



A Review of the Legal Framework and Institutional Mandates for Road and Traffic Safety in Timor-Leste

Bernardo Almeida



The Asia Foundation

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Executive summary

This study, mostly based on desk research, reviews the Timorese legal framework related to traffic and road safety. The study concludes that while the road traffic rules are clearly defined in the Road Code, the lack of specific legislation regarding training and licensing of drivers, and inspection of vehicles, make these safety elements of the road code inapplicable in practice. There are no legal standards for the driver's training and licensing, as well as no legal criteria for vehicle inspections. While some United Nations Transitional Administration of East Timor (UNTAET) legislation regarding the registration of vehicles can be used, in practice new regulations are in need.

The obligation of all vehicles having a liability insurance was established and at the same time suspended by the Road Code. A public instruction of the Bank and Payments Authority of Timor-Leste lifted this suspension, but there remain doubts regarding this instruction's legality.

While Decree-Law 2/2003 generically regulates public transportation, the decree-law lacks the necessary regulations to implement it. Only taxis have been further regulated, but even in this case, some key aspects such as tariffs are missing from the regulation as demanded by law.

In Timor-Leste several institutions are responsible for road safety (Annex 1). Although the roles of each of them are fairly distributed, gaps and overlapping competencies remain. In practice some of these gap have been filled, but further legal clarification of the institutional framework would benefit the sector. The institutional legal framework for transportation is less complex, with the Ministry of Public Works, Transport and Communications (MPWTC) and the Ministry of Planning and Strategic Investment (MPSI) being responsible for developing and implementing the necessary legislation for this sector.

Introduction

This report is the output of a five-day consultancy for The Asia Foundation (TAF), with the objective of reviewing the legal framework in Timor-Leste related to traffic and road safety.

Methodology

This research is primarily based on desk research, in which all the relevant legislation was collected and analyzed. The search for relevant legislation was primarily made through the online portal of the Official Journal (*Jornal da República*), followed by a thorough review of the paper version of the summary of the first series of the Official Journal, in order to spot possible legislation that was not published in the online version of the Official Journal. As detailed below, such a review was necessary because a number of pieces of legislation that had been mentioned by the National Police of Timor-Leste (PNTL) and other institutions were never officially published, and therefore have no legal value.

The analysis is based on the Portuguese version of all relevant legislation. All the legislation mentioned in this review is listed below, with links to the English version whenever available, or the Portuguese version otherwise.¹ An electronic folder with the two versions of all the relevant legislation has been delivered to TAF along with this report. An interview with a legal adviser of the MPWTC was also carried out in order to validate some of the findings.

Research limitations

This short-term research has two main limitations. First, it focuses on the existing legislation, not covering the current practices of institutions. As is debated below, the Timorese legal framework regarding road safety has several gaps, which are often filled by informal practices that are not possible to detect through a legal analysis. Other times the existing legislation is simply ignored. Considering the very informal practices of the public institutions, more

¹ The English translations of relevant legislation have some gaps and at times unclear translations. It is advised to compare these translations with the official Portuguese versions.

research is needed to fully understand the road security sector. Second, this research focuses on Timorese and UNTAET legislation, but does not look at Indonesian legislation. As explained below, some of the legal gaps in the Timorese legal framework could, in theory, be filled by recurring to Indonesian legislation that was in force before 25 October 1999. However, this legislation is difficult to access, and is often ignored by the public institutions. Therefore, this legal analysis does not include potentially applicable Indonesian legislation.

A brief note about the Timorese legal framework

To better frame some of the questions raised below, this section gives a quick overview of the main characteristics of the Timorese legal framework. The Constitution of Timor-Leste is the central piece of legislation regulating the Timorese legal system. According to the Constitution, both parliament and government have legislative powers: the parliament through the approval of laws,² and the government through the approval of decree-laws. Laws and decree-laws have the same legal value, with the only difference being that the legislative power of the government is restricted by articles 95 and 96 of the Constitution.³ An older law or decree-law is repealed by a new law or decree-law on the same topic, even when not expressly mentioned in the new legislation. While the Constitution does not mention any power for approving regulations for legislation, since independence the government and ministries have been approving regulations (government-decrees and ministerial-decrees), which are briefly mentioned in Law 1/2002. In practice these regulations are approved when a law or a decree-law authorizes their approval. Legislation (and by logical extension, regulations) is only enforceable after its publication in the first series of the Official Journal (articles 73.1 and 73.2 of the Constitution, articles 5.2 and 16.2 of Law 1/2002).⁴ Orders (*despachos*) from ministers, directors, or any other administrative positions have an administrative value, but cannot be imposed on citizens as legislation.

Legislation approved by UNTAET, and those Indonesian laws that were in force before 25 October 1999 and have not yet been replaced or repealed by national or UNTAET

² The laws approved by Parliament can be proposed by members of parliament and by the government.

³ Article 95 lists the topics which can be legislated only by the parliament; article 96 establishes the topics that government can legislate about, but only after obtaining permission from the parliament. Parliament also has the power to suspend and terminate decree-laws approved by the government (article 98).

⁴ The Portuguese online version of the Official Journal can be found at <http://jornal.gov.tl/>. The English version of some legislation can be found at <http://jornal.gov.tl/lawsTL/index-e.htm>

legislation, are also direct sources of law of the Timorese legal system (article 165 of the Constitution, article 1 of Law 2/2002, and article 1 of Law 10/2003).

