



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Summary of Advocacy Activities

Regarding

The Freedom of Assembly and Demonstration

October 2020

I. Introduction

In 2002 through its Constituent Assembly Timor-Leste approved the Constitution of the Democratic Republic of Timor-Leste which established the democratic rule of law. Article 42 of the Timor-Leste Constitution enshrines the principle and fundamental value of the Freedom to Assemble and Demonstrate. Article 42.1 states that “*Everyone is guaranteed the freedom to assemble peacefully and unarmed, without need for prior authorization*”. Also, Article 42.2 states that “*everyone is recognised the right to demonstrate in accordance with the law*”.

In addition to the Constitution, in 2003 via Parliamentary Resolution No.3/2003, Timor-Leste ratified the International Covenant on Civil and Political Rights (ICCPR). The ICCPR is an international legal framework, and Article 19.2 specifically deals with freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 2.2. of the ICCPR urges State Parties that have not yet established legislative or other measures to ensure the exercise of the rights provided for in the Covenant to create a legislative mechanism in accordance with their own Constitution. The State of Timor-Leste has met this obligation with the approval of Law No 1/2006, February 2006, on the Freedom of Assembly and Demonstration to ensure that all citizens have the right to voice and express their thoughts based on the democratic rule of law. However, in reality and practice this law, specifically Article 5, contradicts the principles set out in Article 19.2 of the ICCPR and limits the rights of citizens to express their thoughts and concerns.

This summary was compiled by civil society including JSMP and a number of students who have shared their thoughts about the requirement to maintain a distance of 100 meters as set out in Article 5 of Law No. 1/2006, February 2006, on the Freedom of Assembly and Demonstration.

Article 5 Restrictions

1. Assemblies and demonstrations in public places, or in places open to the public, within less than 100m (one hundred metres) from offices of organs of sovereignty, residences of officeholders of organs of sovereignty, military and militarised installations, prison buildings, offices of diplomatic missions and consulates, and offices of political parties, are prohibited.

2. It is equally prohibited to hold demonstrations in places within less than 100m from ports, airports, telecommunications facilities, power stations, depots and storage facilities of water, fuel and inflammable substances.

II. JSMP's thoughts

In relation to this law, JSMP has noted that in reality demonstrators often face difficulties when demonstrating because the security authorities decide that they need to keep far away from places or buildings belonging to State entities which makes it difficult for demonstrators to express their opinions or demands, because of the 100 metre rule set out in Law No. 1/2006. This often has serious implications for demonstrations because the security authorities are obliged to intervene, and they disperse the demonstrators and commit violence against them. Previously JSMP presented an opinion¹ to the National Parliament entitled "Implementation of the International Covenant on Civil and Political Rights (ICCPR) from the Perspective of Law No. 1/2006 on the Freedom of Assembly and Demonstration" to recommend for the National Parliament to improve or amend provisions in Article 5 of Law No. 1/2006 on the Freedom of Assembly and Demonstration, and before making any amendments it is necessary to carry out a feasibility study about the 100 metre rule.

The 100 metre rule set out in Article 5 of Law No. 1/2006 is not only a concern for JSMP, but also for students and civil society groups.

III. The thoughts of civil society and students about the 100 metre rule

JSMP identified and interviewed some civil society groups and university students to hear their thoughts and concerns about the freedom of assembly and demonstration specifically in relation to Article 5 of Law No 1/2006 on restrictions.

Their thoughts are summarised below:

1) Inocencio Xavier, Coordinator of the Human Rights Defenders Network, interviewed on 22 September 2020

Coordinator of the Human Rights Defenders Network, Inocencio Xavier, is also very concerned about the 100 metre rule set out in Law No. 1/2006. Inocencio believes that the law does not reflect the current circumstances and goes against the principles in the Constitution and international instruments adopted by the State of the Timor-Leste.

"In my opinion the State wants to protect itself through this law, especially article 5 of law number 1/2006 on the 100 metre rule. For me, article 5 of this law does not reflect the current situation and contradicts the principles set out in the Constitution and international instruments adopted by the State of Timor-Leste".

