

# NGO Working Group to Study the Immigration and Asylum Bill

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## Article-by-article commentary on the Immigration and Asylum Bill

13 May 2003

Honorable Members  
National Parliament  
Democratic Republic of East Timor  
Dili

With respect,

Following our letter on 5 April 2003, we would like to give further commentary on the Immigration and Asylum Bill. We are aware that the bill has already been passed by the National Parliament and sent to the President for the approval process. Problems with translation have delayed us in finishing our commentary.

Our previous letter only included commentary and critique of Articles 11 and 12. These two articles are only the clearest examples of the anti-constitutional and anti-foreigner attitude asserted by many parts of this bill.

Based on our analysis, we have already identified other articles in this bill, even if Article 11 and 12 were deleted, that would still be violating human rights, the RDTL Constitution and RDTL's international legal commitments.

This commentary is not meant to be an authoritative legal opinion. Some of our concerns relate to fundamental rights; others relate to whether the immigration and asylum process created by this law will be functional given the existing material and human resources in Timor-Leste. Commentary in bold font is of primary importance, especially regarding Chapter 2 (Articles 9-12), Articles 15, 18, 29, 63, 86 and 90.

There are a few overall issues which relate to many sections:

1. Limitations on freedom of speech, assembly and association are directed at foreigners but also infringe these rights for many East Timorese citizens and organizations which would be prohibited from having foreign staff, volunteers or members, or engaging in activities or programs with foreign participants.
2. The power of the government to expel virtually any foreigner at any time, as well as the high fees, requirements to demonstrate assets, and unpredictability of visa renewals will strongly discourage investors and foreign tourists from coming to East Timor, hurting the country's ability to develop its economy and provide jobs for its citizens.
3. Absence of any requirement to advise potential deportees or denied asylum-seekers of their rights or to know why decisions are being made against them, and to appeal the reasons for such actions to a judicial authority. Although some appeal processes are defined, many which should be are not.
4. Poor drafting and lack of definition of terms, leading to ambiguity and cases where the intention of the law would appear to be different than what it actually says.

5. Unrealistic deadlines for processes and appeals in many cases, which will lead to cases being decided without full consideration of all relevant information.
6. Failure to allow delegation of responsibility by the PNTL Commissioner and the Minister of the Interior, requiring the personal attention of these very busy people to procedures which are difficult or time-critical.
7. Failure to specify the need for regulations or administrative bodies which can further develop many of the details and implement the procedures required by the law. Too much is dependent on Parliamentary law which will be difficult to amend or adapt to changing situations or lessons learned. It would be better for the law to spell out general principles and overall procedures, and leave the details to administrative regulations.
8. Many sections of this law are inconsistent with the Refugee Convention and other treaties and conventions East Timor has ratified. Article 9(3) of the RDTL Constitution states: “All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.”
9. Most of the foreigners currently living and working in East Timor, including staff of the UN, World Bank, and foreign governments, are not subject to this law due to agreements between the government of RDTL and their institutions. Paragraph 35 of the Status of Mission Agreement (SOMA) between RDTL and UNMISSET, for example, states “the Special Representative and members of UNMISSET [soldiers and civilian staff] shall be exempt from passport and visa regulations and immigration inspection and restrictions as well as payment of any fees or charges on entering into or departing from East Timor.” SOMA paragraph 22 states: “the Government shall promptly issue to contractors, free of charge and without any restrictions, all necessary visas, licenses or permits [for their entry into and departure from East Timor]. SOMA paragraph 27 applies the Convention on the Privileges and Immunities of the United Nations to UNMISSET civilian staff and UN volunteers. Section 18(d) of that Convention states that these people are “immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration.”
10. Many government and parliamentary officials have given verbal assurances that this law won’t be applied against certain activities or individuals which support East Timor, even though its wording would allow it to be used against them. But those officials may not be making the decisions, and the police and courts are responsible to enforce laws as they are written, not according to the promises of a politician. If the enforcement is left to the discretion of Ministers or police officials, corruption and/or favoritism will be rampant. Furthermore, citizens and foreigners alike will not know what activities to avoid in order not to violate the law.

| <b>Section of the proposed law (unofficial translation)</b>  | <b>Comment</b>  |
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| <p>Immigration and asylum are fundamental problems in modern states. Increasing mobility among populations, social and economic problems influencing many regions around the world, conflicts, terrorism and the need to keep social peace lead States to face the issue of controlling immigration flows as a fundamental component of their policies.</p> <p>The geographic location of the country, in the path of important immigration flows, places special interest in the need for a legal framework that organizes immigration and asylum.</p> <p>Current border control is extremely deficient and is based on insufficient legal instruments that prevent the State from effectively carrying out the constitutional imperative of defending the Timorese people from the threats of transnational crime and terrorism.</p> | <p>In general, immigration and asylum are not “problems”, but issues to be dealt with. Over the past 24 years, East Timorese often used the right to immigrate (i.e. cross borders) and to accept and receive asylum (i.e. climbing embassy fences in Jakarta). These rights also belong to people from other nations.</p> <p>As a government whose Constitution specifies these rights, and which has signed the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Refugee Convention, and the International Covenant on Economic and</p> |

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| <p>The matter of refugees and the right to asylum also takes on a critical dimension in the current geopolitical context in which East Timor is inserted, where the lack of clear legislative framework is preventing an adequate response. Without forgetting international instruments in this area nor the ever present underlying human element, there is, nonetheless, a need to guarantee the right of the State to assess its capacity to provide shelter without jeopardizing internal security, international relations or the equilibrium among the Timorese population.</p> <p>In order to address all these matters, a legislative framework has been developed which organizes all these matters in an integrated, consistent and efficient manner to provide the Democratic Republic of East Timor the necessary instruments to control its borders and immigration flows.</p> <p>The National Parliament dictates, in the terms of paragraph 1 of Article 95 of the Constitution of East Timor, that the following will be law:</p> | <p>Social Rights, RDTL has both a legal and a moral obligation to respect the rights enumerated in these documents. It is not enough merely to mention them; they need also to be obeyed.</p> <p>Terrorism and other transnational crime should be addressed in separate legislation on those specific issues, since they can be committed by foreigners or East Timorese nationals. This bill tends to characterize all immigrants and asylum-seekers as potential criminals and terrorists.</p> |
| <p><b>Chapter 1: General Provisions</b></p> <p>Article 1: Purpose</p> <ol style="list-style-type: none"> <li>1. The current document regulates conditions for entry, permanence, exit and removal of foreigners from the National Territory;</li> <li>2. The above does not preclude special agreements set out in international treaties and conventions that the Democratic Republic of East Timor is party to, adheres to, or becomes party to.</li> </ol>  | <p>Clause 2 means that UN employees, foreign diplomats, World Bank employees, and perhaps other yet-to-be-specified special classes are not subject to this law.</p>  |
| <p>Article 2: Definition of a Foreigner</p> <ol style="list-style-type: none"> <li>1. For all effects and purposes this document defines a <i>foreigner</i> as anyone who cannot prove citizenship of East Timor.</li> <li>2. Proof of citizenship is that which is described in the Citizenship Law.</li> </ol>   | <p>Are people without papers foreigners, even if they were born here and have never left RDTL? How about East Timorese nationals who fled or were deported in 1999 and have not yet returned and therefore have no papers to prove their citizenship. This is a different definition from RDTL Constitution Article 3.</p> <p>There should be a transitional period, and then perhaps reliance on the civil registry.</p>   |
| <p>Article 3: Definition of Resident</p> <p>Foreigners are considered residents or legal immigrants when they have been given a residency authorization which is valid and has been issued in agreement with this legal instrument.</p>  | <p>The law needs a much more extensive section of definitions – many articles are unclear because terms like “good morals,” “lodging” or “national interests” are not defined.</p>  |
| <p><b>Chapter II: Foreigners Rights and Duties</b></p> <p>Article 5: Principle of Legality</p> <p>Foreigners residing in the Democratic Republic of Timor-Leste shall enjoy the rights and shall be subject to the duties enshrined under the Constitution and the laws.</p>   | <p><b>Much of this section violates ICCPR article 2.1 and Section 23 of the RDTL Constitution (UDHR). Among the ICCPR articles contravened by this section are 1, 2, 18, 19, 21 and 22. UDHR articles 9, 18, 19, 20, 23 and 29, and ICESCR articles 3, 8, and 15 are also contradicted.</b></p> <p><b>In addition, RDTL Constitution Articles 40 and 42-45 guarantee basic rights to free speech, association and assembly to all persons, not only to RDTL citizens.</b></p>                     |
| <p>Article 6: Substantiating Documentation</p> <ol style="list-style-type: none"> <li>1. Foreigners must, at all times, carry the document that substantiates their identification and legal status in the National Territory in accordance with the provisions of the present statute.</li> <li>2. The document referred to in the previous paragraph must be presented by the foreigner whenever asked to by any authority or agent of the authority.</li> </ol>   | <p>Clause 1 should allow photocopies or other ID instead of requiring foreigners to always carry their passports and visas. Alternatively, it could require a foreigner to produce such a document within a specified time period.</p> <p>Clause 2 should define “authority or official” to exclude locally- or self-appointed security groups.</p>   |