Legal framework for road and traffic safety

During the administration of UNTAET, a number of regulations about traffic rules and safety were approved. These include the UNTAET Regulation 2001/06 on Registration of Motor Vehicles in East Timor, the UNTAET Regulation 2001/08 establishing the Regime Regulating Road Traffic in East Timor, the UNTAET Directive 2001/05 regulating the Procedures for Registration of Motor Vehicles in East Timor, UNTAET Directive 2001/07 regulating Road Traffic Rules in East Timor, and finally the UNTAET Directive 2011/11 amending UNTAET Directive 2011/05.

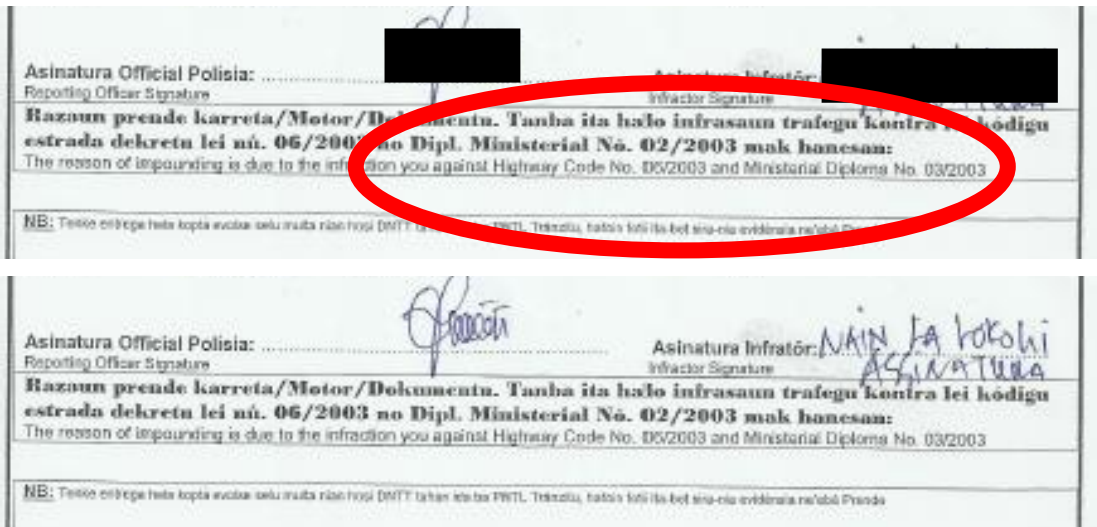
After independence, the Decree-Law 2/2003 establishing the Basic Law on the Road Transportation System and the Decree-Law 6/2003 establishing the Road Code were approved. As detailed below, these two decree-laws repealed most of the UNTAET legislation, but parts of UNTAET legislation remain applicable. Decree-Law 18/2003 about Road Transport Contracts regulates the contracts of cargo transportation, but with no provisions about road safety.

Only in 2010 was new legislation regarding road transportation and safety approved. The Ministerial-Decrees 02/2010 to 07/2010 regulate a number of elements of road traffic and safety.

The above-mentioned legislation is analyzed in further detail below. However, it should be noted that it is common for government institutions and PNITL to refer to rules that are not part of the Timorese legal framework. See the example illustrated in Fig 1, where PNITL documentation refers to a Ministerial-Decree that was not published in the first series of the Official Journal.⁵ Note also that the number mentioned in the Tetun version (*Dipl. Ministerial No. 02/2003*) does not match the English version (*Ministerial Diploma No. 03/2003*).

⁵ Cullen and Marx also mention Ministerial Diploma 3/MTCOP/2003 - REGULATION SYSTEMS OF PUBLIC TRANSPORT (Cullen, Marx, 2015: 23). Such ministerial diploma was not published in the first series of the Official Journal.

Fig 1- Part of an infraction document issued by the PNTL.



The following sections refer to specific aspects of road safety legislation in more detail:

Traffic rules

During UNTAET administration some traffic rules were established by UNTAET Regulation 2001/08 and UNTAET Directive 2001/07. Most of the content of these regulations was then superseded by the approval of Decree-Law 6/2003 that established the Road Code. However, such UNTAET regulations were not specifically revoked by the Road Code, and can be referred to in the case of gaps in the Road Code (some cases are mentioned below).

The Road Code has 172 articles and establishes very comprehensive ruling of the road circulation, including driving rules, security rules, specific rules for motorcycles, etc.⁶ Demonstrating the level of detail of the Road Code, even the circulation of pedestrians is regulated (article 93 to 98).

Most of the articles establish the values of fines in case of infringement. Fines in each case have a minimum and a maximum value; when fines are paid voluntarily the minimum value is applicable (article 147).⁷

⁶ This code seems to have been inspired by the Portuguese Road Code.

⁷ To this value can be added the expenses of the process – article 147.

