



República Democrática de Timor-Leste
**PARLAMENTO
NACIONAL**

Committee for Constitutional Affairs, Justice, Public Administration, Local Government and Anti-Corruption

Proposed Law No. 9/III/ (1) (Media Law)

REPORT AND OPINION

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I. Introduction

I.1 - Notice of Entry of PPL No. 9/III/ (1) and low to the Committee

Draft law No. 9/III/ (1) was presented by the Government to the National Parliament (PN), having been received at the Bureau on 6 September 2013, and on 18 October 2013 it was admitted by the President of PN, who announced that it was referred to the Committee on the same day 18 October 2013, to be dealt with according to Article 101 of the Rules of Procedure of Parliament.

I.2 - Appointment of rapporteur

The Honourable Members Benvinda Catarina Rodrigues and Aurora Ximenes were appointed as rapporteurs.

I.3 - Jurisdiction of specialized standing committees

Pursuant to Articles 79 and 80 of the PN Rules, the task of the specialized standing committees is to hold public hearings, for which purpose they may convene meetings as they deem necessary with the participation of public authorities and civil society to discuss legislative matters under consideration, with a view to preparing the report and opinion referred to in article 103 of the PN Rules.

II. - The Committee's Work

For a first approach to the Members towards the various solutions that PPL proposes, the Committee decided to hold working sessions during which the adviser gave a presentation of the main issues raised in the diploma, as well as the solutions proposed in other legislation on the same matter. It was decided that during the public hearings, the intervention of various invited entities would be guided by the chair so that each would focus their contribution to intervene on the most relevant issues in order to utilize the available time and get the most out of it. With workshops conducted, it was possible to make a survey of the most burning issues the PPL raised about proposed solutions and a set of questions that would be presented to the proponent of the draft law. The "briefings" with Members took place in two separate sessions in the days before public hearings scheduled for 5, 6 and 7 February. However, after the completion of the scheduled hearings, the need arose for new sessions to listen to civil society organizations that were left out in the first sessions. These hearings took place on 19, 20 and 21 February.

III. Analysis of the content of the bill:

III-1 - Overview:

This regulates the media sector. For more than 10 years the Democratic Republic of Timor-Leste has enjoyed, in the opinion of many, a climate of real tranquility in terms of exercise of the fundamental freedoms of citizens, these freedoms provided for either in instruments of international regulation that Timor-Leste ratified or in the Constitution. Media professionals, the owners of the media, citizen beneficiaries of the services provided by one or the other have lived in relative harmony, without frequent cases reported by the press of complaints from citizens or media professionals transgressing or abusing press freedom. For more than 10 years, media professionals had access to sources of information, no one forced them to reveal their sources, reported the information they had access to and no one was prosecuted for exceeding the limits usually imposed on the exercise of freedom of expression. In all that time, the country was informed regularly without any State agency having to intervene to deal with disputes that sometimes arise in the exercise of press freedom. No regulatory agency was created to oversee the activities of the media, but nothing restricted a lively and active media.

We realize now that the state has decided that it's time to regulate the media sector, establishing some rules of functioning, in order to be more rigorous in the information provided and to set minimum parameters that everyone must obey to regulate the sector. And so it is, above all, the establishment of criteria to access the profession of journalism. What are the minimum requirements that a person must meet in order to pursue that profession? Should one reserve these functions just for Timorese citizens or should they be open to foreigners? Should they require a certain educational background? But this also involves anticipating who may or may not create media. Can only nationals own them, or can foreigners also have media? Who is forbidden to create media? Can associations and foundations own media or just only persons organized as commercial companies? But regulating media also disturbs a very sensitive sector because news dissemination could involve breaching rights protected by international legal instruments, as well as the Constitution and ordinary laws. It is the freedom to inform, to inform and to be informed must be exercised with limits. On the other side, the activity of the mass media is carried out by profit-seeking companies. Hence the possibility that this activity, in the pursuit of profit, could harm other legally protected rights. Thus a press law has to provide for a set of situations of violation of citizens' rights by commercial media and a corresponding sanctions framework to deter potential offenders. But, in this matter, the press law can opt for initially regulating conflicts outside the courts, where possible, with recourse to the courts as a last resort when it is not possible to settle the dispute extrajudicially. Beyond these matters, the press law has to envisage situations in which the published news is inaccurate, untrue or false, injuring the rights of third parties, who, of course, would like to clean up their image, see a correction or restore the truth the facts. Thus a press law must establish mechanisms for responding to false or inaccurate news. And when a published response is illegitimately denied, the law must provide a compulsive or coercive mechanism requiring the media to ratify the mistake and restore the truth of the facts. And this is done with the courts. Finally, the state wishing to regulate the press must provide for an independent administrative authority with powers of regulation and supervision of the media to also serve as a dispute resolution forum before such disputes are taken to the courts. This bill will intend to give an answer to these questions, adjusted to Timorese reality.

The PPL we are to analyze consists of 8 chapters including 26 articles as follows:

III - 2 - CONTENTS OF THE PROPOSED MEDIA LAW

CHAPTER I - GENERAL PROVISIONS

Article 1 - Purpose

Article 2 - Definitions

CHAPTER II - FUNDAMENTAL PRINCIPLES

Article 3 - Right to information

Article 4 - Freedom of the press

Article 5 - Limits

CHAPTER III - JOURNALISTS

Article 6 - Journalists

Article 7 - Exercise

Article 8 - Incompatibilities

Article 9 - Membership

Article 10 - Rights

Article 11 - Duties

Article 12 - Code of Ethics

CHAPTER IV - THE COMMUNICATION MEDIA

Article 13 - Media businesses

Article 14 - Licensing

Article 15 - Formal requirements

Article 16 - Advertising

CAP. V - RIGHT OF REPLY AND CORRECTION

Article 17 - Right of Reply and Correction

CHAPTER VI - FORMS OF LIABILITY

Article 18 - Forms of responsibility

Article 19 - Liability

Article 20 - Offences

Article 21 – Attacks on freedom of information

CHAPTER VII - PRESS COUNCIL

Article 22 - Press Council

CHAPTER VII TRANSITIONAL AND FINAL PROVISIONS

Article 23 - Prior rights

Article 24 - Transitional regime

Article 25 - Regulation

Article 26 - Entry into force

III-3 - Main issues raised and suggestions for improving the law:

