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FREEDOM of EXPRESSION and the MEDIA

baseline studies

'Everyone has the right to freedom of expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

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FREEDOM OF EXPRESSION AND THE MEDIA IN TIMOR-LESTE

part of a series of baseline studies on seven Southeast Asian countries

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Freedom of Expression and the Media in Timor-Leste

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Preface

This report is a timely and invaluable guide to the complex legal framework regulating the media in Timor-Leste. It will aid journalists for some time to come in identifying the challenges to free and fair reporting. Created by experts in journalism and the law, it considers the regulatory structure in Timor-Leste against the background of international law, standards and practice, aiding a comparison with best practice and highlighting grey areas in the current legal regime which may be vulnerable to attacks on free expression.

Publication comes at a time when media development in our young country has reached a crucial point: the government is considering making some speech a criminal offence which could lead to reporters being imprisoned. Journalists and all supporters of free expression must encourage law-makers to entrench a broad interpretation of the Constitution's rights to free expression and to reject the possibility of locking-up people who merely express their opinion. The report is also being published as Timor-Leste's journalists are considering their role in the new democratic nation and looking at how they can contribute to its future growth without compromising their journalistic principles. And, as ever, journalists are honing their craft, grappling with issues of professionalism and striving to improve fairness, accuracy and balance which are the best defence against those who want to restrict what can be published.

Journalism around the world is coming under increased scrutiny and Timor-Leste is no exception. Like members of the mass media elsewhere, Timorese journalists must be unrelenting in their examination of their work, unafraid of constructive criticism and able to justify every word reported. The fundamental importance of being able to do that has been forcefully illustrated by the recent criticism of the newspaper *Suara Timor Lorosa'e* which had to defend the accuracy and relevance of its reports into cases of hunger in rural areas. Failure to do so undermines the credibility of individual outlets and can compromise public confidence in the media in general, enabling those who would restrict the publication of information to whittle away hard-fought rights.

In the short time since Timor-Leste won independence, its journalists have already successfully campaigned for free expression rights to be guaranteed in the Constitution. Now we must take on the challenge of defending and expanding them in the face of onslaughts from government, people taking defamation actions, the entreaties of old friends and the difficulties of building a democratic nation from the ground up. It will not be enough for us to rely on the guarantees of the Constitution: these must be backed up by subsidiary laws. But each new piece of legislation creates an opportunity for opponents of free speech to place new limits on expression and we must be vigilant in ensuring these rights are not eroded.

While the legal framework outlined in this report is complex, we should not be afraid of new legislation as it is necessary to achieve aims such as the right of access to

information guaranteed in the Constitution. Instead, we should take the lead in helping to develop laws so they entrench those rights which enable us to inform the people and perform the essential watchdog on authority function necessary to a modern democracy.

Many journalists have helped the struggle to achieve independence for our small country, some at the cost of their lives. We should honour our colleagues by never giving up the new struggle we face today. As United Nations Secretary General Kofi Annan said in 2002, Timor-Leste may be small, but it can be a bright light for the world.

Virgilio Guterres

President, Timor Lorosae Journalists' Association (TLJA)

Managing Director, Rádio e Televisão de Timor-Leste

1. INTRODUCTION

Timor-Leste's media sector is in the early stages of development and, given the context of a newly developing nation, is financially precarious. There are two major daily newspapers, two weeklies, a number of occasional periodicals, a public radio station and television broadcaster, community radio stations and some Internet access.[1] There is also access to satellite television, foreign DVDs and music, as well as some overseas periodicals and literature. These are, however, out of the financial reach of the bulk of the population.

Timor-Leste's media are governed by a complex mix of laws, including those passed by Indonesia, the United Nations transitional administration and, since May 2002, those passed by the Timor-Leste government. In addition to these, international human rights laws and conventions form part of the Timorese legal system. The media regulatory framework in Timor-Leste consists of:

- Freedom of speech and the press in Timor-Leste's Constitution;
- A complex backdrop of international law on freedom of speech legally binding in Timor-Leste;
- Indonesian laws which continue to apply in Timor-Leste, including Indonesia's Press Law of 1999 and Indonesia's Penal Code (which should in theory be curbed in parts by Timor-Leste's Constitution and international human rights law); [2]
- A small amount of subsequent law-making in the area, particularly by the United Nation's transitional administration in Timor-Leste; and
- At least two key court cases with implications for media law.
- Although Timor-Leste's media now have more freedom than during the Indonesian period, this report outlines a number of shortcomings in the current media-laws regime including:
- the continued application of certain Indonesian laws, which restrict freedom of speech;
- uncertainty and lack of clarity surrounding media laws for journalists, judges, prosecutors and lawyers as well as members of government; and
- a newly established judicial system, still in the process of being rebuilt, which may not be equipped to resolve such uncertainties and issues as yet.

[1] For a sector overview, see "An assessment of the Media Sector in Timor-Leste" by A. Lin Neumann with Internews Timor-Leste trainer Jeanne du Toit, March 2002, prepared for the USAID/Office of Transitional Initiatives.
[2] Number 40 of 1999.

Significant Findings

One of the most serious problems identified in this report are the harsh defamation laws pursuant to which journalists or other civil society members may be jailed for publishing views or opinions that may be seen as critical or "dissenting". One person has already been detained under these laws in Timor-Leste since the departure of the Indonesian administration.[3] In May 2004, the Government's Council of Ministers circulated a press release indicating an intention to "criminalise" defamation through the development of new Timor-Leste legislation and this is currently being considered. This could have a chilling effect on Timor-Leste's media, both individual journalists and media outlets, to the detriment of democracy and free and open debate on issues of public importance.

Defamation cases may also lead to unreasonably large damage awards based on precedents in other countries that are disproportionate to the economic realities of Timor-Leste and a financially unsustainable media. Exaggerated defamation claims pose a real threat of bankrupting Timor-Leste's fledgling and financially precarious media outlets, individuals and organisations involved in the publication of information or "dissenting" opinions.[4] For example, in 2002, the Dili District Court found one of Timor-Leste's major newspapers, *Suara Timor Lorosae*, liable for USD 50,000 in civil damage for inaccurate reporting, an award that could have led to the closure of the outlet if it had been enforced immediately and in full.[5]

This report also discusses a number of other laws which limit the media's ability to contribute to the free flow of information and are incompatible with Timor-Leste's Constitution and the international human rights standards recognised by the country. A key challenge for the broadcast sector, which plays a significant role in a country with low literacy levels, is that there is no comprehensive legal regime governing licensing.

Recommendations

This report makes a number of recommendations towards creating an enabling media environment in the long term interests of freedom of speech and participatory democracy for Timor-Leste. A range of practical short-term and long-term recommendations are set out in the next section. These are aimed at remedying Timor-Leste's incomplete

[3] Japanese citizen Takeshi Kashiwagi, who spent 18 days in detention in Timor in 2000 for allegedly libelling Xanana Gusmao, now Timor-Leste's President.
[4] Public liability insurance, sometimes used by media outlets in other countries to manage the risk of losing a defamation case, is not available in Timor.
[5] The other daily newspaper, the *Timor Post* is also currently facing a USD 23,000 defamation suit.

and sometimes repressive media regulatory framework that puts the media sector and others exercising their right to freedom of expression at risk of both formal and informal censorship.

Limitations of this paper

Many legal issues affecting the media are not covered in this report, including laws regarding privacy, court reporting, trespass, intellectual property (for example, copyright and trademarks), commercial laws with regards to ownership of media outlets and tax, as well as the need for transparency in private sector areas such as company records, to promote the accountability of economically powerful figures in society.

2. KEY RECOMMENDATIONS

This report makes a number of key recommendations which, if implemented, would go a long way towards bringing Timor-Leste's law and practice into line with international and constitutional provisions guaranteeing freedom of expression. They are intended to be practical measures which can be implemented, in most cases by State actors but sometimes also by the media or other players.

Our key recommendations are as follows:

In regards to Press Regulation

To the government and/or parliament:

- The maximum fines which may be levied under the Press Law should be stipulated in law and should take into account the limited means available to the media in Timor-Leste. Consideration should be given, for example, to reducing the maximum fines under Article 18 to just a few thousand USD.
- It should be made clear that protections for the media set out in the Press Law apply to all journalists and media.
- The content restrictions in the present Press Law should be reviewed and amended to bring them in line with international and constitutional guarantees of freedom of expression.

- The provisions in the Press Law on the right of reply should also be reviewed and brought in line with international and constitutional standards.

To the media community and media outlets:

- Careful consideration should be given to establishing a truly self-regulatory press council, with representatives from both the media community and the general public. This body could develop and then promote implementation of a code of ethics for the media by, for instance, receiving and deciding upon complaints.
- Each media outlet should consider strengthening internal processes and standards with a view to reinforcing good journalistic practices and avoiding legal problems. Measures could include establishing an internal complaints system, strengthening editorial control and providing training in journalism.
- Members of the media should seek to become more engaged in media law development by, for instance, trying to influence the adoption and/or repeal of laws, as well as their interpretation by the judiciary.

In regards to Broadcast Regulation

To the government and/or parliament:

- Measures should be taken to enhance the independence of ARCOM by, for instance, providing for the involvement of representatives from the broadcasting and civil society sectors in appointments to the board. Once this has been done, the board should be appointed.
- A process of spectrum planning should be undertaken with a view towards ensuring that the spectrum is used to maximum effect and to prevent a situation where too many broadcasters are licensed. Broadcast licensing should be frozen until an effective assessment of broadcast sustainability has been conducted.
- The legal framework for broadcasting should be expanded through the development of comprehensive, progressive licensing and content regulation systems. This framework should provide for limited or no licence fees for community

broadcasters and existing community broadcasters should, in principle, have their licences guaranteed.

- A definition of a community broadcaster should be developed. It should be consistent with the Telecommunications Act and should also embrace all current stations.
- Section 84 of the Telecommunications Law should be amended to ensure that the potential fines for community broadcasters are reduced to less than USD 1,000 (or whatever sum) rather than the current maximum fine of USD 100,000.

To the broadcasting community and broadcasting outlets:

- Consideration should be given to establishing a Broadcasting Foundation or a similar body mandated to provide infrastructure maintenance (such as towers and transmitters) and to support the overall development of broadcasting by providing training, management advice, advocacy and technical support.
- The ARKTL and ex-CEP community radio stations should take measures to work together to promote broad public endorsement of the Code of Practice which they developed together with all community radio stations in 2003.

In regards to Defamation

To the government and/or parliament:

- Any defamation regime in Timor-Leste should respect the following rules:
  - Public officials should not benefit from special protection under defamation laws.
  - Public bodies should not be able to bring defamation suits.
  - No one should be held liable in defamation for statements which are true.
  - Defamation law should distinguish clearly between expressions of opinion and expressions of fact and should provide that the former are not actionable in defamation. At a minimum, opinions should benefit from a high degree of protection against defamation actions.
  - Defamation law should recognise a defence of reasonable publication.
  - Defamation law should provide protection against defamation for certain categories of statements, as described above.
- Consideration should be given to repealing, in their entirety, the criminal defamation provisions applicable in Timor-Leste and replacing them with a

fully developed civil defamation regime which respects the conditions set out above.

- If, contrary to the above, criminal defamation is retained, the following should apply, in addition to the rules set out above:
  - The available penalties should be reduced considerably to ensure that they are strictly proportional to the harm done, and all provision for prison sentences for defamation should be removed from the Penal Code. This is particularly important, in view of the extreme and always-disproportionate nature of imprisonment for defamation.
  - The "crime" of simple defamation should be repealed.
- The civil defamation rules should provide for the following rules, in addition to the general points made above, to ensure that remedies are always strictly proportional to the harm suffered:
  - Non-monetary remedies should, wherever possible, be prioritised over pecuniary awards.
  - A fixed ceiling for non-material harm for defamation should be established, to be awarded in only the most serious of cases.

In regards to Content Restrictions

To the government and/or parliament:

- The draft Timor-Leste Penal Code should be reviewed with a view to repealing or amending any provisions which are against international guarantees of freedom of expression.
- Articles 11(c) and (e) of the Immigration Law should be repealed, while Article 63 should be amended to bring it in line with international standards.
- The false news provisions in Law No. 1, 1946, should be repealed.

To the judiciary:

- The judiciary should apply freedom of expression principles when interpreting the Penal Code.

In regards to Access to Information

To the government and/or parliament:

- A comprehensive access to information law, in line with the standards noted above, should be adopted as a matter of priority.

- Existing laws which provide for secrecy should be reviewed and amended as necessary, so that only legitimately secret material is covered.
- The transparency of the legislative process should be improved. Measures to this effect could include more systematic notice of the planned drafting and introduction of laws and ensuring the possibility of making submissions during the preparation stage.
- Public access to the Official Gazette should be enhanced, ideally through its publication in a second language, preferably Tetum, and by making hard copies available for wider audience.

In regards to Informal Restrictions on Freedom of Expression

To the government and/or parliament:

- Officials should never take measures which constitute harassment of the media or journalists for exercising their right to freedom of expression. Where such measures do take place, the authorities should immediately act to counter them.
- Officials, other public figures and the community as a whole should demonstrate tolerance of criticism and the exercise of the right to freedom of expression by journalists and the media.

3. BACKGROUND

3.1. History

Timor-Leste achieved independence on 20 May 2002 after a long and traumatic period of resistance. It had been a Portuguese colony from 1702 until moves towards decolonisation began in 1974. Fighting broke out in August 1975 and the breakdown of Portuguese authority preceded a declaration of independence by the Frente Revolucionaria de Timor-Leste (Fretilin) on 27 November 1975. Indonesian forces invaded on 7 December 1975 and the country was officially designated Indonesia's 27th province in July 1976.

Resistance movements remained active during the 24 years of Indonesian rule, with Falintil (Armed Forces of National Liberation of East Timor) playing a key role in the push for independence.[6] Between a quarter and a third of Timor-Leste's population is thought to have died during this period as a result of forced population movements, starvation, and killings by Indonesian troops or their proxies.[7]

After the fall of Indonesian President Soeharto in May 1998, East Timorese leaders, with some support from the international community, renewed their push for a referendum on the status of Timor-Leste. The result of the August 1999 popular consultation was

[6] Falintil was the armed wing of Fretilin only until Xanana Gusmao became its leader, in 1983. Since then, Falintil was separated from Fretilin and became an independent resistance movement.

[7] The death toll from the Indonesian invasion is a calculation based on projected population growth based on two pre-invasion censuses in 1970 and 1974, and an Indonesian census in 1980.

a 78.5 per cent vote in favour of independence and against integration into Indonesia. In the violence that followed this vote, more than 1,000 people were killed and 500,000 displaced as armed militias, established and supported by the Indonesian military, went on a rampage. In the wake of this violence, INTERFET, a multilateral military force, was sent in to restore peace, and the United Nations Transitional Administration in East Timor (UNTAET) was created to administer the territory in the lead-up to independence.

The country has emerged as one of the poorest in Asia, heavily dependent on donor support for its national budget and still burdened with the costs of reconstruction after Indonesia's destructive withdrawal in 1999.[8] Extreme poverty is probably the single greatest contributor to the unrest and dissatisfaction that is a pre-condition for the development of rebel groups and incidents such as the Dili riots of December 2002. While a modest economic recovery is predicted in the coming years, poverty levels are likely to remain very high for quite some time.[9] This factor, combined with a culture of violence developed over 24 years of struggle and oppression, is likely to continue to challenge many people's commitment to the principles of peaceful democracy, with a consequent impact on freedom of expression.

Despite the challenges, the recovery of Timor-Leste over the last five years has often, and with good reason, been described as a success story. The rapid organisation of free and fair elections, a consultative constitution-writing process, and the restoration of comparative peace and stability are just a few of the many achievements since 1999.

3.2. Social and Political Context

The Constitution of Timor-Leste was written by the 88-member constituent assembly, a representative body chosen through a national election on 30 August 2001 in which twelve political parties won seats. Fretilin gained a 57 per cent majority, which resulted in it occupying 55 of the 88 seats. The members of the constituent assembly have since become members of the national parliament as a result of their decision not to hold further elections until the end of the five-year term for national parliament members outlined in the Constitution.[10] The Constitution establishes a semi-executive

[8] In Human Development Report 2002, the UN declared Timor-Leste to be the poorest nation in Asia, with more than 40% of its population living below the national poverty line of USD 55 cents a day, over half the population illiterate, few people having received an adequate education and more than 50% of infants underweight.

[9] "Poverty Reduction and Economic Growth Background Document", Timor-Leste and Development Partners Meeting, Dili, 3-5 December 2003.

[10] This was a somewhat controversial move and opposition MPs were reported as

presidential system, with a largely ceremonial president who is nevertheless endowed with some veto powers over legislation, the ability to appoint the prosecutor general, a significant role in foreign relations and a position as Supreme Commander of the Defence Force.[11] The first president, former Falintil leader Xanana Gusmao, was elected on 14 April 2002 in a presidential election in which nine separate political parties insisted that he was their candidate. Due to his great popularity,[12] President Xanana Gusmao has a stronger and more influential de facto position than that granted to him under the Constitution.

The Constitution allows the prime minister to choose ministers from within or without parliament. The government in turn, through its departments, has the capacity to pass certain kinds of legislation in the form of government decrees ratified by the council of ministers instead of the parliament, as stipulated by Section 96 of the Constitution. This includes "general rules and regulations for radio and television broadcasting and other mass media" under Section 96(3). This does not preclude media legislation being passed through the national parliament and, in case of conflict, parliamentary laws take precedence over decree laws.

The role of local government remains unclear. Village and sub-village elections are taking place in 2005 to elect leaders and representative councils. However, these local representatives are not part of the formal government structure, hold no formal power, and receive no payments.

The Church

Over 93 per cent of Timor-Leste's population identify itself as Catholic. Nobel laureate and former bishop of Dili, Carlos Filipe Ximenes Belo and the current Bishop of Baucau, Basilio do Nacimento, were the 1st and 3rd most popular public figures in the

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saying that the assembly 'was chosen only to draft a new constitution and that Fretilin used its numbers to extend its rule for five years - while reneging, with the UN's acquiescence, on a pledge to form a national unity government'. *Sydney Morning Herald*, 14 December 2002, "Timor-Leste at flashpoint as disillusionment sets in". Available at: http://www.smh.com.au/articles/2002/12/13/1039656218233.html.

[11] The President's veto can, however, be overridden by an absolute majority vote of the national parliament.

[12] The President has a 94% approval rating according to the National Opinion Poll published by the International Republican Institute in November 2003. While not without critics—for example in regards to his somewhat absolutist support for "reconciliation" in preference to confrontation and/or trial of the Indonesian perpetrators of human rights abuses in Timor—the President still appears to occupy the role of a "hero" in the public imagination.

country in a recent opinion poll.[13] In 2004, Bishop Belo expressed an interest in running for the presidency in the next election. He was, however, to subsequently withdraw his possible candidacy and resign his post as bishop. President Gusmao subsequently announced his intention to step down at the end of his current term, although this decision may not be final. The church is reported to have played an influential role in the drafting of certain parts of the Constitution, including the removal of a reference to the "separation of church and State" in Section 12.[14]

More than two weeks of essentially peaceful protest in April 2005 saw Timor-Leste's church officials test their organisation's political strength. By mobilising several thousand supporters from the districts, the church was able to force a reversal on newly formulated government policy to make religious education in public schools optional. During the protests, the government closed several of the city's main streets to traffic, but public and private commerce continued at a level close to normal. An agreement signed by senior government and church officials brought the protests to an end. While commentators viewed the result as a major political victory for the Catholic Church, it was also considered a milestone in the establishment of Timor-Leste's young democracy, as well as a successful test of the police force's management of antigovernment protest.

Civil society

It is difficult to assess the overall influence of Timor-Leste's NGO sector in the development and implementation of public policy, particularly as international funding and support begins to dwindle. There is of course, great variety in the approach of civil society towards political issues, with some avoiding politics altogether, some focusing on more activist styles of engagement, and others being involved in a combination of direct and indirect advocacy. However, the sheer number of NGOs in Timor, and their overall purchasing and recruitment power relative to that of the government, indicates that they are a significant element in the balance of political power. The absence of a regulation governing incorporation as a non-profit association means that there are no legal requirements for NGOs to be financially transparent or to make themselves open to scrutiny by their members or the public over and above, where applicable, general rules relating to corporations.

[13] IRI opinion poll, note 12 above.
[14] "Timor-Leste approves draft constitution", Jill Joliffe, *Sydney Morning Herald*, 11 February 2002.

Language

The choice of official languages was inevitably a controversial decision in a country that had two very different languages imposed upon it by foreign powers and a local language without a written tradition or comprehensive vocabulary. Portuguese (spoken by an estimated 7 to 10 per cent of the population, mostly Diaspora and older people) and Tetum (spoken in several dialects by an estimated 60 to 80 per cent of the population, although these figures are not fully documented) were designated as the official languages in the Constitution. Arguably, greater energy has been expended on the dissemination of Portuguese than on the development of Tetum as a language; most government documents and all laws are produced in Portuguese, there have also been reports of discrimination against non-Portuguese-speakers applying for government positions.[15]

This situation has been criticised on the grounds that it partially excludes the majority of Timor-Leste's population from participation in public political life, particularly the youth, who constitute 65 per cent of the population, because they speak Indonesian.[16] Undocumented estimates for the number of residents who speak Indonesian range from 60 to 80 per cent. The 2004 census collected detailed information about the languages spoken by Timor-Leste's population, but the data has yet to be made public. In practice, due to the difficulty of expressing complex concepts using Tetum's limited vocabulary, uncertain spelling and non-standardised grammar, Indonesian is still often used as a working written language by many local NGOs and most of the media, as well as the district courts.

Multinationals

Intergovernmental organisations, such as the UN and World Bank, as well as national donors whose contributions to Timor-Leste's national budget are often channelled through the World Bank, have some influence over the development of domestic policy and political priorities. UNOTIL is the follow-up mission to the UN Transitional Administration (UNTAET) and the UN Mission in East Timor (UNMISET), with 75 police and military advisors and 55 advisors to the government. This is a drop from the height of the UN presence, which saw some 10,000 troops and advisors on the ground. Over the past five years, the UN has also worked with key local public officials,

[15] US Government Bureau of Democracy, Human Rights, and Labour, *Country Reports on Human Rights Practices - 2002*, 31 March 2003. Available at: http://www.state.gov/g/drl/rls/hrrpt/2002/18241.htm.

[16] See *The Age*, 27 October 2000, "Tongue-tied in East Timor" (http://www.etan.org/et2000c/october/22-31/27tongue.htm) and *Inter Press Service*, 13 December 2002, "Riots Show Fragility of World's Newest Nation" (http://www.globalpolicy.org/nations/sovereign/sover/emerg/2002/1213riots.htm).

providing advice and staff to the justice sector, as well as training and gradually handing responsibility over to the local police and defence forces.

Timor-Leste inherited much of its administrative structure from the UNTAET regime, which was at times faulted for a lack of consultation and transparency. It has been argued that prior to the establishment of the current government, Timor-Leste was under a benign dictatorship during the period of UN control.

Peace and security

While Timor-Leste has been peaceful for some time, with no major incidents in the last year, security concerns remain high. There are continuing fears that former militia now living in West Timor could penetrate the border and threaten and destabilise local communities. There are, however, no indications that this is likely to happen in the near future.[17]

Tensions between the police force (PNTL) and the defence force (F-FDTL), at times erupting into violence, have led to concerns about the potential for breakdown in Timor-Leste's hard-won stability in the future, particularly after the departure of UN police and military advisors, currently scheduled for 20 May 2006.[18] Senior commanders of both forces are reported to be meeting regularly to reduce tensions.

