

DEMOCRATIC REPUBLIC OF TIMOR-LESTE
NATIONAL PARLIAMENT

Draft Law
No: .../2006

On the Truth and Measures of Clemency for Diverse Offences

Preamble

On 30 August 1999 all the people of Timor-Leste went *en masse* to the polls to vote in a referendum. The overwhelming majority chose the path of independence. The latter having been recovered, a giant effort to build Peace and Stability was initiated as a pre-condition for the establishment of a Democratic State based on the Rule of Law. Also, conscious that national reconciliation was, and continues to be, the necessary and indispensable foundation for National Unity, several measures were taken with a view to guaranteeing it.

The current year (2006) marks the seventh anniversary of that historical date, as well as the 31st anniversary of the Proclamation of the Democratic Republic of Timor-Leste and the 4th anniversary of the restoration of independence. But this is also a year in which all of us experienced weeks of anxiety recalling us of the violence that we went through in December 1975 and September 1999. Thus, the need arises to take political as well as legislative measures intended to define a legitimate framework of a number of acts and actions that will enable the investigation of certain cases in the search for the material truth, thereby meeting the deepest expectations of all the people and reinstating on solid bases the atmosphere of peace and stability in the spirit of each and every citizen and within the entire Timorese society.

In this year in which the whole State took on the responsibility to recognize and valorize all those who fought for National Independence, the search for the truth constitutes the highest value that the whole Nation hopes to be able to attain.

Once the truth is established, justice should be sought, based fundamentally on the values inherited from our ancestors as combined with those values resulting from the progress that our people chose to embrace and identify themselves with so that decisions are assumed by each and everybody in a conscientious manner.

THUS,

Pursuant to articles 92 and 95.2, subparagraph g), of the Constitution, the National Parliament decrees the following:

Chapter I
National Commission

Article 1
Establishment of the Commission

The National Commission for Truth and Social Harmonization is hereby established, which shall comprise the following:

- The Prosecutor-General
- The Provedor of Human Rights and Justice
- Two Commissioners of CAVR (Commission for Truth, Reception and Reconciliation)
- Two Timorese Commissioners of CVA (Commission for Truth and Friendship)
- Two Representatives of the National Parliament
- One Representative of the Catholic Church
- One Representative of the organized Civil Society

Article 2
Terms of Reference

1. The Commission shall work on the basis of the following Terms of Reference:

1. Analyze the Report of CAVR and recommend the President of the Republic, the National Parliament, and the Government on measures for its dissemination with a view to strengthening peace, stability, national unity and the consolidation of the Democratic State based on the Rule of Law;
2. Follow-up on the work of CVA and facilitate its investigations, taking into consideration its Terms of Reference;
3. Follow-up on the work of the International Investigation Commission and provide advisory assistance to the National Parliament in the analysis of the final report and in the decision-making process;
4. Support the efforts of national reconciliation being made by the State and Society;
5. Propose mechanisms of justice, particularly customary justice, for the settlement of disputes;
6. Investigate all allegations and accusations made, including by holders of Organs of Sovereignty, about alleged distribution of weapons, disseminate the truth, and propose appropriate political and judicial measures;
7. Investigate the real reasons that originated the desertion of the F-FDTL "petitioners" from the barracks as well as the collapse and disintegration of PNTL from April 2006.

1. The Commission shall be accountable to the National Parliament.

Chapter II
Measures of Clemency and Reparation

Article 3
Amnesty

Insofar as they have been committed until the 31st of July 2006, there shall be amnesty on the following offences:

- a) Crimes for taking part in acts provided for and punishable in article 55 of the Criminal Code;
- b) Crimes of voluntary bodily offences, where there are sequels or circumstances provided for in articles 351 to 361 of the Criminal Code;
- c) Crimes of larceny and trickery provided for in articles 362 to 395 of the Criminal Code, where there is *ex parte* pardon;