From the Committee's analysis of the PPL and study of laws on the same subject in some countries, it became clear that the Press Law of Indonesia served as a matrix for the preparation of the draft law for Timor-Leste. And on this, it must be said that the Committee also had access to a 2004 study by an NGO, Article 19, which addressed the Indonesian Press Law, its strengths and weaknesses, and with a view to the future preparation of the Timor-Leste press law, making several recommendations to the Timorese legislature over what, in their understanding, should be followed and not followed from the Indonesian press law. It can be stated that in essence, the recommendations made by the NGO were followed. However, analyzing PPL No. 9/III, the first observation that arises is that it is very meager in terms of number of articles, only 26, in comparison with the Indonesian the press law which was its inspiration. In all the comparative laws to which we had access, the legislature was more profuse and more generous in terms of regulation of the sector. When matter is condensed into a few articles, it sometimes runs the risk of leaving certain aspects to be regulated in very dense form, losing in terms of breadth and visibility of certain governed issues.

The analysis of the PPL was able to list a number of issues that in our view were treated poorly and could be improved. Moreover, we found in other legal systems, other solutions that could be perfectly appropriate to regulate but are not included in the PPL. It is the question of Legal Deposit for example, the existence of minimum rules for the internal organization of the media as the existence of a Director and Deputy Directors and their respective powers, the existence of an Editorial Board with its respective powers, concerning the transparency and accountability of media such as those that require the disclosure of the identity of the owners, the annual publication of financial accounts, or the need of an editorial statute or even the obligation to publish official notices. These last questions did not merit inclusion in the PPL. The table is then translated the survey we did of the main issues that the study of the PPL raised in opposition to the solutions found in other systems of law. At the same time, the Committee makes some suggestions that we understand may improve the statute intended to be approved by the National Parliament.

Topic: - Limits on the exercise of freedom of press - Both the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights and the Constitution of RDTL define press freedom broadly, guaranteeing to everyone the right to inform and be informed. However, both the Constitution or in international instruments, still want their own press laws to which we had access, to set certain limits to this broad freedom, limits imposed by the presence of these other legal benefits of equal or greater value, which in confrontation with press freedom should take precedence over it.

Other experiences:

Among the limits normally imposed on freedom of the press, the comparative law consulted, with greater or lesser extent anticipates limits, for example:

- Strength and objectivity of information
- The protection of the public interest and democratic order
- The protection of public health and morality
- The dignity of the human person
- Imperatives of foreign policy and national defense
- The protection of children and youth
- The protection of the privacy of personal and family life
- The confidentiality of justice

What the PPL provides: The PPL provides in article 5 as limits on press freedom the constitutional limits imposed by the right to honor and privacy and the right to presumption of innocence

What could be improved: The PPL could extend the list of limits on press freedom to include some under other legislation such as the public interest, the protection of children and youth, imperatives of foreign policy and national defense

Topic: Access to the profession of journalist and the question of capacity: To begin the exercise of any profession requires, in addition to academic training, a period of professional apprenticeship to combine theory with practice. When you want quality information with impartiality and objectivity, allied with a good academic background to a probationary period of reasonable duration to ensure the necessary strength of knowledge in the training of media professionals. Beyond the issue related to the formation of the professional media, access to the profession raises the issue of capacity: who can exercise the profession of journalism in Timor-Leste? Can all adult citizens enjoy their rights or only Timorese citizens?

Accreditation of journalists: The body responsible for assigning professional credentials is another issue addressed in discussing access to the profession.

Other experiences - Probationary period: From comparative laws which we accessed, the probationary period for journalist candidates varies between a maximum when the person concerned has no college degree, a shorter period when the candidate journalist has a degree in any area of knowledge than Social Communication, and a shorter period when the person has a degree in journalism. The time periods for these 3 situations are in one of the press laws to which we had access:

Without higher training: 24 months apprenticeship

With higher training: 18 months apprenticeship

With media training: 12 months apprenticeship

The capacity question: In all comparative legislation, when it regulates the issue of capacity, the law refers to all citizens or adult individuals in the full enjoyment of their civil rights, not the citizens of the nationality of the particular country.

The issue of accreditation is resolved in some countries by a Professional Credentials Committee composed mainly of journalists with extensive experience.

What the PPL provides: PPL provides in art 7.1 an apprenticeship lasting only six months, after which, the media organization where the apprenticeship took place will issue a certificate of successful completion of probation, if this is the result. The certificate of completion of the internship is a *sine qua non* condition for obtaining professional press card from the Press Council - art. 22.5(d).

Article 6 of the PPL entitled capacity, limits the access to the profession of journalists in Timor-Leste to Timor-Leste citizens.

What could be improved: The PPL can establish apprenticeships of different duration depending on whether the candidate does not have a college degree, or is enabled with a college degree, or has studied in the media area. In this question, the experience of other countries can be followed in Timor-Leste with advantages. For the ability to be journalists, PPL could adopt the terminology citizens or individuals not required to be Timorese.

Topic: Rights of Journalists: When enumerating the rights of media professionals, the press law varies from country to country, but there is a law which appears almost always it is the right of journalists to participate in the orientation of the respective media organizations, usually through belonging to the Editorial Board.

Other experiences: The right of journalists to participate in the orientation of the respective media organs appears in all comparative laws we consulted. This participation of journalists in internal organs of the media is a first step toward ensuring the self-government of the class of information professionals while at the same time, guaranteeing the accuracy, quality and objectivity information.

What the PPL provides: PPL does not provide the list of the rights of journalists to participate in the affairs of the media organization where they are working. The PPL does not establish the creation of the Editorial Board that in other legislation is considered an essential organ to ensure quality information as well as contribute to the dignity of the journalism profession by enabling one to give an opinion on the appointment of Directors, on the disciplinary action on journalists, among other rights.

What could be improved: The PPL can provide, the listing of journalists' rights, the right to participate in the affairs of the media organization where they work as one of the fundamental rights of journalists so that they can influence the orientation of this organ. This would involve the creation of an Editorial Board.

