



Press Release
18 February 2022

National Parliament

JSMP believes that the revocation of Article 4 of Law No. 5/2016 on crimes that are not subject to pardons and commutations of sentences will undermine the justice system in Timor-Leste

On 8 February 2022 the National Parliament, through a plenary meeting, reevaluated Parliamentary Decree No. 50/V on the first amendment to Law No. 5/2016 which Establishes Procedures for Granting Pardons and Commutations of Sentences, after it was vetoed by the President of the Republic on 11 November 2021.

The President of the Republic vetoed this law on the grounds that, the provisions of Article 4 on crimes not subject to pardons, limit the constitutional power or exclusive competence of the President of the Republic to grant pardons and commute sentences as set out in the provisions of subsection i) of Article 85 of the Timor-Leste Constitution.

“JSMP is very disappointed with the initiative of the National Parliament to revoke the provisions of Article 4 of Law No. 5/2016 based on the request of the President of the Republic contained in the message of veto dated 11 November 2022. JSMP believes that this amendment makes it possible for crimes of corruption, drug trafficking, human trafficking, money laundering, rape and other serious crimes to be pardoned or have sentences commuted. Therefore, to ensure that the justice system is strong and to properly and effectively prevent and combat these serious crimes, JSMP urges the National Parliament not to revoke this article”, said the Executive Director of JSMP, Ana Paula Marçal.

JSMP is also concerned that the revocation of Article 4 will pose a major threat towards the justice sector in Timor-Leste which is still in its infancy and has only just started to obtain the trust of the people in relation to complex cases that disadvantage the people by providing an opportunity for pardons.

In relation to this amendment, MPs from the CNRT Bench in the plenary vigorously questioned the fundamental reasons given by the proponents to revoke Article 4 in the amended law because they believed that this goes against the Constitution in relation to limiting the competence of the President of the Republic and also on humanitarian grounds. The CNRT Bench believe that this amendment could lead to ambiguous interpretations in practice when granting pardons and commuting sentences. The CNRT Bench believes that the crimes mentioned in Article 4 are some of the crimes mentioned in International Treaties and Conventions to which Timor-Leste is a State-Party, therefore, the State is obliged to comply with the provisions of Article 9 of the Timor-Leste Constitution. These international laws do not allow for those who have committed

crimes such as genocide, crimes against humanity and transnational crimes to be pardoned or have their sentences commuted.

In JSMP's opinion, the provisions of Article 4 of Law No. 5/2016 do not go against the Timor-Leste Constitution, because these provisions do not remove the competence of the President of the Republic to grant this competence to another State body or institution. This law is a guideline for the President of the Republic when exercising his competence as set out in the provisions of Article 1 of this law which sets out the procedures for granting a pardon or commuting a sentence.

JSMP also believes that these provisions do not limit the competence of the President of the Republic to grant pardons or commute sentences, however they only limit the right of convicted persons who have committed a serious crime which has severely disadvantaged the State as well as other legitimate interests so that they cannot benefit from a policy of granting pardons and commuting sentences.

JSMP believes that even if this law does in fact limit the competence or power of the President of the Republic it does not mean that the Timor-Leste Constitution has been violated, because not only the competence or powers of sovereign organs are limited in a Democratic State based on the rule of law, because the fundamental rights and freedoms of the people are also limited by restrictions on the exercise of these rights and freedoms to protect or safeguard other fundamental rights, freedoms and legitimate interests as set out in the provisions of Article 24 of the Timor-Leste Constitution on restrictive laws. This means that special laws that regulate the exercise of power and these fundamental rights and freedoms establish limits when other legitimate interests and fundamental rights and freedoms are at risk and need protection. Unlimited power and competence or absolute power only happens in nations that have a dictatorial regime or that are undemocratic.

