



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

Law No /2003

**ESTABLISHMENT OF THE OFFICE OF THE PROVIDOR
DE DIREITOS HUMANOS E JUSTICA**

Taking into account Section 27 of the Constitution, which provides for the Provedor de Direitos Humanos e Justica, an independent organ in charge of examining and seeking to satisfy citizens complaints against public bodies, certifying the conformity of the acts with the law, preventing and initiating whole process to remedy injustice with power to undertake a review, without power of decision, and forwarding recommendations to the competent organs;

Taking into account Section 150 of the Constitution, which provides for the President of the Republic, the Speaker of the National Parliament, the Attorney General, the Prime Minister, one fifth of the Members of the National Parliament and the Provedor de Direitos Humanos e Justica to request a declaration of unconstitutionality of legislative measures;

Further taking into account Section 151 of the Constitution, which provides for the President of the Republic, the Prosecutor-General and the Provedor de Direitos Humanos e Justica to request the Supreme Court of Justice to review the unconstitutionality by omission of any legislative measures as deemed necessary to enable implementation of the Constitution;

Emphasizing the promotion and protection of human rights and freedoms in Timor-Leste, and also the need to establish an effective rule of law in Timor-Leste;

Desiring to create and maintain a lean and effective public administration that is free from corruption and nepotism, and also increase the community's sense of confidence in a just administration;

Further desiring to implement and promote a culture of efficiency, transparency, integrity, responsibility and accountability in Timor Leste's public entities or agencies;

Recalling Timor-Leste's obligation to defend citizens from any abuse of power by public entities,

Further recalling Timor Leste's obligation to observe and comply with customary international law and internationally recognized human rights and good governance standards, as laid down in international ratified Human Rights instruments;

Recalling the United Nations Principles Relating to the Status and Functions of National Institutions for the Promotion and Protection of Human Rights, also referred to as “the Paris Principles”, which provide for a broad mandate granted to independent national institutions;

For the purpose of establishing the Office of the Provedor de Direitos Humanos e Justica;

Under these terms and pursuant to the provisions of 27, 150 and 151 of the Constitution of Timor-Leste, the National Parliament enacts the following text that shall have the force of law:

CHAPTER I: PRELIMINARY

Part 1

Definitions of terms

Section 1: Definitions and Interpretation

For the purposes of the present legislation, the following words and/or expressions shall have the following meaning unless the context otherwise requires:

(a) “*Office of the Provedor de Direitos Humanos e Justica*” means an independent public body that combines the functions of a National Human Rights institution in the areas of human rights and justice, those of an Ombudsman in the area of good governance and public administration, and the functions of an anti-corruption agency.

(b) “*Provedor*” means the person appointed to the Office established by the present Law;

(c) “*Fundamental rights and freedoms*” means the rights and liberties referred to in Part II of the Constitution for Timor-Leste and interpreted in accordance with the Universal Declaration of Human Rights;

(d) “*Human rights*” means the rights embodied in the United Nations instruments on Human Rights, and includes the rights and freedoms set out in Part II of the Constitution for Timor-Leste;

(f) “*International human rights standards*” means the internationally recognized human rights standards outlined under the United Nations instruments;

(g) “*Class actions*” means actions whereby an individual or a group affected by a human rights violation is able to complain not only on his or her own behalf, but also on behalf of others who are similarly affected;

(i) “*Act*” means action, decision, proposal or recommendation made by the entities or agencies referred to in section 3.1. It does not include an act done in the discharge of a judicial or legislative function as specified in Section 3.3;

(j) “*Omission*” means a refusal or a failure to act;

(k) “*Public agencies or entities*” include:

- (i) the governmental departments and agencies, including the legislative and administrative branches of the administration, the judicial branch only to the extent of its administrative

- actions, Timor-Leste Police Service referred to as ‘PNTL,’ and the Defense Force for Timor-Leste referred to as ‘F/FDTL’;
- (ii) the local government administration;
 - (iii) the governmental commissions and agencies;
 - (iv) state-owned companies;
 - (v) companies where the Government owns over 50% of the capital;
 - (vi) any other body as prescribed by law.

(l) “*Public service or function*” refers to a service or function that is normally under the duty and competence of the Government as set out in Section 115 of the Constitution for Timor-Leste, national laws and international instruments but which can be delegated or contracted to a private entity (i.e. provision of water or electricity);

(m) “*Corruption*” refers to the act of offering, giving, receiving, or soliciting anything of value with the aim of deviating the formal and normal duties of a public service meanwhile influencing the action of a public official for satisfaction of one’s private interests; corruption presents itself in different forms such as bribery, conspiracy, nepotism, extortion, embezzlement, fraud and favoritism.