Drivers' training and licensing

Driver's licenses are regulated by articles 115 to 124 of the Road Code.⁸ More precisely, the Road Code refers to 'drivers' titles' (*títulos de condução*), which are then divided in 'drivers' permits' (*licenças de condução*) for driving motorcycles and other vehicles with an engine size smaller than 50cm³, and 'drivers' licenses' (*carta de condução*) for all other motorized vehicles (articles 116.1, 116.2, 117 and 118 of the Road Code). The driver's license is then divided in types (A to E), which authorize driving different vehicles, depending on their characteristics such as length, weight, and trailer size (article 117).⁹ The driver's license is first provisional, becoming definitive after two years if the driver has not been found guilty of committing any serious infractions (Article 116.4).¹⁰

Article 120.1 lists the main requisites necessary to obtain a Timorese driver's license:

- (a) Minimum age, depending on the vehicle;
- (b) Physical, mental, and psychological fitness;
- (c) Literacy qualifications;
- (d) Residency in Timor-Leste;
- (e) Not being forbidden of driving by a court order; and
- (f) Passed the driving exam.

Articles 120.2 to 120.6 and article 121 further regulate the age limits for driving different types of vehicles, among other restrictions.

While regulating the main requisites to obtain a driver's license, the Road Code does not establish the procedures for this. Article 121.7 establishes that a separate legislation will regulate:

- a) The minimum physical, mental, and psychological requirements for driving fitness and the modes of proof thereof;
- b) Material evidence of the driving exams;

⁸ Drive licenses were before regulated by UNTAET Regulation 2001/08.

⁹ For the sake of simplicity, the expression 'driver's license' is used hereafter to refer to both 'drivers' titles' and 'driver's license'.

¹⁰ If the driver already has a previous driver's license of a different category, such limitation is not applicable. See also articles 116.5 and 116.6.

c) Validity periods of the driving titles in accordance with the age of their bearers and how to renew them.

None of these regulations have yet been approved via legislation, leaving a legal vacuum regarding the process of certifying the physical and mental ability of the driver; perhaps even more important, the process to assess the drivers' skills and issue drivers' licenses is also not regulated.¹¹ Specific legislation regarding the drivers' license registry and renewal is also missing (article 116.6). Without any Timorese and UNTAET legislation regulating these procedures, the Indonesian legislation in force before 25 October 1999 is applicable, but in practice is not known nor used by the public institutions.

The Road Code also regulates the validity of foreign drivers' licenses. Article 119 determines that "special drivers' licenses,¹² drivers' licenses issued by foreign states, and international drivers' licenses" are valid. This recognition is done without imposing any other limits, recognition procedures, and obligations. Such provision contradicts the common practice of the Timorese authorities, which have circulated the idea that foreigners resident in Timor-Leste for more than 6 months need to obtain a Timorese drivers' license. A similar obligation was previously imposed by article 4.2 of UNTAET Regulation 2001/08, but this article has been repealed by article 119 of the Road Code. According to article 122, the holders of foreign and international driver's licenses can obtain a Timorese license without doing a driving exam.

Articles 159 and 160 of the Road Code establish the situations in which drivers' licenses can be seized. The driver's license can be temporarily or permanently revoked by a court decision (article 142).

Vehicle registration

All motor vehicles circulating on Timorese roads must be registered (article 111.1 of the Road Code), and drivers must have the registration document with them every time the vehicle circulates (article 79.2 [a]).¹³ Registration and cancelling of registration are partially

¹¹ Article 5 of UNTAET Regulation 2001/08 regarding learners' permits also delegated the regulation of the drivers' licensing process to separate legislation that has not yet been approved.

¹² The code does not clarify what 'special drivers' licenses' are, and no other regulation about this topic has yet been approved.

¹³ The importing of vehicles is regulated by Decree-Law 30/2011. This decree-law limits the import of vehicles not older than 5 years (article 2.1).

regulated by articles 112 and 113 of the Road Code, but these articles do not establish all the details of vehicle registration, such as the required documents, procedures, and competences. No further legislation regarding the registration of vehicles has been approved since the approval of the Road Code; however, in this case, UNTAET Regulation 2001/06 and the UNTAET Directive 2001/05 regarding the procedures of vehicle registration can be applied with some adaptations, considering that they were not revoked by the approval of the Road Code. However the detail of these regulations is limited.

Besides registration, all vehicles must be identified with license plates (article 112.8). The format of license plates was previously regulated by UNTAET Directive 2001/05 (amended by UNTAET Directive 2001/11), but is now regulated by Ministerial-Decree 07/2010. Some questions were raised when analyzing this ministerial-decree. First, it states that plates can only be produced by ‘authorized producers of plates,’ but does not establish any criteria and procedure for determining who the authorized producers are. Second, some of the plate formats established are not being used in practice (see article 3.1 [b] and [c] regarding special plates for rented vehicles and driver-training vehicles).

Inspection and maintenance of vehicles

The characteristics, mechanisms, components, and accessories of vehicles are briefly mentioned in article 108 of the Road Code; however, this article defers to separate legislation for the regulation this topic. However, such regulations have not yet been approved.

The characteristics of vehicles, as well as the good functioning and security of their components and accessories, are verified by a periodical inspection (article 110.1 [d]), and being in possession of the inspection document is mandatory any time the vehicle is circulating on the roads (article 79.2 [c]). However, the Road Code does not give any more details about the inspection, and no separate legislation has yet been approved.¹⁴ As a result, it is not clear which entity should do this inspection,¹⁵ which are the criteria to approve or fail that inspection, what are the consequences of failing it, and the periodicity of the

¹⁴ During UNTAET administration, the regulation of the inspection of vehicles was also deferred to a separate legislation that was never approved (article 3 of UNTAET Directive 2001/05. See also article 2.1 of UNTAET Regulation 2001/06).




