



**JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

Press Release

6 October 2008

DRAFT PENAL CODE NEEDS FINAL ADJUSTMENT

Since 2003, successive versions of a domestic Penal Code have been circulated, each falling victim to the contentious subject matter. This cycle may soon be ended.

A new draft is slated soon to be examined by the National Parliament, and appears now to address most of the criticisms levelled at earlier attempts by civil society.

Such a law would list all offences at criminal law in Timor-Leste. In accordance with UNTAET regulation, the country presently defers to pre-existing Indonesian statutes.

The Indonesian penal code has been decried as departing from international human rights norms on a number of fronts, not least in its treatment of gender-based violence.

A new, Timorese law is needed not only to correct these shortcomings, but also to ensure that Timor-Leste's social and political structures are appropriately reflected.

It is welcome progress, then, to find that in the most recent draft obtained by JSMP, provisions in respect of domestic abuse and sexual violence are vastly improved.

Unlike its predecessor, the draft would allow prosecution of rape within marriage, and considers cohabitation to be an aggravating, rather than mitigating, factor in assaults.

JSMP also applauds revisions that effectively decriminalise abortion in certain cases, such as where the physical or mental health of the mother would otherwise be at risk.

These fortunate legislative advances are tarnished, though, by the persistent inclusion of criminal defamation provisions despite previous, vocal opposition on this point.

Creation of such an offence would, in some cases, penalize public comments critical of the state, its policies or representatives. This would inevitably limit press freedoms.

Similar provisions, enacted in other Asian nations such as Cambodia and Singapore, have proved a powerful tool for quashing dissent and engendering a compliant media.

In an emerging democracy such as Timor-Leste, with its legacy of injustices and its nascent institutions, criminal defamation would have an especially damaging effect.

JSMP understands that both the Minister of Justice and the UN have now suggested that criminal defamation will be removed from the draft to be debated in Parliament.

It is hoped that sustained pressure will avoid the adoption of such an authoritarian and undemocratic device in what would otherwise be a great advance for law in Timor.

For further information please contact;
Roberto da Costa Pachecho, Legal Research Coordinator, JSMP
Email: bebeto@jsmp.minihub.org
Landline: 3323883