Since independence, rebel groups have flourished in Timor, particularly in rural areas and among jobless former guerrilla fighters. They have been reported to be living on 'a mix of cooperative farming, extortion of money from fellow villagers by menace and, occasionally, highway robbery'. [19] Recent heavy-handed police crackdowns on such groups have been criticised on the basis that they may promote the radical opposition that they are intended to combat. Some individuals have been arrested and detained on charges of rebellion and of insulting public authority, articles of Indonesia's penal code that were previously used to silence Soeharto's critics.

Riots in Dili on 4 December 2002 led to the deaths of two students and the injury of 25 others. Several buildings were burned, including a supermarket owned and patronised by foreigners, and the private

[17] Six people were shot in Ermera in January 2003, allegedly by former militia. See Amnesty International, 6 March 2003, "Briefing to Security Council Members on Policing and Security in Timor-Leste".

[18] Incidents include a reported exchange of fire in Lospalos and a fight over a citation by a policeman of an F-FDTL member for failing to wear a helmet while driving a motorcycle.

[19] Jolliffe, Jill, "East Timorese Police Mimic Violence of Ex-Masters", *Asia Times*, 28 January 2004.

house of the prime minister. Speculation on the causes of the riots ranged from heavy-handed police tactics during the arrest of a murder suspect to *agent provocateurs* from West Timor. An UNMISET inquiry into these incidents was unable to identify those responsible, but the *Sydney Morning Herald* reported that panicked Timorese police opened fire after a mob broke through their lines into the grounds of the police headquarters. It also reported that at least five people claimed to have been wounded "when police drove through the streets late in the afternoon firing at suspects".[20] No violence on this scale has occurred in Dili since.

Legal system

The foundational laws of the Timorese legal system, those that determine which laws will broadly apply, include the Constitution, Timor-Leste laws No. 2/2002 and No. 10/2003, and UNTAET Regulation 1999/1 on Sources of Law.

UNTAET Regulation 1999/1, the first legislative act of the United Nations-administered territory's new sovereign government, provided for legal continuity through the continuance in force of Indonesian laws until they are replaced, with the crucial qualification that laws that contravene human rights standards will not be enforced.[21] Section 3.2 of Regulation 1999/1 specifically provided for the non-applicability of certain laws, presumably on the basis that they breached international standards.[22] Regulation 1999/1 has not been amended since independence; hence, its provisions are still in effect.

In July 2003, a Court of Appeal decision stated that Portuguese law, instead of Indonesian, was the subsidiary law in Timor-Leste. For some months this was the most important and confusing issue confronting Timor-Leste's judicial system. The issue was finally clarified by Law No 10/2003 on the Interpretation of Article 1 of Law 2/2002, passed by the National Parliament in October 2003, which confirmed that Indonesian law does in fact continue to apply in Timor-Leste unless revoked or replaced by subsequent laws.

Theoretically, the hierarchy of laws implemented in Timor-Leste is as follows:

- the Constitution of the Republic of Timor-Leste;

[20] *Sydney Morning Herald*, 14 December 2002, note 10 on page 15.
[21] See Section 3.1.
[22] These include the Law on Anti-Subversion, Law on Social Organizations, Law on National Security, Law on National Protection and Defence, Law on Mobilization and Demobilization and Law on Defence and Security. The Law on Anti-Subversion, in particular, was a key legal tool used by the Soeharto-regime in Indonesia to repress dissent. It provided, among other things, for sentences of death or life-long or 20-year imprisonment for anyone who was critical of the government.

- international law;[23]
- laws passed by the national parliament or by the government exercising its powers under Section 96 of the Constitution;
- UNTAET Regulations;
- and Indonesia law as applied prior to 25 October 1999.

As outlined in Chapter 8, the issue of how this complex mix of laws is interpreted is crucial for laws relating to public criticism, which to date are largely found in the laws that Timor-Leste has inherited from Indonesia, particularly the Indonesian Penal Code.

Formally, Indonesian laws apply only if they meet international human rights standards. However, on a day-to-day basis, Timor-Leste's struggling court system is unable effectively to apply even basic laws, such as the nation's criminal procedure rules, let alone interpret complex rules of international law. As a result, the question of whether or not Indonesian laws are consistent with international human rights standards is almost never addressed.

The vast majority of Timor-Leste's judges and lawyers have less than four years' experience in their roles as they were either not permitted to work as judges or lawyers in the court system of the Indonesian administration or have only graduated from law school in the last few years. Timor-Leste's legal system, being rebuilt literally from the ashes after the violent departure of the Indonesian administration, is struggling to meet the demands of the new nation. This compounds the legal uncertainties and threats facing Timor-Leste's media. [24]

In its annual report on Timor-Leste, Amnesty International said some progress was made in 2002 in establishing a legislative framework to protect human rights, although human rights safeguards were often not implemented.[25]

The judiciary faces a number of other challenges. They have to apply UNTAET laws that are not always translated into their preferred

[23] According to Timor's Constitution, all new laws, whether government decrees or laws or resolutions passed by the National Parliament, including the ratification of international treaties, do not come into force until they have been published in the Official Gazette. The failure to do so in some cases has led to concerns that a number of laws, amongst them the resolution ratifying the ICCPR, may have questionable legal status in Timor-Leste. However, significant improvements appear to have been made in the past year, leading to a significant reduction in this sort of uncertainty.

[24] On the early phases of reconstructing Timor's justice system, see H. Strohmeyer, "Policing the Peace: Post-Conflict Judicial System Reconstruction in East Timor" (2001), 24 (1) *University of New South Wales Law Journal* 171.

[25] Amnesty International Timor-Leste report available through http://web.amnesty.org/library/eng-temp/index and at www.jsmp.minihub.org/news/29_05nb_03.htm.

language of Indonesian.[26] They must also access new Timorese Government laws which are not always widely circulated and are written in Portuguese, a language most judges, in common with the vast majority of the population, do not read.

Further complications include anecdotal evidence that—despite laws, such as the Constitution, defining and stipulating when and how previous laws shall continue to apply in an independent Timor-Leste—there is an occasional tendency to disregard relevant laws that are in force from the Republic of Indonesia and the United Nations Transitional Administration on the assumption that Timor-Leste's legal system can be considered a clean slate by court actors.

The Dili District Court is the backbone of Timor-Leste's court system and the court of first instance for media law issues. The Court of Appeal which acts as the review mechanism, recognised as mandatory under international human rights standards, needs to work through a backlog of dozens of cases.[27] The result of these and other factors is the possibility, and at times the reality, of arbitrary or inconsistent reasoning, decision-making or procedures.[28] The Supreme Court, stipulated in the Constitution, has not yet been established.

Following a decision by the Council of Magistrates, court actors were restricted from September 2004 to using Portuguese and Tetum as official court languages. Also, at the end of 2004, all sitting judges, public prosecutors and public defenders failed a test administered to establish basic competency. A two-and-a-half year training course has begun, taught entirely in Portuguese. In the meantime, international judges from Portuguese-speaking countries have been appointed to head Timor-Leste's courts. It is expected that Indonesian base laws will be translated into Portuguese in 2005. On a practical level, one important issue is the fact that the under-staffed and under-resourced district courts, as well as those who appear in them, such as the public defenders, often do not have adequate work-allocation, timetabling, registry or record keeping systems.[29] There are, in particular, a large number of individuals in pre-trial detention. Amnesty International has noted that, "by October [2002], close to 80 per cent of the prison population were in pre-trial detention. Around 30 per cent had been held for six months or more and some for over one year. Twenty-

[26] For example, Executive Orders 2/2000 on the decriminalisation of defamation, discussed in Chapter 4, and 3/2001 on broadcasting, discussed in Chapter 6, are, as far as could be ascertained, only available in English and Portuguese through the United Nations.
[27] See *The Right to Appeal in East Timor*, Judicial System Monitoring Programme, October 2002, available at www.jsmp.minihub.org/resources.
[28] For concrete examples, see *Interim Report on the Dili District Court*, Judicial System Monitoring Programme, April 2003, available at www.jsmp.minihub.org/resources.
[29] Ibid.

seven per cent were detained illegally after their detention orders had expired."[30]

4. INTERNATIONAL AND CONSTITUTIONAL OBLIGATIONS

4.1. International Standards

Article 19 of the *Universal Declaration on Human Rights* (UDHR) guarantees the right to freedom of expression in the following terms:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.[31]

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.[32]

The *International Covenant on Civil and Political Rights* (ICCPR),[33] a treaty ratified by over 152 States, including Timor-Leste,[34] imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found in Article 19 of the UDHR:

> 1. Everyone shall have the right to freedom of opinion.
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of

[30] Amnesty International Timor-Leste report available through http://web.amnesty.org/library/eng-temp/index and at www.jsmp.minihub.org/news/29_05nb_03.htm.
[31] UN General Assembly Resolution 217A(III), adopted 10 December 1948.
[32] See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).
[33] UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.
[34] See below.

> all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Freedom of expression is also protected in all regional human rights instruments, in Article 10 of the *European Convention on Human Rights*,[35] Article 13 of the *American Convention on Human Rights*[36] and Article 9 of the *African Charter on Human and Peoples' Rights*.[37] The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although they are not directly binding on Timor-Leste, judgments and decisions issued by courts under these regional mechanisms offer an authoritative interpretation of freedom of expression principles in various different contexts.

Freedom of expression is a key human right particularly because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."[38] As the UN Human Rights Committee has said:

> The right to freedom of expression is of paramount importance in any democratic society.[39]

Similarly, the African Commission on Human and Peoples' Rights has reaffirmed,

> …the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms … laws and customs that repress freedom of expression are a disservice to society.[40]

The European Court of Human Rights has also elaborated on the importance of freedom of expression:

> Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man [sic] … it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of

[35] Adopted 4 November 1950, in force 3 September 1953.
[36] Adopted 22 November 1969, in force 18 July 1978.
[37] Adopted 26 June 1981, in force 21 October 1986.
[38] 14 December 1946.
[39] *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.
[40] Declaration of Principles on Freedom of Expression, adopted at the 32nd Session, 17-23 October 2002: Banjul, The Gambia, preamble.

> pluralism, tolerance and broadmindedness without which there is no 'democratic society'.[41]

4.2. The Constitution of Timor-Leste

The Constitution of Timor-Leste, which came into effect on Timor-Leste's Independence Day, 20 May 2002, guarantees a number of the human rights and freedoms, including freedom of expression, found in international human rights treaties. The exact manner in which these rights are guaranteed in the Constitution does not always exactly mirror the guarantees found in international law, giving rise to the question of how they should be interpreted.

Section 40 of the Constitution, titled Freedom of Speech and Information, provides:

> 1. Every person has the right to freedom of speech and the right to inform and be informed impartially.
>
> 2. The exercise of freedom of speech and information shall not be limited by any sort of censorship.
>
> 3. The exercise of rights and freedoms referred to in this Section shall be regulated by law based on the imperative of respect for the Constitution and the dignity of the human person.

Section 41, titled Freedom of the press and mass media, provides:

> 1. Freedom of the press and other mass media is guaranteed.
>
> 2. Freedom of the press shall comprise, namely, the freedom of speech and creativity for journalists, the access to information sources, editorial freedom, protection of independence and professional confidentiality, and the right to create newspapers, publications and other means of broadcasting.
>
> 3. The monopoly on the mass media shall be prohibited.
>
> 4. The State shall guarantee the freedom and independence of the public mass media from political and economic powers.
>
> 5. The State shall guarantee the existence of a public radio and television service that is impartial in order to, *inter-alia,* protect and disseminate the culture and the traditional values of the Democratic Republic of Timor-Leste and guarantee opportunities for expression of different lines of opinion.

[41] *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

> 6. Radio and television stations shall operate only under a licence, in accordance with the law.

These Constitutional provisions are unlikely to be altered in the near future, particularly given that Section 154 of the Constitution states that there shall be no revision of the Constitution for at least six years from its commencement on 20 May 2002. For a discussion of the characteristics and arguable flaws of the provisions of the Constitution of Timor-Leste relating to freedom of expression, please consult, among other opinions, ARTICLE 19's *Note on the Draft Constitution of the Democratic Republic of Timor-Leste of 9 February 2002: Focus on Provisions Affecting Freedom of Expression*.[42] Regarding Article 40, the ARTICLE 19 analysis said the following:

> There are a number of shortcomings with[in] this section. First, it is restricted to citizens, whereas most constitutional provisions apply to everyone. Under international law, States are responsible for protecting the rights of everyone subject to their jurisdiction, not only citizens. Second, it protects only the right to inform and be informed. This is a much more limited formulation than under international law, which refers to the right to "seek, receive and impart information and ideas." Third, it does not protect freedom of opinion, a right that is protected unconditionally under international law. Freedom of religion is protected, in Section 45, but not the broader right to freedom of opinion. Finally, and most importantly, the right is conditioned by reference to the idea of impartiality. The right to freedom of expressions should apply regardless of impartiality; individuals have a right to impart information that others may consider biased or partial. Indeed, a key aspect of the guarantee under international law of the right to freedom of expression is [protection] against having one's expressions subjected to external "quality" controls such as impartiality or accuracy.

The Constitution makes some specific reference to how the UDHR and ICCPR will feature in Timor-Leste's legal system. Section 23 (Interpretation of fundamental rights) of the Constitution states, in part: "Fundamental rights enshrined in this Constitution…shall be interpreted in accordance with the Universal Declaration of Human Rights." Furthermore, Section 9 (International law) provides, in part:

> 2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of Timor-Leste following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.

[42] ARTICLE 19, *Access to the Airwaves*, (London: ARTICLE 19, February 2002). Available at: www.article19.org.

> 4. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of Timor-Leste shall be invalid.

The ICCPR was ratified by the parliament of Timor-Leste in December 2002, but the necessary measures to complete that ratification could not be complied with at that time, so ratification was confirmed in June 2003 with Resolution No. 3/2003, "Ratification of the International Convention on Civil and Political Rights". This resolution was subsequently published in the *Official Gazette*, thereby rendering ratification effective.

Furthermore, the Constitution provides in Article 165 (Previous Law):

> Laws and regulations in force in Timor-Leste shall continue to be applicable to all matters except to the extent that they are inconsistent with the Constitution or the principles contained therein.[43]

In some cases, laws other than the Constitution may provide a better or higher level of protection than that provided for by the Constitution. The validity of these laws is specifically protected in Section 23 of the Constitution (Interpretation of fundamental rights) which provides, in part: "[F]undamental rights enshrined in the Constitution shall not exclude any other rights provided for by the law."

It remains unclear how, in practice, the various overlapping instruments that apply in Timor-Leste will interact and which versions of the broad freedoms and guarantees for freedom of speech shall prevail if they appear to be in conflict.

The president, the prosecutor-general, one fifth of the members of the national parliament or the ombudsman (when that office is established) all have the power to bring an abstract review of constitutionality to the Supreme Court of Justice (a role currently occupied by the Court of Appeal). Any decision made by the Supreme Court of Justice on the constitutional review of a law must be followed. In addition, any person whose rights are violated by an application of a law can bring a petition before a court in order to protect his/her constitutional rights.

[43] Similarly, Act 2/2002, Interpretation of Applicable Law, states at Section 1 (Applicable Law): 'Legislation applicable in Timor-Leste on 19 May 2002 shall remain in force *mutatis mutandis* (as amended) for everything not contrary to the Constitution and principles enshrined therein.'

4.3. Rights to Reputation

Both international law and the Constitution of Timor-Leste contain references to protection of reputation, a protection usually elaborated in practice through specific defamation laws. Article 12 of the UDHR states, in part:

> - No one shall be subjected to … attacks upon his [sic] honour and reputation. Everyone has the right to the protection of the law against such…attacks.

Article 17 of the ICCPR states these issues slightly differently, placing emphasis on the protection from 'unlawful' attacks on honour and reputation instead of any attacks, which may conceivably include legitimate criticism, scrutiny and accountability:

> 1. No one shall be subjected…to unlawful attacks on his [sic] honour and reputation.
> 2. Everyone has the right to protection against such… attacks.

Section 36 (Right to honour and privacy) of Timor-Leste's Constitution states, in part:

> Every individual has the right to honour, good name and reputation, (and) protection of his or her public image….

Section 40 of the Constitution also states that the exercise of rights and freedoms of speech and information noted in that section 'shall be regulated by law based on the imperative of respect for the Constitution and *the dignity of the human person'* [emphasis added].

Depending on how these provisions are interpreted, they may envisage undue restrictions on freedom of expression, which go beyond the protection of a good public reputation from falsehoods. They may then result in the application of penalties or laws against mere criticism, insult or ridicule of individuals, regardless of the reputation they hold or the truth of allegations (such laws appear in the Indonesian Penal Code, which applies in Timor-Leste).

4.4. Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently

emphasised the 'pre-eminent role of the press in a State governed by the rule of law'. [44] It has further stated:

> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.[45]

And, as the UN Human Rights Committee has stressed, a media environment that is free is essential in the political process:

> [T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.[46]

The Inter-American Court of Human Rights has stated: "It is the mass media that make the exercise of freedom of expression a reality."[47] The media as a whole merits special protection, in part because of their role in making public 'information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog"'.[48]

The European Court of Human Rights has also stated that it is incumbent on the media to impart information and ideas in all areas of public interest:

> Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] … it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog."[49]

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[44] *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.
[45] *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.
[46] UN Human Rights Committee General Comment 25, issued 12 July 1996.
[47] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.
[48] *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.
[49] See *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87,

It may be noted that the obligation to respect freedom of expression lies with States, not with the media *per se*. However, these obligations do apply to publicly-funded broadcasters. Because of their link to the State, these broadcasters are directly bound by international guarantees of human rights. As publicly-funded broadcasters are in a special position to satisfy the public's right to know and to guarantee pluralism and access, it is particularly important that they promote these rights.

4.5. Pluralism

Article 2 of the ICCPR places an obligation on States to 'adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant'. This means that States are required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know.

An important aspect of the State's positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and ensure equal access for all to, the media. As the European Court of Human Rights stated: "[The imparting] information and ideas of general interest … cannot be successfully accomplished unless it is grounded in the principle of pluralism."[50] The Inter-American Court has held that freedom of expression requires that 'the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media'.[51]

The UN Human Rights Committee has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance "national unity" violate freedom of expression:

> The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.[52]

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para. 65.

[50] *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

[51] *Compulsory Membership,* see note 47 on page 29.

[52] *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practise journalism[53] and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression. In a Joint Declaration issued in December 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression state:

> Individual journalists should not be required to be licensed or to register.
>
> …
>
> Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance. [54]

4.6. Public Service Broadcasting

The advancement of pluralism in the media is also an important rationale for public service broadcasting. A number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.[55] ARTICLE 19 has adopted a set of principles on broadcast regulation, *Access to the Airwaves: Principles on Freedom of Expression and Broadcasting*, which set standards based on international and comparative law.[56] In addition, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the Guarantee of the Independence of Public Service Broadcasting.[57]

A key aspect of the international standards relating to public broadcasting is that State broadcasters should be transformed into independent public service broadcasters with a mandate to serve the

[53] See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, see note 47 on page 29.
[54] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003, online at: http://www.unhchr.ch/huricane/huricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument.
[55] See, for example, the Declaration of Alma Ata, 9 October 1992 (endorsed by the General Conference of UNESCO at its 28th session in 1995) and the Protocol on the system of public broadcasting in the Member States, annexed to the Treaty of Amsterdam, Official Journal C 340, 10 November 1997.
[56] (London, March 2002).
[57] Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996.

public interest.[58] The Council of Europe Recommendation stresses the need for public broadcasters to be fully independent of government and commercial interests, stating that the "legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy" in all key areas, including "the editing and presentation of news and current affairs programmes."[59] Members of the supervisory bodies of publicly-funded broadcasters should be appointed in an open and pluralistic manner and the rules governing the supervisory bodies should be defined so as to ensure they are not at risk of political or other interference.[60]

Furthermore, the public service remit of these broadcasters must be clearly set out in law, and include the following requirements:

1. to provide quality, independent programming that contributes to a plurality of opinions and an informed public;
2. to provide comprehensive news and current affairs programming, which is impartial, accurate and balanced;
3. to provide a wide range of broadcast material that strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
4. to be universally accessible and serve all the people and regions of the country, including minority groups;
5. to provide educational programmes and programmes directed towards children; and
6. to promote local programme production, including through minimum quotas for original productions and material produced by independent producers.[61]

Finally, the funding of public service broadcasters must be 'based on the principle that member States undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions'.[62] Significantly, the Council of Europe Recommendation stresses that "the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over

[58] See *Access to the Airwaves*, see note 42 on page 26, Principle 34. See also the Declaration of Sofia, adopted under the auspices of UNESCO by the European Seminar on Promoting Independent and Pluralistic Media (with special focus on Central and Eastern Europe), 13 September 1997, which states: "State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted status of journalistic and editorial independence as open public service institutions."
[59] Recommendation No. R (96) 10, see note 57 above, Guideline I.
[60] Ibid., Guideline III.
[61] *Access to Airwaves*, see note 58 on page 31, Principle 37.
[62] Recommendation No. R (96) 10, note 57 on page 31, Principle V.

the editorial independence and institutional autonomy of the organisation."[63]

4.7. Independence of Media Bodies

In order to protect the right to freedom of expression, it is imperative that the media are permitted to operate independently from government control. This does not only ensure the media's role as public watchdog but also that the public has access to a wide range of opinions, particularly on matters of public interest.

Under international law, it is well established that bodies with regulatory or administrative powers over both public and private broadcasters should be independent and be protected against political interference. In the Joint Declaration noted above, the UN, OSCE and OAS special mandates protecting freedom of expression state:

> All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.[64]

Regional bodies, including the Council of Europe and the African Commission on Human and Peoples' Rights, have also made it clear that the independence of regulatory authorities is fundamentally important. The latter recently adopted a *Declaration of Principles on Freedom of Expression in Africa*, which states

> Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.[65]

The Committee of Ministers of the Council of Europe has adopted a Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, which states in a pre-ambular paragraph:

> [T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector…specially appointed independent regulatory authorities for the broadcasting sector, with expert

[63] Ibid.
[64] Joint Declaration, see note 54 on page 30.
[65] Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002.

> knowledge in the area, have an important role to play within the framework of the law.[66]

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities and which clearly affirms and protects their independence.[67] The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.[68]

4.8. Freedom of Information

In the international human rights instruments noted above, freedom of information was not set out separately but was instead included as part of the fundamental right to freedom of expression. Freedom of expression, as noted above, includes the right to seek, receive and impart information. Freedom of information, including the right to access information held by public authorities, is a core element of the broader right to freedom of expression. This has been attested to by numerous authoritative international statements.

The UN Special Rapporteur on Freedom of Opinion and Expression has provided extensive commentary on this right in his Annual Reports to the UN Commission on Human Rights. In 1997, he stated:

> The Special Rapporteur, therefore, underscores once again that the tendency of many Governments to withhold information from the people at large … is to be strongly checked.[69]

His commentary on this subject was welcomed by the UN Commission on Human Rights, which called on the Special Rapporteur to 'develop further his commentary on the right to seek and receive information and to expand on his observations and recommendations arising from communications'.[70] In his 1998 Annual Report, the Special Rapporteur declared that freedom of information includes the right to access information held by the State:

> [T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information

[66] Recommendation No. R(2000) 23, adopted 20 December 2000.
[67] Ibid., Guideline 1.
[68] Ibid., Guideline 5.
[69] Report of the Special Rapporteur, 4 February 1997, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1997/31.
[70] Resolution 1997/27, 11 April 1997, para. 12(d).