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| <p>Article 7: Obligation to Notify</p> <p>Resident foreigners must notify the Immigration Department of the National Police of East Timor (PNTL) within 60 days of any change in their marital status, profession, residence or nationality.</p>  | <p>Could this not be done during the normal process of renewing or extending visas?</p>  |
| <p>Article 8: Right to Work</p> <p>1. Foreigner are permitted to engage in remunerated activity, whether self-employed or as a wage-earner, according to limitations established by law.</p> <p>2. Engaging in remunerated activity is not permitted to foreigners who do not possess the appropriate visa or documentation as required by the present law.</p> <p>3. Foreigners who are admitted into the country with a work visa to engage in remunerated activity as a wage-earner, can only engage in that activity with a different entity than that the one which employed him/her with express authorization from the East Timor National Police Immigration Department following a favourable recommendation from the Secretary of State for Labor and Solidarity.</p>   | <p>Clause 3 should not require approval by the Secretary of State for Labor and Solidarity, since approval from that office was not required for the first employer a foreigner had upon entry. Also, what is the basis for such approval or rejection, and is there a right to notification or appeal? Investors are less likely to come if they cannot predict whether their foreign managers and employees will be allowed to stay in East Timor.</p>   |
| <p>Article 9: Right of Association</p> <p>1. Foreigners may associate or to affiliate themselves with cultural, religious, recreational, sports, charitable or assistance associations, as well as participating in commemorative meetings of their national days.</p> <p>2. In addition to requirements stipulated in special laws on associations and corporate bodies, associations organized according to the above paragraph, which are exclusively made up of foreign members or in which the majority of members are foreigners, must register with the Ministry of the Interior (MI).</p> <p>3. Registration of associations described in the previous paragraph must be made through an application lodged the Ministry of the Interior concisely describing the objectives of the association, and submitting a copy of the statutes or by-laws together with a detailed membership list.</p> | <p><b>By implication, this bans all associations with foreign members with other purposes, which violates many Constitutional and international human rights. Perkumpulan HAK, La’o Hamutuk, KSTL, the NGO Forum, most iNGOs active here, and many other organizations would be prohibited from having foreign members, staff or volunteers. This directly violates RDTL Constitution Article 43(1): “Everyone is guaranteed freedom of association provided that the association is not intended to promote violence and is in accordance with the law.”</b></p> <p>Clause 3 states that associations in East Timor with a majority of foreign members are required to register and list their foreign members whether or not those members reside in East Timor. For a local chapter of an international organization, such as a religious order or an athletic league, this could be very difficult. Some such organizations (an East Timorese section of Amnesty International, for example,) would be prohibited as falling outside the scope of clause 1.</p> <p>Article 15 of the refugee convention states “Right of Association: As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.” So under this section refugees have more rights than other foreigners.</p> <p><b>If certain types of associations are considered dangerous and need to be outlawed, this could be spelled out as in the Constitution Article 43(3): “The establishment of armed, military or paramilitary associations, including organisations of a racist or xenophobic nature or that promote terrorism, shall be prohibited.” Broader or undefined restrictions are unconstitutional.</b></p> |

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| <p>Article 10: Refusal and Annulment of Registration</p> <p>1. The Ministry of the Interior will refuse the registration of an association required under the terms of the previous article whenever the objectives and activities of this association are prohibited by the present statute and by other national legislation.</p> <p>2. The Ministry of the Interior may, for well-founded reasons, annul the registration of an association that obtained such registration through false statements of its objectives, or if the organization performs prohibited activities after it is registered.</p> <p>3. Once the registration has been denied or annulled, the operation of the association is automatically suspended, and its officers who continue operations shall be deemed as committing the crime of disobedience.</p> <p>4. The General Prosecutor, at the request of the Ministry of the Interior, will begin special judicial proceedings to dissolve any association which has been denied or annulled by the Minister of the Interior.</p>   | <p><b>The concerns about Article 9 also apply here.</b></p> <p><b>There is no provision for appealing the banning of an association, nor any specification about what law is violated by continued operation, or what the penalties are.</b></p>   |
| <p>Article 11: Restrictions</p> <p><b>1.</b> Foreigners cannot:</p> <ul style="list-style-type: none"> <li>a) Own the majority of stock in a national mass media company, regardless of its legal nature, unless expressly authorized by the Government. This rule does not apply to written media directed exclusively to foreign resident communities for the purpose of disseminating foreign culture, literature or language;</li> <li>b) Own a majority of shares in a national commercial airline unless provided for by specific legislation;</li> <li>c) Participate in the administration of a trade union or professional organization, or in agencies that monitor paid activities;</li> <li>d) Provide religious assistance to the Defense and Security Forces, <i>except in cases of absolute need and urgency</i>;</li> <li>e) Engage in activities of a political nature or be involved, directly or indirectly, in affairs of State;</li> <li>f) Organize or participate in demonstrations, parades, rallies and meetings of a political nature;</li> <li>g) Organize, create or maintain associations or other entities of a political nature, even if solely to disseminate and publicize ideas, programs or platforms of political parties from their country of origin among co-nationals;</li> <li>h) Influence co-nationals or others to follow ideas, programs or platforms of political parties or factions from any country.</li> </ul> <p><b>11.2 The restrictions stated in the previous number do not include:</b></p> <ul style="list-style-type: none"> <li><i>a) Activities of a strictly academic nature.</i></li> <li><i>b) Foreign technical assistance contracted by State institutions.</i></li> <li><i>c) Activities of liberation movements recognized by the Government, in fulfillment of the Constitutional duty of solidarity.</i></li> <li><i>d) Bi and multilateral assistance programs aimed at training and strengthening of democratic institutions that are constitutional and regulated by law.</i></li> </ul> | <p><b>Clauses 1c through 1h should be removed.</b></p> <p>Clauses 1a and 1b would be more appropriate in a law regulating corporations or foreign investment.</p> <p><b>Clause 1c prohibits East Timorese unions or other associations with affiliating with international unions or federations.</b></p> <p><b>Clause 1d would, for example, prohibit the Pope or other foreign priest from giving communion or receiving confession from F-FDTL soldiers.</b></p> <p><b>Clauses 1e and 1f give government officials broad latitude to prevent activities they dislike, or to expel foreigners who participate in such activities, even if those activities were nonviolent, nonpartisan, and supportive of East Timor.</b></p> <p><b>Clause 1g prevents East Timorese from learning positive aspects of political projects or platforms carried out in other countries.</b></p> <p><i>Red italicized wording was added by Parliament on 30 April 2003.</i> Although these changes remove some of the limitations on aid projects of foreign governments (although not on local NGOs or trade unions), they do nothing to protect the rights of East Timorese civil society or other organizations to have foreign members, colleagues, or employees.</p> <p>Article 10 of the RDTL Constitution reads “The DRET shall extend its solidarity to the struggle of all peoples for national liberation.” It says nothing about Government recognition of liberation movements.</p> |

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| <p>Article 12: National Interest</p> <p>The Ministry of the Interior <i>by determination of the Prime Minister</i> can, on good legal grounds, prohibit foreigners from holding conferences, congresses, artistic or cultural exhibitions whenever these may jeopardize relevant interests or international relations of the State.</p>  | <p><b>This should be removed. The criteria for prohibition are broad, subjective, and open to misapplication. Violent or other events which violate the law are already prohibited by other legislation.</b></p> <p><i>Red italicized wording was added by Parliament on 30 April 2003.</i> It makes little difference.</p>  |
| <p><b>Chapter III: Entry and Exit from the National Territory</b></p> <p>Article 13: Border Controls</p> <p>1. Entry and exit from the National Territory can only be made through established border control points during their hours of operation.</p> <p>2. All citizens who enter or exit the National Territory are subject to immigration control.</p>  | <p>This may create difficulties for returning refugees, and could have a provision for special border entry posts.</p>   |
| <p>Article 14: Right to Entry and Exit</p> <p>1. All citizens who can prove East Timor citizenship have the right to enter the National Territory.</p> <p>2. Any citizen may leave East Timor provided no legal order has been issued to the contrary.</p> <p>3. Notwithstanding the above provision, exit from the National Territory shall be denied to minors, nationals or foreigners, who travel unaccompanied by whomever has parental control over them or written authorization therein.</p>   | <p>(1) What happens if an East Timorese national is unable to prove her or his citizenship?</p> <p>(3) seems too restrictive; there are other ways for preventing trafficking in minors without barring them from nearly all unaccompanied border crossings. Passports would be required anyway, and airlines and ships could be required to follow special regulations for transporting minors. It also violates the UN Convention on the Rights of the Child, which RDTL is likely to sign soon.</p> |
| <p>Article 15: Denial of Entry</p> <p>Entry to the National territory shall be denied to foreigners who do not meet all the requirements established in the present instrument or who constitute a risk or a serious threat to health, order, public safety or to the international relations of the Democratic Republic of East Timor.</p>  | <p><b>This is dangerously broad and open to interpretation. It could be used to bar people who have already been issued valid visas.</b></p>   |
| <p>Article 16: Travel Documents and Substituting Documents</p> <p>1. For entering or exiting the National Territory foreigners must carry their passport or other recognized travel document.</p> <p>2. The validity of the travel document has to be longer than the length of stay by at least three months, except in the case of a foreigner who is a resident of the National Territory.</p> <p>3. Entry or exit into the National Territory is allowed to foreigners who:</p> <ul style="list-style-type: none"> <li>a) are nationals of Countries with which the RDTL has entered into agreements allowing their entry with an identification card or its equivalent;</li> <li>b) are bearers of a safe-conduct or its equivalent issued by the authorities of the Country they are nationals of or the Country they represent;</li> <li>c) are bearers of flight license or certificate for crew members described in Annexes 1 and 9 of the International Civil Aviation Organization or of other documents that may substitute them, while in the performance of their duties;</li> <li>d) are bearers of a seafarer identity document described in the Convention 108 of the International Labor Organization, while in the performance of their service;</li> <li>e) are bearers of a <i>laissez-passer</i> issued by the United Nations Organization (UN);</li> </ul> | <p>For East Timorese nationals who have resided in Indonesia since 1999, this could be a problem. According to Article 2, they are “foreigners” if they do not have proper papers. Already, Border Control has been charging visa fees to East Timorese citizens who do not have appropriate documentation with them.</p>  |

