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Committee A of the National Parliament holds a meeting with JSMP and Private Lawyers about the Draft Law on a Bar Association and Legal Regime for a Professional Public Association

On 4 March 2021 Committee A of the National Parliament held a public meeting with JSMP and national and international private lawyers in Timor-Leste. The aim of this meeting was to hear and consider the thoughts and comments of private lawyers and JSMP about Draft Law No. 25/V on a Legal Regime for a Professional Public Association and Draft Law No 26/V approving the Law on a Bar Association in Timor-Leste.

“JSMP appreciates the initiative of Committee A for organising this discussion in order to hear the thoughts and ideas of all national and international private lawyers in Timor-Leste as well as civil society to properly improve and develop this law before it is discussed and approved in general in the plenary” said the Executive Director of JSMP, Ana Paula Marçal

During this meeting many lawyers and JSMP representatives conveyed their comments and thoughts, especially regarding the Law on a Bar Association. Not all lawyers expressed the same thoughts and comments about the need to create a Bar Association.

Some thought that it wasn't the right time or that it isn't necessary to create a Law on a Bar Association because there is only a very small number of lawyers in Timor-Leste, and if a Bar Association is established it will not be able to stand alone or be independent because it will have no financial capacity to sustain its functioning and to build the capacity of lawyers.

However, some others thought that it was the right time and necessary to create a Bar Association in Timor-Leste to ensure that legal services are provided in Timor-Leste and this association can focus on building the capacity of lawyers, and thus increase the quality of lawyers.

In relation to the issue of financial capacity, some MPs and lawyers, as well as JSMP, suggested that this law should include some privileges from the Government to support the administrative work of the Timor-Leste Lawyers Organization (OATL)

Secretariat and also the ongoing training of lawyers. This budget support would only be temporary until the OATL has the financial capacity to function by itself.

In relation to the issue of the independence of OATL if given budgetary support from the Government, Her Excellency Carmelita Caetano Moniz, and also JSMP, stated that budgetary support from the Government will have no impact on the independence of OATL and its legal services. This is because many organizations and institutions, both public and private, are given budgetary support from the State but they still maintain their independence, just like JSMP. This independence depends on the principles of each organization and institution to adhere to its statute and the internal rules of the organization.

Some lawyers raised another important issue and expressed differing opinions, namely the restrictions and opportunities given to international lawyers. Some lawyers proposed for further restrictions to be placed on international lawyers coming to Timor-Leste because national lawyers do not yet have sufficient capacity to compete with international lawyers. Meanwhile, some lawyers thought that it is not necessary to restrict international lawyers from entering Timor-Leste because their presence can help to build the capacity of East Timorese lawyers and can complement the legal services provided because East Timorese lawyers do not yet specialize in particular areas.

JSMP said that this new draft law on a Bar Association has included excellent amendments in comparison with the previous version and many of these amendments correspond with the recommendations that JSMP provided in an opinion given to the Ministry of Justice in 2019¹. This new draft law has given significant independence and competence to the OATL, because in the previous draft law the OATL was significantly dependent on the Ministry of Justice. Therefore, JSMP hopes that the presence of the OATL can promote the effectiveness and quality of legal services in Timor-Leste to contribute towards achieving the objectives of the State in ensuring access to justice for everyone.

However, JSMP believes that the draft law on a Bar Association does not yet include the main legal service, namely “Legal Counsel”. JSMP believes that in reality this could be the exclusive activity carried out by lawyers. “Legal Consultation” can be exercised by other lawyers and institutions who also deal with relevant issues relating to legal matters, such as JSMP. This is because there is a difference between “legal consultation” and “legal counsel”, because legal consultation does not provide assistance to the client throughout the entire process from the outset until resolution, and this activity only provides information and solutions. Whereas legal counsel is provided throughout the entire process, from the outset until resolution (representation in the courts).

¹ Details of this opinion are available at: https://jsmp.tl/wp-content/uploads/SubmmisaunbaMJ_OrdenAdvoago_TETUM.pdf

JSMP also raised another issue for further consideration, namely the issue of requesting payment from clients, which should reflect the reality in Timor-Leste, because most of the population still live below the poverty line. In some cases the payment requested is far higher than the value of the service provided in the case (value of the action). Therefore, JSMP suggests that the payment requested should be less than the material value of the case. Thus, clients will be able to feel the benefit of legal services provided by private lawyers.

When closing the meeting the President of Committee A, His Excellency Joaquim dos Santos, thanked the lawyers and JSMP for their participation and contribution during the meeting and requested for them to submit an opinion to Committee A to assist the specific discussion of this draft law with the possibility of producing a substitute text when it is presented to the Chair of the National Parliament for discussion and approval.

This discussion was attended by the following lawyers: Jose Teixeira, Manuel Tilman, Paulo dos Remédios, Pedro Aparício, Jose Pedro Comoés, Sahe da Silva, Lukeno Ribeiro Alkatiri and from JSMP: Ana Paula Marçal, Jose Pereira, Flora Soriano Menezes, Mateus Xavier and Emanuel Rocha.

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