



Polemic of Using Force and Weapons by Security Actors

“On Law No.5/2017, 19 April, 2017, Judicial Regime on the Practice of Martial Arts, Rituals, Knife and Rama Ambon attacks, and the 5th Amendment to the Penal Code

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(Photo: Fundasaun Mahein)

Fundasaun Mahein (FM)
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Introduction

The issues of Martial Arts Groups (MAG's), ritual arts groups, and *rama ambon* attacks are prominent in Timor-Leste at this time. Law No.16/2013, *Extinction of Martial Arts Groups*, forbade the activities of MAG's that engage in violence. However, some MAG's are continuing their activities, secretly recruiting and training new members, while there has been an increasing link between MAG's and criminal activities. In Dili, many people fear going out at night because of *rama ambon* attacks. A *rama ambon* is a deadly slingshot-like weapon popular among MAGs in Timor-Leste. These attacks usually target young people who are out at night. Fundasaun Mahein (FM) has determined that both the victims and suspected perpetrators of the attacks tend to be involved in martial arts or ritual arts gangs. Suspects from MAG's and Rama Ambon attacks have been captured by the National Police of Timor-Leste (PNTL), yet many of these suspects have been released due to a lack of specific legislation. Fundasaun Mahein (FM) commends this new Law as a means to regulate activities that cause fear among Timorese citizens.¹

On February 2017, as the Presidential Election approached, discussions occurred concerning MAG's, ritual arts groups, the use of melee weapons and *rama ambon* attacks. During this period the Government and the National Parliament consulted with public entities and Civil Society Organisations (CSO). FM was invited by the National Parliament to provide input about the Draft Law. This law, (*Law No. 5/2017 April, Judicial Regime on the Practice of Martial Arts, Rituals, Knife and Rama Ambon attacks, and the 5th Amendment to the Penal Code*) was approved by the National Parliament on March 6, 2017, and promulgated by the President of the Republic on April 12, 2017.

Timor-Leste's Prosecutor General, José Ximenes, said that the law responds to the MAGs' use of melee weapons and *rama ambon* attacks, as the previously existing legislation lacked the strength to criminalize MAG activities.² However, this new law has been passed without much publicity, even though it strengthens the security sector's power considerably.

Chief of Staff of the Falinitil- Timor-Leste Defence Force (F-FDTL), Major General Lere Anan Timur stated that he supports this law "that authorizes the security actors to shoot people who use sharp weapons to commit violent acts."³ The interior

¹Fundasaun Mahein (FM). Mahein Nia LianNú. 120, 10 Fevereiro 2017. Pareser ba Komisaun A Parlamentu Nasional Kona-bá Proposta Lei Sobreos Crimes de Fabrico, Importação, Transporte Venda, Cessão ou Porte de Rama Ambon, Utilização de Armas Brancas para Prática de Crimes e de Prática Ilícita das Artes Marciais e de Rituais. Disponível online: <http://www.fundasaunmahein.org/wp-content/uploads/2017/02/MNL-120-Pareser-ba-Komisaun-A-PN-Kona-ba-PL-Rama-Ambon-no-MAG-PDF.pdf>

²Tatoli – Agencia Noticiosa de Timor-Leste. Lei Arma Branca Sei Soluciona Problema Arte Marsial. Loron 5 Juñu 2017. Disponível online: <http://www.tatoli.tl/2017/06/lei-arma-branca-sei-soluciona-problema-arte-marsial/>

³Tatoli – Agencia Noticiosa de Timor-Leste. Loron 7 Juñu 2017, disponível online: <http://www.tatoli.tl/2017/06/komando-f-ftdl-konkorda-tiru-autor-violensia/>



minister Longuinos Monteiro added that “the National Police of Timor-Leste will execute this law, and human rights will be discussed afterwards.”⁴ Finally, this law became subject to public debates concerning the potential for increased use of force by security actors if the law is implemented. In order to enhance this public discussion, this report intends to explain the use of force according to law *No. 5/2017, 19 of April, Judicial Regime on the Practice of Martial Arts, Rituals, Knife and Rama Ambon attacks, and the 5th Amendment to the Penal Code*, decree law No.43/2011, 21 September.

Methodology

The method employed for this report involved monitoring in the field, reading media publications regarding MAGs in the last couple of years, and examining the legislation regulating MAG activities. Next, FM implemented a method called *Security Sector Discussion* (SSD), in which FM researchers conduct public discussions, analyze the content of these conversations, and finally provide recommendations.

Law and Regulation

Law No.5/2017, 19 April, 2017, Judicial Regime on the Practice of Martial Arts, Rituals, Knife and *Rama Ambon* attacks, and the 5th Amendment to the Penal Code:

Artigu 1 nº.1

- a) *A regulação do exercício e prática de artes marciais e os respetivos centros;*
- b) *A regulação da importação, comércio, detenção, posse e utilização de armas brancas;*
- c) *A definição de rama ambon como arma proibida;*
- d) *A criminalização de condutas que contrariam a proibição estabelecida na alínea c), bem como das que violam as normas reguladoras do exercício e prática de atividade referidas nas alíneas a) e b);*
- e) *A alteração ao artigo 211.º do Código Penal aprovado pelo Decreto Lei n.º 19/2009, d e 8 de Abril.*

Article 1 No.1 established (*Unofficial Translation*):

- a. The regulation of the MAG’s activities and centres;
- b. The regulation of the importation, sale, possession, storing, and use of knives;
- c. The definition of *rama ambon* as a prohibited weapon;
- d. The criminalization of behavior that violates the prohibition established in clause c), such as those that violate the rules surrounding the practice of the activities referred to in clauses a) and b).
- e. The alteration of Article 211 of the Penal Code approved by the Decree Law No.19/2009, April 8.