Topic: Rights of Journalists: In addition to the right to participate in the orientation of the media organization where they exercise their profession, there are other rights of journalists which merit regulation in a separate article to give them more visibility

Other experiences: Legislation covering autonomous rights of journalists such as the right to professional secrecy, freedom of conscience, the right of access to public places, the right of access, are in separate articles giving greater visibility and importance to this material.

What the PPL provides: PPL has a list of journalists' rights in a single article. The regulation of this matter in this compact form reduces its visibility and diminishes certain aspects of regulation.

What could be improved: Given the content of those rights, the PPL can empower the right to confidentiality, freedom of conscience, the right of access to public places and the right of access to sources in separate articles, in order to give greater support for those rights. However, since, in addition to media law, it is necessary to have a Statute for journalists, that comparative legislation approved by law, to always regulate the matter of the rights and duties of journalists in more detail.

Topic: Duties of journalists: A violation of the duties imposed on journalists by either the Press Law, or the Statute of Journalists, remains in the Code of Ethics or carries financial penalties - fines that are, as a rule, applied by the Independent Media Administration Authority.

Other experiences: Legislation assigns jurisdiction to an Independent Media Administration Authority to compel journalists to fulfill the obligations arising under the Press Law and the Code of Ethics of Journalists.

The PPL provides that: Article 20.1(c) the PPL, which regulates offenses, provides for the imposition of fines from \$, 500 to \$, 1,500 when there is breach of art. 11 which regulates the duties of journalists, without the diploma as a whole providing for the entity that has the power to apply this penalty.

What can be improved: In the image of what happens on comparative law to which we had access, the Press Law of Timor-Leste can assign a legal entity under public law to have financial administrative autonomy and its own assets in the nature of an Independent Media Administration Authority, with the mandate to exercise powers of regulation and supervision of levying fines for committing offenses under the law relating to breach of the duties of journalists.

Topic: Participation of foreign capital: As whoever controls information can control power, the regulation of this matter entails some care. It is a matter of political choice to decide on complete liberalization of the media sector, allowing domestic and foreign persons to own the media in the country, or one can opt for restrictive measures preventing foreign natural and legal persons from majority control of media in Timor-Leste.

Other experiences: The comparative law shows that this issue of foreign media ownership ranges from liberals tendencies which do not establish any restriction on the participation of foreign persons, to a moderate restriction, establishing maximum participation of foreign capital of 20% (Mozambique), 30% (Angola), forbidding in any case, can never be more than 50% (Indonesia) and countries that treat the issue with some caution referring to the possibility of another law by which the State reserves certain sectors of the media only to domestic (Cape Verde), or even countries that totally prohibit the participation of foreign capital in media companies, as is the case of Brazil, which states: *"It is forbidden ownership of media companies, whether political or simply news, by foreigners or joint-stock companies."*

What the PPL provides: PPL in art. 13.7 conditions the participation of foreign natural and legal persons in the capital of a media organization to respect the law of Immigration

which is to say, Law No. 9/2003 of 15 October that in its article 11 says that “It is prohibited for a foreigner to own the majority of the capital stock of general and national character, unless expressly authorized by the Government of the Republic”

What could be improved: The issue of foreign ownership of the media could be subject to a thorough debate in order to decide whether the liberal model, or to keep the current model that imposes restrictions. The issue seems to be more related to foreign investment than to the immigration law as to who can create media, or a foreigner can invest in them without having to locate in Timor-Leste.

Topic: Right of reply and correction: In the mission of informing the public, sometimes journalists disseminate untrue, distorted or erroneous facts that may tarnish the reputation of citizens. Becomes more severe injury to the constitutionally protected legal interest, which is the right to honor, good name, the word, the privacy of personal and family life, when false, untruthful or distorted news is conveyed through media outlets with mass circulation or large audience. To minimize the harm done, legal systems provide for control mechanisms on information activity by insertion or disclosure in the same organ that caused the harm, of a response, correction or clarification by the injured party in order to restore the truth of the facts and so clean tarnished honor. In this matter the legislator should consider the following points:

- a) Assumptions of the right of reply, correction and clarification, that is, when does that right exist?
- b) Who can apply for a response or rectification of the mistake: only the victim can react against false or inaccurate information, or should we extend this right to the legal representative, the spouse and heirs?
- c) Deadline for exercising that right, more or less long to discipline the exercise of that right within a certain time limit while avoiding intervening in media organs long after an event has occurred;
- d) Considering a fair impediment, when the victim cannot, in time, exercise their right;
- e) The consent of the victim with the explanations given by the media organ
- f) The mode of enforcing the right of reply
- g) The scope of the right of reply in order not to turn this right into an opportunity for the injured to insult and offend in turn, the media outlet.
- h) The legitimate and illegitimate refusal to publish the response by the media body
- i) Enforced realization of the right of reply and correction when there has been illegitimate refusal: (judicial intervention or the Independent Media Administrative Authority)
- j) The crime of qualified disobedience when the Media organ refuses to print a response even after being ordered by the Court

Other experience: This matter is treated similarly in all Media legislations we analyzed. The way it is treated in the PPL raises some questions. In comparative law, the only variation is the period within which the injured person, his legal representative, spouse or heirs may exercise this right: between 30 to 90 days.

We also notice that the legislation provides for a mechanism for enforcing implementation of the right of reply, because, with the press held by citizens, who create media companies, they can accept or refuse the reasons for the ordinary citizen injured by media activities, and may illegitimately refuse to publish reply, correction or clarification. Here

the Independent Administrative Media Authority can intervene, to the regulatory authority and oversight of the Media or the Court to compel the media to comply.

What the PPL provides: The PPL stipulates a period of only 15 days from the date of publication or transmission of the content for the injured target to exercise their right of reply. The PPL also restricts to only the injured party and his legal representative legitimacy to exercise that right. The PPL does not provide a coercive mechanism to compel the party at fault to comply in case of illegitimate refusal on the part of the media outlet to publish the reply or the request for correction and clarification.

What could be improved: We believe that the deadline for the holder or his legal representative to exercise the right of reply, correction or clarification should be extended. It is suggested that similar to what happens in other studied laws, the legitimacy to exercise this right should be extended to the spouse and heirs. The legislation to which we had access extends this right to:

- a) Owner or his legal representative;
- b) A spouse, ascendant, descendant, sibling, and if the person is absent from the country, if the disclosure is against a deceased person, or if the person in question died after the offense took place, but before the period of decadence, the right of reply.

