

Law no. 7/2010

Law on Domestic Violence

Preamble

Domestic violence is a problem that has occurred in all historical periods and it is probably one of the most complex social problems of our times.

Over the past three decades, various guidelines from international legal instruments have raised the awareness for the need to prevent and investigate crimes of domestic violence.

Those legal instruments have also established reparations for victims of domestic violence, namely with regard to equality and discrimination in the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination Against Women, both of which have already been ratified by the State of Timor-Leste.

The principles of human rights enshrined in the international law instruments that were ratified by Timor-Leste, including those of the Convention on the Rights of the Child, are reflected in this law.

Moreover, and pursuant to the Constitution of the Democratic Republic of Timor-Leste, the measures provided in this law are designed to ensure respect for human rights and the wholeness of families as a fundamental social and cultural unit in Timor-Leste. The law acknowledges that families have, first and foremost, a special duty to protect and defend groups that are particularly vulnerable, such as women, children, the elderly and the disabled, against all forms of violence, exploitation, discrimination, abandonment, oppression, sexual abuse and other forms of ill-treatment. However, the protection of the most vulnerable shouldn't just be provided within families. All citizens are bound by the obligation to prevent acts of domestic violence and to facilitate assistance to the victims of such violence.

Finally, the State cannot but provide protection to its citizens. The State has a role to play in coordinating with public and private entities and community leaders the implementation of policies aimed at preventing domestic violence and the support to its victims.

Pursuant to articles 92 and 95(1) of the Constitution of the Republic, the National Parliament enacts the following that shall have the force of law:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Object

This law establishes the legal regime applicable to prevention of domestic violence and protection and assistance to its victims.

Article 2

Concept of domestic violence

1. For the purposes of this law, domestic violence shall mean any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family, where there is a situation of ascendancy, notably physical or economic, in the family relationship, or by a person with regard to another person with whom the former has had an intimate relationship which resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom.

2. The following, inter alia, shall be considered forms of domestic violence:

a) Physical violence, understood to be any conduct that causes bodily harm or harms a person's health;

b) Sexual violence, understood to be any conduct that constrains any person to witness, engage, or take part in an undesired sexual relation, even if within marriage, through intimidation, threat, coercion or use of force, or that limits or annuls the exercise of one's sexual and reproductive rights;

c) Psychological violence, understood to be any conduct that causes emotional harm and reduces self-esteem, aimed at degrading or controlling the actions, behaviour, beliefs and decisions of another person through threats, coercion, humiliation, manipulation, isolation, constant surveillance, systematic persecution, insults, blackmail, ridiculing, exploitation, restrictions to the right to move freely or by any other means that cause harm to the psychological wellbeing and to self-determination.

d) Economic violence, understood to be any conduct that results in the retention, subtraction, partial or total destruction of personal effects, working instruments, impediment to work or outside the home, personal documents, assets, valuables and rights or economic resources, including those intended to meet personal needs and the needs of the household.

Article 3

Family

For the purposes of this law, members of a family shall refer to people in the following family relationships:

a) Spouses or ex-spouses;

b) Persons who live or have lived under conditions analogous to spouses, even though without cohabitation;

c) Relatives in the ascending and descending line of one or both spouses or of anyone in the situation referred to in the preceding paragraph, as long as they are the same relationship of dependency and part of the household economy;

d) Any other person who is part of the same context of dependency or household economy, including any person who carries out an activity in the household continuously and with a subordinated status.

Chapter II

Fundamental principles

Article 4

Principle of equality

Any individual, irrespective of his or her origin, nationality, social status, sex, ethnicity, language, age, religion, disability, political or ideological beliefs, culture and educational level shall enjoy the fundamental rights inherent to the dignity of the human person, and shall be guaranteed equality of opportunities to live free of violence, including the right to preserve his or her physical and mental integrity.

