

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

**Law No. 7/2004
Of 26 May 2004**

**APPROVING THE STATUTE
OF THE OFFICE OF THE OMBUDSMAN FOR HUMAN RIGHTS AND JUSTICE**

Taking into account Section 27 of the Constitution, which provides for the Ombudsman for Human Rights and Justice, as an independent organ in charge of examining and seeking to satisfy citizens' complaints against public bodies, and also certifying the conformity of the acts with the law. The Ombudsman for Human Rights and Justice is also in charge of preventing injustices and initiating the entire process to remedy injustices with the competence to undertake, without power of decision, a review of specific cases and forward recommendations to the competent organs;

Taking into account Section 150 of the Constitution, which provides for the Ombudsman for Human Rights and Justice to request a declaration of unconstitutionality of legislative measures;

Further taking into account Section 151 of the Constitution, which provides for the Ombudsman for Human Rights and Justice 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 need to promote and protect human rights and freedoms and guarantees, and also the need to establish an effective rule of law in Timor-Leste;

Desiring to create and maintain an efficient public administration that is free from corruption and nepotism, and also to 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 and agencies;

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

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

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 Ombudsman for Human Rights and Justice;

Pursuant to the provisions of 27, 92, 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

Article 1: Terms and expressions

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

- (a) “*Class action*” means an action whereby an individual lodges a complaint for the purpose of defending his or her own rights, collective interests, the Constitution, the law or public interests;
- (b) “*Act*” means an action, decision, proposal or recommendation made by the entities or agencies referred to in Articles 3.1 and 3.2. It does not include an act done in the discharge of a judicial or legislative function as specified in Article 4;
- (c) “*Good governance*” means the transparent exercise of government powers for the establishment of a fair, efficient and responsible public administration, with respect for the principles of legality and of a democratic State based on the rule-of-law;
- (d) “*Conciliation*” means a process whereby the parties to a dispute, with the assistance of a neutral third person called a ‘conciliator’, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator has an advisory role, giving expert advice on the determination of the issue in dispute and the likely settlement terms and actively encouraging the participants to reach an agreement;
- (e) “*Collusion*” means a secret agreement or cooperation, wilful and conscious, made for an illegal purpose;
- (f) “*Corruption*” refers to the act of offering, giving, receiving, or soliciting anything of value with the aim of deviating the legal procedures of a public service meanwhile influencing the action of a public official for satisfaction of one’s private interests, including those of friends and family members; corruption presents itself in different forms such as bribery, conspiracy, nepotism, extortion, embezzlement, fraud and favouritism;
- (g) “*Fundamental human rights and freedoms*” means the rights, freedoms and guarantees referred to in Part II of the Constitution of Timor-Leste and the rights embodied in the United Nations instruments on Human Rights, all interpreted in accordance with the Universal Declaration of Human Rights;
- (h) “*Maladministration*” means acts and omissions outside the powers conferred, made on the basis of irrelevant considerations, mistake of facts and law or lack of due process, and which disrupt or undermine the effective and proper functioning of the public administration;

(i) “*Mediation*” means a process whereby a neutral third person called a ‘mediator’ acts to facilitate the resolution of a dispute between two or more parties. This informal and non-adversarial process may be undertaken voluntarily, under a Court order, or subject to an existing contractual agreement, and is for the purpose of helping the disputing parties reach a mutually acceptable and voluntary agreement. The mediator has no formal advisory or determinative role in regard to the content of the dispute or the outcome of its resolution but may advise on or determine the issue in dispute and assist in exploring settlement alternatives. The decision-making authority rests with the parties.

(j) “*Nepotism*” means favouritism based on kinship or any other personal relationship;

(l) “*Omission*” means a refusal or a failure to act where such duty lawfully **exists**;

(m) “*International Organisation*” means an institution formed by way of a formal agreement among States and comprised of standing bodies that act with autonomy in relation to the Member States for the pursuit of common interests; it includes the United Nations;

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

- (i) the departments of State and the governmental agencies, including the legislative and administrative branches of the State, the judicial branch only to the extent of its administrative actions, the National Police of Timor-Leste referred to as ‘PNTL’, and the Falintil-Defence Force of Timor-Leste referred to as ‘F-FDTL’;
- (ii) the local government administration;
- (iii) the governmental committees 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;

(o) “*Public service or function*” refers to a service or function that is normally under the responsibility or competence of the Government as set out in Article 115 of the Constitution of Timor-Leste, national laws and international instruments but which can be delegated or contracted to a private entity;

(p) “*Influence Peddling*” refers to the practice of soliciting, demanding, charging or accepting, for one’s benefit or that of a third person, by oneself or through an intermediary, and with one’s consent or endorsement, an advantage or promise of advantage, in the form of property or otherwise, to abuse one’s influence, real or presumed, with the aim of illegally obtaining from any public entity a order, competitive bid award, contract, job, allowance, subsidy, benefit or any other favourable decision.