In addition to improving these aspects, we believe that the PPL can be improved in the issue of the forced realization of the right of reply and correction, an issue that was very badly treated, in our view, in the PPL. It should, similarly to what happens in other experience, create a mechanism for judicial, (Appeal to Courts), or administrative (Appeal to the Regulatory Authority) intervention, for the realization of the right of reply and correction. The PPL regulates this matter poorly:

1. When regulates the right of reply and rectification, provided for in article 17.7 that the baseless refusal to exercise a right of reply constitutes an offense under art. 20(f) but does not say who will apply the penalty.
2. When regulates offenses in art. 20.1 says that an offense of this law that does not entail criminal responsibility, and for which the Press Council has exhausted its mediation mechanisms, will be punished by the competent authority and remains there without knowing who that punishing authority;
3. When regulates the powers of the Press Council in art. 22(f) says that it is for that court to issue opinions where the Court considers it necessary to give a specialized opinion to the Press Council with a view to the settlement of disputes arising out of journalistic activities, but does not explain when these disputes may appear.

CONCLUSION: Lack of synchronization between the provided offenses, civil liability and recourse to the judiciary. The experience of other countries shows that the Independent Media Administrative Authority is applying the prosecution of misdemeanor and fines and the Court is the last resort for resolving disputes. The PPL can be improved to follow the example of other countries in this respect.

Topic: Press Council: To safeguard the right to freedom of information, to ensure the independence of the press from political, economic or other influences, to resolve conflicts which may arise between citizens and the media in general, countries usually have an Independent Administrative Media Authority to carry out functions of regulation and supervision of Media. They normally favor extra-judicial mechanisms for resolving conflicts, such as mediation, conciliation and arbitration, but also have a punitive function, applying financial penalties (fines), or even determining the suspension or termination of journals (media organs) . Normally the Press Law provides in one or two articles for the

existence of the regulatory body called the Independent Administrative Authority and leaves to a separate statute to regulate its organization, composition, powers and operation. In this matter the legislator must take into account the following:

1. Should there be a regulatory authority imposed by law, or should leave it for the press to self-regulate?
2. Under the option to create a regulatory body, what is its nature? Only instances of mediation and arbitration or true regulation and oversight? What should be its composition?
3. What should be its powers? Should it be able to impose penalties or just enhance extra-judicial conflict resolution mechanisms?
4. Who should cover its budget?
5. How to ensure that the Media respect the decisions of the Independent Media Administrative Authority

NOTE WELL: In the countries whose legislation we accessed, some regulate the Independent Media Administrative Authority in their own press law, and others provide for its existence in the Press Law but have specific statutes to regulate all matters concerning it.

Other experiences: The study concludes that there are countries that do not have a Media Regulator, and let the sector self-regulate, there are countries that have distinct regulators for the audiovisual press (Radio and TV) and another for written press, and there are countries that have a single regulator for all media. The names vary from country to country, Thus: Press Council, the High Authority for the Media, the Media Regulatory Authority, Regulatory Authority for the Media, Higher Media Council and National Media Council.

The composition and appointment of members also varies from country to country, but the biggest concern is: Do not allow journalists to be a majority or dominate these regulators to permit the necessary impartiality and independence in their actions, or what is commonly designated conflicts of interest. Thus, the experiences we had access to involve the following in the appointment of members of the Regulatory Authority:

1. The National Parliament
2. The Presidency of the Republic, the Superior Council of the Judiciary, the Association of Journalists, the Media Businesses
3. The Political Parties in Parliament, the Council of Christian Churches.

In all legislation, regulation and supervision of the media includes sanctioning powers as well as the mediation of conflicts. The term of office of its members varies from 4 years with the possibility of one renewal to 7 years.

What the PPL provides: The PPL provides a regulatory both with 7 members for a term of four years clearly dominated by the class of Media professionals, contrary to the trend that exists in this field almost everywhere, that to avoid conflicts of interest, there should be other members of the media regulation and supervision body, named by the President of the Republic or the National Parliament as sovereign bodies that represent all citizens and always putting the class of journalists as a minority.

What can be improved: We believe that we should address the nature of the Press Council to be created in greater depth. Thus, you should give it jurisdiction to resolve issues arising from the activity of the media avoiding systematic recourse to the courts. After defining the role of the Press Council as authority for regulation and supervision of the media sector, we should consider its composition or appointment of members. In this respect, the Press Council should be thought of in order to follow the guidance that exists

on this matter advises that the regulator has a heterogeneous composition with members from outside the sector that seeks to regulate and supervise. The media professionals and media owners must be in the minority in these organs.

Additional important issues not addressed in the draft Law:

Topic: I-Legal Repository:

Explanation: Press Laws usually establish a set of institutions to which the media organs must send copies of published journals. This is called a legal repository and is intended to allow the establishment of a bases to preserve documentation for consultation by stakeholders. Beneficiaries of this obligation varies from country to country but range from the National Library, the National Historical Archive, the Documentation Center of Parliaments, the Prosecutor-General's Office etc.

In this regard it should be borne in mind the following questions: 1 - Should the Press Law provide for the obligation of legal repository? If so, which to entities must copies be sent.

NOTE: There are qualifications that provide only for the existence of legal repository, referring to future law for regulation, there are laws that already regulate these obligations and provide the beneficiaries.

Other experiences: From Legislation compared include for example:

1. BRAZIL - art. 70 "The newspapers and other periodicals are required to submit, within five days, copies of their editions to the National Library, and the official Library of the States, Territories and the Federal District. **Libraries are required to keep the copies they receive**

2. Portugal - art. 18 - The system of legal repository consists of decree which shall specify the entities to which copies of publications should be sent, and the number, and the time period.

3. - Mozambique - art. 16

Requires the submission of copies of publications to:

- a) Information Office
- b) Higher Media Council
- c) Prosecutor-General's Office
- d) National Library
- e) National Historical Archive
- f) Any other entities for which there is the duty of the legal repository

Topic: II- Editorial Statute

Explanation: Press Laws consulted provide for periodicals to adopt an editorial statute defining their orientation and objectives. A kind of commitment to the public that must be renewed annually.

