

EAST TIMORESE GOVERNMENT PROPOSES AMNESTY LAW

JSMP, Dili 31 May 2002 ---- As the first legislative initiative of the independent East Timorese government, a new law on amnesty and pardons for past crimes was approved by the East Timorese Council of Ministers on 25 May 2002. For reasons that are unclear, the law has been withdrawn temporarily and is currently being re-drafted.

The law proposes to grant amnesty for all crimes prior to 30 September 1999 committed by East Timorese who were coerced into joining militia groups, as long as the crimes were not "violent and bloody". The draft does not specify what crimes would be covered by this definition, and also fails to clarify what is meant by "forced to integrate to the militias". The Special Panels of the Dili District Court have previously rejected defence arguments on forced militia involvement if the accused person had an opportunity to escape from the group at some point before committing the crime.

By contrast, the draft legislation also proposes that members of the East Timorese resistance movement would be granted amnesty for any past criminal conduct, providing such conduct does not amount to war crimes, genocide or crimes against humanity. In addition, the amnesty would extend to all non-violent property offences committed prior to 20 May 2002. Finally, the new law purports to grant automatic pardons in the form of reduced sentences for all other criminal offences committed prior to 20 May 2002 that do not fall within the ambit of the amnesty provisions.

The proposed legislation has raised several concerns that relate to both the content of the law as well as the process of enacting legislation in newly independent East Timor. The law does not outline any procedures for applying for amnesty or pardons, including who would be responsible for deciding and recording who had been granted an amnesty or pardon. The new East Timorese Constitution clearly grants authority over amnesty to the National Parliament and designates the capacity to grant pardons as an exclusive Presidential power. To date, the law has been introduced as an initiative of the Council of Ministers but has not yet been presented to the National Parliament. Another concern is that the proposed law may also have significant implications for one of the central functions of the Commission for Reception, Truth and Reconciliation, namely the community reconciliation of minor offences such as isolated property offences.

It is still unclear when the revised legislation will be presented to the National Parliament.

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