> held by Government in all types of storage and retrieval systems….[71]

In November 1999, the three special mandates on freedom of expression—the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression—came together for the first time under the auspices of ARTICLE 19. They adopted a Joint Declaration which included the following statement:

> Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.[72]

The right to freedom of information has also explicitly been recognised in all three regional systems for the protection of human rights.

4.9. Restrictions on the Right to Freedom of Expression

The right to freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. There are three means for legally challenging restrictions on freedom of expression in Timor-Leste, the Constitution, the Indonesian Press Law of 1999 and international law. The first two are still essentially untried and little can be said with certainty about their practical effects.[73] International law, on the other hand, particularly, Article 19 of the ICCPR, has been elaborated on in some detail by bodies such as the United Nations Human Rights Committee.[74] One can also look to sources such as domestic and international court decisions and academic discussions.

The onus falls on the State to justify any interference in any kind of expression rather than on the citizen to prove that the interference is

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[71] Report of the Special Rapporteur, 28 January 1998, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40, para. 14.
[72] 26 November 1999.
[73] Judges and lawyers in Timor-Leste's Civil Law system are not required to follow Indonesian precedents, and often have no facilities to research them, and in addition such information is not readily available in Indonesia itself. However, Timor's predominately Indonesian-educated jurists are comfortable falling back on Indonesian legal practices.
[74] Mendel, T., *International law perspectives on the challenge facing the Nigerian media*, presented at the ARTICLE 19 Media Laws Reform Workshop, 16-18 March 1999, Lagos. Available at: www.article19.org.

excessive.[75] In practical terms, however, individuals and institutions outside the government are normally responsible for initiating court action to have a disputed measure reviewed.

Any limitations on freedom of expression must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

> 1. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> 2. (a) For respect of the rights or reputations of others;
>
> 3. (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

A similar formulation can be found in the European, American and African regional human rights treaties. These have been interpreted as requiring restrictions to meet a strict three-part test.[76] International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court of Human Rights has stated:

> Freedom of expression … is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.[77]

First, the interference must be provided for by law. This implies not only that the restriction is based in law, but also that the relevant law meets certain standards of clarity and accessibility, sometimes referred to as the "void for vagueness" doctrine. The European Court of Human Rights has elaborated on the requirement of "prescribed by law" under the ECHR:

> [A] norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given situation may entail.[78]

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[75] Macovei, M., *Freedom of Expression: A guide to the implementation of Article 10 of the European Convention on Human Rights,* Human Rights Handbooks, No. 2, Directorate General of Human Rights, Council of Europe, Strasbourg, 2001.

[76] See *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

[77] See, for example, *Thorgeirson v. Iceland*, see note 44 on page 28, para. 63.

[78] *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

Second, the interference must pursue a legitimate aim. The ICCPR provides a full list of the aims that may justify a restriction on freedom of expression. It is quite clear from the wording of Article 19(3) of the ICCPR, as well as from the jurisprudence, that restrictions on freedom of expression that do not serve one of the legitimate aims listed in Article 19(3) are not valid. This is also the position of the *American Convention on Human Rights* and the *European Convention on Human Rights*.[79]

It is not sufficient, to satisfy this second part of the test for restrictions on freedom of expression, and that the restriction in question has a merely incidental effect on the legitimate aim. The restriction must be primarily directed at that aim, as noted by the Indian Supreme Court:

> So long as the possibility [of a restriction] being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void.[80]

Third, the restriction must be necessary to secure one of those aims. This part of the test presents a high standard to be overcome by the State seeking to justify the restriction, apparent from the following quotation, cited repeatedly by the European Court:

> Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.[81]

The European Court has noted that necessity involves an analysis of whether:

> [There is a] "pressing social need" [whether] the inference at issue was "proportionate to the legitimate aim pursued" and whether the reasons adduced…to justify it are "relevant and sufficient."[82]

The specific requirements of the necessity part of the test for restrictions on freedom of expression have been elaborated upon by courts around the world. The Canadian Supreme Court, for example, has held that it includes a three-part inquiry, as follows:

> First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair, or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the

[79] The African Charter takes a different approach, simply protecting freedom of expression, "within the law."
[80] *Thappar v. State of Madras*, (1950) SCR 594, page.603.
[81] See, for example, *Thorgeirson v. Iceland*, see note 44 on page 28, para. 63.
[82] See *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, EHRR 407, paras. 39-40.

> objective in this first sense, should impair "as little as possible" the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance."[83]

The first factor noted by the Canadian Supreme Court indicates that while States may, perhaps even should, protect various public and private interests, in doing so they must carefully design the measures taken so that they focus specifically on the objective. This is uncontroversial. It is a very serious matter to restrict a fundamental right and, when considering imposing such a measure, States are bound to reflect carefully on the various options open to them.

The second factor is also uncontroversial. Any restriction which does not impair the right as little as possible clearly goes beyond what is necessary to achieve its objectives. In applying this factor, courts have recognised that there may be practical limits on how finely honed and precise a legal measure may be. But subject only to such practical limits, restrictions must not be overbroad.

Other courts have also stressed the importance of restrictions not being overbroad. The US Supreme Court, for instance, has noted:

> Even though the Government's purpose be legitimate and substantial, that purpose cannot be pursued by means that stifle fundamental personal liberties when the end can be more narrowly achieved.[84]

Finally, the impact of restrictions must be proportionate in the sense that the harm to freedom of expression must not outweigh the benefits in terms of the interest protected. For example, a restriction which provided limited protection to reputation but which seriously undermined freedom of expression would not pass muster. This again is uncontroversial. A democratic society depends on the free flow of information and ideas and it is only when the overall public interest is served by limiting that flow that such a limitation can be justified. This implies that the benefits of any restriction must outweigh the costs for it to be justified.

4.10. Derogation from Rights

It is a principle of international law that certain rights should and can never be suspended, even in such extreme states as martial law, wartime or other serious threats to the life of a nation. But under both

[83] *R. v. Oakes* (1986), 1 SCR 103, pp.138-139.
[84] *Shelton v. Tucker*, 364 US 479 (1960), p. 488.

the ICCPR and the Constitution of Timor-Leste, freedom of speech can be "derogated" or suspended under certain circumstances, unlike such non-derogable rights as freedom from torture or arbitrary killings. Article 4(1) of the ICCPR states:

> *In time of public emergency which threatens the life of the nation* and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. [emphasis added]

Article 4(2) goes on to list those rights that may not be suspended under any circumstances which, as noted, do not include freedom of speech.

Section 25 (State of exception) of Timor-Leste's Constitution states in part:

> 1. Suspension of the exercise of fundamental rights, freedoms and guarantees shall only take place if a state of siege or a state of emergency has been declared as provided for by the Constitution.
>
> 2. A state of siege or a state of emergency shall only be declared in case of effective or impending aggression by a foreign force, of serious disturbance or threat of serious disturbance to the democratic constitutional order, or of public disaster. [emphasis added]

Section 25(5) includes a list of fundamental rights that cannot be suspended and, as with international law, freedom of expression and information, and freedom of the press and mass media, are not included.

Section 25 also provides that a declaration of siege or emergency shall specify the rights that are to be suspended; that suspension shall not last more than 30 days at a time, with renewals of suspension periods possible 'when strictly necessary'; and that authorities 'shall restore constitutional normality as soon as possible'. Section 85 of the Constitution states that it is the president who declares the state of siege or emergency after consultation with specified organs of government.

ARTICLE 19, in its analysis of the Timorese Constitution, notes that these provisions contain 'a much broader definition of the type of emergency that would justify derogation than under international law,

which (as noted above) refers to 'a public emergency which threatens the life of the nation' (ICCPR Article 4)'. ARTICLE 19 notes that the terms "serious disturbance" and "public disorder" are 'excessively broad and vague'.[85]

It remains to be seen if the suspension of fundamental rights may be challenged under international law. For example, the suspension of free speech and a free press—by the president based on the 'threat of serious disturbance to the democratic constitutional order', as in Section 25 of the Constitution of Timor-Leste—may be challenged as an insufficient justification for suspension under the principles of international law, as reflected, in particular, in the ICCPR.

5. MEDIA SITUATION

5.1. Media Overview

For a small country, Timor-Leste has an impressively diverse array of media outlets featuring print and community radio sectors, as well as a national public radio and television broadcaster. Most of the journalists working in these outlets have had limited experience working in open and democratic societies, and some have only experienced a free media since 1999. It is through the tenacity and

[85] *Note on the Draft Constitution of the Democratic Republic of East Timor of 9 February 2002: Focus on Provisions Affecting Freedom of Expression*, (London: ARTICLE19, February 2002). Available at: www.article19.org.

enthusiasm of the journalists, notwithstanding meagre resources, that they manage to keep their media outlets open and running. Most of these outlets are still reliant on external financial support to maintain their operations.

It is not possible to describe any one media outlet in Timor-Leste as being pro or anti-government. In the few cases where such biases may be identified, this can probably be ascribed to the preferences of individual journalists, rather than to editorial policy. In this sense, all media in Timor-Leste could be described as "independent". At the same time, the culture of journalism in Timor has not developed to the point where it can effectively act as a watchdog of the government. For example, there is a high incidence of uncritical reportage of the opinions of political leaders without balancing these stories with alternative voices, neutral sources, or the perspectives of "ordinary" people. Rumours are often reported as fact, especially if a person regarded as important is the source.

Anecdotal evidence suggests that many leads which could potentially expose information damaging to public figures are not followed up due to a sense that such stories are too "difficult", that there could be personal consequences, or that no-one would be willing to make on-the-record statements. This has contributed to a paradoxical situation, an example of which is that while generalised allegations of corruption are common in the local media, no single specific instance of corruption has been brought to light.

A number of factors inhibit the ability of Timor-Leste's media to play an effective role as the watchdog of the government and in promoting a culture of accountability through investigative reporting and critical news coverage. As noted, most journalists have limited experience, although training provided by a range of NGOs is starting to address this shortcoming and to contribute to the capacity of journalists in Timor-Leste to report in an accurate, balanced, and independent manner.

A lack of resources such as transport, telephone and Internet access[86] makes investigative journalism far more difficult. Most newspaper reporters in Dili, for example, cover their "beats" on foot and have no access to phones in order to pre-arrange interviews. Some members of government or other influential figures have also exhibited a lack of interest in, or animosity towards, the media which makes it difficult for journalists to convey their perspectives accurately.

[86] The increased cost of communications such as telephone and Internet connections, with donor support dwindling and the introduction of a commercial telecom provider, Timor Telecom, has had a detrimental impact on the media.

Uncertainty about their rights and responsibilities can also hamper the ability of journalists to pursue their trade. A tradition of respect for authority and for elders also hampers the ability of many young journalists to challenge Timor-Leste's public leaders with probing questions.

Language barriers also impact on journalists' ability to do their work. At least four languages are used by most media outlets: Tetum, Indonesian, Portuguese and English. In addition, each of the country's 13 districts has its own dialect. Few journalists or politicians speak all four languages or all local dialects, this often results in critical information being lost in the process of translation.

5.2. Print Media

The print sector in mid-2005 includes four daily newspapers: *Timor Post, Suara Timor Lorosae, Diario Tempo,* and *Diario National*. There are two news weeklies published currently: *Semanario* and *Lia Foun*. *Talitakum*, a monthly newsmagazine that was published from 2002 to 2003, was re-launched in early 2005 by some of its staff. *Lifau Pos* is a weekly newspaper aimed at Oecussi district, the Timor-Leste exclave in West Timor. It has limited news content and, while it receives some of its income from advertisers in Dili, it remains dependent on donor funding. A news weekly, *Vox Populi*, founded in 2004 with seed funding from donors, was in circulation for about six months. Another weekly, *Suara Pembebasan,* published for about two years but then folded in 2004 due to management problems and a lack of funds.

All publications are based in Dili, including *Lifau Pos*, with a few supporting correspondents in, and limited distribution to, the districts. In mid-2002, the total annual sales of all print publications were estimated at 936,000 copies. The total circulation of the dailies is around 499,000 annually. Although the newspapers and magazines have a small customer base, they do reach the "opinion leaders" of the community, playing a key role in fostering intellectual and political debate and development in Timor.

The newspapers also provide news that is broadcast by community radio in the districts. The limited circulation information that is available indicates that each paper is probably read by between 5 and 10 people. *Timor Post* and *STL, which* were originally funded by donors and are now striving to survive independently, are just beginning to cover their costs through sales and advertising. Other publications operate on a mix of advertising, sales revenue and donor support.

It is possible that in future newspapers will be able to take advantage of the growth of Timor-Leste's economy to fund their development and expansion. For the moment, however, the print media sector is vulnerable financially due to the limited size of the market, based on the small number of people that can afford to pay 50 cents or above for a non-essential item such as a newspaper.[87] Publications that can cover most of their operating expenses often do not have sufficient resources for investment, even some basic maintenance costs are out of reach. A number of short-lived publications which have emerged and folded since 1999 are a testament to the difficulties faced by the print media in attracting sufficient advertising revenue and/or other funding.

5.3. Radio

Radio is the most important information provider in Timor-Leste, after personal contact, due to low literacy levels and the limited penetration of daily newspapers, particularly in the districts, which host over two thirds of Timor-Leste's population. Research by the International Republican Institute (IRI) in 2003 found that the vast majority of people in Timor-Leste (63%) get their political information from the radio, while a 2002 survey by The Asia Foundation put the figure at 67 per cent. Furthermore, more than 60 per cent of the population live in households with radios. This has lead to rapid growth of small community stations in tandem with the development of the public broadcaster.

There are two stations that relay international channels: one station in Dili and one in Baucau relay Radiodifusao Portuguesa (RDP), the Dili station relays the BBC and Australian Broadcasting Corporation (ABC).

It is notable that no commercial radio stations have evolved, unlike in the print media sector. This may be due to the difficulty of generating revenue through advertising and sponsorship. Even community radio has struggled to generate sufficient income for basic on-air operational costs. Traditional forms of community radio income, individual and organisational membership, donations and sponsorship, are almost non-existent in Timor-Leste. Stations generate income from community announcements through a coupon system, making US 5–10 cents per coupon. NGO public service announcements, and community programming, are the only other viable form of independent income for this sector for many years to come.

[87] According to 2002 United Nations Development Program statistics, about 40% of the population of Timor-Leste has a *per capita* income of about US50 cents a day.

Community Radio

Of the existing broadcasters, only one community radio station, Radio Timor Kmanek (RTK), was on air prior to 1999. However, management changes in 2004 by the Catholic Church, which owns the station, and an end to donor funding, resulted in most of its journalists being fired. Since then, RTK's news content has been extremely limited and it broadcasts mostly music.

Since 1999, another 16 local community radio stations and one international Christian station have been established. There is one community radio station based in each district outside of Dili and 6 stations established in Dili, of which two are not currently broadcasting. Technical problems and difficulty in accessing funds mean that stations do not broadcast all the time.

These stations were set up by local communities with the help of a range of donors and they play a crucial role in Timor-Leste's media landscape. The community radio stations are owned and operated by the community, and aim to promote participation and inclusion of all groups. They are run mainly by volunteers, especially in the districts, and they gather and broadcast information in the community for the community. Timor-Leste's community stations generally rely on donations from NGO's to pay for their operational costs.

Media (Photo: Suzanna Cardoso)

5.4. Public Broadcasting – Radio and TV

The Public Broadcast Service (PBS), more commonly referred to as RTTL (Radio Televisao Timor-Leste), is funded by the government and donors to provide both television (TVTL; accessible in Dili) and radio (RTL, available nationally). RTTL has a mandate to provide independent, non-commercial news, information and cultural

programming under the direction of an independent public broadcasting board.[88]

RTL broadcasts nationally through a repeater AM and FM network. It has transmitters in all 13 of Timor-Leste's district capitals, but a survey in early 2005 showed that not all are on the air all the time, due to primarily to technical problems.

TVTL reaches Dili and Baucau, although the transmitter in Baucau, Timor-Leste's second-largest city, is not connected to the network, and it currently operates by re-broadcasting taped programs. A communications sector investment program published in 2003 outlined the potential for national distribution of TVTL using Timor Telecom infrastructure. Timor Telecom, granted a 15-year monopoly on telecommunications services in 2002, may have the capacity to carry a national television channel on its digital system in the near future, although it remains unclear whether or not it will be possible to distribute TVTL nationally in this way.

TVTL broadcasts news, along with a number of educational programs and foreign content. It produces a small amount of local programming daily, about 1.5 hours per day, and also retransmits programming provided primarily by Portuguese, Australian and UK broadcasters. Examples include BBC and Portuguese news, games shows, and so on.

Television has a smaller reach in the community due to the cost of purchasing and running a television, along with the lack of reception in the districts. Around 12 per cent of Timor-Leste's population use television as their main source of information. This figure is as high as 47 per cent in Dili but drops to 2-5 per cent in the districts.[89]

It is unlikely that there will be a sufficiently large or prosperous group of advertisers to support an adequately resourced national radio or television service in the foreseeable future. This means that continued government funding of RTTL is crucial, but it also makes the independence of this service doubly important, given the probable continuation of a monopoly on free-to-air television broadcasting.

[88] Specifically, to fulfil the requirement in Section 41 Item 5 of the Constitution for the State to provide "a radio and television service that is impartial in order to, *inter alia*, protect and disseminate the culture and the traditional values of the Democratic Republic of East Timor and guarantee opportunities for the expression of different lines of opinion."

[89] IRI survey, note 12 on page 16. A The Asia Foundation survey found that 17% of the total population get their political information from TV.

5.5. Other Media

Satellite television, by virtue of its distribution technology, is widely accessible across Timor to the few households or businesses with television sets and access to satellite free-to-air and/or subscription services. Many of those with TV sets do have some form of satellite service, which gives them access to a vast array of programming in a range of languages, primarily Indonesian, Korean, Japanese, Malaysian, Chinese and English.

There is a wide range of Indonesian programming available free-to-air from various satellites. The services most commonly accessed are Asiasat 2, Asiasat 3S, Asiasat 4, Palapa C2 and KoreaSat. It appears that most households with satellite dishes watch Indonesian channels such as RCTI, TVRI, and SCTV. Most Timorese families cannot afford subscription satellite services but a number of channels are available in this way, including Indovision, BBC, CNN, HBO and ABC.

5.6. Sector Representation

The rights and interests of journalists and media workers in Timor-Leste are currently represented by at least three different associations: the Community Radio Association (ARKTL, Asosiasaun Radio Komunidade Timor-Leste), the Timor-Leste Journalists Association (TLJA) and Sindicarto Journalista.

ARKTL's membership is made up of community radio stations from across Timor-Leste. CRA has recently developed a Code of Practice for community radio with a view to promoting self-regulation of their reporting and management as well as encouraging responsible journalism and management practices.

TLJA is a media representative body that draws its membership from journalists working for RTTL, *Suara Timor Lorosae* and a number of other print publications, although it is also open to community media journalists. TLJA has taken a leading role in the advocacy for a free press and has established good links with international press freedom advocacy groups. It has, among other things, run a series of seminars on protection of journalists and undertaken parliamentary lobbying which contributed to the formulation of freedom of the press protections in Timor-Leste's Constitution.

Sindicato dos Jornalistos is another journalists' association, with members primarily drawn from the *Timor Post* and RTTL. Sindicato

has not only held a congress and a number of meetings, but also organised activities for the media to mark press freedom day.

The existence of three media associations is a good indication that Timor-Leste's media workers are aware of the importance of their profession and of the need for good representation to advocate for press freedom and the rights and interests of journalists. However, there is some concern that unless these associations work closely together, they may not be able to adequately protect the interests of their members. All three associations have shown signs of struggling to carry out basic activities, such as registering members and providing membership services, without external support.

6. PRESS REGULATION

6.1. Introduction

Indonesia's Press Law of 1999 forms part of the current body of Timorese law.[90] It has been applied at least once since independence, namely, in the December 2002 Dili District Court decision, *Bambang Hermawan v. Suara Timor Lorosae*.[91] The Press Law contains some broadly worded protections for the press and, despite its name, also applies to electronic media.

The 1999 Press Law recognises a number of rights of the media. The law contains, for instance, provisions for the protection of confidential sources of information and the right of journalists to choose their own associations, along with general guarantees of media freedom and a prohibition on censorship. It also envisages a press council, independent of government, with a mandate to promote freedom of expression, to resolve complaints against the press and to supervise compliance with a code of ethics. The Press Law provides for jail terms and fines for those obstructing media freedom.

At the same time, the Press Law provides for some restrictions on media content. It requires, for instance, that the media respect religious and moral norms, as well as the presumption of innocence. In the case of a breach of these provisions, the Law provides only for fines, it should however be noted that these fines are excessively high given the Timorese context (they range from approximately USD 12,000 to 60,000).

Overall, it is a law that, if adopted in an appropriately modified form for Timor-Leste, could make a useful contribution to a rights-respecting media regulatory environment in Timor-Leste. Among other benefits, it would assist the media to settle disputes with members of the public through means other than court action, namely through the Press Council. However, some caution is advised. In the 2002 application of the Press Law by the Dili District Court, USD 50,000 in damages were awarded against *Suara Timor Lorosae*, one of Timor-Leste's only two daily papers at the time. It is unclear how this

[90] According to its text, Law Number 40 of Year 1999 on the Press was "enacted" on 23 September 1999 and, according to its Article 21, "This Act of Law is declared effective on the date of the enactment". It was therefore in force as of the 25 October cut-off prescribed in UNTAET Regulation 1999/1. If this were not the case, Timor-Leste's press could be subject to the draconian Act No 11 of 1966 on the Principles of the Press, as amended by Act No.1 of 1967 and Act No. 21 of 1982. Article 20 of the Press Law states that, upon the Press Law's enactment, those laws are null and void.

[91] Decision No. 56/Pdt.G/2001/P.D. Dili, 13 December 2002.

figure was arrived at and it appears quite excessive in the context of the local socio-economic environment and Timor-Leste's position as one of the world's 10 poorest countries.

6.2. Background and Context

The 1999 Indonesian Press Law was developed in the midst of the post-Soeharto *reformasi* movement with the help of parties such as the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and freedom of expression advocates ARTICLE 19. It was believed that the said law would herald in a period of liberation for Indonesia's long-oppressed media.[92] The new law effectively did away with the notorious *surat izin penerbitan pers* (SIUPP), or press-licensing regime, which had in the past been abused to shut down newspapers deemed critical of the government; in 1994, for example, major national periodicals such as *Tempo* and *Detik* had their licences to publish revoked after criticising the government.[93]

The law allows journalists to join professional associations of their choice, rather than the government-controlled organisation they were previously required to join, and did away with the requirement that the government be represented on the industry's major self-regulation body. It also did away with the requirement for journalists to be licensed.[94]

Notwithstanding the Press Law, potentially inconsistent laws such as the Indonesian Penal Code continue to apply concurrently and it remains unclear how the courts will handle such conflicts, although the Constitution and internationally recognised human rights standards should prevail. This ambiguity is exemplified in the fact that while Article 4(3) of the Press Law states that the press has the right to seek, acquire and disseminate information, the Indonesian Penal Code has provisions on matters such as national secrets, which may impede the acquisition of information.

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[92] Djajonto W., 10 February 2000, "The New Indonesian Press Law" (copy with authors).

[93] Millie J., "The Tempo case: Indonesia's Press Law, the Pengadilan Tata Usaha Negara and the Negara Hukum" in Lindsey T., ed., *Indonesia: Law and Society* (The Federation Press: 1999) and
Bies, D., "Freedom of the Press Undermined by Indirect Censorship in Indonesia" (2001), 24 *Suffolk Transitional Law Review* 279.