Limitations on those serious crimes that are not subject to a pardon or commutation of sentence are not only set out in the laws of Timor-Leste, but in Brazil there is a Presidential Decree that sets out those crimes that are not subject to pardons and commutations of sentence, as set out in the provisions of Article 10 of Decree No. 3.667/2000¹.

“Art. 10. The advantages provided under this Decree do not apply to individuals sentenced for:

I – heinous crimes or crimes of torture, terrorism or illegal trade in narcotics and similar drugs;

II - murder with intent ;

¹ The details of this Decree are available at: http://www.planalto.gov.br/ccivil_03/decreto/d3667.htm

Rua Beco Lakateu, Aldeia Manufuik,
Suku Colmera, Administrativu Vera Cruz
Dili Timor Leste
PoBox: 275

Telephone: 3323883 | 77040735

www.jsmp.tl

ana@jsmp.tl

Facebook: www.facebook.com/timorleste.jsmp

Twitter: @JSMPtl

*III - aggravated theft (Penal Code, art. 157, para. 2);
IV - those who were sentenced but, despite being financially sound, have not redressed the damage caused;
V – crimes defined in the Military Penal Code that correspond to the circumstances provided in indents I, II and III of this article;
VI – crimes against the national financial system ([Law no. 7.492, of 16 June 1986](#)).
Single paragraph. The restrictions in this article to Art. 1(1) and Art. 3 of this Decree do not apply to the circumstances provided under indent IV of Art. 1”*

On the other hand, JSMP believes that in comparison with other nations, Timor-Leste has made considerable progress, because the procedures for granting pardons and commuting sentences are detailed clearly in a separate law, especially those crimes that are not subject to a pardon when considering the other legitimate interests of the State. Therefore, it is very important for the National Parliament to maintain the provisions of Article 4 of Law No. 5/2016 on crimes that are not subject to pardons and commutation of sentences.

JSMP has conducted advocacy for a long time on the issue of pardons and commutation of sentences. In 2010, when the President of the Republic exercised his constitutional power to grant a pardon and commute a sentence for crimes of genocide and crimes against humanity in relation to the convicted person Joni Margues, JSMP wrote an opinion recommending for the National Parliament to create its own law to regulate the granting of this pardon². In 2016, when the National Parliament held a meeting on the draft law for the Granting of Pardons and Commutation of Sentences, JSMP submitted an opinion with recommendations to the National Parliament to properly define the criteria for granting pardons and those crimes that cannot be pardoned³.

The new amendments to this law were presented by members of parliament in the plenary of the National Parliament with a proposal to amend two articles, namely to revoke Article 4 on crimes that are not subject to pardons or commutation of sentences and Article 8 on the issuing of an opinion and the referral of the case by the relevant entities.

² The details of this Press Release are available at: <https://jsmp.tl/wp-content/uploads/2012/08/Kestaun-poder-Prezidensial-ba-indultu-Entre-direitu-prerogativu-no-kredibilidade-sistema-judisiariu-20-Agostu-2010.pdf>

³ The details of this opinion are available at: https://jsmp.tl/wp-content/uploads/2013/03/Paraser-kona-ba-Lei-Indultu-Prezidensial_TETUM.pdf

The proposal to amend these two articles were put forward by MPs Joaqium dos Santos, Francisco de Vasconcelos, Antonio da Conceicao, Francisco David Xavier Carlos, David dias Ximenes, Luis Roberto da Silva.

The draft law was approved in general terms with 40 votes in favour, 0 against and 4 abstentions from a total of 44 members of parliament present.

For more information, please contact:

Ana Paula Marçal
Executive Director of JSMP
Email: ana@jsmp.tl
Website: <http://jsmp.tl>
www.jsmp.tl

Rua Beco Lakateu, Aldeia Manufuik,
SukuColmera, Administrativu Vera Cruz
Dili Timor Leste
PoBox: 275
Telefone: 3323883 | 77040735

www.jsmp.tl

ana@jsmp.tl

Facebook: www.facebook.com/timorleste.jsmp

Twitter: @JSMPtl