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| <p>f) are bearers of travel documents described in the Geneva Convention of 28 July 1951.</p> <p>4. The safe-conduct in item b) of the previous paragraph will only be valid for transit, and when issued within the National Territory, will only allow the bearer to exit.</p> <p>5. As well, foreigners who were issued documents by national authorities according to this instrument, are allowed to exit the National Territory.</p>  |  |
| <p>Article 18: Means of Support</p> <p>1. Entry into the National Territory shall be denied to foreigners who do not have the means to support themselves for the length of their stay, who do not have a return ticket to a country that guarantees their reentry or whose status does not allow them to legally provide for themselves.</p> <p>2. In order to enter and remain in the National Territory, foreigners must have the means to pay <i>per capita</i> an amount equivalent to:</p> <ul style="list-style-type: none"> <li>a) One hundred US dollars for each entry into the National Territory;</li> <li>b) Fifty US dollars for each day expected to remain in the National Territory.</li> </ul> <p>3. The amounts mentioned in the previous paragraph may be exempted in case a support statement is presented by a national or a legal resident guaranteeing the support and lodging of the foreigner during their stay.</p> <p>4. The support statement implies that the subscriber assumes the responsibility to pay for all expenses the Government may incur to remove the foreigner from the National Territory without prejudice to the criminal liability he/she may face by making false statements or giving false information.</p> <p>5. For the purpose of the above paragraph and after payment of debt with an attached note, the support statement becomes an enforceable instrument.</p> <p>6. The model for the support statement shall be approved by an order of the Ministry of the Interior.</p> <p>[7 sic]. The amounts mentioned in this article will be updated annually by a joint order from the Minister of the Interior and the Minister of Planning and Finances.</p> | <p><b>(2) is a large amount of money, and would discourage tourists and potential investors. A person coming for a 90-day visit would have to have \$4,600 in their possession. This is far more than it costs to live in East Timor.</b></p> <p>This also makes it almost impossible for refugees and asylum-seekers to enter East Timor and have their claims examined, as is their legal right under the Refugees Convention.</p> |
| <p>Article 19: Purpose and Conditions for Staying</p> <p>1. Entry into the National Territory shall be denied to foreigners whose purpose for staying is clearly contrary to the documents or statements presented.</p> <p>2. Foreigners, upon request, must submit for the record the statements and documents justifying the purpose and conditions for their stay, or entry or transit within the National Territory.</p>  | <p>What documents could tourists or casual visitors use to “justify the purpose” of their stay?</p> <p>Perhaps this is only meant to apply to those seeking work visas?</p>  |
| <p>Article 20: Entry Authorization in Special Cases</p> <p>1. In situations of relevant national interest and for urgent humanitarian reasons, the entry into the National Territory may be authorized to foreigners who do not fulfill legal entry requirements.</p> <p>2. Power to authorize such entry as described in the previous paragraph falls upon the Ministry of the Interior on good legal grounds.</p> <p>3. Maximum validity of the entry authorization is 30 days, and it can be extended once for an equal period of time.</p>  | <p>“relevant national interest” is very broad, the Refugee Convention obliges countries to accept refugees and fully assess asylum claims without considering their own national interests..</p>   |
| <p>Article 25: Carriers Responsibility</p> <p>1. Carriers that transport into the National Territory by air, sea or land foreigners who have been denied access to said territory, must provide those foreigners their return trip in the shortest time possible to the port where they first boarded the carrier or, if this is impossible, to the country where the travel document was issued or to any other location where their admission is guaranteed.</p>  | <p>The requirement to immediately expel foreigners who have been denied access to TL may make it impossible for them to appeal that decision, or to make legitimate application for asylum. It also violates the Refugee Convention.</p>   |

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| <p>2. Until the boarding of the foreigner has been verified, he or she is under the responsibility of the carrier.</p> <p>3. Whenever it is justified, foreigners who have been denied entry will be removed from the National Territory escorted by elements of the National Police.</p> <p>4. The carrier is responsible for all expenses incurred by the use of the police escort, including payment of any applicable fees.</p> <p>5. In the case of denial of entry at a land border point, the return will proceed immediately after the formalities related to the denial of entry are completed.</p>   |  |
| <p>Article 26: Decision and Notification</p> <p>1. The decision to deny entry can only be made after a hearing with the foreign national.</p> <p>2. The decision to deny entry shall be notified to the interested party, indicating the basis of the denial, the right to appeal and the deadline to exercise that right.</p> <p>3. The carrier shall also be notified of the denial of entry for the purposes stipulated in the previous article.</p>  | <p>This appears to apply to all visa applications, either in advance outside RDTL or at the border. Procedural mechanisms for notification and hearing need to be specified.</p> <p>Who holds the hearing? Does the foreigner have the right to counsel?</p>   |
| <p>Article 27: Appeal</p> <p>1. The decision to deny entry can be appealed before the Ministry of the Interior and must be filed within eight days.</p> <p>2. The remedy referred to in the previous number does not grant a reprieve.</p>   | <p>If the person is denied entry and removed from RDTL (Article 25) before their appeal is heard, how can they file or argue the appeal?</p>   |
| <p>Article 28: Rights of Foreigners who are not admitted</p> <p>During the time spent in the international area of the border control post, the foreign national who has been denied entry has the right to contact a person of their trust, and to receive adequate assistance.</p>   |  |
| <p>Article 29: Refusal of Entry</p> <p>1. Entry into the National Territory shall be refused, and a record shall be kept of foreigners who:</p> <ul style="list-style-type: none"> <li>a) Have been expelled from the National Territory;</li> <li>b) Have left the National Territory as a consequence of notification issued under the terms of this instrument;</li> <li>c) Have been sentenced to incarceration for a duration of more than one year;</li> <li>d) About which there are strong indications that they pose a threat to the health, order or public security, or to the RDTL international relations;</li> <li>e) About which there are strong indications that they have committed or intend to commit what qualifies as a war crime, or an act of terrorism or an act contrary to the principles of the democratic rule of law.</li> </ul> <p>2. Entry refusal provisions not subject to definite deadlines as per the terms of the present instrument will be periodically revisited to decide about their continuity or dismissal.</p> <p>3. It is the responsibility of the Ministry of the Interior, following a request by the National Director of the PNLT to register the names in the list referred to in paragraph 1 above.</p> <p>4. The courts and law enforcement authorities, within the scope of their authority, may request the interdiction of persons at the border to the National Director of the PNLT, who is the officer in charge of maintaining the list.</p> | <p>1c would exclude people sentenced for political crimes, including, for example, Indonesians and others who were imprisoned for advocacy or peaceful support of East Timor's independence. The imposition of a prison sentence by a foreign government doesn't necessarily mean that the person did something wrong under East Timor's laws.</p> <p><b>1d, especially the last point, is very broad. It is reminiscent of Indonesia's blacklist which prevented many peaceful foreigners from visiting East Timor.</b></p> <p>Is the list public?</p> <p>Is there a procedure for appealing for the removal of a name from the list (other than the periodic review in clause 2)? How often is the list reviewed, and on what basis, since items 1a, 1b, and 1c are past events which will not change?</p> <p>If there is to be such a list, the Interior Ministry should decide who is on it, not the police.</p> |



