



Fundasaun Mahein (FM), June 13 2017

Press Release

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

The issue of Martial Arts Groups (MAG's), rituals, and knife 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 engaging in violence. However, some MAG's are continuing with their activities, secretly recruiting and training new members, whilst there has been an increasing link between MAG's and criminal activities. 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) is appreciative of this new Law to regulate these activities which are creating fear among Timorese citizens.

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. This Law has just been published, and socialisation has been minimal so far, but likely to be used by security forces soon. It also raises questions as to the legitimacy of security forces using a “shoot to kill” policy.

Security authorities have said that this Law will be implemented, with human rights implications to be discussed afterwards. FM believes that this Law may in fact protect people's human rights, if used judiciously, as FM has been a strong critic of the use of violence by MAG's and during Rama Ambon attacks. These actions have threatened people's safety and caused injuries and trauma, with Timorese citizens avoiding areas associated with MAG's and Rama Ambon due to fear of attack. Therefore, the security forces should be using whatever legal means at their disposal to prevent these attacks, up to and including the use of force.

However, the use of force and weapons must be in accordance with proportionality as stipulated by the law, and treaties and conventions ratified by the Democratic Republic of Timor-Leste (RDTL). This doesn't mean that the security forces cannot use lethal force if their lives or those of civilians are in danger. This level of force must however, only be used in circumstances where the use of non-lethal force has been unsuccessful. The exercise of lethal force must not be used arbitrarily, but with extreme discretion, responsibility and discretion by security forces.

Therefore, FM urges that all security actors, when executing this new Law, must be careful and respectful of all laws, inclusive of international treaties ratified by the RDTL,

and also not to obey unlawful instructions by their commanders. Security force members are legally compelled to refuse illegitimate orders from their commanders to use lethal force if they determine the escalation to the use of lethal force to be unlawful. If a security force member uses lethal force at the direction of their commander, and this is later found to be unproportional and unlawful, the individual security force member and their commander may face criminal charges under the Penal Code of the RDTL. Therefore, if the use of lethal force is exercised responsibly, proportionally and within the law, security force members are protected by law, but if acting outside of these parameters, and their actions are found to be unlawful, they will be held responsible by the law.

Recommendations

1. Security and justice sector actors need to thoroughly socialise this new Law to citizens and communities before implementation.
2. PNTL General Commander, District Commanders and Police Special Unit Commanders thoroughly educate and train the officers under their command regarding the legal application of the law, especially in regards to the use of force and weapons.
3. Security sector members conduct themselves in line with legal regulations regarding the use of force and weapons, and exercise discretion, good judgment and responsibility before contemplating the use of force

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