[94] The law sets out a number of broad obligations on media outlets but does not provide for sanction for failure to respect these provisions. Article 6, for example, requires the media to do such things as satisfy the public's right to know; enforce democratic basic principles and develop public opinion based upon factual, accurate and valid information. It is unclear what the legal consequences would be of any finding that the press has failed to respect these rules.

6.3. Rights of the Press

Article 4 of the Press Law provides:

> (1) Freedom of the press is guaranteed as a basic human right for every citizen.
> (2) Towards national press no censorship, banning or restriction of broadcasting will be imposed upon.
> (3) To ensure the existence of the freedom of the press, national press has the right to seek, acquire, and disseminate ideas and information.
> (4) In terms of accountability towards the law, the journalist has the Right to Repudiate.

Press is defined expansively in Article 1 as "a social and mass communication institution that operates within journalistic activities that include seeking, acquiring, possessing, recording, analysing, and disseminating information, in any forms either in written, sound, picture, sound and picture, with data and graphic in any other forms, by using printing media, electronic media and all kinds of available channel".

The clarification of Article 4(2) prohibiting censorship is difficult to understand, stating that "censorship, termination or restrictions of broadcasting do not apply for print and electronic media. Non-journalism broadcasting is regulated by the statutory laws."[95] This may be taken to imply that the ban on censorship in the Law only applies to newsgathering and not to entertainment. On the other hand, this may be understood as being limited to cases where non-journalists are used in broadcasting, in interviews for example. Regardless, this article appears to envisage licensing of broadcasters, which is imposed in both Timor-Leste and Indonesia itself.

The clarification of Article 4(1) appears to re-emphasize the Press Law's apparent thrust of seeking a balance between a free press and a professional, responsible and accountable press. It reads:

> The phrase 'The freedom of the press is guaranteed as (one of) the basic human rights (of) every citizen' means that press shall be free from obstacles, banning and/or suppression (so) that the public right to get information is guaranteed. The freedom of the press is a freedom accompanied by the awareness of the importance in maintaining legal supremacy conducted by the courts of law as well as the professional awareness as detailed in the Journalists' Code of Ethics as well as the conscience of the press professionals.

[95] Indonesian laws contain a "clarification" section which elaborates on the meaning of different provisions.

Article 18(1) provides for maximum jail terms of two years or fines of Rp. 500 million (approximately USD 60,000) for 'anybody who deliberately acts against the law to hinder or prevent the implementation of the provisions stated in' Articles 4(2) on censorship or banning of the media and 4(3) on the right to seek and disseminate information. It would appear that, pursuant to this provision, if a member of the government or the public demands that an outlet run or not run a certain story, he or she could go to jail for up to two years.

Ultimately, the nature of many of the broad protections and rights provided by the Press Law must be tested and defined in Timor-Leste by the courts or by local legislation. For example, the right to seek and acquire information suggests that the press should have open access to government information; however, to realise and regulate this right Timor-Leste will need to pass a detailed freedom of information law (see Chapter 10).

6.4. Protection of Sources or the Right to Repudiate

The Press Law provides for journalists to refuse to reveal the identity of confidential sources of information. Article 4(4) of the Press Law states: "In terms of accountability towards the law, the journalist has the Right to Repudiate". This is defined in Article 1 as 'the right owned by journalists as professionals to refuse disclosing names and/or other identities (of) sources to be kept concealed'. "Journalist" is defined in Article 1 as a 'person who regularly conducts journalistic activities'. The clarification for Article 4(4) stipulates: "The main objective of the Right to Repudiate is to enable reporters to protect their informers by refusing to disclose their identity. This right can be employed by reporters during questioning by investigators or when they become witnesses in the courts of law." As a result, sources can provide information anonymously without fear that a journalist will be compelled to reveal their identities.

This recognition of journalists' right not to reveal confidential sources may come into conflict with the laws on contempt of court, or defying a court's authority. Section 48 of Timor-Leste's Transitional Rules of Criminal Procedure provides that if a witness before the court refuses to answer a question, he or she can be jailed for one year or fined USD 1000.[96] Significantly, the clarification for Article 4(4) states: "The Right to Repudiate can be *revoked* by a court of law in view of State safety or public order" [emphasis added]. [97] It also establishes that the

[96] UNTAET Regulation 2000/30.

[97] In its analysis of the Press Law, ARTICLE 19 wrote: "It would be preferable if the power of override were set out more clearly in the law itself and subject to conditions, such as that the information cannot be found elsewhere and that any

right to repudiate may be revoked only in relatively narrow circumstances.[98] The right to protect sources receives support from Section 41 (Freedom of the press and mass media) of Timor-Leste's Constitution, which provides that freedom of the press shall include "protection of…professional confidentiality".

6.5. Obligations of the Press

Article 5 of the Press Law provides:

> (1) National press has the obligation to report events and opinions with respect to public religious norms and moral norms, complete with the presumed innocent principle.
> (2) The Press is obliged to attend to the Right of Response.
> (3) The Press is obliged to attend to the Right to Correct.

According to Article 18, a "press company" that violates Article 5(1) or (2) can be fined a maximum of Rp 500 million (approximately USD 60,000), although no sanction is stipulated for breach of Article 5(3).

Fair Trial and Religious Norms

The presumption of innocence is generally taken to mean that someone is presumed to be innocent until they are proven to be guilty by a court of law, a principle also noted in Timor-Leste's Constitution and criminal laws.[99] In relation to this, the Press Law's clarification says: "In disseminating information, the national press shall not judge or make a conclusion upon someone's wrong doing, especially for cases that are still under trial and shall accommodate the interest of all related parties covered in the news". This clearly leaves open the possibility of application in cases that are not actually on trial, although a narrow reading would suggest that it applies only to the pre-trial phase of a case. It is also unclear what is meant by accommodating the interests of "all related parties covered in the news"; again, a narrow reading would suggest that this applies to parties with a direct interest in the case, such as alleged victims or witnesses.

It is widely recognised that freedom of expression may be restricted to protect the administration of justice, and this may justify the above

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order for source disclosure is in the overall public interest." *Note on the Indonesian Press Law*, February 2004.

[98] We understand a "Clarification" to an Indonesian law to be an official aid to interpretation but we are not aware of their precise legal effect.

[99] Section 34 (Guarantees in criminal proceedings) of Timor-Leste's Constitution states: "1. Anyone charged with an offence is presumed innocent until convicted".

rule in certain circumstances. Under international law, however, as noted above, restrictions on freedom of expression are allowed only when necessary to protect legitimate interests. In this case, the rule should, therefore, be restricted to cases where the disclosure of the information would pose a serious risk of undermining the fairness of the trial.

The meaning of "public religious norms and moral norms" is not defined further, consequently, the provisions are unduly vague and broad. This part of Article 5(1) is therefore inconsistent with the international law test for restrictions on freedom of expression (outlined in Chapter 4) which requires, among other things, that any restriction be clearly defined. As noted in Chapter 9, the Indonesian Penal Code contains similar offences. These provisions have not yet been tested in Timor-Leste.

The Rights to Response and Correction

Article 1(11) of the Press Law provides: "The Right to Response is the right owned by individual or group to respond or deny any factual news that is unfavourable for his/their good reputation." Article 1(12) stipulates: "The Right to Correction is the right owned by everybody to correct or restore any inaccurate information published by press, either concerning himself or any other person." It would appear that only persons or groups whose reputation has been harmed may demand a right of response (or, as more commonly know, a right of reply), while any person can ask for a correction.

Legislating for alternative remedies in cases of harm to reputation is positive. Courts, for example, should have the power to impose such remedies instead of being confined to using damage awards in such cases, particularly given that non-monetary remedies may, in many cases, be more effective in restoring reputations. It may be noted, however, that a right of reply is a highly disputed area of media law. In the United States, at least as regards to the print media, it is seen as unconstitutional on the grounds that it represents an interference with editorial independence.[100] In Europe, in contrast, the right of reply is the subject of a resolution of the Committee of Ministers of the Council of Europe.[101]

There are problems with these provisions in the Press Law. Firstly, the scope of the right of reply is vastly overbroad. Under international law, such a right should be restricted to statements which are false or

[100] *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).
[101] Resolution (74) 26 on the right of reply, adopted on 2 July 1974. See also the Advisory Opinion of the Inter-American Court of Human Rights, *Enforceability of the Right to Reply or Correction*, 7 HRLJ 238 (1986).

misleading and which breach a legal right of the claimant; it should not be permitted to be used to comment on opinions that the reader or viewer doesn't like or those that are simply "unfavourable". Secondly, the sanction for a failure to provide a right of reply, up to USD 50,000, is excessive. Indeed, it would be preferable if these provisions were applied only via the Press Council (see below). Thirdly, the Law fails to stipulate when and how this right should be enforced or put into effect in practice.

The right of correction, understood as a right to call on the media to correct its mistakes, is a far less intrusive remedy than a right of reply and should, as a result, be preferred whenever it will effectively address the wrong done. At the same time, it should be clear that it applies only in the context of false statements of fact.

6.6. The National Press

"National press" is defined in Article 1(6) as "press conducted by Indonesian press companies". In Timor-Leste this phrase could be interpreted as meaning Timorese-registered or based companies. It therefore appears that while the Press Law places many obligations on all media, it declines to provide some protections to parties which are not Timorese media companies. As an example, Article 4 reads, in part:

> (1) Freedom of the press is guaranteed as a basic human right for every citizen.
>
> (2) Towards national press no censorship, banning or restriction will be imposed.
>
> (3) To ensure the existence of the freedom of the press, national press has the right to seek, acquire and disseminate ideas and information.

International guarantees of freedom of expression apply "regardless of frontiers" and there would appear to be no justification for restricting these guarantees to national media. In any case, media that is not Timorese "national press" could still invoke constitutional protections.[102]

On the other hand, certain obligations appear to apply only to local media. Article 18, for example, may imply that journalists and media outlets that are *not* Timorese do not bear liability for prosecution for breaching those particular obligations. Articles 18(2) and (3), which provide for fines of up to about USD 50,000 for breaches of certain obligations such as the Right to Response, apply to a "press

[102] Early drafts of the East-Timorese Constitution guaranteed freedom of speech to just "citizens", but the final document applies to "every person".

company"—defined in Article 1 to be, among other things, "an Indonesian legal entity" (read Timor-Leste legal entity).[103]

6.7. The Press Council

Article 15(1) reads: "In the efforts of developing the freedom of the press and expanding the existence of the national press, the Press Council shall be established". The accompanying clarification states: "The objective of the formation of the Press Council is to develop the freedom of the press and improve the quality and the quantity of the national press."

Article 15(2) reads:

> The Press Council has the following functions:
> a. protect the freedom of the press from any intervention;
> b. conduct studies to develop the existence of the press;
> c. decide and control the compliance of Code of Ethics of Journalistic;
> d. give consideration and find solutions to any complaint lodged by public towards cases concerned with press' reportage;
> e. develop communication between press, public and government;
> f. facilitate press' organisations in order to form regulations in press as well as increase the quality of journalistic professionalism;
> g. register press companies.

The clarification for Article 15(2) reads: "Consideration on the public grievances as intended in Verse (2) letter d is related to the Right to Response, the Right to Correct and indications of violations of the Journalistic Code of Ethics." This appears to provide that the Press Council is responsible for processing complaints. The clarification does not suggest that the Press Council has an exclusive role regarding complaints and it does not state that those seeking to have their rights to correction or response honoured must go first to the Press Council instead of the courts or the media outlets directly.

[103] Article 1365 of the Indonesia Civil Code – applicable in Timor – states: "Every unlawful act which causes harm to another person shall obligate the person whose act has given rise to said harm to compensate for said harm". In its 2002 decision against the *Suara Timor Lorosae* newspaper (discussed in Chapter 4), the Dili District Court appeared to base its decision to make a USD 50,000 civil damages award against the paper on a finding that the paper had breached the Press Law. In this instance, whether the media outlet is a company or not, or local or foreign, is probably immaterial.

Membership and funding

Article 15(3) reads:

> The membership of the Press Council consists of:
> a. journalists appointed by journalists' associations;
> b. management of press companies, appointed by press companies' associations;
> c. public figures, experts in press and/or communication, and other fields appointed by journalist and press companies' organizations.

Unlike earlier Indonesian press laws, the 1999 Press Law does not provide for a government representative to sit on the council; instead, the Council is entirely chosen and appointed by journalists and media owners. The law does not specify how Press Council members should be chosen or how many representatives each group would get; instead, Article 15(5) provides that 'Membership of the Board of the Press as stated in item (3) is stipulated by a Presidential Decree'. In practice, there are nine members, divided equally among the three categories.

One issue regarding the application of these provisions in Timor-Leste is that the powers of the president are very tightly defined in the Constitution and there is a question mark as to whether or not he would have the power to constitute the Press Council. If not, it is unclear who would hold this prerogative.[104]

Article 15(7) states:

> The financial resources of the Press Council are from:
> a. press organizations;
> b. press companies;
> c. non-binding financial assistance from government and other parties.

This provision appears to leave open the possibility of donor funding for the organisation, important given that Timor-Leste's press organizations are unlikely to be able or willing to contribute large sums of money to the council in the near future; and an independent council may not wish to receive government funding, however "non-binding".

Press Council for Timor-Leste?

It is unclear what the implications of the existing Press Law are in terms of a specific press council for Timor-Leste but, in practice, this is most unlikely to happen under this Law.

[104] See sections 85 to 89 of the Constitution.

At present, there is no press council, either purely self-regulatory or statutory, in Timor-Leste and it is unclear whether or not the country has the political will or the resources, human and other, to move in this direction. However, without such a body, the country lacks a body to mediate media-related disputes outside of the courts. A press council could provide a mechanism to address complaints fairly, equitably and in a timely manner which avoids costly legal battles.

6.8. Code of Ethics

Article 7(2) of the Press Law states that a journalist "owns and adheres to the Journalistic Codes of Ethics". Article 1 explains that a journalist is a "person who regularly conducts journalistic activities" and the "Journalistic Code of Ethics is the compilation of ethics for the journalism profession." The clarification to the Press Law states that the Journalistic Code of Ethics 'is mutually agreed Codes by press organizations and endorsed by the Press Council'.

There does not appear to be a specific sanction attached to a failure to adhere to the Journalistic Codes of Ethics, although one of the Press Council's functions under Article 15 is to supervise compliance with the Code. In practice, the Code is used to mediate disputes between the media and the public.

According to the Indonesian Civil Code Article 1365, "Every unlawful act which causes harm to another person shall obligate the person whose act has given rise to said harm to compensate for said harm". If it was found that a failure to adhere to the Code of Ethics was an unlawful act, then there may be scope for a compensation claim. This is a potential flaw in the Press Law as the Code appears to have been intended as part of a self-regulatory system, not as a legally binding document.

No central code has yet been agreed upon by all of the relevant stakeholders in Timor, but the Timor Lorosae Journalists' Association (TLJA) has drawn up its own code of ethics, as have community broadcasters. The public broadcaster also began developing its own Code of Practice in 2004. The stipulation that the Code to be followed under the Press Law is the one endorsed by the Press Council appears only in the clarification to the Press Law and not in the law itself, and it is conceivable that a Timorese court would be prepared to look to the Timor Lorosae Journalists' Association's code as the document to be followed in Timor, even without a Press Council to endorse it.

Recommendations:

To the media community and media outlets:

- Careful consideration should be given to establishing a truly self-regulatory Press Council, with representatives from both the media community and the general public. This body could develop and then promote implementation of a code of ethics for the media, by, for instance, receiving and deciding upon complaints.
- Each media outlet should consider strengthening internal processes and standards with a view to reinforcing good journalistic practices and avoiding legal problems. Measures could include establishing an internal complaints system, strengthening editorial control and providing journalism training.
- Members of the media should seek to become more engaged in media law development including by trying to influence the adoption and/or repeal of laws, as well as their interpretation by the judiciary.

To the government and/or parliament:

- The maximum fines which may be levied under the Press Law, and any Timor-Leste law that supersedes it, should be stipulated in law and should take into account the limited means available to the media in Timor-Leste. Consideration should be given, for example, to reducing the maximum fines to just a few thousand USD.
- It should be made clear that the protections for the media set out in the Press Law apply to all journalists and media.
- The content restrictions in the present Press Law should be reviewed and amended to bring them into line with international and constitutional guarantees of freedom of expression, as noted above.
- The provisions in the Press Law on the right of reply should also be reviewed and brought into line with international and constitutional standards.

7. BROADCAST REGULATION

Timor-Leste broadcasting has grown quickly with the establishment of a public broadcaster and 18 community radio broadcasters in under 4 years, all attempting to meet the information needs of local and national audiences.

A number of UNTAET regulations and Timor-Leste decree laws currently make up an incomplete, and at times confusing, broadcast regulatory framework. These regulations and laws are generally based on international best practice and provide a good model for a broadcasting that suits the newly democratic nation of Timor-Leste. At the same time, they leave a number of gaps to be filled to create a full regulatory system.

Section 41 of the Constitution specifically provides that the State may impose a licensing regime on broadcasters, stating: "Radio and television stations shall operate only under a license, in accordance with the law". However, the guarantees of freedom of expression contained in the Constitution—along with the internationally recognised human rights standards that apply in Timor-Leste, in particular those contained in the ICCPR—are relevant to the nature of the licensing regime that can be applied.

Currently, broadcasters are operating with spectrum access licenses, along with frequency allocation, issued by the Ministry of Transport, Communication and Public Works. In terms of standards, community stations are following broadcast standards they have established themselves, such as those outlined in their constitutions and an agreed upon Community Broadcasting Code of Practice and journalism Code of Ethics. There is more clarity concerning the public broadcaster given a detailed UNTAET Regulation and subsequent Decree-Law governing its structure and activities. However, it also operates without a specific broadcasting licence and its assets have not formally been handed over from the government.

7.1. Reasons to Regulate

Across the world, States regulate the "scarce resource" of radio frequency spectrum. There are a number of reasons why such regulation is necessary. It prevents interference from overlapping radio frequency signals that could disrupt the effectiveness of emergency and military communications services, as well the operations of commercial, public and community broadcasters. A central role in the international planning of frequencies is played by the International Telecommunications Union (ITU), and national

regulators help ensure that States meet their commitments to this body.

Broadcast regulation can also serve to ensure that limited frequencies are used in the public interest, taking into account the limited capacity of society to support broadcasters. Regulation can, for example, help ensure that local content is included in the broadcasting mix available to citizens, and that broadcasting content does not harm children or offend too strongly against local morals and values.

Broadcast regulation can also ensure the sound development of the sector at the technical level, providing for consistency of quality and reception capacity, as well as for the incorporation of new technologies, such as digital broadcasting. Furthermore, regulation can ensure that the growing profitability of this sector is shared with the public as a whole, based on the idea that frequencies are public property, essentially through the charging of licence fees for use of frequencies.

Regulation should also help ensure that broadcasting services are sustainable in the context of their listening community, local business and funding opportunities. This is a particular concern in smaller and poorer countries like Timor-Leste. Small districts, for example, struggle to sustain one community radio station in terms of income and volunteers. At the end of 2004, there was one station in each district, a public broadcaster transmitting its signal across most of the nation and 5 stations broadcasting in Dili (PBS, Voice FM and three community stations: RTK, Radio Rakambia, Radio Falintil). This would appear to be a reasonably stable broadcasting environment, the establishment of additional broadcasters would, however, threaten to dilute the limited resources currently available. As most stations are no more than 2-3 years old, a cap on new broadcast licenses would assist this fragile media sector to work slowly towards sustainability.

At the same time, it is essential that broadcast regulation not be used as a means of government control over broadcasters. Most regulatory systems provide, in cases of serious breach of the rules, for disciplinary action to be taken, including the power to shut down broadcasters. If such powers are wielded by politically motivated actors, a serious threat to freedom of expression could emerge. To avoid this possibility, and to ensure that regulatory powers are used in democratic ways, it is important that regulatory authorities be independent, in the sense of operating at arm's length from government.

7.2. Broadcast Legislation – Current Status

A unique aspect of the broadcast sector in Timor-Leste is that the radio broadcasting sector has grown rapidly in a short amount of time in the absence of a clear government broadcast policy or an established regulatory framework. A range of aid agencies—including UNESCO, UNDP, USAID, World Bank, Internews, INDE, APHEDA, Hirondele, IBASE, and UNDP—supported the development of a number of broadcasters, prior to license availability. Consequently, there is some ambiguity about existing broadcasters' right to broadcast.

In 2001, UNTAET passed a law relating to both telecommunications and broadcasting. This law, identified in this paper as the Telecommunications Law, laid the groundwork for the establishment of the public broadcasters (radio and TV) and an independent regulatory authority, now known as ARCOM, to plan radio spectrum, and to issue and review broadcast licenses. Since then, a number of UNTAET regulations and Timor-Leste Parliamentary Decrees have refined and developed the Telecommunications Law.

21 July 2001: UNTAET Regulation No. 2001/15 on the establishment of an Authority for the Regulation of Telecommunications in Timor-Leste.

Known as the Telecommunications Law, Regulation 2001/15 contains broad provisions for telecommunications spectrum allocation and regulation as well as specific articles on the establishment and operation of a Communications Regulatory Authority (CRA) and its role in issuing and reviewing both spectrum access and broadcast licenses. Pursuant to a Decree-Law passed in July 2003 (see below), the CRA became known as ARCOM (Portuguese acronym of the same), paving the way for the establishment of the regulatory authority, although, as of December 2004, the board had yet to be appointed.

The Telecommunications Law provides a democratic basis for the regulation of telecommunications and broadcasting. It meets a significant number of ARTICLE 19's principles in this regard, as set out in *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*.[105] For instance, it establishes a regulator that is relatively free from government control, calls for open public hearings in the licence application and review process, provides for the establishment of a public broadcaster (PBS) managed by a separate independent authority and, in Section 59, prohibits broadcast

[105] ARTICLE 19, 2002, see note 42 on page 26.

licenses being granted to 'any party, movement, organisation, body or alliance which is of a party political nature'.

It also contains broad definitions for the establishment of a 3-tiered broadcasting sector comprising public (RTTL), private/commercial (for profit) and community (owned and run by not-for-profit community organisations representing their local communities) broadcasters. For instance, Section 58, Community broadcasting licenses, requires that applicants be issued a license based on criteria to be determined by the regulatory authority. The criterion include considering whether the applicant is controlled by a non-profit entity, proposes to serve the interests of the relevant community, has the support of the relevant community regarding the provision of the service and proposes to encourage members of the relevant community to participate in the selection and provision of programmes.

One of the purposes of the regulator is set out in Section 3 of the Regulation as follows:

> (1) For the purposes of ensuring that the telecommunications systems and services, including the broadcasting services, are operated in a manner that will best serve and contribute to the economic and social development of Timor-Leste, there is hereby established a juridical person to be known as the Communications Regulatory Authority.

The regulator is tasked with managing the radio-frequency spectrum (see Section 25) and provides for public access to the planning process, with the opportunity for comment from all interested parties.

The Telecommunications Law also provides, at Section 62, for the establishment of a Broadcasting Monitoring and Complaints Committee tasked with the role of monitoring cross media ownership, as well as ensuring compliance with broadcasters' licence conditions and 'any Codes of Conduct for Broadcasting Services issued by CRA'. While the development and monitoring of codes of conduct is common in broadcasting laws, consideration should also be given to the idea of self-regulatory codes developed by broadcasters themselves.