Part 2 General Principles

Article 2 Right of Claim

1. All legal and natural persons may lodge a complaint with the Office of the Ombudsman for Human Rights and Justice.
2. Complaints may be made individually or collectively, including through class actions.

3. Disputes that are the object of a complaint may be settled to the satisfaction of the parties through mediation or conciliation.

Article 3 Scope of Action

1. The Ombudsman for Human Rights and Justice shall exercise his or her functions within the scope of action of public entities, notably the Government, the PNTL, the Prison Service, and the F-FDTL.

2. The action of the Ombudsman for Human Rights and Justice may also focus on the activities of public or private entities and agencies that, regardless of their origin, fulfil public functions and services or manage public funds or assets.

3. The Office shall, subject to Article 37.3, investigate all complaints relating, but not limited to acts or omissions which:

- (a) are contrary to the 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, erroneous or mistaken ascertainment of facts;
- (e) are otherwise irregular and devoid of justification.

Article 4 Limits of action

1. The activities of the National Parliament and the Courts performing their legislative and judicial functions shall not be subject to the investigative and supervising powers of the Ombudsman for Human Rights and Justice's, save insofar as their administrative activity as well as the acts that they perform in supervising the administration, are concerned.

2. The Ombudsman for Human Rights and Justice may however review the constitutionality of legislative measures in accordance with Sections 150 and 151 of the Constitution of Timor-Leste.

CHAPTER II Office of the Ombudsman for Human Rights and Justice

Part I Preliminary provisions

Article 5 Nature

1. The Office shall operate as an independent statutory body and shall not be subject to the direction, control or influence of any person or authority.

2. The Office shall have the power to review complaints, conduct investigations and forward to the competent organs the recommendations deemed appropriate to prevent or redress illegality or injustice.

3. The purpose of the Office of the Ombudsman for Human Rights and Justice, hereinafter referred to as “the Office”, is to combat corruption and influence peddling, prevent maladministration and protect and promote human rights and fundamental freedoms of natural and legal persons throughout the national territory.

4. The Office shall provide the technical and administrative support for the discharge of the duties of the Ombudsman for Human Rights and Justice and for the exercise of his or her functions with independence in relation to the Government and the other organs of sovereignty, political parties and all other entities and authorities that might affect his or her work.

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

Article 6 Rules of procedure

1. The Office shall be governed by the present law and the rules of procedure necessary for the effective performance of its functions and for the exercise of its powers and duties.

2. The rules of procedure shall be fair and equitable.

Article 7 Office location

The Office shall have its main location in Dili and sub-offices may be established in other parts of Timor-Leste.

Article 7 Scope

1 All legal and natural persons in Timor-Leste may benefit from the services provided by the Office.

2 The Ombudsman for Human Rights and Justice shall ensure that the most vulnerable and disadvantaged persons such as detainees, women, children and minority groups, including persons in special needs such as culture, language and health, and those with disabilities are able to benefit from the services provided by the Office.

7.3 The services of the Office shall be rendered free of charge.

Part II
Staffing table

Article 9
Composition

The Office shall be composed of the Ombudsman for Human Rights and Justice, Deputy Ombudsmen, a Chief of Staff, Officers and other staff members as deemed necessary to provide the Office with the necessary technical and administrative support.

Article 10
Status of Personnel

1. The Ombudsman for Human Rights and Justice shall be empowered to perform any act relating to the appointment and to the professional situation of the staff of the Office in accordance with the Civil Service Act, with the necessary adaptations, and other laws applicable in Timor-Leste, and to exercise disciplinary powers in relation to such staff.
2. The staff of the Office shall be appointed on the basis of their qualifications and taking into consideration the gender balance and ethnic and religious representativeness within the Office.
3. All positions in the Office shall be incompatible with a remunerated activity in a private company or body, or any employment as a civil servant under the Civil Service Act of Timor-Leste.
4. The employees of the Office shall always act in accordance with the laws of Timor-Leste and shall give their duty and loyalty to the Ombudsman for Human Rights and Justice.
5. The employees of the Office shall not receive instructions from any other entity, unless such entity has been delegated powers by the Ombudsman for Human Rights and Justice for that purpose.
6. The Ombudsman for Human Rights and Justice and the employees of the Office shall act on the duty of confidentiality, under the present law, in relation to all matters that come to their knowledge in the performance of their functions and duties.
7. The duty of confidentiality shall be owed after separation from Office.

Part III
Funding

Article 11
Adequacy of funding for the Office

1. The Office shall have an annual budget sufficient to ensure its operation, and adequate to maintain its independence, impartiality and efficiency. Such budget shall be appropriated in accordance with the law.
2. The budget for the Office shall be prepared, approved and managed in accordance with the law.