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| <p><b>Chapter IV: Visas</b></p>   |   |
| <p><b>SECTION II: TYPES OF VISAS</b></p> <p>Article 34: Types of visas</p> <p>The following types of visas shall be issued:</p> <ol style="list-style-type: none"> <li>a) Ordinary visa;</li> <li>b) Work visa;</li> <li>c) Permanent residency visa.</li> </ol>  |   |
| <p>Article 35: Ordinary Visa</p> <ol style="list-style-type: none"> <li>1. Ordinary visas are divided in four different categories and are meant to allow entry into the National Territory for lengths of stay that do not qualify for work visas or permanent residency visas.</li> <li>2. Ordinary Visa Class I is reserved for foreigners who travel to the National Territory for tourism or business, it allows a maximum length of stay of 90 days and is valid for up to one year with multiple entries.</li> <li>3. Ordinary Visa Class II is meant for transit through the National Territory <i>en route</i> to another country, or between two international flights in a domestic airport, it allows a single entry and is valid for a maximum of 72 hours.</li> <li>4. Ordinary Visa Class III is reserved for foreigners who intend to study in the National Territory, it allows a length of stay of up to one year and multiple entries, and it is renewable for the same duration upon proof of academic performance, registration and availability of funds and lodging.</li> <li>5. Ordinary Visa Class IV is reserved for foreigners who travel to the National Territory in a cultural trip or for scientific research, as an artist or athlete, or as a correspondent of a foreign mass media organization, it allows a length of stay equivalent to the contract or mission with a maximum length of stay of 180 days, it can be extended, can be issued for multiple entries and is valid for one year.</li> </ol> | <p>There should be an additional category of Ordinary visa for family visits. This visa would be for East Timorese living abroad who come to visit relatives here. The fee should be low.</p> |
| <p>Article 37: Visa to Establish Permanent Residency</p> <ol style="list-style-type: none"> <li>1. Visas to establish permanent residency are reserved to allow the bearer entry into National Territory in order to request authorization for permanent residency.</li> <li>2. Visas to establish permanent residency are granted to the applicant who proves intention to remain permanently in the National Territory, who proves he or she has means of self support, has lodging ensured and does not have a criminal or police record.</li> <li>3. Visas to establish permanent residency are valid for a single entry into National Territory and allow the bearer to remain for six months.</li> <li>4. If the foreigner who requests a visa under the terms of this Article intends to perform a professional activity as an employee or as an independent worker, consideration will be given to granting the visa based on the goal of providing specialized labor to the various sectors of the economy to increase productivity and assimilating technology.</li> <li>5. The number of foreigners that will be admitted under the terms of the previous paragraph, as well as the sectors of the economy in which they will carry out their activity, will be set annually by resolution from the Council of Ministers.</li> <li>6. Granting a visa to establish permanent residency may be conditioned to residing in a specific region within the National Territory for a period of no longer than five years.</li> </ol>   | <p>(2) should be more specific about what a criminal or police record is. It should entail conviction for a serious, nonpolitical crime.</p>  |

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| <p>Article 40: Processing Documentation for Work Visas and for Establishing Permanent Residency</p> <p>1. The requests for work visas and for establishing permanent residency must be accompanied by the following documents:</p> <ul style="list-style-type: none"> <li>a) Full identification of the applicant through an authenticated copy of their passport;</li> <li>b) Color photograph, permit size, with single color background;</li> <li>c) Certificate of clean criminal record and medical certificate attesting to the physical and psychological suitability of the applicant, issued by competent authority in the country of the applicant’s nationality, or from his/her country of residency for more than one year;</li> <li>d) Proof of support and lodging;</li> <li>e) Visa application specifying the reasons for requesting residency and the length of time of permanence, as well as a commitment statement by the applicant to honor all the legal requirements for the requested visa.</li> </ul> <p>2. In the case of a working visa, or a visa to establish permanent residency with the purpose of performing professional activities, the applicant must also attach proof of employment offer, participation in a corporation, professional competence for performing an independent profession, or any other probatory document referred to the activity intended.</p>  | <p>1c, especially “psychological suitability” is open to misinterpretation, and has the potential for unwarranted discrimination.</p>  |
| <p><b>Chapter V: Extension of Permanent Residency</b></p> <p>Article 41: Travel Document Requirement</p> <p>Foreigners admitted into the National Territory, with or without a visa requirement, must have valid and recognized travel documents if they intend to remain longer than the time granted at the entry point in the border.</p>  |  |
| <p>Article 42: Limits for Lengths of Stay</p> <p>1. Foreigners who are bearers of visas can extend their stay in the National Territory with the following restrictions:</p> <ul style="list-style-type: none"> <li>a) Up to ninety days if the applicant holds an ordinary Class I visa;</li> <li>b) Up to three years if the applicant holds a work visa, which can be extended for subsequent 1 year periods;</li> <li>c) Up to 180 days if the applicant holds an ordinary visa Class IV, except journalists of foreign mass media who can extend their stay to the maximum time allowed, which is three years and for periods of 180 days;</li> <li>d) Until completing his/her studies if the applicant holds an ordinary visa Class III, the limit being the number of years anticipated for the course curriculum.</li> </ul> <p>2. Foreigners admitted into the National Territory without the visa requirement can extend their stay for up to ninety days.</p> <p>3. Extensions to work visas shall be contingent upon maintaining the working situation that granted the visa authorization, as well as the mandatory opinion of the government department that oversees labor and employment.</p> <p>4. Extensions to lengths of stay granted under the terms of the present Article may be cancelled by the Head of the Immigration Department of the PNTL if the conditions that were the basis for granting the visa or the extension thereof are altered or if the presence of the foreigner in the National Territory constitutes a threat to public order, public security or international relations of the RDTL.</p> <p>5. Extension denial sets in motion deportation procedures to exclude the foreigner from the National Territory as provided by this instrument.</p> | <p>Clause 3, with no specified criteria for the opinion from the labor department, creates unnecessary uncertainty about a foreigner’s ability to continue to work. If it is included, it should be better defined.</p> <p>Clause 4 is very broad. If a person has been convicted of a crime or otherwise violated rules which could cause them to be deported, their visa will not be extended. There is no need for a general provision to be included here.</p> |

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| <p>Article 43: Qualification</p> <p>1. The authority to extend visas as per this Chapter falls on the National Director of the PNTL, who can delegate it on the Head of the Immigration Department.</p> <p>2. Extensions are granted by means of a stamp affixed to the applicants travel documents, which model shall be approved by decree from the Ministry of the Interior.</p>  | <p>The two individuals empowered to extend visas will spend a lot of their valuable time signing passports, which will lead to delays and distract from their other important duties, unless there is other legislation empowering them to delegate their responsibilities to others.</p>               |
| <p><b>Chapter VI: Family Reunification</b></p>   |   |
| <p>Article 44: Right to Family Reunification</p> <p>1. In the National Territory the right to family reunification is recognized to foreigners who are family members of a resident immigrant with whom they lived in another country or of whom they are dependants.</p> <p>2. The applicant for a Family Reunification request must have a valid residency authorization.</p>  |   |
| <p>Article 45: Beneficiaries</p> <p>1. For the purposes of the previous Article, members of the resident’s family are:</p> <p>a) Spouse;</p> <p>b) Dependent children, children under 18 years old by both spouses, or by one of the spouses.</p> <p>2. In the case of a child under 18 years old or handicapped child by one of the spouses, he/she shall qualify for family reunification only if the minor is in legal custody of the applicant.</p>  | <p>Given the extended family structure of this and other societies, perhaps siblings and parents, at minimum, should be included.</p>   |
| <p><b>Chapter VIII: Residency Authorization</b></p>  |   |
| <p>Article 53: Granting Permanent Residency Authorization</p> <p>A permanent residency authorization may benefit foreigners who:</p> <p>a) Have been legal residents of the National Territory for at least 12 consecutive years;</p> <p>b) Have not been sentenced for criminal offenses to a prison term (concurrent or consecutive) of more than one year, during the residency period described in the above paragraph.</p>  | <p>12 years seems excessive, and is far longer than required by most countries.</p> <p>Is the sentencing (b) only in East Timor, or would it include foreigner sentenced in another country (perhaps while residing in East Timor) for acts which are not criminal here? See comment on Article 29.</p> |
| <p>Article 54: Special Cases</p> <p>1. In special cases and in cases of national interest, residency authorization may be granted to foreigners who do not meet the requirements under this instrument.</p> <p>2. The authority to grant residency in the special cases described in the previous paragraph falls on the Prime Minister and the Minister of the Interior by joint order.</p> <p>3. The application shall be submitted to the Immigration Department of the PNTL who will start the process, gathering all pertinent elements and documents thereto, namely those related to the exceptionality and national interest invoked.</p> <p>4. Once the process is concluded, a report shall be prepared describing the grounds for a decision proposal which, together with the corresponding file, shall be submitted for a final decision.</p> | <p>What is the “national interest”? This opens the door to corruption.</p>  |
| <p>Article 55: Foreigner minors born in the National Territory</p> <p>1. Foreigner minors born in the National Territory enjoy the same resident status granted to any of the parents.</p> <p>2. In order to issue the resident document, any of the parents must submit a petition to that effect within six months following the minor’s birth registration.</p>   | <p>What happens if the parents do not submit the petition within six months, since they may not be aware of the requirement?</p>  |

