Statement and report of a SEAPA Mission to look into a set of media laws being proposed for Timor-Leste

Submitted to:
The Office of the President, Timor-Leste
The Office of the Prime Minister, Timor-Leste
Committee A, Parliament, Timor-Leste
The Country Director, UNDP Timor-Leste
KOLKOS and all media stakeholders in Timor-Leste

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A flawed process: Drafting media laws in Timor-Leste

Following are the findings of a regional mission to Timor-Leste organized and led by the Southeast Asian Press Alliance and joined in by representatives from its member organizations, the Alliance of Independent Journalists (AJI), the Institute for Studies on the Free Flow of Information (ISAI), and the Philippine Center for Investigative Journalism (PCIJ). Also joined by SEAPA's Dili-based partner, the Timor Lorosae Journalists Association, and the SEA Legal Media Defense Network, the mission on April 16 to 18 met with KOLKOS (a network of media practitioners and stakeholders brought together to monitor all legislations affecting their sector), journalists, press freedom advocates, lawyers (including the president of the Timor-Leste Bar Association, and media development organizations and donors in Timor-Leste, including the country representatives of the UN Development Program (UNDP) and the International Center for Journalism (ICFJ). The team also met with Timor-Leste President Jose Ramos-Horta, Vice Prime Minister Dr. Jose Luis Guterres, and MP Fernanda Borges, who heads a parliamentary committee on laws impacting on the media and press freedom.

Background

The SEAPA mission was put together out of concern for a set of media-related laws being considered for the young nation. The draft laws comprise a media law, a media council law, a community radio law, a journalists statute, and

a right to information law. All were drafted by a legal consultant from Portugal hired on behalf of Committee A of Timor-Leste's National Parliament by the UNDP office in Timor-Leste. The drafts have been put forward as "zero-drafts" (in UNDP parlance), or basically discussion papers intended precisely for multi-sectoral critique, discussion, consultation, and as assumed necessary, revision.

As "zero drafts" the proposals and are not yet officially considered bills. They have yet to be submitted to the relevant committee in Parliament (Committee A), and are precisely up for consultation with the different stakeholders in Timor-Leste.

In recent months, however, the sense of needing to review and check the progress of the draft laws have grown with some palpable urgency on the part of media practitioners and advocates in the country. TLJA found many proposals troubling and threatening to media independence. And a larger network of Timor-Leste media organizations to which the TLJA belongs, referred to collectively as KOLKOS, has expressed disappointment over the process by which the drafts are being discussed.

Objectives

It was in this light that the SEAPA mission was put together. The mission's objectives were to express solidarity and lend support for our Timor-Leste partners in understanding the legislative process; to mitigate against any proposals that could undermine the foundations for press freedom in Timor-Leste; to push for a more ideal legal environment for independent media; and to help identify ways forward for all media and free press stakeholders in Timor-Leste.

Findings

After consulting with the various sectors and stakeholders in the young nation's media and journalism community, we found and report here:

- Serious problems and questions over the very process for drafting the proposals and consulting for its revision and finalization.

There have been evident gaps in the drafting and consultation process resulting in perceptions of a lack of openness, participation, transparency, and genuine cooperation. Media practitioners and free press advocacy groups in particular feel they have been inadequately consulted. Equally troubling, where they have been consulted, they have still felt isolated from the actual revision process, and perceive a weak reception to their suggestions. There is an uneasy sense that suggestions from the media to strengthen principles of self-regulation are not being accommodated and incorporated as logically as they should be in the draft laws, and instead are running up against a mindset proceeding from predetermined values and experience of the drafting consultant.

Over the past six months, UNDP had organized at least two consultative workshops involving the consultant and KOLKOS, the network of media and journalist organizations that monitors all legislation related to the press.

Clearly, however, there have been mismatches in the expectations and perceptions entering into, and emerging from, those workshops.

KOLKOS and the media practitioners they represent feel that the process was not really participatory nor completely receptive to their opinions. On the other hand, emerging too from the consultation process, journalists and media advocates acknowledge that their own capacity limitations (to comprehend, analyze, and contribute to a complex set of proposed legislations) may have handicapped the consultation from the start.