3. The funds of the Office shall consist of all budgetary appropriations for the Office and all other funds lawfully received by the Office.
4. The Office shall not receive funds from a source and in circumstances that could compromise its independence and integrity and any investigation.
5. The Office shall keep proper books of account and other records in relation to its functions or activities, and shall be accountable under the law.
6. The Office's statements of accounts shall also be submitted to the National Parliament, and may be audited by the High Administrative, Tax and Audit Court or shall, pending the creation of the latter, be subject to independent external auditing.

CHAPTER III STATUTE

Part I Appointment of the Ombudsman for Human Rights and Justice

Article 12 Appointment procedure

1. The National Parliament shall appoint the Ombudsman for Human Rights and Justice through absolute majority votes of its members on active duty.
2. The appointment may only fall upon a citizen who fulfils the conditions set out in subarticle 3 below.
3. The National Parliament shall publicly call for candidacies within one (1) month of promulgation of the present law, or within one (1) month of vacation of the position of Ombudsman for Human Rights and Justice.
4. The National Parliament shall consider all the candidacies, in a plenary session, and shall alternately take a vote on each of the candidacies.
5. The National Parliament may call for candidacies before the timeframe set out in subarticle 3 above but the appointment process shall be completed within the timeframe stipulated under the present law.

Article 13 Eligibility requirements

A person shall not be qualified for appointment as Ombudsman for Human Rights and Justice, unless he or she has:

- (a) sufficient experience and qualifications in order to investigate and report on human rights violations, corruption, influence peddling, and malpractice in the administration;
- (b) proven integrity;

(c) a sound knowledge of the principles of human rights, good governance and public administration.

2. A person applying for the position of Ombudsman for Human Rights and Justice shall also be recognized for his or her standing in community, as well as his or her high level of independence and impartiality.

Article 14 Declaration of income

The Ombudsman for Human Rights and Justice shall forward to the National Parliament a declaration enumerating all his or her assets and any other income earned before taking up functions. Such declaration shall be confidentially kept by the Speaker of the National Parliament.

Article 15 Taking-up of functions

13.2 The Ombudsman for Human Rights and Justice shall take up functions before the Speaker of the National Parliament, and make the following oath or solemn declaration:

“I swear (or solemnly declare) that in carrying out the functions entrusted to me as Ombudsman for Human Rights and Justice, I will perform my duties independently and impartially.

I will, at all times, act in accordance with the dignity and the integrity that the performance of my functions requires.

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

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

2. The Ombudsman for Human Rights and Justice may delegate his or her powers in part.

Article 16 Deputy Ombudsmen

1. The Ombudsman for Human Rights and Justice may appoint two (2) or more Deputies.
2. The Deputy Ombudsmen shall be appointed on the basis of transparent and objective criteria, giving consideration, notably, to their integrity, independence, impartiality and qualifications.
3. The Deputy Ombudsmen shall be appointed for a renewable four (4) years period.
4. The term of office of the Deputy Ombudsmen shall cease with the end of the term of office of the Ombudsman for Human Rights and Justice, under Article 19.5.
5. The Deputy Ombudsmen shall take up functions before the Speaker of the National Parliament, and shall make the following oath or solemn declaration:

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

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

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

6. The Deputy Ombudsmen shall be removed from office by the Ombudsman for Human Rights and Justice.

Article 17 **Incompatibilities attached to the function**

1. The position of Ombudsman for Human Rights and Justice and Deputy Ombudsman shall be full-time positions and incompatible with:

- (a) the holding of a representative office or the exercise of functions in any other constitutional organ;
- (b) political activities such as an office in a political party or in a public office;
- (c) any remunerated activity or position in any other body;
- (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, Prosecutor-General, Defender or Prosecutor;
- (g) the exercise of functions in any entity under the scope of action of the Ombudsman for Human Rights and Justice.

2. The Ombudsman for Human Rights and Justice must cease any of the above activities within fifteen (15) days before taking up functions.

Article 18 **Privileges and Immunities attached to the function**

1. The Ombudsman for Human Rights and Justice and the Deputy Ombudsmen shall enjoy such rights, honours, precedence, rank, remuneration and privileges as the Prosecutor-General and the Deputy Prosecutor-General, respectively.

2. Neither the Ombudsman for Human Rights and Justice nor the Deputy Ombudsmen shall be civilly or criminally liable for any act done or omitted, observation made or opinion issued, in good faith in the exercise of their functions.

