



WHAT WILL BE THE EFFECT OF THE DRAFT AMNESTY LAW?

The Parliament has the power under section 95 (i) of the Constitution to grant amnesties. However, there are doubts as to whether the current draft law on amnesties and pardons is consistent with the Parliament's duty to guarantee and promote fundamental rights and duties of the citizens and to promote democratic rights and duties based on the rule of law (section 6(b) of the Constitution).

JSMP is an East Timorese NGO comprised of both East Timorese and international lawyers. Since April 2001 JSMP has been monitoring the operation of the new judicial system and has observed over 100 court hearings, including many serious crimes cases. JSMP aims to contribute to the development of a fair justice system for East Timor through providing independent legal analysis and information.

JSMP is as concerned as the Government to ensure that the rule of law is upheld and the rights of all East Timorese citizens are respected. Based on our experience of monitoring cases, JSMP offers this paper to illustrate some practical consequences that may follow from the current draft law that would undermine these fundamental national foundations at a crucial period in East Timor's process of nation-building and reconciliation.

An important aspect of the rule of law is the need to have clear laws that are easy to apply fairly and justly. While there are many technical legal issues for decision-makers to determine, JSMP asks the Government to consider how this law would work in the real lives of the East Timorese people.

Article 1

Practical Consequences:

A wide range of property-related crimes would be granted amnesty under this article. As "propriedade" is not defined, it may include the following situations:

- All people who are currently illegally living in public buildings
- A person who stole weapons from the police
- Indonesian soldiers who stole people's entire possessions and animals, and burnt down their homes

There is no differentiation between the crimes committed in the political conflict and crimes committed in peace. By granting amnesties to all the people who have stolen and destroy property in years since UN arrive, undoes all the work of the police and court to establish security and rule of law for the East Timorese community in the last three years.

Article 2

Practical Consequences:

- *Showing that somebody was forced to join militia is very difficult in the context of East Timor's history.* Almost every militia member who has already come before the Courts in East Timor has claimed that he was "forced" either to join the militia or to commit the crime. However, in most cases the Court has decided that the accused was not forced.

For example, in the case of *The Prosecutor v Joseph Leki* the accused said that he was forced to join the militia because otherwise his family would be killed. But the court decided that he had many opportunities to flee to the mountain with other members of the village and therefore rejected his defence that he was forced to join the militia.

Under this law, any person can claim that he was forced and deserves the amnesty, and there is no procedure to determine the truthfulness of this claim.

- All crimes committed, not just crimes that were part of the militia activities, would be covered by this provision. Therefore, a Timorese militia member who committed crimes before he joined the militia, such as drug dealing, would receive amnesties.
- As violent and sanguinary crimes are not explained in the law, many serious crimes could be included in the amnesty.

For example,:

- ⇒ Timorese militia members currently accused of holding ordinary citizens as prisoners in a military base for several months in the Lolotoe case, could receive amnesties.
- ⇒ In the Los Palos case, several Team Alpha members were convicted of the crime against humanity of forcing entire villages to leave their homes and burning their property. Would they be entitled to amnesty?
- ⇒ Timorese militia members who cut off people's access to food and medicine, which can be a genocide or crime against humanity, would receive an amnesty.

There is already a current law that explains the definitions of war crimes, genocide, crimes against humanity and torture (Regulation 2000/15), and any draft amnesty law should be clear as not to cover these most serious of crimes. Furthermore, East Timor has an obligation under international obligation to try these crimes.

Article 3

Practical Consequences:

- This article discriminates on the basis of political ideology, namely whether a person supported independence or not, and therefore violates Section 16 of the Constitution which prohibits discrimination against people on such a basis. Indonesia inflicted violence and terror on the East Timorese population on the basis of this political ideology. This law would continue the use political ideology as a means of dividing society and treating people differently on the basis of their political beliefs. This conflicts with the process of reconciliation which the East Timorese community have called for in the building of their new nation.
- There is no definition nor a process for determining who are "members of any components of the Resistance". Therefore many people could claim they were part of Resistance to receive the amnesty without needing to provide any evidence they were part of the Resistance. This would again continue to divide society on the basis of political belief.
- All crimes committed, not just crimes that were part of the political conflict, would be covered by this provision. Member of the Resistance who murdered their wife or sexually abused children would receive an amnesty for such crimes.

Article 4

Practical Consequences:

- *Violation of Constitution.* This article is inconsistent with the Constitution because section 85(i) states that the power to grant pardons and commute sentences is an exclusive competency of the president. This is a draft law of the National Parliament, which has no competency to make laws to grant pardons or commute sentences. The law does not include a procedure for an individual to make an application to the President, and it also does not include a procedure for the President to consult with the Parliament. These are both required by section 85(i) of the Constitution.
- *Reduction in sentences for people convicted of serious and horrendous crimes.* This provision applies to all crimes not granted amnesty therefore people who have been convicted of crimes against humanity will serve relatively small prison sentences.

For example, Joni Marques, a leader of Team Alpha who was convicted of 6 crimes of as a crime against humanity of many victims in the Los Palos case, was sentenced to 33 years in prison. This long sentence was imposed because of the horrendous nature of the crimes, the defenceless of the victims and to give a strong message to those who had planned and committed crimes against humanity. If it was to be reduced to 11 years, what kind of message does this send to people who have taken leading roles in committing serious crimes?

Article 7

No procedure for who will receive amnesty and who will not. The law is silent as to who will interpret and apply the amnesty law to individual cases. A fundamental principle of the rule of law is a fair process which is transparent, accessible, and applies equally to everyone. Any determination must be based on the impartial determination of fact and evidence. If amnesty are granted in a manner which is not transparent and fair in the eyes of the community, it will only further create distrust in the justice system and undermine the rule of law.

Concluding comments

For many people, there is much concern about the slow progress of justice for past crimes, and confusion about the processes already established through the Serious Crimes Unit and the Commission for Reception Truth and Reconciliation. Many people are living in their local communities with others who they have witnessed committed crimes of all kinds, crimes of violence, crimes against property, against men, women and children, politically-related crimes, ordinary crimes. It is rare for these communities to see investigation and prosecution of these crimes, nor has the promised state-sponsored reconciliation process begun. To add another element to the process of justice and reconciliation by passing an amnesty law must be considered in light of the existing needs, concerns and confusion in the community about how the government is establishing a system which will protect them and provide victims with remedy when their rights are violated.

JSMP hopes that the Parliament can take a positive step in the direction of creating a system which is capable of upholding the rule of law and protecting citizen rights – for as we all know they have been denied for too long.