to the Beneficiary**

The decision granting legal assistance shall be notified to the beneficiary of the legal aid and to the public defender, with express reference being made to the name of the appointed public defender and the location of the Office of the Public Defender with territorial jurisdiction.

**Article 28**  
**Request for Withdrawal**

- 1 The appointed public defender, lawyer or trainee lawyer may submit to the judge responsible for the proceedings a request for withdrawal and shall for this purpose submit a sealed envelope, where the grounds for withdrawal are alleged, addressed to the General Public Defender or to the President of the Bar Association, respectively.
- 2 A request for withdrawal submitted during the course of the proceedings interrupts such time period as is underway.

TRANSLATION

- 3 Upon the envelope being forwarded by the court to the Office of the Public Defender or to the Bar Association, the relevant entity shall decide on the request for withdrawal within five days.
- 4 If withdrawal is granted, the provisions of Article 26 shall apply with due adaptations.

**Article 29**  
**Choice of Lawyer**

- 1 The lawyer or trainee lawyer designated by the applicant in the request for legal aid shall be accepted whenever they declare acceptance of the services to be rendered.
- 2 This designation shall not be taken into account when there are valid reasons to believe that it has been requested for an ongoing proceeding in relation to which the applicant already benefits from free legal representation.

**Article 30**  
**Attendance Schedules**

- 1 The Office of the Public Defender shall organize attendance schedules for the purposes of appointing public defenders, and shall notify said schedules to the courts.
- 2 In the case provided for in the preceding paragraph, a public defender listed in the attendance schedule who is present shall be appointed, whenever possible.

**Article 31**  
**Substitution**

- 1 Beneficiaries of legal aid may, in any proceeding, request the substitution of the appointed public defender, lawyer or trainee lawyer by means of a duly grounded request.
- 2 In the case provided for in the preceding paragraph, the court shall decide freely upon hearing the Office of the Public Defender or the Bar Association, respectively.
- 3 If the request for substitution is accepted, the provisions of Article 26 shall apply with due adaptations.

**Article 32**  
**Attorneys' Fees**

- 1 In terms of free legal assistance, appointed lawyers and trainee lawyers are entitled to fees for the services provided, as well as to be reimbursed for the expenses incurred, provided these are duly evidenced.
- 2 The amounts referred to in the preceding paragraph shall be established by the court in the final ruling within the limits set forth in the relevant chart, taking into account the time spent, the volume and complexity of the work performed, and the acts and procedures carried out.

**CHAPTER V**  
**Special Provisions on Criminal Proceedings**

**Article 33**  
**Applicable Regime**

The appointment of a defender for a formal suspect and the exemption from legal representation, substitution and remuneration shall be carried out under the terms of the Code of Criminal Procedure and in accordance with the following provisions.

**Article 34**  
**Appointment of Defender**

- 1 Whenever no lawyer or trainee lawyer was designated by the defendant, the judiciary authority responsible for information on the duty to appoint a defender shall request the Office of the Public Defender with territorial jurisdiction to designate a public defender.
- 2 The Office of the Public Defender shall designate a public defender within five days.
- 3 Whenever no designation has been made and in case of an impediment of the public defenders included in the court's attendance schedule, the judiciary authority shall appoint a lawyer or trainee lawyer, even if beyond their own powers.

**Article 35**  
**Withdrawal in Criminal Proceedings**

- 1 If the public defender, lawyer or trainee lawyer requests to be excused from representation on just grounds, the court shall request the Office of the Public Defender or the Bar Association to issue their opinion, and upon hearing same a decision shall be made.

## TRANSLATION

- 2 The defender appointed for a single act shall be maintained for all subsequent acts in the proceedings, for as long as they are not substituted.
- 3 If the request for excuse is grounded on the safeguard of professional secrecy, the terms of Article 28 shall be followed analogically.
- 4 In the event set forth in the preceding paragraph, the court may appoint another defender, in case of urgency, until such time as the Office of the Public Defender or the Bar Association issues an opinion.

### **Article 36** **Appointment of Legal Representative**

- 1 Whenever defendants appoint their own legal representatives, the appointment of a defender shall terminate.
- 2 Lawyers or trainee lawyers appointed as defenders may not accept the legal representation of the same formal suspect.

## **CHAPTER VI** **Final and Transitional Provisions**

### **Article 37** **Powers in Higher Courts**

In the higher courts, the powers conferred hereunder to the judge responsible for the proceedings shall be carried out by the judge acting as rapporteur.

### **Article 38** **Attorneys' Fees Chart**

The lawyers' and trainee lawyers' fees due for the services provided within the scope of free legal assistance are as provided for in the chart to be approved by means of a joint Ministerial Statute of the Ministry of Justice and the Ministry of Finance.

### **Article 39** **Chart for Assistance with Transportation, Accommodation and Meals**

The allowance for assistance with transportation, accommodation and meals is as provided for in the chart to be approved by means of a joint Ministerial Statute of the Ministry of Justice and the Ministry of Finance.

**Article 40**  
**Payments**

The fees and expenses payable to lawyers and trainee lawyers for the services they provide within the scope of free legal assistance, as well as the allowance for transportation and accommodation, shall be paid by the Justice Treasury through the court that decided on granting legal aid, regardless of legal fees being charged.

**Article 41**  
**Powers of Lawyers**

Such lawyers and trainee lawyers as are members of the Bar Association pursuant to and in accordance with the relevant regulations may be a part of the free legal assistance service.

**Article 42**  
**Powers of the Bar Association**

The powers awarded to the Bar Association pursuant to the terms hereof shall be temporarily exercised by the Lawyers Disciplinary Council, pursuant to and in accordance with the relevant regulations.

**Article 43**  
**Regulations**

Regulations on the legal aid system and its financial regime shall be approved my means of Decree-Law.

**Article 44**  
**Repealing Provision**

All statutory provisions inconsistent with this law are hereby repealed.

**Article 45**  
**Entry into Force**

This statute shall become effective on the day following that of its publication.