3. The Ombudsman for Human Rights and Justice and the Deputy Ombudsmen 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 arising from the present law.
4. The National Parliament shall decide on the lifting of the immunities of the Ombudsman for Human Rights and Justice or of the Deputy Ombudsmen in case of an offence committed in the exercise of their functions.
5. The National Parliament shall remit to the Prosecutor-General any criminal offence committed by the Ombudsman for Human Rights and Justice or by the Deputy Ombudsmen outside the exercise of their functions.
6. All correspondence addressed or material and information furnished to, obtained or collected by the Ombudsman for Human Rights and Justice or his or her staff shall be immune from any kind of censorship or other interference.
7. The premises of the Office shall be inviolable. The archives, files, documents, communications, property, funds and assets of the Office or in possession of the Ombudsman for Human Rights and Justice, wherever located and by whomever held, shall be inviolable and immune from search, seizure, requisition, confiscation or any other form of interference.

Part II Tenure of Office

Article 19 Term of office

1. The Ombudsman for Human Rights and Justice shall be elected for a period of four (4) years and may seek re-election only once, for an equal period of time.
2. The Ombudsman for Human Rights and Justice shall inform in writing the Speaker of the National Parliament, no less than three (3) months before the expiration of his or her term of office, of his or her decision to apply for a second mandate.
3. A vote, under the terms of Article 12.3, shall be called for within thirty (30) days of the expiration of the term of office of the Ombudsman for Human Rights and Justice.
4. Once appointed, the Ombudsman for Human Rights and Justice shall remain in office until expiration of his or her mandate except in the cases provided for in subarticle 5 below.
5. The mandate of the Ombudsman for Human Rights and Justice is deemed to have expired in the following cases:
 - (a) expiration of the term of his or her mandate;
 - (b) death;
 - (c) resignation;
 - (d) mental or physical incapacity to carry out his or her duties, attested by a medical panel;
 - (e) final conviction for a criminal offence that carries a prison sentence exceeding one (1) year;
 - (f) final conviction for a criminal offence punished by actual imprisonment;
 - (g) removal from office under the terms of Article 21.

6. For the purposes of the preceding subarticle, the medical panel shall be composed of three practitioners from a public hospital, who may be assisted by specialists practising medicine outside the public sector.

Article 20 Vacation of office

1. In the event of vacation of office for any reason other than expiration of the term of office or in the event the Ombudsman for Human Rights and Justice is suspended from office under the terms of Article 22, the National Parliament shall, as soon as possible and for such time as it may decide, appoint a Deputy Ombudsman as interim Ombudsman for Human Rights and Justice.

2. In any event, the National Parliament shall appoint a new Ombudsman for Human Rights and Justice within two (2) months of such vacation.

Article 21 Removal from Office

1. The Ombudsman for Human Rights and Justice can be removed from office by a two-third (2/3) majority in the National Parliament, on the grounds of:

- (a) acceptance and performance by the Ombudsman for Human Rights and Justice of an office, function or activity that is incompatible with his or her mandate, as set out under Article 17 above;
- (b) permanent physical or mental incapacity preventing him or her from performing his or her functions, attested by a medical panel under the terms of Article 19.6
- (c) incompetence;
- (d) Definite conviction for a criminal offence that carries a prison sentence of less than one year;
- (e) acts or omissions in contradiction with the terms of his or her oath.

2. Any motion for the removal from office of the Ombudsman for Human Rights and Justice must have the support of one-fifth (1/5) of the Members of Parliament;

3. The National Parliament shall set up an ad hoc enquiry committee to review and investigate the matter that is the object of the motion for removal.

4. The findings of the ad hoc enquiry committee provided for in the preceding subarticle shall, as soon as possible, be reported to the Ombudsman for Human Rights and Justice, who has the right of appeal to the Plenary. Such appeal shall be dealt with in a plenary session specifically scheduled to take a vote on the removal.

5. The findings of the ad hoc enquiry committee shall not be voted on until the appeal lodged has been reviewed and the Ombudsman for Human Rights and Justice heard.

Article 22
Suspension from office

Where the Ombudsman for Human Rights and Justice is indicted for an offence that carries a penalty exceeding one (1) year's imprisonment, 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
COMPETENCIES, POWERS AND DUTIES

Part I
Competencies

Article 23
Investigation

The Ombudsman for Human Rights and Justice shall be empowered to investigate violations of fundamental human rights, freedoms and guarantees, abuse of power, maladministration, illegality, manifest injustice and lack of due process, as well as instances of nepotism, collusion, influence peddling and corruption.

Article 24
Monitoring and Advice

The Ombudsman for Human Rights and Justice shall, within the scope of his or her monitoring powers, be empowered to:

- (a) oversee the functioning of public authorities, notably the Government, its agencies and private entities fulfilling public functions and services and may conduct inquiries into systematic or widespread violations of human rights, maladministration or corruption;
- (b) submit to the Government, the National Parliament or 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;
- (c) request the Supreme Court to declare the unconstitutionality of legislative measures, including unconstitutionality through omission in accordance with Sections 150 and 151 of the Constitution of Timor-Leste;
- (d) monitor and review regulations, administrative instructions, policies and practices in force or any draft legislation for consistency with customary international law and ratified human rights treaties;
- (e) recommend the adoption of new legislation, and propose the amendment of legislation in force and the adoption or amendment of administrative measures.