¹⁵ In practice this inspection is done by the National Directorate of Road Transportation of the MPWTC. However, this directorate has no formal mandate for this task.

inspection.¹⁶ Nevertheless, the fees for the inspections are established by law: article 1 of Ministerial-Decree 03/2010 establishes the fees to be paid for the inspection of various imported vehicles; article 1 (d) of the Ministerial-Decree 06/2010 establishes the applicable fees for other inspections.

In practice, vehicles are inspected, but no legal criteria is followed. As can be observed in Fig. 2, the only legal reference made in the inspection document is to article 110 of the Road Code. The same document determines that the inspection should be done annually, but does not clarify the legal basis for this term. More importantly, there is no reference to the safety condition of the vehicle, to the tests made, and to the required actions for possible problems detected.

¹⁶ There are two exceptions: article 2 of the Ministerial-Decree 4/2010 establishes that state vehicles must be inspected annually; article 4 of the Ministerial-Decree 5/2010 establishes that taxis must be inspected every 6 months.

Fig. 2 – Inspection Document issued by the National Directorate of Road Transportation

 REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE Direcção Nacional de Transportes Terrestres Administração Pública de Timor Leste Lei da Inspeção dos Veículos Regulamento Numero 06/2003 Artigo 110	
Cartão da Inspeção	
No. DL : [REDACTED]	No. REGISTO : [REDACTED]
<u>Identidade Careta Nain:</u> Naran : [REDACTED] Endereco : [REDACTED] Sub Distrito : [REDACTED] Distrito : [REDACTED]	<u>Prazo Inspeção</u> Data Inspeção : 20/04/2015 Second Inspeção : 20/04/2016
<u>Identidade Careta/Motor</u> Categoria : [REDACTED] Modelo Careta/Motor : [REDACTED] Marca Careta/Motor : [REDACTED] Tinan Fabrico : [REDACTED] Numero Motor : [REDACTED] Numero Chassis : [REDACTED] Kor Careta/Motor : [REDACTED] Uza Mina : [REDACTED]	Assinatura da Inspector  N.º 000 L
<u>Numero Assentos</u> cc Careta/Motor : [REDACTED] Data Registo : [REDACTED] Tula Ema Hira : 5 Tula Sasan Kg Hira : -	Fo Sai Iha : Dili Iha Data : [REDACTED] Chefe de Inspeção - DNTT Timor Leste  Fernando da Costa Guterres N.º 000000735
<u>Fo Hanoin : Prazo ne se remata tuir data second inspeci, inspesaun sei halao iha loron sanulu ikus molok prazo remata</u>	

In conclusion, while there are some general references in the law regarding the inspection of maintenance and safety of vehicles, such inspections are missing the necessary regulation to become implementable and effective means to assess the safety of vehicles. Furthermore, the competency for doing these inspections should be clarified by law.

Liability insurance

Article 125.1 of the Road Code establishes that all motor vehicles and trailers circulating on public roads are obliged to have liability insurance. The same article also mentions that the

liability insurance is regulated by specific legislation.¹⁷ Insurance documents are also mentioned in article 79.1(c), which establishes that a driver must have the insurance document in his or her possession every time the vehicle circulates. Article 83.1 establishes the obligation of providing the other party with the vehicle insurance reference in case of an accident. According to article 162.1(f) a vehicle can be seized if it does not have liability insurance. However, article 171 determines that the obligation of having liability insurance is suspended until ‘*the creation, by the State, of the legislative, administrative and technical conditions necessary for the application [of the insurance obligation].*’ As a result, the obligation of having liability insurance was suspended with the approval of the Road Code, until the approval of further legislation.

In 2010, the Official Journal published the Public Instruction No. 07/2010 of the Bank and Payments Authority of Timor-Leste (BPA), regarding the Vehicles’ Obligatory Third Party Liability Insurance.¹⁸ This public instruction establishes that every motorized vehicle circulating in Timor-Leste must have liability insurance. It also regulates specific elements of vehicle insurances, such as the legal effects of the insurance, the maximum price, and the maximum value of compensations.

However, the constitutionality of this public instruction is doubtful. Law 6/2005 establishes the Regime for the Licensing, Oversight and Regulation of Insurance Companies and Insurance Intermediaries. Article 3 of this regime establishes that the BPA has the power to ‘*license, oversee and regulate insurance companies and insurance intermediaries,*’ determining that this entity has the power to approve public instructions to regulate the insurance companies’ and intermediaries’ activities.¹⁹ According to the Timorese Constitution, only the parliament and the government have the power to approve legislation (articles 92 and 116 of the Constitution), raising doubts that this regulatory power could be delegated to an independent institution such as the BPA. Furthermore, even if allowed by the Timorese Constitution, this regulatory power is limited to insurance companies and insurance intermediaries, not the Timorese population in general. The Public Instruction No. 07/2010 has a direct impact on all drivers, obliging them to purchase liability insurance, an instruction which seems to go beyond the regulatory power of the BPA. Finally, it can also be argued that the suspension

¹⁷ Article 125.2 establishes the fines for vehicles circulating without insurance: *US\$ 30 to US\$ 150, in case the vehicle is a motorcycle or a motorcar, or of US\$ 18 to US\$ 90, in case of other motor vehicles.*

¹⁸ Published in the Official Journal of 29/12/2010, in the Series I, No. 49.