(n) “*Collusion*”

(o) “*Nepotism*”

(p) “*Maladministration*” means

(q) “*Good governance*” means

(r) “*Mediation*” means

(s) “*Conciliation*” means

(t) “*Manifest injustice*” means

(u) “*Organs of sovereignty*” means the President of the Republic, the National Parliament, the Government and the Courts as provided for in section 67 of the Constitution for Timor-Leste.

Part 2 **General Principles**

Section 2: Right of Claim

2.1 All legal and natural persons may file a complaint in the Office of the Provedor de Direitos Humanos e Justica. Complaints may be made individually or collectively including through class actions.

2.2 The Provedor shall examine the complaints and address to the relevant bodies such recommendations, as he or she seems fit to prevent or redeem injustice; the Provedor shall consider the complaints without the power to take decisions but only with the view to addressing recommendations to the relevant bodies, or settling the complaint to the satisfaction of the parties through mediation.

Section 3: Scope of Action

3.1 The Provedor shall exercise his or her functions notably with respect to the activities of the Government, the Police Service and the Prisons Service, the National Defence Force, public or private entities and organizations, regardless of their origin, fulfilling public functions and services or managing public funds or assets.

3.2 The Provedor shall act on all complaints relating, but not limited to acts or omissions which:

- (a) are contrary to law or regulation;
- (b) are unreasonable, unfair, oppressive or discriminatory;
- (c) are inconsistent with the general course of a public entity or agency's functions;
- (d) proceed from mistake of law or an arbitrary ascertainment of facts;
- (e) are otherwise irregular, immoral and devoid of justification.

3.3 The intervention of the Provedor in the activities of the organs of sovereignty performing their executive, legislative and judicial functions shall be limited. The exercise of these activities shall not be subject to the Provedor's control and supervising powers, save insofar as their administrative activity as well as the acts that they perform in supervising the administration, are concerned.

CHAPTER II: ESTABLISHMENT OF THE OFFICE

Part I **Establishment**

Section 4: Office of the Provedor de Direitos Humanos e Justica

4.1 The Office of the Provedor de Direitos Humanos e Justica is hereby established by the promulgation of this Act; it shall set out its own rules of procedure for the effective exercise or performance of its powers, functions and duties. These rules shall be consistent with due process.

4.2 The Provedor de Direitos Humanos e Justica is an institution established to protect and promote the human rights, fundamental freedoms and legitimate interests of natural and legal persons in Timor-Leste, when such rights and freedoms are violated by an act or omission of persons, public entities or private entities and organizations, regardless of their origin, fulfilling public functions and services, or managing public funds or assets.

Section 5: Nature

5.1 Under the terms of the Constitution, the Provedor de Direitos Humanos e Justica operates as an independent statutory body and is not subject to the direction, control or influence of any person or authority.

5.2 In exercising his or her functions, the Provedor de Direitos Humanos e Justica shall act independently of Government, party politics and all other entities and situations which may be in a position to affect its work.

5.3 The Office of the Provedor shall have the power to enter into contracts, to sue and be sued, to acquire, hold and dispose of property, as deemed necessary for and incidental to the performance of its functions.

Section 6: Office location

6.1 The Provedor de Direitos Humanos e Justica shall have its main office in Dili. The Provedor may establish additional sub-offices in Timor-Leste.

6.2 The public shall be granted free access to the offices of the Provedor de Direitos Humanos e Justica.

Part II **Personnel and Funding**

Section 7: Composition of the Office

The Office of the Provedor de Direitos Humanos e Justica shall be composed of the Provedor, Deputy (ies) Provedor, Provedor Officers and other staff members as deemed necessary to provide the Provedor with the necessary technical and administrative support.

Section 8: Deputy (ies) Provedor

8.1 The Provedor shall have the power to appoint one or more Deputies; he or she shall use transparent and objective criteria including integrity, independence, impartiality and adequate qualifications.

8.2 The Deputy (ies) Provedor shall be appointed for a renewable 2-years period; he or she shall take up functions before the President of the National Parliament, and make the following oath (or solemn declaration):

“I swear (solemnly declare) that in carrying out the functions entrusted to me as a Deputy Provedor, I will perform my duties independently and impartially. I will, at all times, act in accordance with the dignity that the performance of my functions requires.

In the performance of my functions, I will seek to promote respect for human rights, good governance and peace.