Article 25
Promotion of human rights and good governance

1. The Ombudsman for Human Rights and Justice shall, within the scope of his or her action to promote human rights and good governance, be empowered to:

- (a) promote a culture of respect for human rights, good governance and fight against corruption, notably by making public statements, conducting information campaigns or by other appropriate means to inform the general public and public administration, and disseminate information regarding human rights, good governance and fight against corruption;
- (b) make recommendations on the ratification of, or accession to, international human rights instruments, monitor the implementation of those instruments, and recommend that reservations to those instruments be either withdrawn or raised.

2. The Ombudsman for Human Rights and Justice may also:

- (a) advise the Government on its reporting obligations within the framework of international human rights instruments;
- (b) contribute to the reports that Timor-Leste is required to submit to United Nations bodies and committees, and to regional institutions;
- (c) express an independent opinion on the Government's reports.

3. The Ombudsman for Human Rights and Justice may seek leave of the Court to intervene in legal proceedings in cases that involve matters under his or her competence, notably through the expression of opinions.

Article 26 **Fight against corruption**

1. The Ombudsman for Human Rights and Justice shall, within the scope of the fight against corruption, be empowered to:

- (a) investigate all instances of corruption and the misappropriation of public assets by officials, and take measures to combat corruption, notably by forwarding reports resulting from such investigations to the Prosecutor-General;
- (b) develop activities for strengthening responsibility and accountability in public administration, and in particular in infrastructure, procurement and public works sectors through ensuring and promoting public input and monitoring, and also developing information networks, sectoral strategies and any other appropriate tools;
- (c) promote awareness campaigns by divulging anti-corruption practices and principles, and legal rights of action, notably through the development and implementation of a strategic annual plan of actions, publications, lectures and symposia.

Article 27 **Fight against influence peddling**

The Ombudsman for Human Rights and Justice shall, within the scope of fight against influence peddling, be empowered:

- (a) to investigate the legality of administrative acts or procedures within the scope of relations between public administration and private entities;
- (b) to monitor the legality and correction of administrative acts involving property interests, notably the award of public works contracts and contracts for the supply of goods or services, procurement and disposal of property assets or payment of compensations, import or export of goods and services, granting or refusal of credits and debt forgiveness;

- (c) to propose to the National Parliament and the Government the adoption of legislative or administrative measures for improving the functioning of services and respect for administrative legality, namely for the elimination of factors favouring or facilitating unlawful or unethical practices.

Part II Powers

Article 28 Scope

For the purpose of performing his or her functions under Articles 23 to 27, the Ombudsman for Human Rights and Justice 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 on, or dismiss, complaints brought before him or her, pursuant to Article 37.3 below;
- (d) to order a person to appear before him or her or at another place deemed more appropriate where it appears that person may have information relevant to an investigation initiated or to be initiated;
- (e) to have access to any facilities, premises, documents, equipment, goods or information for inspection and interrogate any person to whom the complaint relates somehow;
- (f) to visit any place of detention, treatment or care in order to inspect the conditions therein 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 of the National Parliament to appear before a court, arbitration tribunal or an administrative enquiry commission;
- (i) to act as a mediator or 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, notably by proposing remedies and reparations;
- (l) to provide advice including opinions, proposals and recommendations for the purpose of improving respect for human rights and good governance by the entities within his or her jurisdiction;
- (m) to report to the National Parliament in relation to the findings of an investigation or in relation to his or her recommendations.

Article 29 Limits of powers

The Ombudsman for Human Rights and Justice shall not be empowered:

- (a) to make decisions which dispose of fundamental human rights or freedoms;
- (b) to set aside, revoke or modify the decisions of the agencies or entities affected, or make compensation orders;
- (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, except through the means of monitoring constitutionality under the Sections 150 and 151 of the Constitution of Timor-Leste;
- (e) to investigate a matter that is already subject of an action before a Court, and has not yet been determined.

Article 30
Duty to keep the public informed

The Ombudsman for Human Rights and Justice shall keep the public informed of the activity and mandate of its Office, and be accessible to any person who wishes to bring information, lodge a complaint or seek clarification on a matter.

Article 31
Duty to maintain confidentiality

1. Records and information collected by the Office shall be confidential throughout the investigation;
2. Records and information shall be kept confidential after the completion of the investigation where required to protect the privacy of persons, minors in particular, or in other cases where the Ombudsman for Human Rights and Justice considers the protection of privacy is necessary.
3. The Ombudsman for Human Rights and Justice and the employees of the Office 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.
4. The duty to maintain confidentiality shall apply after separation from Office but does not prevent the Ombudsman for Human Rights and Justice from exercising duties under Article 33.4.
5. The provisions of the preceding subarticle shall not be so construed that the Ombudsman for Human Rights and Justice or any employee of the Office 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 in connection with information which came to his or her knowledge.