- d) Crimes against the security of the State provided for in article 104 to 129 of the Criminal Code;
- e) Crimes against public order provided for in articles 154 to 177 and crimes against public authority provided for in articles 207 to 241 of the Criminal Code, save where such crimes have been committed through the media;
- f) Crimes of defamation provided for in articles 310 to 321 of the Criminal Code, save where such crimes have been committed by the media;
- g) Crimes provided for in articles 4 to 12 of the UNTAET Regulation No. 2001/12 (Code of Military Discipline);
- h) Crimes of use, carry and possession of firearm provided for in articles 1 to 7 and punishable by the provisions of UNTAET Regulation No. 2001/05 of April 2001, as long as the holder surrenders the firearm to police or military authorities in the 30 days subsequent to the entry into force of the present law;
- i) Crimes against the general security of people and property provided for in articles 187 to 206 of the Criminal Code, where the qualification of such crimes does not result in material, personal and direct authorship of homicide punishable pursuant to articles 338 and subsequent articles of the Criminal Code, or where the total value of the stolen or embezzled items, or of the property damages caused, or of the illicit benefits, in the attempted or accomplished form, is less than 10,000 dollars;
- j) Crimes of disobedience provided for in article 155 of the Criminal Code and other legal statutes;
- k) Crimes committed by negligence, where such crimes are not punishable with imprisonment penalties of more than one year, with or without a fine penalty;
- l) Crimes committed by negligence, even where such crimes are punishable with imprisonment penalty of more than one year, with or without a fine, where the victim is an ascendant, descendent, sibling or spouse of the defendant or somebody the defendant lives with in analogous conditions, or where there is *ex parte* pardon.
- m) Contraventions of the Road Traffic Code provided for in Decree Law No. 6/2002 and in other regulations relating to road traffic, parking and road transports, including the measures of security and accessory penalties resulting from such contraventions;
- n) Contraventions punishable with a fine penalty the maximum limit of which does not exceed 500 dollars and countermandings punishable with a fine penalty up to 2,000 dollars, with the exception of those contraventions of a fiscal, customs, financial and banking nature and the ones provided for in the subsequent subparagraphs;
- o) Disciplinary offences punishable by Disciplinary Statutes approved by Decrees and Decree-Laws of the Democratic Republic of Timor-Leste directly or by specific statutes, where the applicable or applied penalty is not higher than suspension, as well as offences committed by functionaries or agents having a special status resulting from such Statutes, save where the imputed facts comprise criminal offences or where the offender has already been punished previously by censure or by a more serious penalty;
- p) Military and police disciplinary offences where such offences are punishable with a penalty not superior than disciplinary imprisonment.

Article 4 Scope of Application

1. Amnesty decreed in subparagraphs a) and c) of article 3 shall be granted on suspensive condition of prior reparation to the victim even where no claim for compensation has been filed, save where there is *ex parte* pardon or desistence of the complaint.
2. The condition referred to in item 1 above shall be met within the 90 days immediately following notification served to the defendant for such purposes or, where this is not possible, within the 90 days of his or her notification for trial, where the defendant has not been notified before, regardless of notification.

3. The condition referred to in item 1 above shall be deemed to have been met when the aggrieved party or aggrieved parties declare themselves to have been the object of reparation or when they renounce the reparation.

4. Whenever the aggrieved party is unknown, or has not been found, or another justified reason has occurred, and where the reparation consists in the payment of a certain amount, the condition referred to in item 1 above shall be considered to have been met if the respective amount is deposited with the Banco Nacional Ultramarino/Caixa Geral de Depósitos in the name and to the order of the aggrieved party within a maximum period of 30 days from the date of entry into force of the present law.

5. Where the value of the compensation for repair has not been exactly determined, the judge, following a petition of the Public Prosecution or of the defendant to be submitted within the deadline referred to in item 2, shall establish such amount equitably through unappealable award.

6. In the cases provided for in item 5 above, or where the economic status of the defendant and the absence of criminal antecedents so justify, the judge, either officiously or upon petition, shall grant a new delay of 90 days to allow the defendant meet the condition referred to in item 1 above.

Article 5 *Ex parte*

1. For the purposes of the present law, *ex parte* pardon shall mean the declaration of the aggrieved party, to be made directly in the records or by petition until the date of publication of the first-instance judgment, stating that he or she does not want the law suit to be filed or to pursue.

2. Pardon granted to one of the co-participants in the crime shall be extensive to the remaining co-participants.

3. Where there is a plurality of aggrieved parties or holders of the right to pardon, pardon shall only be effective where it is granted by all the aggrieved parties or holders of the right to pardon.

4. Where the aggrieved party has died or is disabled, the right to pardon shall pertain to the respective spouse and adult descendants or the legal representative and, in the absence of the latter, to the ascendants, siblings and descendants.

Article 6 Objects of offences

Objects used or intended to be used for the commitment of an offence for which amnesty has been granted pursuant to article 3, or objects produced by such objects, shall forfeit to the State whenever, by their own nature or by the circumstances of the case, they pose a serious risk of being used in the commitment of new offences.

Article 7 Deadlines

1. Regardless of the immediate application of the present amnesty, defendants who committed offences provided for in article 3 may, within 10 days from the date of the entry into force of the present law, file a petition requesting that the present amnesty do not be applied to them, in which case the order decreeing the amnesty shall be declared null and void.

2. The declaration made by the defendant referred to in item 1 above shall be irrevocable.

3. Declarations of pardon, reparation, renunciation of reparation and withdrawal of reparation claim may be made in the records, before the Chief of *suco* or *lian nain* or before the public defender or attorney.