I will carry out my functions without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

8.3 The Provedor shall be empowered to delegate his or her powers to a Deputy Provedor to discharge the functions of the Office where the Provedor’s duties end or are temporarily discontinued.

Section 9: Other Staff

9.1 The Provedor shall be empowered to perform any act relating to the appointment and to the professional situation of the staff of the Office within the Labor laws and other applicable texts of Timor-Leste; he or she shall also exercise disciplinary powers in relation to the Office.

9.2 The persons appointed to serve in the Office of the Provedor shall give their duty and loyalty to the Provedor and shall not receive instructions from any other source and/or person.

9.3 The Provedor and the persons appointed to serve in the Office of the Provedor shall preserve and aid in preserving the confidentiality of matters that come to their knowledge in the performance of their functions and duties as established by the present Law. Such restrictions shall apply after separation from Office.

Section 10: Adequacy of funding for the Office

10.1 The Office of the Provedor de Direitos Humanos e Justica shall have an annual budget sufficient to meet the needs of the Office, and adequate to maintain the independence, impartiality and efficiency of the Office; budgetary appropriations for the Office shall be automatically and regularly released.

10.2 The budget for the Office of the Provedor de Direitos Humanos shall be prepared, approved and managed in accordance with the provisions of Regulation 2000/20.

10.3 The funds of the Office of the Provedor de Direitos Humanos e Justica shall consist of:

- (a) all budgetary appropriations for the Office;
- (b) all other moneys and funds lawfully received by the Provedor's Office;
- (b) all accumulations of income derived from any such money.

10.4 The Office of the Provedor shall keep proper books of account and other records in relation to the functions or activities of the Office of the Provedor de Direitos Humanos e Justica, and shall prepare in respect of each financial year of the Office a statement of accounts in a form designed to:

- (a) indicate monthly expenditures,
- (b) provide data for up-to-date budget control,
- (b) ensure correct use of the funds of the Office of the Provedor.

10.5 The accounts of the Provedor's Office shall be audited by the Auditor General, and he statements of accounts shall be submitted to the Speaker of the National Parliament.

CHAPTER III: STATUTE

Part I

Terms and Conditions of Appointment of the Provedor

Section 11: Appointment procedure

11.1 The National Parliament shall appoint the Provedor through absolute majority votes of its members.

11.2 The appointment may only fall upon a citizen who fulfils the conditions set out in article 12 of the present Law.

11.3 The National Parliament shall call for candidacies within one month of promulgation of the present Law, or within one (1) month of vacancy of the Provedor's Office.

11.4 When calling for candidacies, the President of the National Parliament shall set up an internal Committee, which shall receive and consider the applications for the Provedor position; the internal Committee shall be comprised of one Deputy from each political party represented in the National Parliament; candidacies shall be open for forty –five days.

11.5 Procedures of the National Parliament internal Committee shall be defined and prescribed by Act of the National Parliament within a month after the entry into force of this Law; the procedure shall be established in accordance with fairness, independence and transparency principles.

Section 12: Criteria for appointment

A person shall not be qualified for appointment as Provedor, unless he or she has:

- (a) sufficient experience, maturity and qualifications in order to investigate and report on human rights violations, corruption and malpractice in the administration;
- (b) proven integrity and is recognized for his or her standing in community as well as his or her high level of independence and impartiality;
- (c) a sound knowledge of the principles of human rights, good governance and public administration.

Section 13: Appointment

13.1 The Provedor shall divulge his assets and any other income before taking up functions.

13.2 The Provedor shall take up functions before the President of the National Parliament, and make the following oath (or solemn declaration):

“I swear (solemnly declare) that in carrying out the functions entrusted to me as a member of the Office of the Provedor, I will perform my duties independently and impartially. I will, at all times, act in accordance with the dignity that the performance of my functions requires.

In the performance of my functions, I will seek to promote respect for human rights, good governance and peace.

I will carry out my functions without discrimination on any ground such as color, race, marital status, gender, ethnic origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.”

Section 14: Incompatibilities attached to the Function

The position of Provedor shall be a full-time position and incompatible with:

- (a) the holding of a representative Office;
- (b) political activities such as an office in a political party or in a public office;
- (c) any remunerated activity or position in a governmental office;
- (d) the management or control of a body corporate, or any other body carrying on business for profit;
- (e) the exercise of leadership or employment in a trade union, association, foundation or religious organization;
- (f) the performance of the duties of a Judge.

Section 15: Privileges and Immunities attached to the function

15.1 The Provedor and Deputy (ies) Provedor shall enjoy such rights, honours, precedence, rank, remuneration and privileges as a Minister and a Vice-Minister respectively.

