



Opinion:

Implementation of the International Covenant on Civil and Political Rights (ICCPR) in relation to Law No. 1/2006 on the Freedom of Assembly and Demonstration

Introduction

Timor-Leste ratified the International Covenant on Civil and Political Rights (ICCPR)¹ in 2003 via Parliamentary Resolution No. 3/2003² which was published in the State Gazette on 23 May 2003.

Article 9.2 of the Timor-Leste Constitution states that Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette. This means that that these international instruments bind the State of Timor-Leste and oblige Timor-Leste to meet its obligations/requirements to adhere to what is set out in the legal framework.

The aim of the provisions set out in national and international legal frameworks is to ensure the protection and promotion of the fundamental rights of citizens based on the rule of law and democracy. The State is obliged to create legal policies and mechanisms to specifically deal with the enjoyment of these fundamental rights, especially to ensure that there are no impediments to the enjoyment of these rights and that there are no violations of other rights and freedoms enjoyed by citizens as well as protecting national security or public order or health or public morals as provided for in Article 19.3 a) & b) of the ICCPR.

The ICCPR specifically sets out and regulates a number of fundamental rights that citizens are entitled to relating to their civil and political rights. This opinion paper will include JSMP's observations and analysis with a focus on the obligations of the State of Timor-Leste to implement the ICCPR by creating legal policies and mechanisms to ensure the exercise of fundamental rights and freedoms to assemble and demonstrate as provided in Articles 19 and 21 of the ICCPR as well as Articles 40 and 42 of the Timor-Leste Constitution.

¹ Please refer to this covenant at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

² More information is available about this resolution at: http://www.mj.gov.tl/jornal/public/docs/2002_2005/resolucao_parlamento/3_2003.pdf

Before acceding to this covenant, Timor-Leste already set out a number of fundamental rights in the Timor-Leste Constitution, including the specific right of freedom of assembly and demonstration. To ensure the right of freedom of assembly and demonstration provided for in Article 42 of the Timor-Leste Constitution, the State, through the National Parliament, established Law No.1/2006 on the Freedom of Assembly and Demonstration. The provisions set out in the Constitution and this law state that there is no need to obtain prior authorisation before citizens can exercise their right of freedom to assemble and demonstrate peacefully and unarmed.

A demonstration is a public expression and opinion or collective feeling about a public, social or other issue relating to the common interest. A demonstration can be carried out in many ways; for example through an organised rally, parade and procession as provided for in Article 3 of Law No. 1/2006. An assembly according to the provisions of Article 2 of Law No. 1/2006 is a pre-organised crowd concentrating in a place, be it private, public or open to the public, for purposes not contrary to the law, morals, the rights of other citizens, and public order and peace.

These legal provisions are based on the principle of safeguarding and upholding the principle set out in the Constitution that Timor-Leste is a democratic, sovereign, independent State that upholds the dignity of the people. These provisions also uphold the aim of the State as set out in Article 6 (b) of the Constitution, namely that the State must guarantee and promote the fundamental rights and freedoms of the citizens and the respect for the principles of the democratic State based on the rule of law.

JSMP's observations regarding the implementation of the ICCPR are based on interviews with key and relevant entities such as representatives from academia³, civil society⁴, former community leaders⁵, the Office of the Ombudsperson for Human Rights and Justice⁶, the President of the National Youth Council of Timor-Leste⁷ and university students.⁸ In addition, JSMP will also analyse the relevant legal frameworks. This process has shown that Timor-Leste's legal policies and mechanisms for ensuring the exercise of the right and freedom to assemble and demonstrate are not yet in place, and are in contrary to the principles and spirit of the ICCPR and the Timor-Leste Constitution. JSMP has observed that some provisions are missing and some are unnecessary and

³ Interview with Mr. Faustino Soares, Assistant Lecturer at the Faculty of Philosophy, UNTL on 06/03/2018.

⁴ Interview with Mr. Inocêncio de Jesus Xavier, Activist and Public Relations Officer from AJAR (Asian Justice and Rights) on 22/02/2018.