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| <p>Article 57: Renewal of Residency Authorization</p> <p>1. Renewal of the temporary residency authorization must be requested at least 30 days prior to its expiration.</p> <p>2. Among the considerations examined in the request submitted to the Immigration Department of the PNTL, the following criteria will be examined:</p> <ul style="list-style-type: none"> <li>a) Means of support and lodging accommodations of the applicant;</li> <li>b) The applicant’s history of abiding by the current legislation, namely that referring to foreigners.</li> </ul> <p>3. Request for renewal must be accompanied by the documents described in paragraph c) and following, of paragraph 2 of the previous Article.</p>  | <p>Clause 2b means that all the vague general violations described in other sections of the law could be used to deny renewal of residence. It should be deniable for criminal violations only.</p>  |
| <p><b>Chapter IX: Lodging Registration</b></p> <p>Article 62: Lodging Registration</p> <p>1. Lodging registration is intended to allow for the control of foreigners in the National Territory.</p> <p>2. For the purpose of registration described in the previous paragraph, all persons, individually or collectively, that provide lodging to foreigners in any manner, must keep a record of that information.</p> <p>3. The record must include the name, date of birth, number and expiration date of the identification document, nationality, and the date of entry and departure from the lodging.</p> <p>4. Registration may be done electronically or in paper, but must necessarily contain the information mentioned in the previous number.</p>  | <p>“Lodging” is not defined. Does it include landlords renting houses to foreigners? People (East Timorese or foreigners) having foreigners as house guests or allowing them to camp on their land? This is a carryover from a repressive Indonesian practice.</p> <p>Who administers this procedure, and who is the registration record given to?</p> <p>Who has the right to see the registration record?</p>  |
| <p><b>Chapter X: Deportation From the National Territory</b></p> <p><b>Section I: General Stipulations</b></p> <p>Article 63: Basis for Deportation</p> <p>1. Without prejudice to provisions in international treaties or conventions where the RDTL is a party to, foreigners will be deported from National Territory if they:</p> <ul style="list-style-type: none"> <li>a) Enter or remain illegally in the National Territory;</li> <li>b) Commit acts against national security, public order or good morals;</li> <li>c) Because of their presence or activities in the National Territory constitute a threat to the interests and dignity of the RDTL or its citizens;</li> <li>d) Interfere in an abusive manner in the exercise of the right of political participation reserved for the citizens of RDTL or are responsible by commission or omission, of acts prohibited to foreigners under this law;</li> <li>e) Have committed acts that, if known to the authorities of the RDTL, would have prevented their entrance into the National Territory.</li> </ul> <p>2. The provision in the previous paragraph does not preclude criminal responsibility on the part of the foreigner.</p> | <p><b>This Article incorporates the same gross violations of constitutional and international human rights that are described in Chapter II above. Section 1b is so vague as to allow virtually anyone to be deported; “good morals” is not defined. Section 1c is similarly open to broad misinterpretation.</b></p> <p><b>The Article allows no discretion, stating that all foreigners who violate its vague terms <i>will be deported</i>. It has no provision for notifying the foreigner exactly why they are being deported, nor for them to appeal the basis for the decision.</b></p> |

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| <p>Article 64: Exclusion from the National Territory</p> <p>1. Before deportation procedures are filed, foreigners who are in one of the situations described in paragraph 1 of the previous Article, can be ordered to leave the National Territory within a certain time frame.</p> <p>2. Non-compliance with the above order sets in motion immediate deportation proceedings, together with detention and other coercive measures included in this instrument.</p> <p>3. The authority to notify the foreigner under paragraph 1 rests on the National Director of the PNTL, who can delegate on the Immigration Department.</p> <p>4. The time frame described in paragraph 1 can be between 24 hours and ten days.</p>   | <p>24 hours is an unreasonably short time, given weekends and poor communication and transportation facilities. It does not allow for an appeal or hearing.</p>  |
| <p>Article 65: Additional Penalties to Deportation</p> <p>1. Beyond what other criminal laws provide, an additional penalty to deportation can be imposed to:</p> <ul style="list-style-type: none"> <li>a) Foreigners who are not residents of the National Territory who were convicted of a crime that carries a prison sentence of more than 6 months</li> <li>b) Foreigners who have been residents of the National Territory less than four years and were convicted of a crime that carries a prison sentence of more than one year;</li> <li>c) Foreigners who have been residents of the National Territory for over four years who were convicted of a crime that carries a prison sentence of more than 3 years.</li> </ul> <p>2. The additional penalty can be imposed even if the deportee is free on probation.</p> <p>3. The court that imposed the sentence has jurisdiction to decide on the deportation.</p> | <p>This section blurs the distinction between criminal sentencing and the administrative process of deportation.</p> <p>Clause 1 states that if a crime carries a certain maximum sentence, deportation could be additionally sentenced – even if the convicted person is given a suspended jail term or a sentence shorter than the length specified in this Article.</p>   |
| <p>Article 68: Country of Destination</p> <p>1. A foreigner cannot be deported to a country where he/she may suffer life-threatening persecution for ethnic or religious reasons, nationality, social group or political ideas.</p> <p>2. In order to be protected by the above mentioned guarantee, the foreigner must invoke fear of persecution and provide proof of it within the timeframe granted by the law.</p>  | <p>The timeframe in clause 2 should be specific, and adequate.</p>   |
| <p>Article 69: Length of Reentry Prohibition</p> <p>Reentry into the National Territory will be denied to deportees for a period between three to ten years.</p>   | <p>Should allow more flexibility.</p> <p>Also, who decides?</p>  |
| <p>Article 70: Coercive Measures</p> <p>1. Beyond other provisions in the criminal laws, the Courts could further impose the following measures on foreigners subject to deportation proceedings:</p> <ul style="list-style-type: none"> <li>a) Regular reporting in person to the Immigration Department of the PNTL;</li> <li>b) Placing the deportees under preventive detention, separated from the rest of the inmates.</li> </ul> <p>2. The District Courts in the area where the foreigner resides have jurisdiction to impose these coercive measures. In cases where the foreigner is not a resident, the Court in the location where the foreigner was found has jurisdiction over the case.</p>   | <p>A foreigner subject to deportation has not been convicted of a crime and should not be jailed (b) as if he or she was. These measures should only be invoked if there is a strong likelihood that the person will not comply with orders to appear for hearings or deportation.</p> <p>Are these decisions (2) made by Investigating or by Trial Judges? What are the criteria for deciding who is put in preventive detention?</p> |

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| <p><b>Section II: Deportation process</b></p> <p>Article 71: Due Process</p> <p>1. Deportation proceedings shall be started against foreigners who incur in one of the causes for deportation from the National Territory described in this instrument.</p> <p>2. No decision to deport a foreigner may be executed without a final deportation decision after due process.</p>   | <p>“Due process” needs definition, including the right of the foreigner to be informed of and to appeal each decision along the way.</p>  |
| <p>Article 73: The Process</p> <p>1. During the fact finding stage of the deportation process, the person subject to the process has the right to a hearing, and enjoys all guarantees for his/her defense.</p> <p>2. The fact finder shall start all legal proceedings deemed essential to find out the truth and can reject, on good legal grounds, any preparatory inquiries requested by the person against whom the process was initiated, when the alleged facts are sufficiently proved.</p> <p>3. Once the fact finding is complete, a report must be prepared, where the fact finder describes the facts discovered and proposes what he/she considers an appropriate decision, and the file shall then be sent to the competent authority that issues a final decision.</p> | <p>Does the subject of the process have the right to read and respond to the fact finder’s report?</p> <p>The fact-finder should be required to consider all relevant facts, and not allowed to reject the subject’s suggestions out of hand.</p> <p>Can the subject appeal the fact-finder’s decision before receiving a deportation order?</p>  |
| <p>Article 75: Notice of Deportation Order</p> <p>The deportation order shall be notified to the person against whom the process was initiated and included therein is the right to appeal, as well as the deadline to file such recourse.</p>  | <p>Does the notice include the fact-finder’s report and complete case file?</p>   |
| <p>Article 76: Appeals</p> <p>1. The deportation order can be appealed before the Court of Appeals.</p> <p>2. The appeal of the decision against foreigners who entered and remained legally in the National Territory or are permanent residents has the effect of a stay.</p> <p>3. The appeal of the decision against foreigners who entered and remained illegally in the National Territory has merely a returnable effect.</p> <p>4. Deadline to file the appeal is ten days from when the notice of the decision to deport has been given to the person concerned.</p>   | <p>Does the appeal of the deportation order also include an appeal of the information in the fact finder’s report and the decision in article 73(3)? Is it an appeal <i>de novo</i> (with new evidence admissible), or only on the basis of information utilized by the fact-finder?</p> <p>What does (3) mean? If it is deportation while an appeal is pending it is a violation of the Refugee Convention</p> |
| <p><b>Section III: Execution of the Deportation Order</b></p> <p>Article 77: Executing the Order</p> <p>1. A foreigner against whom a deportation order has been issued will remain under police custody for a period of 48 hours, beginning at the time when the decision was notified, unless the foreigner is not in preventive detention or has not filed for appeal under Article 76, paragraph 2.</p> <p>2. Police custody described in the previous paragraph is intended to ensure the deportation order is executed and the deadline can be extended by the Court for a maximum of 96 hours if execution of the order is impossible before the deadline anticipated in paragraph 1.</p>  | <p>This section is poorly drafted and its meaning is difficult to ascertain.</p> <p>This contradicts the 10-day window for filing an appeal. Why keep the person in custody for 48 hours if they will have eight more days in which to file, and the appeal will then stay the order until it is heard?</p>   |
| <p>Article 78: Violation of Reentry Prohibition</p> <p>1. It is a crime punishable by a prison term of up to two years for foreigners who reenter the National Territory during the time such reentry is prohibited.</p> <p>2. In case of conviction, the Court shall order the deportation of the foreigner as an additional penalty.</p>  | <p>How will they know how long re-entry is prohibited for, Article 69 says it could be 3-10 years?</p>  |