15.2 Neither the Provedor the Deputy (ies) Provedor nor an employee of the Office of the Provedor de Direitos Humanos e Justica shall be liable to an action, suit or proceedings for or in relation to an act done or omitted in good faith in the exercise or purported exercise of a power or authority conferred by the Constitution to the present Law.

15.3 The Provedor and/or the Deputy (ies) Provedor shall be answerable before the National Parliament for offences committed in the exercise of their functions and for clear and serious violation of their obligations derived from the present Law; for offences not committed in the exercise of their functions, the Provedor and/or the Deputy (ies) Provedor shall also be answerable before the National Parliament, and forfeiture of office shall only occur in case of a sentence of imprisonment.

15.4 It is incumbent upon the National Parliament to initiate the criminal proceedings following a proposal made by one-fifth and deliberation approved by a two-thirds majority of its Members.

15.5 All correspondence addressed or material and information furnished to, obtained and/or collected by the Office of the Provedor and/or its staff shall be immune from any kind of censorship or other interference.

15.6 The premises of the Provedor shall be inviolable. The archives, files, documents, communications, property, funds and assets of the Provedor or in possession of the Provedor, wherever located and by whomever held, shall be inviolable and immune from search, seizure, requisition, confiscation and any other form of interference.

Part II **Tenure of Office**

Section 16: Term of Office

16.1 The Provedor shall be appointed for a period of four years and shall be eligible for appointment to one more term of four years through absolute majority vote in the National Parliament.

16.2 Once appointed, the Provedor shall remain in office until expiration of his or her mandate except where provided for under this Law.

16.3 The mandate of the Provedor is deemed to have expired in the following cases:

- (a) expiration of the term of his or her mandate;
- (b) death;
- (c) resignation;
- (d) proven mental or physical incapacity to carry out his or her duties;
- (e) prison sentence for a criminal offence.

Section 17: Vacancy of the Office

17.1 In the event of removal from office or in the event the position of the Provedor becomes vacant for any reason such as death, resignation, suspension or permanent incapacity, the National Parliament shall, as soon as possible and for such time as it may decide, appoint a Deputy Provedor as interim Provedor. In any event, the National Parliament shall appoint a new Provedor within three (3) months of such vacancy.

17.2 Upon the expiration of the term of office, the Provedor whose term has expired shall continue to exercise his or her functions on an interim basis until a new Provedor is duly appointed.

Section 18: Removal from Office

18.1 Any motion for removal must have the support of a one-fifth majority vote of its Members for submission to the National Parliament. The National Parliament will consider and investigate the matter in accordance with its Rules of Procedure.

18.2 The Provedor can be removed from Office by a two-thirds majority in the National Parliament, on the grounds of:

- (a) acceptance and performance by the Provedor of an office, function or activity that is incompatible with the mandate of the Provedor as set out under Section 14 of the present Law;
- (b) permanent physical or mental incapacity preventing him or her from performing his or her functions,
- (c) proven incompetence;
- (d) acts or omissions in gross contradiction with the terms of his oath.

18.3 The decision of the National Parliament shall be final except that the Provedor has the right of appeal to the Supreme Court in case of lack of due process or breach of natural justice.

Section 19: Suspension from Office

Where criminal proceedings are filed against the Provedor and the latter is charged, the National Parliament shall decide through a two-third (2/3) majority of its Members whether or not to suspend him or her from office.

CHAPTER IV: FUNCTIONS, POWERS AND DUTIES

Part I **Functions**

Section 20: The functions of the Office of the Provedor de Direitos Humanos shall be:

20.1 To Inquire into and Investigate

- (a) alleged or suspected violations or infringements of fundamental human rights and freedoms, abuse of power, maladministration, manifest injustice and lack of due process; and
- (b) alleged or suspected nepotism, collusion and corruption including misappropriation of public funds or other public property;

20.2 To Monitor and Provide Advice

- (a) The Provedor shall monitor the functioning of the Government, its agencies and private entities fulfilling public functions and services in accordance with his or her mandate, and shall submit to the Government, the National Parliament and any other competent body on an advisory basis, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights and good governance.
- (b) The Provedor may request the Supreme Court to review the constitutionality of legislative measures, including unconstitutionality through omission in accordance with Sections 150 and 151 of the Constitution of Timor-Leste.
- (c) The Provedor shall review national legislation, regulations and practices for consistency with customary international law and ratified human rights treaties.
- (d) The Provedor may recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.