The mission notes that there were also, and continues to be, much confusion and misunderstandings over key terms in the legislation, leading to the reflection that the consultation workshops may have suffered as result. Many journalists and even parliamentarians, for example, could not make a distinction between the prospects of mere "accreditation" of journalists and their outright "licensing" under the proposed law.

- Dismay among Timorese journalists and media advocates over the content of proposed media laws, seeing them fall far short of two minimum standards set by the UNDP.

UNDP officers said they had instructed the consultant to draft with an aim of meeting two criterion: the draft should, ab initio, be relevant to and consistent with "the context of East Timor", and it should conform with international standards and principles for independent media.

The drafts for discussion have disappointed on both fronts.

For starters, the drafts were written in Portuguese and apparently derived from Portuguese models (licensing of journalists, for example, a media council with government representation, and a journalists statute that spells out duties of journalists under the law.)

Most Timor-Leste journalists and the parliamentarians we spoke with said that English, Tetum, or Bahasa would have all been friendlier and more accessible languages. Translations for all were eventually provided but somewhat too slowly. In any case, the East Timorese cannot directly monitor their comments even to the translated the drafts as revisions are done in Portuguese as well, and the wait for translations takes time yet again.

Beyond the language barrier, there are also legal and cultural hurdles. Timor-Leste's past and current legal environment for the media most closely hews to that of Indonesia. Indeed, beyond Constitutional guarantees for press freedom and in the absence of its own media laws, the Timorese Constitution allows media-related matters to be backstopped by the Press Law in Indonesia. And yet, the sense in Dili is that the search for a consultant completely bypassed Indonesia, the rest of Southeast Asia, and even Australia, Timor-Leste's closest neighbors (geographically or even politically), and headed straight for Portugal.

UNDP representatives in Timor-Leste said Constitutional requirements that legislation be finalized in Portuguese – one of two official languages for Timor-Leste, with Tetum being the second – limited the options for recruiting a Portuguese-speaking expert. This seems a flimsy reason to overlook the capacities and expertise present and

abundant in the Southeast Asian community, however. The mission raised with UNDP the question of whether or not the drafting and consultation process could in fact be conducted in English, Bahasa, and/or Tetum, and then simply allow for a final translation into Portuguese at the end of the process to meet Constitutional requirements, and the answer was that, yes, this is (and therefore should have been) possible.

On the second point of requiring drafts that conform with international standards for independent media, we found validation and multisectoral agreement over analyses already put forth by London-based Article 19, which find that certain proposals in the drafts could undermine press freedom and media independence in Timor-Leste.

Among the controversial provisions of the drafts are proposals to effectively legislate duties and ethics, license journalists, establish a parliament-appointed and highly complex, bureaucratic media council, and to slap hefty fines on reporters violating vague provisions of any of the above-mentioned proposals.

The proposed media council can fine journalists between US$500-US$2,500 and up to US$10,000 for newspapers. The amount of fines—representing anywhere from one to 10 months' worth of a typical Timor-Leste journalist's salary—will have a serious chilling effect on the media sector of what is, by any account, one of the poorest countries in the world.

Meanwhile, it is proposed that members of a national media council (the same body that will have the authority to issue and revoke licenses to journalists) will be ultimately appointed by parliament. The proposed media council will be structured to partly derive its revenue from fines imposed on journalists, creating a curious and dangerous model that would actually give incentive for the council to penalize individual journalists.

- Confusion and anxiety over the sheer volume and complexity of the package of proposed laws. There were entreaties to simplify the draft laws, prioritize among them, and consider them separately and accordingly. Stakeholders from journalists to legislators confess to being overwhelmed by the sheer volume of the proposals, and to being ill-equipped to process their provisions separately or in relation to each other.

- Urgent and united call from among independent media and press advocates and key legislators themselves for pause in the drafting process and an extension and improving of the consultation process. There is consensus among the stakeholders and leaders we spoke with that there is "no need to rush" such an important piece of legislation. There has been concern that political and parliamentary personalities may have an interest in passing the proposed media laws ahead of scheduled elections in September 2009. The media representatives reject any such timetable as unrealistic, and unduly creating additional risks of passing haphazardly considered laws. In the meantime, as stated, they feel there is adequate legal structure in all the UN Conventions to which Timor-Leste has signed, the Constitution, and the Indonesian Press Law.