Article 32
Duty to keep the parties informed

Where the Ombudsman for Human Rights and Justice decides to conduct an investigation under this law, he or she shall inform:

- (a) the complainant, pursuant to Article 37.4;
- (b) the aggrieved person;
- (c) the person to whom the investigation relates;
- (d) the head of department, in relation to an investigation relating to a public entity or agency.

Article 33
Duty to cooperate with other entities

1. The Ombudsman for Human Rights and Justice shall maintain close liaison with similar institutions, bodies or authorities from within Timor-Leste in order to foster common policies and practices, and to promote cooperation.
2. The Ombudsman for Human Rights and Justice shall also cooperate with the Office of the Prosecutor-General where the latter, following a request by the National Parliament, undertakes an investigation into the acts or omissions of the Ombudsman for Human Rights and Justice.
3. Where the Ombudsman for Human Rights and Justice deems that an effective and adequate judicial or gratuitous remedy is available to the complainant, the Ombudsman for Human Rights and Justice may limit his or her intervention to directing the complainant to the competent authority.
4. Where information received by the Ombudsman for Human Rights and Justice gives rise to a belief that a crime has been committed or the commission of a crime is imminent, the Ombudsman for Human Rights and Justice may refer the case to the Office of the Prosecutor-General and share any information or documents in his or her possession, which may contribute to uncovering the truth.
5. If the Ombudsman for Human Rights and Justice so refers the complaint, he or she shall forthwith give notice in writing to the complainant stating that the complaint has been so referred.
6. The Ombudsman for Human Rights and Justice shall maintain close contact, consult and cooperate with other persons and bodies or organizations concerned with the promotion and protection of human rights and justice, the fight against corruption and influence peddling, and the protection of vulnerable groups.

Article 34
Duty to report

1. The Ombudsman for Human Rights and Justice shall report annually to the National Parliament on the performance of his or her functions.
2. Where circumstances so require, the Ombudsman for Human Rights and Justice may decide to address the public directly or to issue communiqués or publish information on his or her opinions, recommendations and reports on specific cases or on his or her activity.
3. Any publicity issued by the Ombudsman for Human Rights and Justice shall be balanced, fair and true.

CHAPTER V COMPLAINTS HANDLING PROCESS

Part I Processes and Procedure

Article 35 Initiative

The Ombudsman for Human Rights and Justice shall act on the basis of a complaint or representation, individual or collective, or on his or her own initiative.

Article 36 Lodgement of complaints

1. Any natural or legal person may, directly or through their representative, address complaints to the Ombudsman for Human Rights and Justice about violations and infringements as set out in Articles 23 to 27 of the present law.
2. Complaints shall be made orally or in writing, and shall include the complainant's identity and contact address.
3. Where a complaint is made in writing, it shall be signed by the complainant, if he or she is able to sign, or his or her legal representative or agent.
4. Where a complaint is made orally, it shall be reduced to writing and signed by the person to whom the complaint is made and by the complainant, if he or she is able to sign; where the complainant is not able to sign, his or her fingerprint shall be taken.
5. Except as otherwise provided, where a letter written by a person held in any place of detention or a patient in a hospital or other institution is addressed to the Ombudsman for Human Rights and Justice, it shall be immediately forwarded in a sealed envelop, unopened and unaltered 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.
6. 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 a member of his or her family, by his or her legal representative or other individual suitable to represent him or her.
7. Complaints can only be lodged in connection with acts or omissions, which were committed after the entry into force of the present law.
8. Complainants shall not be required to pay a fee, compensation, tax or charge in respect of the lodgement of a complaint, or in respect of the handling of such complaint or services provided by the Office.

