



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

## **Summary of Advocacy Activities**

In relation to:

### **Criminalising Defamation and Injury**

**Period I**

## I. Introduction

Pursuant to Decree-Law No 19/2009, the Government, through the Ministry of Justice, took the initiative to draft a sixth amendment to the Penal Code (PC) to criminalise defamation and injury.

The Government-Ministry of Justice took the initiative to criminalise defamation and injury with the idea of educating all citizens to respect each other, and to respect the honour, reputation and privacy of others.

This legislative initiative was sudden and urgent, therefore there was not enough time for all people, particularly civil society, to express their views.

Public consultation requires the Ministry of Justice to send the amended draft to all entities, including civil society. Even though the time given was so short, civil society managed to express their views through meetings and the presentation of opinions that almost unanimously state that it is unnecessary for the Government-Ministry of Justice to amend the PC to criminalise defamation and injury.

JSMP together with civil society organizations, students/academics, the Association of Journalists, the Press Council, individuals and community members believe that the criminalisation of defamation will have a significant impact on rights regarding the freedom of expression. They also believe that criminalising defamation is not an appropriate mechanism to protect people's rights to honour and reputation.

## II. Activities

JSMP and civil society organisations, the Association of Journalists, the Press Council and academics, individuals and certain members of the community believe that it is not necessary for the Government to criminalise defamation and injury. Therefore, to halt this initiative, JSMP together with civil society organisations as well as academics, have been engaging in efforts and advocacy by conducting the following activities:

1) Developed and submitted a written opinion to the Ministry of Justice

JSMP was invited by the Ministry of Justice to present the views of civil society regarding the initiative of the Ministry of Justice to amend the Penal Code to criminalise defamation and injury, starting with an internal discussion to prepare a written opinion to present the views of JSMP regarding this draft law. JSMP conducted research to identify the relevant legal provisions in the Civil Code (CC) and the Penal Code (PC) that deal with defamation and injury. Based on the results of this research and analysis, JSMP believes that it is unnecessary to add some new articles to criminalise defamation and injury, because these issues are sufficiently dealt with in the CC and PC<sup>1</sup>.

2) Involved in a briefing facilitated by Ms. Barbara from JU,S

On 5 June 2020, JSMP together with Lao Hamutuk, took the initiative to organize an urgent meeting for civil society organisations and invited Ms. Barbara from *Juridico Social* (JU,S) to provide a briefing or explanation about the intentions and contents of these articles.

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<sup>1</sup> The JSMP opinion is available at: [https://jsmp.tl/wp-content/uploads/JSMP\\_Pareser\\_Esbosu-Lei-Difamasaun-no-Injuria-2020.pdf](https://jsmp.tl/wp-content/uploads/JSMP_Pareser_Esbosu-Lei-Difamasaun-no-Injuria-2020.pdf)

### 3) Meeting with the Ministry of Justice

On 12 June 2020 JSMP met with the Minister of Justice and his support team to hear from the Ministry of Justice about the initiative to amend the PC to criminalise defamation and injury. In this meeting the Minister of Justice and his support team expressed their views, and the Minister also said that the basis for criminalising defamation and injury is because members of society do not respect the honour of others. Therefore, criminalising defamation and injury can educate all citizens on how to respect each other, and respect the honour, reputation and privacy of others. After hearing the explanation of the Minister and his support team, JSMP thanked the minister for meeting with JSMP and reminded the Minister and his team to conduct thorough research and to consult with all entities to hear their ideas and thoughts to give careful consideration before going ahead with these articles.

### 4) Meeting with civil society and academics<sup>2</sup>

JSMP organised regular meetings on 17 July, 20 July, 27 July and 28 July 2020 to discuss strategies and methods to stop the Ministry Of Justice from presenting these draft amendments to the Council Of Ministers. The methods and strategies were discussed and agreed upon, after hearing from the organisations, academics, community members and individuals. Some members of FONGTIL are in the districts, so FONGTIL will arrange for them to express their position regarding the draft amendments to criminalise defamation and injury. Also, JSMP prepared and distributed a petition to the media at the national and regional levels, and also Lao Hamutuk, the Timor-Leste Journalists Association (AJTL) and the Office of the Ombudsman for Human Rights and Justice (PDHJ) were responsible for informing international solidarity organisations.

### 5) Involvement in Webinar

On 21 July 2020 JSMP also took part in a webinar organized by OXFAM in conjunction with the International Center for Not-for-Profit Law (ICNL). This webinar discussion was hosted by Mr. Zack Lampel, Senior Legal Advisor at the International Law Government Freedom of Expression, and the participants shared their views regarding their experiences relating to “Developments regarding the Criminalisation of Defamation in European countries and the Association of South East Asian Nations (ASEAN).

During the webinar the participants said that it is unnecessary to criminalise defamation and injury because honour and privacy are dealt with in civil law. The participants also asked about advocacy strategies, in particular the use of United Nations mechanisms. In relation to this matter, the Senior Legal Advisor shared his experiences regarding the most effective mechanisms, namely how to communicate with Special Rapporteur for the freedom of the press and freedom of expression and to request the Special Rapporteur to intervene by sending a letter to the State of Timor-Leste.