Article 5

Principle of consent

1. Without prejudice to other applicable provisions under criminal law and criminal procedural law, any intervention in support of a victim shall take place after the victim has given his or her free and informed consent and shall be limited by the full respect for his or her will.
2. A specific intervention in support of a young victim of domestic violence aged 16 years or more pursuant to this law shall depend only on his or her consent.
3. A specific intervention in support of a child or youth victim of domestic violence aged less than 16 years pursuant to this law shall depend on the consent of a legal representative thereof or, in the absence of the latter, or where the latter is the perpetrator of the crime, of the entity designated by law and the consent of the child or youth aged 12 years or more.
4. The consent of a child or youth aged between 12 and 16 years shall suffice to legitimate a specific intervention to support him or her pursuant to this law, where the circumstances prevent the timely reception of a statement on consent by his or her legal representative or, in the absence of the latter, or where the latter is the perpetrator of the crime, of the entity designated by law.
5. A child or youth victim of domestic violence aged less than 12 years shall be entitled to give his or her views on the specific support to be provided to him or her pursuant to this law, having regard to his or her age and maturity.
6. The victim may freely revoke his or her consent at any time, by himself or herself or through his or her legal representative.

Article 6

Protection of a victim lacking capacity to give his or her consent

1. Outside of the framework of criminal proceedings, any intervention in support of a victim lacking capacity to give his or her consent shall only take place to directly benefit him or her.
2. Whenever, pursuant to the law, and by virtue of mental disorder, illness, or a similar reason, an adult lacks capacity to give his or her consent to an intervention, such intervention shall not take place without the authorization of his or her representative or, in the absence of the latter, or where the latter is the perpetrator of the crime, of an authority or a person or instance designated pursuant to the law.
3. A victim under such circumstances shall, to the extent possible, take part in the authorization process.

Article 7

Principle of information

The State shall, through the criminal investigation police and the Public Prosecution Service, the Office of Public Defender and the medical and social services, ensure that the victim is provided with information deemed appropriate to the protection of his or her rights.

Article 8

Professional obligations and rules of conduct

Any expert intervention in support of a victim shall take place in full observance of the professional standards and obligations, codes of conduct, standard operating procedures, universal principles of human rights, as well as rules of conduct applicable to the specific case.

Article 9

Awareness-raising of public opinion

The Government shall conduct awareness-raising campaigns aimed at public opinion through the media in order to promote a culture of non-violence and to fight gender-based stereotypes grounded on the respect for the rights and duties of all and aimed at changing behaviours conducive to violence against especially vulnerable groups.

Article 10

Information

1. The Government shall prepare information and training resources on the prevention, identification and domestic violence factors, with a particular focus on materials intended for professionals, as well as on the transcription, publication and dissemination of international documents on this matter.
2. The Government shall also prepare and freely distribute throughout the country a guide intended for victims of domestic violence. Such guide shall contain practical information on their rights and on the tools and resources available to them.
3. The Government shall prepare training sessions and information resources specifically aimed for suco chiefs (chefes de suco) and hamlet chiefs (chefes de aldeia), bearing in mind the privileged position of community leaders for the dissemination of information.

Article 11

Education

1. As a way of fighting violence, the Government shall include topics relating to human rights in school curricula, particularly topics related to gender, including references to the importance of love, sexuality, and the principle of the negotiated settlement of conflicts.
2. It shall be incumbent upon the member of the Government in charge of education to prepare the school curricula for every cycle of education.

Article 12

Studies and research

The State, by itself or in cooperation with other institutions, shall support and encourage studies and research into the factors underlying domestic violence of a physical, psychological, sexual and economic nature.

CHAPTER III

INSTITUTIONAL COOPERATION

Article 13

Role of the State

1. It shall be incumbent upon the Government to promote and develop a National Plan of Action for preventing and extending support in the field of domestic violence, in collaboration with society in general and, in particular, with families and local government bodies, pursuant to this law.
2. It shall be incumbent upon the Government to coordinate policies, measures and sectoral actions at national and community level.
3. The programmes provided for in this chapter shall be executed in phases, as set out in the National Plan of Action against domestic violence.

4. Medical services and legal and police support shall be made available from the time this law comes into force.

Article 14

Coordinating entities

1. The Government shall ensure that there is a public entity that collaborates in the definition, coordination and follow-up of the National Plan of Action referred to in article 13 above.
2. The public entity referred to in the preceding paragraph and the member of the Government in charge of the promotion of equality shall collaborate with the Government members in charge of security, health, education, justice and social solidarity.
3. The Government shall prepare an annual report on the activities undertaken as well as a programme for the ensuing year, which shall be submitted to the National Parliament.

