

# La'ó Hamutuk

Timor-Leste Institute for Development Monitoring and Analysis

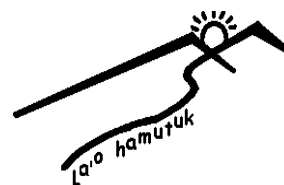
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Dili, 29 May 2014

**His Excellency Taur Matan Ruak**

**President, Democratic Republic of Timor-Leste (RDTL)**

**Dili, Timor-Leste**

**Regarding: Proposed Media law**

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**Your Excellency, Mr President, with our respect,**

On 6 May 2014, National Parliament approved a Media Law, after nearly three months of work by Committee A.

*La'ó Hamutuk* participated in a hearing held by Parliament Committee A in Tibar on 19 February to discuss the draft law the Government had sent to them. We feared that this draft law could damage freedom of expression and freedom of the press, and that it also threatens democracy and human rights in Timor-Leste.

Unfortunately, National Parliament has not repaired the basic flaw in this law, and therefore, through this submission, we would like to ask the President of the Republic to use your powers under Article 88 of the RDTL Constitution to veto this media law, as a symbolic and actual protection of democracy and the principles of independence.

*La'ó Hamutuk* is asking the President to veto this Law because it will harm democracy and human rights, restrict many people's rights to freedom of expression, and give power to a single group to issue a few licenses while limiting other people's rights to share information. We believe this violates Timor-Leste's Constitution and the International Covenant on Civil and Political Rights.

We also ask the President of the Republic to write a letter to Parliament to help the Members improve this legislation.

Our analysis is as follows:

## **Free expression is a principle of democracy.**

Freedom of expression is a universal principle of democratic nations, and laws must not limit the rights of any person to receive and distribute information. This principle is guaranteed by Articles 40 and 41 of Timor-Leste's Constitution and Article 19 of the International Covenant on Civil and Political Rights, which Timor-Leste has ratified. Timor-Leste is legally obliged to follow them, and legislation must reflect their fundamental principles.

**Article 2(a)** of the proposed law defines "journalistic activities" as "seeking, collecting, selecting, analyzing and distributing information to the public, as text, words or images,

through a media organ”, which **Article 2(l)** defines as “a person or corporation engaged in journalistic activity.” **Article 2(i)** says that a “journalist” is a professional whose principle activity is “journalism.” These self-referential definitions encompass a far broader range than commercial newspapers, radio and television stations.

In reality, many other people have a profession of distributing information, even though they are not professional journalists, such as researchers, academics, civil society organizations, bloggers, freelance journalists and others. Therefore, we see that this Article allows freedom to distribute information only to professionals who receive credentials from the Press Council, which works for commercial media who have registered and received a license from the Press Council.

The law must not block the way for anyone to distribute information, even if they don’t have credentials from the Press Council, because everyone has the right to carry out such activities, including sharing information through their personal means, free of censorship or intervention from special interest.

In truth, nobody needs to request accreditation to distribute information to the public. The Press Council cannot limit people’s freedom of expression, as **Articles 42, 43 and 44(b, c and d)** in this Law state.

In addition, **Article 12** cancels some people’s right to freedom of expression, rejecting the rights of anyone who is not an “adult citizen” to be a journalist. This provision restricts students who want to cover news, create “wall newspapers,” as well as student bloggers who publicize information.

In Timor-Leste, for example, students at Escola São Jose (Sanyos) for several years have written in the newspaper, *Suara Timor-Lorosa’e*, and coverage by students as Colegio Saó Miguel (CSM) is often included in *STL TV* news.

### **Not only “journalists” share information with the public.**

**Article 13.5** says that people who don’t meet the law’s criteria for journalists cannot distribute information to the public, which violates human rights principles. This provision contradicts the work of institutions and organizations engaged in public education, analysis, commentary and advocacy.

