



**JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

**JUSTICE UPDATE
Period: February 2007
Issue: 03 February 2007**

**STATEMENT BY THE PRESIDENT OF NATIONAL PARLIAMENT
CONSIDERED TO BE INCOMPATIBLE WITH THE PRINCIPLE OF
SEPARATION OF POWERS**

1. Introduction

Since the desertion from the post as the Military Police Commander based in Kaikoli-Dili till now, Major Alfredo Reinado and his followers have been residing in Ai-Fu and expressly raising their voices for Law Enforcement and Justice upholding in Timor-Leste. In order to fulfill his good aim, he has come to an agreement with the Timor-Leste's Prosecutor General Longuinhos Monteiro, SH¹ to launch a trial hearing for his case in Gleno, Ermera District in the near future. Francisco Guterres Lu-Olo, the President of National Parliament, through a press conference, said that he was opposed to the agreement made by the Prosecutor General and Alfredo Reinado.

2. The Principle of Separation of Powers

To comprehend the constitutional view as addressed by JSMP, the following definitions will be explained from the aspect of constitutionality in relation to the functions and authorities of Sovereign Organs.

1) Legal Basis on the Sovereign Organs

In article 67 of the RDTL² Constitution, it states that:

"The organs of sovereignty shall comprise the President of the Republic, the National Parliament and the Courts".

2) Definitions on the Sovereign Organs

a. Article 74 of the RDTL Constitution:

a). The President of the Republic is the Head of the State and the symbol and guarantor of national independence and unity of the State and of the smooth functioning of democratic institutions.

¹ Longuinhos Monteiro, SH is currently the Prosecutor General for the second term of office.

² RDTL stands for República Democrática de Timor-Leste (Democratic Republic of Timor-Leste)

b) The President of the Republic is the Supreme Commander of the Defence Force.

b. Article 92 of the RDTL Constitution:

The National Parliament is the organ of sovereignty of the Democratic Republic of East Timor that represents all Timorese citizens and is vested with legislative supervisory and political decision making powers.

c. Article 103 of the RDTL Constitution:

The Government is the organ of sovereignty responsible for conducting and executing the general policy of the country and is the supreme organ of the Public Administration.

d. Article 118 of the RDTL Constitution:

Courts are organs of sovereignty with competencies to administer justice in the name of the people.

e. Article 119 of the RDTL Constitution:

Courts are independent and subject only to the Constitution and the law.

These are the legal basis on the Principle of Separation of Powers in Timor-Leste guaranteed by the Constitution of the Democratic Republic of Timor-Leste. All Timorese citizens, particularly those exercising power in the Sovereign Organs shall obey and respect the Principle of Separation of Powers applicable in Timor-Leste as provided in the article 69 of the RDTL Constitution:

Organs of sovereignty, in their reciprocal relationship and exercise of their functions, shall observe the principle of separation and interdependence of powers established in the Constitution.

JSMP (*Judicial System Monitoring Program*) take this opportunity to encourage everyone to assess whether or not the National Parliament Speaker is wrong regarding his response to the agreement made by the Court with Alfredo Reinado in Ermera. Before analyzing the substantial issue, JSMP firstly wants to explain the facts relating to the legal basis as mentioned in the Press Conference held by both parties as in No. 3 and No. 4 below:

3. Press Conference held by Alfredo Reinado regarding his readiness to appear before the Court

Major Alfredo, in a Press Conference held in Aldeia Ai-Fu, Suku Mirtutu, Ermera District and broadcasted through all media, including TVTL on 01 February 2007, affirmed that he is prepared to be present at the trial hearing

which will be conducted in Gleno because the Prosecutor General has signed a written agreement with him in connection with the trial hearing. His readiness to face the preliminary hearing in the set venue reflects his attitude that he does not escape from the judicial process which he and his followers should be held responsible.

4. Press Conference held by the National Parliament Speaker in response to that by the Prosecutor General and Alfredo Reinado

Responding to the agreement made by Major Alfredo and Monteiro, the National Parliament Speaker Francisco Guterres (Lu-Olo) said, in a press conference broadcasted by TVTL on 01 February 2007 that he could not accept and was opposed to the agreement made by Major Alfredo and Longuinhos Monteiro.

It was said by the National Parliament President Francisco Guterres (Lulolo) that the agreement is another form of discrimination in the Timor-Leste's judicial sector. Lu-Olo said that what was done by both parties is considered to be in contradiction with the RDTL Constitution.

5. JSMP's response based on the constitutional viewpoint

According to JSMP, the statement made by Lu-Olo, the President of National Parliament is unconstitutional even though he recognized that the statement was constitutional, because in the statement, he said that Longuinhos Monteiro and Major Alfredo Reinado had violated the Constitution. Contrary to his emotional statement, the National Parliament Speaker was precisely wrong and violated the Constitution because he was not aware that he had interfered with the existing justice sector or judicial institution. This is, by itself, incompatible with the legal basis already provided in the Constitution.