⁴Tatoli – Agencia Noticiosa de Timor-Leste. Loron 5 Juñu 2017, disponivel iha ne’e: <http://www.tatoli.tl/2017/06/polisia-tenki-impoen-lei-ba-arte-marsial/>



This means that the law will regulate MAG's activities and centres. It will also regu

late the importation, trafficking, and use of knives and *rama ambon*. Therefore, people (individually or collectively) who practice such actions will be considered criminals and will receive imprisonment or other punishment.

Criminalization of *rama ambon* and knives

Individuals who make, transport, store, sell, or import/export *rama ambon* can be imprisoned for 4 to 8 years. If these actions are committed by members of the security forces, magistrates, justice officers, public civil servants, or other members of the public administration, they can be imprisoned for 6 to 10 years.⁵

Furthermore, the use of knives by “unauthorized persons who violate the law by storing, transporting, buying, selling, making, importing or exporting, using or carrying knives will receive imprisonment for 3 to 6 years.” If those practices are committed by members of the security forces, magistrates, justice officers, public civil servants and public administrations agent, they can be imprisoned for 6 to 10 years.⁶

Regarding the illegal trafficking of weapons, people who buy and sell arms outside of the legal process can be imprisoned for 4 to 10 years.⁷

International traffic and transferring of weapons: “those who do not obey the legal process by conducting the import, export, transit, or transport of weapons through the national territory to another country will receive 4 to 12 years in prison.”⁸

Furthermore, if the objects being trafficked are used for illicit practices with the acknowledgement of a person, group, organization or criminal association, those involved will receive 5 to 15 years in prison.⁹

Criminalization for illicit practice of MAGs and Rituals

Illegal practices or illegal martial arts: “those who, in violation of the legal process or against the rulings of the relevant authorities, teach, learn, or practice any type of martial arts will be punished with 3 years imprisonment. If the practice's intention is to provoke social disorder or disrupt public tranquility, it will be punished with 3 to 8 years imprisonment.”¹⁰

Illegal exercises or illegal martial arts: “those who, in violation of the legal process or

⁵Lei N.º 5/2017 de 19 de Abril Regime Jurídico Relativo à Prática de Arte Marciais, Rituais, Armas Brancas, Rama Ambon e Quinta Alteração ao Código Penal. Artigo 19 n.º 1 no 2

⁶Lei N.º 5/2017 de 19 de Abril Regime Jurídico Relativo à Prática de Arte Marciais, Rituais, Armas Brancas, Rama Ambon e Quinta Alteração ao Código Penal. Artigo 20 n.º 1 no 2

⁷Ibid Artigo 21

⁸Ibid. Artigo 22

⁹Ibid. Artigo 23

¹⁰Ibid. Artigo 24



against the rulings of the relevant authorities, explore, lead or in whatever way establish martial arts practices will receive 3 -6 years prison. If these behaviors are practiced by elements of the F-FDTL, security forces, magistrates, justice officers, public civil servants and public administration agents, they will receive 6 to 10 years in prison.”¹¹

Illegal practices or illegal rituals: “Those involved in MAGs or ritual practices that provoke social disorder or disrupt public tranquility or endanger lives will receive 3 years in prison. If the above mentioned facts are practiced by elements of the F-FDTL, security force, magistrates, justice officers, public civil servants and public administration agents, they will receive 1 to 5 years in prison.”¹²

The law also stipulates that acts including the publication and editing of communications that promote *rama ambon*, wearing uniforms identified with the illegal practice of MAGs or RAGs, and opening centers, clubs, or schools of MAGs without identifying them in accordance with legal requirements will pay a fine of US\$ 50 – 500.¹³

Action: The use of force and weapons “Shooting and killing”

With regards to the discussion spreading in communities around Timor-Leste, this section will explain when and how the security forces are authorized to “shoot to kill” according to *Law No.5/2017, 19 April, 2017, Judicial Regime on the Practice of Martial Arts, Rituals, Knife and Rama Ambon attacks, and the 5th Amendment to the Penal Code*. Law no. 5/2017 chapter VI use of force, article 35 explains that:

1. *Os recurso armas fogo só é permitido em caso de absoluta necessidade, como medida extrema, quando outros meios menos perigosos se mostrem ineficazes, e desde que proporcionado às circunstâncias.*
 2. *Em tal caso, o agente deve esforçar-se por reduzir ao mínimo as lesões e danos e respeitar e preservar a vida humana.*
-
1. Resorting to deadly weapons is only permitted in cases of absolute necessity, as a last resort when other, less dangerous means become ineffective. Such use should always be proportional with the circumstances.
 2. In such cases, agents should attempt to keep to a minimum losses and damages, and to respect and preserve human life (*unofficial translation*).