CHAPTER IV

SUPPORT AND ASSISTANCE TO VICTIMS

SECTION I

Support to victims

Article 15

Receiving victims

1. The Government, through its member in charge of social solidarity, shall establish, manage and supervise the national network of support centres for victims of domestic violence. Such centres shall be responsible for directly assisting, providing shelter and guiding victims.
2. The support centres shall comprise reception centres and shelters, which shall work in coordination.
3. In those districts where no shelters exist, the reception centres shall operate in coordination with the closest shelter.
4. The Government, through its member in charge of social solidarity, shall prepare a set of operational directives for supervising the establishment and management of the support centres referred to in the previous paragraphs.

Article 16

Purpose of the shelters

1. The shelters shall have the following purposes:
 - a) To temporarily house victims of domestic violence, accompanied or not by their children who are minors, whenever for security reasons they cannot remain in their habitual residence;
 - b) To provide psychological support and/or medical care, social assistance and legal support deemed appropriate to the situation of the victim;
 - c) In cases where it is justifiable, to promote the personal, professional and social skills of users of a shelter during their stay therein that may help prevent situations of social exclusion and contribute to their successful social reintegration.
2. The Government, through its member in charge of social solidarity, shall define, by means of complementary legislation, the common procedures to be adopted by all shelters, notably insofar as the rights of the victims are concerned, including access to information, admissions, maximum duration of stay in the shelter and out-patient treatment.

Article 17

Rights and duties

1. The users and their children who are minors that are being housed in a shelter shall enjoy the following rights in particular:
 - a) The right to accommodation and to food under conditions of dignity;
 - b) The right to privacy and to enjoy a certain degree of autonomy in the conduct of their personal life appropriate to their age and status;
 - c) The right to benefit from a safe and healthy environment inside the shelter;
 - d) The right to attend the school that is closer to the shelter.
2. It shall be a special duty of the users and minors housed in a shelter to comply with the established rules.

Article 18

Cost-free nature of the services

Services provided through the national network of centres for supporting victims of domestic violence shall be dispensed free of charge.

Article 19

Reporting

Reception centres shall report to the National Police of Timor-Leste (Polícia Nacional de Timor-Leste, PNTL) or to the Public Prosecution Service any case regarding victims of domestic violence that comes to their knowledge for purposes of criminal prosecution.

They shall do so in keeping with the confidentiality and the privileged nature of the information shared between the victim and his/her counselor, analogous to the relation established between a medical officer and a patient.

SECTION II

ASSISTANCE TO VICTIMS

Article 20

Emergency assistance service

1. An emergency assistance service is hereby established for providing assistance to victims of domestic violence with the aim of informing them of the adequate measures for their situation.
2. The emergency assistance services shall make available an anonymous telephone line (hotline) for a time period and under conditions to be set out in a ministerial order.
3. In the cases of emergency, the service shall convey to the competent police authorities the need for an immediate intervention and, if need be, shall refer the victims to shelters.

Article 21

Direct assistance to victims

1. Specialized assistance services are hereby established for filing complaints related to the commitment crimes of domestic violence, for providing assistance to and guiding victims when dealing with hospital services and organizations pertaining to the network of referral services supporting victims of domestic violence, and PNTL.

2. The implementation of the services referred to in the preceding paragraph shall take place in a phased manner, through joint ministerial orders by the members of the Government in charge of domestic violence and of security, health and social solidarity.

3. The Government, through the entity in charge of social security, shall guarantee information and specialized training for the officials working in the services referred to in paragraph 1.

Article 22

Assistance in hospitals

Whenever a patient reveals to have been a victim of domestic violence, or the clinical diagnosis shows that a crime of domestic violence has been committed, the specialized service for hospital assistance shall be called to intervene in order, notably:

- a) to provide assistance and medical follow-up to the victims of domestic violence taking into account the needs of the victims, particularly of children;
- b) to protect any evidence relating to a possible crime, notably through medical-forensic examinations or investigations, or by adopting other precautionary measures appropriate to the specific circumstances of the case;
- c) to inform the victim of his or her rights and of the measures that may be adopted, as well as of the duty that is incumbent upon the hospital authorities to inform the police authorities of the facts;
- d) to immediately convey the facts to the police authorities or the Public Prosecution Service;
- e) to prepare a report about the situation and the measures taken and to submit it to the competent authorities;
- f) to refer the victim to a shelter where the circumstances justify such a referral, and the victim requests it.

