



JSMP Press Release
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JSMP's Report on the Draft Penal Code

JSMP hopes that the comments, and the recommendations for amendments contained in JSMP's report analyzing Timor Leste's draft Penal Code will be useful to the drafters, members of Government and the Parliament currently considering this important law.

JSMP's comments are limited to the draft Penal Code provisions on: defamation, domestic violence, offences against sexual freedom, crimes against humanity and war crimes. JSMP has chosen to reserve its comments to these particular areas which are pertinent to JSMP's current expertise. We hope that other institutions and members of civil society can provide comments on some of these other areas which will be useful to the drafters of the Penal Code.

JSMP is concerned that on 19 January 2005, the Council of Ministers conducted a preliminary examination of a Bill on Legislative Authorisation for the future approval of the Penal Code. NGOs have urged the Parliament to use its discretion not to give the government this authorization because it is important that this law be open to parliamentary debate. The criminal legal system is so fundamental to society and public order that there is a strong need for the Penal Code to be passed in a manner that is open to public scrutiny and in accordance with Timor Leste's Constitution.

Justice is a community concept. It is important that the criminal law that is in place in Timor Leste is one which everyone respects, and understands, in order to ensure compliance with the law. The appropriate punishment for various crimes should also be decided upon with community consultation. The law must be made through public consultation for the Timorese people to feel that they have ownership of the law.

Defamation

JSMP is very concerned that defamation is criminalized under the draft Penal Code. Freedom of opinion and expression are important to the development of a democratic society. In JSMP's opinion, articles 172 – 177 of the draft Penal Code (which provide for one to two years imprisonment) place too strong a limit on individuals' and institutions' rights to freedom of expression. These articles could have the effect of stifling criticism of, and opposition to, the current and future Timor Leste governments. Criminal sanctions might dissuade journalists or individuals from reporting or discussing important issues for fear of prosecution and result in self-censorship by the media.

In JSMP's view the criminalisation of defamation may be unconstitutional in Timor Leste because articles 172 – 177 of the draft Penal Code do not comply with Timor Leste's obligations under article 19(3) of the ICCPR.

Although freedom of expression should not encroach on an individual's right to reputation, this right to reputation can be sufficiently protected through civil defamation laws. Civil defamation laws can provide monetary compensation to victims where appropriate and the threat of civil action should be sufficient to deter defamatory acts.

JSMP therefore recommends deleting Articles 172 – 177 of the draft Penal Code and to protect individuals' reputations with appropriate civil defamation laws instead.

Domestic Violence and Offences against Sexual Freedom

JSMP welcomes the recognition of the seriousness of crimes of domestic violence in articles 148 – 150 of the draft Penal Code. However, these articles should be expanded to include a wider variety of domestic relationships and types of violence. Further, in JSMP's view, the drafters of the Penal Code should consider the original draft Domestic Violence Law which contained far more thorough definitions and guidelines to sentencing for decision makers.

JSMP welcomes the expansive definitions and relatively harsh penalties provided under articles 159 – 171 for crimes of sexual violence. In JSMP's view, the penalties provided will have a deterrent effect on future perpetrators of these serious criminal offences, and provide a far more just outcome for victims of such offences than currently provided under the Indonesian Penal Code.

JSMP has, however, recommended a number of amendments to the articles criminalizing sexual violence. These can be read in the report

Compliance with the Rome Statute

The draft Penal Code also adapts Timor Leste criminal legislation to the *Rome Statute of the International Criminal Court (Rome Statute)*, defining conduct that constitutes crimes under international law as defined in the *Rome Statute*. As a party to the *Rome Statute*, Timor Leste must comply with its obligations under the Statute. Also, if a rule in the Penal Code is contrary to the *Rome Statute* it will be invalid pursuant to s9(3) of the Timor Leste Constitution (which states that rules contrary to international conventions are invalid).

The report contains a number of recommendations for amendments to the draft Penal Code articles on genocide (Article 120), crimes against humanity (Article 121), and war crimes (Article 122 – 127).