



## JUDICIAL SYSTEM MONITORING PROGRAMME

## PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

### *Press Release*

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### **President of Timor-Leste performs miracle by ratifying the Civil Code that contains more than 2000 articles in just one day**

#### **JSMP urges consideration and expresses concern**

On 13 September 2011 the President ratified Draft Law No. 56/II on the Civil Code. This draft law that was authorized by the National Parliament and forwarded to the President consists of Five (V) Books and more than two thousand articles.

Draft Law No. 56/II was submitted by the National Parliament to the President on 12 September 2011. This means that the President only took one day to read or to consult on the draft law that contains more than 2000 articles ... something that JSMP believes is absolutely impossible.....! Maybe this is a miracle....!

Article 88.1 of the Timor-Leste Constitution on 'promulgation and veto' states the following: *"Within thirty days after receiving any statute from the National Parliament for the purpose of its promulgation as law, the President of the Republic shall either promulgate the statute or exercise the right of veto, in which case he or she, based on substantive grounds, shall send a message to the National Parliament requesting a new appraisal of the statute"*.

Without questioning the constitutional authority of the President, consideration should be given that the draft civil code is a technical and complex law that encompasses normative issues regarding rights and obligations in the context of social relationships in the community, and therefore a number of countries have required considerable time to conduct appropriate studies or before they enact their civil codes ..... However in Timor-Leste it is completely the opposite, because it's as if the President has performed a miracle, without reading the document submitted to him, he has immediately completed it in just one day after its submission by the National Parliament.

From a political angle JSMP values and respects the commitment and effort of the State of Timor-Leste to strengthen the civil law framework, however this law has raised a substantial

problem for all members of the community and can give rise to new conflict between communities, because the validation process was not carried out in a sufficiently organized manner and without a public consultation process that was open to all members of society.

The civil code is really important in a democratic society, because this code determines and regulates the legal relationships that exist between individuals, between individuals and groups, as well as between groups, and highlights and stresses the importance of the interests of every individual.

Therefore, JSMP believes that the Civil Code needs to be looked at in great detail and sufficient time is required for its review before it is submitted to the President for validation and promulgation, because this law is extremely complex and must reflect the current reality and culture that exists in Timor-Leste.

Based on its observations, JSMP is extremely concerned with several matters relating to the validation process of the Civil Code by the President and JSMP believes that the President has not examined this law in sufficient detail.

There are several matters that have raised the concern of JSMP:

1. Throughout the entire process that has taken place in the National Parliament, JSMP observed that discussion or debate has not been effective, because there was no thorough consultation about the contents of the law;
2. No detailed or thorough study was conducted on the social-cultural realities and traditional practices that exist in Timor-Leste before the Civil Code was formulated;
3. Not all entities were involved, for example civil society, religious representatives and customary elders to ensure that the Civil Code reflects the day to day life and cultural practices that exist in Timor-Leste;
4. JSMP is also concerned that in the end many members of parliament did not understand the contents of the draft Civil Code, especially the benefit and impact of this law, because the draft was only provided in Portuguese;
5. JSMP also observed that the discussion of this law was entrusted to a Special Commission which was represented by eight (8) members of parliament. A clear example is the fact that 14 members of parliament, including 5 members of the AMP coalition, chose to abstain in relation to the draft Civil Code because there were a number of articles in the draft that do not reflect the current realities that exist in Timor-Leste, for example Article 1475 on civil marriages, marriages in accordance with the rules/doctrines of the Catholic Church, and monogamous marriages according to customary law, as well as Article 1305 on the classification of clean water;
6. JSMP also believes that even though it was possible for parliament to organize consultations, it is unlikely that they would be efficient, because this draft law was only provided in Portuguese and was not translated into Tetum to facilitate the understanding of every person to encourage the public to participate in this process;

In relation to the aforementioned matters and concerns, JSMP believes that:

1. Although JSMP believes that this law is necessary and important for Timor-Leste, it is not pressing/URGENT, because we are currently applying the Indonesian Civil Code;
2. JSMP also believes that the complexity of the Civil Code exceeds the current capacity of the people of Timor-Leste, recalling that Timor-Leste has a very small population of approximately one million people, but the Civil Code contains more than 2000 articles;
3. JSMP is concerned that this law is highly complex, and the population do not have an adequate understanding, which will render this law meaningless, because they will not use it. We may have our own Civil Code, however if the people do not use it, then the law will have no meaning, just like what has happened in other countries, for example in Africa (Ethiopia);
4. JSMP has observed that Committee A of the National Parliament and also the Special Commission (Ad Hoc) were not able to fully participate or contribute because of the language issue and also because time was extremely limited;
5. Therefore, JSMP believes that an adequate study needs to be conducted to reflect the realities that exist in Timor-Leste, in relation to family issues/lines of descent, inheritance, land, goods, traditional marriages and other social-cultural relationships which are part of the cultural wealth of the people of Timor-Leste, so that the aforementioned law truly reflects the realities that exist in Timor-Leste;
6. Finally, JSMP requests for the government to fully socialize this law in the future, because this law has already been promulgated by the President, therefore JSMP believes that all relevant institutions including court actors, academics, public defenders and private lawyers, as well as all levels of the community, need to have a good understanding of this law so they can implement it in the future.

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