### 6) Establishing the Movement Against the Criminalisation of Defamation and Injury (MKKDI)

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<sup>2</sup> Forum ONG-Timor Leste (Fongtil) HAK Association, AJAR, ALFeLa, AHMDTL, CBR-Networking, RHTO, ADTL, OXFAM, KAK, Fokupers, Lao Hamutuk, Acbit, CODIVA, Belun, Mahein Foundation, Press Council, Timor-Leste Journalist Association, Dili University (UNDIL), Universidade da Paz (UNPAZ), Timor-Leste Student Front and JSMP.

After holding meetings with civil society organisations, students, the association of journalists, and academics, it was jointly agreed to establish a Movement named the Movement Against the Criminalisation of Defamation and Injury (MKKDI) and it was agreed for JSMP to lead this movement, to coordinate, and communicate with members to hold discussions to find mechanisms and strategies on how to stop the initiative of the Ministry of Justice. In addition to holding discussions to explore thoughts on strategies for advocacy both at the national and international levels, efforts were required to identify international solidarity organisations, to prepare a petition and to organise signatures.

#### 7) Preparation of the petition<sup>3</sup> and organising signatures

The movement led by JSMP and its partners prepared a petition against the criminalisation of defamation and injury and organised 819 signatures from civil society (national and international), the media, journalists, students, academics, individuals and community members.

#### 8) Meeting with the Minister of the Presidency of the Council of Ministers and presentation of a petition to State organs

On 25 August 2020 the movement, represented by FONGTIL, JSMP, Lao Hamutuk, AJTL, the Press Council, HAK Association, ALFeLa and AJAR, met with the Minister of the Presidency of the Council of Ministers, Mr. Fidelis Manuel Leite Magalhães, and his advisors.

During this meeting the Movement introduced itself and explained its history and its position regarding the initiative of the Government-Ministry of Justice to criminalise defamation and injury.

The movement told the Minister of the Presidency of the Council of Ministers that it does agree and considers it unnecessary to criminalise defamation and injury because it violates a range of principles, as provided for in the Timor-Leste Constitution and also international instruments adopted by Timor-Leste.

Meanwhile the Minister of the Presidency of the Council of Ministers did not have any views to discuss with the Movement team because his office has not yet accessed this draft law. Therefore, he said that there was no material to discuss with the Movement.

However, the Minister thanked the Movement for presenting its position and in the future the relevant Ministry or the Ministry that initiated this draft law can make a presentation to the Council of Ministers for their consideration and if the draft law contradicts the principles set out in the Constitution and other rules then it would be sent back to the relevant ministry to be cancelled.

#### 9) Meeting with the Human Rights Advisory Unit in Timor-Leste (UADU)

The Movement, represented by AJTL, OXFAM, HAK, ALFeLa, Lao Hamutuk and JSMP, on 2 September 2020 met with the United Nations representative in Timor-Leste to ask for some ideas about how to communicate with the Special Rapporteur for freedom of the press and freedom of expression. From this meeting the new Head of UADU, Ms. Claudia Diaz,

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<sup>3</sup> The Petition of the Movement Against the Criminalisation of Defamation and Injury is available at: [file:///C:/Users/JSMP-03/AppData/Local/Temp/PETISAUN\\_MOVIMENTU\\_KONRA\\_KRIMINALIZA\\_DIFAMASAUN\\_TETUM.pdf](file:///C:/Users/JSMP-03/AppData/Local/Temp/PETISAUN_MOVIMENTU_KONRA_KRIMINALIZA_DIFAMASAUN_TETUM.pdf)

promised to find out how to communicate with the Special Rapporteur and find out about the mechanisms to send a letter to the Special Rapporteur for freedom of the press and freedom of expression to intervene by sending a letter to the State of Timor-Leste on the issue of criminalising defamation and injury. UADU identified the means and guidelines and introduced them to the Movement regarding how to contact the Special Rapporteur.

### **III. Conclusions and Recommendations**

Criminalising defamation will have a significant impact and consequences on freedom of the press and freedom of expression as set out in the Constitution and also will violate principles in international law that have been adopted by Timor-Leste. JSMP together with other civil society organizations also believe it is unnecessary to criminalise defamation and injury therefore JSMP recommends for:

- 1) The Ministry of Justice to cancel this initiative because it is unnecessary and to focus on other more important draft laws
- 2) The Council of Ministers to stop the draft amendment to the Penal Code to criminalise defamation and injury;
- 3) The National Parliament to reject the sixth draft amendment to the Penal Code to Criminalise Defamation initiated by the Government, through the Ministry Of Justice;
- 4) The President of the Republic to use the competence provided to him in the Constitution to veto this law;
- 5) Request for the Government and relevant parties to increase awareness about the provisions regarding defamation and injury in the Civil Code and encourage the public to use this mechanism when subjected to defamation and injury by another party.