We cannot accept that everyone has to apply for Press Council credentials to do the work of collecting, analyzing and disseminating information to the public. “Media organs” like [www.aitaraklaran.blogspot.com](http://www.aitaraklaran.blogspot.com), *Buletin Fongtil*, *Buletin Haburas*, [www.laohamutuk.org](http://www.laohamutuk.org), [www.haktl.org](http://www.haktl.org), [www.timorhauniadoben.com](http://www.timorhauniadoben.com), [www.diakkalae.org](http://www.diakkalae.org), [www.economia-tl.blogspot.com](http://www.economia-tl.blogspot.com), Casa Produção Audiovisual (CPA) television programs, NGOs, World Bank and UN reports, Facebook writers and others have a fundamental right to distribute information to the public.

### **The law should protect the diversity of opinion.**

A key function of the press is to circulate information and opinions from different perspectives, to help people understand various sides, not to give only one view. We are worried that **Article 3.1(e)**’s description of media’s function to “promote peace, social stability, harmony and national solidarity” could be used to discourage dissemination of

other points of view. **Article 4(g)**'s requirement that media "promote the public interest and democratic order" could also be an excuse for repressing different opinions.

These articles contradict **Article 20.1(c)** which says that a journalist has a duty to "defend the plurality of opinions, ensuring the ability of expression of different currents of opinion and respect for cultural, religious and ethnic diversity." We hope that the latter point of view will prevail.

In addition, we are concerned about **Article 23's** statement that a separate law will regulate non-profit media. Although we do not know what Parliament plans for that law to include, the current example is cause for concern. If the intention of Article 23 is to state that this Media Law does not apply to religious, community and non-profit media, it would be better to say that explicitly, and to clarify that such publications do not need credentials from the Press Council to continue to exercise their Constitutional rights.

### **Don't restrict the independence of the press.**

Media organs should follow the Journalists' Code of Ethics, which was developed by journalists and their employers, ensuring accuracy, diversity and freedom of the press. We appreciate that working journalists have voluntarily committed themselves to follow these principles.

However, we are concerned when they become law through **Article 21**, enforced (and perhaps modified) by the Press Council, and applied more widely than their original authors intended. This could open the way for media owners or Parliament to interfere in the independence of the media, and to limit other people's right to free expression.

Furthermore, we are concerned that the Press Council with legal authority, funding and members chosen by political officials and commercial media, should not have the power (under **Articles 43 and 44**) to prevent anyone from exercising his or her freedom of expression.

The State should respect journalists' rights to create their own bodies, including journalist associations like AJTL and TLPU, to regulate their own members, but they cannot compel other people to follow their rules.

### **This Law denigrates Timor-Leste's history.**

As we wrote to Parliament Committee A, Timor-Leste should not forget the history of our liberation struggle from 1974 to 1999. Many people in the resistance used media to communicate and share information to defend the rights and dignity of the people of this land.

The *Seara Bulletin* and Radio Maubere were among Timorese media which helped liberate Timor-Leste from colonialism and occupation. José Ramos-Horta, Xanana Gusmão, Francisco Borja da Costa and others used these media to educate, inform and coordinate the struggle for liberation, even though they were not "professional journalists" accredited by the Portuguese or Indonesian governments.

In addition, journalists from other countries, including Roger East, the Balibo Five, Sander Thoenes from the Netherlands, Agus Mulyawan from Indonesia, Kamal Bamadhaj from New

Zealand, Amy Goodman from the USA, Max Stahl with his film of the Santa Cruz Massacre and other foreign media coverage were examples of the contribution from freedom of the press and journalism without borders, free of geographic and political limitations.

Reporting by these journalists helped our diplomatic front advocate for Timor-Leste's independence, supported others providing solidarity, assisted the resistance and other Maubere people to know what was happening here and exemplified the spirit of "A Luta Continua". Even today, foreign media serve a key role in keeping Timor-Leste in the world's eyes.

Unfortunately, this Media Law tries to limit foreign journalists' activities, such as **Article 25** which requires visiting foreign reporters to get Press Council approval, and **Article 12** which bans non-citizens from working as journalists.<sup>1</sup>

This provision negates the history of our struggle, suffering and the contribution that media made to ensure that a democratic state under rule of law which values human rights will stand strong in this beloved land Timor-Leste.

