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LAW NO. 6/2023 OF 1ST OF MARCH CHILD AND YOUTH IN DANGER PROTECTION LAW

The enactment of Law No. 6/2023 on the 1st of March marks a critical milestone in the legal framework of child and youth protection in Timor-Leste. It was decreed to come into force 180 days post publication, i.e. 28 August 2023. This legislation, rooted in a compassionate view towards the vulnerabilities of younger members of society, aims to harmonise the myriad of laws related to the promotion and protection of children's and youths' rights.



Aiming to foster an inclusive and secure environment for all minors, this law elevates the nation's alignment with international commitments, privileging the well-being of the younger population as imperative. With this legal brief we will try to summarise the profound implications and the structural provisions of the law, assessing how they contribute to the protective shield cast around children and young individuals deemed at risk. We will delve briefly into each aspect of the legislation, articulating its foundational strength in creating a supportive and vigilant societal structure.

GENERAL PROVISIONS

CHILD AND YOUTH IN DANGER PROTECTION LAW

CONCEPTS AND DEFINITIONS

This law begins with the various important and official definitions and concepts surrounding the subject-matter of Child and Youth Protection.

GENERAL PROVISIONS OF THE LAW

- The paramount objective of the law is to engender the promotion and protection of the rights of at-risk children and youth, ensuring their well-being and overall development. This provision of the law anchors the legislative intent, setting the premise for subsequent provisions.
- Emphasising inclusivity, the scope of this law envelops any child or youth in danger residing or present within Timor-Leste. This unbounded territorial application demonstrates the expansive reach of the child and youth protection mandate.
- This provision of the law is directed at ensuring that the law applies to individuals up to the age of 21, and under specific circumstances up to 23, who may receive continued protection and support, thereby highlighting society's ongoing responsibility to its young adults.



RIGHT TO INTERVENTION FOR PROTECTION

Section 5 lays the bedrock for the legitimate grounds upon which interventions are to be made. The law categorically states that action must be taken if the parents, legal representatives, or de facto guardians expose a child or youth to significant risk or fail to address risks posed by third parties or the minors themselves. This pre-emptive stance obliges all stakeholders in the caretaking area to engage actively in the defence and advocacy of minors' safety and rights. The responsibility of addressing risks is placed squarely on those in positions of guardianship, with an irrevocable duty to shelter and nurture those entrusted to them.

KEY PRINCIPLES

When it comes to safeguarding the rights and well-being of children and young people, specific principles guide the actions and decisions of professionals in the field of social welfare and child rights. Each principle is crucial for providing the necessary care and protection for vulnerable children and youth. The following key principles shape their actions and decisions: Supremacy of Privacy; Minimal Intervention; Timely Response; Proportionality and Currency; Family Responsibility; Relational Continuity; Family; Pre-eminence; Obligatory Informed Consent; Mandatory Hearing and Participation; Institutional; Care Exceptionality; Subsidiary Action; Equality and Anti-Discrimination.

INTERVENTION

CHILD AND YOUTH IN DANGER PROTECTION LAW

ENTITIES AND THEIR RESPONSIBILITIES

The promotion of rights and protection of children and young people in danger is the responsibility of several entities, including the government, state entities responsible for the promotion, defense, and monitoring of children's rights, entities with competence in childhood and youth matters, protection networks, protection services, police authorities, the Public Prosecutor's Office, and the courts.

- **Ministry of Social Solidarity-** The ministry responsible for social solidarity is tasked with managing and coordinating the child and youth protection system. It develops measures and programs that materialize policies for promoting rights and protecting children and young people, especially those at risk.
- **Police Authorities** - Police authorities intervene in the promotion of rights and protection of children and young people in danger through units specially trained to deal with children and young people. These units are regulated by their specific diploma.
- **Child and Youth Protection Networks** - The child and youth protection networks are established to support families and communities in preventing dangerous situations and protecting children and young people. They operate in a coordinated manner at the municipal level.
- **Competent Entities in Childhood and Youth Matters** Entities with expertise in childhood and youth matters intervene in promoting rights, preventing dangerous situations, and protecting children and young people within their attributions and according to the law.
- **Child and Youth Protection Services** - Child protection services step in when others can't eliminate danger for a child. They prioritize partnerships, using them when solo intervention falls short in ensuring the child's rights and safety.
- **Judicial Intervention** - Judicial intervention occurs when consent for the application of a measure by child and youth protection service is not provided, withdrawn, or repeatedly not complied with, among other specific circumstances.

