

# La’o Hamutuk

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## Submission to Committee A, National Parliament Democratic Republic of Timor-Leste

From  
La’o Hamutuk  
Regarding the  
Draft Media Law  
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*Translated from Tetum. For texts, information and analysis of the draft Media Law, see  
<http://www.laohamutuk.org/misc/MediaLaw/14MediaLaw.htm>*

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## Introduction

Firstly, La’o Hamutuk greatly appreciates the invitation from Committee A of the National Parliament to this hearing to discuss and share alternative analysis of draft **Law N<sup>o</sup> 9/III (2<sup>o</sup>) - Media Law**, and we hope that this discussion will help you improve this legislation before it is approved, to benefit the people and respect democratic values and human rights according to Article 40 of Timor-Leste’s Constitution and international conventions that we have ratified.<sup>1</sup>

These international conventions are legally binding on Timor-Leste, and laws need to reflect their fundamental principles.

We will discuss several issues in the draft law, as follows:

### **Do not limit the right of people to access and distribute information freely.**

Although some provisions in the draft protect people’s rights, such as **Article 17**, we see many other provisions which do not allow for the rights and freedom for everyone to access, receive and distribute information, including:

- **Article 3** about the Right to Information is limited to “**citizens**” only and doesn’t recognize the rights of non-citizens. This article violates Constitution Article 40 as well as the International Convention on Civil and Political Rights, which recognize the right of every person (not only citizens) to freedom of speech and the right to inform and be informed impartially. We suggest to change the word “**citizen**” to “**everyone.**” This suggestion also applies to **preamble paragraph 2**, and **Articles 6, 11, 13** and **22**.
- **Article 4** regarding Freedom of the Press is limited only to “**rights of journalists**” and not to other people or organizations who conduct media activities. We suggest that this article should be expanded to the right of expression of “**every person.**”
- **Article 6** about “**Journalists’ capacity**” doesn’t recognize the freedom and rights of other people who don’t have professional and academic qualifications recognized by the Press Council to conduct “**journalistic activity.**”

This article does not protect students who make a “wall newspaper” in their school, or allow journalists from other countries to work Timor-Leste, or bloggers or people who write on the internet to express their thoughts, or people and

### **International Covenant on Civil and Political Rights**

#### **Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others;
  - b) For the protection of national security or of public order, or of public health or morals.

### **RDTL Constitution**

#### **Article 40**

#### **(Freedom of speech and information)**

1. Every person has the right to freedom of speech and the right to inform and be informed impartially.
2. The exercise of freedom of speech and information shall not be limited by any sort of censorship.
3. The exercise of rights and freedoms referred to in this Section shall be regulated by law based on the imperative of respect for the Constitution and the dignity of the human person.

<sup>1</sup> <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

institutions to distribute information they receive (for example, the *Bulletin of La'o Hamutuk* and other civil society organizations, church and political parties, [www.timorhauniadoben.com](http://www.timorhauniadoben.com), [www.diakkalae.org](http://www.diakkalae.org), [www.laohamutuk.org](http://www.laohamutuk.org), [www.haktl.org](http://www.haktl.org), [www.economia-tl.blogspot.com](http://www.economia-tl.blogspot.com), television programs by Casa Produção Audiovisual (CPA), and others).

This article allows commercial media to monopolize communication, as only those recognized by the Press Council can seek, collect, select, process and distribute information to the public.

- In addition, **Articles 7 and 8** continue provisions to limit opportunity and creativity for writers who share their information with the public. This contradicts **Articles 40.1 and 40.2** of the Constitution.

Therefore, we suggest **deleting Articles 6-8 from the Media Law** and using Constitution **Articles 40 and 41** as the legal basis for “journalistic activity” of seeking, collecting, selecting, analyzing and disseminating information to the public.

### **Don't create a specific category defined as “journalism.”**

The process of seeking, collecting, selecting, analyzing and disseminating information, as words and/or images, to the public, through a media organ is defined as “journalistic activity” in **Article 2(e)** of the draft Media Law; but this is not solely the work of journalists. Many in civil society, including national and local NGOs, academic and scientific researchers, and ordinary people also do this.

The Media Law should not limit anyone's activity to collect and share information. Therefore, there should not be definitions like those in **Article 2 (e)** and **(f)**, and we suggest to explicitly state that everyone, not only journalists employed by for-profit media -- including free-lancers, part-timers, students, researchers and columnists -- has the right to collect and distribute information.

In addition, **Article 2(h)** defines “Community Radio” as radio which can be heard over a geographically determined area. This is wrong, as all radio broadcasts (including RTL and BBC) have geographic limitations.

### **The Law should promote people's rights, not those of media businesses.**

We see **Article 13** of this draft law as eroding the principle and value of media as an instrument to provide information, educate, entertain and circulate various public opinions.