Article 37
Preliminary Assessment

1. The Ombudsman for Human Rights and Justice shall, within ten (10) days of a complaint being lodged with his or her Office, notify the complainant, in writing, of the receipt of the complaint.
2. The Ombudsman for Human Rights and Justice shall, within thirty (30) days of the complaint being lodged with his or her Office, make a preliminary assessment of the complaint with a view to deciding whether to take action or not on the complaint.
3. The Ombudsman for Human Rights and Justice may decide to dismiss the complaint or not to take further action where:
 - (a) the complaint is anonymous;
 - (b) the complaint is made in bad faith, unfounded or patently frivolous or vexatious;
 - (c) 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;
 - (d) the complaint is not within the mandate of the Ombudsman for Human Rights and Justice;
 - (e) the complaint is in connection with acts or omissions that were committed before the present law came into force;
 - (f) the complaint was lodged after the period provided in the present law;
 - (g) the complaint has been manifestly delayed too long to justify an investigation;
 - (h) the alleged damage has been effectively and adequately redressed;
 - (i) the matter or substantially the same matter has already been addressed, or is currently being addressed by the Ombudsman for Human Rights and Justice or another competent organ;
 - (j) having regard to all the circumstances of the case, any further investigation is unnecessary.
4. The Ombudsman for Human Rights and Justice shall, within forty-five (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 or to dismiss the complaint.
5. The decision not to take further action on, or to dismiss, the complaint or to proceed with investigations shall be substantiated.
6. Without prejudice to subarticle 3 above, the Ombudsman for Human Rights and Justice may, on his or her own initiative, decide to investigate the matter that is the object of a complaint.
7. The Ombudsman for Human Rights and Justice may re-open the case if, within one (1) year after he or she has dismissed the complaint or decided not to take further action on it, fresh evidence in favour of the complainant becomes available.

Article 38
Mediation and Conciliation

1. The Ombudsman for Human Rights and Justice may act as a mediator and a conciliator in a dispute between the complainant and the entity or agency the subject of a complaint, where both parties agree to submit to such a process.
2. Where one of the parties rejects mediation or conciliation, the Ombudsman for Human Rights and Justice shall conduct a full investigation and make recommendations on the case.

Part II
Investigation

Article 39
Self-incrimination

Except for the purposes described in Articles 48 and 49, no statement made in the course of an investigation conducted by the Ombudsman for Human Rights and Justice or in any other proceedings being conducted by the latter shall be admissible as evidence in court, enquiry or any other procedure, nor shall such a statement be used against the person who made it.

Article 40
Victimisation

1. No person shall be liable to prosecution for an offence committed by reason of his or her compliance with a requirement of the Ombudsman for Human Rights and Justice under this law.
2. Absence from work shall be deemed justified where it stems from the duty to appear before the Ombudsman for Human Rights and Justice.
3. No person, or a relative or associate to that person, shall be unfairly treated in their employment or be discriminated against by any other means by reason of his or her lodging a complaint, his or her cooperation with the Ombudsman for Human Rights and Justice, or by reason of his or her taking any action under this law.

Article 41
Investigation procedure

1. The investigation shall be conducted with due respect of the rights and liberties of the persons involved.
2. Any investigation under this law shall be conducted in private.
3. A person who has been required to appear before the Ombudsman for Human Rights and Justice shall be permitted to appear with, or be represented by, a legal representative with the leave of the Ombudsman for Human Rights and Justice.
4. The Ombudsman for Human Rights and Justice may hear the entities or persons concerned.
5. The Ombudsman for Human Rights and Justice may also hear the person(s) the subject of a complaint, allowing him or her, or his or her representative, to provide the necessary clarifications and answer the allegations made against him or her in the complaint, within a reasonable deadline as determined by the Ombudsman.
6. In conducting investigations, the Ombudsman for Human Rights and Justice shall not be bound by the rules of civil and criminal procedure and evidence, but shall act objectively and fairly at all times.

Article 42
Investigation-related powers

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 legal and natural persons.
2. The Ombudsman for Human Rights and Justice shall not investigate:
 - (a) a matter which is already pending before a Court;
 - (b) a matter involving the relations or dealings between the Government and any other Government or an international organisation;
 - (c) a matter relating to the grant of pardons or commutation of sentences, as per Section 85 (i) of the Constitution of Timor-Leste.
3. Where he or she considers relevant to an investigation, the Ombudsman for Human Rights and Justice 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;
 - (c) to produce any object or item including documents and records, namely electronic data, in his or her possession, custody or control;
 - (d) to allow the Ombudsman for Human Rights and Justice complete access, inspection and examination to any premise, document, equipment or asset.
4. In the exercise of his or her competencies under Articles 23 to 27 above, the Ombudsman for Human Rights and Justice or any delegated employee of the Office may request, in accordance with the law, a Prosecutor to obtain search and seizure warrants to enable the Ombudsman or a delegated employee, in conjunction with the PNTL, to search premises and seize particular items considered relevant to an investigation conducted by the Office.

Article 43
Duty of non-interference

The Courts shall not arbitrarily interfere with, nor shall issue any writ of injunction to delay, an investigation being conducted by the Ombudsman for Human Rights and Justice, unless there is prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman for Human Rights and Justice or if there is mala fide or conflict of interest.

Article 44
Duty to cooperate

1. Any person, including any civil servant, any administrative official or any incumbent of any organ both civil and military, shall cooperate with the Ombudsman for Human Rights and Justice and provide all information that the latter might request while performing his or her functions.
2. The duty to cooperate shall not prevail where legal restrictions in respect of privileges, immunities and duty of confidentiality apply to these entities.

