



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

THE LAW MAKING PROCESS IN TIMOR LESTE

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Introduction

The National Parliament is a legislative institution that is sovereign independent, dignified and representative of the people. It carries out the legislative function of producing laws in the interests of the community that are based on the spirit and sovereignty of the people as enshrined in the Constitution. The National Parliament has three main powers: 1. *legislative*, 2. *Supervisory*, 3. *political decision making*. These three powers are set out in Article 92 of the RDTL Constitution

The drafting of Laws

The National Parliament has the legislative function of drafting laws. The parliament is made of standing committees with members from each faction who gained seats at the last election. Each commission is responsible for a particular area and also for preparing and discussing draft laws which are presented by members of parliament, factions and the government¹.

The Council of Ministers (government) has the authority to propose two types of draft laws, namely *Draft Bills and Decree-Laws*².

Draft laws proposed by members of parliament (by individual members as well as factions) are called *Draft Bills*. These proposals can be submitted to the plenary to be discussed comprehensively and in great detail.

¹ See Article 9 and 86 of the rules of procedure of the National Parliament.

² Article 115.2 (a) & Article 116 (c) & (d) of the RDTL Constitution.

In regards to the drafting of laws, there are three main components which are interlinked and inseparable. *Firstly*, the law making institution. *Secondly*, the procedure or rules for lawmaking. *Thirdly* the matters that will be set out in the law. If one of these main components is lacking in some way then the end product will be a flawed piece of legislation.

Public Consultation

The rules of procedure of the National Parliament provide an opportunity to each committee to organize a consultation or public audience with the community to discuss legislative material that is of particular interest to the public.³ JSMP has observed that members of the parliament have carried out such consultations, but only in the capital Dili, and rarely have the public in the districts been consulted about the contents of draft laws.

JSMP has observed that efforts to consult the public have been minimal, both on behalf of parliamentary members and the government. Therefore it is desirable for public consultations to be held in the districts with the aim of directly engaging the community, so that the laws are widely consulted and thus can be said to be truly representative.

In addition to public consultation, the community should be kept informed about every law enacted by the President so that they are aware of the law and how it will impact on them. When a law is enacted the “*fictie*” principle automatically applies meaning that it is assumed that every citizen is aware of the law, without exception. Generally speaking, in many nations the process of drafting a law must also take into consideration philosophical, historical and sociological/anthropological factors. Therefore we hope that the national parliament will always give due consideration to the philosophical, historical

³ *Opcit*, Article 75 (d), Article 76.1

and sociological characteristics of the people of Timor Leste. These three aspects are a crucial part of formulating draft laws in this new nation.

Voting Mechanism

Another factor that influences the content of each draft law is the voting system, which is a democratic process to establish different views about the contents of a draft law during a plenary session. It is important to note that this process is the final alternative in a democratic nation. However, this process often gives weight to political interests only.

Voting is the final stage, to ensure that the majority of parliament vote in favor of the draft law being discussed. Through this process the majority in parliament determines if a draft law is to be approved or not, however on some occasions the majority fails to consider the substance of the draft law and in the end the community feels that the legislation produced is not beneficial to them. For example, a draft law on firearms was proposed by the government recently to the parliament. This type of thing will soon be commonplace in the parliament, because parliamentary members will always prioritize political considerations rather than the actual contents of the law, and in fact more consideration should be given to philosophical, sociological/anthropological and historical elements.

Draft laws presented by parliamentary members, factions or the government can be accepted or rejected. When a draft law is accepted by the parliament then it will be sent to the relevant/competent committee, or in other words, the committee that deals with the topics proposed in the draft law. The draft will be discussed in detail (article by article) at the committee level and the findings will be presented in a plenary session with the aim of hearing responses from all members of parliament about the contents of the draft law.

However, if some articles require modification then the plenary will recommend for the relevant committee modify the contents and the format of the articles and during the following plenary session a final and comprehensive vote will be held to determine if the draft law is accepted or rejected. When the majority of parliamentarians present approve the draft law, then it will be forwarded to the President for enactment or veto, in accordance with Article 85 (c) and Article 88.1 of the Constitution. Thereafter it must be promulgated in the official gazette so that it can be enacted as law. The Constitution does not expressly state what the consequences are if the President does not exercise the right of veto. However it can be said that if the President does not exercise the right of veto within 30 days then the law can be considered to have been accepted and it must be enacted. A draft law can only be submitted by the parliament to the president twice, and on the second occasion if two thirds of the absolute majority of members present approve the draft law then the President can not reject the draft law and President shall enact and promulgate the law via the official gazette (*Jornal da Republica*) within 8 days after receiving it.

Based on the observations of JSMP, many legislative programs have been established or are currently being established, including preparations for debate in plenary sessions. The backlog of draft laws in the national parliament can be attributed to a number of factors; the primary cause is the failure of council members to attend sessions to discuss the contents of draft laws in accordance with established timetables.

The scheduling of sessions to enable the committees to discuss urgent issues includes setting an agenda for the discussion of draft laws. Often the discussion of draft laws in plenary sessions are delayed because less than two thirds of members are present and therefore a quorum can not be established. These factors prevent the parliament from completing its work in an efficient and effective manner.

Challenges

In relation to the drafting of laws as discussed above, the parliament and government still face a number of hurdles when proposing and drafting laws. The language used to draft laws is quite problematic. The use of Portuguese can be deemed legitimate according to Article 13.1 and Article 94.1(a) of the rules of procedure of the national parliament on the use of the official languages (Portuguese, Tetun) to draft laws.

However, there is concern that Portuguese is used to draft every law, as this approach favors the use of scientific language that is complicated and therefore requires in-depth analysis, which is a problem for a number of parliamentary members who have limited ability to use the Portuguese language, as well as for the common people who do not understand the substance of these laws. Such difficulties hinder the legislative process and create obstacles for committees wishing to debate laws in plenary sessions, as well as having a negative effect on the community.

A number of parliamentary members and members of the community have voiced their concerns about the language issue. It has been suggested that the original text drafted in Portuguese should be translated into Tetun so that the majority of parliamentary members can properly understand the contents of draft laws. In this way they will be able to actively present their opinions and ideas about the contents of draft laws. To date a large number of laws have been met with a mixed response by the community. This is because these laws are not considered to be beneficial to the general interests of the community. This is due to the fact that the consultation process failed to involve the public.

Recommendations:

JSMP recommends for the legislators to:

- Pay attention to the formal and material elements relating to each piece of legislation as well as its philosophical, historical, sociological/anthropological character and shape. This recommendation has been issued in light of the many legislative instruments adopted by this new county that are not always compatible with the culture of Timor Leste
- The public need to be consulted and kept informed about every law that is being drafted and enacted.
- It would be preferable to have each draft law and law translated into Tetun so that the public can understand its contents.