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### Viewing cable 07DILI232, PROMULGATION OF PROBLEMATIC AMNESTY LAW UNLIKELY FOR N

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Reference ID	Created	Released	Classification	Origin
07DILI232	2007-06-20 10:38	2011-08-30 01:44	CONFIDENTIAL	Emb

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C O N F I D E N T I A L SECTION 01 OF 02 DILI 000232

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E.O. 12958: DECL: 6/20/2017  
TAGS: PGOV PHUM KJUS TT  
SUBJECT: PROMULGATION OF PROBLEMATIC AMNESTY LAW UNLIKELY FOR NOW

DILI 00000232 001.2 OF 002

CLASSIFIED BY: Elizabeth S. Wharton, Political / Economic Officer, U.S. Embassy, Dili, East Timor, Department of State.  
REASON: 1.4 (b), (d)

¶1. (C) Summary: The National Parliament on June 4 approved a Law on Truth and Measures for Clemency for Various Infractions, stipulating that amnesty be provided for a wide array of offenses so long as they were committed between April 20, 2006 and April 30, 2007. If promulgated, the law would have a dramatic impact, encompassing a large number of the individuals recommended for prosecution by the UN Special Commission of Inquiry for their role in the 2006 crisis, as well as a large number of individuals implicated in the increased volume of common crimes that accompanied the crisis period. The law has come under immediate criticism by civil society groups and international observers. In addition to objections that it will perpetuate a culture of impunity, critics note that it is badly drafted, containing provisions at odds with the constitution, ambiguity regarding how it is to be applied, and internal inconsistencies. Although it remains unpromulgated, the lawyer for convicted and jailed former Interior Minister Rogerio Lobato has already attempted to cite it to benefit his client. At this point, it appears there is no immediate risk of it being signed into effect by President Jose Ramos-Horta, who has informed us he is referring it to the Court of Appeals for constitutional review and will wait until after elections to take any action. However, while Ramos-Horta noted that the current draft is problematic, he nonetheless registered his support for some form of amnesty law. We will continue to track this issue and emphasize the importance of accountability. End summary.

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¶2. (U) On June 4, the National Parliament approved a Law on Truth and Measures for Clemency for Various Infractions by a vote of 44 in favor, with 2 abstentions and no votes against. Opposition Members of Parliament from several parties walked out in protest before the vote, leaving just one MP above the required quorum in place. The law declares that amnesty shall be granted for a wide array of offenses so long as they occurred in the period from April 20, 2006 through April 30, 2007. Offenses eligible for amnesty encompass over 150 articles of the Indonesian Penal Code, which continues to be applied in East Timor pending passage of a Timorese penal code to replace it. Also included are offenses defined in UN Transitional Authority for East Timor (UNTAET) regulations on firearms and military discipline. Among the offenses covered are: maltreatment and assault; negligence resulting in harm or death; theft and burglary; extortion and blackmail; embezzlement; fraud; crimes against the security of the state; crimes against public order; crimes against public authority; defamation (except if done via the media); crimes endangering the general security of persons and property; and most military and police disciplinary offenses. Several offenses are explicitly excluded from eligibility for amnesty such as crimes of homicide accompanied by direct malice; sexual crimes where the victim is under 14; drunk driving and drug trafficking.

¶3. (C) On June 18, a domestic NGO the Judicial System Monitoring Program (JSMP) published its initial analysis of the law, criticizing it as unconstitutional, containing a number of contradictions and ambiguities, and ultimately not in the public interest. JSMP characterized the legislation as "more political than judicial in nature" and apparently designed with "the intention of protecting certain individuals and groups who wish to evade prosecution". JSMP is not alone in its criticism. The Prosecutor General, Longinhos Monteiro, shared his view with us in a June 13 meeting that it was "totally unbelievable" and one analyst at the UN Human Rights Unit has reportedly described it as the "worst piece of legislation I've ever seen". Beyond the objections to the breadth and type of offenses covered, some of the specific issues cited in these criticisms include:

- the law defines eligibility for amnesty, but is unclear regarding who is empowered to grant amnesty or clemency, and through what process;
- the law allows for the cancellation of court judgments, in clear contradiction with the constitution which states in Article 118 that "Court decisions shall be binding and shall prevail over the decisions of any other authority."
- the law grants broader amnesty to moral actors than to direct actors, that is the person who gave the order may receive amnesty, while the person who carried it out may not;
- the entire document is remarkably badly drafted and confusing, containing a number of errors that could complicate application.

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¶4. (C) The law if promulgated would clearly have a wide and dramatic impact. With the exception of those found to have committed homicide with deliberate intent, many individuals recommended for prosecution in the UN Special Commission of Inquiry (COI) report, which examined the events of April-May 2006, for crimes such as weapons distribution to civilians, would benefit. The vast majority of cases arising from mob and gang violence during the crisis period would be cancelled. The multiple cases of F-FDTL transgressions while manning static security posts in Dili in the March-April, 2007 timeframe also appear to be eligible. Despite the lack of promulgation, Rogerio Lobato's lawyer has already made written appeals to the Prosecutor General and Court of Appeals to free his client on the basis on the new law.

¶5. (C) In order to be promulgated, the law must first be signed by the President and then published in the Jornal de Republica (National Gazette). In a meeting with Charge d'Affaires on June 20, President Ramos-Horta told us he had sent the law for review to the Court of Appeals, but that he would take no action until the new Parliament was in place following the June 30 elections. He said he was not opposed in principle to an amnesty, but that the law as sent to him was problematic, appearing to be

"tailor-made" for certain cases. He emphasized the need for greater consultation before such a law is developed and said that he would prefer a more far-reaching amnesty that, except for the most brutal cases, would extend back to 1975. Ramos-Horta added that the imprisonment of former Interior Minister Lobato underscored the case for amnesty. If Lobato was in prison, Ramos-Horta said, then former Minister of Defense Roque Roderiguez and Defense Force Chief Brigadier Taur Matan Ruak, considered a hero of the resistance, should logically be as well. Trying and jailing Ruak in particular could lead to trouble with Falantil veterans in the F-FDTL. Ramos-Horta said he would raise issues such as these in discussions with the Church and other civil society elements in July, and then would produce a better plan for clemency. Ramos-Horta added that he was separately looking into his authority to issue pardons more generally on humanitarian grounds.

¶6. (SBU) Comment: While there is no doubt that the judicial system is overloaded with 2006 crisis cases, Post concurs with the assessment that this is a bad law. Aside from its shoddy drafting and ambiguities, the message such an almost all encompassing amnesty would send to the population at large regarding lack of accountability at all levels would be highly counter productive. Also of concern is the Parliament's passage of such a potentially important piece of legislation during its last few weeks in power in the lead up to elections. In light of both the quality of the law and the unlikelihood that it will be promulgated, this is an unimpressive addition to the closing history of East Timor's first parliament. Post will continue to monitor this issue closely and emphasize the importance of credible accountability to effectively move beyond the events of ¶2006. End comment.  
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