MEASURES

CHILD AND YOUTH IN DANGER PROTECTION LAW

PROMOTION AND PROTECTION

The measures for promoting rights and protecting children and young people aim to remove the danger they face and provide conditions that protect and promote their safety, health, education, well-being, and comprehensive development. These measures are crucial for ensuring that children and young people can recover and thrive in a safe and supportive environment. The law specifies various protective measures, including support with parents or legal guardians, support with other family members, support with a suitable person, support for life autonomy, family care, institutional care, and entrusting a person or institution with a view to adoption.

These measures can be implemented in the child or young person's natural environment or through placement, depending on their nature, and may be decided as a precautionary measure. The measures applied by child and youth protection services or in judicial proceedings, by negotiated decision, are integrated into a promotion and protection agreement.

The court may apply precautionary measures while social assessment and subsequent guidance for the child or young person are being undertaken and determined. Child and youth protection services can also apply these measures as a precaution while conducting social assessment. These measures have a maximum duration of six months and must be reviewed within three months, ensuring that the child or young person's situation is continually assessed and addressed.

The application of the measures for promoting rights and protecting children and young people is the exclusive competence of child and youth protection services and the courts. This ensures that they are applied by entities with the necessary expertise and authority to make decisions in the best interest of the child or young person.

COMMUNICATIONS

CHILD AND YOUTH IN DANGER PROTECTION LAW

COMMUNICATION AND REPORTING

The law mandates that police and judicial authorities must report to child and youth protection services any situations which they become aware of in the course of their duties where children or young people are in danger. In addition, judicial authorities are required to adopt civil protective measures that are deemed appropriate.

The communication of situations of danger in the context of child and youth protection is a crucial aspect of the responsibilities of public authorities and entities. It involves the sharing of pertinent information to ensure the safety and well-being of children and young individuals in precarious situations.

Any person aware of the situations described in this law can report them to the competent entities for childhood and youth, police entities, child and youth protection services, or judicial authorities. Reporting is mandatory for anyone aware of situations that endanger the life, physical or psychological integrity, or freedom of the child or young person.

Child and Youth Protection Services are obligated to communicate various critical situations to the Public Prosecutor. These communications serve to preserve the intent behind protective measures while ensuring that any potential obstacles, such as opposition from relevant institutions or a failure in decision-making, are escalated to a judicial level. This is a pivotal process in the mechanism of safeguarding child welfare.



PUBLIC PROSECUTOR'S

CHILD AND YOUTH IN DANGER PROTECTION LAW

INTERVENTION

The Public Prosecutor's Office plays a role in promoting and defending the rights and interests of children and young people at risk, as established by this law.

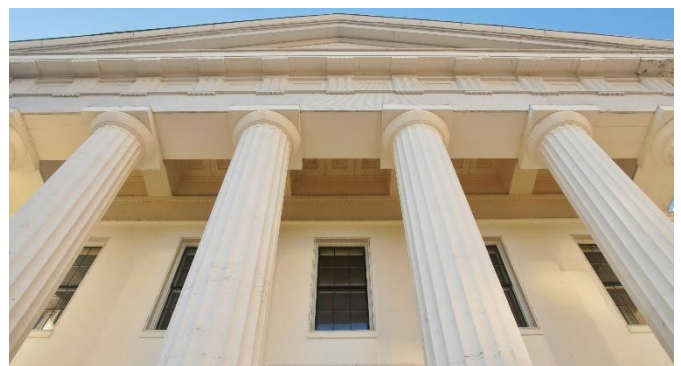
This statutory provision ensures that the Public Prosecution actively monitors activity within child and youth protection services, scrutinizes the legality and suitability of decisions, and instigates judicial procedures if deemed necessary.

JUDICIAL PROCESS INITIATIVE

The Public Prosecutor's Office initiates the judicial process of promotion and protection when it considers necessary the judicial application of promotion and protection following communications from Articles 47, 48, 49, and 50. Its duty is to:

- Dismiss from further legal action all communication that are manifestly unfounded or do not require intervention, through a reasoned order.
- Request the competent court to take the appropriate civil protective measures whenever necessary, particularly in situations provided in this law.
- Request a judicial review of the decisions made by child and youth protection services when it believes that the applied measure is illegal or inadequate for the promotion of rights and protection of the child or young person in danger.

The request for judicial review must be submitted within 15 days after the Public Prosecutor's Office receives the decision from the child and youth protection services.



GENERAL PROCEDURAL PROVISIONS

CHILD AND YOUTH IN DANGER PROTECTION LAW

This section applies to the processes of promotion and protection, whether initiated by child and youth protection services or by the courts.

The process of promotion and protection is individual, with a single process organized for each child or young person.

Measures of promotion and protection are applied by child and youth protection services or the court of the area where the child or young person resides at the time the communication is received, or the judicial process is initiated. If the residence is unknown or cannot be determined, the services or court of the place where the child or young person is found have jurisdiction.