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| <p><b>Chapter XI: Immigration Crimes</b></p> <p>Article 79: Aid to Illegal Immigration</p> <p>1. All persons who, through any means, assist or facilitate the illegal entry or permanence of a foreigner in the National Territory shall be punished by imprisonment from 30 days to 3 years.</p> <p>2. If the acts referred to in the previous paragraph were committed for profit, the penalty shall be imprisonment from 12 months to 4 years.</p> <p>3. Attempted crimes shall be punished with the same sentences applicable to committed crimes.</p>   | <p>Border Control officials must be unhappy about this, since there's no requirement for criminal intent. A 30-day minimum sentence could be imposed for a minor oversight – even if one of their colleagues notices the problem and prevents the alien from arriving illegally.</p> <p>Also, people who help refugees enter or stay in East Timor could be jailed whether or not the refugee is granted asylum. They should not be punished if they had reason to believe the asylum claim was justified, even if it is later denied.</p> |
| <p>Article 80: Illegal Solicitation of Labor</p> <p>1. All persons who, for cash or in kind remuneration, hire or help the hiring of a foreigner in a workplace for any type of economic activity shall be punished by imprisonment from 30 days to 3 years.</p> <p>2. Attempted crimes shall be punishable by the same penalties applicable to committed crimes.</p>  | <p>Presumably this is meant only to apply to foreigners without work visas, but it doesn't say so.</p>   |
| <p>Article 81: Human Trafficking</p> <p>1. All persons who under threat of force or any other form of coercion, fraud, deceit, abuse of power or by taking advantage of the victim's vulnerability, recruit, transfer, lodge or keep persons with the purpose of exploiting them or placing them in sexual exploitation, forced labor, slavery or human organ trafficking networks, shall be punished by imprisonment from 3 to 8 years.</p> <p>2. The same penalties shall apply to those who, through payment either in cash or in kind, buy consent from a third party in control of the victim, to perform the activities described in paragraph 1 of the present Article.</p> <p>3. If the victim of the activities described in paragraphs 1 and 2 of the present Article is a minor under 18 years of age, the mere transportation, recruitment, transfer, lodging or keeping of these persons for the purposes described in paragraph 1, constitutes a crime that shall be punishable by imprisonment of from 5 to 12 years.</p> | <p>The wording of this closely parallels the international convention on people trafficking, except that the convention is applicable only to trafficking across international borders, while this law also applies to trafficking within East Timor.</p> <p>It applies to both foreigners and East Timorese citizens, and would be more appropriate in separate legislation.</p>  |
| <p>Article 82: Criminal Association</p> <p>1. All persons who create a group, organization or association whose activities are geared to the commission of the crimes described in the previous Articles shall be punished by imprisonment of from 2 to 5 years.</p> <p>2. The same penalties apply to all members of such groups, organizations or associations.</p> <p>3. The leaders of those groups, organizations or associations described in the previous paragraphs shall be punished by imprisonment of from 5 to 15 years.</p> <p>4. Individuals who commit the offenses described in the present Chapter and cooperate with law enforcement investigation, or who with their behavior contribute in a decisive manner for the offense not to be committed, may be given special reduced sentence with a reduction of 2/5 of the minimum and maximum limits.</p>   | <p>See comments on Article 81.</p> <p>A criminal association should be defined in the penal code and should apply to all criminal activities.</p> <p>This might be applied to groups which are working to support refugees.</p>  |

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| <p><b>Chapter XII: Right to Asylum</b></p> <p>SECTION I: ASYLUM</p> <p>Article 84: Right to Asylum Guarantee</p> <p>1. The right to asylum is guaranteed to foreigners and stateless persons, persecuted or seriously threatened by persecution as a result of an activity carried out in the Country of their nationality or of their ordinary residency, in favor of democracy, social and national freedom, peace among the peoples, freedom and human rights.</p> <p>2. The right to be granted asylum is given to foreigners and stateless persons who fearing with cause being persecuted due to race, religion, nationality, political opinion or for being part of a specific social group, cannot or because of fear do not want to return to their Country of origin, or to their country of residency.</p> <p>3. Asylum may only be granted to foreigners who have more than one nationality when the motives referred to in the previous paragraphs can be verified in all the Countries they are nationals of.</p> | <p>The language in this article closely parallels two documents which East Timor is already bound by, which is good.</p> <p>Article 10(2) of the RDTL constitution states “The Democratic Republic of East Timor shall grant political asylum, in accordance with the law, to foreigners persecuted as a result of their struggle for national and social liberation, defence of human rights, democracy and peace.”</p> <p>Article 1 of the Refugee Convention (modified by the 1966 Protocol) defines a refugee as “any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”</p> |
| <p>Article 85: Effects of the Asylum Granting</p> <p>Asylum granting under the terms of the previous paragraph gives the beneficiary the status of refugee, subject to the provision in this instrument, without prejudice to what has been stipulated in treaties or conventions which the RDTL is party to or adheres to.</p>   | <p>As there is no “refugee visa” described in Chapter V, this article should state what the status of refugee means.</p>  |
| <p>Article 86: Deportation and Right to Asylum</p> <p>1. Asylum cannot be granted to:</p> <ol style="list-style-type: none"> <li>Those who have committed acts that go against the basic interests or the sovereignty of the RDTL;</li> <li>Those who have committed crimes against peace, war crimes or crimes against humanity, as described in international instruments designed to prevent them;</li> <li>Those who have committed common law felonies punishable by incarceration of more than 3 years;</li> <li>Those who have committed acts that are contrary to the goals and principles of the United Nations.</li> </ol> <p>2. Asylum can be denied if granting it results in a demonstrated danger or well-founded threat to internal or external security, or to public order.</p>  | <p><b>1a is too broad and could be used to deny asylum based on political considerations or the economic prospects of RDTL.</b></p> <p>1c has the same problems discussed in comments on Articles 29 and 65 above. It should specify non-political crimes, which is what the Refugee Convention says.</p> <p>1d, although perhaps problematic, is the same wording as in the Refugee Convention.</p> <p>2 is very subjective. The Refugee Convention wording is better: Asylum may not “be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”</p>   |
| <p>Article 87: Family Reunification</p> <p>Asylum benefits extend to spouses, minor children, adopted or incompetent, as long as the petitioner so requires and without prejudice to what is provided in the previous paragraph.</p>  | <p>Who determines which family members are “so required” by the petitioner? It should be automatic.</p> <p>How about parents and siblings of minor children who are granted asylum?</p>   |



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| <p>Article 90: Prohibited Acts</p> <p>Asylum applicants cannot:</p> <p>a) Interfere, in any manner prohibited by law, in the political life of the RDTL;</p> <p>b) Carry out activities that might endanger internal or external security or public order, or that may harm relations of the RDTL with other States;</p> <p>c) Carry out activities that are contrary to the goals and principles of the United Nations or of international treaties and conventions that the RDTL is party to or adheres to.</p>  | <p><b>A more general statement that asylum applicants must obey the laws of RDTL would be better.</b></p> <p><b>As written, 1b is too broad. The act of applying for asylum could be interpreted as harming relations with the state the refugee is fleeing from.</b></p>   |
| <p><b>SECTION II: ADMISSIBILITY OF THE ASYLUM REQUEST</b></p> <p>Article 91: Asylum Request</p> <p>For the purposes of this section, an asylum request is understood as the request by which a foreigner petitions a State for protection under the 1951 Geneva Convention, invoking refugee status as defined in Article 1 of said Convention, with the wording used in the New York Protocol.</p>  | <p><b>There are many problems with the process of requesting and receiving asylum described in this and subsequent sections, much of which are inconsistent with East Timor's commitments under the Refugee Convention.</b></p> <p><b>UNHCR, UNMISSET HRU, IOM and others more familiar with refugee law can give more accurate and complete comments than I can.</b></p> |
| <p>Article 92: Submission of Request</p> <p>1. Foreigners and stateless persons who enter the National Territory in order to request asylum must submit their request to any police authority within 72 hours from their entry into the Country, orally or in writing.</p> <p>2. In the case of a resident of the National Territory, the time count begins on the date in which the facts, or the knowledge of the facts, that serve as basis for the petition are verified.</p> <p>3. The request must include the petitioner's identification and that of the family members for whom the same request is being filed under the terms of this instrument, plus a statement of the circumstances or facts that constitute the basis for the asylum request and a listing of all the evidence.</p> <p>4. In case the request is not submitted to the Immigration Department of the PNTL, it shall be sent to that Department, which immediately notifies the petitioner to make a statement within the next five days, and informs the United Nations High Commissioner for Refugees (UNHCR).</p> <p>5. Together with the notification referred to in the previous paragraph, the petitioner is given a statement of proof of submission of request, whereupon the foreigner should be informed of his or her rights and responsibilities, and told to keep the Department informed of their present residency and to appear every 15 days on a specific day of the week, without which the procedure may not go forward.</p> | <p>The 72 hour deadline is too short, because of logistical, information, or language problems.</p> <p>Five days is not enough time for the petitioner to prepare a statement to the PNTL.</p>  |

