



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

JUSTICE UPDATE

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The Code of Penal Procedure to Enter into Force in January 2006

Authorisation Law No 15/2005 (“the Law”) was approved by Parliament on 28 July and entered into force on 16 September 2005, thereby granting to the Government exclusive power to draft the new Code of Penal Procedure (“CPP”) for Timor-Leste. When finalized and passed the CPP will replace the Transitional Rules of Criminal Procedure which were introduced during the UNTAET period.

Article 2 of the Law stipulates that the CPP must observe and give effect to constitutional principles and norms of international instruments pertaining to human rights and must also respect and, not undermine, the customs and traditions of Timor-Leste.

The CPP is linked to the Penal Code of Timor-Leste and both, according to Article 5, will enter into force on the same date. According to Art 6 of the Law the government has a maximum of 120 days in which to develop and finalise the text of the Code of Penal Procedure, after which time the Law will cease to be of effect. Nevertheless, according to section 116.2 of the Rules of Parliamentary Procedure, Parliament can extend this period provided this is by way of a new authorising law.

On 20 October 2005 the Government issued a notification, from a meeting of the Council of Ministers, indicating that the CPP would enter into force on 1 January 2006.

The CPP will, in general, be a significant improvement on the transitional UNTAET regime because its normative framework is based on the rights, freedoms and guarantees entrenched in the Constitution. For example, it will reinforce the guarantee of suspects’ rights and establish a clearer regime in relation to pre-trial detention measures. It will also restrict the type of crimes for which a person can be detained prior to trial, namely, only for those crimes for which the maximum penalty is three years imprisonment or more.

The adoption of the CPP will also allow victims, who have suffered damage as a result of a crime, to file civil compensation claims in the course of criminal proceedings.

The new CPP reflects modern notions of law and justice by focusing on the need for procedural efficiency. It promotes a simple procedural model with two processes: a standard, common form of process and a summary process for minor offences or for cases in which the suspect is apprehended in the act of committing the offence.

The creation of a body of criminal laws for independent Timor Leste is an extremely important milestone and a sign of positive progress in the development of Timor-Leste as a sovereign nation.

However, although the substance of the new laws is generally to be commended, the process of creating the laws leaves much to be desired. There has been virtually no public consultation or participation regarding the CPP, its role and purpose or its contents.

Furthermore, the draft of the CPP has not been made publicly available; JSMP’s numerous attempts to obtain a copy have proven futile. With such a low-level of public knowledge of the law, it is patently clear that the proposed date for entry into force of the CPP is far too premature. If East Timor’s criminal laws are to have any public legitimacy the wider community must be given at least some basic information on what they will contain.

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