20.3 To Promote Human Rights and Good Governance

- (a) The Provedor shall increase general awareness on human rights and good governance, including by making public statements, conducting information campaigns or using other appropriate means to educate the public and disseminate information regarding human rights and good governance practices.
- (b) The Provedor shall make recommendations on the ratification of, or accession to, international human rights instruments, monitor the implementation of the obligations derived from those

instruments, advise the Government on its reporting obligations under international human rights instruments and, where appropriate, recommend the withdrawal of reservations to those instruments.

- (c) The Provedor may contribute to the reports that Timor-Leste is required to submit to United Nations bodies and committees, and to regional institutions and, where necessary, express an opinion.
- (d) The Provedor may seek leave of the court to intervene in legal proceedings in cases that involve matters under his or her competence, including through the submission of amicus curiae briefs.

20.4 To Combat Corruption

- (a) The Provedor shall investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials, and take appropriate steps of remedy instances of corruption, including by forwarding reports resulting from such investigations to the Prosecutor-General.
- (b) The Provedor shall develop activities for strengthening accountability in public administration, and in particular in infrastructure, procurement and public works sectors through ensuring public input and monitoring, and also developing information networks, sectoral strategies and other tools.
- (c) The Provedor shall educate the public on corruption and legal rights of action by such means as the Provedor may decide, including the development and implementation of a strategic annual plan of actions, publications, lectures and symposia.

Part II **Powers and Duties**

Section 22: Powers

For the purpose of performing his or her functions under Section 20, the Provedor de Direitos Humanos e Justica shall have the following powers:

- (a) to receive complaints;
- (b) to investigate and inquire into matters under his or her competence;
- (c) to decide not to take any further action;
- (d) to invite a person to answer questions where it appears that person may have information relevant to the complaint;
- (e) to have access in accordance with the law to any person, premise, document, equipment, good or information in connection with the complaint;
- (f) to visit any place of detention in order to inspect the conditions of detention and conduct a confidential interview of the persons in detention;

- (g) to refer a complaint to a competent jurisdiction or another recourse mechanism;
- (h) to seek leave to appear during proceedings before a Court, a Tribunal, an Arbitrator or an administrative Commission;
- (i) to act as a mediator and a conciliator between the complainant and the agency or entity which is the subject of a complaint, where the parties agree to submit to such a process;
- (j) to make recommendations for redress in complaints brought before him or her, including recommendations on remedies and reparations;
- (k) to provide advice including opinions, proposals and recommendations aimed at improving respect for human rights and good governance by the entities within his or her jurisdiction;
- (l) to report to the National Parliament in relation to the findings of an investigation or in relation to his or her recommendations;
- (m) to maintain confidentiality.

Section 23: Limits of powers

The Provedor de Direitos Humanos e Justiça shall not be empowered:

- (a) to make decisions which determine or dispose of the fundamental human rights, freedoms or legitimate interests of persons; or
- (b) to set aside, revoke or modify the decisions of the agencies or entities affected, or make compensation orders; or
- (c) to investigate the exercise of judicial functions or challenge a decision issued by a Court; or
- (d) to investigate the exercise of legislative functions; or
- (e) to investigate a matter that is subject of an action before a Court, and has not yet been determined.

Section 24: Duties

24.1 To keep the public informed

The Provedor de Direitos Humanos e Justiça shall keep the public informed of the existence and mandate of its Office, and be accessible to any person who wishes to bring an information, lodge a complaint or seek clarification on a matter.

24.2 To maintain the confidentiality

- (a) The Provedor and the persons appointed to serve in the Office of the Provedor shall preserve and aid in preserving the confidentiality of matters that come to their knowledge in the performance of their functions and duties as established by the present Law. Such restrictions shall apply after separation from Office but do not prevent the Provedor from exercising duties under Section 24.4 .
- (b) The provisions of Section 24.1 (a) shall not be so construed that the Provedor or any employee of the Office of the Provedor shall be compelled to produce any book, voucher or other

document or to answer questions in any proceedings in a court of law or before any body or institution established by or under any law, in connection with information which came to his or her knowledge.

24.3 To keep the parties informed

Where the Provedor decides to conduct an investigation under this Law, he or she shall inform:

- (a) the complainant (if any) pursuant to Section 27.4;
- (b) the person alleged to be aggrieved, if not the complainant;
- (c) the person to whom the investigation relates;
- (d) in relation to an investigation relating to a department, the person holding or performing the duties of the Office of Head of the department, of his or her intention to make the investigation.