In such situations, the use of deadly weapons should be used with respect for necessity and proportionality. The law signifies that while arms or weapons can be used, the user must follow the requirements specified by law. Article 36 no. 1 said that the use of weapons is authorized in order to:

¹¹Ibid. Artigo 25

¹²Ibid. Artigo 26 n.º 1 no 2

¹³Ibid. Artigo 28



- a. To confront aggression against a security agent or against other people;
- b. To capture or impede people attempting to escape from criminal acts that carry penalties of more than 3 years imprisonment or people who use *rama ambon*, knives or other weapons including explosives, substances, radioactive materials, or toxins;
- c. To detain people in prison or to impede people who are trying to escape after being captured;
- d. To release hostages or kidnapped people;
- e. To stop or impede attacks on state installations or public utilities, or attempts against planes, ships, trains, or other public transportation;
- f. To act against violent resistance to the security agents' execution of their functions and to maintain authority after issuing warnings.
- g. To act against animals that endanger the safety of the public.
- h. As an alarm mechanism in an emergency situation, if other mechanisms are unavailable.
- i. When the maintenance of public order requires agents to act otherwise, they can use their discretion.

This is corroborated by No.2 article 36 on the use of weapons against individuals, which can be allowed as a last resort if all other methods have failed. Such circumstances include:

- a) To respond to current illegal aggression against an agent or a third party, if there is imminent danger of death or serious injury to physical integrity;
- b) To prevent particularly serious criminal practices that threaten human lives.
- c) To capture people who represent a threat and who resist the authorities or to prevent their escape (*Unofficial Translation*).

Furthermore, No 3 and 4 of the article 36 stated that, in circumstances which do not permit the use of deadly weapons, someone cannot shoot weapons to intimidate people. Use of weapons is only permitted when the facts clearly justify it.

When using weapons, security personnel should first clearly make an announcement or warning. The warning shot should be aimed upwards in order to avoid hitting bystanders.¹⁴

In such circumstances, security personnel should obey their commanders' instructions unless it is hard to receive instructions or they are placed in an isolated area.¹⁵

When an agent uses a weapon, he or she has an obligation to help people who get

¹⁴Lei N.º 5/2017 de 19 de Abril Regime Jurídico Relativo à Prática de Arte Marciais, Rituais, Armas Brancas, Rama Ambon e Quinta Alteração ao Código Penal. Artigo 37

¹⁵Ibid. Artigo 38



injured or to find another means to aid them.¹⁶ It is especially important that after using any weapon, members of the security forces should immediately inform their superiors via a written report. After receiving such a report, the superior should then present the report to the public ministry in accordance with established procedures.

Agent or police who have discharged a weapon should not tamper with the area so that the evidence remains intact. Further investigation of the shooting area will occur to furnish proof of what actually occurred.¹⁷ In this case agents who use weapons should receive justice for the action according to article 40 no. 5, which says that:

“In a case in which using weapons constitutes a crime, apply to whichever agent the relevant rules of the penal code” (*Unofficial Translation*).

Apart from this law that regulates the use of weapons, there are other national legal bodies that Timor-Leste has authorized¹⁸ to address the use of weapons. This law does not function alone, but acts in tandem with legislation such as law no. 2/2010, law of the national security article 7, on the use of force. This law specifies the circumstances, conditions, levels and forms according to which it is appropriate to use force. These rules can ensure citizens' rights, freedom to live, and fundamental legal norms.¹⁹

The PNTL mission is to defend democracy, to safeguard citizens' lives, and to protect rights established by the constitution and laws. Force can be used for self-defense and to defend other people. Security personnel should always use the minimum force required, and never use their weapons to threaten or intimidate people.

In cases involving clear aggression against security agents or other people, as well as situations involving escaped prisoners, and restore public order, deadly force can be used if alternative methods are not possible. Nonetheless, the use of weapons should be based on the circumstances and with respect to proportionality.

Finally, weapons should be used responsibly. If any member of the security forces acts in violation of the law, or receives an order from their commander that violates the law, the parties responsible will be prosecuted according to the penal code of Timor-Leste.

¹⁶Ibid. Artigu 39

¹⁷Ibid. Artigu 40 n.º 1 to'o 4

¹⁸RESOLUÇÃO DO PARLAMENTO NACIONAL N.º 9 /2003 De 17 de Setembro. RATIFICA A CONVENÇÃO CONTRA A TORTURA E OUTRAS PENAS OU TRATAMENTOS CRUÉIS, DESUMANOS OU DEGRADANTES

¹⁹Define mosiha Lei N.º 3/2010, Lei DefezaNasional, artigu 47



Recommendations

1. Justice and security actors must thoroughly publicize the new law before implementing it.
2. The PNTL general commander, the Police Special Units, and the district commanders must communicate with their institutions' members regarding the content of the law about the use of deadly force.
3. Security and military force members must understand the procedures surrounding the use of deadly force and must obey the relevant laws.



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