Article 23

Duties of the social assistance services

It shall be incumbent upon the assistance and support services, notably:

- a) to provide services that meet the needs of victims of domestic violence in accordance with their code of professional conduct and standard operating procedures;
- b) to provide special services to children who have been victims of domestic violence.
- c) to report cases of domestic violence to members of the police in full respect for their code of professional conduct;
- d) to undertake counselling sessions with victims of domestic violence;
- e) to facilitate, where needed, the removal of the victim to a place that is adequate to his or her needs, particularly in the case of children victims;
- f) to prepare reports and other documents relating to the cases where they have provided assistance for use by the police, the Public Prosecution Service and the Courts;
- g) at the request of the victim, to provide support and follow-up the case in court;
- h) to take part in the establishment of security networks for victims of domestic violence at community level.

Article 24

Police assistance

1. The specialized assistance services of the police shall intervene in cases of crimes relating to domestic violence in the wake of a communication by the hospital services and victim support services.

2. It shall be incumbent upon the specialized assistance services of the police within PNTL's district structures:

- a) to provide the victim with all the necessary assistance, notably by informing him or her of his or her rights;
- b) to refer the victim, whenever necessary, to a shelter or support centre;
- c) to take measures , whenever necessary, to ensure that the victim receives immediate medical and psychological support by specialized staff;
- d) in case of danger to the mental stability of the victim, to take measures with a view to ensuring that a mental health professional undertakes an evaluation so that the victim may continue to benefit from the necessary support from the competent bodies;
- e) to prepare a summary report about the observation made, the measures adopted, and the evidence collected, to be attached to the complaint to be submitted to the Public Prosecution Service within five days from the date when it became aware of the facts;
- f) to inform the Office of the Public Defender by means of the summary report in case the victim lacks the financial means to hire the services of a lawyer without hindering his or her means of subsistence, within five days from the date of becoming aware of the facts.

Article 25

Legal assistance

1. The victims of domestic violence shall be accompanied in any proceedings by a lawyer or public defender, in case he or she lacks the financial conditions to hire the services of a legal counsel.
2. It shall be incumbent upon the lawyer or public defender, notably:
 - a) to provide legal counselling to victims of domestic violence;
 - b) to report the occurrence of cases of violence to the police and the Public Prosecution Service whenever such reporting does not imply a breach of professional secrecy;
 - c) to advise the victims, witnesses and family members on the progress being made in the judicial proceedings relating to cases of domestic violence;
 - d) to monitor the way the cases of domestic violence are dealt with by the authorities and judicial operators, i.e., the police, the Public Prosecution Service and the Courts;
 - e) to get in touch with relevant entities, bodies and community groups for the purpose of dealing with cases of domestic violence;
 - f) to advise the victims on their access to other services that may be necessary;
 - g) to facilitate access by the parties to information relating to specific cases under the terms provided in this law and in other applicable legal provisions.

Article 26

Measures for the social reintegration of the victims

1. It shall be incumbent upon the Government to promote and support the establishment and functioning of associations or other organizations if it considers that the existing conditions are insufficient.
2. The objective of the supporting associations is to protect victims of domestic violence by giving priority to programmes aimed at assisting and monitoring them and at promoting their personal and professional development in accordance with their social needs.

Article 27

Measures in support of offenders

The member of the Government that is in charge of promoting equality shall foster the development of public or private projects and initiatives catering to offenders and designed to raise their awareness and induce them to adopt a non-violent behaviour.

Article 28

Assistance by the Public Prosecution Service

In addition to its obligations under criminal procedural law, it shall be incumbent upon the Public Prosecution Service in the context of the fight against domestic violence:

- a) to provide direct assistance the victims seeking its services and to inform them of their rights and forms of exercising such rights, notably through the services of the Office of the Public Defender, in case the victims lack the conditions to hire the services of a legal counsel without hindering their own means of subsistence and those of their respective family;
- b) To refer the victims to hospitals for assistance or to shelters in case this hasn't been done yet.

CHAPTER IV ON ALIMONY

Article 29

Right to alimony

Where the victim is a spouse or ex-spouse, lives or has lived under conditions analogous to spouses, even though without cohabitation, is in the ascending or descending line with regards to the offender, he or she shall be entitled to alimony as long as he or she proves to be in need of that assistance.

