

# TIMOR-LESTE

# INTERNET FREEDOMS

# UNDER THREAT

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Timor-Leste  
Internet Freedoms under Threat

2021  
Asia Centre

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# Acknowledgements

Timor-Leste is the youngest country in Southeast Asia and enjoys high levels of freedom of expression. Despite weak telecommunication infrastructure and high costs of internet access, internet usage in Timor-Leste has been steadily rising and social media platforms have become new sites of political expression. However, concerns have arisen that internet freedoms and the rights to privacy may be affected by newly-drafted laws and initiatives proposed by the Timorese government.

Asia Centre would like to extend a sincere thank you to the organisations of La'o Hamutuk, Oxfam Timor-Leste and the Timor-Leste Journalist Association for providing their local expertise and aiding us in clarifications and valuable inputs for this report. We would also like to thank Roberto Caetano de Sousa Vicente, Executive Director of the Agency of Communication and Technology, for his feedback.

We are grateful to participants who contributed generously through their insights during our town hall, 'Timor-Leste: Internet Freedoms Under Threat' on 4 June 2021 in the run-up to the drafting of the report. There were also others in the development sector that shared information with us.

We are thankful and grateful to our partners, The International Center for Not-for-Profit Law (ICNL) and the ASEAN Parliamentarians for Human Rights (APHR) for reviewing the draft of this report and providing constructive feedback.

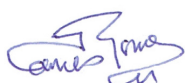
From the start, Asia Centre's Executive Director Dr. Robin Ramcharan and Programme Coordinator Yawee Butrkrawee led the research, drafting and editing. Asia Centre's Research Interns Rory McAfee, Roshni Sharma and Ayman Ragab also supported the research.

We would also like to recognise Communications Assistants Srettapong Srimekarat and Thachaporn Sathawarintu for designing the cover and formatting the text and infographics for the report. For the cover page, "Social Network" by mattjeacock via Getty Images was used. We would also like to thank Centre Manager Patcharee Rattanarong for her administration of the project.

Amidst recent civil society pushback to protect internet freedoms, it remains to be seen if the nation's pursuit of accession to the autocratic Association of Southeast Asian Nations (ASEAN) would impact Timor-Leste's democratic identity forged through years of war and suppression.

*Timor Leste: Internet Freedoms Under Threat* is dedicated to civil society activists, journalists, development specialists and parliamentarians in Timor-Leste who continue to advocate for the advancement of Timor's democratic identity.

Your Sincerely



Dr. James Gomez  
Regional Director  
Asia Centre

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# Abbreviations

AHRD	ASEAN Human Rights Declaration
AMP	Alliance for Change and Progress
ASEAN	Association of Southeast Asian Nations
CAT	Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CNRT	National Congress for Timorese Reconstruction
COVID-19	Coronavirus Disease 2019
CRC	Convention on the Rights of the Child
CRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
FRETILIN	Revolutionary Front for an Independent East Timor (Frente Revolucionária de Timor-Leste Independente)
GBV	Gender Based Violence
HRD	Human Rights Defender
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
ILO	International Labour Organisation
KHUNTO	Enrich the National Unity of the Sons of Timor party
NGO	Non-Governmental Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
PDHJ	Office of the Provedor for Human Rights and Justice (Provedor de Direitos Humanos e Justiça)
RTTL	Radio and Television of Timor-Leste
SDGs	Sustainable Development Goals
SDP	Strategic Development Plan
SR	Special Rapporteur
TATOLI	Timor-Leste News Agency
TLJA	Timor Lorosa'e Journalists' Association
UPR	Universal Periodic Review
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHRC	United Nations Human Rights Committee
UNICEF	United Nations International Children's Emergency Funds
UNTAET	United Nations Transitional Administration in East Timor
VNR	Voluntary National Review
WIPO	World Intellectual Property Organisation

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# Executive Summary

Timor-Leste ranks high on freedom indexes across academic, press and internet thresholds in Southeast Asia. It is also considered the most free country in Southeast Asia, scoring 72 on the Freedom in the World Index in 2021. As internet usage increases steadily year on year, social media platforms have become channels through which political ideals, critical discussion and free speech are being exercised.

The growth in internet and social media usage has resulted in increased criticism directed at political incumbents, who have subsequently made use of current legislation, amended existing laws and drafted new laws to curtail these criticism. The government has attempted to reinstate criminal penalties for defamation within the Penal Code as of June 2020 after this provision was removed in 2009. The draft Cybercrime Bill submitted in January 2021, due to its ambiguity, technically allows the state to intercept any form of online communication, which has the potential to intensify self-censorship among those using social media. While the draft Data Privacy and Protection Bill, scheduled for release in mid-2021, outlines provisions to ensure the protection of personal data, concerns over the operation and implementation of data collection and storage.

This report examines existing national legislation such as the Constitution, Media Law and the Penal Code, as well as new draft legislation such as the draft Criminal Defamation Law, the draft Cybercrime Bill and the announced Data Privacy and Protection Bill. Although Timor-Leste's constitution guarantees freedom of expression and freedom of the press, and its constitution and national laws are purportedly in alignment with international human rights standards, the reality is different. Legislation continues to be overly broad, allowing for potential misuse to prosecute any forms of critical speech.

Violations of human rights, including internet freedoms, have been reported in submissions to the Universal Periodic Review (UPR). Timor's low record of reporting to human rights treaty bodies casts doubts on its overall commitment. It has not been forthcoming on invitations to the UN Special Rapporteur on issues related to freedom of expression. This already-passive response may worsen if Timor-Leste is admitted into the ASEAN, as the norms of the authoritarian regional grouping further discourage adherence to human rights commitments.

This report provides specific recommendations that when implemented will enable the promotion and protection of internet freedoms, freedom of expression and access to information on the internet. Licensing requirements should be removed, vaguely worded provisions on the duty of journalists should be edited and Article 45 on the election of Press Council members should be amended in the Media Law; provisions in Section 285 of the Penal Code on slanderous denunciation should be repealed; the Draft Criminal Defamation law should be withdrawn; the Draft Cybercrime Bill should be revised to specify the threshold for a warrant to be issued for investigation, the type of data collected and the use of data, and protections should be provided to whistleblowers and their organisations from persecution; and independence of the committee overseeing the handling of the draft Data Privacy and Protection Law should be ensured.

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<sup>1</sup> Countries on Freedom House's Freedom in The World Index are given scores from 1-100 based on assessments of their political rights and civil liberties (1 = 'least free' and 100 = 'most free'). In Section D on Freedom of Expression and Belief, Timor-Leste scored 14 out of 16. Timor-Leste's country report is available here: <https://freedomhouse.org/country/timor-leste/freedom-world/2021>



# 1. Introduction

Compared to other countries in Southeast Asia, freedom of expression, both online and offline, has been well-protected in Timor-Leste thus far. However, the country's underdeveloped telecommunication infrastructure has resulted in poor access to the internet, compromising its use as a civic space. The emergence of the draft Criminal Defamation Law focused on protecting political incumbents from valid criticism has the worrying potential to impose a chilling effect on the internet landscape, as journalists and social media users alike would be likely to engage in self-censorship in fear of persecution. The draft Cybercrime Bill would undermine the work of whistleblowers as it imposes criminal liability on legal entities allowing the government to close down civil society organisations or media houses if a violation of the law occurs on its premises or by their staff. The law also criminalises access to information and threatens data privacy. An additional draft law announced on Data Privacy and Protection, while supposedly containing clauses on data protection and privacy, has the potential to be misused for policing and surveillance. The possible criminalisation of freedom of expression and misuse of personal data to track those who share critical views on the state, have resulted in significant barriers for the country's young population in their political advocacy. It has put on the backfoot the country's capacity to achieve its full democratic potential.

This report analyses the existing and proposed legislation in Timor-Leste to understand the state of internet freedoms and to offer recommendations aimed at aligning legislation with international human rights standards.

## Dashboard of Draft Laws

Criminal Defamation Law	Cybercrime Law	Data Privacy & Protection Law
		
May be used to silence critics of the government.	Criticisms may be labelled as fake news and criminalised.	Guarantees of data privacy and protection risk negation.

