LAW No. 6/2017

of 19 April 2017

FRAMEWORK LAW OF TERRITORIAL PLANNING

The approval of the Framework Law of Territorial Planning aims at translating the various principles and rules contained in the Constitution that guide the exercise of this public policy and, to that extent, constitute true guidelines that must be enshrined in ordinary legislation.

It is noteworthy that, at the State level, the Constitution establishes, as a fundamental objective of territorial planning public policy, the harmonious and integrated promotion of development of sectors and regions, as well as the fair distribution of the national product. In addition to this, other purposes committed to the State necessarily call for a set of measures whose territorial repercussions cannot be neglected by land use plans. These are cases of ensuring the development of the economy, creating the material well-being of citizens, protecting the environment and natural resources, and affirming and enhancing the cultural heritage, which are public interests with territorial expression that must be considered when defining the general foundations of territorial planning.

In summary, the Constitution of the Republic contains a set of guidelines for the exercise of the freedom of conformation of the ordinary legislator, namely with regard to the pursuit of objectives and balancing public interests of relevance to land use, administrative and territorial organization, and the enforcement of fundamental rights, in connection with public policies for land use planning and urbanism, and in the definition of the regime applicable to territorial planning.

The approval of the Basic Law of Land Use Planning allows, thus, to specifically define the purposes and guiding principles of Public Administration in the definition of Land Use Planning policy, the identification of various public interests with a territorial dimension, the use of territorial planning instruments as a means of intervention by the Public Administration, as well as defining the typology and objectives to which they must comply.

The present Basic Law consequently provides for the existence of two major types of territorial planning instruments: those of national scope and those of municipal scope. The former must take the form of a National Land Use Plan and can be complemented with national sectoral plans, for each of the public policies that the Public Administration understands as convenient. The latter ones, at the municipal level, cover the municipal circumscriptions, with the decentralized organs of administration responsible for the preparation of municipal land use plans. When necessary, land use plans can also be prepared and approved.

Finally, the present Law aims to provide a framework for the adoption of precautionary measures in the plans, preventing changes in the existing circumstances in a certain part of the territory, guaranteeing the freedom of Public Administration in the preparation of territorial plans and preventing the future execution of the plan from being compromised. To this end, two figures are established, namely preventive and provisional measures, which differ from each other in that they involve, respectively, the definition of negative forms (prohibitions and limitations) and positive forms (aptitudes and vocations), which determine a transitional regime applicable to a part of the territory.

Therefore,

The National Parliament decrees, under the terms of paragraph 1 of article 95 of the Constitution of the Republic, to be enforced as law, the following:

CHAPTER I
Object, purposes and general principles

Article 1
Object

This law establishes the general bases of public policy for land use planning.

Article 2
Definitions

For the purposes of this law, the following definitions apply:

a) ***"Concessions for the use and exploitation of the public domain"***, acts of Public Administration that authorize the use by individuals of goods that are part of the State's assets, during a certain period of time and by agreement between the Administration and the individual;

b) ***"Specific ecosystems",*** a dynamic complex of plant, animal and microorganism communities and their non-living environment that interacts as a functional unit and that, due to their own characteristics, must be protected;

c) ***"Rough land re-parceling operations",*** acts of soil restructuring carried out by Public Administration aimed at ending the fragmentation and dispersion of rustic lands belonging to the same owner;

d) ***"Urban land re-parceling operations"***, acts of soil restructuring carried out by Public Administration, which consist of the re-parceling of land located on urban areas and its subsequent division;

e) ***"Spatial planning"***, a public policy aimed at organizing and defining land use, with a view to promoting the country's sustainable economic, social and cultural development;

f) ***"Maritime shore"***, the portion of the territory where the sea, assisted by the wind action, directly exerts its action and which extends, towards the land side, to a 50 meter strip measured from the line of the maximum sea of living equinoctial waters, and extends, to the side of the sea, until the bathymetric of 30 meters;

g) ***"Regional spatial planning plan with supra-municipal scope"***, a territorial planning instrument with a broader territorial scope than a municipality and covering a specific region of the territory, with content, function and binding force equivalent to a municipal land use plan.