If the situation of danger simultaneously affects more than one child or young person, a single process may be initiated, and if separate processes have been initiated, they may be joined to the one initiated first if family relationships or the specific situations of danger justify it.

When processes of promotion and protection or related to civil protective measures are successively initiated for the same child or young person, they must run jointly, with the judge of the first initiated process having jurisdiction to deliberate on the cases.

When a child or young person is simultaneously involved in a process of promotion and protection and a criminal process, the services or court sends a copy of their decision to the judicial authority with jurisdiction for the criminal process, possibly adding information about the family and socio-professional insertion of the child or young person.

Child and youth protection services and courts must refrain from ordering the repetition of already performed actions, such as social reports or medical exams, unless the overriding interest of the child or young person requires their repetition or to ensure the principle of the right to legally contest.

Children and young people over 12 years of age, or younger if their capacity to understand the intervention advises it, are given the right to be heard about the situation that gave rise to the intervention and regarding the application, review, or cessation of the promotion and protection measure.

Their opinion must be considered in determining their best interest.

Parents, the legal representative, and persons who have de facto custody of the child or young person are mandatorily heard about the situation that led to the intervention and regarding the application, review, or cessation of the promotion and protection measure.

The process must be comprehensible to the child or young person, considering their age and intellectual and psychological development.

During the hearing of the child or young person and other procedural acts or steps that justify it, the services or judge may determine the intervention or assistance of specialists or a person of the child or young person's trust, or the use of technological means deemed appropriate.

Medical exams that may offend the modesty of the child or young person are only ordered when deemed indispensable and, in the child, or young person's interest, and must be conducted in the presence of a parent or a person of the child or young person's trust, unless the examined does not wish it or their interest requires otherwise.

These exams are carried out by qualified medical personnel, with the necessary psychological support provided to the child or young person.

The process of promotion and protection is of a confidential in-camera nature, with access to the processes being granted to the parents, legal representative, and persons with custody, as well as to the child or young person through their defender or personally if authorized by the judge or head of the child and youth protection services.



PROCEDURES

CHILD AND YOUTH IN DANGER PROTECTION LAW

URGENT PROCEDURES IN THE ABSENCE OF CONSENT

This law addresses the urgent procedures that must be taken when there is a current or imminent danger to the life or physical integrity of a child or young person, and there is opposition from those holding parental authority or custody. Child and youth protection services are required to take appropriate measures for immediate protection and request the intervention of the court or police authorities.

JUDICIAL URGENT PROCEDURES

The court must follow up on communication received of situations under this law. The court must make a provisional decision within 48 hours, confirming the measures taken for the immediate protection of the child or young person, applying any of the measures provided in this law, or determining what it deems appropriate regarding the child or young person's destination.

INITIATIVE OF INTERVENTION BY CHILD AND YOUTH

PROTECTION SERVICES

Section 73 of the law details the circumstances under which child and youth protection services may intervene, either at the request of the child or young person, their parents, legal representative, or custodians or on their initiative when they become aware of situations of danger in the course of their duties.

PROCEDURES IN SITUATIONS OF OCCASIONAL CUSTODY

Section 76 of the law provides for the actions to be taken when a child or young person is living with someone who does not hold parental authority, is not their legal representative, nor has their de facto custody. Protection services must immediately make all efforts to contact those who must give consent to address the situation of danger or provide consent for intervention. This ensures that even in less conventional custody situations, the child or young person's safety is still a priority.

NATURE OF THE PROTECTIVE JUDICIAL PROCESS

The legal process called the judicial procedure for promotion and protection, aims to safeguard the rights of endangered children and youth. It operates under voluntary jurisdiction, allowing the court to freely investigate facts, gather evidence, and order inquiries. The court isn't bound by strict legal criteria and must choose the most appropriate solution for each case.

COMPETENT COURT

Section 81 focuses on the jurisdictional specifics, attributing the responsibility for instruction and adjudication of judicial promotion and protection processes to the court of first instance within the area of the child's or young person's residence. It pinpoints the specialized '*juíz de família e menores*' (*family and minor judge*) or, in its absence, the civil court, as the court with jurisdiction.

Its localization ensures that the process is handled by a court most familiar with the regional context and resources.

DURATION

The law sets a maximum duration of four months for the instruction of the promotion and protection process, with a possible extension of thirty days, ensuring that the process is conducted within a reasonable timeframe. This time-bound approach respects the need for timely resolutions while allowing for a thorough investigation.

This new law institutes a comprehensive national framework for child protection, comprising a network of services, institutions, and professionals dedicated to safeguarding the well-being of children and youth.

Widely regarded as a major milestone, this law represents a significant accomplishment in advancing and upholding human rights in Timor-Leste.