## 1a. Methodology

Desk research for the first draft of the baseline study was undertaken between December 2020 and January 2021, and covers the period from 2015 to June 2021. The five-year period was chosen as it marked the end of the 2nd cycle of the Universal Periodic Review (UPR) of the Human Rights Council, in November 2016, to the 3rd cycle scheduled for November 2021. Equally important, the research consults with Timor-Leste's UPR process and its relevant documents (National Reports, United Nations (UN) Reports, Stakeholder Summary, Report of the Working Group and Addendum from State under review), the 2019 Voluntary National Report (VNR) submitted for the Sustainable Development Goals (SDGs) and other relevant reports of the UN, international organisations, think-tanks and governments to identify human rights gaps and challenges to the realisation of internet freedoms. The first draft underwent a review in February 2021. Following revision from the internal review, consultation calls were conducted with local stakeholders. On 4 June 2021, a town hall consultation was held by Asia Centre to present our preliminary findings and seek comments from participants. Following feedback and consultation, the report was further revised and a second internal review was initiated in mid-June before the report was finalised and published in July 2021. A brief background is outlined in order to contextualise the ensuing analysis.



## 1b. Background

Following the collapse of the Portuguese Empire, revolutionary leaders declared Timor-Leste's independence in 1975, only for this declaration to be thwarted by annexation into Suharto's Indonesia. Following Suharto's resignation in 1998, the UN sponsored a referendum on independence and in 1999, the independentist cause won with 78% of the vote. The United Nations Transitional Administration in East Timor (UNTAET) proceeded to administer the country with the aim of steering Timor-Leste towards full independence, which was achieved in 2002. Physical infrastructure destroyed over the years of violence under Indonesian occupation was re-developed during this period. The UNTAET also aided in the establishment of a new Constitution and assisted in conducting elections. With these provisions set in place to aid Timor's democratisation, the country has seen free and fair elections, peaceful transitions of power as well as substantive human rights protections in the Constitution.

In the 2017 presidential election, the left-wing Revolutionary Front for an Independent East Timor (FRETILIN) candidate Francisco Guterres was elected. However, his party does not hold the majority in parliament, which has been controlled by an alliance of opposition parties since the 2018 parliamentary elections.<sup>2</sup> The various coalitions in parliament, however, have continued to change over time and have resulted in major political gridlock. For example, despite the governing alliance possessing a majority in parliament in 2020, a revised budget could not be passed (Leach, 2020). The uncertainty in parliament has posed a threat to the already-delicate administrative systems in the country.

## 1c. Internet Landscape

The political conflict and the ensuing violence destroyed most of the country's pre-independence power grid and telecommunications infrastructure. Hence, the information and communication technology (ICT) infrastructure had only begun to be restored with the aid of UNTAET from 1999 and onwards. After independence in 2002, the majority of the country still relies on slow and expensive satellites for internet connectivity due to a lack of fibre-optic internet connection. Timor's VNR indicates that an increasing fibre optic cables connection to deliver affordable high-speed internet access to the population is part of Timor-Leste's SDP under the SDG 9.C and SDG 16.10 to ensure public access to information (Government of Timor-Leste, 2019). In November 2020, the government approved the installation of a submarine fibre optics cable system connecting Timor-Leste with Australia (Freitas, 2020). This move will link a fiber-optic cable from Timor-Leste to an Australian cable that runs between Darwin and Port Hedland.<sup>3</sup>

The liberalisation of the telecommunication sector was only finalised in March 2012. Before 2012, *Timor Telecom* had virtually monopolised the telecommunication sector. This lack of competition resulted in the high price of broadband service. For example, 15-minute of internet use would cost as much as \$0.50 USD (Moreira, 2009). To date, despite the presence of three major mobile network service providers in the country—Timor Telecom, Telkomcel, and Telemor—expansion in internet infrastructure and reduction in subscription costs have been slow. As of 2021, 599,700 Timorese (45.1%) have access to the internet (Kemp, 2021). Despite the low percentage, the number of internet users as well as social media users has been steadily increasing. The growth of internet access and social media has provided citizens with the digital civic space to consume, produce and share information, engage in discussion and mobilise for social action.

<sup>2</sup>In the 2018 elections, the Alliance for Change and Progress (AMP) won an absolute majority of 24 out of 65 seats in Parliament. The AMP is a coalition of three opposition parties - the National Congress for Timorese Reconstruction (CNRT), the People's Liberation Party (PLP) and the Enrich the National Unity of the Sons of Timor (KHUNTO). However, as of 2020, a new coalition of the PLP, KHUNTO, and FRETILIN possess the majority in Parliament, as a result of KHUNTO formally leaving the AMP, and the PLP shifting support to FRETILIN.

<sup>3</sup>Australia's decision to provide the necessary financing for the fiber-optic cable comes amidst fears of rising Chinese influence, and is coupled with other plans to connect the neighbouring Solomon Islands and Papua New Guinea to Australia with similar fibre-optic infrastructure to prevent China's foothold in the region.

## 1d. Adherence to Human Rights Mechanisms

Freedom of expression is recognised and protected under the ICCPR, which Timor-Leste ratified in 2003. Under Article 19, *“everyone shall have the right to hold opinions without interference”, and “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”*. The ICCPR also protects internet freedoms, as Article 19 ensures the protection of free speech across all mediums: *“either orally, in writing or in print, in the form of art, or through any other media of his choice”*.

In this section, Timor-Leste’s adherence to international, regional and national human rights mechanisms as it pertains to internet freedoms are reviewed and assessed. The review is based on documents submitted to various UN human rights mechanisms, such as the UPR in 2011 and 2016, commitments to international treaties and reports from UN Special Rapporteur (SR) visits. Nationally, Timor-Leste established the Office of the Provedor for Human Rights and Justice (PDHJ), a national human rights institution (NHRI) aligned with the Paris Principles. As Timor-Leste seeks membership into the ASEAN, and would subsequently be subject to the regional human rights norms covered in the ASEAN Charter and the ASEAN Human Rights Declaration (AHRD), the implications of this for internet freedoms will also be considered.

Timor-Leste has ratified the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Committee Against Torture (CAT), Committee on the Elimination of Racial Discrimination (CERD) and International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW) treaties. With the exception of the CEDAW and CRC, Timor-Leste has not submitted its national report per the obligations of the abovementioned ratified treaties. The non-submission to the ICCPR since 2003 is regrettable, as this instrument is the most relevant to internet freedoms by guaranteeing freedom of speech through all media. Likewise, while the country has allowed SR visits by the SR on extrajudicial killing, violence against women, internally displaced persons, extreme poverty, minority issues and indigenous people since 1999, no standing invitation has been extended to the UN SRs for freedom of opinion and expression, freedom of assembly and association and the right to privacy, who would all be able to provide a more complete and comprehensive assessment on the protection of internet freedoms.

Timor-Leste has undergone two cycles of the UPR in 2011 and 2016 respectively.<sup>4</sup> Timor-Leste’s 3rd cycle is scheduled to take place in November 2021. In its national reports, Timor continues to emphasise that international standards of human rights and freedom of the press have been incorporated into its domestic legislation. However, disparity between what the government has pledged and its actual implementation on human rights protection has been highlighted in both cycles.

The major issues raised in both cycles of the UPR are as follows:

- The first cycle’s Compilation of UN Information, specifically the section ‘promotion and protection of human rights on the ground’, addressed the lack of timely submission of reports to Treaty Bodies and a lack of human rights audits undertaken by the SR on freedom of expression.
- In the Compilation of UN Information in the second cycle, it was highlighted in paragraph 43 that non-governmental organisation (NGO) staff have faced occasional threats and intimidation upon speaking on sensitive topics. According to the UN country report’s paragraph 31, in January 2016, during the Indonesian President’s visit, human rights defenders (HRD) reported facing harassment as a result of their efforts to demand accountability for past human rights violations.

- In paragraphs 46 and 47 of the Stakeholder Summary report from cycle two, the ambiguity within the Media Law and the requirements of journalist accreditation by the Press Council were emphasised, as they may potentially undermine the work of journalists and result in self-censorship.
- In paragraph 42 of the Compilation of UN Information in the second cycle, UNESCO noted that defamation is criminalised and punishable under Article 285 of Penal Code, with up to three years imprisonment or a fine.