In a number of countries self-regulation has been identified as an effective and prudent means to promote better standards in broadcasting. The UNESCO study on *Legislation on Community Radio Broadcasting – comparative study of the legislation of 13 countries* commends the few countries that have pursued self-regulation through Codes of Practice. Broadcasters benefit from this through ownership of shared goals and principles, leading to improved

standards of program quality and organisational management (such as commitments to equitable complaints handling processes, local cultural development, volunteerism and so on). The regulator and State benefit as the onus of costly program, management, quality monitoring and complaints handling are shifted onto the broadcasting community.

In Timor-Leste, recent progress has been made, particularly by community broadcasters, in developing their own code of conduct. The regulatory system should endeavour to take this into account.

9 May 2002 (11 days before independence): UNTAET Regulation No 2002/06 on the Establishment of the Public Broadcasting Service of Timor-Leste

This regulation, referred to herein as the PBS Law, is consistent with the 2001 Telecommunications Law and meets most of ARTICLE 19's standards on public broadcasters.[106] In particular, it requires that the PBS be governed by an independent board, setting out clear rules relating to the appointment of members, disallowing political appointments and conflicts of interest, specifically protecting institutional autonomy. Apart from providing a clear legislative statement of goals, powers and responsibilities, the regulation also ensures respect for editorial independence and in funding arrangements.

This regulation effectively provided the legal basis for transforming PBS from the public information vehicle of the UN into a public service broadcaster. The broadcaster has had to transform culturally from within as most journalists trained under UNTAET were practised in promoting the activities of the government of the day and are reticent to broadcast material that may be seen to be critical of the Parliament or Government.

The objectives of the PBS, as outlined in Section 3 of the PBS Law, include the provision of a service that promotes freedom of expression, open communication of ideas and a peaceful social environment, contributing to the unity and national identity of Timor-Leste, respecting the cultural, religious or other beliefs of all the people of Timor-Leste, as well as promoting accurate, informative, educational, entertaining and creative broadcasting. It also aims to foster its growth into a financially viable sector capable of competing with foreign broadcasting service providers.

Section 4 sets out a number of principles that govern PBS. These include independence from governmental, political, economic or other control, editorial integrity, provision of news which is consistently

[106] ARTICLE 19, 2002, see note 42 on page 26.

reliable, accurate, objective and comprehensive, as well as a reflection of the diversity in Timor-Leste's thought and institutions, culture and society.

Time will tell how these guarantees for PBS' organisational and editorial independence work in practice. It will also be some time before PBS is put on a stable financial basis; government funding for it is a process of annually negotiation with the treasury and no set levels of funding are allocated. Donors currently provide much of its funding.

10 March 2003: National Parliament passes Law No 2/2003 Amending UNTAET Regulation No 6/2002 on the Establishment of the Public Broadcasting Service of Timor-Leste (later gazetted sometime between May and Sept 2003)

This Law confirmed the status of Regulation 2002/6. It amended only one section of the earlier regulation, affecting practical processes relating to board selection, and did not change the overall intent of the earlier regulation nor undermine the independence of PBS.

22 May 2003: Decree-Law No 11/2003 Establishing the basis for Telecommunications (gazetted 29 July 2003)

This Decree-Law is primarily concerned with telecommunications and refers to radio/television broadcasting only insofar as the regulation of radio frequency spectrum is the responsibility of ARCOM. It specifically provides that broadcasters are exempt from the provision that all telecommunications infrastructure is under the exclusive competency of the universal telecommunications operator (Timor Telecom).

This Decree-Law repeals all earlier related laws and regulations, but provides for the repeal of Regulation No. 2001/15 only insofar as it is inconsistent with its own provisions. This effectively means that while all Indonesian Laws and interim Executive Orders passed by UNTAET dealing specifically with telecommunications and broadcast regulation have been repealed and replaced by this Law, provisions of the Telecommunications Law not covered by the new law are still in force. Minor inconsistencies between Regulation No. 2001/15 and this Decree-Law may still emerge, inconsistencies which will require interpretation.

22 May 2003: Decree-Law No 12/2003 Statutes for the Authority for the Regulation of Communications and its Constitution (gazetted 29 July 2003)

This Decree-Law transformed the telecommunications regulator established under the Telecommunications Law as the CRA into ARCOM. While it is consistent with the intent of the Telecommunications Law in terms of the purpose and activities of ARCOM, it provides more detailed guidance to ARCOM in its operations, with particular focus on Telecommunications.

The ARCOM board has not yet been established, although the body itself is operational. Two spectrum managers who have been transferred from the Ministry of Transport, Communication and Public Works to ARCOM administer its office.

As with its companion legislation, it repeals other laws in the same subject area, with the exception of the Telecommunications Law, which it repeals only to the extent of any inconsistency with the new Law. Consequently, it would appear that the 2001 Telecommunications Law remains the primary legislation regarding Timor-Leste's broadcasting environment.

The Decree-Law is silent on the role of ARCOM in relation to broadcast licensing, monitoring, review and complaints handling, although ARCOM is specifically responsible for managing the radio-electric spectrum, presumably including in relation to broadcasting. It can therefore be assumed that broadcast regulation remains largely as outlined in the Telecommunications Law, with spectrum planning and licensing matters continuing to be the responsibility of the ARCOM. Frequency use licenses were issued to the newly established Timor Telecom, as well as to a number of community broadcasters, in 2003.

7.3. Plans for New Legislation

Despite the legislation already passed, a number of issues remain outstanding. Detailed rules relating to broadcasting, including licensing and the development of codes of practice, are not provided for in the existing legislative framework. As a result, the government is planning to adopt new legislation to establish an independent authority or public institution to issue broadcast licenses, to address issues of broadcast content and possibly also to oversee community broadcasters (see below).

This possibility presents a number of potential benefits, in line with the need for broadcast regulation, as described above. The creation of an impartial authority with expertise would allow for the issuing of broadcast licenses that benefit the community and could help ensure the orderly development of the sector, in line with Timor-Leste's capacity. Regulation could also help create truly democratic processes for community participation in community radio (through, for

example, the election of boards which are representative of the local community) and ensure that community broadcasters are run on a not-for-profit basis.

It is, as noted above, essential for any regulator to be protected from political and commercial interference. One means of ensuring this is through the appointment of an independent board. The increased role of the State in overseeing the issuance and oversight of broadcasting licences that a new law would likely envisage makes the issue of independence all the more important.

It is also important that any new legislation, which might repeal existing regulations and laws, benefit from the extensive international research and local consultation undertaken since 1999 to develop best practice models for broadcasting in Timor-Leste.

Community broadcasters

In March 2004, the World Bank funding allocated to the Community Empowerment Program (CEP) ceased. The CEP program had created 13 community radio stations in 8 districts. These stations are now independent community radio stations aiming to provide self-sustaining services.

It seems likely that the new broadcasting legislation will deal in some detail with the issue of community broadcasting, particularly the oversight of the CEP community radio stations. It remains unclear what role a new regulatory authority will play in relation to community radios. A key issue is whether the infrastructure of these stations, which is currently State-owned, will remain a public asset.

It is essential that, whatever their formal status, these stations be managed by the communities they serve. This could be achieved, for example, through the development of access agreements/contracts with the board of each community station. As part of this access agreement or contract, the independent authority would ensure the stations are run by bodies that are truly representative of the community, linked to traditional local governance systems. To be consistent with international best practice in the area of community radio, as outlined in the UNESCO study on *Legislation on Community Radio Broadcasting – comparative study of the legislation of 13 countries* by Dr Gloria Sanchez, it is important that any such agreements do not impact on broadcast content or duplicate community broadcast licenses.

There is also a risk of different rules emerging with the CEP-initiated stations using one model (where assets are overseen by an

independent authority) while other community stations, with independent ownership of their assets, using another. This might promote segregation in the community radio sector, although it may be noted that all stations are working towards healing the rift between the CEP and "other/independent" community radio stations. In a country of the size and wealth of Timor-Leste, three tiers of broadcasters, as outlined in the Telecommunications Law, is more than adequate. Ideally, all community broadcasters should be subject to the same criteria in their application for community licenses.

The current legislation envisages the payment of a licence fee for broadcasters. It is of the greatest importance that the nature of community broadcasting, running on a not-for-profit basis and with minimal revenue opportunities, be taken into account in the assessment of any fee to be levied on this tier of broadcaster. At present, we estimate that on average a district-based community radio station has the potential to generate between USD 50-100 per month, through NGO partnerships and public service announcements (PSAs). This is barely enough to cover the costs of petrol to run a generator (when the power is out), materials and maintenance of equipment costs. In 2003, most stations generated under USD 50 per month, with volunteers donating money and time to keep these stations alive.

Recommendations:

To the broadcasting community and broadcasting outlets:

- Consideration should be given to establishing a Broadcasting Foundation or some such body with a mandate to provide infrastructure maintenance (such as the towers and transmitters) and to support the overall development of broadcasting through providing training, management advice, advocacy and technical support.
- The ARKTL and CEP community radio stations should take measures to work together to promote broad public endorsement of the Code of Practice they developed together with all community radio stations in 2003.

To the government and/or parliament:

- Measures should be taken to enhance the independence of ARCOM. This should include provisions for the involvement of representatives from the broadcasting and civil society sectors in appointments to the board. Once this has been done,

the board should be appointed.

- A process of spectrum planning should be undertaken with a view to ensuring that the spectrum is used to maximum effect and to prevent a situation where too many broadcasters are licensed. Broadcast licensing should be frozen until an effective assessment of broadcast sustainability has been conducted.
- The legal framework for broadcasting should be expanded through the development of comprehensive, progressive licensing and content regulation systems. This framework should provide for limited or no licence fees for community broadcaster, in addition to this, existing community broadcasters should, in principle, have their licences guaranteed.
- The definition of community broadcaster should be consistent with the Telecommunications Act while also embracing all current stations.
- Section 84 of the Telecommunications Law should be amended so that the potential fines for community broadcasters are reduced to a few thousand dollars instead of the current maximum fine of USD 100,000.

8. DEFAMATION

The Indonesian Penal Code, applicable in Timor-Leste, contains a number of provisions criminalising defamation. These provisions are further reinforced by civil sanctions for defamation. Both have been used in Timor-Leste in ways that exert a chilling effect on freedom of expression. Furthermore, the Timorese authorities are currently considering proposals to provide for local legislation on criminal defamation.

This section of the report draws heavily on the distillation of international standards in this area contained in the ARTICLE 19 publication, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputations* (ARTICLE 19 Principles).[107] These principles have attained significant international endorsement, including three official mandates on freedom of expression, the UN Special Rapporteur on Freedom of Opinion and

[107] ARTICLE 19, *Defining Defamation*, (London: ARTICLE 19, 2000).

Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.[108]

8.1. General Principles of Defamation Law

Public officials and bodies

As discussed in the next section of the report, the Penal Code contains special protections for a wide range of public officials and bodies. It is important to note that this situation stands international jurisprudence on its head. Jurisprudence which establishes that public *officials* should tolerate a greater degree of criticism than private persons since they have willingly taken on a public role in a democratic context, as a result of which their actions should be subject to the scrutiny of the public.[109]

Added protection for public *bodies* is, if anything, even less appropriate. It is vitally important in a democracy that open criticism of government and public bodies be facilitated. It is equally important to recognise that public bodies have only limited reputations which, in any case, can be said to belong to the public as a whole. Finally, public bodies possess ample means to defend themselves. For these reasons, the ARTICLE 19 Principles recommend that defamation actions by public bodies be prohibited altogether.[110] This is in accordance with the decisions of superior courts in a number of countries, which have limited the ability of public bodies, including elected bodies, State-owned corporations and even political parties, to bring defamation actions.[111] Timor-Leste should follow this lead.

[108] See their Joint Declaration of 30 November 2000. Available at: http://www.unhchr.ch/huricane/huricane.nsf/view01/EFE58839B169CC09C12569AB002D02C0?opendocument.

[109] See, for example, *Lingens v. Austria,* 8 July 1986, Application No. 9815/82 (European Court of Human Rights).

[110] See ARTICLE 19 Principles on Defamation, see note 107 on page 67, Principle 3.

[111] See, for example, *Derbyshire County Council v. Times Newspapers Ltd.* [1993] 1 All ER 1011 (United Kingdom); *Rajgopal v. State of Tamil Nadu*, (1994) 6 Supreme Court Cases 632, p. 650 (India); *City of Chicago v. Tribune Co.*, 307 Ill 595 (1923), p. 601 (United States); *Die Spoorbond v. South African Railways* [1946] SA 999 (AD) (South Africa); *Posts and Telecommunications Corporation v. Modus Publications (Private) Ltd.*, (1997), Judgment No S.C. 199/97 (Zimbabwe); and *Goldsmith and Anor. v. Bhoyrul and Others*, [1997] 4 All ER 268 (United Kingdom).

Defences

A number of defences have been recognised as necessary if defamation laws are to conform to international standards relating to freedom of expression.

a. No Liability for true statements

The Civil Code does not appear to provide for a separate truth defence and the Penal Code allows such a defence only in a limited set of circumstances. It stands to reason, however, that one cannot protect a reputation which one does not deserve. True statements about a person cannot detract from any reputation which is legitimately theirs precisely because they are true. If the challenged statements are true, a defendant should not be liable in defamation.[112]

b. No Liability for the expression of opinions

For the most part, the Penal and Civil Codes do not clearly distinguish between the treatment of expressions of opinions and expressions of fact. However, courts around the world, international and national, regularly distinguish between opinions and statements of fact, allowing far greater latitude in relation to the former. The ARTICLE 19 Principles take the view that statements of opinion should never attract liability under defamation law;[113] at a minimum, such statements should benefit from enhanced defamation protection.

c. Reasonable publication

It is widely recognised that a rule assigning liability for *every* false statement is unfair, particularly to the media. Even the best of journalists make honest mistakes, leaving them open to punishment for every false allegation would only serve to undermine public interest in receiving timely information. The nature of the news media is such that stories have to be published when they are topical, particularly when they concern matters of public interest. As the European Court of Human Rights has held:

> ▪ [N]ews is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.[114]

Consequently, an increasing number of jurisdictions are recognising a "reasonableness" defence—or an analogous defence based on the ideas of "due diligence", "good faith" or absence of malice—due to

[112] ARTICLE 19 Principles on Defamation, see note 107 on page 67, Principle 7.
[113] ARTICLE 19 Principles on Defamation, see note 107 on page 67, Principle 10.
[114] *The Sunday Times v. the United Kingdom (No. 2)*, 24 October 1991, Application No. 13166/87, para. 51.

the harsh nature of the traditional rule according to which defendants are liable whenever they disseminate false statements or statements which they cannot prove to be true. This provides protection to those who have acted reasonably in publishing a statement on a matter of public concern, while allowing plaintiffs to sue those persons who have failed to meet a standard of reasonableness.[115]

d. Liability exemption for certain categories of statements

Certain kinds of statements should never attract liability for defamation. Generally speaking, this is in cases where it is in the public interest that people be able to speak freely without fear or concern that they may be liable for what they have said. This would apply, for example, to statements made in court, in the legislature and before various official bodies. Equally, fair and accurate reports of such statements, in newspapers and elsewhere, should be protected.[116]

Principle 11 of the ARTICLE 19 Principles details the types of statements which should attract such protection:

> (a) Certain types of statements should never attract liability under defamation law. At a minimum, these should include:
>
> i. any statement made in the course of proceedings at legislative bodies, including by elected members both in open debate and in committees, and by witnesses called upon to give evidence to legislative committees;

[115] See ARTICLE 19 Principles on Defamation, see note 107 on page 67, Principle 9. See also *Lingens v Austria*, 8 July 1986, Application No. 9815/82 (European Court of Human Rights), *New York Times v Sullivan* 376 US 254 (1964) (United States Supreme Court), *Lange v. ABC* (1997), 145 ALR 96 (High Court of Australia) and *Reynolds v. Times Newspapers*, [2001] 2 AC 127 (United Kingdom House of Lords). According to Macovei, in the *Lingens* case the Court held "that politicians must show wider tolerance of media criticism. The court explained: 'Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the (European Convention on Human Rights). The limits of criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance' . Note 75 on page 35, pp.46-47.

[116] See, for example, the following decisions by the European Court of Human Rights: *A. v. the United Kingdom*, 17 December 2002, Application No. 35373/97 (members of the legislature should enjoy a high degree of protection for statements made in their official capacity); *Nikula v. Finland*, 21 March 2002, Application No. 31611/96 (statements made in the course of judicial proceedings should receive a high degree of protection); *Bladet Tromso and Stensaas v. Norway* (media and others should be free to report, accurately and in good faith, official findings or official statements).

ii. any statement made in the course of proceedings at local authorities, by members of those authorities;
iii. any statement made in the course of any stage of judicial proceedings (including interlocutory and pre-trial processes) by anyone directly involved in that proceeding (including judges, parties, witnesses, counsel and members of the jury) as long as the statement is in some way connected to that proceeding;
iv. any statement made before a body with a formal mandate to investigate or inquire into human rights abuses, including a truth commission;
v. any document ordered to be published by a legislative body;
vi. a fair and accurate report of the material described in points (i) – (v) above; and
vii. a fair and accurate report of material where the official status of that material justifies the dissemination of that report, such as official documentation issued by a public inquiry, a foreign court or legislature or an international organisation.

b) Certain types of statements should be exempt from liability unless they can be shown to have been made with malice, in the sense of ill-will or spite. These should include statements made in the performance of a legal, moral or social duty or interest.

8.2. Criminal Liability for Defamation

General problems with criminal defamation

Short of the threat of being killed or otherwise harmed or blackmailed, the threat of jailing journalists and others distributing information represents one of the most oppressive curbs possible on freedom of speech. Under the authoritarian regime that ruled Indonesia, including Timor, until the late 1990s, a number of journalists were imprisoned across the archipelago under various sections of the Indonesian Penal Code for their writings and work.[117] It appears that individuals are still being imprisoned under these laws in the newly democratising Indonesia.[118]

[117] See Bies, D., "Freedom of the Press Undermined by Indirect Censorship in Indonesia", (2001) 24 *Suffolk Transitional Law Review* 279. Millie J, "The Tempo case…" in Lindsey T., ed., *Indonesia: Law and Society* (The Federation Press, 1999).
[118] According to an ARTICLE 19 press release "some 20 activists and journalists

Of greater surprise is that in East Timor in 2000, under the regime of the United Nations Transitional Administration, a Japanese citizen named Takeshi Kashiwagi was detained for 18 days while being investigated for allegations under section 310 of the Penal Code's Chapter XVI on defamation.

Despite advocacy to the contrary at the time of its drafting,[119] Timor-Leste's Constitution does not explicitly prohibit criminal sanctions, including jail terms, for defamation. As noted earlier, it protects the right to public image and freedom of expression.

International law recognises that freedom of expression may be limited to protect individual reputations but defamation laws, like all restrictions, must be proportionate to the harm done and not go beyond what is necessary in the particular circumstances. Criminal defamation provisions breach the guarantee of freedom of expression for two primary reasons. Firstly, less restrictive means, such as the civil law, are adequate to redress the harm done and, secondly, because the sanctions they envisage are disproportionate.

Numerous international statements attest to this fact. The UN Human Rights Committee, the body with responsibility for overseeing implementation of the ICCPR, has repeatedly expressed concerns over the possibility of custodial sanctions for defamation.[120] The UN Special Rapporteur on Freedom of Opinion and Expression has asserted that imprisonment is not a legitimate sanction for defamation.[121] In his report to the UN Human Rights Committee in 2000, and again in 2001, the Special Rapporteur went even further, calling on States to repeal all criminal defamation laws in favour of civil defamation laws.[122] Every year, the Commission on Human

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have been arrested and jailed for criminal defamation during the Megawati presidency", 20 June, 2003.

119 See comments by Michael Chesterman, University of New South Wales, February 2002, 'Draft Constitution of East Timor: Sections Dealing with Freedom of Expression and Freedom of the Media'; letter from Marilyn J Greene, Executive Director World Press Freedom Committee 6 March 2002; and Timor Lorosae Journalists' Association Submission on Freedom of Expression: for inclusion in the Asia Foundation's submission to the Constituent Assembly, all on file with the author.

120 For example in relation to Iceland and Jordan (1994), Tunisia and Morocco (1995), Mauritius (1996), Iraq (1997), Zimbabwe (1998), and Cameroon, Mexico, Morocco, Norway and Romania (1999), Kyrgyzstan (2000), Azerbaijan, Guatemala and Croatia (2001), and Slovakia (2003).

121 *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1999/64, 29 January 1999, para. 28.

122 See *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 52 and *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2001/64, 26 January 2001, para. 47.

Rights, in its resolution on freedom of expression, notes its concern with 'the abuse of legal provisions on criminal libel'.[123]

In their Joint Declarations of November 1999, November 2000 and December 2002, the three special international mandates for promoting freedom of expression—the UN Special Rapporteur, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression—called on States to repeal their criminal defamation laws.[124]

The ARTICLE 19 Principles, reflecting this clear international tendency, also call for the repeal of criminal defamation laws. At the same time, in recognition of the fact that many countries still have such laws in place, Principle 4 notes that prison sentences, suspended or otherwise, should never be imposed for defamation.

Based on the foregoing, our principal recommendation is that the defamation provisions in the Penal Code be repealed altogether. If criminal defamation laws remain in force, they should be amended so as to minimise the potential for abuse or unwarranted restrictions on freedom of expression in practice. An essential element of this should be the removal of the possibility of imprisonment for defamation.

Specific Problems with Criminal Defamation

a. Offences of libel and slander

Article 310 provides for the general crimes of slander and libel. The former occurs when a person 'intentionally hurts someone's honour or reputation by charging him with a certain fact, with the obvious intent to give publicity thereof' and the latter occurs when such "charge" is based on the dissemination of writings or portraits. The maximum imprisonment for slander is nine months while the maximum sentence for libel is 16 months. Fines are also provided for with respect to both offences.

It is worth noting that that these offences, at least, require an intention to damage a subject's honour or reputation, by means of charging him with a certain fact, and a further intent to make the charge public. On the other hand, as we have made clear, imprisonment for such conduct is a disproportionate penalty compared to any harm which might conceivably be caused. Moreover, as we note below, the defences available with respect to these offences are inadequate.

[123] See, for example, Resolution 2000/38, 20 April 2000, para. 3.
[124] Adopted, respectively, on 26 November 1999, 30 November 2000 and 10 December 2002.

b. Defences to charges of slander or libel

The Penal Code contains a complex, confusing and weak set of defences to libel and slander charges. Firstly, Article 310 provides: "Neither slander nor libel shall exist as far as the principal obviously has acted in the general interest or for a necessary defence." Given this provision, it would seem that expressions in the general interest or for a necessary defence are not viewed as libel or slander in the first place. But the effect of Articles 311 and 312 appear to put the burden on the defendant to show that the expression fulfilled one or the other of these functions.

Article 312 provides that proof of truth may be proffered and, presumably, if successful, the defendant will be found innocent—only if 'the judge deems it necessary to examine the truth in order to evaluate the allegation of the defendant that he has acted in the public interest or out of necessity to defend himself' or where the challenged expression charges an official with 'having done something in the performance of his service'. The former leaves this important matter entirely up to the discretion of the judge and gives no guidance to the judge as to when and whether or not to exercise such discretion.

Article 312 is problematical for a number of reasons. Firstly, it fails to clarify what, exactly, is required. It appears that the accused needs to prove both that the statements were made in the public interest or for purposes of defence and also that they were true. Secondly, even if successful, it is unclear that these proofs will absolve the defendant of guilt. Indeed, according to our sources, one can be convicted of either libel or slander for true statements. Thirdly, and most seriously, the right to prove the truth should never be denied to a defamation defendant.