h) ***"Soil reserve"***, allocation of a given soil for the installation of equipment, urban infrastructure and spaces for collective use, by means of the respective acquisition by Public Administration, when it is privately owned, within the term established in the territorial management instruments;

i) ***"Administrative easement"***, a means of intervention by Public Administration that imposes a charge on a certain building for the benefit of public utility of something;

j) ***"Coastal zones",*** a portion of territory influenced directly and indirectly, in biophysical terms, by the sea, which extends, towards the land side, up to a limit defined in its own regulation, measured from the line of the maximum high tide of equinoctial living waters, and extends, to the side of the sea, until the limit of the territorial sea;

Article 3
Purposes of spatial planning

Spatial planning has the following purposes:

a) The harmonious and sustainable development of the national territory, ensuring a balanced distribution of the different uses of the soil and promoting its rational and efficient use;

b) Enhancing the potential of the soil, as a physical support for carrying out human activities, source of raw materials and biodiversity reserve;

c) National cohesion, guaranteeing equal opportunities for all citizens in access to infrastructure, equipment and urban functions;

d) Territorial integrity, safeguarding the specificities of municipal border;

e) The rationalization and sustainability of urban areas, promoting the improvement of living conditions in urban areas and the habitability of buildings, as well as the requalification of areas most in need of urban services;

f) The enhancement of the rural space, through the improvement of housing conditions and the use of soil potentials;

g) The protection and enhancement of the natural, cultural and landscape heritage, namely coastal areas, lake and river banks, agricultural areas, forest areas and specific ecosystems;

h) The economic, social and environmental territorial development, by way of rational use of resources through human activities developed on the soil;

i) The protection of populations and heritage against natural disasters and interventions that are likely to cause negative impacts, preventing their effects.

Article 4
General principles

Spatial planning is subject to the following general principles:

a) Coordination of the various public interventions with territorial impact and a fair balance of public interests among themselves and between them and private interests;

b) Sustainability of the solutions contained in the instruments of territorial planning, in the economic, social, cultural and environmental dimensions;

c) Intergenerational solidarity, ensuring present and future generations an orderly and balanced heritage;

d) Subsidiarity, coordinating the procedures of the various levels of Public Administration and territorial levels and specificities, in order to privilege the decision level closest to the citizen;

e) Equity, through the fair sharing of benefits and charges resulting from the application of territorial planning instruments;

f) Prevention, through the anticipation, prevention and reduction of causes that have effects that are likely to change the quality of the environment;

g) Precaution, through the adoption of effective measures to prevent or minimize changes in the quality of the environment;

h) Environmental and Social Efficiency, establishing the achievement of the maximum economic and social benefit for each unit of natural resources consumed and for each unit of waste produced;

i) Participation of citizens in the training, dynamics and execution procedures of territorial planning instruments, and guaranteeing access to the information produced in the referred procedures;

j) Legal security and protection of trust, thanks to the stabilization of applicable legal and regulatory regimes.

Article 5
Integrated coastal zone management

The territorial planning system must also consider the special needs for integrated management of the coastal zone and in particular the seafront, with a view in particular to:

a) Protect and enhance, from a perspective of sustainability, the coastal zone, preserving the public maritime domain and public access to the sea;

b) Prevent the phenomena of natural degradation and the phenomena caused by human activities, and encourage the recovery of degraded areas;

c) Enhance the natural, historical-cultural and landscape heritage;

d) Stimulate socio-economic activities compatible with the sustainable development of the coastal zone;

e) Make compatible different uses and specific activities of the coastal zone, enhancing the use of its own resources, with respect for the carrying capacity of natural systems, and minimizing risk situations and environmental, economic and social impacts.

Article 6
Right to spatial planning

1. Everyone has the right to a rational, proportional and balanced land use planning, so that the pursuit of the public interest in matters of territorial planning policy is done with respect for of each one's rights and interests legally protected.

2. Everyone has the right to participate in the preparation, execution and inspection of compliance with territorial planning instruments, through participation in public consultations, the presentation of proposals, recommendations and complaints.