¹⁹ The BPA is regulated by UNTAET Regulation 2001/30.

established by the Road Code could only be lifted by a subsequent law or decree-law, never by a public order of the BPA.

In conclusion, the Road Code establishes that all motor vehicles and trailers must have liability insurance, but such obligation was suspended until the approval of specific legislation. It is arguable that the Public Instruction No. 07/2010 of the BPA removed this suspension, but the legality of this public instruction goes beyond the mandate of BPA and its constitutionality is doubtful. If these doubts about the validity of the public instruction are not correct, all drivers should now have liability insurance. However, if the above-mentioned doubts about the validity of the public instruction are correct, the obligation of having a liability insurance established in the Road Code is still suspended.

Seatbelts and helmets

The use of safety accessories in motorized vehicles is regulated by article 76 of the Road Code. Article 76.1 establishes that all passengers in a motorcar must use a seatbelt.²⁰ Article 76.2 and 76.3 regulate the use of helmets.²¹ According to article 76.2, the riders and passengers of a motorcycle must wear an officially approved helmet, properly adjusted and fastened.²² Officially approved helmets are regulated by the Ministerial-Diploma 02/2010.

A special reference should be made to the use of helmets by children on motorcycles. First, the law makes no exceptions for children: they are also obliged to use helmets when riding on a motorcycle. Second, the law forbids children younger than seven years old to be passengers on a motorcycle (article 85.1 of the Road Code).²³

Besides the use of helmets, the Road Code establishes a set of special rules specifically for the riders of motorcycles, regulating topics such as driving rules (article 84), transportation of goods (article 85), and lights (article 87 to 89).

²⁰ Article 76.4 establishes the range fines for not using a seatbelt: US\$ 12 to US\$ 60.

²¹ The use of helmets was previously regulated by article 11 of UNTAET Directive 2001/07.

²² Article 76.3 establishes an exception for the mandatory use of helmets, in case of vehicles that are ‘*made up of a hard body and of vehicles that have, at the same time, a hard protection structure and seatbelts.*’ Article 76.5 establishes the range of fines for not using a helmet: US\$ 6 to US\$ 30.

²³ This article establishes an exception for ‘*vehicles with a hard body that [are] not designed to carry goods only.*’

Public transport of passengers and cargo

The public transport of passengers and cargo is regulated by Decree-Law 2/2003. Public transport is defined as the *'transport that is carried out by enterprises qualified to run activities related to the provision of transport services, on a regular or non-regular basis, and is intended to meet, through remuneration, the needs of users'* (article 3.2).

The law imposes some restrictions regarding the companies that can be involved in public transport. According to article 15, a public transport company must:

- (a) Be held by a Timorese national; a company with over 50% control by Timorese nationals; or nationals of other states that enjoy the right to equal treatment with Timorese nationals.
- (b) Meet the conditions of competence, financial capacity, and professional capacity, to be defined by regulation;
- (c) Be registered in the National Registry of Road Carriers.²⁴

Such requisites are in practice inapplicable: the regulations for assessing the competence, financial capacity, and professional capacity of companies, as well as the regulations of the National Registry of Road Carriers, have not yet been approved.

Decree-Law 2/2003 mentions different licenses and regulations for different kinds of public transportation: urban and local regular passenger transport services; inter-urban regular passenger transport; occasional passenger transport; transport for collective tourist trips; and public cargo transport (article 16 to 20). However, all of these articles are fairly generic, and are dependent on further regulations that has not yet been approved.

According to article 21 of Decree-Law 2/2003, the prices to be paid for public transport of passengers should be set by separate legislation, and such prices should be made public and adequately disseminated. However, such legislation has not yet been approved.

Ancillary and complementary transport activities, such as transport agents and vehicle rental, should also be regulated in specific legislation (article 23.1), but such legislation has also not been approved.

²⁴ Such registration does not exist, at least officially.

The Road Code establishes a few specific rules for public transport. Some examples include the need for specific stopping places of public passenger transport (article 52),²⁵ and reference to special regulation regarding rest time of professional drivers of public transport (article 77).

Taxis are the only public transport regulated by specific legislation.²⁶ The Ministerial-Decree 5/2010 regulates a number of elements related with taxis' activities: licensing (article 2 and 3); inspection of taxis (article 4); characteristics and special features of the vehicles (article 5); onboard equipment such as first-aid kit and fire extinguisher (article 6);²⁷ requisites and behaviors of the drivers (article 7); and the value of registration and licensing fees to be paid by the taxi drivers (article 8). This ministerial-decree establishes a fairly comprehensive regulatory framework for taxis; however, some elements, such as the licensing process, could be better detailed, and other elements, such as taxi fares, are totally absent in this regulation.

Decree-Law 18/2003 regulates road transport contracts. However, it only regulates the contracts of transportation of goods, with no reference to vehicles' conditions and road safety.