Article 311, in turn, imposes a further, and very dramatic, penalty enhancement in the event that a person accused of libel or slander elects to try to prove that he or she acted in the public interest or out of necessity. If the accused tries to defend him or herself in this way and fails, he or she would be subject to imprisonment of up to four years. Consequently, any decision by a defendant to claim truth would be highly risky because, in the case that the evidence of truth is rejected on the terms of Article 311, the person is effectively subject to a potentially much longer prison sentence.

Finally, these provisions do not envisage a defence of reasonableness.

c. "Simple" defamation

Article 315 creates a further general offence as follows: "A defamation committed with deliberate intent which does not bear the character of slander or libel, against a person either in public, orally or

n writing, or in his presence orally or by battery, or by a writing delivered or handed over, shall [be] a simple defamation." Such 'simple" defamation is punishable by imprisonment of up to four months and two weeks, and by potential fines as well.

"Simple" defamation is defined only negatively, as (presumably) defamation which involves neither slander nor libel (both of which are defined in terms of hurting someone's "honour or reputation"). It is, thus, rather unclear. The term "defamation" suggests that it involves statements harming reputation. However, it remains unclear how this might be engaged or why it is necessary given Article 310. This may be a catch-all or it may relate to statements of opinion. In either case, it fails to incorporate the necessary defences.

d. Some other defamation-related provisions

Article 317 subjects to fines and potential imprisonment of up to four years any person who 'with deliberate intent submits or causes to submit a false charge or information in writing against a certain person to the authorities, whereby the honour or reputation of said person is harmed'.

Article 318 subjects to fines and potential imprisonment of up to four years any person who 'with deliberate intent by some act falsely casts suspicion upon another person of having committed a punishable act'.

Finally, Article 316, relating to "general defamation", provides for penalty enhancements, by one third, 'if the defamation is committed against an official during or on the subject of the legal exercise of his office'.

Article 317 is duplicative of the provisions discussed previously in this section and is therefore an unnecessary article. Moreover, it has the peculiar effect of privileging the position of public officials in the defamation regime. The honour or reputation of a person is in no way particularly sensitive in relation to public officials and yet Article 317 seems to imply that dishonouring the reputation of a person before public officials should be a separately-actionable offence, with particularly harsh penalties.

Article 318 implies that 'casting false suspicion … [for] having committed a punishable act' is *worse* than simply libelling or slandering someone, because it incurs a considerably longer period of imprisonment than Article 310. This is unnecessary, inasmuch as Article 310 covers such situations and already provides excessive penalties.

Article 316 is deeply problematic, for reasons which have already been made abundantly clear: public officials should tolerate more, rather than less, criticism, particularly in relation to their public work. Given this, it makes no sense whatsoever for the defamation of such officials to attract more severe penalties.

The defamation proposals for Timor-Leste

As noted above, there are currently proposals to introduce criminal defamation in Timor-Leste. Our review of these proposals as of February 2005 suggests a number of serious problems. The most serious of these is that the proposals envisage defamation as a criminal offence, with sanctions ranging from unspecified fines to imprisonment of up to three years. As previously discussed, this is a matter of some concern. The fact that the proposals fail to set a limit on the level of fines that may be levied is also a serious problem and presents the very real risk that such fines will be disproportionate to any harm caused, again in breach of the right to freedom of expression.

Secondly, the proposals envisage liability for defamation based on the expression of an opinion. As noted above, international standards make it clear that opinions should benefit from greater protection than statements of fact. In stark contrast to this, the proposed provisions provide for liability for any opinions which "could harm" the honour or reputation of another person. This is an unacceptably low standard.

Thirdly, the proposed provisions envisage special protection, in the form of higher penalties, for those who perform State, religious or political duties. Again, this stands in stark contrast to international standards, as noted above.

Fourthly, the proposed provisions envisage liability in defamation for criticism directed at "collective" persons or any other social institution. This presumably includes public institutions, such as the government, parliament and so on. As noted above, it is arguable that international law prohibits sanctions being imposed for mere criticism of public bodies and this interpretation is reflected in many national legal systems.

Finally, the proposals fail to recognise important defences to defamation. In particular, they fail to recognise that mistakes are inevitable in regular social discourse and that, in consequence, certain defences for even mistaken comments should be recognised. In particular, the law should provide for a defence of reasonable publication, whereby no one should be liable for the publication of even mistaken statements on matters of public interest, so long as the

concerned parties acted reasonably. This strikes a balance between the need to avoid harm to reputation and the sometimes countervailing need to ensure the free flow of information on matters of public concern.

The Kashiwagi case

The case of Takeshi Kashiwagi, and the rules adopted to address it, highlight the problem of criminal defamation in Timor-Leste. On 18 August 2000, the Dili District Court issued an order for the detention of Japanese citizen Takeshi Kashiwagi, described variously as an activist or journalist, under Chapter XVI of the Penal Code, on the grounds that he had libelled and threatened to kill Xanana Gusmao, then President of the Timorese Council of National Resistance (CNRT). On 22 August 2000, police in Dili arrested Kashiwagi and detained him for 18 days. On 7 September 2000, the UN's Transitional Administrator for East Timor, Sergio Vieira de Mello, issued an Executive Order seeking to remove Chapter XVI from the Penal Code and for that declaration to apply to Kashiwagi. Kashiwagi was then released on a judge's order and the charges against him were dropped.

Kashiwagi responded by suing for compensation for wrongful imprisonment and, on 15 January 2001, the Dili District Court upheld his claim, although the three-judge panel failed to make any reference to freedom of expression in their decision. Instead, it appears that Kashiwagi won his claim because the records of the investigation said to have been submitted as evidence do not contain any reference to a complaint from Xanana Gusmao. On 3 August 2001, this decision was reversed when Timor-Leste's Court of Appeal dismissed the compensation claim and absolved the defendants—Dili District Investigating Judge, Mr Carvalho; the then Deputy General Prosecutor General (Ordinary Crimes), Mr Monteiro; the Dili District Head Prosecutor, Mr Barris and the Transitional Administrator, Sergio Vieira de Mello—of liability.

The Court failed, however, to resolve issues relating to the legitimacy and/or status of the Executive Order ruling out criminal defamation.

8.3. Civil Liability for Defamation

The Civil Code Provisions on Defamation

a. Offences

The Civil Code does not include explicit provisions on defamation but its general tort provisions have clear application to defamatory acts. Article 1365 provides that a 'party who commits an illegal act which causes damage to another party shall be obliged to compensate therefore'. The link to defamation is forged from this statement by Article 1372, which provides that a legal claim 'with respect to an offence shall extend to compensation of damages and to the reinstatement of good name and honour that were damaged by the offence'.

Article 1375 extends the right to bring suit under the previous provisions to spouses, parents, grandparents and grandchildren on behalf of a deceased relative.[125]

Article 1367, a vicarious liability provision, imposes potential liability for the acts of others 'for whom [one] is responsible' or 'caused by matters which are under his supervision'. In particular, parents or guardians are responsible for the acts of certain minor children; employers and other managers are responsible for the acts of their 'servants and subordinates in the course of duties assigned to them'; and teachers and work supervisors are responsible for the acts of their students and apprentices during the period of their supervision.

The primary problem with these provisions is that they incorporate the overbreadth of the criminal defamation provisions, noted above. A closely related problem is that these general civil provisions fail to take into account the fact that freedom of expression is guaranteed in the Constitution and under international law as a fundamental human right. What may be appropriate in relationship to a general civil wrong may need to be adapted when applied in the context of a human right. Rules in this area may be contrasted with general civil rules, which often simply seek to apportion loss either to the party best able to pay or to the party on whom it is most appropriate for this burden to fall.

Inasmuch as Articles 1365 and 1372 refer simply to "another party", they may be compatible with defamation lawsuits being brought by public bodies, which we have already noted is illegitimate.

[125] Additionally, Article 1379 provides that a claim for compensation does not lapse upon the death of either the offender or the offended party. We note also that the Penal Code also has provisions relating to defamation of the deceased, at Articles 320 and 321. We express no view on these provisions at this time.

The provisions on vicarious liability, while they may well be appropriate for other civil wrongs, are inappropriate in this area, failing, as they do, to take into account the importance of freedom of expression. In particular, it is simply not appropriate to impose liability on teachers, parents and the like for the potentially wayward expression of their trustees.

b. Defences

Article 1376 provides that an 'offence cannot be admitted, if it does not appear that there existed intent to offend'. The same article goes on to provide that intent may not be supposed to have existed if the 'alleged offender apparently acted in the public's interest or if he did so as an act of necessary defence'.[126]

Article 1380 provides for a limitations period of one year, 'effective as of the day upon which the act was committed and known to the plaintiff'.

While a defence of acting in the public interest or for "necessary defence" is welcome, it does not go far enough. It seems to imply that intent may be supposed to exist where these conditions are not met. Furthermore, it fails to provide for other defences, such as proof of truth or reasonableness.

Additionally, we note that, while a general limitations period for defamation actions of one year is commendable, Article 1380 suffers from the defect that the period does not appear to commence when the act is committed but, rather, only when the plaintiff gains knowledge that the act was committed. The article leaves open the possibility that an individual who happens to come across an allegedly defamatory remark or publication many years after it is has been uttered or published—for example, because he or she was away from the country during his or her professional life and only returned upon retirement—may bring suit, even though the remark or publication has long passed from public view.

c. Sanctions

Article 1372 instructs the judge, when considering sanctions, to 'have regard to the severity of the offence, also the position, status and financial condition of the parties involved and the circumstances'.

Article 1373 specifically imports the Penal Code offence of slander into civil proceedings, providing that 'the offended party may also

[126] Article 1377 provides that a civil claim shall 'not be admitted if the offended party has been irrevocably declared guilty of the act which was allegedly committed against him'.

demand a judgment declaring that the offensive act is slanderous or offensive'. In the event of such a declaration, the provisions of Article 314 of the Penal Code 'with regard to punishment for slander, shall apply'. Article 1374 provides that the defendant may 'prevent the [Article 1373] request … by offering and providing a public declaration … that he regrets the act committed; that he therefore apologises and that he considers the offended party to be a person of honour'. However, such a declaration, according to this article, would be 'notwithstanding his obligation to compensate'.

Nothing in the Civil Code limits the amount of compensation awardable in defamation actions. Indeed, Article 1372 would appear to encourage judges to award particularly significant sums because they are to take into account "the severity of the offence".

Civil defamation regimes should ensure that damage awards are strictly proportional to the harm actually caused, taking into account any negative effect such awards might have on freedom of expression. ARTICLE 19 strongly recommends that legislators specifically ensure, in the civil defamation context, that non-monetary awards be prioritised wherever possible; that a fixed ceiling for compensation for non-material harm to reputation be set out in law; and that the maximum be awardable in only the most serious of cases.[127]

The invocation, by Article 1373, of Penal Code Article 314 is particularly problematic. It would appear to allow for double penalties, criminal and civil, to be imposed on defendants. Moreover, as the declaration involved will be made in the civil context, it may only need to satisfy a civil standard of proof, rather than the more exacting criminal standard yet, at the same time, the declaration would effectively result in a situation where criminal liability was engaged. As a result, Article 1373 appears to create the possibility of "bootstrapping" a criminal conviction based on a civil one. For both these reasons—the potential for double penalties and the possibility of obtaining a criminal conviction with a civil evidentiary showing– Article 1373 raises the spectre of particularly disproportionate penalties for expression.

The Suara Timor Lorosae case

Civil damages for defamation or misreporting have been awarded in Timor-Leste, with the Dili District Court in December 2002 making a USD 50,000 damages award against major local newspaper Suara Timor Lorosae (STL). There were serious concerns that this huge sum would have bankrupted the paper if the sanctions had been imposed

[127] See ARTICLE 19 Principles on Defamation, see note 107 on page 67, Principle 15.

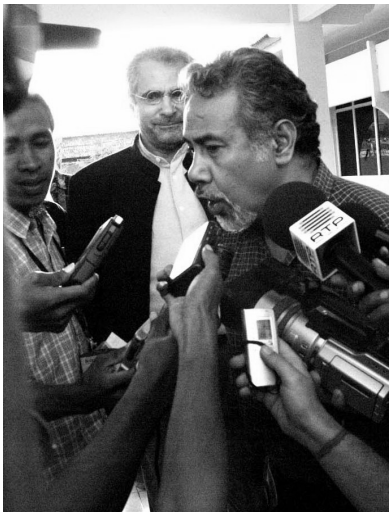
immediately and in full, and this is a very worrying precedent for the media in Timor where many media outlets are dependent on donor funding to operate.

The plaintiff, Indonesian businessman and Dili motorcycle-business operator Bambang Hermawan, alias "Kasto", brought the case based on an August 2001 article in Suara Timor Lorosae with the headline: 'Kasto held in Salemba for falsely claiming to be acting on Xanana's orders". The first line of the article read: "Watch out for a foreign businessman using the name of Xanana Gusmao to invest his capital in East Timor." Hermawan claimed the article falsely alleged that he had threatened a shop-owner in Indonesia, saying he was acting under Xanana's orders, and that he had been detained by the Indonesian authorities due to his involvement in land fraud, trade in narcotics and prohibited drugs, and property damage. Hermawan asked for USD 250,000 in damages.

In December 2002, the Dili District Court found the daily newspaper, one of two in Timor-Leste, liable in defamation based on its finding that the published report was incorrect. The paper was ordered to pay the plaintiff "compensation" of USD 50,000 'for the restoration of the plaintiff's damaged reputation since the publishing of the said report'. It was also ordered to publish an apology in its pages for three consecutive issues and to pay court costs of USD 75. Significantly, the judge also stated that its decision 'can be executed beforehand', which the paper understood as requiring it to settle the damages immediately, regardless of any appeal it might lodge. This did not occur and the parties negotiated an agreement to pay the compensation in instalments. STL launched an appeal against the ruling and the payment, which is still pending.

It is unclear from the judgment whether the award was actually made for defamation under Chapter XVI of the Penal Code, for inaccurate reporting and an alleged failure to correct the inaccuracies, in contravention of the Press Law of 1999, or both.

A key problem with this decision is the huge award of damages, taking into account the local economy. Indeed, the paper's management stated privately that the award could shut down the paper. The European Court of Human Rights has held that a large damage award, on its own, represents a breach of the right to freedom of expression if it is disproportionate to the harm done.[1] In this case, the award unacceptably threatens the losing party's capacity to speak out and also deters others from speaking out. It is submitted that, for East Timor, US D50,000 is disproportionate given average incomes and the level of economic development of East Timor.



Xanana and Ramos Horta (Photo: Mario Jony)

Recommendations:

To the government and/or parliament:

- Any defamation regime in Timor-Leste should respect the following rules:
- Public officials should not benefit from special protection under defamation laws.
- Public bodies should not be able to bring defamation suits.
- No one should be held liable in defamation for statements which are true.
- Defamation law should distinguish clearly between expressions of opinion and expressions of fact and should provide that the former are not actionable in defamation. At a minimum, opinions should benefit from a high degree of protection against defamation actions.
- Defamation law should recognise a defence of reasonable publication.
- Defamation law should provide protection against defamation for certain categories of statements, as described above.
- Consideration should be given to repealing, in their entirety, the criminal defamation provisions applicable in Timor-Leste and replacing them with a fully

developed civil defamation regime which respects the conditions set out above.

- If, contrary to the above, criminal defamation is retained, the following should apply, in addition to the rules set out above:
- The available penalties should be reduced considerably to ensure that they are strictly proportional to the harm done. In particular, in view of the extreme and always-disproportionate nature of imprisonment for defamation, all provision for prison sentences for defamation should be removed from the Penal Code.
- The "crime" of simple defamation should be repealed.
- The civil defamation rules should, in addition to the general points made above, provide for the following rules to ensure that remedies are always strictly proportional to the harm suffered:
- Non-monetary remedies should, wherever possible, be prioritised over pecuniary awards.
- A fixed ceiling for non-material harm for defamation should be established, to be awarded in only the most serious of cases.

9. CONTENT RESTRICTIONS

9.1. The Immigration Law

The recent immigration and asylum law could be used to deport foreign journalist reporting in Timor.[128] In July 2003, Timor-Leste's Court of Appeal found parts of the Law, including aspects of Article 11, which places certain restrictions on the activities of foreigners, to be unconstitutional. However, the Prime Minister and Speaker of the Parliament made clear their intention to put the law into force as it stood, and it was adopted unamended by Parliament on 29 September 2003.

Article 63 (Basis for Deportation) includes provisions that could be used to deport foreign journalists for their reporting. However, the section itself acknowledges that it should not be enforced where it is in conflict with international treaties, including those guaranteeing freedom of expression. The article reads, in part:

> 1. Without prejudice to provisions in international treaties or conventions to which the Democratic Republic of Timor-Leste (RDTL) is a party, foreigners will be deported from the National Territory if they: …
>
> (b) commit acts against national security, public order or good morals;
>
> (c) because of their presence or activities in the National Territory constitute a threat to the interests and dignity of the RDTL and its citizens;
>
> (d) interfere in an abusive manner in the exercise of the right of political participation reserved for citizens of RDTL or are responsible by commission or omission, of acts prohibited to foreigners under this law; …

Acts prohibited to foreigners include the prohibitions contained in Article 11 (Restrictions), which reads, in part:

> Foreigners cannot: …
>
> (c) Participate in…agencies that monitor paid activities;
>
> (e) participate, directly or indirectly, in affairs of State;
> …

There appears to be considerable scope within the wording of these provisions to enable the government to deport foreign journalists for their reporting. The entire bill was heavily criticised in a submission

[128] The law provides for a particular visa for foreign journalists. For the text of the law (of which only a draft translation is available), see: www.jsmp.minihub.org.

from a working group of Timorese and international NGOs. The foremost criticism in their submission was: "Limitations on freedom of speech, assembly and association are directed at foreigners, but also infringe these rights for many Timor-Leste citizens and organizations which would be prohibited from having foreign staff, volunteers or members, or engaging in activities or programs with foreign participants."[129]

9.2. The Penal Code

On the face of it, Indonesia's Penal Code, which currently applies in Timor-Leste, represents a very serious threat to freedom of expression, containing numerous broadly worded and unjustifiable articles that punish free speech with jail terms.[130] The Code contains numerous provisions that are specifically concerned with the conveyance or publication of information, comment and opinions, all of which are backed up by possible imprisonment.

Although, as noted above, provisions which run counter to either the Constitution or international human rights guarantees are not formally applicable in Timor-Leste, in practice this requires either court or legislative intervention. The challenge, in a country struggling to apply and manage a new, technically challenging and nascent legal system, is that many police, prosecutors, defence lawyers, judges and members of the government do not have the resources to assess their obligations under internationally recognised human rights standards when interpreting and applying Indonesian laws. As highlighted by a former UNTAET prosecutor: "[W]ithout precise instruction on what is or is not an internationally acceptable legal provision, it remains at the discretion of the relevant prosecutor whether a certain offence will be pursued."[131]

Whilst researching this report no court cases or legislative action were discovered concerning any of the parts of the Penal Code described

[129] "Article-by-article commentary on the Immigration and Asylum Bill", NGO Working Group to Study the Immigration and Asylum Bill: Communication Forum for East Timorese Women (Fokupers), Sahe Institute for Liberation (SIL), Kadalak Sulimutuk Institute (KSI), HAK Association, La'o Hamutuk, Center for Development and Popular Economy (CDEP), Haburas, Catholic Bishops' Conference of Japan (CBCJ), Dai Popular, Judicial Systems Monitoring Program (JSMP), National Council of East Timorese Youth (CNJTL), Men's Association Against Violence (AMKV), Timor Lorosa'e Journalists Association (TLJA) and East Timor Sustainable Agriculture (HASATIL).

[130] These laws continue to be used to imprison people in Indonesia. According to ARTICLE 19, 'some 20 activists and journalists have been arrested and jailed for criminal defamation during the Megawati presidency'. ARTICLE 19 press release, "Indonesia should repeal criminal defamation laws", 20 June 2003.

[131] Linton, S. "Rising from the ashes: the creation of a viable criminal justice system in East Timor". Available at: www.jsmp.minihub.org/resources.

herein, other than those outlined in Chapter 8 (Defamation). The following analysis illustrates the types of issues Timor-Leste justice system officers, particularly judges, would have to work through in order to decide whether and how the provisions could be applied in Timor. However, in the absence of explicit judicial rulings or legislative intervention, there remains considerable uncertainty about the nature and operation of the Indonesian Penal Code in Timor-Leste, a crucial aspect of Timor-Leste's legal framework governing freedom of expression. This leaves Timor-Leste's journalists in the precarious position of having to guess how the legal system might approach these issues.

The press, publishers and printers

The Penal Code contains some specific references to "the press", although what constitutes "the press" is not defined in the Code. Article 78 of the Code's Chapter V (Participation in Punishable Acts) specifies that the right to prosecute lapses in one year "for crimes committed by the means of the press".

Chapter V also contains two articles that specifically refer to press publishers and printers. Article 61 refers to an otherwise undefined press "publisher", who is apparently exempted from prosecution if the identity of the "perpetrator" presumably the original writer or source of the offending information or comment—is known or made known, unless the perpetrator cannot be prosecuted or lives outside the country. Article 62 establishes a similar exemption for "printers".

Sedition and "political insult"

Book II, Chapter V of the Code, Crimes Against the Public Order, contains Indonesia's notorious "hate-sowing" articles—sedition provisions with jail terms of up to seven years. These were used frequently throughout Indonesia during the Soeharto-era to muzzle the media and other dissenting parties by the threat of/and actual imprisonment.[132]

Article 154 states:

> The person who publicly gives expression to feelings of hostility, hatred or contempt against the Government of Indonesia, shall be punished by a maximum

[132] See Bies, D., "Freedom of the Press Undermined by Indirect Censorship in Indonesia" (2001) 24 *Suffolk Transitional Law Review* 279, and Millie J., "The Tempo case: Indonesia's Press Law…" in Lindsey T., ed., *Indonesia: Law and Society* (The Federation Press, 1999).

> imprisonment of seven years or a maximum fine of three hundred Rupiahs.

Article 155 reads:

> (1) Any person who disseminates, openly demonstrates or puts up a writing where feelings of hostility, hatred or contempt against the Government of Indonesia are expressed, with the intent to give publicity to the contents or to enhance the publicity thereof, shall be punished by a maximum imprisonment of four years and six months or a maximum fine of three hundred Rupiahs.
>
> (2) If the offender commits the crime in his profession and during the commission of the crime five years have not yet elapsed since an earlier conviction on account of a similar crime has become final, he may be released from the exercise of said profession.

These provisions are extremely problematic from the perspective of freedom of expression. ARTICLE 19 describes Articles 154 and 155 as "species of sedition laws, widely recognised as illegitimate although they remain on the books in many countries". The two articles are 'drafted extremely broadly (encompassing feelings of hostility for the government, something any decent opposition politician is expected to feel)'. In ARTICLE19's view, all three prohibited expressions—hostility, hatred or contempt—are perfectly legitimate in relation to a government."

There is a risk that Article 155 may be invoked to prosecute journalists reporting factually incidents where 'feelings of hostility, hatred or contempt' are expressed towards the government.

On the possible sanction of a ban on practising one's profession, ARTICLE 19 'consider(s) penalties like deprivation of the right to practise a profession to be in the same category as imprisonment, that is to say, illegitimate as a sanction…'.

Article 154a provides for jail terms of up to four years for violating Indonesia's, and therefore presumably Timor-Leste's, flag and coat of arms. ARTICLE 19 notes that "inanimate objects, such as flags and national emblems, do not have a reputation and, subject to rules on public order, there is no reason why they should not be 'violated'."[133]

[133] In asserting that sanctions for violating State symbols are not permissible under the European Convention on Human Rights, Macovei states: "The destruction of a state symbol or an 'insulting act' against it would express one's disagreement and criticism with some political decisions, activity of public authorities, public policies in particular areas, or anything else in connection with the exercise of power. Such disagreement and criticism must be free…" See note 75 on page 34, p. 29.