This article gives “freedom” only to commercial media, and not to media created by discussion groups, students, activists, non-profit institutions, the church, communities, freelance journalists, bloggers, Facebook, Twitter to provide coverage. We suggest eliminating this provision, because it violates the principle of freedom of the press, and doesn't value a democratic state under rule of law.

### **Timor-Leste does not need a Press Council.**

This draft law says that its Press Council is different from the *Dewan Pers* in Indonesia's *Orde Baru* (New Order) dictatorship, where the Council partnered with the regime to

journalists gave to the public. However, in this draft law we see much of the role of the Press Council as limiting and censoring the activity of seeking, collecting, selecting, analyzing and disseminating information, as words or images, through social communication. **Articles 6** and **7** clearly show this.

Therefore, “defending the right to information and freedom of expression, defining their activities without being subject to any guidelines or directions from political power,” is already guaranteed by Constitution **Articles 40** and **41**, and does not require the creation of a new Press Council to promote media’s freedom of information and expression.

**Article 22.6** that the “finances of the Press Council will be assured through the State Budget” could indicate a risk of politicians’ influencing the independence of the Council, even though **22.7** hopes that this budget allocation “should not affect the Press Council’s independence.”

In addition, choosing “representatives of media owners” as Council members will orient the Council’s direction toward commercial interests, rather than protecting everyone’s right to information and press freedom. Therefore, we think that Timor-Leste does not need a Press Council. The media owners and journalists’ associations (such as AJTL, TLPU, TLPC) can govern their staff and members, but they cannot force other people to follow their rules, and should not involve the State or the law.

### **This law does not reflect Timor-Leste’s history.**

We think that Timor Leste should not forget its history of struggling for independence during 1974-1999, when many people used media to communicate and share information to defend the rights and dignity of the people of this land.

The *Seara* bulletin and Radio Maubere were used by Timorese people for many years to free Timor-Leste from colonialism and occupation. José Ramos-Horta, Xanana Gusmão, Borja da Costa and others used these media to educate, inform and direct the struggle for liberation, although they were not “professional journalists” certified by the governments of Portugal or Indonesia.

In addition, non-Timorese journalists, including Roger East, the “Balibo Five”, Sander Thoenes from the Netherlands, Agus Mulyawan from Indonesia, Kamal Bamadhaj from New Zealand, Amy Goodman from the United States, Max Stahl with his film of the Santa Cruz massacre, and other coverage are examples of freedom of the press and journalism without borders, with no geographic limitations, which supported our independence.

Media coverage helped our Diplomatic Front advocate for Timor-Leste’s independence, supported people from other countries who gave solidarity, helped the resistance and other Maubere people understand what was happening here, including the spirit of “A Luta Continua” for self-determination.

Unfortunately, this Media Law limits and tries to control the activities of journalists from other countries, as mentioned in **Articles 6** and **13.8**. Therefore, we suggest that this Media Law must reflect our history of struggle and suffering, and the contributions that free media have made to ensure that a democratic state under rule of law, which respects human rights and values, continues to grow stronger in our beloved land of Timor-Leste.

## Other comments

- Remove **Article 2(g)**. We suggest there's no need to define terms or issues not mentioned in the law, such as "media of a doctrinal or denominational nature."
- Remove **Article 9**. Each journalist has the right to affiliate with a journalists' organization, or to choose not to affiliate, so we suggest to eliminate this article. The state should not require a journalist to affiliate.
- Remove **Article 11**. "Contributing to a free and democratic society, combating any restriction on freedom of expression or freedom of the press, or any other form of restrictions on citizens' right to information" is the duty not only of journalists but of everyone. Hence we suggest eliminating this provision, as these "duties" are moral obligations, not legal ones. If a person or an institution distributes information which violates someone's privacy, or gives false information to impugn someone's reputation, the Timor-Leste Civil Code can deal with it.
- Remove **Article 12**. Although the Journalists' Code of Ethics is important for journalists as they do their work, it doesn't need to be included in the Media Law. The Code of Ethics is not the State's responsibility to create or implement. Furthermore, it cannot be imposed on everyone. Therefore, we suggest to remove this Article from the Media Law, and leave it to media organizations to decide their own Journalists' Code of Ethics. This suggestion also applies to **Articles 10.6 and 11(g)** in the draft law.

## Conclusion

Although the preamble to this draft law states "This Act aims to ensure freedom of the press, promoting the necessary balance between the exercise of this fundamental freedom and other constitutionally protected rights and values," we see that some of the content of this law itself is too far from these objectives, and can limit and risk people's freedom to receive and distribute information.

Timor-Leste has already gone for more than a decade without a Media Law, and we have not had problems with media and information. During this time, Timorese people enjoyed their right to information and freedom of expression through various media, after nearly five hundred years of repression and censorship.

Therefore, we conclude that this Media Law violates Timor-Leste Constitution Articles 40 and 41 about people's rights and freedom to seek, collect, choose, analyze and disseminate information, as words and/or images, to everyone.

This ends our submission. Thank you very much for your attention, and we remain ready to provide information or answer your questions.

Sincerely,



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