Nationally, from 2006 to 2011, according to the UPR cycle one submissions, the PDHJ had made recommendations in relation to the 54 cases of human rights violations to government institutions. However, the majority were not implemented, nor did the government provide updates on the progress of implementation. The government has failed to communicate and implement the majority of recommendations put forward by the PDHJ that would ensure the promotion and protection of human rights.

The 'Timor-Leste Strategic Development Plan 2011-2030' was developed and approved by the parliament on 7 July 2011.<sup>5</sup> In 2015, the SDG Working Group was established to ensure that the SDGs would be reflected in annual plans and budgets, and streamlined into the existing SDP. SDG Goals 9.C and 16.10 which are relevant to internet freedoms, however, were not streamlined into the SDP. Timor's Voluntary National Review (VNR) in 2019 also presented a gap in terms of visibility for goal 16 and in particular goal 16.10 on ensuring public access to information and protecting fundamental freedoms.

As it pursues membership in the ASEAN, Timor Leste's adherence to its international human rights commitments may be sorely tested upon admission given ASEAN's poor record of adherence to its own norms under the ASEAN Charter and the ASEAN Human Rights Declaration (AHRD). Both of these documents seek to steer ASEAN towards the protection of human rights, notably freedom of opinion and expression. However, ASEAN has thus far prioritised the norm of non-interference, buttressed by consensus decision making, both of which are epitomized in the organisation's paralysis in the face of ethnic cleansing and gross violations of human rights in Myanmar in the past few years. When it is admitted, membership in ASEAN may serve to dis-incentivise Timor Leste from its international human rights commitment.

Having outlined Timor-Leste's internet landscape and international and regional standards, the next section looks at the country's legal framework. We examine the relevant provisions of the Constitution of Timor-Leste, the Media Law, the Penal Code and the Draft Criminal Defamation Law, Draft Cybercrime Bill and the announced Data Privacy and Protection Bill.

<sup>5</sup> Timor-Leste's SDP can be accessed here: <https://www.adb.org/sites/default/files/linked-documents/cobp-tim-2014-2016-sd-02.pdf>

## 2. National Laws

Even though freedom of expression is guaranteed in Timor-Leste's Constitution, there are emerging concerns that freedom of expression and, by extension, internet freedoms, are under threat. New laws containing provisions that facilitate litigation against journalists or internet users have been drafted, following a rise in criticism against government officials. In this section, an analysis of Timor-Leste's Constitution, existing domestic legislation such as the Media Law and Penal Code, new draft laws such as the Draft Law on Criminal Defamation and Draft Cybercrime Bill and the newly-announced Data Privacy and Protection Law will be undertaken. This analysis identifies gaps and loopholes that may compromise the ability to exercise freedom of expression on the internet and the right to privacy.

### 2a. Constitution

The drafting of Timor-Leste's Constitution of 2002 was guided by the UNTAET, and as such, international human rights norms significantly informed the new constitution. Devereux (2015) has noted that human rights lie at the heart of the Constitution, as it was influenced by some 40 other constitutions from around the world.

The preamble solemnly affirms respect and guarantee for human rights and fundamental freedoms of citizens. In Part I of the Constitution, Section 1 notes that Timor-Leste is to be based on the *"rule of law"*. Section 9 states that the legal system of Timor-Leste will adopt the *"rules provided in the international conventions, treaties and agreements"*. Moreover, *"all norms that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor are invalid"*. Some 40 substantive provisions provide for the protection of human rights including a wide range of civil, political, economic, social and cultural rights and also 'third generation' rights such as environmental rights.

Freedom of expression is guaranteed under article 40 and 41 of the Constitution. Article 40 provides that the right to exercise freedom of speech shall not be limited by censorship unless in respect to *"the Constitution and the dignity of the human person"*. Article 41 provides that press and media freedom is guaranteed and free from political and economic interference. Freedom of assembly is also recognised in Article 42: *"all are guaranteed the freedom to assemble peacefully and unarmed, without a need of prior authorization"*. This right must be practiced in accordance with the law.

The right to privacy is ensured under Articles 36 which states that: *"every individual has the right to honour and privacy"*. Similarly, Article 37 also mentions that *"the household, correspondence, and any private means of communication are inviolable, save in cases provided for by law"*. Meanwhile, the principle of data protection is provided for under Article 38: *"every citizen has the right to access personal data stored in a computer system or entered into mechanical or manual records regarding him or her, and he or she shall have the right to demand the purpose of such data ... the processing of personal data on private life, political and philosophical convictions, religious faith, party or trade union membership and ethnical origin, without the consent of the interested person, is prohibited"*. Despite the existence of this provision in the Constitution, as of 2021 there is no comprehensive online data protection law.

Table 1 : Selected National Legislation

The Constitution and its alignment with international human rights norms, in principle provides a framework for all other legislation that governs freedom of expression in Timor-Leste. As we will see below, the preamble of various national laws strongly affirms guarantees on rights per Article 40 and 41, but these very same legislations also contain provisions that criminalise defamation or false information. These discrepancies are reflected in the spate of incidents involving public officials, especially the freedom fighters from the independence struggle era, who have interpreted criticism directed at them as fake news, misinformation and as an affront to their honour.

Regulation	Penalty
Media Law	A fine up to US\$1,500 (Violation of Journalists' duties) A fine of US\$2,500 to \$10,000 (Refusal to comply with the right of reply)
Penal Code <ul style="list-style-type: none"> <li>Slandorous Denunciation - Section 285</li> <li>Defamation - Sections 187-A to 187-F (Proposed - 2020)</li> </ul>	Up to three year imprisonment or a fine
Draft Cybercrime Law (Draft submitted - 2021)	Up to five year imprisonment or a fine

Source: WIPO, La'o Hamutuk

## 2b. Media Law

In 2014, the Media Law was passed with the aim of ensuring freedom of the press and media as well as freedom of information. However, the law contains many vaguely-worded provisions that may lead to press censorship and restrictions on internet freedoms through the outlining of specific qualifications of a journalist, issuance of licenses, and broadly-defined moral codes. To date, there are no reported cases of the Media Law being directly invoked to prosecute journalists and internet users. However, it is worth noting that, in 2015, the law failed to protect *Timor Post* journalists Raimundos Oki and Lourenço Vicente Martins from charges of slanderous denunciation, despite their compliance with provisions in the Media Law - this incident is elaborated in 2ci.

Consequent to Article 12 (eligibility to the profession) and Article 13 (exercise of the profession), only citizens of Timor-Leste, who have certified credentials subject to periodic review by the Press Council, can qualify as a journalist. Foreign correspondents are allowed to conduct their work in as long as the Press Council approves their application for credentials. These conditions were stipulated as: *"journalists may be citizens of majority age, in the full enjoyment of civil rights and who possess at least a secondary education degree...The profession of journalist is enabled only by means of its professional license, which is to be issued and have its validity renewed by the Press Council...No media organization can hire or keep in employment as a journalist someone who is not duly certified with their credentials"*.

The prescribed provision contradicts the United Nations Human Rights Committee's (UNHRC) statement in General Comment No. 34 paragraph 44, which states that *"journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere"*. Limited accreditation is allowed in so far as it is not subjectively administered (Carter and Westenskow, 2020).



Paragraph 44 of General Comment No. 34 notes further, “*general State systems of registration or licensing of journalists are incompatible with paragraph 3*” of Article 19 of the ICCPR. Paragraph 3 of the latter only allows restrictions on freedom of expression “(a) *For respect of the rights or reputations of others; (b) For the protection of national security or of public order ...[,] public health or morals*”. Such licensing would therefore only be justified after strict examination is done, to assess the presence of threats as indicated in paragraph 3, and cannot be “*invoked as a justification for the muzzling of any advocacy of ... human rights*” according to paragraph 23 of General Comment No. 34.