Article 30

Amount of the alimony

The amount of the alimony obligation shall be established taking into account the possibilities of the provider and the needs of the recipient, notably the possibility of the latter to partially ensure his or her own subsistence.

Article 31

Modalities of the alimony

1. The actual contents of the obligation to provide support may be established by a written agreement between the provider and the receiver, or his or her legal representative in case the receiver is a minor or in case of incapacity, or it may be established by the competent court.
2. Where, after the amount has been established by mutual agreement or by a judicial decision, a modification occurs in the circumstances that dictated its establishment, the amount of the alimony may be increased or reduced also by mutual agreement or by a judicial decision.

Article 32

Provisional alimony

1. The court may, at any time, grant provisional alimony either on its own initiative or at the request of the victim or the Public Prosecution Service.
2. Under no circumstance shall there be restitution of provisional alimony already received.
3. Where the defendant lacks the economic means to provide alimony, the support due shall be borne by the services of the Ministry of Social Solidarity.

Article 33

Assistance for social reintegration

1. The ministry in charge of social services shall support the victims in the process of social reintegration as well as in the provision of food support whenever deemed necessary.
2. The scope and nature of the support to be provided shall be defined by a statute issued by the member of the Government in charge of social solidarity.

Article 34

Proceedings

1. The request for provision of alimony may be attached to the corresponding criminal proceedings.
2. In all other issues related to this matter, the provisions contained in articles 831 and following of the Civil Procedure Code shall apply.

CHAPTER IV

CRIMINAL ASPECTS

Article 35

Crimes of domestic violence

For the purposes of this law, the following shall be considered crimes of domestic violence:

- a) the types of crime provided for in articles 153, 154, 155 and 156 of the Criminal Code;
- b) the types of unlawful conduct provided for in articles 138, 139, 141, 145, 146, 167, 171, 172, 175, 177, 178 and 179 whenever, in addition to fulfilling the typical elements of fact contained in the incriminating norm, any of the circumstances described in article 2 of this law occur.

Article 36

Crimes of domestic violence as public crimes

The crimes of domestic violence referred to in article 35 above are considered public crimes.

Article 37

Measures of restraint

In addition to the measures of restraint provided for in the Criminal Procedure Code, in the case of a crime of domestic violence, the perpetrator may be subject, by a decision of the trial judge, to the measure of coercive removal from the place of family residence, whenever there are signs of violence which reasonably suggest that acts of aggression may occur again in a manner that will place the life or the physical, mental or sexual integrity of the victim at risk, as well as be barred from having any contact with the latter.

Article 38

Selection and determination of the penalty

1. The court may replace the penalty of imprisonment with a fine as long as the prerequisites provided for in article 67 of the Criminal Code have been met, the security of the victim has been guaranteed, the perpetrator agrees to be subject to treatment or to follow-up by the victim support services, and such replacement is deemed advantageous for maintaining the unity of the family.
2. The defendant may further be sentenced to an accessory penalty of prohibition to maintain contact with the victim for a maximum period of 3 years, whenever it is considered that the application of the principal penalty is insufficient for preventing the repetition of identical acts.

Article 39

Witness protection

Whenever deemed necessary, the competent court shall apply procedural measures for the protection of witnesses in proceedings relating to crimes of domestic violence, of the victims and of individuals with knowledge of the facts behind the proceedings or other information deemed relevant for the decision, pursuant to the applicable law.

Article 40

Professional secrecy

1. The technical and non-technical staff working at reception centres, shelters and specialized assistance services is bound by professional secrecy in relation to the facts that come to their knowledge solely by virtue of the professional relationship established with the victims under their care.

2. Once the consent of the victim has been requested and the victim has given the consent on his or her own will, the duty to observe professional secrecy of the personnel referred to in the preceding paragraph ceases in case they are called by judicial entities to make a deposition or to supply other information.

CHAPTER VII**FINAL PROVISIONS****Article 41**

Regulation

It shall be incumbent upon the Government to approve the regulations deemed necessary to the implementation and development of this law within 180 days.

Article 42

Entry into force

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

Adopted on 3 May 2010.

The President of the National Parliament,
Fernando Lasama de Araújo

Promulgated on 21/06/2010

To be published.

The President of the Republic,
José Ramos-Horta