In conclusion, while the principles of public transportation were regulated by Decree-Law 2/2003, most of the regulatory framework is still missing, making the implementation of this decree-law very difficult. Taxis are the only form of public transportation that is regulated in more detail by Ministerial-Decree 05/2010, but even in this case some important aspects are still lacking any specific regulation.

²⁵ UNTAET Regulation 2001/08 mentioned the construction of road terminals for public transportation (article 31), but no regulation about this has yet been approved.

²⁶ According to an interviewee, the *mikrolet* routes are informally regulated by internal practices of the National Directorate of Road Transportation, but no formal regulation was ever approved for these.

²⁷ This article also refers to a number of elements that taxis should not have, such as tinted windows and high volume speakers.

The mandates, responsibilities, and relationships between government institutions

In this section the mandates, responsibilities, and relationships between the government institutions are listed and analyzed, taking into consideration the current organic laws of the different ministries and institutions. It should be noted that some laws, especially Law 2/2003, establish competencies and institutions that are now outdated by the approval of the organic laws of various institutions.²⁸ The mandates and responsibilities of each ministry are summarized in Annex 1.

Ministry of Interior

The Ministry of Interior (MoI) is responsible for overseeing the security forces, as well as developing the national policy of road safety and taking the necessary measures for road safety (article 30.1(d) of Decree-Law 30/2015 and article 2.1(d) and 2.1(q) of Decree-Law 35/2015). The two institutions under MoI oversight that are responsible for implementing these tasks are the PNTL (article 5.1(a) of Decree-Law 35/2015) and the National Directorate of Road Security, which is one of the national directorates of MoI (*Direcção Nacional de Segurança Rodoviária*, article 5.1(d)ii. of Decree-Law 35/2015).²⁹

The competencies of the PNTL in relation to road safety are analysed below. The competencies of the National Directorate of Road Security are listed in article 11.2 of Decree-Law 35/2015. In summary, this directorate is responsible for contributing to road safety policies; drafting and monitoring the National Road Safety Plan (*Plano Nacional de Prevenção e Segurança Rodoviária*); implementing public information campaigns with public and private partners, including in schools; administrating and processing traffic fines; standardizing and supervising the activities of the entities enforcing road rules; and supervising the implementation of road traffic rules.

²⁸ For instance, see article 7.2 of Law 2/2003.

²⁹ This national directorate is under the General Directorate of Operational Services (article 5.1(d) of Decree-Law 35/2015). The organic law of this directorate has not yet been approved.

The Advisory Office takes a central role inside the MoI in studying and preparing the legislation necessary to fulfil the competencies of the ministry (article 20.2 (b) of Decree-Law 35/2015).

National Police of Timor-Leste

The National Police of Timor-Leste (PNTL) is responsible for ‘*ensuring road safety by planning, monitoring and directing traffic in coordination with the Ministry for Infrastructure*’ (article 2.2(k) of Decree-Law 9/2009). This competency is further pursued by the PNTL’s Department of Traffic and Road Safety (*Departamento de Trânsito e Segurança Rodoviária*), which is responsible for undertaking training programs, studies, and information campaigns for the police force regarding traffic and road safety; developing road safety and road-traffic legislation public information campaigns; and ‘*collaborat[ing] with the competent authorities in defining road signs and road markings and to ensure that they are duly applied*’ (article 19 of Decree-Law 9/2009).

The formulation given by Decree-Law 9/2009 is not completely clear regarding PNTL’s responsibility for directing and, if necessary, enforcing the road-traffic rules. Article 2.2(k) briefly mentions the competency of ‘*ensuring road safety by planning, monitoring and directing traffic in coordination with Ministry of Public Works*’, leaving doubts regarding the nature of these institutions’ coordination and respective responsibilities. For instance, who is responsible for issuing fines and deciding to block a road? While in practice PNTL has taken these competencies, such issues should be clarified in law.

Ministry of Public Works, Transport and Communications

The Ministry of Public Works, Transport and Communications (MPWTC) is responsible for the construction and maintenance of public roads and bridges, as well as the coordination of the public road sector and the necessary research for its development (articles 27.1(e), 27.1(p) and 27.1(t) of Decree-Law 6/2015). Within this ministry’s structure, two institutions are responsible for pursuing these competencies. The National Directorate of Road Transportation (*Direcção Nacional de Transportes Terrestres*) is responsible for the implementation of the transport and road safety competencies (article 12 of Decree-Law

4/2013).³⁰ These include the implementation of the National Road Plan (*Plano Rodoviário Nacional*);³¹ the development of necessary regulations regarding road safety and road transport; the management of the national vehicle registration system; the licensing of private drivers' schools; the regulation and issuing of licenses for public transportation; and the cooperation with the police on the implementation of road rules. The inspection of vehicles that is done by this directorate is not featured in its official list of competencies.

Also within the MPWTC, the National Directorate of Roads, Bridges and Flood Control (*Direcção Nacional de Estradas, Pontes e Controlo de Cheias*) is responsible for the construction, maintenance, and safety of urban and rural roads (article 12 of Decree-Law 48/2012 and article 8 of Ministerial-Decree 25/MOP/2013).

