

PETITION

Rejecting the Proposed Sixth Amendment to the Penal Code to Criminalise Defamation and Injury

From:

THE MOVEMENT AGAINST THE CRIMINALISATION OF DEFAMATION AND
INJURY
(MKKDI)

SUBMITTED TO

PRESIDENT OF THE COUNCIL OF MINISTERS

CC:

1. PRESIDENT OF THE REPUBLIC
2. PRESIDENT OF THE NATIONAL PARLIAMENT
3. PRIME MINISTER
4. PRESIDENT OF THE COURT OF APPEAL
5. OFFICE OF THE OMBUDSMAN FOR HUMAN RIGHTS AND JUSTICE
6. MINISTRY OF JUSTICE
7. PROSECUTOR GENERAL
8. ANTI-CORRUPTION COMMISSION
9. PRESS COUNCIL
10. CHEGA NATIONAL CENTRE
11. UN RESIDENT COORDINATOR IN TIMOR-LESTE

I. Introduction

The freedom of expression and the press are key elements of citizens' rights, because they play a fundamental role that underpins democracy. Also freedom of expression and the press are protected in the Timor-Leste Constitution, and have been a means for people to fully contribute to development and a pillar of sustainable development, in a democratic society free from corruption and built on good governance. However, the 8th Constitutional Government wishes to limit the freedom of expression and the press by producing a Draft Decree-Law that Criminalises Defamation and Injury, whereby through the Ministry of Justice, pursuant to Decree Law No. 19/2009, the Government seeks to make a Sixth Amendment to the Penal Code.

This draft Decree-Law has been developed in such a hurry when Timor-Leste is still in a State of Emergency. Even though the Ministry of Justice consulted the public and some portions of Civil Society at the national level, including academic institutions, the media, the Press Council, the Timor-Leste Journalists Association (AJTL), and the Office of the Ombudsman for Human Rights (PDHJ), no scientific research was conducted and not all citizens were consulted to find out if it is truly necessary for Timor-Leste to have this decree-law. The consultation process only lasted one week. Our movement was very surprised when this draft Decree-Law was suddenly produced.

On this basis we as individuals and representatives of groups from a cross section of society have come together to form this **Movement Against the Criminalisation of Defamation and Injury (MKKDI)**, and we consider that the draft amendment **"IS NOT ONLY UNNECESSARY"** but also unconstitutional because it **VIOLATES** the principles and spirit of the **Timor-Leste Constitution, Universal Declaration on Human Rights and international instruments ratified by the State of Timor-Leste.**

Our movement understands that many countries consider defamation to be a crime, but they have been the targets of harsh and continuous condemnation from international and regional human rights organisations. Timor-Leste is a democratic

nation based on the rule of law and the Constitution and laws that uphold human rights, particularly the right to freedom of expression the press.

Therefore, our movement **DOES NOT AGREE** with the criminalisation of defamation and injury based on the following reasons:

- 1) Articles 40 and 41 of the Timor-Leste Constitution guarantee the Freedom of Expression and the Press.
- 2) The people's right to honour and privacy are protected in Article 36 of the Constitution and specifically set out in Articles 67, 68, 76, 77, 417, 418 of the Civil Code. In addition, there are some crimes that limit the right to freedom of expression and as a consequence the State needs to intervene, namely defamatory false information (Article 285 of the PC), religious or racial discrimination (Article 135 of the PC) and instigation to commit a crime (Article 189 of the PC) and Article 183 of the PC on public disclosure of private information;
- 3) The State of Timor-Leste has signed a number of international conventions including Article 19 of the International Covenant on Civil and Political Rights (ICCPR), that guarantees that everyone shall have the right to hold opinions without interference.
- 4) Article 19 of the Universal Declaration of Human Rights also deals with the right to expression, including freedom of opinion without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers.
- 5) Timor-Leste is the most democratic country in Southeast Asia and has gained international recognition as reflected in the 2020 democracy index, where Timor-Leste is ranked number 1 in Southeast Asia and number 78 in the world.
- 6) The *Chega!* Report recommends for defamation not to be criminalised in Timor-Leste.

II. **Impact and consequences**

If the State approves the Decree-Law that Criminalises Defamation and Injury, there will be huge consequences, as follows:

1. Impact on the State:

- The State protects the reputation of individuals, of people, as a legal value, but this should not result from an investment by the State because it is related to the individual's own personality (private nature).
- The State also protects the reputation of legal persons and of entities that are legally comparable thereto (Police, Government officials and individuals that have links to politicians and criminals).
- This implies State expenditure for those institutions within the judicial authority system (human resources, infrastructure and increased budgets).
- A further increase in the workload of judicial actors and this could have consequences on the administration of justice in cases that are relevant in society such as corruption and other public crimes.
- Limit the role of the CAC and PDHJ to combat corruption and promote good governance.
- Diminish the image of the State of Timor-Leste at the international level in relation to the democracy index.