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| <p>Article 94: Inadmissibility of Request</p> <p>1. The request is considered inadmissible if through the proceedings described in the present instrument some of the causes described in Article 86 or in the following lines were to be found:</p> <ul style="list-style-type: none"> <li>a) It is groundless because it clearly does not meet any of the criteria defined by the Geneva Convention and the New York Protocol, because the petitioner’s allegations concerning his/her fear of persecution in their country of origin have no material basis, being clearly fraudulent or an abusive use of the asylum process;</li> <li>b) Is made by a petitioner who is a national of or an ordinary resident in a country which qualifies as a safe country or as a third country of shelter;</li> <li>c) It falls within the situations described under Article 1-F of the Geneva Convention;</li> <li>d) The request is presented, unjustifiably, beyond the deadline described in Article 92</li> <li>e) The petitioner is subject to deportation from the National Territory.</li> </ul> <p>2. For the purpose of what appears in paragraph a) of paragraph 1, there are clear indications that the request is fraudulent or that it constitutes an abusive use of the asylum process when the petitioner, namely:</p> <ul style="list-style-type: none"> <li>a) Based the request on proof provided by counterfeit or falsified documents, and when questioned about the same affirms in bad faith their authenticity, gives false testimony concerning the purpose of the request or destroys documents proving his/her real identity;</li> <li>b) Knowingly omits the fact that an asylum request has already been submitted in one or more other countries, eventually resorting to a false identity.</li> </ul> <p>3. For the purposes of paragraph b) in paragraph 1, it is understood that:</p> <ul style="list-style-type: none"> <li>a) Safe country – a country from which one can safely say, in an objective and verifiable way, does not generate any refugees, or a country from which one can say that the causes that could previously justify the protection of the 1951 Geneva Convention have ceased to exist;</li> <li>b) Third country of shelter – a country where the asylum petitioner was verifiably not a target of threats to his or her life and liberty in the sense of Article 33 of the Geneva Convention, nor subject to torture, or inhuman or degrading treatment, and where he/she received protection or took advantage of the opportunity, at the border or in the interior of the territory, to contact the authorities of that country to request protection, or was in fact admitted, and where he/she benefits with real protection against exclusion in the sense of the Geneva Convention.</li> </ul> | <p>This Article provides a way to rule out asylum claims prior to going through the entire application process. It should only be used in cases where it is absolutely clear that the request must not be considered.</p> <p>1a allows an application to be dismissed without being fully considered, prior to a fact-finder’s investigation. How can the request be labeled “groundless” before it has been looked into?</p> <p>1d is too short a time on which to base a decision.</p> <p>1e appears to contradict articles 88 and 93(1). Any deportation proceeding should be suspended while an asylum request is considered.</p> <p>2a is problematic, as many refugees need to use false documents to get out of countries where they are persecuted.</p> |
| <p>Article 95: Summary Fact Finding and Decision</p> <p>1. The National Director of the PNTL, after summary fact finding, has the authority to issue a decision on good legal grounds as to the refusal or admission of the request within 20 days, after which the request will be considered admitted, in the absence of a decision.</p> <p>2. The UNHCR representative shall be notified of the decision.</p>   | <p>There should be a right to a hearing.</p> <p>Does “summary fact finding” mean the PNTL director need not look into <u>all</u> relevant facts?</p> <p>20 days is too short for a real investigation, which may require information from other countries. This short time will result in rejection of claims based on the investigator’s inability to verify them within 20 days, as to do otherwise would grant asylum by default.</p>  |

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| <p>Article 96: Effects of the Request Refusal</p> <p>1. The petitioner shall be notified of the decision to refuse the request within 24 hours, with the warning that he/she must leave the National Territory within 10 days, or risk immediate deportation once the deadline has passed.</p> <p>2. The notification referred to in the previous paragraph shall include the information as to the rights of the petitioner under the terms of the following Article.</p>   | <p>The notification should include all information, reasons and fact finding reports relevant to why the request was refused.</p>  |
| <p>Article 97: Appeal</p> <p>1. In case the petitioner is not satisfied with the decision, he/she can, within five days from receiving notice, submit an appeal to the Minister of the Interior; the appeal has the effect of a stay.</p> <p>2. Within 48 hours from the date in which the appeal was received, the Minister of the Interior will issue a final decision, which can be appealed before a court of law within the following eight days.</p>   | <p>48 hours is not enough time for the Minister to make a decision; what happens if it takes longer?</p> <p>The court process needs to be better defined. Which court? What happens while the appeal is pending (which could be months)?</p> <p>Is the court empowered to review facts or only process? Can it consider evidence not considered earlier?</p> |
| <p>SECTION III: REQUESTS SUBMITTED AT BORDER POINTS</p> <p>Article 98: Special Provisions</p> <p>Inadmissibility of the asylum requests made at the border points by foreigners who do not meet the necessary legal requirements to enter into the National Territory are subject to the provisions described in the previous Articles, with the changes included in the present Section.</p>  |  |
| <p>Article 99: Request Evaluation and Decision</p> <p>1. The Immigration Department of the PNTL shall inform the UNHCR representative about the requests for asylum referred to in the previous Article, and he/she shall have 48 hours to interview the petitioner, if desired.</p> <p>2. Within the timeframe referred to in the previous paragraph, the petitioner shall be informed of his or her rights and responsibilities and shall be interviewed.</p> <p>3. The National Director of the PNTL shall make a decision on good legal grounds refusing or admitting the request within a maximum period of 5 days, but never before the deadline anticipated in paragraph 1.</p> <p>4. The decision referred to in the previous paragraph shall be notified to the petitioner, including information as to his/her rights, and shall simultaneously be communicated to the UNHCR Representative.</p> | <p>The deadlines here and in Article 100 are even shorter than those above, far too short to allow meaningful decisions or fair process.</p> <p>Has UNCHR agreed to be part of this process?</p> <p>What happens if UNHCR no longer has a representative in Timor Leste? (See 100(2) and 103 also.)</p>  |
| <p>Article 100: Appeal</p> <p>1. Within 24 hours of receiving notification of the decision, the petitioner may file an appeal with the Minister of the Interior; the appeal has the effect of a stay and the Minister shall render a decision within 24 hours.</p> <p>2. The UNHCR representative may, if he/she wishes, make a statement about the decision of the National Director of the PNTL, and it must be done in writing within 24 hours from the communication about the decision.</p>   | <p>It is impractical to require the Minister to decide within 24 hours, especially if UNHCR has the same period in which to make a statement (if the appeal was filed immediately). What happens if the Minister's deadline is missed?</p>   |

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| <p>Article 101: Effects of the Request and of the Decision</p> <ol style="list-style-type: none"> <li>1. The petitioner remains at the international area of the border while awaiting decision by the National Director of the PNTL.</li> <li>2. The decision to deny the request results in the return of the petitioner to the location where his or her trip originated, and in the event that this is impossible, to the country where the travel documents with which he or she traveled were issued, or to another place where he or she may be admitted, namely a third country of safe harbor.</li> <li>3. The decision to grant admission or deny the request, if it is not notified to the petitioner in the time established in the previous Articles, the entry of the petitioner to the National Territory is allowed, followed by the start of the asylum request proceedings under the terms of the present instrument.</li> </ol>  | <p>This could be up to six days, or longer.</p>  |
| <p>SECTION VI: GRANTING ASYLUM</p> <p>Article 102: Temporary Residency Authorization</p> <ol style="list-style-type: none"> <li>1. The Immigration Department of the PNTL shall issue to individuals covered by the request for asylum a temporary residency authorization, valid for 60 days from the date the request was filed and renewable for 30 day periods until a final decision is made, model of which will be approved by decree of the Minister of the Interior.</li> <li>2. Family members entitled to the same protections under the present instrument must be mentioned and named in the petitioner's application for residency.</li> </ol>  | <p>Section number should be IV. Subsequent ones are also wrong.</p>  |
| <p>Article 103: Fact Finding and Reports</p> <ol style="list-style-type: none"> <li>1. The Immigration Department of the PNTL shall initiate the required legal proceedings and determine all facts, that need to be discovered for a fair and speedy decision.</li> <li>2. Deadline for the fact finding process shall be 60 days, renewable for an equal period, when justified.</li> <li>3. During the fact finding process the UNHCR may attach to the request reports or information about the country of origin and obtain information about the status of the application.</li> <li>4. After finding the facts, the Immigration Department of the PNTL prepares a report with the final proposal which is to be sent, together with the file, to the Minister of the Interior.</li> <li>5. The UNHCR representative shall be informed of this proposal and if so willing, may make a statement as to its content within five days.</li> <li>6. The applicant shall be informed of the proposal's contents and may also make a statement about it within the same timeframe.</li> <li>7. The Minister of the Interior shall decide within eight days counting from the last day of the term established in the previous paragraph, taking into account the proposal that was made and the possible statements by the applicant and the UNHCR.</li> <li>8. All who participate in the asylum process must keep professional secrecy regarding the information they have access to in the performance of their duties.</li> </ol> | <p>Is there a way for the applicant to provide information or evidence to supplement their initial request, which may have been made under a tight deadline or with limited information and counsel? Is the applicant entitled to a hearing?</p> <ol style="list-style-type: none"> <li>1. PNTL should be required to consider all relevant facts.</li> <li>3,5. Are agencies or organizations other than UNHCR allowed to submit information or reports?</li> <li>5,6. Do UNHCR and applicant get copies of the complete fact-finding report? They need it to provide meaningful comments.</li> <li>7. Eight days may not be enough time, the MI is a busy man.</li> <li>8. Could this prevent the applicant from voluntarily sharing information with refugee assistance organizations?</li> </ol> |
| <p>Article 104: Notification and Appeal</p> <ol style="list-style-type: none"> <li>1. A denial to the request for asylum can be appealed before the Court of Appeals, must be filed within 20 days and it has the effect of a stay.</li> <li>2. The Immigration Department of the PNTL shall notify the decision to the applicant mentioning his/her right to appeal described in the previous paragraph and shall also notify the UNHCR.</li> </ol>  | <p>Can the Court of Appeals review the found facts as well as the decision? When does the 20 days start?</p> <p>If asylum is granted, what kind of visa does the person get?</p> <p>If it is denied, does the applicant get a full copy of the fact-finding report and reasons for the decision?</p>   |