Notwithstanding the above concerns, it is important to stress that the mission also found:

- Goodwill and good faith among all stakeholders, and sincerity in all efforts by parliamentarians, journalists, officials, the UNDP, and other media development proponents to develop a landmark media law in support of independent media and press freedom in Timor-Leste.

- Consensus that there is, and should continue to be, enough time to consult on, revise, and improve the latest drafts being considered, as well as a genuinely open and participatory process for undertaking the same. All parties and stakeholders agreed that "it is far from being too late", and everyone may yet consider the current draft as still being in the early stages of consultation and revision.

- Continuing acceptance and acknowledgment for the basic need for a media law. KOLKOS itself reminds that the need for a media law is required under Timor-Leste's young constitution. In this sense, the question of whether or not to even draft a media law, given all the pros and cons, is considered academic.

  On a deeper level the stakeholders do appreciate this requirement as an opportunity to strengthen independent media in Timor-Leste. They also realize the risk that it could go in the opposite direction, however. The key is to do it well, and at their own pace, and mindful of Timor-Leste's context and considerations. As a young country, Timor-Leste's context includes limited legal capacities to defend journalists in court. There are hardly any native lawyers specializing in media defense, nor, for that matter, have the country's few judges been trained on handling media cases precisely on standards of Constitutional and universal standards for human rights.

  Timor-Leste's democratic foundations cannot risk being undermined. President Ramos-Horta himself stressed that Timor-Leste has signed and is a party to all conventions on rights and development upheld and promoted the United Nations. Any media law cannot go against this.

Related to this, however, an important point was raised by legislators as well as journalists. They stressed that any discussion for new media laws cannot be truly circumspect unless and until defamation is completely decriminalized in Timor-Leste. It was therefore pointed out that government and parliament leaders had already moved to remove defamation from the penal code. As MPs themselves have noted, however, until the newly revised Penal Code is published and disseminated formalizing this commitment, criminal defamation or its abolition will provide a crucial premise that can support or undermine any new media law.

- Support for ultimately having laws on access to information and community radio. There is a proposed Right to Information law as well as a draft law in support of community radio, the most important mass medium in the country. The mission found broad appreciation for the need for such

laws—though, it must be stressed, not necessarily as currently drafted. Timor-Leste journalists are aware that specific proposed provisions for both could in themselves pose risks to their own stated intentions, and indeed run in conflict with proposals under the other three draft media laws. Article 19, for example, notes that the current draft for a Right to Information Law carries provisions for "limits on the use of information" under pain of severe penalties. In parts, the draft could in fact perpetuate a culture of secrecy rather than openness, as for example where the law would penalize disclosure of "confidential information". Meanwhile, the draft Community Radio Law is well-intentioned but "unduly rigid and stringent," as again Article 19 has pointed out. As currently drafted, the law could end up creating a barrier for new entrants to the sector, and would limit the right of community stations to network amongst themselves. For all their potential benefist and risks, there is also dismay over impressions that these laws are being considered in package with all the other draft media laws. One popular sentiment is to de-link proposed laws on Right to Information and on community radio from the other draft media laws, and to consider each separately on separate timetables.

Recommendations

In the light of the above findings, the mission urges:

- All interested and involved sectors – the media, media development supporters, and legislators – to follow their own apparent consensus that the drafting process need not be rushed, and can afford to be pursued on a deliberate, reflective pace. We urge all parties to heed their own assurances that the process is yet in an early stage. This sentiment was made explicit by all sectors consulted, from the journalists, lawyers, and media development groups, to the members of Parliament and President Ramos-Horta himself. President Ramos-Horta in fact stressed that he would rather go through the growing pains of a young democracy—the presence of an aggressive, inconvenient, and still maturing media sector included—than have a press that feels threatened by the country's laws. There is no rushing the growth and maturity of Timor-Leste's vital media community, and there can be no rushing legislation that deals precisely with their future.

- Stronger ownership of the media law proposals by media practitioners themselves, and a more open, transparent, and participatory process in the drafting and consultation for the proposed laws. This recommendation, we believe, will be helped along by:

    - As much as possible prioritizing Bahasa, English, and Tetum over Portuguese in the drafting and consultation process for the proposed laws. Instead of drafting in Portuguese and translating into the stakeholders' primary and

preferred languages for purposes of consultation, the process should place considerations for Portuguese at the very end, where it is expected under Constitutional requirements. The back-and-forth in the current process is unwieldy and full of barriers. To meet Constitutional requirements that final laws be rendered in Portuguese and/or Tetum, perhaps just one translation into either official language at the end of the process, when the actual draft laws are ready, accepted, and primed for submission and/or approval, would suffice.