2. Impact on Society

- Will destroy freedom of the press and expression, and the former's role of social control.
- Impede the implementation of the Law on Witness Protection and will deter witnesses from providing testimony in cases.
- Will fortify a culture of silence and discourage victims of gender-based violence (GBV) because victims will be afraid to talk truthfully when they interact with the formal justice system.
- The number of crimes registered will increase and this will result in more annual expenditure (resources and funds) for the justice sector to protect peoples' honour, and consequently will prevent people from having access to education, social rights and other economic rights.
- The number of minors in conflict with the law will increase, given that criminal responsibility starts at age 16.

III. Case studies

To reinforce our concerns about the impact of the Decree-Law that Criminalises Defamation and Injury, we have included 2 cases studies to present the following facts:

1. Case Study 1 - Rape

(The names used in this case study are fictitious to protect confidentiality).

Abuk told Abui that Berek (a public servant) sexually abused a girl named Dauris who is a minor. Abuk heard this information from Dauris who was in tears. Berek told the girl "You can't tell anyone about this incident, because if you do you will be punished for tarnishing my name". Then Abuk made a complaint to the police about Berek's behaviour, namely that he sexually abused Dauris. Even though Dauris knew that this case did indeed occur, during the investigation Dauris completely changed her statement, because she was afraid of Berek, therefore she did not speak truthfully about the facts. In the end the formal justice system closed the case due to insufficient evidence.

2. Case Study 2 – Corruption/economic participation in business

(The names used in this case study are fictitious to protect confidentiality).

Carlos is a Minister who is suspected of misusing State funds to enrich himself and his family. Rui is a public servant who knew about Carlos' actions, but he did not have any proof or documents relating to how Carlos enriched had himself or his family with State funds.

When Rui gave information to the CAC and also spoke to the media, he knew that Carlos had enriched himself and his family with State money, but he did not have sufficient evidence. In the end, during the trial there was no evidence to indicate that

Carlos had enriched himself and his family with State funds. Therefore, Carlos initiated proceedings against Rui for the crime of defamation as well as the media for publishing information about this case.

The Movement is also concerned that the President of the Court of Appeal and the Prosecutor General¹ made a statement to the media to criminalise defamation and injury. The draft Decree-Law states that the Justice Coordination Council has to give a positive opinion. According to the Constitution, the Supreme Court of Justice/Court of Appeal has competence to consider issues of legality and constitutionality of the rules.

The Prosecutor General has specific powers to raise the unconstitutional nature of laws in abstract terms and the Public Prosecution Service has general powers regarding the unconstitutionality of laws in concrete cases. It is noted that in Timor-Leste no individual has the capacity to raise the issue of unconstitutionality of rights directly with the Court of Appeal which happens in other countries, including some of the countries from the Community of Portuguese Speaking Nations (CPLP). Therefore, the opinions of the President of the Court of Appeal and Prosecutor General are pre-empting the powers of the other entities that exist in the Constitution.

IV. Recommendations:

For the aforementioned reasons, our Movement requests for:

1. The Prime Minister, thought the Council of Ministers to **CANCEL** the proposed amendment to the Penal Code on the Criminalisation of Defamation and Injury.
2. The Government to ensure awareness raising and the implementation of the Civil Code and its procedures and to promote sufficient investment in the judicial system (especially the Office of the Public Defender and the courts) so that they are capable of protecting people's right to honour through the civil law;
3. The National Parliament **NOT TO AUTHORISE** the Government to Criminalise Defamation and Injury.

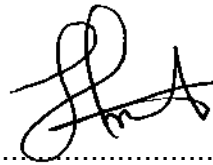
¹ Statement of the Prosecutor General to TATOLI on 29 June 2020.

4. The President of the Republic “**MUST NOT PROMULGATE**” the draft decree-law to Criminalise Defamation and Injury.

Spokespersons for the Movement Against the Criminalisation of Defamation and Injury:

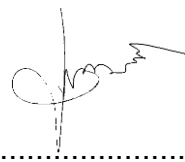
1. Daniel Santos do Carmo

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2. Zevonia Maria Vieira

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3. Inocencio Xavier

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4. Jose Moniz

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Dili, 25 August 2020