Other experiences: We found this requirement in Press Laws of other countries

Topic: III- Director, Editorial Board:

The comparative law does not define the internal organization of media organs for themselves, before regulating certain aspects they consider essential for competent and unbiased information. Will that effect the provision for a figure of the Director and the existence of a collective body, the Editorial Board, whose mission, among others, is to

endure the quality of information in compliance with the ethical standards of the profession, advising on the appointment and dismissal of Managers, give opinions to disciplinary proceedings of journalists, etc. Through the Editorial Board journalists wield one of the most important rights contained in the list of rights of Media professionals are entitled to participate in the orientation of the respective media organ.

Other experiences: Found throughout the studied comparative law provision for internal organization of media organs with the figure of the Director, Deputy Directors, with its own statute, the provision for the creation of the Editorial Board whenever there are more than 5 journalists in periodicals, and the Editorial Board is formed for areas within each Media organ.

Topic: IV- Public Notices

There are situations where Press Laws require media organs to publish certain notices at no cost. Times of public calamity, emergency, danger to national independence, public health. The unofficial notices come from official entities and should be short, not more than 500 words

Topic: V - Registration of Social Communication:

The specificity of Media makes some laws provide for a system of media registration in parallel or in addition to recording the legal persons who may have started the organ.

IV - 1 - PUBLIC HEARINGS:

In fulfillment of the provisions of art. 80, of the Committee held public hearings on 5, 6 and 7 February with public authorities and civil society to discuss legislative matters under consideration and collect contributions from one and the other.

IV-2 - PARTICIPANTS:

Participated in those hearings, the following entities:

Day 1:

- 1 - Nelio Isaac Sarmiento - Secretary of State for Social Communication
- 2 - Milena Soares Abrantes,
- 3 - Paulino Quintas
- 4 - Salvador J. Ximenes Soares - SUARA TIMOR LOROSAE

2nd day - the morning

- 5 - DAILY SUARA TIMOR LOROSAE - Salvador J. Ximenes Soares
- 6 - DAILY NATIONAL - José Gabriel da Costa
- 7 - INDEPENDENTE DAILY - Mouzinho Lopes de Araujo
- 8 - THE DILI WEEKLY - Manuel Ximenes
- 9 - TIMOR BUSINESS WEEKLY - Carlos de Jesus
- 10 - WEEKLY TIMOROMAN.COM - Jacob Ximenes, Director
- 11 - WEEKLY MATADALAN - Cancio Ximenes Soares
- 12 - TIMOR POST - Joseph M. Ximenes

2nd Period-day afternoon

- 13 - RADIO TIMOR-LESTE (RTL) - Tito Filipe
- 14 - RADIO LIBERTY (RL) - Francisco da Silva
- 15 - RADIO TIMOR Kmanek (RTK) (no)
- 16 - RADIO Ramelau Kablaki Matebian (RKM) - Eurico Pereira

17 - RADIO LORIKU LIAN - Prezado Ximenes

3rd day:

18 - ASSOCIATION OF JOURNALISTS OF TIMOR-LESTE (AJTL)-President Tito Filipe, President

19 - ASSOCIATION OF JOURNALISTS OF TIMOR-LESTE (AJTL) Chairman of the Board of Ethics - Hugo Fernandes

20 - ASSOCIATION OF JOURNALISTS OF TIMOR-LESTE (AJTL) - Secretary General - Alexandre Assis

21 - TIMOR-LESTE PRESS CLUB - José António Belo

22 - UNION OF JOURNALISTS OF TIMOR-LESTE - Joseph M. Ximenes

23 - COMMUNITY RADIO ASSOCIATION - Prezado Ximenes

24 - TIMOR-LESTE MEDIA FUND FOUNDATION - Susana Cardoso

25 - TIMOR-LESTE MEDIA DEVELOPMENT CENTER - TLMDC-Alberico Junior

Public Hearings - second round: Given the reaction of civil society that appeared just after the completion of the first hearings, claiming that public hearings had left out entities and organizations that may have an important role in contributing to the enrichment of law, new sessions of public hearings were scheduled for 19, 20 and 21 February with the following civil society organizations:

1st day Morning Session:

1 - Zelia Trindade - Deputy Prosecutor General of the Republic

2 - Flavio C. Neves - Vice-Minister of Transport and Communications

Day 1 - Period afternoon:

1 - Celestino Gusmão - Researcher Lao Hamutuk

2 - Charles Scheiner - Researcher Lao Hamutuk

3 - Adilsonio J. Costa - Researcher Lao Hamutuk

4 - Juvenal Dias - Researcher Lao Hamutuk

5 - Manuel Monteiro Fernandes - HAK Association

2nd day:

1 - Francisco Guterres Lu-Olo - President of FRETILIN

2 - Harold Moucho - Advisor FRETILIN

3 - José Luís Oliveira - delegate AJAR (Asia Justice and Right)

4 - Victor da Costa - Vice President of FRENTI MUDANÇA

5 - Sitalina M. Tilman - FRENTI MUDANÇA

6 - Virgilio da Silva Guterres - Journalist and media specialist

7 - Dionisio Babo - Secretary-General of CNRT party

8 - Lourdes Bessa - Vice-Chairman of the Democratic Party

9 - Carlos Saky - Advisor Democratic Party

3rd day:

1 - Rev. Moses A. da Silva of IPTL (Protestant Church of Timor-Leste)

2 - Viriato Soares Pereira - FONGTIL

IV-3-MAIN ISSUES RAISED IN PUBLIC HEARINGS:

1 - Access to the profession of journalists. Art.6 of the PPL reserves the profession of journalists in Timor-Leste to Timor-Leste citizens. Those who opined on this subject considered this restriction a solution that contradicts the constitution, and that is a setback to Timor-Leste in terms of its stance on the international stage due to commitments by ratifying international treaties and conventions.

