



JSMP Press Release
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The Government Seeks to Regulate Private Lawyers

The Timor Leste Lawyers' Association ("AATL") was established by private lawyers voting at its General Assembly in August 2003 in order to promote regulation of private lawyers in Timor Leste and to develop appropriate laws and mechanisms for that purpose. There is still at this point in time, however, no law which *formally* regulates the profession of private lawyers in Timor Leste. The AATL have therefore been actively working for the profession to be acknowledged and regulated by way of a parliamentary law and have been assisted in this regard by Avocats Sans Frontieres ("ASF").

Since its establishment the AATL has worked with ASF to develop a draft law on private lawyers ("AATL Law") for future submission and ratification as a parliamentary law. A working group has been formed in conjunction with members of Parliamentary Commission A as a means of further developing and revising the AATL Law. According to the RDTL Constitution, groups or individuals from civil society are entitled to submit draft laws to either members of parliament, parliamentary groups or the Government who may then endorse the draft law and present it to Parliament to be considered and passed as a law. In submitting the AATL Law, the AATL has validly complied with this process.

Nevertheless, the Ministry of Justice has apparently already drafted a law which purports to regulate the private lawyers' profession and their training ("The Draft Law"). The status of the Draft Law is unclear, however, it appears that the Council of Ministers will be discussing the Draft Law in the near future and intend for it to be eventually passed as a law by the Council of Ministers. Although the AATL is the umbrella-association for all private lawyers, and has to date made major contributions to the judicial system in Timor Leste, it has not been provided with a copy of the Draft Law, nor consulted in relation to its contents. The AATL has only received a copy of the Draft Law from ASF.

It is clear that the role of all private lawyers must be regulated by law. The Constitution does not clearly define whether Parliament has *exclusive competence* to pass laws – either on its own initiative or on behalf of associations such as the AATL – in relation to the regulation of private lawyers. On the other hand, it is also unclear whether the Government has authority under the Constitution to pass laws on this subject matter. In JSMP's view, a draft law regulating private lawyers is best debated in the Parliament to ensure the opportunity for public consultation on the law.

JSMP is aware that the AATL has a number of concerns with some of the provisions contained within the Draft Law. JSMP is also of the view that, irrespective of competence to initiate the Draft Law and the lack of consultation in its development, there are a number of fundamental flaws which undermine and limit its effect:

- The Draft Law restricts the right of private lawyers to form, and become members of, a representative professional association such as the AATL. The Draft Law requires satisfaction of specified criteria and, most importantly, government approval in order to establish a professional lawyers' association.
- The Draft Law does not acknowledge the existence of the AATL as a legitimate body with a role to play in the regulation and organization of private lawyers. Bar Associations have an important function in assuring the independence of lawyers, without which the proper pursuit of that profession would be impossible. It is for this reason critical that the AATL is given at least some responsibility for matters relating to the training and accreditation of lawyers. In JSMP's view these matters can only properly be addressed by way of co-operation and co-ordination with the Government. What is clear is that the strength and impartiality of the legal profession will be undermined if it is regulated solely by either the AATL or the Government acting alone and without co-operation.
- The Draft Law provides for a training course as the basis for lawyers' accreditation. It fails, however, to consider the future of private lawyers, and their cases, if they fail to pass the exams required by that course. For example, what are the implications for those clients who have been convicted of offences whilst being represented by a lawyer who is subsequently disqualified from practice (by failing to fulfill course requirements)? Who will have conduct of current files pending before the courts at the time of disqualification?
- The Draft Law requires proficiency in Tetum *and* Portuguese as a condition of admission to the training program. As a result lawyers will not be able to secure accreditation and practice as a lawyer unless fluent in Portuguese. In JSMP's view this is clearly discriminatory and arguably violates numerous provisions of the Constitution, including the prohibition against discrimination on the grounds of language and provisions recognizing the status of Tetum as one of the national languages of Timor Leste. Furthermore, there will be major practical difficulties in conducting legal training in an unfamiliar language, as has been observed with the current program at the Judicial Training Centre. Those difficulties will be even more pronounced with respect to private lawyers' training as they have not, to date at least, received the same level of language-training support.
- There is a lack of detailed provisions in relation to the proposed training program for private lawyers. For example, the Draft Law does not address the status of lawyers who do not fulfill the training requirements. Further, it fails to prescribe time limits for the training program (although a source states that it is likely to be approximately one year) or details as to the nature of the proposed training curriculum.

JSMP welcomes the government's initiative and foresight in drafting a law which addresses the regulation of private lawyers, nevertheless, JSMP feels that it is essential to discuss and consider in more depth the numerous problems identified above. Above all, it is critical that this take place by means of an open, transparent forum which will maximize input from the AATL as well as civil society. Furthermore, in developing a law to regulate private lawyers, the initiating body ought to consider the AATL law, the issues addressed therein and the concerns of the AATL.