



**JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

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PRESIDENT'S CRISIS AMNESTY SCHEME FLAWED

Timor-Leste's President José Ramos-Horta yesterday unveiled his legislative plan for an ambitious reconciliation process covering the events of the 2006 crisis. The draft law, authored by his office, sets out a scheme whereby those charged, or even sentenced, for their role in the crisis could be excused from criminal responsibility.

"Passage of this draft law would signal a lack of confidence in the formal justice system as an avenue for the resolution of social conflict and undermine efforts in this sector" said Casimiro dos Santos, Acting Director, JSMP.

In 2006, after much protest, a Bill establishing a process of widespread amnesty was vetoed by the then President, and returned for constitutional review by the Court. Constitutionally, amnesty is the exclusive domain of the National Parliament, whereas the granting of pardons (following a judicial process) is a part of the President's role.

Constraints on the exercise of the parliamentary amnesty power are argued by many to arise from a constitutional guarantee of the prosecution of certain serious crimes.

This new draft has not proceeded through the usual development and scrutiny stage presided over by parliamentary commissions, and has seen no public consultation.

In terms reminiscent of the Truth and Friendship Commission, the draft law speaks of establishing a definitive account of the violence that erupted in 2006, and its causes.

Trials relating to crisis events have been few, and as many as eighty accused remain in pre-trial detention, most on charges of property destruction or disturbing the peace.

JSMP understands support has been forthcoming from several parties, with a Bill to be put to the Parliament in September, seeking an initial one year mandate. Under the envisioned scheme, those accused (or even convicted) of crimes warranting less than five years' prison time are eligible to take part in round of public hearings.

Taking part in these hearings by making a confession and apology would be enough, under this community reconciliation scheme, to sidestep future court appearances.

Those accused of more serious crimes may, by application or nomination, have their case determined by a new body, the Commission for Truth and National Dialogue. Commissioners would be appointed by the President, and would be empowered to exempt individuals from penalty or prosecution if they confess their criminal acts.

Participation would, as distinct from the CAVR, halt or in some cases overturn legal proceedings in the formal justice system, with agreements superseding court orders.

In a move many will interpret as positive, the draft law entails a process of offering recompense to victims of the 2006 violence who take part in successful reconciliation.

“JSMP agrees there is a need for reparations, but maintains their receipt must not be used as an inducement, nor made conditional on participation in a flawed process” said Casimiro dos Santos, Acting Director, JSMP.

In a further break from the formal justice system, acceptance of monetary restitution would constitute a waiver of any right to pursue a civil remedy through the courts.

“The President’s growing role in developing policy, and his planned involvement in the exercise of Parliament’s amnesty power, raise substantial constitutional questions. Of similar concern is the use of executive influence to displace the role of the courts. A process that overturns judgements would seem to upset the separation of powers” said Casimiro dos Santos, Acting Director, JSMP.

JSMP contends that if the funds likely to be put toward the proposed scheme were instead directed to under-resourced courts, they would better cope with crisis cases.

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