



Press Release
6 October 2021
National Parliament

**JSMP is disappointed with the amendments to the Law on Pardons and
Commutation of Sentences:**

**These amendments make it possible for crimes of corruption to be pardoned and
for sentences to be commuted**

On 5 October 2021 the National Parliament, through a plenary meeting, held a discussion and general vote on Draft Law No. 33/V/3rd on the First Amendment to Law No. 5/2016 on the Establishment of Procedures for Pardons and Commutation of Sentences.

This law sets out separate procedures to facilitate the granting of pardons and commutation of sentences relating to the President of the Republic exercising his competence to grant a pardon and commute a sentence in accordance with the provisions of Article 85 i) of the Constitution.

“JSMP is very disappointed with the initiative of the National Parliament to amend the Law on Pardons and Commutation of Sentences because these amendments make it possible for crimes of corruption and other serious crimes to be pardoned and for sentences to be commuted. The provisions of Article 4 of the Law on Pardons and Commutation of Sentences states that all crimes of corruption and other crimes that carry a penalty of more than 8 years are not subject to a pardon and commutation of sentence. Therefore, JSMP believes that this law is fine, and it is not necessary to amend this article because it can educate and prevent people from committing corruption and serious crimes. If these provisions are removed, it will encourage people to commit corruption, homicide, rape, etc. This law guarantees their right to have a punishment reduced and to be granted freedom after demonstrating good behaviour in prison and serving one third of their sentence”, said the Executive Director of JSMP, Ana Paula Marçal.

During the plenary meeting members of parliament vehemently questioned the rationale of those advocating for the amendment of this law and also there was no clear humanitarian justification which will lead to ambiguous interpretations in practice when granting pardons and commuting sentences. Also, members of parliament believed that the procedure for granting a pardon as set out in Article 8 of Draft Law No.33/V/3rd make it possible for the President of the Republic to intervene in the work of the courts.

Pardons were practiced in the olden days, when kings (*liurai*) would forgive people who were sentenced to death, for humanitarian reasons¹. Now, humanitarian reasons are based on health such as a person suffering a physical disability or illness that causes a disability or needs intensive and ongoing treatment, etc, and age such as those who are elderly or young, and family reasons such as a mother with young children who are dependent on her. For example, in Brazil a Decree-Law sets out the types of physical disabilities including quadriplegia and illnesses, and the elderly who are 60 or above who have served one third of their sentence can be pardoned and the young who are 21 or less who have served one third of their sentence can be pardoned².

Therefore, JSMP believes that if the National Parliament wants to amend this law, the provisions of Article 3 on the criteria for granting a pardon should be improved to specifically set out the criteria in detail. This is because the provisions of Article 3.3 only set out the criteria in general terms. These provisions do not specifically define humanitarian reasons, as well as personal, family and social reasons. Therefore, it should make it easier for the Government to prepare a list of prisoners who are to be pardoned, and will also assist the President of the Republic in granting pardons, and this could include criteria for those who contributed to the fight for independence to reflect our context and reality.

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 pardons and commutation of sentences, JSMP wrote an opinion to recommend for the National Parliament to create a separate law to deal with the granting of pardons³. In 2016, when the National Parliament organised a public meeting on the draft law for Pardons and Commutations of Sentence, JSMP submitted an opinion with recommendations for the National Parliament to properly set out the criteria for the granting of pardons and crimes that are not subject to pardons⁴.

The draft amendments to this law were presented by members of parliament in the plenary of the National Parliament, namely Article 4 on crimes that are not subject to a pardon or commutation of sentence, Article 5 on fixing an annual date for the President of the Republic to grant pardons, Article 8 on opinions that are submitted with procedural documents and Article 9 on Presidential Decrees and the release of convicted persons.

This draft law was approved in general with 38 votes in favour, 16 against and 0 abstentions with a total of 54 members of parliament present.

¹ Detailed information is available in this article:

<https://repositorio.ufsc.br/xmlui/bitstream/handle/123456789/182151/Trabalho%20de%20Conclus%C3%A3o%20de%20Curso%20-%20Gabriela%20Consolaro%20Nabozny.pdf?sequence=1&isAllowed=y>

² This decree-law is available at: http://www.planalto.gov.br/ccivil_03/decreto/d3667.htm and <https://www.in.gov.br/web/dou/-/decreto-n-10.590-de-24-de-dezembro-de-2020-296387950>

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

⁴ The details of this opinion are available at: https://jsmp.tl/wp-content/uploads/2013/03/Paraser-kona-ba-Lei-Indultu-Presidencial_TETUM.pdf

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