Ministry of Planning and Strategic Investment

The Ministry of Planning and Strategic Investment (MPSI) is also responsible for '*contributing to the development of a national policy of transportation*' and '*in cooperation with other public services, preparing and developing the implementation of the national road plan*' (articles 31.3(r) and 31.3(s) of Decree-Law 6/2015, and articles 2(r) and 2(s) of Decree-Law 31/2015). However, the organic law of this ministry is not clear on which department within the ministry is responsible for these competencies.³² The law also does not clarify how these competencies are harmonised with the ones given to the MPWTC.

Prime Minister's Office

The competencies of the Prime Minister are defined in article 6 of Decree-Law 6/2015. This article does not give the Prime Minister any specific competencies relating to road safety, but as the chief of the government, the Prime Minister has the power to direct every ministry and take decisions covered by the specific competencies of every ministry (article 6.3 of Decree-Law 6/2015). Therefore, the Prime Minister can always take necessary action

³⁰ Until the approval of a new organic law for the MPWTC, the organic laws of the former Ministry of Transport and Telecommunications and Ministry of Infrastructure are applicable. The National Directorate of Road Transportation does not have any organic law approved.

³¹ This plan is already mentioned in article 10 of Decree-Law 2/2003, and consists of defining the characteristics of different types of roads: national roads, district roads, and local roads. However, such a plan was never approved.

³² While it is not clear in the organic law, it seems that the Organic Unit of Integrated Planning (*Unidade Orgânica de Planeamento Integrado*) could take this role (article 12 of the Decree-Law 31/2015).

regarding the above-mentioned topics by giving specific orders to the ministries or taking direct action himself. The Prime Minister's Office is responsible for giving support to the Prime Minister, but has no separate competencies (Ministerial-Decree 28/2015).

Under the Prime Minister's direction is also the Unit of Planning, Monitoring, and Evaluation. This unit is responsible for coordinating, organizing, and supervising the process of planning, monitoring and evaluating the policies of the government (article 2.1 of Decree-Law 22/2015). This unit can be involved in the process of planning, implementing, and evaluating new road safety policies.

Which institution is responsible for road and traffic safety?

Several institutions have responsibilities regarding road safety: the first is the PNLT, which is responsible for enforcing road traffic rules, in coordination with the MPWTC (despite its unclear mandate). MPWTC also has competencies relating to road security—such as the licensing of vehicles and drivers—and to the implementation of the National Road Plan. The MoI also has direct and indirect responsibilities for road safety: direct responsibilities through its own department for road safety, responsibilities for creating a National Road Safety Plan, and indirect responsibilities because it oversees PNLT. Finally, the MPSI is also responsible for road safety, considering its role in collaborating on the drafting of the National Road Plan. The Prime Minister has the power to direct any of these ministries, or take specific decisions, about road safety.

While the roles of each institution regarding road safety are distributed in a logical way, the sector would benefit from further clarity. For instance, clear differences regarding the National Road Plan and the National Road Safety Plan should be established; the responsibilities for drafting the National Road Plan should be clarified; and a concrete timeframe for the completion of these plans should be established. Other central competencies are not listed, such as the responsibility for the urban circulation design, the application and maintenance of road traffic signs, and the inspection of vehicles. Some of these gaps have been filled in practice, but remain unclear in law.

Which institution is responsible for public transportation?

MPWTC, through the National Directorate of Road Transportation, is the ministry responsible for regulating and licensing the public transportation sector. The MPSI is responsible for contributing to the development of a national policy of transportation.

Gap analysis

This research identified the following gaps in the current legal framework:

- Driver's license regulations (process to obtaining a driver's license, assessment of physical and psychological capacity to drive, training, private driver's schools, registry of issued driver's licenses)
- Clearer and more detailed vehicle registration regulations
- Vehicle maintenance and safety inspection regulations
- Characteristics, components, and accessories of vehicles' regulations
- Parliament or Government legislation clarifying the liability insurance obligations
- The entire regulatory framework of the public transportation sector (complementing Decree-Law 2/2003 and Ministerial-Decree 5/2010)
- A clearer mandate for the PNLT's role on the enforcement of road rules
- A clearer distinction between the competencies of the PNLT and the MPWTC
- A more-detailed mandate of the National Directorate of Road Transportation to match its current tasks (e.g., vehicle inspections)
- A clear mandate for road circulation design and road traffic signalization
- Clarification of the purposes, institutional roles, and timeframes of the National Road Security Plan and the National Road Plan

Conclusions

The road traffic rules are clearly defined in the Road Code. Those rules include circulation rules, but also other elements of road safety, such as driver's licensing and vehicle inspections. However, the lack of specific legislation regarding training and licensing of drivers, and inspection of vehicles, make these safety elements of the road code inapplicable in practice.

There are no legal standards for the driver’s training and licensing, as well as no legal criteria for vehicle inspections. The registration of vehicles mentioned in the Road Code also lacks regulations; in this case, it is possible to recur to UNTAET legislation, but new regulations could make legislation better adapted to, and reflective of, the current reality in Timor-Leste.

The Road Code established the obligation of all vehicles to have liability insurance, but this obligation was suspended until the creation of the necessary technical conditions for its implementation. A public instruction of the BPA lifted this suspension, but there remain questions regarding this instruction’s legality.