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| <p><b>SECTION VIII: LOSS OF THE RIGHT TO ASYLUM</b></p> <p><b>Article 107: Causes for Loss of the Right to Asylum</b></p> <p>Cause for loss of the right for asylum are:</p> <ul style="list-style-type: none"> <li>a) Stated renunciation;</li> <li>b) Engaging in prohibited acts or activities as stipulated in the provisions of this instrument;</li> <li>c) Proof of falsehoods in the basis invoked for the granting of asylum, or the revelation of facts, which if known at the time of the granting, would have resulted in a negative decision;</li> <li>d) The request by, and subsequent granting of protection to the petitioner in the country in which he or she is a national;</li> <li>e) Voluntary reclaiming of the nationality that the petitioner had lost;</li> <li>f) Voluntary adoption by the refugee of a new nationality as long as he or she enjoys protection from that country;</li> <li>g) Voluntary relocation to the country he or she had left or from which he or she remained away from for fear of persecution;</li> <li>h) Cease of motives which justified the granting of asylum;</li> <li>i) Judicial decision to deport the individual given asylum;</li> <li>j) Refugee's departure from the National Territory and relocation in another country.</li> </ul> | <p>b) is problematic because of the vague prohibited activities elsewhere in this law. It should only apply if the applicant is convicted of a serious nonpolitical crime.</p> |
| <p><b>Article 109: Deportation of Refugees</b></p> <p>Deportation of refugees in the terms of the previous article, may nor result in his or her placement in a Territory in a country where his or her freedom is at risk for any of the causes which, in the terms of this Chapter, may constitute basis to grant asylum.</p>   |  |
| <p><b>Article 110: Legal Authority</b></p> <ol style="list-style-type: none"> <li>1. The Ministry of the Interior has the authority, under provisions from the National Director of the PNTL, to decide about the loss of the right to asylum.</li> <li>2. The decision of the National Director of the PNTL described in the previous paragraph shall be brought to the attention of the UNHCR who, if he/she wishes to, may make a statement about the decision within five days.</li> <li>3. The decision stipulating the loss of the right to asylum can be appealed before the Court of Appeals, it must be filed within 20 days, and it has the effect of a stay.</li> </ol>  |  |
| <p><b>Article 113: Termination</b></p> <p>The procedure described in this Chapter will be deemed terminated when the process is stalled for over 60 days for reasons attributed to the petitioner.</p>  | <p>Attributed by whom? On what basis?</p>  |

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| <p><b>Chapter XIII: Fees</b></p> <p>Article 114: Fees</p> <p>1. The fee for visas and visa extensions are the following:</p> <ul style="list-style-type: none"> <li>a) To issue ordinary visas Class I 30 USD, Class II, 20 USD, Class III and IV, 40 USD.</li> <li>b) To issue work visas and establishing residency 50 USD;</li> <li>c) To extend permanent visas 35 USD.</li> </ul> <p>2. The fees to be paid for issuing and renewing residency authorizations are the following:</p> <ul style="list-style-type: none"> <li>a) To issue authorization for temporary residency 40 USD and to renew residency card 25 USD;</li> <li>b) To issue authorization for permanent residency 100 USD and to renew residency card 25 USD;</li> </ul> <p>3. To escort foreign nationals whose deportation from the National Territory is the responsibility of the carriers in the terms of this instrument, a 750 fee shall be required for each individual.</p> <p>4. Fees described in this Article are revisited annually by a joint order from the Minister of Planning and Finances and the Minister of the Interior.</p> | <p>These fees will have a negative effect on tourism revenue for East Timor. There should be provision for short-term entry without fee from most countries.</p> |
| <p>Article 115: Fee Exemption and Reduction</p> <p>1. Holders of diplomatic and official passports are exempt from visa fees and permanence extension fees.</p> <p>2. The same benefit of fee exemption applies to foreign nationals from countries with which the RDTL has agreements for such purpose or whose domestic laws guarantees identical treatment to RDTL nationals.</p>  | <p>Perhaps (2) can be more flexible, allowing RDTL to make country-specific policies consistent with the national interest.</p>                                  |
| <p><b>Chapter XIV: Fines</b></p> <p><b>Section I: Applicable Fines</b></p> <p>Article 116: Illegal Stay</p> <p>1. In cases where the foreigner exceeds the authorized stay in the National Territory, the following fines will apply:</p> <ul style="list-style-type: none"> <li>a) 70 USD to 150 USD if the period exceeding authorized stay does not exceed 30 days;</li> <li>b) 150 USD to 270 USD if the period exceeding authorized stay exceeds 30 days;</li> <li>c) 270 USD to 500 USD if the period exceeding authorized stay exceeds 90 days.</li> </ul> <p>2. Extensions to the maximum stay allowed in the provisions of this instrument cannot be authorized without proof of payment of the appropriate fees under the previous paragraph.</p>   | <p>Who, and on what basis, decides whether the fine is the minimum or maximum?</p>   |
| <p>Article 122: Non-observance of Lodging Registration</p> <p>For each foreigner who is not registered in a Records Book or other type of register under the terms of this instrument shall be fined USD 25-200.</p>  | <p>See commentary on Article 62.</p>   |
| <p><b>Section II: Application of Fines</b></p> <p>Article 123: Notification Orders</p> <p>1. For every violator detected when a fine is due under the terms of the present instruments, a notification order shall be written.</p> <p>2. If more that one violator is detected in relation to the same agent, only one notification order will be written for all violations.</p> <p>3. The notification order must include location, date of violation, name of the responsible party, the building itself, the circumstances that resulted in the violation and the name and contact information of the witnesses to the violation, as well as the identification and signature of the agent that wrote the orders.</p>   | <p>How is the amount determined? 126(1) says how the court determines it if appealed, but what basis does PNTL use?</p>  |

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| <p>Article 125: Willful Failure to Pay</p> <p>1. In the case of willful failure to pay, the notification order, together with other relevant documentation shall be sent to the District Court of the district of residence of the violator, in order to proceed with execution, or if that is not possible, to the Court district where the violation was committed.</p> <p>2. Upon receiving the file, the Court initiates order execution proceedings, setting the date for the hearing, sending summons all interested parties and the violator, informing the latter that he or she may bring up to three witnesses and present other proofs.</p> <p>3. The summons to appear is mandatory and the Court will make a decision even if the violator fails to appear and it is proven that he or she was duly notified.</p> <p>4. Presentation of proof ends if the Court decides not to acquit and sets a fine according to the criteria defined in the next Article and within to legal limits, plus payment of court fees.</p> <p>5. The decision is immediately notified to the violator if present, or by mail if absent, setting a deadline for voluntary payment, after which if payment is not made, the sentence shall be executed.</p> <p>6. The decision of the District Court in this case cannot be appealed.</p> | <p>Can the individual request and obtain a court hearing without committing “willful failure to pay” that would seem to prejudice the court?</p> <p>Point 4 seems a prejudgment of guilt, rather than a fair legal process.</p> <p>Assessment of court fees penalizes people for exercising their legal rights.</p> <p>Point 6 – the decision should be appealable. In some cases (i.e. a lodger or employer with multiple infractions), the fine could be many thousands of dollars.</p> |
| <p>Article 126: Criteria to Set Fines</p> <p>1. In order to set fines the Court will consider, among others, the following criteria:</p> <ul style="list-style-type: none"> <li>a) The financial status of the violator;</li> <li>b) Economic advantages removed with the infraction;</li> <li>c) Recidivism;</li> <li>d) Criminal intent;</li> <li>e) Damages caused to society, to the State or to other public entities.</li> </ul> <p>2. Negligence in payment of the fines described in this instrument shall be punishable by law.</p>  | <p>1b and 1e seem poorly defined.</p>   |
| <p>Article 127: Restrictions</p> <p>Under no circumstances shall visas be extended, permanent visas granted, authorization of residency renewed or any acts performed for the benefit of a foreigner without proof of payment of all fines due.</p>   | <p>Should allow some flexibility, especially if appeals are pending.</p>  |
| <p>Article 128: Purpose of Fines and Fees</p> <p>1. The monies received for fines under the terms of the present instrument will be assigned as follows: 80% for the State and 20% for the PNTL.</p> <p>2. The total amount of the fees will be distributed according to the criteria described in the previous paragraph, except for fees for visas to establish residency, ordinary visas Class II and IV, and work visas which shall go 80% to the State, 10% to the PNTL and 10% to the Ministry of Foreign Affairs and Cooperation.</p>  | <p>All revenues should go to the State, with the MFAC and PNTL receiving their funding through the STATE budget. PNTL should not have an economic incentive to impose or maximize fines.</p>  |

We hope that you value our commentary. And we remain ready to discuss this further if you so wish.

Sincerely,

CC: President RDTL  
RDTL Council of Ministers  
President of the Court of Appeal of RDTL  
RDTL General Prosecutor  
General Public via mass media