

# Timor-Leste's Draft Defamation Law Will Make It Harder to Curb Corruption

The broad scope of criminal defamation and its application presents a serious obstacle to journalists and whistleblowers seeking to expose corruption.

*By Jonas Guterres for The Diplomat, 10 August 2020*

After nearly a decade of uncertainty, Timor-Leste's National Parliament on July 20 unanimously approved an anti-corruption law, entitled Measures to Prevent and Combat Corruption. This move to reinforce the existing anti-corruption legal framework, in compliance with international standards and a national commitment to curb corruption, was widely welcomed.

In a parallel development, however, the government of Timor-Leste has also drafted a decree law on criminal defamation that seeks to protect (among other things) the "honor" (not defined) of public figures, the almost inevitable effect of which will be to discourage public scrutiny of public institutions and government officials. This move stunned the public, and has been strongly criticized by human rights activists, civil society groups, media organizations, and notable figures such as the president of the Press Council, Virgilio Guterres, and Nobel Laureate Dr. José Ramos Horta.

The argument apparently being advanced in favor of the criminalization of defamation is that it will help to "educate" society to use the right of free speech responsibly, so as not to destroy the reputation and honor of others. The minister of justice, the head of the armed forces (Major General Lere Anan Timor) and the director of the Centro Quesadhip Ruak foundation, Isabel Ruak Ferreira (who is also the spouse of the prime minister) are among the prominent individuals who have endorsed this perspective publicly.

The government, through the Ministry of Justice, circulated the draft decree law on criminal defamation and invited civil society organizations to submit legal opinions. One point that has frequently been made concerning the draft is that its scope is both overly broad and uncertain, due to the vague and subjective terms used to define particular offenses. For that reason, the draft has been criticized not just for compromising the right to free speech, but also for presenting a serious obstacle to journalists and whistleblowers wishing to expose, as part of the nation's anti-corruption efforts, the corruption that they encounter in their daily lives.

The importance of there being no such obstacles was in fact noted by President Francisco Guterres (also known as Lu-Olo) in his speech marking the 10th anniversary of Timor-Leste's Anti-Corruption Commission (CAC):

*There is evidence that a country that does not limit freedom of press and freedom of expression is more likely to be successful in fighting corruption. The voice of the people is fundamental in the mission to prevent and combat corruption.*

More broadly, the decree law raises a range of concerns.

First, such a legislative constraint, especially given its breadth and vagueness, is likely to have a chilling effect on public commentary going well beyond the mere punishment of defamatory falsehoods. It risks giving rise to a public attitude of passive submission, and (at least to some extent) a suppression of critical voices and meaningful civic engagement on vital issues of democratic governance and reform, with flow-on effects on citizen participation, good governance, and economic and social development. The draft, especially in its lengthy preamble, conveys almost no recognition that the doubtless laudable objective of promoting truthful and respectful political discourse needs to be weighed realistically against its potential impact on freedom of expression.

Second, the mind-set that underpins the draft appears to be one that would seek to constrain members of Timor-Leste's society to using language and arguments congenial to those in positions of power. This cuts across one of the key values of a democratic society: that those in power are there to serve the people, rather than the other way around, and that freedom of expression is vital for ensuring such democratic accountability. In fact, the draft quite blatantly seeks to impose harsher penalties on an ordinary member of society convicted of defaming a public figure than on a public figure who might have uttered exactly the same defamation about an ordinary member of society.

Third, the belief that a punitive system is an effective approach to educating people and improving their behavior is antiquated, reflecting a view of the criminal justice system that would not have been out of place in colonial times. Imposing criminal penalties for defamation, particularly through incarceration, looks wildly disproportional to the problem (of which few concrete examples have in fact been cited), especially when alternatives such as civil action leading to payment of damages, or court orders to publish corrections and/or apologies, appear to work effectively in many countries. In effect, the remedy will be more dangerous than the disease. The practice of imprisoning people for exercising free speech is widely seen as a major human right violation, one that can greatly damage a country's international standing and reputation and call into question its commitment to democracy. On that subject, it might be noted that TimorLeste's democratic reputation is currently one of its national assets: The country was ranked first in Southeast Asia in The Economist's Democracy Index in both 2016 and 2019.

Fourth, the existence of criminal sanctions against defamation particularly compromises the work of the media — especially in investigative journalism — and also has the potential to frighten individual citizens who might otherwise be mobilized to help to detect and expose illegal acts of corruption. Anti-corruption efforts tend to be most successful when it is clear that private citizens and media can safely raise concerns about corrupt practices and illegal acts that harm the public interest.

Defamation law can be a mighty weapon used by public officials, politicians, and powerful private actors to silence criticism and investigative journalism that could disclose embarrassing truths. Experiences from other countries, especially post-authoritarian regimes and emerging democracies, provide disturbing evidence of how corruption allegations can be stifled by defamation law. For example, a Human Rights Watch Report on the Human Rights Consequences of Criminal Defamation Law in Indonesia notes that: “The officials who have been reported to engage in corruption may retaliate by filing criminal defamation against anti-corruption whistleblowers.” The report “urges police to prevent their investigation of defamation complaints from distracting them from properly investigating the underlying corruption allegations.”

The existence of whistleblower protections is vital if hidden practices of corruption are to be uncovered. However, the protections (such as they are) in the recent anti-corruption law still fall short of international standards in several important aspects (including scope of application, disclosure procedures, nature and extent of protection, resources, and capacity of enforcement, etc.).

Fighting corruption is not only the responsibility of the Anti-Corruption Commission (CAC) and the General Prosecutor’s Office. It is a national fight, and investigative journalists and whistleblowers play a vital role in exposing corruption, especially if it involves wrongdoings by politicians, government officials, or powerful people. Public figures hold positions in which they are expected to be trustworthy, but trust is something that needs to be earned, rather than one of the benefits that comes with the job. For that reason, most democracies take the view that elected leaders and public officials, rather than deserving special protection from (even unfair or unjustified) criticism, should be prepared to live with the extreme scrutiny that is part and parcel of being publicly accountable in a democratic society.

For all of these reasons, the move by the government of Timor-Leste to criminalize defamation is against the national interest, and will likely undermine efforts to curb corruption, by suppressing to a greater or lesser extent the voices of whistleblowers and the media. If anything, there is a need instead for anti-corruption efforts to be strengthened even further, by enhancing whistleblower protections and asset recovery processes.

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