⁵ Interview with Mr. Manuel Corria, Former Village Chief of Santa Cruz on 23/02/2018

⁶ Interview with Mr. Horacio de Almeida, Deputy Ombudsman for Human Rights and Justice (PDHJ) on 06/03/2018.

⁷ Interview with Ms. Maria Didi Soares Magno, President of the Timor-Leste National Youth Council (CNJTL) on 22/02/2018.

⁸ Interview with Mr. Crisogno Tatamailau Ana on 09/02/2018.

irrelevant, particularly several articles in Law No. 1/2006 on the Freedom of Assembly and Demonstration.

This opinion will then list the articles that need to be amended in Law No. 1/2006, such as Article 5 on restrictions, Article 8 on the Guarantees in the exercise of freedom, Article 9.2 on the presence of agents, Article 10 on prior notice, Article 13 on the identification of public places and Articles 14 and 15 on the applicable laws that refer to the criminal process, when crimes occur during a demonstration.

Details of the Interviews and Legal Analysis

In this section JSMP will detail JSMP's thoughts, analysis and recommendations, including those obtained from relevant entities interviewed by JSMP about articles in Law No. 1/2006 that they feel do not reflect the spirit of the ICCPR and the Constitution and need to be revised and amended.

1. Restrictions or prohibitions

The provisions of Article 5 on restrictions or prohibitions state that assemblies or demonstrations in a public place or in places open to the public must not occur within less than 100 metres from offices of organs of sovereignty, residences of officeholders of organs of sovereignty, military and militarised institutions, prison buildings, offices of diplomatic missions and consulates, and offices of political parties, including ports, airports, telecommunications facilities, power stations, water depots and storage facilities of water, fuel and flammable substances.

Article 19.3 and 21 of the ICCPR clearly state that there shall be no intervention and restriction on the exercise of these fundamental rights and freedoms, with an exception for cases relating to safeguarding national interests such as national or public security, public order, the protection of public health or morals and the protection of the rights and freedoms of others.

Based on JSMP's observations and analysis of this law, and also the results of interviews with relevant parties, JSMP believes that the provisions of Article 5 regarding places, buildings and facilities that are relevant to the national interest do need to be protected, however the restriction on distance does not reflect the reality of Timor-Leste, particularly in the capital of Dili. In the capital Dili almost all public buildings are less than 100 metres apart. Therefore, this law implicitly prohibits citizens from expressing or conveying their thoughts towards State organs who are their target of their demonstration, so they can hear or respond to their demands. Even if demonstrators express or convey their thoughts, they won't reach their target, because they will be too far away. Normally public institutions or sovereign organs are the target of demonstrations. Therefore, Article 5 of Law No. 1/2006 is not relevant in the context and reality of Timor-Leste.

Based on the JSMP's observations, as well as the observations and analysis of other parties, to date those demonstrators who wish to demonstrate to convey their thoughts and demands often face difficulties because the security forces require them to be a long distance from the place or building used by the State entities who are the intended target of the demonstrators, because they have to be more than 100 metres away. This often has serious implications for demonstrations because the security forces have to intervene and they commit violence against demonstrators. This has happened many times, including a recent case where the police used force to arrest, detain and commit violence against demonstrators from the Timor-Leste University Movement (MUTL) who were carrying out a peaceful action against the National Parliament because of its purchase of 'Prado' vehicles for members of parliament from the Fifth Legislature.

The parties who participated in interviews have observed that a demonstration is the last recourse that the community or groups have chosen in order to express their thoughts or feelings in the public interest regarding certain political issues that undermine the interests of many people. Therefore, demonstrations are the only means or way of finding a solution or of influencing public decisions by the State authorities that undermine the public interest or do not reflect the interests of the entire community.

To ensure the full exercise of these fundamental rights and freedoms in the appropriate manner, JSMP and the parties who participated in interviews recommend for the Government and National Parliament to:

- Amend the provisions in Article 5 of Law No. 1/2006 on the Freedom of Assembly and Demonstration;
- firstly carry out a feasibility study on distance before making amendments;
- separate those places and facilities that have a high risk to national security such as military facilities (military storage areas) telecommunications facilities, power stations, water depots and storage facilities of water, fuel and flammable substances so that severe restrictions can be applied to avoid any risk of disaster or threat to national security. Restrictions should be minimised for other places and buildings, and the distance should be amended, to ensure that citizens are able to properly express and convey their thoughts and interests in accordance with the Convention and the Constitution.