24.4 To cooperate

- (a) The Provedor shall maintain close liaison with similar institutions, bodies or authorities in order to foster common policies and practices, and to promote cooperation.
- (b) Where the Provedor deems that an effective and adequate judicial or administrative remedy provided by the law is available to the complainant, the Provedor may limit his or her intervention to directing the complainant to the competent authority.
- (c) Where information received by the Provedor gives rise to a belief that a crime has been committed or the commission of a crime is imminent, the Provedor shall refer the case to the Office of the Prosecutor-General and share any information or documents that are in his/her possession or under his or her control.
- (d) If the Provedor so refers the complaint, he or she shall forthwith give notice in writing to the complainant stating that the complaint has been so referred.
- (e) The Provedor shall consult and cooperate with other persons and bodies or organizations concerned with the promotion and protection human rights and justice, the fight against corruption and the protection of vulnerable groups.

24.5 To report

- (a) The Provedor shall report annually to the National Parliament on the performance of its functions.
- (b) Where circumstances so require, the Provedor may decide to address the public directly or through the State owned media press or any other press organ, particularly to publicize his or her opinions and recommendations; the Provedor may also decide to issue 'communiqués' or publish information concerning the conclusions reached in cases or any other matter pertaining to his activity. Any publicity issued by the Provedor shall be balanced, fair and true.

CHAPTER V: COMPLAINTS HANDLING PROCESS

Part I Processes and Procedure

Section 25: Initiative

The Provedor shall act on the basis of a complaint or representation, individual or collective, or on his or her own initiative.

Section 26: Submission of complaints

26.1 Any legal or natural person, or their agent or representative, may complain to the Provedor de Direitos Humanos e Justica about:

- (a) alleged or suspected violations or infringements of human rights and freedoms, abuse of power, maladministration, manifest injustice, lack of due process and discrimination; and
- (b) alleged or suspected nepotism, collusion and corruption including misappropriation of public funds or other public property;
- (a) alleged unconstitutionality, including through omission, of an act of the Government, legislative measures, laws and other legal instruments;
- (b) alleged inconsistency of laws, administrative instructions, policies and practices with customary international law and ratified human rights treaties.

26.2 The National Parliament, its parliamentary committees, as well as its Members may refer to the Provedor petitions or grievances that are submitted to any of the former.

26.3 Complaints shall be made orally or in writing, and shall include the complainant's identity and contact address.

- (a) Where a complaint is made in writing, it shall be signed by the complainant or his or her agent, if he/she is able to sign;
- (b) Where a complaint is made orally, the person to whom the complaint is made shall reduce the complaint to writing or assist the complainant in putting the complaint in writing, and shall append his or her signature and the signature or thumbprint of the complainant.

26.4 Notwithstanding any law to the contrary, where a letter written by:

- (a) a person held in any place of detention; or
- (b) a patient in a hospital or other institution,

is addressed to the Provedor de Direitos Humanos e Justica, it shall be immediately forwarded unopened and unaltered to the Provedor by the person in charge of the place or institution where the writer of the letter is detained or in which he or she is a patient.

26.5 Where a person who may have laid a complaint under this Law has died or is for any reason unable to act for himself or herself, the complaint may be continued by his or her personal representative, or by a member of his or her family, or other individual suitable to represent him or her.

26.6 Complaints can only be submitted in connection with acts or omissions, which were committed after the entry into force of the present Law.

26.7 Complainants shall not be required to pay a fee in respect of the lodgment of a complaint, or in respect of any of the work of the Provedor, nor shall the Provedor receive any compensation from complainants in respect of his or her work.

26.8 Procedures before the Provedor shall be exempted from expenses and stamps.

Section 27: Preliminary Assessment

27.1 The Provedor shall, within 30 days of a complaint being lodged with his or her Office, notify the complainant, in writing, of the receipt of the complaint.

27.2 The Provedor shall, within 30 days of the complaint being lodged with his or her Office, make a preliminary examination of the complaint with a view to deciding upon its admissibility.

27.3 The Provedor may decide not to investigate or investigate further, if:

- (a) the complaint is manifestly made in bad faith, unfounded or patently frivolous or vexatious;
- (b) under the law or existing administrative practice, there is adequate remedy for the complaint, whether or not the complainant has availed himself or herself of it;
- (c) the complaint is not within the mandate of the Provedor;
- (d) the complaint is in connection with acts or omissions that were committed before the present Law came into force;
- (e) the damages caused by the act or omissions have been effectively and adequately redressed;
- (f) having regard to all the circumstances of the case, any further investigation is unnecessary.