3. Non-compliance with the duty to cooperate without lawful excuse shall constitute an offence, as provided for in Article 48.1 of the present law.
4. The Ombudsman for Human Rights and Justice shall establish in the Rules of Procedure of the Office the conditions under which he or she may pay to a person who has cooperated with the Office in an investigation, such amounts in respect of expenses properly incurred having regard to the rates applicable to the Courts.

Part III Reporting and Recommendations

Article 45 Final investigation report

1. The Ombudsman for Human Rights and Justice shall, after completing any investigation and before publishing a report, provide the complainant and the person or entity against whom the complaint was made with a draft report on the findings of such investigation and his or her points of view, conclusions and recommendations.
2. The parties to the complaint shall provide their comments within fifteen (15) days after receiving the draft report.
3. The Ombudsman for Human Rights and Justice may make known to other persons findings, points of view, conclusions or recommendations in respect of a matter he or she investigated.

Article 46 Progress Report

1. The Ombudsman for Human Rights and Justice 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.
2. The report shall make recommendations concerning reforms and other measures, whether legal, political or administrative, which could be taken to achieve the objectives of the Office, prevent or redress human rights violations and promote fairness, integrity, transparency, responsibility and accountability in public administration.
3. The annual report shall be published through any means accessible to the general public.
4. The Ombudsman for Human Rights and Justice may submit to the National Parliament special reports on cases or matters of a serious nature, if deemed fit or necessary.
5. The Ombudsman for Human Rights and Justice may, from time to time, in the public interest or in the interest of any person or entity, publish reports on the exercise of his or her functions or on any particular cases or situations investigated under this law.

Article 47
Recommendations

1. The Ombudsman for Human Rights and Justice shall determine the causes of human rights violations, abuse, mismanagement, fraud, corruption and influence peddling in a public entity, and make recommendations for their correction, prevention or elimination and the observance of the highest standards of respect for human rights, rule of law, ethics and efficiency.
2. The recommendations made by the Ombudsman for Human Rights and Justice shall be addressed to the organ that has the power to correct or redress the irregular act or situation.
3. The organ to which a recommendation is addressed must, within sixty (60) days, inform the Ombudsman for Human Rights and Justice of the extent to which the recommendation has been acted upon or implemented.
4. Where the recommendation has not been acted upon or implemented, the Ombudsman for Human Rights and Justice may report such failure to the National Parliament as provided for in Articles 34 and 46 above.

Part IV
Offences

Article 48
General Offences

1. It shall be an offence for any person to:
 - (a) without reasonable excuse, fail to comply with an order issued by the Ombudsman for Human Rights and Justice to appear or answer questions at a specified place, date and time;
 - (b) without reasonable excuse, fail to comply with an order issued by the Ombudsman for Human Rights and Justice to produce any object or item in his or her possession, custody or control;
2. Any natural person who commits any of the acts listed in Article 48.1 above shall be liable to a fine not to exceed US\$ 500.
3. Any legal person who commits any of the acts listed in Article 48.1 above shall be liable to a fine not to exceed US\$ 5,000.

Article 49
Other Offences

1. It shall be a serious offence for any person to:
 - (a) disclose any confidential information in contravention of the present law;
 - (b) act by malice or gross bad faith while filing a completely unwarranted or false complaint against any government official or civil servant;
 - (c) perform any act for the purpose of improperly influencing the work of the Office;
 - (d) hinder the Office in the fulfilment or execution of its obligations, powers and duties under the present law;

- (e) threaten, intimidate or improperly influence any person who has complained to or cooperated with the Office or is intending to complain to or cooperate with the Office in accordance with Article 35 of the present law;
- (f) threaten, intimidate or improperly influence the employees of the Office.

2. Any person who commits any of the acts listed in Article 49.1 above shall be liable to a fine not to exceed US\$ 3,000 and a term of imprisonment not to exceed one (1) year, where the act does not carry a heavier fine or term of imprisonment by virtue of other legal provisions.

3. Any attempt to commit any of the acts listed in Article 49.1 above shall be punished by reducing the maximum applicable penalty to one-third (1/3).

4. Any delay or refusal to comply with the request of the Ombudsman for Human Rights and Justice shall constitute ground for disciplinary action against the government official or civil servant to whom it was addressed.

Part V FINAL PROVISIONS

Article 50 Implementation

Any supplementary provisions, necessary to give effect to the provisions of this law, shall be regulated by Government decree.

Article 51 Entry into Force

The present law shall enter into force the day following its publication.

Passed on 27 April 2004

The Speaker of the National Parliament

[Signed]
Francisco Guterres 'Lu Olo'

Promulgated on 20 May 2004
To be published.

The President of the Republic

[Signed]
Kay Rala Xanana Gusmão