The public transportation sector is generically regulated by Decree-Law 2/2003, but the lack of all necessary regulations makes its implementation almost impossible. Only taxis have been further regulated, but even in this case, some key aspects such as tariffs are missing from the regulation as demanded by law.

The institutional legal framework regarding road safety is distributed by several entities. Although the roles of each of them are fairly well distributed, gaps and overlapping competencies remain. Some of these gaps and inconsistencies have been filled in practice, but further legal clarification of the institutional framework would benefit the sector. The institutional legal framework for transportation is less complex, with MPWTC and MPSI being responsible for developing and implementing the necessary legislation for this sector.

List of relevant legislation

<u>Legislation</u>	<u>Topic</u>
Constitution of Timor-Leste	<u>Constitution of the Democratic Republic of Timor-Leste</u>
UNTAET Regulation 2001/06	<u>Registration of Motor Vehicles in East Timor</u>
UNTAET Regulation 2001/08	<u>Regime Regulating Road Traffic in East Timor</u>
UNTAET Regulation 2001/30	<u>Banks and Payments Authority of East Timor</u>
UNTAET Directive 2001/05	<u>Procedures for Registration of Motor Vehicles in East Timor</u>
UNTAET Directive 2001/07	<u>Establishment of Road Traffic Rules in East Timor</u>
UNTAET Directive 2011/11	<u>Amendment to UNTAET Directive 2011/05</u>

Law 1/2002	Publication of Acts
Law 6/2005	Regime for the Licensing, Oversight and Regulation of Insurance Companies and Insurance Intermediaries
Decree-Law 2/2003	Basic Law on the Road Transportation System
Decree-Law 6/2003	Road Code
Decree-Law 18/2003	Road Transport Contracts
Decree-Law 9/2009	Organic Law of the National Policy of Timor-Leste (PNTL)
Decree-Law 20/2011	Conditions and Procedures to be Observed in Relation to the Import of Motor Vehicles
Decree-Law 48/2012	Organic Law of Ministry of Public Works
Decree-Law 4/2013	Organic Law of Ministry of Transports and Telecommunications
Decree-Law 6/2015	Organic Law of the VI Government
Decree-Law 22/2015	Planning, Budgeting, Monitoring and Evaluation
Decree-Law 31/2015	Organic Law of the Ministry of Planning and Strategic Investment
Decree-Law 35/2015	Organic Law of Ministry of Interior
Ministerial-Decree 02/2010	Use of Helmets in Motorbikes, Motorized Tricycles and Quads
Ministerial-Decree 03/2010	Administrative Fees for the Approval and Inspection of Imported Vehicles
Ministerial-Decree 04/2010	Administrative Fees for the Services of DNTT Regarding State Vehicles
Ministerial-Decree 05/2010	Regulation of the Public Transport of Passengers by Taxi
Ministerial-Decree 06/2010	Administrative Fees for the Services of DNTT
Ministerial-Decree 07/2010	System of Plates and Vehicle Identification
Ministerial-Decree 25/MOP/2013	Organic Law of the General Directorate of Public Works of the Ministry of Public Works
Ministerial-Decree 28/2015	Organic Law of the Prime Minister's Office
Public Instruction No. 07/2010	Public Instruction No. 07/2010 of the Bank and Payments Authority of Timor-Leste

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Annex 1: Road Safety and Public Transportation Competencies

Road Safety and Public Transportation Competencies			
<u>Ministry</u>	<u>Competencies</u>	<u>Directorate/Institution</u>	<u>Competencies</u>
Ministry of Interior	<ul style="list-style-type: none"> • oversight of the security forces • development of the National Policy of Road Safety • implementation of the necessary measures for road safety 	National Directorate of Road Security	<ul style="list-style-type: none"> • contribution to road safety policies • drafting and monitoring the National Road Safety Plan • implementation of public information campaigns with public and private partners, including in schools • administration and processing of traffic fines • standardization and supervision of the activities of the entities enforcing road rules • supervision of the implementation of road traffic rules
		National Police of Timor-Leste (Department of Traffic and Road Safety)	<ul style="list-style-type: none"> • undertaking of training programs, studies, and information campaigns regarding traffic and road safety directed to the police force • development of road safety and road-traffic legislation public information campaigns • collaboration with the competent authorities to define road signs and road markings and to ensure that they are duly applied
Ministry of Public Works, Transport and Communications	<ul style="list-style-type: none"> • construction and maintenance of public roads and bridges • coordination of the public road sector and the 	National Directorate of Road Transportation	<ul style="list-style-type: none"> • implementation of the National Road Plan • development of necessary regulations regarding road safety and road transportation • management the national system of vehicle registration • licensing of private drivers' schools • regulation and issuing of licenses for public transportation

	necessary research for its development		<ul style="list-style-type: none"> • cooperation with the police on the implementation of road rules
		National Directorate of Roads, Bridges and Flood Control	<ul style="list-style-type: none"> • construction, maintenance, and safety of urban and rural roads
Ministry of Planning and Strategic Investment	<ul style="list-style-type: none"> • contribution to the development of a national policy of transportation • in cooperation with other public services, preparation and development of the implementation of the national road plan 		
Prime Minister	<ul style="list-style-type: none"> • power to give direct orders to the different ministers or to take direct action on any of the government competencies 		



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