2. Prior notice or providing information beforehand

Article 21 of the ICCPR states that there are no restrictions on peaceful assemblies and demonstrations and Article 42.1 of the Timor-Leste Constitution on freedom to assemble and demonstrate states that everyone is guaranteed the freedom to assemble peacefully and unarmed, without the need for prior authorisation.

JSMP's observations of the real situation and analysis of provisions in the ICCPR and the Constitution show that citizens who wish to organise and assemble to carry out peaceful and unarmed demonstrations are not required to request permission or authorisation from the relevant State institution to exercise this right and freedom. These provisions do not give competence to the relevant State institutions to make decisions to allow or to not allow the exercise of this right to assembly and demonstration. However, it is important for security forces to ensure that assemblies and demonstrations are peaceful and unarmed to avoid conflict or confrontation between other people or groups and the demonstrators, as set out in Article 8 of Law No. 1/2006.

JSMP is concerned with the interpretation of the wording about prior notice because in practice the authorities have so far interpreted this article in contradiction to its original intention by demanding for demonstrators to provide written information to obtain permission from the police before holding a demonstration.

JSMP recommends that civil and police authorities who are granted responsibility in the law should not intervene and impede the exercise of citizens' rights and freedoms to conduct peaceful and unarmed assemblies and demonstrations without permission when prior warning has been provided about such activities. This is because the law does not give competence to civil or police authorities to make decisions to allow or to not allow assemblies or demonstrations, because the law only gives responsibility to civil and police authorities to ensure that citizens can properly exercise their fundamental rights.

3. Civil and police authorities have the responsibility of guaranteeing that citizens can exercise the right and freedom to assemble and demonstrate.

To guarantee the exercise of fundamental rights and freedoms of citizens is an objective and obligation of the State, as provided in Article 6 b) of the Timor-Leste Constitution. Therefore, in order for the State to achieve its objective and meet its obligations, Article 8 of Law No. 1/2006 on the freedom of assembly and demonstration provides a guarantee on the exercise of the right and freedom whereby civil and police authorities attend the location to ensure the exercise of the right and freedom to assemble and demonstrate. Article 9 of the aforementioned law obliges police authorities to maintain order during assemblies and demonstrations that are taking place in locations closed to the public when their attendance or support has been requested.

JSMP believes that this legal provision is appropriate to ensure the exercise of the freedom of assembly and demonstration. However, JSMP has often observed that during demonstrations to date, there have been no confrontations with other parties, but confrontations have originated from the police authorities acting against the demonstrators. Actually, the law gives responsibility to police authorities to guarantee that confrontations are avoided and that individuals or other groups (unidentified) are not able to infiltrate the demonstrators, but in reality police authorities provoke and cause

these confrontations. JSMP has observed that this problem often occurs because of the issue regarding distance when police authorities attend assemblies and demonstrations. Police authorities are too close to the place where demonstrators are demonstrating which makes them feel uncomfortable and then confrontations occur.

JSMP recommends for the National Parliament to modify Article 8 and 9 of Law No. 1/2006 to add wording to this sub-section and set out a distance for police authorities to maintain when they attend a demonstration to avoid confrontation between the two parties in the field. JSMP suggest that the distance should be approximately 15-25 metres from the demonstrators.

4. Identify and define public places for demonstrations

Articles 13 of Law No. 1/2006 gives competence to civil and police authorities to identify and define public places for citizens to exercise their right and freedom to assemble and demonstrate.