Furthermore, the Media Law also contains provisions under the section ‘Duties and Functions of Journalists’. Under Article 20, it stipulates the duty of the journalists as follows:

- a) Contribute to a free and democratic society, fighting any restriction on the freedom of expression, freedom of the press or any other form of restriction on the citizens’ right to information;*
- b) Contribute to the development of society by informing citizens in an educational, honest and responsible way, in order to promote the creation of an enlightened public opinion;*
- c) Defend the plurality of opinions, ensuring the expression of different currents of opinion and respecting the citizens’ cultural, religious and ethnic diversity;*
- d) Exercise their profession with independence and impartiality, without the influence of other major interests beyond the right of public understanding;*
- e) Always observe the personal rights of citizens, including protecting their honor, dignity and privacy, except when such observance conflicts in an obvious and unequivocal way with the public interest;*
- f) Respect the presumption of innocence of legal defendants until the final judgment of the courts;*
- g) Exercise their activity with respect for ethical principles of the profession, complying with the rules contained in the Code of Ethics of Journalists.*

The Media Law’s applicability to articles posted on the internet is stated in Article 2, which defines ‘media’ as “*the dissemination of information through written text, sound or image and made available to the public, regardless of the means for its reproduction or dissemination*”. Hence, when journalists, bloggers, or any individual post news articles online or on social media platforms, they can be liable if deemed to be transgressing Article 20 above.

The government, when it deems necessary, would be able to arbitrarily use the above provisions for personal and political reasons, and penalise journalists for their critical reporting. According to Article 20(2), failure to observe the duties prescribed in the preceding paragraph is a punishable offense with a fine of up to \$1,500 USD. It is noteworthy that Article 20 and other clauses in the first iteration of the Media Law were rejected by the Court of Appeal in 2014, and sent back to Parliament for redrafting (Gosford, 2014).

These duties that journalists must abide by, listed in Article 20, are overly-broad and ambiguous. For example, journalists must inform citizens in a ‘responsible way’, but it is unclear what this ‘responsible way’ entails. The state may misuse this provision to further their own narrative, and brand any anti-state narratives as irresponsible in nature. The need to ensure ‘the expression of different currents of opinion’, while intending to ensure a lack of biased reporting, may result in the use of this Article to propagate pro-state narratives that attempt to provide subjective rebuttals to anti-state dissent. Finally, with the emphasis on the protection of honour and dignity, criticisms against state officials could warrant the use of this Article to disproportionately penalise journalists. As such, the vague nature of provisions in Article 20 can be arbitrarily interpreted to the detriment of journalists who share critical comments against the state or its officials online. This limits their internet freedoms and the use of the internet as an avenue to engage in free speech.

This provision may thus be exercised counter to the UNHRC's General Comment No. 34, which authoritatively stated that *"all public figures, including those exercising the highest political authority such as heads of state and government, are subject to criticism and political opposition ... the penalisation of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression"*.

Article 45 of the Media Law provides information on the composition of the Press Council. The Press Council, tasked by the law to oversee the licensing of journalists and supervise journalist's duties, is composed of two parliament-appointed public figures. This arrangement was criticised by the Timor Lorosa'e Journalist Association (TLJA), which fears that political interference may compromise the Council (Southeast Asian Press Alliance, 2015). As noted earlier, the licensing of journalists is not compatible with Article 19 of the ICCPR, as highlighted by paragraph 44 of Comment No. 34. The involvement of parliament-appointed figures may also run counter to the independent nature of such a body, as there are concerns about political interference that may not allow journalists to perform their duties effectively.

It is noteworthy that political interference in the work of journalists has led to dismissal and threats. In 2019, Gil Da Costa, the Chairperson of the Board of Directors of the Timor-Leste Radio and Television (RTTL) was removed from his position on 9 January 2019 following a controversial audit by the government. Da Costa was replaced by Francisco da Silva Gari, who led the auditing process. The Press Council issued a statement on Da Costa's alleged political meddling in the RTTL, also noting that certain advisors had entered the newsroom to physically request editorial changes during his reign over RTTL (Pacific Media Watch, 2019). The Council also took note of the incident when the head of the Office of the Secretary of State for Social Communication (SECOMS) Julio Goncalves, threatened to dismiss RTLL journalist Constancio Vieira from his job, following the latter's comments on freedom of the press and freedom of expression on his social media account. These are positive moves by the Press Council to ensure media organisations do not face any difficulties in engaging in journalism effectively. However, the continued presence of parliament-appointed figures still poses concerns of whether the licensing of journalists is politically motivated.

Such restrictions on press freedoms run counter to international standards noted previously. The Human Rights Committee, in General Comment No. 34, considered journalism so important that its guidelines on ensuring free expression set it apart from other forms of free expression. While limitations on rights are provided for in Article 19, the General Comment No. 34 stipulates in paragraph 34, the boundaries on such limitation in the case of journalism, namely a proportionality test:

*[R]estrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected. . . . The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law. . . . The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination*

Hence, it needs to be emphasised that the possibility of the law being used to curtail freedom of expression does exist. This possibility was reflected in the RSF's Word Press Freedom Index in 2015, when Timor-leste dropped 26 positions to rank 103 out of 180 countries, the second largest fall recorded by the Index thus far. Analyses of the law must take into account the atmosphere of self-censorship in Timor-Leste, where journalists operate with the fear of repercussions on the horizon.



Take for instance an incident from 2012, when Timor-Leste's Police Commissioner Longinhos Monteiro threatened to arrest journalists who published reports considered to be inaccurate. Seven months later, the Dili public prosecutor ordered a house arrest on two journalists for their reporting that criticised the judicial process following a fatal car accident (Kine, 2014).

In light of the threats faced by journalists in Timor-Leste from public officials, the vague and overly broad provisions of the Media Law, specifically the duties of a journalist, have the potential to be misused to restrict internet freedoms. Journalists may face restrictions on airing critical speech online, given that their work and personal opinion is increasingly being expressed and shared on online platforms, especially on social media. Political influences through the Press Council may impose limits as to what can be discussed, as well as on which journalists receive accreditation, further restricting freedom of expression online.

## 2c. Penal Code (Criminal Defamation)

Throughout the Indonesian occupation of Timor-Leste from 1975 to 1999, defamation was criminalised, and those punished faced up to one year and four months imprisonment or a fine up to IDR300 under Article 310 of Indonesia's Penal Code. Indonesia's Penal Code could be traced back to the Dutch colonial rule over Indonesia, when it was used to defend the Crown in the Netherlands and criminalise colonial subjects who criticised the Dutch government. Indonesia extensively used criminal defamation to suppress free speech during the independence struggle in Timor-Leste. Criminal defamation was removed from Timor-Leste's Penal Code when the government adopted the new Penal Code in 2009.

### 2ci. Article 285

Despite the removal of criminal defamation from the Penal Code, the occasional misuse of the 'slandorous denunciation' clause under the Section 285 of the country's Penal Code has threatened journalists and media practitioners from engaging in effective journalism and sharing critical opinions. Section 285 punishes *"any person who, by any means, before authorities or publicly, and aware of the falsity of the accusation, informs or casts suspicion on a certain person regarding commission of a crime, with the intent of having criminal proceedings initiated against said person, is punishable with up to three years imprisonment or a fine"*. The misuse of Section 285 of the Penal Code to penalise journalists who engage in critical reporting on the state, provides a glimpse into the ways the draft Criminal Defamation Law, when passed, can be used to silence criticism and opposition, ultimately posing a significant threat to free speech online.

The presence of this slanderous denunciation clause has allowed for its abuse, even in instances where other laws are present to address the situation in a manner that does not disproportionately penalise journalists. In November 2016, a slanderous denunciation charge was filed against Raimundos Oki and Lourenco Vicente Martins, journalists of the Timor Post. The case was filed under Section 285 of Penal Code over the duo's report in 2015, which alleged that Prime Minister Rui Maria de Araujo influenced the winning bid for a project supplying new IT equipment to the Ministry of Finance's new building, but misnamed the company (Associated Press, 2017). Recognising their misidentification, the two journalists observed the right of reply or correction per Article 34 of the country's Media Law, and a correction of the report and an apology was published the next day (Davidson, 2017b). However, Araujo used this mistake as a basis for filing a criminal case under Article 285 of the Penal Code against the journalists, claiming the article made damaging and incorrect insinuations, which hurt his reputation (Davidson, 2017a).