Chapter II: Crimes against the dignity of the President

The provisions of Book II, Chapter II on Crimes Against the Dignity of the President and Vice-President are forms of insult law, which allow those speaking out to be imprisoned or otherwise sanctioned for merely insulting a particular figure in some manner, arguably regardless of any assessment of damage to reputation or the truthfulness of any statement of fact. The Democratic Republic of Timor has a President, but no Vice-President.

Article 134 states "Deliberate insult against the President…shall be punished by a maximum imprisonment of six years…".[134] This would impact on journalists reporting even factual statements deemed to be "insulting" to the President.

Article 137 states:

> (1) Any person who disseminates, demonstrates openly or puts up a writing or portrait containing an insult against the President…with the intent to make the contents public or enhance the publicity thereof, shall be punished by a maximum imprisonment of one year and four months…
>
> (2) If the offender commits the crime in his profession and during the commission of the crime two years have not elapsed since an earlier conviction on account of a similar crime has become final, he may be deprived of the exercise of said profession.

This may affect journalists who report the statements of others, even if those statements are already in the public domain. Apart from the possibility of a 16-month jail term, the article also threatens journalists and others with the possibility of being banned from practising their profession if the offence is the second within two years of a "similar crime".

ARTICLE 19 states that the articles in Chapter II are illegitimate, inasmuch as they give special protection to the President as a public official.[135] It is well established under international law that there should be greater leeway to criticise politicians and other officials, [136] because of the special role they play in a democracy.[137]

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[134] "Article 131 is considered to apply not to speech but to physical acts against the President" according to Hinca Pandjaitan, Indonesia Media Law Policy Centre, Jakarta, August 2003.
[135] See also Article 136bis.
[136] See note 115 on page 69.
[137] See Mendel, T., *International Law Perspectives on the Challenges Facing the Nigerian Media*, Paper for the Media Laws Reform Workshop, 16-18 March 1999

There do not appear to be any defences to these provisions, such as proof of truth, fair comment, or reasonableness of the expression in all the circumstances.[138]

Article 139 provides that penalties for breach of Article 134 can include losing the right to stand or vote in elections, although Section 47(1) of the Constitution of Timor-Leste states that "every citizen has the right to vote and to be elected". Article 21(1) of the *Universal Declaration of Human Rights* states: "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives".

Chapter VIII: Crimes against public authority

The first two articles of Chapter VIII (Crimes Against Public Authority) purport to make it an offence, punishable by imprisonment, to "insult" an "authority or public body" (as opposed to its individual members or officers).

Article 207 states: "Any person who with deliberate intent in public, orally or in writing, insults an authority or a public body set up in Indonesia shall be punished by a maximum imprisonment of one year and six months…"

Article 208 reads:

> (1) Any person who disseminates, openly demonstrates or puts up a writing or portrait containing an insult against an authority or public body set up in Indonesia with intent to give publicity to the insulting content or to enhance the publicity thereof, shall be punished by a maximum imprisonment of four months…
>
> (2) If the offender commits the crime in his profession and during the commission of the crime two years have not yet elapsed since an earlier conviction of the person

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Lagos.

[138] Mendel, ibid., noted that a number of courts around the world have allowed, in the particular area of free speech about political matters, a form of defence that excuses statements that cannot be proven true as long as it was reasonable in all of the circumstances to make them. This might, for example, be the case if the author of the statements made sufficient checks of their truthfulness and gave the criticised party a reasonable opportunity to reply to them. Mendel stated that the requirement to prove the truth of damaging factual statements "has been rejected in many jurisdictions as imposing too high a standard on the media, which have an obligation to report in the public interest. Instead, in these jurisdictions, the media are required to show only that they have not acted maliciously, or that they have acted reasonably, even if ultimately they published factually erroneous material. Decisions to this effect have been rendered by superior courts in Australia, India, New Zealand, Pakistan, South Africa, the United Kingdom, the United States and Zambia."

> on account of a similar crime has become final, he may be deprived of said profession.

As noted above, "a growing body of national courts does not consider that public bodies have any right to reputation so should not benefit from any provision of this sort".[139]

Articles 207 and 208 also suffer from the same problems as Articles 134, 136bis and 137, namely that they are too broad and lack appropriate defences.

Chapter III: Crimes against friendly states

Chapter III, Crimes Against Friendly States and Against Heads and Representatives of Friendly States, includes five articles punishing with jail terms the expression of dissent towards undefined "friendly" States and their heads. These provisions could, for example, lead to the jailing of a journalist for five years for criticising an ambassador to Timor-Leste or for nine months for reporting criticism from others of an ambassador to Timor. A newspaper cartoonist could spend four years in jail for satirical use of a neighbouring country's flag. The provisions read as follows:

> Article 142
>
> Deliberate insult against a ruling king or another head of a friendly state shall be punished by a maximum imprisonment of five years…
>
> Article 143
>
> Intentional insult against a representative of a foreign power to the Indonesian Government in his capacity shall be punished by a maximum imprisonment of five years…
>
> Article 144
>
> (1) Any person who disseminates, openly demonstrates or puts up a writing or portrait containing an insult against a ruling king or another head of a friendly state or against a representative of a foreign power to the Indonesian Government in his capacity, with intent to make the insulting content public or to enhance the publicity thereof, shall be punished by a maximum imprisonment of nine months…
>
> (2) If the offender commits the crime in his profession and during the commission of the crime, two years have

[139] See Section 8.1. of this report, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation* (London: ARTICLE 19, July 2000).

> not yet elapsed since an earlier conviction on account of a similar crime has become final, he may be deprived of the exercise of said profession.

ARTICLE 19 notes that the same criticisms apply to these provisions as to Article 134, and similar articles, regarding crimes against the dignity of the president. These are that the articles give special protection to a figure because of the office he or she holds, that "insult" is not defined and is open to wide interpretation, and that there do not appear to be any defences, such as proof of truth, reasonableness in all the circumstances, or fair comment. Freedom of expression is even more vital when it relates to scrutinising official conduct; Chapter III's articles "specially apply to foreign officials acting in their official capacity that is to say in the very capacity in which they should tolerate more criticism".

Article 142a states: "Any person who violates the national flag of a friendly state shall be punished by a maximum imprisonment of four years…" To repeat the arguments made earlier with regard to Article 154a, ARTICLE 19 states that "inanimate objects, such as flags and national emblems, do not have a reputation and, subject to rules on public order, there is no reason why they should not be 'violated'".[140]

Chapters I and XIV: Security and decency

Chapters I and XIV of the Penal Code also contain provisions that could be used against the media, under the guise of protecting public order or morals.

Articles 104 to 108 of Chapter I, Crimes Against the Security of the State, relate to seeking to overthrow the President, and to promoting separatism, revolution and rebellion. Article 110 provides for jail terms of up to six years for those who "facilitate" such incidents (doubled if the crime actually occurs). This may be relevant to freedom of expression, for example where these issues are covered by the media. For example, a newspaper editorial urging the separation of a part of Timor-Leste could result in jail terms of up to six years—twelve if the separation actually comes about. Article 110 does provide an exemption where 'it is evident that (the person's) intent is merely aimed at the preparation or facilitation of political changes in the general sense'.

[140] In asserting that sanctions for violating State symbols are not permissible under the European Convention on Human Rights, Macovei states: "The destruction of a state symbol or an 'insulting act' against it would express one's disagreement and criticism with some political decisions, activity of public authorities, public policies in particular areas, or anything else in connection with the exercise of power. Such disagreement and criticism must be free…" Note 75 on page 35, p. 29.

Examples of other articles in the chapter (and related maximum jail terms) include Articles 112 on giving State secrets to a foreign power (seven years); 113 on revealing defence and external security secrets (four years, potentially increased by a third if the person is a journalist); 115 on examining and copying defence-secrets (3 years); 116 on conspiracy to commit the crimes set out in Articles 113 and 115 (one year); 117 on entering or photographing military areas (six months) and 118 on producing images of a matter of military interest (two years). It is conceivable that the daily activities of a journalist in covering social and political issues of importance may be construed as offences according to these articles.

Chapter XIV, Crimes Against Decency, governs offences against decency, although this term is not defined. Article 281 provides for a maximum jail term of two years and eight months for 'any person who with deliberate intent publicly offends against decency'; Article 282(1) provides for a maximum sentence of 16 months' imprisonment for 'any person who disseminates, openly demonstrates or puts up a writing of which he knows the content or a portrait or object known to him to be offensive against decency' in order that it be so disseminated, openly demonstrated or put up; and Article 282(2) provides a maximum sentence of nine months in jail for anyone who, 'if he has serious reasons for suspecting' that a similarly published writing, portrait or object is offensive to decency, publishes it.

The definition of decency is critical here as many publications in challenging or investigating cultural, political or religious "norms" are likely to "offend" some portion of a community. In addition, media catering to specialist needs (for example, youth music magazines) may "offend" religious or political leaders by profiling fashions or behaviour which are at odds with current standards but may well become the norm as the younger generation become leaders in their communities. Decency is simply too vague a term to serve as a restriction on freedom of expression.

Articles 107a to 107d relate to following, advocating or discussing communism (the provisions speak of Marxism-Leninism). It appears that these articles were inserted into the Indonesian Penal Code in the late 1990s, and they are unacceptable restrictions of speech, opinion, and political involvement.

Chapter XVII: Secrets

Chapter XVII Revelation of Secrets, may deter people from giving information to the media which reveals inappropriate action on the part of public and private sector actors. The provisions in this chapter restrain people from revealing information that they have received in

the course of employment, imposing jail terms of up to nine months for a person who deliberately "reveals a secret".

Article 322 is likely to apply to so-called whistleblowers, an important potential source of information on inappropriate public servant actions. ARTICLE 19 states that 'this secrecy provision is seriously flawed'.[141] Article 323 refers specifically to "particulars concerning an enterprise of commerce, industry or agriculture". In many other jurisdictions such matters would be dealt with under civil laws on employment, contract and/or intellectual property. ARTICLE 19 suggests 'there is no need to provide criminal protection for disclosure of commercial secrets. This sort of thing should be dealt with through civil law proceedings, subject only to other laws of general application, for example on fraud, theft and so on'.

Hate Speech and Incitement to Commit Crime

Chapter V, Crimes Against the Public Order, also includes prohibitions on so-called hate speech or racial and religious vilification, and on inciting others to commit crimes. Such provisions are found in the laws of many countries and ARTICLE 19 is of the opinion that hate speech laws, in particular, are 'widely recognised to be not only legitimate but actually required under international law'. Indeed, Article 20 of the International Covenant on Civil and Political Rights states: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Article 156 of the Penal Code reads:

> The person who publicly gives expression to feelings of hostility, hatred or contempt against any one or more groups of the population of Indonesia shall be punished by a maximum imprisonment of four years…
>
> By group in this and in the following articles shall be understood each part of the population of Indonesia that

[141] ARTICLE 19 notes, firstly, that this article would protect whatever information is deemed secret or classified, even though the classification may well be unnecessary and contrary to the "right to know" or to the presumption that information should be openly available. ARTICLE 19 states that restrictions on information should relate to a "legitimate interest" of some sort, and disclosure should only be prohibited where it would actually harm that interest. Furthermore, ARTICLE 19 states that there should be a "public interest override"—that information should be released where the public interest in the information's release outweighs the harm to the legitimate interest that is being protected. They similarly note that the person who would be prosecuted under this section for revealing information should be protected if he or she has acted in 'the public interest'. And lastly, they note that the provision is 'insensitive to the passage of time': information that may once have been legitimately classified should over time be eligible for release, as reflected in such practices as opening State records to scrutiny after a set number of years.

distinguishes itself from one or more other parts of that population by race, country of origin, religion, origin, descent, nationality or constitutional condition.

Article 156a reads:

- By a maximum imprisonment of five years shall be punished any person who deliberately in public gives expression to feelings or commits an act
- a. which principally has the character of being at enmity with, abusing or staining a religion adhered to in Indonesia;
- b. with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.

Article 157 reads:

- Any person, who disseminates, openly demonstrates or puts up a writing or portrait where feelings of hostility, hatred or contempt against or among groups of the population of Indonesia are expressed, with the intention to give publicity to the contents or to enhance the publicity thereof shall be punished by a maximum imprisonment of two years and six months…

ARTICLE 19 states that these provisions 'suffer from a number of limitations… First and most importantly, they diverge from international law in as much as they do not require *incitement* to hostility, hatred or contempt, but merely the *expression* thereof' [emphasis added]. This may be compared with, for example, ICCPR Article 20's requirement to prohibit any '*advocacy* of national, racial or religious hatred *that constitutes incitement* to discrimination, hostility or violence' [emphasis added].

ARTICLE 19 argues that the Penal Code provisions would catch a much wider range of expression than is permitted under international law. Furthermore, ARTICLE 19 notes that the provisions do not require establishing intention to promote hostility, hatred or contempt. Finally, these provisions do not provide for a defence of truth, which is important to preserve the free flow of information to the public.

Articles 160 to 165 range from prohibiting incitement to commit crimes to imposing a requirement to report knowledge of an intended crime. These provisions might, for example, be used to prosecute journalists or any other member of society, for advocating, or concealing knowledge of plans for a sit-in of government offices or a wide-scale refusal to pay utility bills.

As an example, Article 160 reads:

> Any person who orally or in writing incites in public to commit a punishable act, a violent action against the public authority or any other disobedience, either to a statutory provision or to an official order issued under a statutory provision, shall be punished by a maximum imprisonment of six years…

Article 160 would cover those in the media themselves advocating disobedience, whilst Article 161 could also capture those who are merely reporting on such calls. Article 161 reads:

> (1) Any person who disseminates, openly demonstrates or puts up a writing in which (there is incitement) to commit a punishable act, a violent action against the public authority or any other disobedience described in the foregoing article, with intent to give publicity to the inciting content or to enhance the publicity thereof, shall be punished by a maximum imprisonment of four years…
>
> (2) If the offender commits the crime in his profession and during the commission of the crime five years have not yet elapsed since an earlier conviction on account of a similar crime has become final, he may be deprived of the performance of said profession.

ARTICLE 19 states, regarding these articles that they, 'like hate speech laws…are recognised as legitimate but only if they meet certain standards, similar to those provided for hate speech laws, such as incitement and intention'. ARTICLE 19 notes that under the Indonesian Penal Code provisions, it is not clear that prosecutors must prove an intention to actually incite a crime (merely an intention to give publicity to material). They also note that many countries have defined more clearly what it means to incite crime: "[M]ost jurisdictions now require a closer nexus than simply incitement in relation to crime…The United States, for example, requires imminent lawless action, while other jurisdictions require a high likelihood of crime".

9.3. Indonesia's False News Articles

Indonesia's Law No. 1, 1946, contains two false news articles:

Article XIV states:

> 4. Anybody who broadcasts/publishes a false story or press release/ announcement, with the intention to cause a public disturbance, is to be punished with a jail sentence of up to ten years.

> 5. Anybody who broadcasts/publishes a story or distributes an announcement that can cause a public disturbance, while he/she should suspect that the story is false, is to be punished with a jail sentence of up to three years.

And Article XV states:

> Anybody who broadcasts/publishes news that is used with certainty or news that exaggerates or is incomplete, while they understand or at least should be able to understand, that the news will or could easily cause a public disturbance is to be punished with a jail sentence of up to two years.

These articles contain a number of phrases that are overly vague, typical of what are known in Indonesia as "*pasal karet*", or "rubber articles." On the face of it, the phrase "public disturbance" (in Indonesian *keonaran di kalangan rakyat)* could be related to "public order", which is considered under international law to be a "legitimate public interest", the protection of which can justify reasonable restrictions on freedom of expression. However, many events could be described as "public disturbances", which represent no real or imminent threat to public order and which can in fact be central to the operation of a democratic society. For example, demonstrations, public rallies or protests on political issues could all be described by a reasonable person as public disturbances, even though none of these would normally result in public disorder.

The word "*keonaran*" could alternatively be translated as "confusion" or "sensation", both ambiguous concepts, which could mean that almost any news article addressing a complex, sensitive, or controversial issue would breach this provision. In addition, the clause in Article XV, "news that is used with certainty…that exaggerates or is incomplete", could also be used to cover an inappropriately wide range of media content.

In October 1995, ARTICLE 19 convened a group of experts in international law, national security and human rights, which drafted the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*.[142] These principles have been cited by the UN Commission on Human Rights.[143] Principle 6 is particularly relevant to the above articles:

> …expression may be punished as a threat to national security only if a government can demonstrate that:
>
> (a) the expression is intended to incite imminent violence;

[142] (London: ARTICLE 19, 1996).
[143] See Resolution 1998/42, preamble.

(b) it is likely to incite such violence; and

(c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Indonesia's "false news" provisions clearly fail to meet the requirements of this principle: in particular, the phrase "will or could easily cause a public disturbance" in Article XV requires neither that there be a risk of serious harm (that is, violence or other unlawful action), nor that this risk be imminent.

Recommendations:

To the government and/or parliament:

- The Penal Code should be reviewed as a matter of urgency with a view to repealing or amending any provisions which offend against international guarantees of freedom of expression. In particular:
- Articles 11(c) and (e) of the Immigration Law should be repealed, while Article 63 should be amended to bring it into line with international standards.
- The false news provisions in Law No. 1, 1946, should be repealed.

To the judiciary:

- The judiciary should apply freedom of expression principles when interpreting the Penal Code.

10. ACCESS TO INFORMATION

10.1. Introduction

The Constitution of Timor-Leste contains provisions on access to information from public bodies but these have not been implemented through the adoption of a comprehensive law on access to government information. In practice, realisation of the right to access information requires comprehensive legislation that enshrines clear principles such

as the presumption of openness, availability and disclosure, along with clear and narrow exceptions to disclosure, for example to protect national security or privacy. The law should also provide for regular dissemination of information of public interest, even in the absence of a specific request and measures should be taken to ensure that these documents are widely circulated.

Timor-Leste has not as yet developed a systematic legal regime for accessing information held by public authorities. The Indonesian government is currently discussing a bill to establish a freedom of information regime and Timor-Leste should do the same.

10.2. Government Information

Timor-Leste's Constitution arguably provides for a right to freedom of information for everyone, and it specifically provides for a right of "access to information sources" for the press. Individuals and the press could rely on these provisions in individual court challenges to access official information. Sections 40 and 41 of the Constitution also provide a strong basis for arguing that citizens have a right to access public information. Section 40 is entitled "Freedom of Speech and Information" and Subsection 1 states, in part: "Every person has the right to…be informed".[144] Section 41 (Freedom of the Press and Mass Media) appears clearer on this point for "the press", stating in Subsection 2 that "Freedom of the press" includes "access to information sources".

Some new Timor-Leste laws do contain case-by-case provisions to allow public access to certain government information. For example, the Telecommunications Law, discussed earlier, empowers the Communications Regulatory Authority (CRA) to prepare "frequency band plans" to determine such matters as which frequencies will be available to broadcasters. Section 26 (Frequency band plans) directs that when the CRA is drawing up a frequency band plan it must give notice of that intention in the Official Gazette, invite interested parties to make written representations, and then hold a public hearing.

Section 7(a) reads:

> Any frequency band plan adopted under this Section and all such comments, representations and other documents as have been received in response to the notice contemplated in Subsection (4) herein or tendered at the

[144] The phrase reads: "Every person has the right to…*be informed impartially*" [emphasis added]. It might be argued that this does not provide an unqualified right to access information or to "be informed" but, rather, that if information has been provided (from the government or elsewhere), it must be impartial or without bias. The phrase "every person has the right to be informed" is clearer.

> hearing, shall be kept at the offices of CRA and shall, subject to Paragraph (b) herein, be open to public inspection by interested persons during the normal office hours of CRA, and CRA shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof.

In other words, members of the public must be able to inspect the frequency plans and related public comments at the CRA offices during office hours, but they may have to pay to get copies.

The Indonesian Penal Code, still in force in Timor-Leste, contains more than 20 articles that define what information is classified as an official secret, State security secret and commercial secret, some of which were discussed in the previous section. In these articles, secret information is defined very broadly and in a way that is open to subjective interpretation. As a result, this is a serious legal obstacle to the development of a freedom of information regime.

10.3. Principles of an Access to Information Regime

Some of the principles that should be enshrined in such a regime include:[145]

- *A presumption of openness*: every document or piece of information under the control of a public authority should be subject to disclosure unless it is covered by an "exception" expressly set forth in legislation, with the burden of justifying refusal to disclose the information falling on the government (rather than requiring the "applicant" to prove that the information should be released).
- *Coverage of institutions and documents that is both wide and deep*: the information regime should apply broadly across all public bodies and cover all information held by public bodies.
- *Processes to facilitate access*: all public bodies should be required to establish open, accessible systems to process requests for information and ensure compliance with the law. Requests should be processed within strict time limits and any refusals should be accompanied by written reasons. The costs associated with following these processes should not be prohibitively high and they should be waived or reduced for requests for personal information or for requests in the public interest (for example where the request is made by the media).
- *Meetings of governing bodies relating to matters of high public interest should be open to the public*: this is necessary so that the public have the opportunity to know what the government is doing on its behalf and

[145] These principles are taken from *The Public's Right to Know: Principles on Freedom of Information Legislation* (London: ARTICLE 19, 1999). Available at www.article19.org.

to participate in decision-making processes. This should include formal meetings of elected bodies and their committees, planning and review boards and boards of public authorities. Notice of such meetings should be provided to the public, and meetings should only be closed in accordance with established procedures and where there are sufficient reasons for closure.

- *Protection for whistleblowers*: individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing. Wrongdoing may include the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body. It also includes a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not. Whistleblowers should benefit from protection as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing. Such protection should apply even where disclosure would otherwise be in breach of a legal or employment requirement.
- *A narrow and precise range of exceptions to the right of access, set out in legislation*: this is consistent with the basic test for restrictions on freedom of information, namely that they should be set out in law and be limited to what is needed to protect a legitimate countervailing interest.[146]
- *Independent appeals mechanism*: anyone whose request for information has been refused should have the right to appeal that refusal to an independent administrative body and, from there, to the courts. Otherwise, access will largely depend on the discretion of officials, who will be influenced by the culture of secrecy which is currently in place.

10.4. Open Government

The adoption of an access to information law should be accompanied by initiatives to promote a culture of open governance, including public education on the right to access information and on the way in which such rights can be exercised. In a country like Timor-Leste, with low literacy levels and a high proportion of the population living in the rural districts, radio is the most effective way of conveying this information.

[146] Section 26(7)(b) of the Telecommunications Law, for example, reflects a common exception to the presumption of openness, the protection of information that is deemed commercially sensitive or "commercial in confidence". It reads:
"(b) CRA may, at the request of an applicant or person who lodged representations, determine that any document or information relating to the financial capacity or business plans of any person or to any other matter reasonably justifying confidentiality, shall not be open to public inspection, if such document or information can be separated from the application, representations or other documents in question."