He also expressed concern that when demonstrators held a demonstration in front of the UNTL building (he was referring to the autonomy of the campus or the university) the security authorities (police) showed no respect and they entered the campus and stopped the demonstrators on the basis that the distance between UNTL and the National Parliament building was less than 100 metres. This was unfavourable to the

¹ JSMP's opinion is available at: file:///C:/Users/JSMP-03/AppData/Local/Temp/Pareserkona-baLeiDemostrasau_TETUM.pdf

demonstrators who wished to express their demands to the relevant institutions (Parliament and Government).

He reiterated that such a demonstration is a type of political communication because the politicians have not kept the promises that they made when campaigning, and therefore the public can express their demands and this is why social movements emerge, especially social groups, students and civil society, who wish to express their demands in the form of a demonstration to influence politicians to change their policies to ones that are more favourable to the people and everyone's livelihoods.

2) Ms. Laura Afonso, Executive Director of CODIVA, interviewed on 23 September 2020

Ms. Laura Afonso also questioned the law on demonstrations which makes it difficult to hold a demonstration and violates people's rights, and she believes that it is necessary to amend the law so that security authorities do not use the law to carry out violence against citizens who wish to express their thoughts.

"The 100 metre rule set out in article 5 of this law restricts demonstrators from expressing their thoughts about the policies of leaders that don't correspond with what people want".

"I believe that this law needs to be amended by the National Parliament so that it reflects our Constitution and the international laws ratified by the State of Timor-Leste. The reality is that there have been massive changes in terms of development, and if we continue to have this law, then politicians will not hear our demands that we wish to convey to them, and the security authorities will use this law to commit violence against citizens who wish to express their opinions".

3) Mr. Gaspar Afonso, Director of the Timor-Leste Association of the Blind (AHDMTL), interviewed on 24 September 2020

In this interview, Mr. Gaspar Afonso questioned interventions carried out by security authorities that have disrespected the rights of others to express their thoughts on political decisions that impact on everyone's rights, including the disabled.

"We talk about the principles of the democratic rule of law which guarantee that all citizens are free to express their opinions, but in practice we don't uphold these principles. In relation to article 5 of the law on demonstrations, and the restriction that prohibits people from demonstrating within 100 metres of certain locations, we can see that development is moving forward, and lots of public buildings are very close to each other, and there is no space for people to express their thoughts, desires or dissatisfaction. This law needs to be amended. However, if politicians continue to use this law, we will not have any freedom to express our aspirations and opinions".

"I have observed that politicians continue to defend this law, because it gives them a reason to limit and prohibit citizens from freely questioning certain things. Therefore,

those of us from civil society cannot remain quiet, but we need to continue to find whatever way we can to demand for the Parliament to re-examine this law so that it reflects our current circumstances. For me, this law needs to be amended so that it does not undermine the fundamental rights guaranteed in the constitution and international laws ratified by Timor-Leste”.

4) Novelino do Santos, spokesperson for the Timor-Leste Student Front (FMTL), interviewed on 23 September 2020

The spokesperson for FMTL, Novelino do Santos, completely disagrees with the 100 metre rule set out in this law, because public institutions are very close to each other in the city of Dili.

“We can see that public institutions are close to each other, especially in Dili. Therefore, those of us from the Timor-Leste Student Front (FMTL) totally disagree with this 100 metre rule, because this is completely undemocratic and it only protects those in power. Law No, 1/2006 sets out this 100 metre rule to regulate demonstrations. This means that our State is totalitarian. This is the nature of the State”.

In addition, Novelino do Santos questioned why the police always use the 100 metre rule to intervene and disrespect the autonomy of the university.

“...the distance between the UNTL and the Parliament is less than 100 metres and this always gives a reason to the police to intervene and disrespect the autonomy of the university. We organised an action against the lifelong pension, and an action against the Parliament for purchasing Prado vehicles, as well as the case involving the Ministry of Education committing discrimination in relation to school fees, and the law criminalizing defamation and injury. The response of the police is always counterproductive, and they commit violations against citizens, and this is because of article 5 of law number 1/2006. Therefore, FMTL does not agree with this law, and wants it to be amended urgently”.