Based on JSMP's thoughts and analysis this provision is unnecessary and irrelevant. The provisions in the ICCPR and Timor-Leste Constitution prohibit restrictions on the exercise of freedom to assemble and demonstrate, except for certain places and certain issues relating to the national interest and to protect the rights and freedoms of others. Article 5 of Law No. 1/2006 restricts assemblies and demonstrations from taking place within a certain distance from certain public places and facilities. Article 42.2 of the Constitution and Article 4.1 of Law No. 1/2006 state that no prior authorisation is required or it is not necessary to request prior authorisation for assemblies and demonstrations that are carried out peacefully and without arms. Article 10 of Law No. 1/2006 only states that prior notice must be given to civil and police authorities, so that they can be informed and comply with their responsibilities set out in Article 6 b) of the Timor-Leste Constitution and Articles 8 and 9 of Law No. 1/2006 to protect and promote the fundamental rights and freedoms of citizens as well as ensuring the exercise of these rights and freedoms.

JSMP believes that the ICCPR, the Constitution and the law do not provide competence to civil and police authorities to allow or to not allow the exercise of the freedom to assemble and demonstrate in a peaceful and unarmed manner, and actually the law does not give competence to civil and police authorities to identify and determine where citizens can exercise their right and freedom to assembly and demonstrate. Citizens are actually free to choose a public place to exercise their right and freedom to assemble and demonstrate in a peaceful and unarmed manner. Civil and police authorities can intervene when the exercise of this right and freedom contradicts the legal framework or violates restrictions provided for in Article 7 of Law No. 1/2006.

For these reasons, JSMP recommends for the National Parliament to revoke Article 13 of Law No. 1/2006, in order to avoid contradiction with the provisions of the ICCPR, the Constitution and other provisions set out in this law.

Conclusions and Recommendations

The Democratic Rule of Law places the highest value on totally guaranteeing the fundamental rights and freedoms of citizens including the right and freedom to assemble and demonstrate. In this regard the State has the responsibility and obligation to fully guarantee the exercise of these fundamental rights and freedoms. The way that the State can comply with its responsibilities and obligations is by establishing sound, proper and appropriate legal policies and mechanisms in accordance with the principles enshrined in the ICCPR and the Timor-Leste Constitution.

The State of Timor-Leste has adopted the ICCPR as an international legal instrument that protects and promotes the fundamental rights and freedoms of citizens in relation to civil and political matters. Timor-Leste also provides for the protection and promotion of these fundamental rights and freedoms in its Constitution. To ensure the exercise of these rights and freedoms, the State has also established a specific policy and legal framework regarding the exercise of freedom to assemble and demonstrate. However, JSMP and the relevant parties believe that this policy and legal framework does not yet properly reflect the spirit set out in the ICCPR and Timor-Leste Constitution. Therefore, JSMP through this short opinion recommends for the National Parliament to examine and consider these points to improve Law No. 1/2006.

JSMP's recommendations are as follows:

National Parliament

- improve and amend the provisions in Article 5 of Law No. 1/2006 on the Freedom of Assembly and Demonstration;
 - firstly carry out a feasibility study on distance before making amendments;
 - separate those places and facilities that have a high risk to national security such as military facilities (military storage areas) telecommunications facilities, power stations, water depots and storage facilities of water, fuel and flammable substances so that severe restrictions can be applied to avoid any risk of disaster or threat to national security. Restrictions should be minimised for other places and buildings, and the distance should be amended, to ensure that citizens are able to properly express and convey their thoughts and interests in accordance with the Convention and the Constitution.
- to improve Articles 8 and 9 of Law No. 1/2006 wording should be added to this sub-section to determine a distance for police authorities to maintain when they

attend a demonstration to avoid confrontation between the two parties in the field. JSMP suggests that the distance should be approximately 15-25 metres from the demonstrators.

- revoke Article 13 of Law No. 1/2006, in order to avoid contradiction with the provisions of the ICCPR, the Constitution and other provisions set out in this law.

Civil and police authorities:

Should not intervene and impede the exercise of citizens' rights and freedoms to conduct peaceful and unarmed assemblies and demonstrations without permission when prior notice has been provided about such activities. This is because the law does not give competence to civil or police authorities to make decisions to allow or to not allow assemblies or demonstrations, because the law only gives responsibility to civil and police authorities to ensure that citizens can properly exercise their fundamental rights.

Dili, 26 October 2018
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