## 2cii. Draft Criminal Defamation Law

In June 2020, restitution of criminal defamation within the country's Penal Code was suggested by the Minister of Justice Manuel Cárceres de Costa. He cited the increased use of social media among the population as "[posing] increased risks, with regard to the offense of honour, of the good names and reputation of individuals" (Global Voices Advox, 2020). He put forward a draft law to amend Article 187 of the Penal Code and reinstate criminal defamation. Under the proposed Article 187-A, it would penalise *"whoever, publicly and in the absence of the victim, orally or using any other means of communication, imputes/asserts to another person a fact or utters an offensive opinion of his/her honour and prestige, or transmits that imputation/ assertion or opinion to a third party when it has not been produced by the offender/the one carrying the criminal responsibility, is punished with imprisonment up to one year or fine"*. Furthermore, under Article 187-B (aggravated penalties), if the plaintiff is an office holder, or if the statement is made through traditional or social media, the wrongdoer faces up to three years imprisonment or a fine.

The draft Criminal Defamation Law is aimed at preventing criticism on the internet and social media platforms in Timor-Leste, especially those directed towards public officials. This was overtly stated in the preamble of the law: *"through the media and social networks, the offenses against honour, good name and reputation are amplified, thus causing repercussions that affect more seriously the dignity of those targeted, and also the dignity of the State, who should also be responsible for protecting its own dignity ... [I]n this context, coupled with the need to ensure that citizens' honour, good name and reputation are not deemed incomplete rights, the Government considers it appropriate to provide for and punish certain imputations of facts or judgments that may offend them, by introducing the crimes of defamation and insults, the offense of a collective legal person [public institution, company, and the like] or those of similar prestige, and the offense on the honour of deceased person's memory in the Penal Code"*.

This clearly runs counter to the Human Rights Committees' authoritative statement in General Comment 34 that *"the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties ... [L]aws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration"*.

The use of Section 285 of the Penal Code as highlighted in 2ci provides a glimpse into the possible misuse of the draft Criminal Defamation Law, if implemented. As it stands, other laws such as the Media Law can be used to ensure quality journalism. Article 76 (the Right to an image) under Timor-Leste's Civil Code, which prohibits the reproduction, exhibition and sale of a portrait of a person if consent is not given or if that results in *"damage to the honour, reputation or mere decorum of the person portrayed,"* can also be applied. Instead, the implementation of the Criminal Defamation law would only serve to promote an environment of fear among journalists, social media bloggers, civil society activists and ordinary citizens, as they could face harsh penalties for even sharing sound critical dissent against the state.

## 2d. Draft Cybercrime Law

The draft Cybercrime Law, introduced in January 2021, is another tool aimed at tackling issues that have arisen from increased internet penetration, but it has faced criticism for its potential negative effect on freedom of expression. It is therefore ironic that ensuring public access to information is an objective that Timor-Leste tries to pursue as part of its fulfillment of the Sustainable Development Goals, stated in SDG 9.C and SDG 16.10. In submitting the draft Cybercrime Law to the Council of Ministers for consideration, public prosecutor José Ximenes shared that it would be adjusted according to the country's Penal Code and Criminal Procedure Code (de Sousa, 2021). While the implementation of such a law is the right step forward in investigating and tackling cybercrimes, it does not provide effective protections to ensure the right to privacy, or the protection of those who may have committed the offenses unintentionally.

Specifically, its provisions focus on cybercrimes and the collection of evidence pertaining to such crimes. Vague provisions may give rise to abuse of this law to curtail free speech online, as well as access to information. This is due to the lack of specificity with regard to the preservation of data (Article 15), accessing computer data (Article 17), searching computer data (Article 18), seizing computer data (Article 19), seizing emails and other electronic communications and records (Article 20), interception of communications (Article 21), leaving open the threshold of crimes that warrant investigation, types of data collected, and the destruction of data after investigations.

These provisions envisage the judicial authorisation of surveillance and investigation powers authorities must abide by when accessing, searching and preserving computer data and electronic communications. However, adequate thresholds have not been established with regards to the severity of a crime that warrants the authorisation of an investigation. For example, the draft law requires a warrant to be issued prior to accessing and searching information, data and other electronic communications, except in cases of emergency, but it does not establish evidentiary standards that must be satisfied before the court issues a warrant. Vaguely-worded clauses such as '*reasonable grounds to believe*' do not constitute a threshold high enough to avoid violation of the right to privacy; rather it is tantamount to a *de facto* acceptance of law enforcement requests, which may lead or contribute to the restriction of freedom of expression.

Freedom of expression online may be threatened if the warrant to investigate personal data is easily obtained, regardless of the necessity of the investigation, as individuals could be easily investigated over simple suspicions. The lack of clarity as to what forms of private data can be collected, could lead to the collection of data unnecessary for investigations, which can potentially be misused. Moreover, as there are no provisions on the destruction of collected data after the investigation, there is potential for the future abuse of personal data once investigations are over, threatening citizens' right to privacy (ICNL, 2021).

Article 6 (illegal access), which criminalises the unauthorised access of a computer system, and Article 7 (illegal interception), which criminalises the interception of computer data, do not ensure the protection of human rights defenders (HRD) and whistleblowers, who access and intercept such data to expose rights violations (ICNL, 2021). While illegal access is a criminal activity and therefore legitimately included in the draft Cybercrime Law, the criminalization of illegal access necessitates an intent requirement, which is not articulated in the current draft. An exception to the crime of illegal access should be made and strictly enforced when there is no damage to the underlying computer system or data and the said action relates only to exposing abuses that are in the public interest to disclose.

The ambiguity under Article 6 and 7 may lead to criminalisation, even if such information exposes the wrongdoings of the state in terms of human rights violations. Not only would the actions of HRDs and whistleblowers threaten their individual safety and their ability to perform their function, but they would also threaten the entity or project they belong to. Article 11 imposes criminal liability on legal entities or projects for cybercrimes committed *“in their name and in the collective interest of the people who occupy a leadership position,”* and by individuals *“acting under the authority”* of the leaders of the entity.

In instances where rights violations have been exposed by HRDs or whistleblowers belonging to media organisations or civil society groups, their organisations would possibly face suspension. This would greatly curtail the activities of such groups, limiting their freedom of expression especially if they engage in advocacy activities, online or offline. Article 11, in tandem with the vague provisions as to what requires an investigation under Articles 15 to 21, could potentially undermine the work of civil society groups and activists in Timor-Leste, as authorities may be able to easily investigate and surveil their work when they subjectively deem it necessary.

Article 5 of the draft Cybercrime Law provides punishment with respect to data protection and privacy; *“Whoever, without legal permission or without being authorized by the owner, by another holder of the computer system through the introduction, transmission, deterioration, damage, alteration, deletion, impediment of access or deletion of programs or other information data or any other form of interference in computer system, will be punished with imprisonment up to 5 years or with penalty of fine of up to 600 days”*. While this provision is legally sound, as it intends to criminalise electronic crimes based on computer systems, the absence of safeguards for whistleblowers and adequate judicial review for communication surveillance and interception raises concerns related to the right to freedom of expression online, and the right to privacy.

By criminalising the access to information withheld by the state that exposes rights violations, the draft Cybercrime Law runs contrary to Article 19, Paragraph 2, of the ICCPR, which stipulates that *“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”*. UNHRC’s General Comment No. 34 noted that this prescribed provision also embraces the rights of access to information withheld by public authorities and that the *“rights of access to information includes a right whereby the media has access to information on public affairs”*. As the media has the right to access information pertaining to public affairs, such a penalisation of information access or sharing will violate freedom of expression online.

## 2e. Data Privacy and Protection Provisions

With increasing internet use, issues of data protection are an emerging concern. In line with the regional rise in and development of e-government services, the Timorese government has proposed implementing a unique ID system, aimed at enabling access for citizens to a wide array of public and private sector services. The proposed online ID system would obtain citizens’ personal and biographical information in order to authenticate their identity (Government of Timor-Leste, 2021a). The collection of data for such a system would require dedicated legislation on data privacy and protection, which Timor-Leste does not have as of yet. Roberto De Sousa, Chief Executive Officer of Timor’s Agency of Communication and Technology, during an Asia Centre’s town hall discussion on 4 June 2021 noted that the government of Timor is drafting the Data Privacy and Protection Law separate from the draft Cybercrime Law

As mentioned, safeguards to the protection of personal data and privacy, as a general right applicable to citizens, are present in the Constitution under articles 36 and 37. Yet, as of 2021, there are no comprehensive online data protections or privacy legislation, which are necessary for the modern internet landscape. Provisions for key areas such as with respect to data retention are non-existent. The right to data privacy is also enshrined in Article 17 of the ICCPR, ratified by Timor-Leste, whereby *“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks”*.