3. Everyone has the right to access information and documents that are part of the procedures for preparing and executing land use plans, held by public entities, under the terms of the law.

Article 7
Duty to order and plan

The State and other public entities promote territorial planning, within the scope of their respective mandates and competences, in order to ensure an articulated system of territorial planning that promotes an adequate organization and use of the national territory in the perspective of its valorization and sustainable development, in accordance with the purposes set out in this law.

CHAPTER II
Soil legal status

Article 8
Land use regime

1. Land use is carried out in accordance with the limits provided for in the Constitution, the law, the territorial plans in force and in accordance with the respective classification and qualification.

2. The land use regime defines the discipline related to the respective occupation, use and transformation.

3. The land use regime is established by the territorial plans of municipal scope through the classification and qualification of the soil.
4. The classification of the soil determines its basic destination and is based on the fundamental distinction between rustic and urban soil.
5. The soil qualification defines, with respect for its classification, the content of its possible use by reference to a dominant activity or use.
6. For the purposes of this article, the following definitions apply:
   a) Rustic soil, one for which the vocation for agricultural, livestock, forestry, mining and natural protection and leisure activities is recognized;
   b) Urban land, one for which the vocation for the urbanization and building process is recognized.

Article 9
Public spaces and public equipment and infrastructure for collective use

1. Spaces for public use and public equipment and infrastructure for collective use are in the public domain of the State.
2. When spaces for public use and public equipment and infrastructure for collective use remain or are integrated in private ownership, the Administration ensures the public use of the goods in question and regulates the respective terms, namely through administrative easements, regulations administrative services for public use of private or contract spaces.

Article 10
Private domain of the State and spatial planning policy

Without prejudice to other purposes provided for by law, real estate in the private domain of the State may be assigned to the pursuit of territorial planning policy purposes, namely to:

a) The installation of public spaces, infrastructures and equipment for collective use;
b) The carrying out of public interventions or public initiatives, in the fields of agriculture, forests, social housing and urban rehabilitation;
c) Other purposes of collective interest.

Article 11
Private property

1. Everyone is guaranteed the right to private property, under the terms of the Constitution and the law and with respect for their social function.
2. The right to private property and the other rights related to the soil are considered and made compatible, within the framework of the legal relations of spatial planning and urbanism, with protected constitutional principles and values, namely in the domains of the environment, culture and cultural heritage, public health, education, housing, quality of life and economic and social development.
3. The use and classification of soil takes place in the form and within the limits established by law and in the territorial planning instruments binding on individuals.

Article 12
Means of public intervention

1. The State and other public entities intervene in relation to the soil, within the respective attributions and competences of its organs, for the pursuit of the purposes assigned to them within the scope of spatial planning policy and in compliance with the laws, regulations and applicable territorial plans, namely through the following means:
   a) Territorial planning;
   b) Exercise of preemptive right;
   c) Constitution of surface right;
   d) Administrative easements;
   e) Expropriations for public utility;
   f) Urban land re-parceling operations;
   g) Land re-parceling operations;
   h) Soil reserve;
   i) Concessions for the use and exploitation of public domain.
2. In adopting the measures referred to in the preceding paragraph, the State and other public entities must consider, in particular, protection and enhancement of:
   a) Natural, cultural and landscape heritage;
   b) Coastal zone;
   c) Margins of lagoons and streams;
   d) Water resources;
   e) Agricultural and forest areas;
   f) Protected areas;
   g) Specific ecosystems;
   h) Ordering and qualification of urban areas.
3. The State and other legal persons governed by public law, within the scope of their respective attributions and powers, and for the promotion of the purposes of territorial planning defined in this law, may buy, sell or exchange goods that are part of the private domain of the State or local governments.

Article 13
Restrictions of public utility

1. Without prejudice to the definition of land use regime by territorial planning instruments, for the pursuit of public interest, purposes related to spatial planning policy, restrictions of public utility to the content of property rights may be established by law.
2. When, by law or territorial planning instrument, restrictions equivalent to expropriation are imposed on land or buildings, their owners are entitled to compensation, under the terms of the law.