There will be more likely a question raised by the community as to *why is the statement made by the National Parliament considered to be compatible with the Principle of Separation of Powers?*"

In view of all the definitions already explained at Point No.2 above, it can be concluded that the sovereign organs or institutions exercise various functions and authorities. The President of the Republic is the Head of the State and the Symbol of the Unity; the Parliament is vested with the legislative function, the Government is to exercise its executive function, and Courts are the judicative organ.

Based on the principle of separation of powers as provided in article 69 of the RDTL Constitution, the four different organs or institutions shall be independent in the exercise of their functions and authorities, that is, one

ought not to interfere with others. Otherwise, we violate article 69 on the separation of powers.

It needs to be questioned as to *whether the agreement made by the Prosecutor General and Alfredo Reinado is considered to be a legal act in accordance with the constitution or such an act is a real discrimination in Timor-Leste's judicial system.*

According to JSMP, the agreement made by the Prosecutor General and Alfredo Reinado is considered to be legal and in compliance with the Criminal Procedure Code. It is the viewpoint of JSMP that the agreement made by both parties is not a discriminative act. In addition to the Criminal Procedure Code, the Prosecutor General complied with his competence as regulated in the Directorate of Public Prosecutions of Timor-Leste. For us to be clear, some legal basis, based on which the Prosecutor General used to perform this act, will be explained as follows:

1. Article 30 of Criminal Procedure Code on Urgent Acts:
A court or Public Prosecution Service agent, who makes a declaration of lack of jurisdiction, shall perform, however, those procedural acts that are urgent in nature.
2. Article 31 of Criminal Procedure Code on Validity of Prior Acts
Evidence adduced, restrictive measures imposed, and all other procedural acts performed before a declaration of lack of jurisdiction is made, retain their validity, except where the competent court deems them unnecessary.
3. Article 9 (d) of the Directorate of Public Prosecutions on Competence of the Prosecutor General:
*The competence of the Prosecutor General is to:
Promulgate legality of the agreements which are to defend the interest of the state, where his or her presence is required by law or by the Government.*

Regarding the court jurisdiction, Ermera District falls within the jurisdiction of Dili.³ The court hearing to be held is the preliminary hearing (Audiência Preliminar). Therefore, the court has the power to try cases everywhere independently. According to JSMP, this is not the first time a trial hearing is conducted outside the territorial jurisdiction of the court. The court actors have always performed it many times. From the monitoring activity performed by JSMP, it was found that a trial hearing outside the territorial jurisdiction of the court had been held many times.

6. Conclusion

³ The territorial jurisdiction of the Dili District Court consists of Liquiça, Aileu, Ermera and Dili.

In line with the legal basis as explained in detail above, JSMP concludes that the statement made by the National Parliament Speaker in a press conference was an opinion which tends to reflect political view rather than a constitutional basis. According to JSMP, by making such a statement, the National Parliament Speaker Francisco Guterres, also known as Lu-Olo, has undermined the principle of separation of powers as provided in article 69 of the Constitution.

7. Recommendation

Basically, JSMP respects and supports the freedom of expressions of everyone. JSMP disagrees with anyone who has no respect for the law especially every statement and act performed are considered to be incompatible with the RDTL Constitution.

JSMP recommends that everyone, in particular officials of the competent organs such as legislative organ that has made strong efforts to draft the constitution and other laws currently applicable, respect and obey the law. JSMP suggests that everyone be able to avoid making statement or performing act which reflect their personal or institutional views, seeing that words and deeds are not always corresponding to appropriate place and time.

JSMP recommends that the Prosecutor General remain firm with his commitment. According to JSMP, the Prosecutor General is solely responsible for the Head of the State and delivers his annual report to the National Parliament in compliance with Article 133 (4) of the RDTL Constitution.

JSMP sees that the case of Major Alfredo Reinado⁴ is a very urgent case with the Prosecutor General responding to the urgent situation as well. This is not incompatible with the Constitution because the act or agreement made by Major Alfredo Reinado and the Prosecutor General Longuinhos Monteiro is in compliance with Article 30 of Criminal Procedure Code on Urgent Acts:

A court or Public Prosecution Service agent, who makes a declaration of lack of jurisdiction, shall perform, however, those procedural acts that are urgent in nature.

Therefore, the act performed by the Prosecutor General is based on law. In JSMP's view, the act by both parties is not aimed at establishing an Ad hoc Tribunal in Ermera as provided in Article 123(3) of the RDTL

⁴ Alfredo Reinado and his men were accused of being involved in the crossfire incident occurred in Fatu Ahi on 22 and 23 May 2006. They and 50 other inmates also faced charges with Becora mass jailbreak on 30 August 2006.

Constitution, seeing that Ermera District falls within the territorial jurisdiction of the Dili District Court. The establishment of a court is a definitive term.

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