Article 8
Civil liability

1. Amnesty provided for in article 3 shall not invalidate civil liability arising from facts object of amnesty.
2. Private prosecutors, victims or aggrieved parties who, at the time of the entry into force of the present law, have been notified and are in time to file claim for civil compensation attached to a criminal suit extinguished by the present amnesty may do so by providing evidence pursuant to the summary declaratory proceeding.
3. Aggrieved parties not constituting themselves in private prosecutors and private prosecutors not yet notified to file civil claims shall become so in order to be able to file their civil claims in 10 days, pursuant to item 2 above, under pain of having do to it in separate in a civil jurisdiction.
4. Whoever has already filed such claim may, within 10 consecutive days from the date of the notification that may be served on him or her for such purpose, request that the law suit proceeds, for the sole purpose of examining the same claim, and implicit use shall be made of the evidence provided for criminal purposes.
5. In case of proceedings containing order of indictment or setting a date for trial, where the criminal procedure is declared to be extinct by virtue of the present law, the aggrieved party may, within 10 consecutive days from the final sentence, request that law suit proceeds, for the sole purpose of determining the value of the civil liability, and implicit use shall be made of the evidence provided for criminal purposes.
6. Following the application of the present law, any of the parties or thirty parties intervening in suits for civil liability may, until eight days before the discussion and trial hearing, request the annexation of the proceeding in which amnesty has been decreed or, until the discussion and trial hearing is closed, request the annexation of certificate of the part of the proceeding deemed relevant for the civil claim.

Article 9
Pardon

1. As regards offences committed until 31 July 2006, there shall be amnesty on the following offences:
 - a) All penalties of fine cumulatively applied with penalty of imprisonment for the commitment of the same offence;
 - b) 180 days of the penalties of fine applied effectively or in substitution of penalties of imprisonment;
 - c) One year in all penalties of imprisonment or one sixth of the penalties of imprisonment up to eight years, or one eighth or one year and six months of the penalties of imprisonment of eight years or more, whichever is more favorable to the convicted.
2. The contents of subparagraph d) of item 1 above shall be applicable to penalties of major imprisonment, military imprisonment, and military prison, where they exist.
3. The pardon referred to in item 1, subparagraphs b) and c) of article 9 above shall cover alternative imprisonment in the respective proportion.
4. In case of accumulation of penalties, pardon shall fall on the single penalty and shall be materially additionable to prior pardons, without prejudice to the provisions of article 10 of the present law.

Article 10
Reincidents

1. Unless otherwise stated, reincidents shall benefit from the amnesty and pardon granted pursuant to the present law.
2. The following shall not benefit from the amnesty or pardon granted pursuant to the present law:
 - a) Habitual delinquents or habitual alcoholics and their equivalent as determined by judicial decision;
 - b) Members of the defence, police and security forces or functionaries and guards of prison services as regards the practice, in the exercise of their functions, of crimes constituting violation of rights, liberties or personal guarantees of citizens, regardless of the penalty;
 - c) Transgressors of the road traffic code, where they have committed the offence under influence of alcohol, or have abandoned the victim, regardless of the penalty;
3. The following shall not benefit from the pardon provided for in article 9 above:
 - a) Individuals sentenced for having committed crimes against the economy or fiscal, larceny, or embezzlement, where such crimes have been committed through falsification of documents;
 - b) Individuals sentenced by a penalty of imprisonment for having committed sexual crimes where the victims have less than 14 years of age;
 - c) Individuals sentenced by a penalty of imprisonment of more than 10 years for having committed crimes against people and whose penalty of imprisonment has already been reduced by virtue of a prior pardon;
 - d) Individuals sentenced by a penalty of imprisonment for having committed crimes of drug trafficking.
4. Exclusion of pardon provided for in items 1 and 2 above shall not infringe on the application of pardon provided for in article 9 in relation to other committed crimes and the appropriate cummulation of penalties shall apply.

Article 11
Substitution of Penalties

As regards offences committed until 31 July, penalties of imprisonment of less than three years applied to delinquents with less than 18 years of age at the time of the commitment of the crime, or to delinquents with 60 years of age or more as of 31 July 2006, shall always be substituted with a penalty of fine, save where they are reincidents or where they are found to be in one of the situations provided for in article 12 below.

Article 12
Resolutive Condition

Amnesty and pardon provided for in the present law shall be granted on condition that the beneficiary is not to commit another malicious offence in the succeeding three years from the date of entry into force of the present law, in which case the penalty applied to the supervenient offence shall be added by the penalty or part of the penalty of the pardoned offence.

Article 13
Suspended Sentence

As regards convictions resulting in a suspended sentence, pardon provided for in the present law and the provision contained in article 10 shall only apply where suspension is to be revoked.

Article 14
Proceedings in Process

As regards proceedings relating to facts occurred until the 31st of July 2006:

- 1) Not yet submitted for trial and which, notwithstanding the amnesty granted in article 1, have to proceed for the examination of crimes susceptible of desistence of complain, the court, before commencing the discussion and trial hearing, shall make an attempt to compose the parties.
- 2) Within the 5 days immediately after the entry into force of the present law, a re-examination of the prerequisites of the coercive measures or preventive measures shall be undertaken at the request of the Public Prosecution or officiously by the interested parties, depending on the stage of the proceedings.

Article 15
Cancellation of Records

Without prejudice to the norms of Criminal Record, all the records relating to transgressions, contraventions and contra-ordinations for violation of norms of the Traffic Code and complementary legislation committed until 31 July 2006 shall be cancelled.

Article 16
Entry into Force

The present law shall enter into force on the day after its publication.

The Members of Parliament proposing the draft law:

1. Elizario Ferreira
2. Feliciano Alves Fatima
3. Lucio Marcal Gomes
4. Pedro M. Costa
5. Sebastião Simoes