CHAPTER III
Territorial planning system

Article 14
Territorial planning

1. Territorial planning contributes to the achievement of public policy objectives for land use planning.
2. The territorial planning system is organized at the national and municipal levels according to the nature and impact of the public interests pursued.

Article 15
Weighting public and private interests

Territorial planning instruments identify, rank and harmonize the various public and private interests with projection in the spatial planning, with a view to the most correct use of the territory in environmental, economic, social and cultural terms.

Article 16
National plans

1. Territorial planning instruments at the national level define the strategic framework for the organization of the national space, establishing guidelines to be considered at the municipal level and the compatibility of public sectorial policies of the State and, as necessary, the safeguarding of values and resources of recognized national interest.
2. The national spatial planning plan and sectoral plans are instruments of national scope.

Article 17
Municipal plans

1. Territorial planning instruments at municipal level establish, in accordance with national guidelines, the land use regime and the respective programming and execution.
2. Municipal territorial planning instruments are the municipal land management plan and the land use plan.
3. The municipal land management plan defines the strategic and programmatic framework for the management and use of the municipality's territory, based on the local development strategy.
4. The land use plan is an operational plan for implementing the directives of the municipal land management plan and has a binding nature for individuals and public entities.

Article 18
Principles of coordination and articulation

Entities responsible for the preparation approval of territorial planning instruments coordinate and articulate the training and execution of the referred instruments among themselves, namely through the identification and weighting of plans, programs and projects existing or in preparation, with a view to ensuring their compatibility.

Article 19
Relationships between territorial planning instruments

1. The options and the territorial development model contained in the national territorial planning instrument guide and frame preparation of the other territorial planning instruments, whether national or municipal, which must be compatible with those.

2. Territorial planning instruments of municipal scope observe the guidelines defined in the territorial planning instruments of national scope.

3. In the relations between territorial planning instruments of municipal scope that contradict each other, the later plan prevails over the pre-existing plan.

Article 20
Validity

1. The validity of territorial planning instruments and of urban management acts implementing them depends on their conformity with applicable law.

2. Territorial planning instruments are invalid when:

   a) They offend the provisions of the territorial planning instrument or the prohibitions or limitations resulting from preventive measures or provisional measures that they must respect;

   b) Contradict administrative law easements, limitations and restrictions of public utility or that allow the performance of actions not in conformity with the purposes that led to the exclusion of areas from their respective scope.

3. The administrative acts of urban management practiced in violation of any instrument of territorial planning binding on individuals are invalid.

Article 21
Legal binding

1. Territorial planning instruments are binding on public entities.

2. Land use plans are also directly and immediately binding on private individuals.

3. Spatial planning instruments plans may also be directly or immediately binding on individuals, in whole or in part, when this is determined by the Government decree that approves them.

Article 22
Elaboration and approval

1. The National Territorial Planning Instrument is prepared and approved by the Government in the form of a decree-law.

2. Sectoral plans are prepared by the body of the State Central Administration responsible for the respective public policy and approved by Government decree.

3. The territorial planning instruments of municipal scope are adopted by deliberative organs of the Municipal Authorities and approved by Government decree.

Article 23
Publicity

Territorial planning instruments are published in the *Jornal da República*.[1]

Article 24
Execution of land use plans

1. Public Administration may implement land use plans through an implementation program, approved by Government decree, upon proposal of the Central Administration body of the State responsible for territorial planning.

[1] Jornal da República – National Official Gazzette

2. The implementation of land use plans consists in the implementation of the urban planning options and interventions provided for therein by Public Administration and by individuals, namely through the means of public intervention in the soil provided for in Article 8.

Article 25
Change and revision

1. Territorial planning instruments are occasionally changed or globally revised whenever the evolution of economic and social development perspectives justifies it.
2. The change and revision of territorial planning instruments follow, with the necessary adaptations, the procedures foreseen for their preparation, approval and publication.