5) Ms. Marta da Silva, Coordinator of La’o Hamutuk, interviewed on 19 October 2020

The Coordinator of La’o Hamutuk, Ms. Marta da Silva is disappointed about the spaces provided for in Law No.1/2006 and recommends a review.

“We, the people, need sufficient space to express our disappointment regarding political decisions that do not reflect the interests of the people. However, this law also places limitations on demonstrations where people wish to express their thoughts in public spaces which are the target of their action. A major issue with this law is that it states that demonstrations must be more than 100 metres from public buildings, however in reality nearly all institutions are close together in Dili. Therefore the security authorities use the Public Order and Traffic Code to place limitations on people’s freedoms, and sometimes they don’t allow demonstrators to take action, and often the security

authorities are told by politicians to intervene in an excessive manner against demonstrators”.

“...this law needs to be revised and we recommend that all parties should be thoroughly consulted before making any amendments”.

IV. Concrete cases

When Law No. 1/2006 came into force in 2006, there were those who were for or against this law. The community was concerned and believed that this law would have consequences and would impact on the fundamental rights of citizens, especially the right to express their opinion.

In reality, article 5 of this law prohibits assemblies and demonstrations from taking place in public spaces that are less than 100 metres from offices of organs of sovereignty, residences of officeholders of organs of sovereignty, military and militarised installations, prison buildings, offices of diplomatic missions and consulates, and offices of political parties. In practice, the security authorities (police) use this law to justify their actions, particularly article 5 that sets out the 100 metre rule which allows the police to intervene and the rights of demonstrators are violated. Examples of violations involving the security authorities are set out below:

- *Case involving mobile traders who were demonstrating. They were searched, arrested by the police and placed in holding cells, and violence was committed against an old lady who suffered an injury;*
- *Case of students who were demonstrating against the National Parliament relating to the purchase of luxurious vehicles for MPs. The demonstration was on university grounds, but the police used teargas and fired it at the demonstrators and damaged UNTL buildings. This is a crime because the police entered the UNTL which is an autonomous area. These violent acts occurred because of article 5 of this law, which gives a reason for the security authorities (police) to intervene and stop demonstrators if they believe that they are not observing the 100 metre rule;*
- *Demonstration against the National Parliament relating to the lifelong pension, where students were conducting a demonstration and the security authorities fired teargas towards them and some were struck and punched;*
- *Demonstration by students, civil society and communities against the Government-Ministry of Justice regarding the draft law to criminalise defamation. During this demonstration the police arrested some demonstrators because they did not observe article 5 on the 100 metre rule;*
- *Demonstration by students against the Government-Ministry of Education for perceived discrimination relating to the school fees of students in Timor-Leste. Some students were arrested and taken to the courts for summary proceedings.*

V. Conclusions and Recommendations

Article 42 of the Timor-Leste Constitution enshrines principles and fundamental values about the Freedom of Assembly and Demonstration, and also Article 19 of the International Covenant on Civil and Political Rights ensures the right to the freedom of expression. This international covenant also requires State Parties to promise to take necessary measures in accordance with the constitutional process and provisions of the covenant to adopt legislation or measures necessary to ensure the exercise of the rights recognised in the covenant. The State of Timor-Leste, as a State Party to the covenant, complied with its obligation and produced Law No 1/2006 on the Freedom to Assemble and Demonstrate. However, in practice the implementation of this law, especially Article 5.1 and Article 5.2, contradicts the human rights principles and values enshrined in the Timor-Leste Constitution and international instruments, as it prohibits and restricts people from expressing their opinions. Therefore, JSMP would like to conclude by making the following recommendations:

The Government

- Take the initiative to initiate discussions with relevant parties to hear their views and ideas about amending Law No. 1/2006, especially Article 5 on restrictions.

National Parliament:

- If there is no initiative from the Government, the National Parliament could use its initiative to organise a discussion and a meeting with stakeholders and relevant parties to come up with draft amendments for Law No.1/2006, particularly Article 5 on restrictions.
- When producing a law, it is necessary to engage in thorough consultation with all entities and civil society to ensure that the law has been carefully considered and that it will reflect the interests of all parties.