27.4 The Provedor shall, within 45 days of a complaint being lodged with his or her Office, notify the complainant, in writing, of his or her decision to investigate or not to take further action on the complaint and the reasons for so deciding.

27.5 Notwithstanding Section 27.3, the Provedor may decide to inquire generally into a matter of his or her own initiative, or re-open the case if within 12 months after the refusal of the Provedor to investigate any complaint, fresh evidence in favor of the complainant becomes available.

Section 28: Mediation and Conciliation

28.1 The Provedor shall be empowered to act as a mediator and a conciliator between the complainant and the agency or entity the subject of a complaint, where both parties agree to submit to such a process.

28.2 The objectives of a conciliation conference are to identify the matters at issue between the parties and to use the best endeavours of the Provedor to secure a settlement between the parties on the matter at issue.

28.3 The objectives of a mediation conference are to facilitate the parties reaching an agreement in settlement of the matter at issue.

28.4 Where one of the parties rejects mediation or conciliation, the Provedor shall conduct a full investigation and make recommendations on the case.

Part II **Investigation**

Section 29: Investigation procedure

29.1 The Provedor shall not investigate:

- (a) a matter which is pending before a Court or judicial tribunal;
- (b) a matter involving the relations or dealings between the Government and any other Government or an international organization;
- (c) a matter relating to the exercise of the prerogative of mercy.

29.2 No writ of injunction shall be issued by any Court to delay an investigation being conducted by the Provedor under this Law, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Provedor de Direitos Humanos e Justica.

29.3 The investigation shall be conducted with due respect of rights and liberties of the persons involved; any investigation under this Law shall be conducted in private and a person who has been invited or required to appear before the Provedor shall be permitted to appear with, or be represented by, a legal representative.

29.4 No person shall be entitled as of right to be heard by the Provedor.

29.5 Where the Provedor decides to conduct an investigation under this Law, he or she shall inform:

- (a) the complainant (if any) pursuant to Section 27.4;
- (b) the person alleged to be aggrieved, if not the complainant;
- (c) the person to whom the investigation relates;
- (d) in relation to an investigation relating to a department, the person holding or performing the duties of the Office of Head of the department, of his or her intention to make the investigation.

29.6 The Provedor shall give the entity or person concerned and to any other person who is alleged in the complaint to have taken or authorized the act or omission complained of, an opportunity to comment on any allegations contained in the complaint, and the representative of the entity or person concerned shall submit his or her comments within such time as the Provedor may specify.

29.7 In conducting investigations, the Provedor shall not be bound by the strict rules of evidence or procedure, but shall act fairly at all times.

Section 30: Investigation related powers

30.1 An investigation shall consist of requests for information, inspections, examinations, inquiries or any other procedures that do not impinge upon the fundamental rights of the citizens.

30.2 Any person, any civil servant, any official of any public entity, any incumbent of any organ both civil and military subject to his or her jurisdiction under the terms of Section 3 above, shall collaborate with the Provedor and provide all information that the latter might request.

30.3 For the purpose of an investigation, the Provedor may, by notice in writing, require a person:

- (a) to appear before him or her, on a date and at the time and place specified in the notice;
- (b) to disclose truthfully, frankly and fully information within his or her knowledge;
- (a) to produce any object or items including documents and records, including electronic data, in his or her possession, custody or control, that the Provedor considers relevant to an investigation;
- (b) to allow the Provedor complete access, inspection and examination in accordance with the law to any premise, document, equipment or good that the Provedor considers relevant to an investigation.

30.4 In the fulfillment of his or her functions under Section 30.3 below, the Provedor may request, in accordance with the law, an Investigating Judge of a competent jurisdiction of Timor-Leste to issue search and seizure warrants to enable relevant authorities to search premises and seize particular items considered relevant to a Provedor's investigation.

30.5 The duty to cooperate shall not prevail where legal restrictions in respect of privileges and duties of confidentiality apply to these entities. If the Prosecutor-General certifies that the disclosure of information would be contrary to the law or the public interest, as such information would

- (a) seriously harm the legitimate commercial interests of any person or body;
- (b) prejudice the security, defence or international relations of the State;
- (c) involve the disclosure of deliberations or decisions of the Cabinet, or of a committee of the Cabinet,

the Provedor cannot require a person to give information concerning the matter, to answer questions concerning the matter or to produce the document, record or item.

30.6 Non-compliance with the duty to cooperate without lawful excuse shall constitute an offence, as provided for in Section 34.1 of the present Law.