- A clarification of the role of the drafting consultant. Simultaneous and related to this, there should be additional support for KOLKOS and the media sector its network represents, specifically to build up the stakeholders' capacity to take part in the drafting and consulting process for the media law.

These twin recommendations are important to the crucial task of clarifying ownership over any draft media law. Such ownership clearly should belong to independent media stakeholders in Timor-Leste itself. Any draft law ultimately submitted to Parliament's Committee A must be understood as being proposed, accepted, and endorsed by Timor-Leste's independent media practitioners themselves. Given a better process, it should be better understood that a genuine media law protective of independent media interests can only come from the journalists and media practitioners themselves.

Confusion and conflicting interpretations of the consultant's role, and the limited capacity of KOLKOS to analyze and participate in the drafting process, resulted in a consultant that apparently controlled too much of the drafting process, limitations in media stakeholders' ability to even communicate and discuss the proposed provisions amongst themselves, and ultimately a weak sense of ownership for the drafts laws among the same stakeholders. The mission cannot emphasize enough the importance of having a process and a law imbued with the Timor-Leste media sector's sense of ownership.

- Simplification and prioritization of the draft laws, and scheduling their consideration separately and accordingly. The current drafts have been overwhelming to journalists and media practitioners in Timor-Leste, and initial assumptions that they were to be submitted together as one package caused much concern. They have found it difficult to comment, and did not fully understand what process there was to either endorse or reject everything, or to extricate support for certain proposals from concern for the others.

- Broaden consultations and considerations to include the monitoring and ensuring of the final removal of defamation from Timor-Leste's Penal Code. Unless this is ensured, all discussions about any future media-related laws may be misled and for nought.

- Continue to expand and strengthen the media stakeholders in Timor-Leste, with awareness programs, capacity building, and technical support. Their own capacity to also communicate the values and principles of press freedom and independent media – values and principles including that of self-regulation, ethics, professionalism, and freedom from government interference – to the general public will also be important to sustaining any and all efforts to secure the same. Media laws will amount to nothing if the independent media sector is not supported in efforts to promote professionalism, ethics, sustainability, plurality, and diversity.

- Spell out the international standards on press freedom and independent media that Timor-Leste, as a signatory to all UN Conventions, subscribes to, as a basic and fundamental part of capacity building for stakeholders' full participation in the drafting process. UNDP and KOLKOS should continue to cooperate in this capacity building exercise, so there is also clear understanding about UNDP's own intention to see draft laws that, from the start, conform with international standards on independent media. This would form the basis for being back on the same page and agreeing on minimum standards, from which the participatory drafting process can get back on track.

- Audit and review the draft laws based on the above-mentioned international standards.

- Take better advantage of capacities and expertise on media law, and media development in general, that are already present and abundant in Southeast Asia and/or, for that matter, Australia, New Zealand, and the Pacific Islands. Indonesia, in particular, must be considered a most logical source for resources, technical and legal experts, translation services, and consultants. Southeast Asia has established networks of press freedom and independent media advocates and experts, and even networks of lawyers and legislators specializing in media matters. President Ramos-Horta himself acknowledged the importance and Timor-Leste's direction of networking and engaging with the ASEAN community now and in the immediate future. Timor-Leste's ability to develop as a democracy will benefit from the ASEAN community context, and vice versa.

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About SEAPA

SEAPA is the only regional organization with the specific mandate of promoting and protecting press freedom in Southeast Asia. SEAPA is a coalition of press freedom advocacy groups from Indonesia, the Philippines and Thailand. Its

founding members are the Manila-based Center for Media Freedom and Responsibility (CMFR), the Thai Journalists Association (TJA), Jakarta-based Alliance of Independent Journalists (AJI), Jakarta based Institute for Studies on the Free Flow if Information (ISAI), and the Philippine Center for Investigative Journalism (PCIJ).

Established in November 1998, the network aims to unite independent journalists and press-related organisations in the region into a force for the protection and promotion of press freedom and free expression in Southeast Asia.

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