

EAST TIMOR'S LEGISLATIVE BULLY

A new law could put journalists behind bars for criticizing public officials. But will it force the media into silence?

By Sonny Inbaraj

THE CURRENT MEDIA landscape in East Timor, the world's newest nation, is not a pretty one.

Journalists could face a three-year jail sentence for defamation under the recently amended penal code, which Prime Minister Mari Alkatiri revised Dec. 6, 2005. The revisions call for up to three years' imprisonment and unlimited fines for publishing statements deemed defamatory of public officials. All that is needed for the decree to become law is the president's signature.

But international press freedom groups point out that criminal defamation laws are unnecessary in a democracy and that prison penalties would undercut the fundamental democratic principle of free expression.

"Criminal defamation is an affront to free speech in East Timor," said the Brussels-based International Federation of Journalists in a statement last month. "The steps to building a democracy are not paved with Draconian laws which punish journalists for doing their work," says IFJ President Christopher Warren.

The New York-based Committee to Protect Journalists echoed IFJ's sentiments in a January letter to President Xanana Gusmao. CPJ said the bill threatens journalists whose reports on public officials or government institutions might be considered defamatory, even if the facts are fairly and accurately represented and are reported in good faith.

"Your nation's stated commitment to a free press and to democracy is undermined by measures that provide special protection to public officials," said Ann Cooper, CPJ's Executive Director, in the letter. "We believe criminal defamation laws are unnecessary in a democracy and that prison penalties

for such charges undercut the fundamental democratic principle of free expression."

Cooper appealed directly to Gusmao not to sign the legislation.

Meanwhile, journalists in the direct line of fire are worried that the decree-law will have a chilling effect on more than just the individual involved.

"This decree-law threatens the fearless nature of a free press," says Jose Ximenes, the *Timor Post* news editor. "It has the frightening effect of silencing not only individual journalists charged but the media community as a whole."

Ximenes is worried that his reporters

will be restrained in their efforts to criticize those in power. "My reporters, in particular the ones new to the profession, could be practicing self-censorship motivated by fear," he says.

The ball, however, now lies in the presidential court. On Feb. 17 Gusmao sent the draft decree back to the Ministry of Justice for reconsideration. Although he has yet to use his veto power, he is said to be awaiting a legal opinion from the Court of Appellate. According to Lusitania Cornelia Lopes, the president's chief spokesperson, Gusmao is also considering public opinion on the articles in making his decision.



The words "journalist" and "challenge" have always gone together in East Timor. Yet it was during the 1999 struggle for independence that media personnel had the greatest difficulty doing their jobs.

But signals from the Court of Appellate have not been encouraging.

In January, the president of the Appellate Court, Claudio Ximenes, told reporters that the defamation articles in the penal code "are not dangerous to democracy" in East Timor. "The situation in East Timor is different from other countries and this article will ensure social stability and democracy in the nation," he says.

Ximenes says that several European countries, such as Spain, Germany and Italy, also have similar laws criminalizing defamation. "And these are advanced democracies," says Ximenes. "So we do not have grounds to say these defamation articles will endanger democracy."

Virgilio da Silva Guterres, president of the Timor Lorosae Journalists Association, disagrees. Guterres says the law favors public officials and government leaders and protects them from criticism. In his opinion, it offers little protection for reporting facts that may be construed as defamation. He feels that the sanctions would be a setback for the dream of a democratic East Timor.

"The chilling effect of this law will prevent people, particularly journalists, to pursue the truth because of the three years' imprisonment as stipulated in this decree-law," Guterres says.

Local legal experts also point out that this decree-law goes against the country's constitution and certain international laws signed by East Timor.

"This decree-law violates the East Timor constitution," says Tiago Sarmiento, director of the Judicial System Monitoring Program, a Dili-based legal watchdog. "[It violates] Article 6, which speaks about the goals of the state, Article 40 about freedom of expression and information and also Article 41 about freedom of the press and other communications media. It also goes against the International Convention on Civil and Political Rights, which has also been ratified by the East Timor government."

East Timor's road to independence, which was achieved on May 20, 2002, was long and traumatic. After a forced 25-year occupation, Indonesia agreed in August 1999 to let the East Timorese choose between independence and local autonomy. Militia loyal to Indonesia tried in vain to use terror to discourage a vote for independence.



The fate of the proposed criminal defamation law lies in the hands of President Xanana Gusmao, whose veto would effectively kill the bill.

When the referendum showed overwhelming support for independence, the loyalists went on the rampage, murdering hundreds and reducing towns to ruins. The media was not spared. The territory's only newspaper office was burned to the ground and all printing machines in the capital, Dili, were destroyed.

An international peacekeeping force eventually halted the mayhem and paved

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the way for a United Nations mission that helped East Timor back onto its feet.

The rebuilding of East Timor has been one of the U.N.'s biggest success stories. It has helped to revive independent media outlets in the militia-destroyed territory. Yet today the reconstructed media in East Timor grapples with the challenges of rebuilding a nation and its increasingly important role in developing the new democracy.

But with the impending wind-down of the U.N. mission here and trickling donor support for media development, many are

worried that the lack of a legal and legislative infrastructure supportive of public access to information and free speech will only make things worse in East Timor.

"Without a media-supportive infrastructure, Timorese journalists are not protected against intimidation," says Aderito Hugo da Costa, director of *Timor Post*. "In addition, state interference in media rights is likely to go uncontrolled and people could withdraw their faith in the media as an impartial source of information."

According to da Costa, a media-supportive infrastructure needs time to develop and also needs donor support. "These are long-term objectives and they need international support," he says.

East Timor's economic conditions are also beginning to thwart viable and professional media. According to World Bank figures, East Timor is among the poorest countries in the world, with a per capita gross domestic product of \$366. 2001 figures also indicated that one in five people lived on less than one dollar a day and two in five lived below the national poverty line.

"Regardless of the number of journalistic competency programs, East Timor's low-functioning economy generates miniscule advertising and little revenue for independent media operators," says da Costa. "It's a daily struggle to survive."

Yet in spite of the obstacles faced by the East Timorese media, Paul McGeough, *Sydney Morning Herald's* veteran foreign correspondent, believes that the ultimate reward will be well worth the effort.

"If people in post-conflict societies can set up newspapers that are independent and not locked in with local political parties or interests, it's a huge asset," says McGeough.

"To get openness, to get newspapers working as they have to work to play their part in a democracy, they need to be funded. They need money; they need resources; they need guidance; they need training." ■



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