2 - The indemnity provided for in art. 19 of the PPL. At the public hearing was raised the issue of joint and several liability for damages caused by the publication of the text, sound or image in a media organization, this responsibility belongs to the author, director or his legal

substitute and the company or media organization. Because of the way they divide work within a media organization, the various actors involved in the collection, compilation and dissemination of news, according to one view, the responsibility of the author of the text ends when he writes and delivers it to the editor to review and publish. Thus, according to this opinion, you should never punish the journalist, but rather the editor or the director of the national media.

3 - The fines provided for in art. 20 of the PPL. Some voices called for the outright elimination of art. 20 because establishing monetary penalties constitutes in the opinion of the stakeholders an obstacle to press freedom and an attack on democracy. That it would, in the opinion of some, to counteract the freedom of press and expression widely referred to in articles 40 and 41 of the Basic Law. Within the chapter of fines, those who opined, did see that the minimum and maximum amounts are too high by the standards of wages prevailing in the media. Journalists are a very underpaid class in Timor-Leste, some earn less than the minimum wage of \$115 per month and setting fines in the amounts set forth in art. 20 makes life impossible for journalists who make a mistake. Ended up suggesting that the size between the maximum and minimum be removed to give more leeway to the applicator of the fine in each case, so that it can adjust for each case the best pecuniary penalty to the concrete situation at trial.

4 - New Laws for the Media Sector: In the public hearings was suggested that, following the press law that is being discussed, a move to specific laws of the various sectors of social communication in order to have a law for the audiovisual, radio and television sector, and another law for the written press.

5 - Political parties: may or may not own the media, in view of the prohibition in article 13.6? Firstly this question was raised concerning the apparent contradiction between the existing article 2(g) which defines doctrinal or denominational media, implying that it would be one of the media provided by law, and art. 13.6 when bans political parties from creating media. The Government defended its choice, explaining that supporters or managers or members can create a media company individually but not the political party itself. The aim would be to avoid politicization of the *media*. Despite many explanations were those who fought for outright elimination of art. 13.6 of the PPL suggesting that a media must be able to be created by the political parties also provided that these entities comply with the Code of Ethics and Professional Conduct of Journalists. For others, once the PPL defines the art. 2(g) doctrinal or denominational media, it must be consistent and allow political parties to create the media will be hoping that such a doctrinal nature, that is, to promote the party doctrine.

6 - The need for this law to provide for Blogs as media, given their role of disseminating news to the public regularly.

7 - Access to the profession of journalism: Some suggested eliminating the requirement for academic qualifications for journalists. As arguments presented, there is no requirement that a President, Prime Minister, Minister or National Deputy has an academic qualification, therefore it should not require the journalist. In this respect, the discussion fell upon: first it must impose certain academic training to journalists. For some, this requirement would be unreasonable since it is not just government that hires journalists but also private companies. So if the state is not who pays, it cannot determine to require academic training to journalists who it does not hire and pay. That would be an internal problem of media organs. For others, the matter of accreditation of journalists must change the figure provided by PPL where the art. 7 obliges the media organization the task of providing trainee journalists the possibility of frequent apprenticeship ending with issuance of a certificate of completion of internship, which will be

used by the regulator Press Council the right to award a license to the journalist that you submit with such a certificate - art. 22.5(d) "recognize the professional status of journalists indicated by the media in terms of art. 7." The alternative to the model was towards training as the responsibility of the Journalists Associations using a Journalists Training Institute and the allocation of professional credentials by the Press Council. In this as in other matters, there was no unanimity, with the majority opined by the need to provide for the future creation of courses for journalists, the State assuming this task as a need that is in the public interest, ensuring quality, credible, free, impartial and independent information. Regarding accreditation of journalists, this role should be reserved for the regulator, which should also take part in the training process.

8 - Foreign investment in media organs: concern was raised at the public hearings the possibility of foreign capital may hold a media company in Timor-Leste. This, taking into account the weaknesses of a post-conflict country and care that the state must take in terms of stability and security which is easily undermined by misinformation. The Government explained that, in this matter, the rule imposed by art. 9 of the Asylum and Immigration Law which limits foreign participation in the capital of media enterprises less than 50%, that is, they cannot have the majority. Nevertheless, it was demonstrated concern due to the possibility of foreigners may want to invest in the sector through third parties, eventually holding a larger share than the law allows, the law does not provide mechanisms for punishing those who do so.

9 - The limits of press freedom laid down in art. 5 in what regards to privacy, privacy of personal and family life constituted a concern raised in the hearings, and those who gave their opinions on this subject, said that the right to privacy must yield when it comes to public figures. It must be said that respect for privacy and limit the freedom of the press always finds a place in media laws and is a matter that is part of the instruments of international law that Timor-Leste has ratified.

10 - Art. 20 of the PPL, which provides a set of fines for various situations transgressing the Press Law, the rights of persons and the Journalists Code of Ethics of was the target of sharp criticism from various participants in the public hearings. For some it is a clear violation of the Constitution, articles 40 and 41 thereof, being a clear violation of the freedoms set out therein, and some advocate their outright elimination; for others, the establishment of fines in this article would violate the provisions of article 75 of the Criminal Code that establishes the maximum fines. Still others argue that, instead of imposing fines is a pecuniary penalty it should focus on other ways to repair the damage that have to do with the culture and tradition of Timor-Leste to cases of "Taka Falta", such as delivery a particular object or animal in recognition of harm done and apology. Given a scenario of possible maintenance of art. 20 and the possibility to establishing a more comprehensive sanctions framework, and noting the fact that freedom of information cannot be limitless freedom but is freedom with responsibility, noting the fact that the use of the press without responsibilities can result in serious damage to the lives of citizens and the sanctions framework of the Press Law should therefore be strengthened in order to curtail the possibility of abuse of press freedom, there were various opinions towards that, given the salary level of journalists, which is sometimes less than the minimum wage and pay attention to the difficulties they experience the organs of written media, the fines provided for behavior should be lowered to a level consistent with the actual situation of the country. Against this suggestion, was opposed that fines in higher amounts would respond to the need for a threatened sanction to have a deterrent effect on potential offenders causing them to take more care to produce information that could be damaging to constitutionally protected rights.