Worldwide, the Coronavirus Disease 2019 (COVID-19) pandemic has spurred governments to collect detailed data on their citizens for the pretext of control and prevention; this has been no different in the case of Timor-Leste. The absence of crucial regulations on data retention leaves room for misuse in the long term of sensitive personal data, uncongenial for a young democracy.

The exposed gaps that exist in Timor-Leste’s legislation regarding data protection and privacy leave citizens’ data vulnerable to abuse. There is an obvious need for more comprehensive and specific legislation on data protection and privacy. The Agency of Communication and Technology has established that the draft legislation will be completed by mid-2021. As Timor-Leste’s sensitive private data repository grows exponentially with the Unique ID program, the need for the according legislation to ensure safe handling and protection from misuse is increased.



## 3. Impact on Freedoms

After reviewing the challenges arising from domestic legislation, this report argues that the full realisation of internet freedom in Timor-Leste is partly impeded by the meagre development and investment in the telecommunications sector. Without stable, affordable internet access, the Timorese population, especially the youth—the most politically engaged and frequent users of the internet—cannot fully express themselves and articulate their concerns to policymakers and elected officials. Despite these challenges on internet infrastructure, Timorese have steadily begun to use social media platforms for their political activism, criticising government policies and holding political figures accountable. It is for this reason that a worrying trend is emerging: government officials proposed new draft laws to reinstitute criminal defamation and criminalise ‘fake news’ to regulate online discussion and silence what they see as criticisms directed at them.

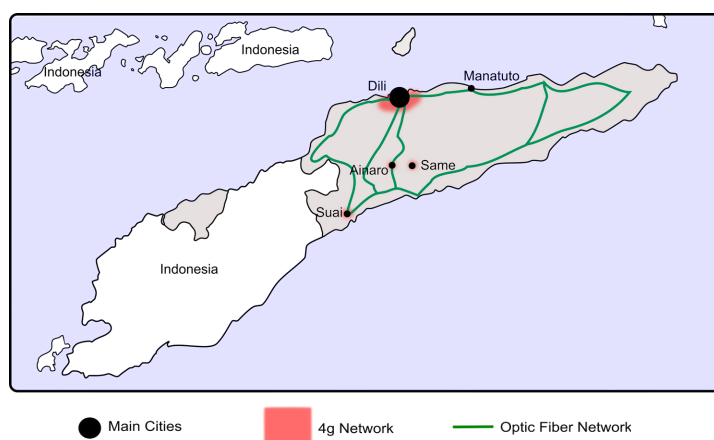
### 3a. Infrastructure

The first issue facing Timor-Leste’s internet penetration is high costs. The oligarchical structure of the sector has resulted in the continuity of high prices for the internet. In 2019, the Timorese had to pay \$200 USD per Mb, estimated to account for around 7% of their monthly revenues, when neighbouring countries pay between \$2 and \$8 USD. As a result, only 250,000 people are subscribed to 3G or 4G services (Telecompaper, 2019). Telemor, while a privately-owned company operating in the sector, is an affiliate of Viettel, a state-owned company run by Vietnam's Ministry of Defense. Such a flimsy relationship between authoritarian regimes and business entities raises an eyebrow over the prospect of infrastructure control in the time of public emergency or political upheaval, denying the rights to information and internet freedom of the larger population.

The government has been working to bring down the cost of internet access, especially due to the COVID-19 pandemic and the necessary change to the work from home approach to contain the pandemic. For example, in April 2021, the ministry of Education announced that 65,000 university students would be eligible for free internet access provided by the government. A total of \$5 million USD has been invested by the government for this policy. However, despite these provisions, there are worries that rural students may not possess the means to access online classes despite the free internet, due to poor infrastructure (Fernandes, 2021).

The second issue concerning the uptick in internet penetration is the lack of technical infrastructure in Timor-Leste that facilitates strong internet connectivity. Timor-Leste is one of the few countries lacking a submarine fibre-optic internet connection as it heavily relies on satellite internet access, a service that is considerably expensive and of poorer quality. However, as of November 2020, a submarine fibre optics cable system connecting Timor-Leste with Australia has been approved by parliament.

**Figure 1: Internet Infrastructure Network in Timor Leste**



Set to be finalised in September 2022 or May 2023, the cable would effectively lift up Timor's internet infrastructure by allowing a cheap and stable source (Observador, 2020). It is important to note at this juncture that the move behind Australia's investment in Timor-Leste is strategic in nature, to tackle China's rising presence among its neighbours. China has been expanding its influence within Southeast Asia through developmental aid as well as providing necessary infrastructure for technological advancement, most notably through its Belt and Road Initiative projects and 5G deals. In Timor-Leste, Chinese state contractors have been involved in building highways and electric grids, and the government has actively voiced its willingness to approach China for loans and further support in other infrastructure projects (Hutt, 2018). Australia has thus stepped in through technological investments, in Papua New Guinea and the Solomon Islands. The aim is to prevent China's technological firms from providing its networks to Australia's neighbouring countries, and block China from gaining a foothold close to the Australian mainland (McGuirk, 2019).



## Spotlight : Timor Leste's Internet Infrastructure

<b>Poor Connectivity</b>  Infrastructure is not extensive and does not provide adequate coverage.	<b>Expensive</b>  Lack of competition has kept prices significantly high.	<b>Geopolitics</b>  Australian strategic investment to counter Chinese influence.	<b>Urban Concentration</b>  Internet Infrastructure mostly concentrated in Dili.
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## 3b. Draft Laws

The introduction of new draft laws began in 2019 when the Minister of Legislative Reform and Parliamentary Affairs, Fidelis Manuel Leite Magalhães, suggested that the parliament is considering drafting an anti-fake news law to curb fake social media accounts spreading false information. Magalhães warned that some journalists have developed the practice of using fake accounts to criticise politicians and that media practitioners must follow the media code of ethics and be accountable for information they disseminate on social media (Xavier, 2019). The public statement from government officials was followed by the draft amendment to the Penal Code in 2020 to reinstate criminal defamation, and the draft Cybercrime Law in 2021.

This section analyses the concerns arising from the possible use of the draft laws, as well as standards they should uphold to ensure they are not misused to curtail internet freedoms or breach data privacy.

### 3bi. Draft Criminal Defamation Law

The draft Criminal Defamation Law, in its preamble section, matches government rhetoric that such draft laws are to be implemented to deter criticism of public officials. The problems with defamation laws are increasingly being recognised in Timor-Leste. Human rights advocates have encouraged using civil law and not for defamation to be a punishable criminal offense with periods of incarceration. Earlier in the drafting process of the Constitution, the TLJA advocated for Article 40 to include the right to seek, impart and receive information by all persons and for a prohibition on criminal penalties for defamation (Devereux, 2015, p.189).

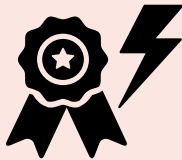


As mentioned in 2cii, the use of Article 285 to criminalise slanderous denunciation provides Timorese with a glimpse into the potential repercussions of the reintroduction of criminal defamation into the Penal Code. The country possesses existing provisions in other laws, such as the Media Law, to deal with issues concerning the publication of information online, and the restitution of criminal defamation would only serve the interests of the state in curtailing critical free speech. Public officials, regardless of position, are subject to criticism and political opposition according to the UN Human Rights Committees' General Comment 34. Public officials' rhetoric on the restitution of criminal defamation in Timor-Leste to tackle *"offenses against honour, good name and reputation"* are thus invalid according to General Comment 34. In paragraph 47 of General Comment 34, it is explicitly stated that defamation laws cannot stifle freedom of expression. *"Care should be taken by States parties to avoid excessively punitive measures and penalties"*, which may ultimately promote self-censorship in fear of such repercussions. *"States parties should consider the decriminalization of defamation"* and *"the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty"*. The government of Timor-Leste should withdraw its amendment to reinstitute criminal defamation in the Penal Code, as the government's aim of using the law to tackle critical speech clearly runs counter to international norms on freedom of expression.