Steps forward have already been taken in some areas: for example, the Open Government initiative is a significant commitment to open governance by the current government, whereby the entire council of ministers travels to one district at a time to establish temporary forums for communication with the public. The government also expressed strong commitment to the Extractive Industries Transparency Initiative and organized a conference on Transparency and Accountability in Public Administration. However, in other areas of public administration "open governance" is still not practised. For example, the office of the Inspector General, who is responsible for investigating allegations of corruption in the government, does not let the public access its findings.[147]

In April 2005, Timor-Leste's National Parliament approved the appointment of Sebastiao Dias Ximenes, the candidate of the majority party Fretilin, to head the Office of the Provedore for Human Rights and Justice, effectively an independent human rights and justice ombudsman. This office is provided for in the Constitution as an independent institution that protects the rights, liberties and legitimate interests of people who have been affected by acts of government agencies, or private contractors operating a public service, or managing public assets on behalf of the government. It is intended to operate outside of government to conduct inquiries, initiate investigations, and to make recommendations and reports to Parliament. The UN and other donors have indicated that they will support this office and its activities.

[147] The World Bank "Background Paper for the Timor-Leste and Development Partners Meeting" stated: "The Government has made it clear that it will not tolerate corruption, nepotism or abuse of power. Nevertheless, shedding the habits of the past poses a tremendous challenge: abuse of power, use of Government assets for personal purposes, failure to apply proper approval procedures for the use of public funds and diversion of public funds from their intended use are all emerging as real problems. While the scale of the problems remains contained, the time to act to prevent corruption from taking hold is now." Dili, 3-5 December 2003.

PM Alkatiri (Photo: Suzanna Cardoso

10.5. The Government Gazette and Official Registers

Part of a comprehensive regime providing for public access to official documents is the development of an effective system to ensure relevant information is provided to the general public in an accessible manner. Significant progress was made in late 2003 and early 2004 in the publication of decree laws and laws and resolutions passed by national parliament in the Official Gazette, which is available online as well as in printed form. This publication is crucial because the courts, the public and the media need to be able to access legislation; it is also a step required by the Constitution (section 73) after which legislation may then be declared valid (see the discussion of this in previous chapters).

The Official Gazette is one key way of ensuring that Timor-Leste's legal system adheres to the principle that laws that are binding on the citizenry should be both clear and accessible to that citizenry. Unfortunately, the Official Gazette is only published in Portuguese, so the principle of accessibility has not yet been met for the majority of the population. The UN mission posts unofficial English translations on its website http://www.unmiset.org/legal/index-e.htm. For true accessibility the Gazette would also need to be published either in Tetum (perhaps not feasible, due to the difficulty of legal translation into this language) or in Indonesian. Ideally, print copies of records published in the Official Gazette could be made available to the public at government or public administration offices such as the district courts, national university, Parliament and so on.

Easy access to the laws passed by parliament and government would constitute a good step in public information provision.[148] In the long run, the government and parliament should consider publishing the minutes of their meetings and debates, and investigations, such as the ones done by the Inspector General's office.

[148] The Judicial System Monitoring Program's 2003 report recommended that "legislative amendments should be enacted as a matter of priority in order to provide public access to court documents." They also recommended that formal procedures should be established for this public access. In order to support this, "clear directives (should) be issued and supervised regarding the need for transcripts of proceedings to be taken, (and) training and facilities (should) be provided to allow transcripts and recordings of trials to be taken at the Dili District Court." Judicial System Monitoring Program, *Dili District Court Final Report 2003*.

Recommendations:

To the government and/or parliament:

- A comprehensive access to information law, in line with the standards noted above, should be adopted as a matter of priority.
- Existing laws which provide for secrecy should be reviewed and amended as necessary so that only legitimately secret material is covered.
- The transparency of the legislative process should be improved, including through more systematic notice of the planned drafting and introduction of laws and through ensuring the possibility of making submissions during the preparation stage.
- Public access to the Official Gazette should be enhanced, ideally through publication in a second language, preferably Tetum, and through making hard copies available to wider audience.
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11. INFORMAL RESTRICTIONS ON FREEDOM OF EXPRESSION

> Former Indonesian Foreign Minister Ali Alatas was interviewed by a Portuguese journalist at a press conference in pre-independence Timor-Leste. "You will find it [sic] in Indonesia that we have freedom of expression, freedom of speech, just like you have in your country," said the minister. The journalist countered "But do you have freedom after you speak?"[149]

In comparison to most ASEAN nations, many of which have been experiencing renewed attacks on freedom of expression in recent times, Timor-Leste's media is remarkably free of restrictions and harassment. [150] This fortunate situation may be ascribed in part to the strong role that media coverage played in Timor-Leste's independence

[149] "Die Laughing ala Timor-Leste", Tri Agus S Siswowiharjo, Solidamor, Talitakum, 2002, p. 29.

[150] See, for example "Doors close on free press", Guardian Online, 1 January 2004. Available at: http://www.guardian.co.uk/elsewhere/journalist/story/0,7792,1114609,00.html .

movement, the constant struggle of pro-independence activists to get their cause recognised by the media and the severe restrictions on expression experienced under Indonesian occupation.

These factors have arguably contributed to widespread awareness of the importance of freedom of speech in the post-independence era. The 2003 World Press Freedom ranking by Reporters Without Borders (RSF), ranked Timor-Leste 30th out of 166 countries, higher than Australia, which ranked 50th. [151] Overall, Timorese people feel free to express their political opinions, with 88.7 per cent of respondents in a recent survey saying they felt able to express themselves freely and only 4.8 per cent feeling they were unable to do so.[152]

Additionally, in cases where journalists had reported being subject to threats or intimidation in post-independence Timor-Leste, those journalists expressed a strong determination not to be influenced by the intimidation they had experienced. They reaffirmed their commitment to accurate and truthful reportage and in addition reported that they had generally encountered no further problems after the initial conflict was resolved. On the other hand, there is also the potential for such incidents to lead to self-censorship, particularly amongst those journalists who are less aware of their responsibility to report in the public interest.

11.1. Informal Harassment

Given that the existence of a free media is a very recent development in Timor-Leste, it is not surprising that a number of public figures and other members of the community have, at times, contravened basic principles of media freedom and independence. The few instances of informal harassment that have occurred could be dismissed as the results of inexperience in dealing with independent media and of a lack of a clear complaints procedures that would allow criticisms of the media to be dealt with in a more structured manner.

An example of this occurred in October 2003, when public radio RTL faced an attempt at interference after a stringer in the Covalima district reported on allegations of local police violence. The stringer broadcast two reports, the first based on an interview with the local

[151] Second World Press Freedom Ranking, Reporters Without Borders, 20 October 2003. Available at: http://www.rsf.org/article.php3?id_article=8248.

[152] National Opinion Poll published by the International Republican Institute in November 2003. In this survey 99.9% of the highly educated respondents felt free to express themselves, while only 85% of the lowest educated felt free to express their political opinions.

police commander and the second quoting both the commander and the alleged victims of police beatings.

Following the second story, the police commander announced that he would be moving the stringer's wife (who was a policewoman with a six-month old child) to a very remote posting. The stringer and the policewoman then approached the board of the Public Broadcasting Service (PBS) for assistance, saying that the main motivation for the policewoman's relocation was the commander's suspicion that she was responsible for passing information about the alleged violence on to her husband.

The chairman of the PBS board, Virgilio Guterres, sent a letter to the police superintendent and to Interior Minister Rogerio Lobato, questioning the motivation for the relocation and requesting clarification of the basis for the decision. The Interior Minister requested that the Vice-Minister speak to the policewoman and her commander about the matter. The commander admitted he had over-reacted to the situation and the decision was reversed. No further problems were encountered by either the policewoman or the RTL stringer after that.[153]

In September 2003, the daily newspaper *Suara Timor Lorosae* (STL) received notification from the government that it had to start paying rent for the space it was using in a government building, which UNTAET had previously allowed STL to use at no cost. After the paper had agreed to lease the space, the government was reported by the US 2003 *Country Reports on Human Rights Practices* to have reversed its position and issued an eviction order.[154] Senior staff at the paper were concerned that the eviction notice was served just after a senior government official publicly criticized STL's coverage of an alleged corruption case, threatening to close the paper. The eviction notice was enforced in February 2005. STL moved to new premises and continues to publish in a modified tabloid format (rather than its previous broadsheet format), while it sources funding to move its printing press.

The eviction also coincided with a vigorous attack by the government on STL's coverage of the issue of hunger in Timor-Leste. It was reported that the prime minister imposed a ban on STL subscriptions by government offices and issued an instruction that STL should not be invited to official government functions or press briefings. The level of adherence to the reported ban and its impact are unclear.

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[153] Interview with Virgilio Guterres, Chairman of the PBS Board of Directors, 19 March 2004.

[154] *Country Reports on Human Rights Practices - 2003*, United States Bureau of Democracy, Human Rights, and Labour, 25 February 2004. Available at: http://www.state.gov/g/drl/rls/hrrpt/2003/27769.htm.

The combination of lack of awareness of the role and methods of the media combined with post-traumatic stress, social tension in a newly developing country, and even boredom, can lead to violent community reactions to the exercise of free speech. In 2001, a member of the community expressed dissatisfaction with a story about theft broadcast on Radio Communidade Lospalos, by repeatedly kicking the door of the station and threatening a volunteer.

In late 2003, some TVTL electrical equipment was damaged beyond repair by unknown saboteurs. Local theatre and popular education group Bibi Bulak were pelted with rocks during performances on a recent tour, which featured progressive messages on sensitive issues such as women's rights and domestic violence. In some areas, they needed to be accompanied by a police presence when giving performances.

11.2. Intolerance of Critical Reporting

In August 2003, the Secretary of State sent a letter to the Chairman of the Board of Directors of the public broadcasting service, requesting that journalists be disciplined or criminally prosecuted because of their coverage of the eviction of a popular opposition leader.[155] After a public statement was issued by the Chairman of the Board to the effect that neither the government nor the board has the right to interfere in the internal editorial affairs of either TVTL or RTL, government officials responded that the letter represented a valid criticism rather than an attempt at interference.

On 6 August 2003, two days after this letter was sent, a TVTL reporter was waiting with other journalists for a helicopter to an Open Government trip to Oecusse. At around 7am, the Prime Minister arrived and approached the TVTL reporter, saying: "You journalists, when you make news, make it correct, don't just say anything. When you make news you should use your brain, not your heart…if not I will close down television & radio. Go and tell all your journalist friends." This statement was made in the presence of several RTL, *Suara Timor Lorosae*, RTK and *Timor Post* reporters. The incident was reported later that night on RTK's news program.

Following news coverage of allegations of corruption in the Department of Telecommunications, Transport and Public Works in

[155] The letter stated: "[T]he reporters may not make this service into a propaganda tool to oppose the Government & other authorities, particularly to make issues and create disinformation with the purpose of mobilising the population. We challenge the Board of Directors to analyse the practices of several reporters over the last two weeks, and on this basis take disciplinary action and if necessary bring any criminal instances before the General Prosecutor."

October 2003, Vice Minister for Public Works, César Vital Moreira, was reported to have made threatening and intimidating telephone calls to two TVTL journalists.[156] Nelio Isaac, the TVTL News Director, said that he had been called and told to "repeat" a story this time featuring the entire 20-minute speech that the Vice Minister had delivered at a press conference the day before. When he explained that he could not do this, the Vice Minister, who had been overseas when the story about the alleged corruption had broken, responded: "When I was in Brazil you exposed a lot about this story. Then when I come back, you don't make what I say clear. You have to be careful—I have many people who can do something. Please tell your journalists to be careful when they do stories about me, because I have many people."[157]

The Vice Minister also made two phone calls to the Chairman of the PBS Board of Directors. During the first call, the Chairman promised to investigate the issue. On receiving the second call, in which the Vice Minister made the same request for the entire speech to be broadcast, the Chairman explained that he hadn't found any problems in the way the story was covered. The issue appeared to be resolved after this and the Chairman commented that the Vice Minister had been genuinely unaware of the fact that it is not normal practice for a news program to broadcast a 20-minute speech in its entirety.

In May 2002 (the week after the Independence celebrations), Bishop Belo issued a public statement demanding that Lusa news agency correspondent Antonio Sampaio be "run out of the country" for writing an article critical of the Catholic Church. While this statement, published in one of the dailies, was immediately rejected by Prime Minister Alkatiri and Foreign Minister Ramos-Horta, it illustrated a worrying attitude towards press freedom from one of the country's most powerful and popular men.[158] At other times, Bishop Belo has come out strongly in support of media freedom, and *Suara Timor Lorosae* reported Belo as expressing concerns that 'the Government could use the Internal Security Act to control the media unfairly'.[159]

A number of public officials have exhibited a tendency to respond to news stories of which they do not approve by threatening to take the journalist(s) responsible to court. In September 2003, Foreign Minister Ramos-Horta threatened to sue Lusa correspondent Antonio Sampaio for a story about a woman who was looking for the remains of her father, who had died in 1975. The story noted that the death of the woman's father was not well documented and that, ironically, the only

[156] "Journalists accused Vice Minister of intimidation and threats", *Lusa*, 24 October 2003.
[157] Miriam Lyons interview with Nelio Isaac, 18 February 2004.
[158] See http://www.abc.net.au/rn/talks/8.30/relrpt/stories/s585618.htm or http://www.rsf.org/article.php3?id_article=6465.
[159] 'Bishop Belo says the media must be free', *Suara Timor Lorosae*, 8 September 2003.

official reference to the death was in propaganda produced by the Indonesian government, one example of which was an official government document accusing Ramos-Horta of being involved in the father's death.

Three days after Sampaio's story was released, Ramos-Horta issued a statement, published in one of the dailies, stating his intention to sue Sampaio for defamation. Sampaio responded by stressing that the story clearly discredited the source of the accusation against Ramos-Horta and that 'in any normal country' he would not have been in the least afraid of being prosecuted for defamation on the basis of such a story. Ramos-Horta in fact never did sue and neither Sampaio nor the courts received any further correspondence from the Foreign Minister about the matter. Sampaio later stated that he assumed Ramos-Horta had issued the statement on the basis of a second-hand report of the story and changed his mind when he actually read it himself. In his words, the worrying thing was that, 'on the basis of second hand information, Horta threatened to take me to a court which he had himself criticised'.[160]

As the above examples show, it is not unusual for governments to assume that any critical reporting is based on an anti-government bias. This issue was raised by Democratic Party leader Fernando Araujo in a question-and-answer session with the Prime Minister at a seminar in 2004 on the role of the media in democracy: "The Prime Minister always says that we are all in the process of learning. So, why does the Prime Minister want to sue the journalists? As a citizen you have this right, but as a Prime Minister you can influence the whole situation—how do you balance these two roles?"[161] The Prime Minister responded by saying: "My tolerance is quite big…that is why no one has been taken to the court yet. Since 2002, I have been the target of many things…but there should be a limit. My target (in taking journalists to court) is to clear up my name, not to put the journalists in jail." [162]

It should be noted that the tendency to respond (or to threaten to respond) to unfavourable reporting by bringing or threatening court action is certainly not limited to members of the government. A lawyer representing the opposition Social Democratic Party (PSD) recently filed a lawsuit against the Portuguese-language weekly *Seminario* for publishing an interview with the former PSD Vice-

[160] Miriam Lyons interview with Antonio Sampaio, 28 October 2003.
[161] 'The Role of the Media in Democratic Timor-Leste', Hotel Timor, 26 March 2004. This event was organised by the journalists association TLJA, supported by JICA and the President's Office. Quotes from the Q&A session are based on the author's notes and may not be completely accurate translations.
[162] 'The Role of the Media in Democratic Timor-Leste', Hotel Timor, 26 March 2004. This event was organised by the journalists association TLJA, supported by JICA and the President's Office. Quotes from the Q&A session are based on the author's notes and may not be completely accurate translations.

President in which he accused the party of accepting USD 50,000 from Petrotimor, East Timorese oil company, during political campaigns.[163] The lawyer, Mr dos Santos, was reported as saying that 'PSD wants Seminario and Leandro Isaac to apologise through the local media within seven days, or face the consequences'.

The US *Country Report on Human Rights Practices* for 2003 reported that government officials had threatened to use the controversial Immigration and Asylum Act against the International Republican Institute (IRI) despite previous promises that the Act would not be used to interfere with valid NGO activities. Again, these statements did not result in action.

In early 2004, phone calls were made by Fretilin parliamentarians to a member of the independent selection panel for the new managing director of the Public Broadcasting Service. According to another member of the panel, 'the purpose of the calls was clear—it was because they wanted a certain person to become the new director…they clearly wanted to influence the selection team to choose that candidate'. The panel member explained that 'this is a problem of old habits—habits from before in Indonesian times—now want to be continued by the people who have power. At the moment the feeling for following the law is still small; people are still continuing the culture of using power. This is a method that is very much not modern. This is the traditional way, the feudal way'.[164]

On 15 March 2004, five Fretilin members of parliament made phone calls to the news director of TVTL, complaining about the journalism of the TVTL reporter assigned to cover parliament. They argued that the particular reporter concerned always chose controversial news or stories unfavourable to the government and asked if the reporter could be moved from parliament to a different beat. One of the parliamentarians said that 'when (the reporter) picks the story to cover, they need to pick the story that is constructive for the community…if you (the news director) don't resolve this; it will create confusion in the community. I recommend that you move (the reporter)…if you don't do this, maybe in future TVTL will have big problems'.[165] The news director said that he didn't know what kinds of problems were implied by this remark. While he agreed that the journalist concerned could sometimes be provocative, and that he would welcome and respond to constructive criticism, he did not like

[163] 'Semanario and Leandro Isaac taken to court by PSD', *Suara Timor Lorosae*, 2 April 2004.
[164] Miriam Lyons interview with member of the selection panel for the new managing director of the Public Broadcasting Service, 18 February 2004, on condition of confidentiality.
[165] Miriam Lyons interview with TVTL news director Nelio Isaac, 19 March 2004.

being asked to move the journalist, as such matters were his responsibility as news director.[166]

11.3. Media Law Survey

A media law survey conducted by Internews in late 2003 uncovered some interesting perspectives on freedom of expression on the part of Timor-Leste's media managers. Managers reported that their journalists faced a number of challenges when attempting to find sources to balance their stories. These included:

> Finding that their desired sources were not "brave enough" to convey information: "some do not want to comment, perhaps because they do not want to become involved in the problem."
>
> "Sometimes if there is a listener who is not happy with a quote in a story, they directly approach and hassle the source, rather than the station which broadcast it." This was regarded as contributing to the overall reluctance of sources to go on record in the first place.

There were also comments that the government 'is not yet open enough to convey information to the mass media', and three media outlet managers commented that they found it difficult to deal with a government and public that did not yet comprehend the role, function and methods of the media. One manager mentioned that sometimes the result of this lack of understanding is that government members 'accuse journalists of not being neutral at times when they actually have been neutral in their stories'.

One question in the survey asked managers to give their opinions on the relative importance of various potential functions that could be played by a press Council in Timor. Out of eleven potential roles that might be played by a press Council, the response "defending media freedom against government interference" was ranked equally first by respondents. Although this does not necessarily indicate a sense of present danger, and could be explained by experiences of government interference under Indonesian rule or an awareness of the importance of such protections in general, it is still significant.

Statements by public figures in support of media freedom are frequent. However, the post-independence era has also seen a gradual rise in instances of what could be described as threatening and intimidating behaviour towards the media. It is likely that, as mistakes continue to be made by both journalists and public figures, conflicts such as those discussed in this chapter will continue. One

[166] Miriam Lyons interview with TVTL news director Nelio Isaac, 19 March 2004.

correspondent commented: "I strongly believe that attacks against the media are likely to increase. One reason is that the quality of the media needs to increase. Plus the media needs to improve its efforts to work through formal structures, using codes of conduct, etc. And they need to defend journalists who are attacked—rather than what happens if someone is attacked at the moment, which is that they find it funny…the media need to get themselves more legitimacy in order to be in a position to defend themselves from attacks."[167]

Overall, Timor-Leste has achieved significant improvements in respect for freedom of expression since independence. Despite the many practical hurdles faced by journalists in their attempts to produce balanced reporting, they now usually feel free to prepare hard-hitting stories without fear of harassment or imprisonment, and they appreciate the widespread government support for free speech.

There is without question a need for better professionalism and standards in the media. At the same time, public figures also have a significant role to play in promoting an appropriate and professional relationship between themselves and the media, and in demonstrating their commitment to freedom of expression by responding to unfavourable reportage with restraint. Given that Timor-Leste's media community still recalls a not too distant history in which journalists were imprisoned for criticising the Soeharto regime, and given that the laws from that era are still in effect, the chilling effect of threatening to prosecute journalists for perceived bias is likely to result in self-censorship, to the detriment of open and factual reporting on matters of public interest.

Recommendations:

To the government and/or parliament:

- Officials should never take measures which constitute harassment of the media or journalists for exercising their right to freedom of expression. Where such measures do take place, the authorities should immediately act to counter them.
- Officials, other public figures and the community as a whole should demonstrate tolerance of criticism and the exercise of the right to freedom of expression by journalists and the media.
-

[167] Lusa correspondent Antonio Sampaio, interview with author, 28 October 2003.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

ARTICLE 19 champions freedom of expression and the free flow of information as fundamental human rights that underpin all others. We take our name from Article 19 of the Universal Declaration of Human Rights. It states:

> *Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.*

ARTICLE 19 believes that freedom of expression and of information is not a luxury but a basic human right: it is central to achieving individual freedoms and developing democracy.

ARTICLE 19 works to make freedom of expression a reality all over the world:

- ARTICLE 19 works worldwide – in partnership with 52 local organisations in more than thirty countries across Europe, Africa, Asia, Latin America and the Middle East - to lead institutional, cultural and legal change.
- ARTICLE 19 monitors threats to freedom of expression in different regions of the world and develops long-term strategies to combat them.
- ARTICLE 19 undertakes authoritative and cutting edge research and monitoring, advocacy and campaigning work.
- ARTICLE 19 produces legal analysis, set standards, and advocate for legal and judicial changes.
- ARTICLE 19 carries out advocacy and training programmes in partnership with national NGOs to enable individuals to exercise their human rights.
- ARTICLE 19 engages international, regional and State institutions, as well as the private sector, in critical dialogue.

Founded in 1986, ARTICLE 19 was the brainchild of Roderick MacArthur, a US philanthropist and journalist. Its International Board consists of eminent journalists, academics, lawyers and campaigners from all regions of the world. ARTICLE 19 is a registered UK charity (UK Charity No. 327421) based in London with international staff present in Africa, Latin America and Canada. We receive our funding from donors and supporters worldwide who share a commitment to freedom of expression.

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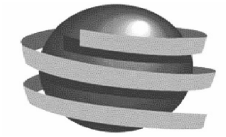

Internews Network

Formed in 1982, Internews Network, Inc. is a not-for-profit media development organization incorporated in California, USA. It is a founding member of Internews International, whose members currently work in 51 countries worldwide, spanning Africa, Asia, Europe, the Middle East, and North America.

Internews has worked with 3,400 radio and television stations and print publications and trains more than 8,000 media professionals each year. Last year Internews produced or facilitated the production of 5,400 hours of television and radio programming, which reached a potential audience of 293 million radio listeners and 336 million TV viewers. Internews has advocated for fair media laws in 15 countries, and has worked for open and accessible Internet policy and liberalized telecommunications policy in 26 countries.

Internews Timor-Leste

In October 1999 Timor-Leste gained its independence. Since January 2000 Internews has maintained a permanent presence in the country, delivering a diverse range of training activities with local newspapers, radio stations, and media sector associations. Internews conducts training both at its office in Dili and in Timor-Leste's districts. It runs hands-on training, mentoring, management programs, and technical assistance inside media outlets across Timor-Leste and media-sector development through media law development and reform. InternewsTL also supports the Timor-Leste Media Development Centre, a new national NGO. TLMDC works to build open and independent media in Timor Leste by delivering training to improve journalistic skills and access to quality news and information.

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