11 - The Press Council: Article 22 of the PPL that provides for the creation of the body of regulation and supervision of the media has been widely debated. The debate focused on composition rather than on their powers. As some of the participants in the public hearings, members of TEAM 5 who were involved in the making of the draft law from the outset, viewed with concern the proposed design with only 7 members when they had always advocated for the existence of 9 members of which 3 come from Journalists Associations, 3 from media organizations and 3 from civil society. In view of the objections raised that a body composed mainly of media professionals that potentiate the lack of independence and impartiality due to the solidarity of the class with their peers, advocates for this design maintain their position of not wanting people from outside the class to supervise and regulate the media sector. Several speakers were openly against the possibility that some members of the governing body be appointed or chosen by the organs of sovereignty, with the argument that they fear the politicization of the Press Council. They argue that if a political body has the power to appoint members of the Council, later when the political feel targeted by certain information they might remove the accreditation of the journalist who was behind the news. In the discussion of this matter it was said for example, that the National Parliament has participated in several situations in which the law gives them power to appoint members to outside the National Parliament, the case of CAC, the Supreme Court of Justice and other agencies, and members chosen have acted with complete independence and professionalism and are a pride for all Timorese. Some actors in the debates questioned those who defended the composition of the Press Council as a majority of the next class can ensure that a regulator with this composition would ensure fairness, impartiality, independence in their actions and not be tempted by solidarity with colleagues. Anyway it became clear that the law should highlight the role of overseeing and regulating the media sector with the ability to resolve conflicts that may arise with the activities of the press, reducing the load of the courts since only when the parties do not accept the solution may they appeal to the judiciary. It was also established that the law itself should regulate the composition, powers and operation of the Press Council, is no consensus that the image of what happens in other countries, that there should be a law of Parliament regulating this issue. One option mooted argues that the number of members of that body must be reduced to 5 members, with a majority coming from the civil society with an indication of some members of the sovereign bodies of great representativeness; members of the Press Council should not exercise office in that body permanently but with participation in meetings as needed entitled to attendance fees and that only the President of the Board should work continuously, assisted by a secretariat and technical support personnel to ensure the smooth functioning of the Council. It also became clear that the Press Council should move from the current model proposed in PPL as an essentially mediating body to be a true regulator and supervision, with decision-making powers in various fields from the accreditation of journalists to conflict resolution by applying fines for professionals and the media.

12 - The period established by art. 23.1 of the PPL of 6 years of working for the immediate issuance of credentials for journalists already in office, making it unnecessary for the fulfillment of the criteria set out in Articles 6 and 7 was the subject of debate in the public hearings, fighting mostly for lower limits. Some suggested one or two years as a reasonable period, and there were those who advocated the maintenance of six years assuming that there is a decrease in time, which becomes 5 years. The arguments in favor of decreased time for 1 or 2 years suggest that the class of media professionals in Timor-Leste is occupied by persons of low academic training, for individuals who finish secondary school and go looking for their first job and when they can't find it elsewhere will default to the media, that the wages paid are low and at the limit of the minimum wage being some journalists receive less than a hundred

dollars per month, due to the fact that the class be poorly paid, journalists do not stay a long time at a media company because, at the first opportunity they find to earn a better salary, they leave their position: that setting a longer period of 6 years as the PPL provides for can take many journalists in office for mandatory training according to the law as it is and if it can empty personnel from the media, jeopardizing their operation. For those who were of the opinion that the period of 6 years should be maintained, argue that to make a good journalist in the actual teaching conditions in Timor-Leste requires several years; reporters candidates come to edit a newspaper, even with university training, knowing not write a text, that after years of work they begin to enhance their knowledge, that lowering the period of 6 years for any other will decrease the quality of service rendered by those who have not yet had time to learn.

13 - Community Radio defined in Article 2(h) raised two kinds of problems: the first has to do with the actual definition, which according to a representative of the media who participated in the public hearings, does not really reflect their way of operation or the functions they play in Timorese society, the second has to do with the advanced information for this representative that Community Radios have the active participation of community leaders and public officials, that it is proper for them to participate in the structure and operation, and the establishment of incompatibilities in article 8 which prohibit both public officials - paragraph 1(a) as community leaders, and line (b) can endanger the functioning of Community Radios.

14 - The definition of “means of social communication” of article 2(c) as a vehicle that allows for regular dissemination of journalistic activity was the source of the recommendation made at the public hearings for this law to establish mechanisms that oblige periodicals to comply with the obligation to the public to be on newsstands with the regularity assumed by the medium itself, with daily, weekly, fortnightly or monthly, an must be issued with the announced regularity. The non-publication of periodicals as regularly assumed by the public would constitute a breach of contract made with the public that pays for the newspapers there, and a potentially sanctionable situation that must be provided for in this law

15 - Article 16 of the PPL was given attention in the public hearings. After noting the Timorese reality where newspapers carry a large section of advertising, the question was raised whether this law should establish the maximum permissible advertising in each newspaper in comparison with news materials. If the law moves towards a requirement for a percentage breakdown of the space in a periodical or media outlet between advertising and news matters, the law should provide for penalties for non-compliance with enforcement. Related to the issue that advertising dominates in newspapers, leaving the background to the news, there arose the problem of the use of foreign languages either in advertising or in news. This led to the recommendation for the law limiting the use of foreign languages in place for news, reserving it for the national languages.

16 - Public hearings also allowed participants to share their views on the following questions:

- The Legal Repository – the obligation of periodicals to send copies to certain institutions such as the National Library, Museums, Historical Archive and Prosecutor-General
- Requiring the establishment of the Editorial Boards in the media to ensure improved quality in disseminating information and to ensure greater journalist participation in orientation and life of the media in which they provide work
- The need to ensure greater transparency in the media sector by imposing mandatory disclosure of the identity of media owners;
- The need for this law require that the media have an editorial statute as a commitment by the media to the public, this commitment to be renewed annually

IV-4 - SUBMISSIONS:

Following the public hearings, the Committee asked every organization who participated in them that if they wanted to, they could submit suggestions and recommendations for possible improvement of PPL to the Committee by 11 February 2014. During the hearings, we received welcome feedback from civil society, namely the NGO Lao Hamutuk.