30.7 The Provedor may pay to a person who has made a complaint is made and to any other person who attends and furnishes information for the purposes of an investigation under this Law, such amounts in respect of expenses properly incurred having regard to the rates applicable to the Courts.

Part III

Report and Recommendations

Section 31: Report

31.1 The Provedor shall after completing any inquiry or investigation, provide the person who laid the matter before him/her, if any, and the person or entity against whom the complaint, if any, was made with a detailed report on the findings, recommendations and outcome of such inquiry or investigation. The Provedor may make known to other persons findings, points of view, conclusions or recommendations in respect of a matter he/she investigated.

31.2 The Provedor shall, not later than 30 June of each year, submit to the National Parliament, a detailed report of his or her activities, initiatives, statistics on cases and the results obtained during the calendar year ending on the preceding 31 December. The report shall make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise which could be taken to achieve the objectives of the Provedor, prevent or redress human rights violations and respond to the needs of fairness, integrity, accountability, transparency and responsibility in public administration. The report shall be published in the Official Gazette of the Democratic Republic of Timor-Leste or any means accessible to the general public.

31.3 In addition to the annual report contemplated in Section 31.2 above, the Provedor may submit to the National Parliament special reports on cases or matters of a serious nature, if deemed fit and necessary.

31.4 The Provedor may, from time to time, in the public interest or in the interests of any person or entity, publish reports relating generally to the exercise of his or her functions or to any particular cases or situations investigated under this Law.

Section 32: Recommendations

(a) The Provedor shall determine the causes of violation, abuse, mismanagement, fraud and corruption in the public entity, and make recommendations for their correction, prevention and their elimination and the observance of high standards of respect for human rights rule of law, ethics and efficiency.

(b) The Provedor's recommendations shall be addressed to the organ that has the power to correct and redress the irregular act or situation.

(c) The organ to which a recommendation is addressed must, within 60 days, inform the Provedor of the extent to which the recommendation has been acted upon or implemented.

(d) Where the recommendation has not been acted upon or implemented, the Provedor may report such failure to the National Parliament as provided for in Sections 24.5 and 31.3 above.

Article 33: Absence of Appeal

No appeal lies against the recommendations of the Provedor.

Part IV **Offences**

Article 34: General Offences

34.1 It shall be an offence for any person to:

- (a) knowingly hinder the Office of the Provedor in the fulfillment or execution of its powers, obligations and duties under the present Law;
- (b) without reasonable excuse, fail to comply with an order issued by the Provedor to appear and/or answer questions at a specified place, date and time;
- (c) without reasonable excuse, fail to comply with an order issued by the Office of the Provedor to produce any object or item in his or her possession, custody or control;

(d) willfully disclose any confidential information in contravention of the present Law, except in cases provided for in article 24.2.

34.2 Any person who commits any of the acts listed in article 34.1 shall be guilty of an offence and may be liable to a fine not to exceed US 3,000 dollars.

Article 35: Other Offences

35.1 It shall be a serious offence for any person to:

- (a) perform any act aimed at improperly influencing the Office of the Provedor;
- (b) threaten, intimidate or improperly influence any person who has cooperated with the Office of the Provedor or is intending to cooperate with the Office of the Provedor;
- (c) act by malice or gross bad faith while filing a completely unwarranted and false complaint against any government official or employee.

35.2 Any person who commits any of the acts listed in article 35.1 shall be guilty of an offence and may be liable to a fine not to exceed US 3,000 dollars and a term of imprisonment not to exceed one (1) year.

35.3 Any delay or refusal to comply with the request of the Provedor shall constitute ground for administrative disciplinary action against the Officer or employee to whom it was addressed.

Part V **Miscellaneous**

Section 36: Victimization

36.1 No person shall be liable to prosecution for an offence under enactment by reason of his or her compliance with a requirement of the Provedor under this section. Absence from work shall be deemed justified where it stems from the duty to be present before the Provedor.

36.2 No person, or a relative or associate to that person, shall be unfairly treated in their employment or by any other means by reason of his or her cooperation with the Office of the Provedor de Direitos Humanos e Justiça, or by taking any action under or by reference to this Law.

Section 37: Implementation

Any supplementary provisions, necessary to give effect to the provisions of this Law may be specified by Directive.

Section 38: Entry into Force

The present Law shall enter into force upon signature.

Passed on_____ 2003

The Speaker of the National Parliament
Francisco Guterres 'Lu Olo'

Promulgated on_____ 2003
To be published.

The President of the Republic
Jose Alexandre Gusmao 'Kay Rala Xanana Gusmao'