The first nine of the foreign journalists listed above gave their lives for Timor-Leste's independence. If they had sought accreditation from Suharto's "**Dewan Pers**", Timor-Leste might still be under Indonesian rule today.

This proposed law is reminiscent of policies implemented by dictatorships everywhere to hide the reality in their countries from the world, strangling people's freedom of expression to preserve their power. Attempts by the Salazar and Suharto regimes to control the press should give Timor-Leste pause.

## **Other comments**

**Article 27** sets formal requirements for media to publish certain information regularly and **Article 32** requires a specific editorial structure. We believe that such matters are for the media themselves to control, based on their nature and financial resources. According to the definitions in **Article 2**, people who disseminate information through blogs, Twitter, Facebook and similar means are also media organs, and a single person cannot form an Editorial Board.

## **Final words**

Timor-Leste has been sovereign for more than a decade without a Media Law, and so far we have not had problems with non-accredited media. During this time, Timorese people freely exercised our right to express their opinions and receive media information without pressure or censorship for the first time in nearly 500 years.

We believe that there is no urgency for Timor-Leste to create a press law, especially a defective one like this, which will reverse our society's advances toward using social and other media to exchange ideas without limitation. We recognize that journalists' capacity,

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<sup>1</sup> Deputada Carmelita Moniz told La'o Hamutuk that "cidadão" in this article does not mean "cidadão de RDTL." However, the Constitution uses "pessoa" when it intends to refer to everyone regardless of nationality, and Parliament refused to make this change to the Government's proposal. The judicial system will enforce it based on the words contained in the law itself.

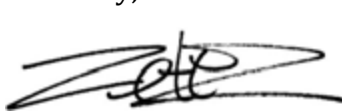
misinformation and lack of experience sometimes make people unhappy with published articles, but state regulation is not the solution.

Therefore, this issue needs deeper study and analysis before deciding whether to have a Media Law, and what it should include to be consistent and appropriate for this digital world, as well as with fundamental and universal human rights.

In closing, we believe that Timor-Leste can continue with the freedom of expression and the press defined in our Constitution and the International Covenant on Civil and Political Rights, with the good intentions of our leaders, journalists, media owners and entire society.

Thank you very much for your attention, and we are ready to answer questions or provide additional information in writing or in meeting with the President of the Republic, if he is available.

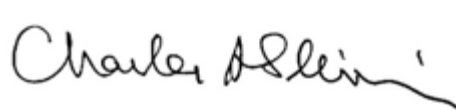
Sincerely,



Juvinal Dias  
La'ó Hamutuk



Celestino Gusmão



Charles Scheiner

**This letter is also supported by:**

**Name**

**Organization**

**From Timor-Leste:**



Arsenio Pereira

NGO Forum (FONGTIL)



Manuel Monteiro

Asosiasaun HAK

Carlos Florindo

ETADEP

Alex Tilman

[www.diakkalae.com](http://www.diakkalae.com) blog



Jenito Santana

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FORAM



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Maria do Rosario (Zizi) Pedruco

<http://www.timorhauniandoben.com/> blog



Hugo Fernandes

Asosiasaun Jornalista Timor-Leste (AJTL)



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Timor-Leste Koligasaun ba Edukasaun (TLCE)



Max Stahl

CAMSTL

Susan Marx

The Asia Foundation

Madre Monica Yoko Nakumura

Escravas do Sagrado Coração de Jesus

Meagan Weymes

independent journalist

Rowena McNaughton

independent journalist



Nugroho Katjasungkana

Fortilos

#### From around the world:



David Robie

Pacific Media Centre, regional

Shalmali Guttal

Focus on the Global South, regional



John M. Miller

East Timor and Indonesia Action Network, USA

Maire Leadbeater

East Timor Independence Committee, NZ

Carmel Budiardjo

TAPOL, UK

Jude Conway

Hunter East Timor Sisters, Australia

Gabriel Jonsson

Swedish East Timor Committee

Mikio Monju

Japan East Timor Coalition