Due to public pushback in 2020, it was reported that the defamation law has been shelved, though this has not been officially confirmed. According to the local NGO La'o Hamutuk, as the draft Criminal Defamation Law has not been mentioned publicly since August 2020, it may be withdrawn permanently, but could be reintroduced later (La'o Hamutuk, 2020b).

## Legal Concerns : Draft Criminal Defamation Law

### Public Rebuke



Directed at people who criticise community and political leaders.

### Legal Misuse



Law may be applied to criminalise free speech.

### Other Laws



Other relevant laws may also be used.

## 3bii. Draft Cybercrime Law

Despite being crafted as a law to tackle issues of cybercrime, Attorney José Ximenes, the architect behind the bill, gave an interview to the press explaining that the law is "to control the use of social media and the spreading of falsehoods, slander and defamation". It is thus evident that Timor's increasing internet penetration, and subsequent increased use of social media as a platform for engagement and advocacy, has threatened political incumbents. Such rhetoric might misinform the use of this law to criminalise access to information or critical speech by HRDs, media organisations, NGOs, and general internet and social media users. These fears have arisen from the vague nature of the law, in terms of what sorts of crimes warrant an investigation, the type of data collected, and the lack of protections for those who obtain information on rights violations through such accessing of data. The fact that there are currently no provisions on the destruction of personal data collected after the investigations, also leads to worries on the use of such data by the state in the future for surveilling citizens.

As Timor-Leste continues to build its internet infrastructure to facilitate an uptake in internet usage, the draft Cybercrime Law can be used as a tool to ensure any cybercrimes are dealt with effectively. Despite the presence of many well-intentioned clauses, the enactment of the law must be done objectively, without restricting freedom of expression, public access to information, or the right to privacy. The Budapest Convention on Cybercrime is currently the only major treaty that addresses cybercrimes, though it has not been ratified by Timor-Leste. It clearly addresses that the criminalisation of cybercrimes must only be in instances where the cybercrime is committed intentionally, for dishonest reasons (ICNL, 2021). Timor-Leste should adopt similar international standards in drafting its Cybercrime Law to ensure that access to information is not penalised, and data privacy is ensured during personal data collection, during the investigation, and after the investigation.

## Legal Concerns : Draft Cybercrime Law

### Investigations



Ease of receiving approval to conduct investigations.

### Data Misuse



Potential misuse of data for surveillance of critics.

### Whistleblowers



Lack of protections to whistleblowers.

During a consultation call with the Oxfam country office in Timor-Leste on 1 June 2021, journalist Zevonia Viera Fernandes revealed that the law is undergoing a review in the parliament. On 4 June 2021, La'o Hamutuk submitted an open letter to the Speaker of the parliament urging the postponement of a consideration of the Bill towards the end of the COVID-19 pandemic. In the letter La'o Hamutuk cautioned that *"in the past few years the government has tried several ways to limit and criminalize the right to access information and expression,"* and that the postponement would create a more meaningful public consultation when the pandemic subsides, as stakeholders are constrained by the state of emergency regulation and travel restrictions (La'o Hamutuk, 2021b).

## 3biii. Unique ID System and Data Privacy and Protection Law

The Timorese Agency of Communication and Technology proposed draft plans for a unique ID system in January 2021—this would involve the gathering of citizens' personal data and biographical information. NGOs in Timor, such as the La'o Hamutuk, have expressed their concerns over the suggestion to implement such a system. The Unique ID system would result in a large number of Timorese handing over their data without the necessary safeguards in place to guarantee its safe handling and protection from misuse, a valid point considering the sinuous way in which similar systems have developed amongst its regional neighbours (La'o Hamutuk, 2021a).

As mentioned earlier, there are plans in the pipeline for a Data Privacy and Protection Law to be legislated in mid-2021, though the date and specifics of that are only partially known at the time of writing. While there is currently no publicly-available draft of the Data Privacy and Protection Law, the state must ensure that the Law upholds international standards of the right to privacy and protection. From a regional perspective, data privacy and protection laws are usually vaguely worded, leaving gathered data vulnerable to misuse. In Singapore, there was a public outcry when the 'Trace Together' COVID-19 tracker data was used by police in a murder case, contradicting previous assurances from the government that data would solely be used for the purpose of COVID-19 containment (Xinghui, 2021).

## **Legal Concerns : Data Privacy and Protection Law**

### **Digital Illiteracy**



Poor understanding of privacy implications due to lack of digital literacy.

### **Privacy Violations**



Lack of voluntary consent for data collection.

### **Surveillance**



Possible surveillance of citizens.

While Timor-Leste is not in a dire situation where legislation is grossly abused, as experienced by neighbouring Southeast Asian countries, the warning signs through the proposed vaguely drafted laws of the draft Cybercrime bill and draft Defamation Amendment create concerns for the future. Timor-Leste must ensure that articles in the legislation being drafted extensively cover issues of data collection, storage, and usage. Legislators should avoid the use of vaguely worded clauses that may result in the potential misuse of the Law, or the lack of adherence to the rights to privacy enshrined in article 17 of the ICCPR. In order to ensure personal data is not abused by the state for political purposes or shared between ministries, independent oversight mechanisms should be guaranteed.

Another point of contention is that the implementation of the unique online ID system would compel Timorese citizens to cede their data in order to access government services and apply for economic relief online. Asia Center's consultation revealed that, due to low digital literacy among the population, many people do not understand the technicalities and implications linked with personal data collection and their rights to privacy and data protection. This would not only violate the people's rights to privacy and voluntary consent, but it would also be tantamount to preying on their vulnerabilities of economic dependence.

While Article 40 and 41 of the Constitution provide guarantees on freedom of expression, which extends to internet freedom, this should not be taken for granted, as the trend to legislate against what the government considers to be false information is on the horizon. As we have seen from the previous section, such endeavor through draft legislation is often vaguely-worded and risks criminalising the exercise of freedom of expression, which is contradictory to international human rights standards. It is evident that the reasons behind these draft laws have been articulated by government officials who want to shield themselves from public criticism, rather than for the benefit of the community as whole. If we look across Southeast Asia, this trend of legislating against critics is entrenching and empowering the authoritarian regime. As Timor-Leste aspires to be part of ASEAN, it needs to ask itself a hard question whether it wants to perpetuate this trend.

### 3c. Online Threats, Hate Speech and Harassment

There are also attempts to use non-legal measures such as issuing online threats or hate speech to ward off public scrutiny when the subject of discussion is government officials. The government has threatened to use arrests to criminalise what it perceives as acts of defamation or disseminating false information. However, it is often left vague as to what constitutes such acts. For example, in May 2018, after a week of people sharing photos of terrorist suspects on Facebook who were allegedly living in Timor-Leste, the country's Police Commissioner Julio Hornai commented that those who have shared fake news on social media were arrested. He urged the public not to believe information on social media and warned against spreading false information online (Ximenes, 2018).

According to the Press Council, from 2016 to 2019, there were four cases of intimidation against journalists. One of the cases involved a public official sending a message to a journalist, and publicly writing on Facebook, that the journalist "committed gross defamation against our minister" and that he "will see the consequences later" (International Federation of Journalists, 2019). As Timor-Leste's society is highly influenced by hierarchy and patriarchy, which place emphasis on the respect of elders, especially men, public officials react negatively to criticism.

#### Undesirable Online Behaviours

Online Threats	Sexual Harassment	Propaganda
		
<p>Critics have been intimidated by public officials after claims of defamation.</p>	<p>Sexual harassment of women and girls pushes them away from the internet.</p>	<p>Government owned media may push for a favorable narrative.</p>

These measures also extend to monitoring online discussion, or using software applications to communicate directly with internet users, which could potentially pave the way for spreading pro-government narratives in the future. In March 2021, it was reported that the government had used the Integrated Centre for Crisis Management to combat fake news, supervised by the Ministry of Parliamentary Affairs and Media. According to the government's website, Radio and Television of Timor-Leste (RTTL), and Timor-Leste News Agency (TATOLI) are under the Ministry's supervision, allowing the state to push out their own narratives to the public through them (Government of Timor-Leste, 2021b). Likewise, during the COVID-19 pandemic, the Ministry of Health of Timor-Leste entered into a partnership with Catalpa International, a not-for-profit technology firm, to develop a chatbot on WhatsApp to demystify COVID-19-related rumours. Once a user subscribes to the system, the chatbot will send automated messages to users' accounts. While innovative and timely, this raises concerns over the possibility of the government unilaterally sending pro-regime content after the pandemic (ABC Radio Australia, 2020).