Article 26
Suspension

1. The total and partial suspension of territorial planning instruments occurs when there are exceptional circumstances resulting from significant changes in the prospects for economic and social development incompatible with the implementation of the options set out in the plan.
2. The suspension of territorial planning instruments is determined by decree-law in the case of the National Territorial Planning Instrument and by government decree in other cases.
3. Local Government representative bodies and Municipal Advisory Councils are consulted prior to the suspension of territorial planning instruments in the respective municipality.
4. The act that determines the suspension must indicate the reasons, the term and the territorial impact of the suspension, as well as expressly indicate the suspended provisions.

Article 27
Precautionary measures

1. For reasons of public interest, preventive measures may be established for the maximum period to be defined in specific regulations in the territorial areas for which the elaboration, changes, suspension or revision of territorial planning instruments has been decided, with the objective of preventing changes to the territory or existing legal situations that may limit planning options or hinder their execution.
2. Where the public interest to be served by the elaboration or revision of a territorial planning instrument cannot be achieved by imposing the prohibitions or limitations referred to in the previous paragraph, provisional measures may be laid down, for a maximum period to be defined in specific regulations, defining in a positive manner the transitional regime applicable to a given area of the territory and which are necessary to safeguard those interests.
3. The adoption of precautionary measures is justified and establishes the duration of measures and may give rise to compensation, under the terms of the law.
4. The procedure for adopting precautionary measures is defined in specific regulations.

Article 28
Evaluation

The entities responsible for the preparation of territorial planning instruments promote permanent assessment of the adequacy and implementation of the discipline enshrined in them, as well as the significant impacts of their implementation on the environment.

CHAPTER IV
Final and transitional provisions

Article 29
Direct application

The rules and principles laid down in this law shall apply to the preparation of any territorial planning instruments whose preparation procedure is ongoing on the date of their entry into force.

Article 30
Oe-Cusse Ambeno Special Administrative Region

1. The Regional Plan of Territorial Planning, the Regional Sectorial Plans and the land use plans for the Special Administrative Region of Oe-Cusse Ambeno are approved by Government decree, on a proposal from the Authority of the Region.
2. The Regional Spatial Planning Plan has a supramunicipal scope, with content similar to that of a municipal spatial planning plan and must contain the specific characteristics of the Oe-Cusse Ambeno territory, defined in the legal regime of territorial planning instruments.
3. In the Oe-Cusse Ambeno Special Administrative Region there is no place for the preparation and approval of municipal territorial planning instrument.

Article 31
Ataúro Island

1. The Territorial Planning Instrument for the Island of Atauro is approved by Government decree, upon proposal of the Board of Directors of the Special Social Economy Market Zone of Oe-Cusse Ambeno and Ataúro.
2. The Atauro Territorial Planning Instrument is equivalent to the municipal territorial planning instrument and must contain the specific features of the insularity of its territory, defined in the legal regime of territorial planning instruments.
3. Land use plans for the Island of Ataúro may also be approved, by proposal of the Board of Directors of the Special Social Economy Market Zone of Oe-Cusse Ambeno and Ataúro.

Article 32
Complementary diplomas

The Government approves, within 90 days, the following complementary diplomas:

a) Legal Regime for Territorial Planning Instruments;
b) Building and Urbanization Legal Regime;
c) Legal Classification and Qualification of Soil.

Article 33
Transitional regime

1. All territorial planning instruments currently in force must be returned to the modalities provided for in this law, under the terms provided for in the following paragraph.
2. Within 90 days after the entry into force of this law, the Minister responsible for land use planning is responsible for identifying the planning instruments whose adaptation is necessary.
3. Until the installation of the representative bodies of Local Governments, the powers attributed to them are ensured by the body of the Central Administration of the State responsible for the area of territorial planning, with the participation of the bodies and services of the Local Administration of the State, under the terms of regulation by Government decree.

Article 34
Implementation

This law comes into force 30 days after its publication.

Approved on February 27, 2017.

The President of the National Parliament,

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Adérito Hugo da Costa

Enacted on April 17, 2017.

Be it published.

The President of the Republic,

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Taur Matan Ruak