Entities that presented submissions

- 1 - TIMOR-LESTE PRESS UNION - TLPU previously the TIMOR-LESTE PRESS CLUB
- 2 - RADIO LIBERDADE DILI
- 3 - TIMOR-LESTE MEDIA DEVELOPEMENT CENTRE - TLMDC
- 4 - LA'O HAMUTIK
- 5 - TIMOR POST
- 6 - JSMP (JUDICIAL SYSTEM MONITORING PROGRAMME)
- 7 - Mr. Virgilio Guterres

The criticisms and recommendations received after the holding of public hearings can be summarized as follows:

- a) - Public consultations left out people interested in the phenomenon of media who could contribute to enriching this decree, such as bloggers, book publishers, NGOs, political commentators, civil society and academics who deal with the field of social communication;
- b) - The definition of journalists leaves out independent journalists, "freelance" reporters, and corresponding "citizen journalists" not tied to a commercial company.
- c) - The restriction of journalistic activity to commercial companies, leaving out associations, foundations, churches or other institutions
- d) - Restriction of access to the profession of journalists to Timorese citizens, denying the same access to foreigners
- e) - Failure to take account of Timorese journalists trained abroad or with experience acquired abroad
- f) - The difficulty of the State in enforcing the disqualifications provided in the PPL in relation to the profession of journalists
- g) - The ban on political parties owning media violates democratic principles.
- h) - The penalty of imprisonment provided for in article 21 for the crime of attack on press freedom must be removed
- i) - The imbalance in the composition of the Press Council
- j) - Article 16 leaves out advertising through radio and limits the freedom of the media to meet the demands of consumers who want to advertise their products
- k) - The requirement of academic training for journalists does not take into account the reality of the country since the vast majority of Timorese journalists only finished secondary education and have no formal academic training for the profession
- l) - Article 4, Press freedom, when you allow the right of access to all sources with the exceptions provided in the law can be an obstacle to investigative journalism

- m) - Article 8 on incompatibilities is repressive and does not reflect the principle of democracy because it limits the number of people who wish to develop activities in the country;
- n) - Article 20 sets excessive fines for the current conditions of Timor-Leste
- o) - Media organs should be the only entity which issues accreditation for journalists, without the intervention of the Press Council
- p) - The elimination of article 7 of PPL
- q) - The wording of Article 9 has to be improved to provide punishment which could prevent a journalist from joining the journalists' organization of his/her choice
- r) - Eliminate the requirement in Article 10 as "taking into account the administrative procedures" and make journalists depend only on the Code of Ethics for Journalists.
- s) - Remove the requirement in article 15.4 for media to preserve a copy of audiovisual materials for 6 months because the media are not archives, and should not serve as secret services of the State.
- t) - Delete the word "crime" from article 18 of the PPL because defamation is no longer a crime in the Timorese Penal Code.
- u) - Eliminate article 20 or reduce fines provided for to a maximum of USD \$3,000.
- v) - Article 21 which provides for the crime of attack on freedom of information should not punish the behavior described here with imprisonment, but should be changed into an infraction punishable by a fine up to \$5,000.
- x) - The composition of the Press Council with only 5 members, 2 journalists, one chosen by the Association of Journalists and one chosen by the media. The budget of the Press Council should be under the supervision of the National Parliament
- y) - The elimination of article 13.8 which requires agencies of foreign media wishing to distribute or base a correspondent in Timor-Leste, to request authorization from the Ministry responsible on the grounds that this requirement does not reflect the appreciation that Timor-Leste should have for the contribution of foreign media who covered the struggle of the Timorese people for their emancipation during the 24 years of occupation and we do not see that foreign countries require something of Timorese journalists who cover news outside when accompanying Timorese leaders.
- z) - Elimination of Article 8(e) of the PPL because it limits individual or legal persons to develop their creativity in their economic activity.
- aa) - Article 10.5 allowing the breach of professional secrecy for journalists when in compliance with the Rules of Criminal Procedure provided that there is a threat to State Security should be added.
- bb) - Establish that received fines if convicted, pursuant to article 20 shall revert to the Press Council to be used for training journalists and supporting media.
- cc) - Remove the possibility of journalists being held liable for violating the press law, designating this responsibility only to the Editor, Chief Editor and Editor in Chief because the journalist's responsibility ends when he or she delivers text or recording to the Editor / Chief Editor / Editor in Chief.
- dd) - Delete article 22.5 of the PPL because the public should be judging the professional competence of journalists, not the Press Council.

V-CONCLUSION

Having analyzed the bill in question at length, having heard and fully considered opinions, analyses and suggestions received during the public consultation through public hearings and written submissions, the Committee concludes, among other things:

1. The explanatory memorandum was well short of fulfilling its role of to provide explanation and elucidation of the principles and philosophy on which this proposal is based, as well as the assumptions that are based on the choices made concerning the various issues that the proposed Law intends to address. This made it vastly more difficult to understand the proposal and its critical assessments, which are the center of activity for parliamentary scrutiny of legislative initiatives.
2. That the text of the bill deserves an intervention with a view to its improvement. On the one hand, with regard to the processing of submissions, to separate some topics, treating them in separate articles, with further development, as explained above in the analytical part of this report.
3. Moreover, it seems that it would be appropriate to expand the treatment of other materials, to treat them at once in this law, preventing its referral to another law, which would avoid the dispersion of material among numerous diplomas. An example of the latter case is the Press Council. We will explore these options in the “specialty” discussion.
4. That the “specialty” phase should duly consider suggestions for improving this bill, referred to in section III.3 of this Report and Opinion, as well as suggestions received during the public consultation (public hearings and written submissions), reflected in sections IV.3 and IV.4 of this Report and Opinion.

VI-OPINION:

1. It appears to the Committee that the proposed law is able to continue its procedure, because it fulfills the applicable legal and regulatory requirements and merits schedule, debate and vote in “generality” on the Plenary.
2. It also appears to the Committee that this bill deserves approval in generality.

VII-ADOPTION OF THE REPORT

This report and opinion was approved in the Committee meeting on 28 February 28 with 10 votes in favor, 0 against and 0 abstentions.

There were no declarations of vote.

Dili, the National Parliament House, 28 February 2014.

The Rapporteurs,

Deputada Benvinda Catarina Rodrigues

Deputada Aurora Ximenes

**The President of the Committee,
Carmelita Caetano Moniz**