Increased internet access has unfortunately resulted in online harassment of women. Given that domestic violence is normalised by both men and women as an acceptable form of discipline, this attitude has manifested itself online in rising hate speech and threats of violence against young girls and women (Haider, 2012). Timor's indigenous roots continue to perpetuate values of a patriarchal society where women are viewed as lesser than men. While there is positive change, particularly at the national level where Timor-Leste has one of the highest proportions of female politicians in the world and the highest in Southeast Asia, the conservative attitudes that normalise violence and hate speech against women are still very much evident. This is particularly palpable on social media platforms, where young girls and women are often targets for hate speech and threats of violence (Tatoli, 2020).

The prevalence of internet access for the majority of citizens in Timor-Leste is a relatively recent phenomenon, creating a certain naivety around digital literacy. It also provides anonymity, and therefore a platform for peoples' hidden prejudices to materialise. In a country where much of the populace have only just reconciled with their traditional views, the internet does risk becoming a catalyst for those views to once again rise up to the surface.

The internet, while being a new platform to spread violence and hate speech, also has the potential to be utilised as a means to prevent violence against women and other vulnerable groups. Asia Foundation's #GBVchat addresses a range of topics that aim to prevent gender-based violence (GBV) (Asia Foundation, 2015). Five UN agencies—UN Women, United Nations Population Fund (UNFPA), United Nations Development Programme (UNDP), United Nations International Children's Emergency Funds (UNICEF), and International Labour Organisation (ILO)—have collaborated in creating 'the spotlight initiative', focusing on creating a society where women and girls enjoy their right to a life free of violence. This group initiated another social media campaign; #WithHer, raising awareness on GBV in Timor-Leste (Spotlight Initiative, 2021).

The gaps in Timor's implementation of domestic law and the obligations and principles of international human rights treaties are the main challenge. These lapses, as mentioned from the examples above, have translated into human rights violations and self-censorship. Moving forward, there needs to be a legal review of these gaps, which shall be addressed in order to protect internet freedoms. The next section outlines some key recommendations that can act as a policy advocacy toolbox.



## 4. Recommendations

Following the review of selected national laws and their alignment to international human rights standards, we saw in the previous section examples where the application of these national laws had an impact on internet freedoms. To ensure that overall freedom of expression is protected, this section outlines a set of recommendations that can foster safeguards. Primarily, these recommendations are designed to serve as a toolbox to advocate for the protection of internet freedom, and serve as a guideline for the review of existing laws.

- Repeal Section 285 of the Penal Code that has been used to criminalise slanderous denunciation.
- Withdraw the Draft Criminal Defamation Law that criminalises defamation.
- Transform the proposed committee overseeing the correct handling of the draft Data Privacy and Protection Law into a wholly independent body consisting of a wide range of individuals from civil society.
- Amend the Media Law's licensing requirements to ensure that citizen journalists, bloggers and others are not barred from carrying out journalistic work.
- Amend vaguely-worded provisions under Article 20 of the Media Law, especially the duties of journalists, to minimise the risk of excessive punitive action against journalists.
- Amend Article 45 of the Media Law to ensure that all members of the Press Council, which supervise the enforcement of Article 20, are elected internally by the journalists and media organisations to prevent interference from the government.
- Amend Articles 15 to 21 of the Draft Cybercrime Bill to specify the threshold for a warrant to be issued for investigation, the type of data collected and the use and disposal of data.
- Amend Article 5 of the Draft Cybercrime Bill to include information on communication surveillance and data interception, as well as safeguards for whistleblowers.
- Amend Articles 6, 7 and 11 of the Draft Cybercrime Bill to ensure protections are provided to whistleblowers and HRDs, as well as their organisations or projects, if they intercept data to expose human rights violations and explicitly provide that criminal liability is subject to the test of 'intention' to commit the stipulated 'crimes'.
- Ratify the Budapest Convention on Cybercrime and abide by its standards of cybercrime legislation.
- Provide support and resources for Timor-Leste specifically in preparing, drafting and submitting reports to ICCPR and generally for drafting reports to treaty bodies.
- Support the PDHJ through the strengthening of human capital and resources so that it can contribute well in its general work as well as to issues related to freedom of expression and internet freedoms.
- Consult with UN human rights bodies or international human rights organisations when formulating new laws that might affect freedom of expression as part of a multi-stakeholder collaboration.
- Seek advice from civil society organisations and ensure meaningful public participation when drafting new laws that may impact on freedom of expression or human rights generally.
- Monitor and submit the records of the situation of freedom of expression and possible human rights violations in Timor-Leste as part of its submission to the UPR process.

While Timor-Leste has not yet experienced the misuse of vaguely-worded laws to penalise and arrest journalists or social media users to the extent other countries in Southeast Asia have, nevertheless, the existing, drafted and newly-announced laws possess the potential for misuse in order to advance the interests of incumbent politicians. Timor-Leste must thus work towards amending or repealing the abovementioned problematic legislation to safeguard its internet freedoms and democratic ideals.

## 5. Conclusion

Timor-Leste is a rare case in Southeast Asia, where fundamental freedoms are recognised and protected. However, due to the challenges affecting internet infrastructure and the emerging trend of prohibiting criticism of public officials online, freedom of expression and internet freedoms are under threat.

Low quality and underdeveloped internet infrastructure, coupled with the oligarchical nature of the telecommunication sector, have contributed to high cost of internet access, which is not affordable for the general populace in Timor-Leste.

As exemplified under Articles 40 to 44, Timor-Leste's Constitution holds the promotion and protection of basic human rights in high regard. However, there has been an emerging trend to introduce new, vaguely-worded legislation that seeks to criminalise online political expression. This trend when combined with the prospect of Timor-Leste joining ASEAN, which treats human rights and fundamental freedoms as inviolable domestic affairs and shuns out accountability to its citizenry and the international community, presents a worrying trajectory for Timor-Leste. The prospect is alarming due to the fact that, since ratifying the ICCPR in 2003, Timor-Leste has never submitted periodic reports to the ICCPR treaty body, which monitors state parties in promoting and protecting freedom of expression and other fundamental rights, of which internet freedom is a critical part.

Domestic legislation such as the Media Law (2014) and the draft Laws on Criminal Defamation (2020) and Cybercrime (2021) are not aligned with international standards and risk criminalising internet freedoms and the rights to privacy. The review of incidents show there is a trend where efforts are made through legal measures, public threats, social media monitoring teams and software applications to control and shape online content deemed offensive to the honour, good name and reputation of public office holders. These developments could curtail freedom of expression and internet freedom.

Moreover, with the collection of personal data during the COVID-19 crisis, as well as the implementation of the Unique ID system, the necessity for oversight mechanisms and laws to protect personal data and privacy has increased. While the government has announced a new Data Privacy and Protection Law, only time will tell if the principles of protection of personal data being considered for the law would be effectively implemented.

Gender inequality continues to exist in Timor-Leste. Conservative and patriarchal elements of its society remain steadfast and unwavering. In line with increasing internet use, the anonymity of social media has now become a tool to perpetuate online harassment and hate towards women and young girls.

In addressing these developmental and human rights challenges, recommendations are made to the government of Timor-Leste to ensure that both domestic and emerging laws are aligned with international standards and safeguard internet freedom. Only through such an alignment can citizens make effective use of the internet for sharing their critical opinions without fear of persecution and can the country retain its democratic ideals.



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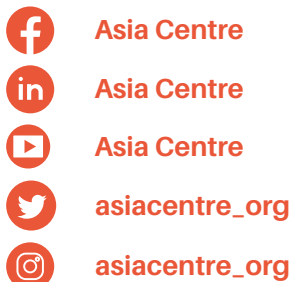
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