



## JUSTICE UPDATE

*Period: February 2006*

### Promulgation of the Freedom of Assembly and Demonstration Law

#### *Introduction and Background*

The law of Freedom of Assembly and Demonstration was first approved by the Parliament on 7 December 2004. Before the President promulgated the law on 16 January 2006, he sent it to the Court of Appeal to review the constitutionality of several articles. The articles in question were considered to be potentially in contradiction with democratic values, Timor-Leste's Constitution, principles of international law and the International Convention on Civil and Political Rights.

During this constitutional review, the Court of Appeal found that Sub-article 1 and 2 of Article 4 were unconstitutional. Following the Court's decision, the Parliament then revoked the above-mentioned articles and resent the law to the President. The President eventually promulgated the law, however well outside of the time limits allowed by the constitution.<sup>1</sup>

#### *Constitutionality of the Law*

##### *a) The Content of the Articles*

Before the review by the Court of Appeal, Parliament had previously altered Article 5, which refers to the distance a demonstration must be from certain locations. Article 5 originally required that demonstrations were to be 500 metres away from listed locations<sup>2</sup>, however this was changed to 100 metres. This alteration was made following a JSMP report analysing the draft law, its constitutionality and compliance with international law and as a result of comments conveyed to members of Parliament, and, Parliamentary Commission A, which handles human rights issues.

JSMP recognises that Parliament changed the contents of certain articles in order to bring them into line with constitutional requirements and international law. However, the alterations made to Article 5 have not changed the fact that they still interfere with the rights of people to express their opinion in public freely<sup>3</sup>; and to assemble and

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<sup>1</sup> Article 88 (1) states that the President must promulgate or exercise the right of veto within thirty days of receiving a statute from the Parliament.

<sup>2</sup> This included in Article 5 (1): state organs, official residences of holders of posts in state organs, military buildings, prisons, diplomatic representations and headquarters of political parties. In Article 5(2): ports, airports, telecommunication's buildings, power stations, water depots, fuel and other flammable materials.

<sup>3</sup> Section 40 of the Constitution of RDTL and Article 19 of the International Convention on Civil and Political Rights (ICCPR).

#### JSMP

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demonstrate.<sup>4</sup> In particular, Articles 6, 7 and 15 still have the capacity to unduly restrict the right to assemble and demonstrate.<sup>5</sup>

#### *b) The Late Promulgation*

The Constitution sets out in Section 88, that:

*“Within thirty days after receiving any statute from the National Parliament for the purpose of its promulgation as law, the President ... shall either promulgate the statute or exercise the right of veto...”*

The National Parliament originally sent the law of Freedom of Assembly and Demonstration for promulgation on 18 July 2005. As the law was not promulgated until 16 January 2006, this raises another question of constitutionality: what is the effect of the late promulgation? The President has promulgated outside of the powers designated by Section 88, and what then is to become of laws in this situation? Should these laws be considered unconstitutional and therefore invalid and nullified? JSMP recognises the burdensome task of creating new laws for a new democracy however it is a dangerous precedent to set if organs of the state are allowed to act outside of their constitutional powers without consequence.

#### **Lack of Community Consultation**

The fundamental basis for access to public sector information rests on two principles. The first principle is that access to public sector information is a human right and thus is an essential element of the democratic process. The second principle is that such information can constitute a valuable resource and its exploitation is necessary to the development of a private sector led market in information.<sup>6</sup> In this Justice Update, JSMP will focus on the first of these two principles.

The constitution states that the internal legal system in Timor-Leste shall adopt “the general or customary principles of international law”<sup>7</sup>; and must comply with “the rules provided for in international conventions, treaties and agreements”<sup>8</sup> including all human rights treaties to which Timor-Leste is party.<sup>9</sup> Any articles which do not comply with the provisions of these treaties will be invalid.<sup>10</sup>

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<sup>4</sup> Section 42 of the Constitution of RDTL and Article 21 of the ICCPR.

<sup>5</sup> Please refer to the JSMP report “Draft Law 29/1/3A Freedom of Assembly and Demonstration” for the analysis of the law’s constitutionality and its adherence to international law.

<sup>6</sup> McDonagh, M. “Access to public sector information: the Australian experience” paper presented at the Access To Public Information: A Key To Commercial Growth And Electronic Democracy Conference Stockholm 27/28 June 1996; Prins, J.E.J., Vunderink, P.A.M., Franke, A.M., van der Klaau-Koops, J.D., Gerrit-Jan, J.D. Discussion Paper: Access to Public Sector Information, internal European Commission Legal Advisory Board Task Force Discussion document, 72; and Saxby, Stephen John Public Policy and Legal Regulation of the Information Market in the Digital Network Environment, PhD. thesis, University of Southampton, January 1996, 128.

<sup>7</sup> Article 9 (1) of the Constitution of RDTL

<sup>8</sup> Article 9(2) of the Constitution of RDTL

<sup>9</sup> These include the International Convention on Civil and Political Rights, International Convention on Economic, Social and Cultural Rights, Convention Against Torture, Convention on the Elimination of all forms of Discrimination Against Women and Convention on the Rights of the Child

<sup>10</sup> The Constitution of RDTL, Article 9(3) states “[a]ll 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”

Under Article 25 of the *International Convention on Civil and Political Rights*:

*“Every citizen shall have the right and the opportunity...without unreasonable restrictions:*

*(a) To take part in the conduct of public affairs, directly or through freely chosen representatives.”*

Furthermore, citizens have a constitutionally-protected right “to inform and be informed impartially”<sup>11</sup> and to “participate in the political life and in the public affairs of the country”<sup>12</sup>. The precise scope of these rights are unclear, however, they would surely include a right of participation in and to be informed about the creation of the laws of one’s own country. Laws, particularly those relating to criminal sanctions and imposing limitations on the ability to assemble and demonstrate, are an essential instrument of ensuring good governance, public order and development of the rule of law. The process of creating a sound system of enforceable laws is therefore critical in the development of a young democracy such as Timor-Leste and is one which should involve open debate.

The lack of consultation with the community and lack of public debate remains a serious challenge to a community wishing to provide comments and opinions during the drafting of laws. Furthermore, this impacts on good governance and the development of democracy and the rule of law in Timor-Leste. Although, the National Parliament is open to the public, easy access to the institution is restricted to the people who live in Dili. The Parliament is much less accessible to communities in district areas, which are disadvantaged by distance and are not able to comment on new laws. In addition, the lack of education and low literacy in Timor-Leste means that the language used in Parliament, in terms of the level of sophistication, and the predominance of Portuguese, would limit an ordinary citizen’s comprehension of what is being discussed. Therefore, in JSMP’s opinion more consultation and socialisation of draft laws is needed to facilitate the involvement of the whole community in law making.

JSMP’s access to the draft law and its commentary on the articles has been a rare occurrence. Most of JSMP’s attempts to obtain copies of draft laws have proven futile. The parliament and government need to make more of an attempt to consult with the general public, who elected them to their positions, as the Freedom of Assembly and Demonstration law is vital to community participation in the political process.

Therefore, the law makers should incorporate greater community consultation when drafting the law, so that the law is not only drafted in accordance to the actual situation of the community, but also to avoid creating unnecessary controversy in the community.

Finally, a better consultation process would lead to a better understanding of the law, the crimes contained within it and would result in less infringements of the law due to ignorance.

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<sup>11</sup> Article 41, The Constitution of RDTL

<sup>12</sup> Article 46, The Constitution of RDTL