



JUDICIAL SYSTEM MONITORING PROGRAMME
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National Parliament Resolution No. 62/II Potentially in Conflict with the Constitution

On 5 April 2011 the National Parliament held a debate on Parliamentary Resolution No. 62/II on the suspension from office of the Deputy Prime Minister José Luis Guterres. This resolution was based on the request from the Dili District Court on 3 March 2011 asking the National Parliament of Timor-Leste to suspend Mr. José Luis Guterres from his office to facilitate the processing of justice in this case, which is already before the courts.

Parliamentary Resolution No. 62/II was passed on the following day, the 6th April 2011, with 38 in favor, 16 against, 1 abstaining and 3 invalid. The resolution suspended the Deputy Prime Minister from his functions for the day of the hearing only and not for the duration of the trial. In addition to this resolution, another resolution was submitted by the opposition bench, which was rejected in the plenary session of the National Parliament.

The Executive Director of JSMP, Luis de Oliveira Sampaio, stated that even though he has the utmost regard for the rights of the defendant to a fair trial¹ and the principle of the presumption of innocence,² JSMP nevertheless believes that this resolution does not coincide with Article 113 of the RDTL Constitution, could potentially violate the Constitution and constitute a policy that deviates from the Constitution.

¹ The principle of a “fair trial” is a fundamental element of human rights and is an integral part of the concept of a democratic state based on the rule of law. This principle encompasses the right to equal treatment before the courts and access to the courts, the right to a trial open to the public, the right to be tried by an independent, competent and impartial court, the right to speedy trial without undue delay, right to the presumption of innocence, the right to defend oneself and to be given legal assistance by a lawyer, etc. (*DJ Ravindaran, Human Right Praxis, A Resource Book for Study, Action and Reflection 102 (cited in Uli Parulian Sihombing -The Indonesian Legal Resource Center-ILRC, 1998).*)

² The principle of the presumption of innocence means that every defendant must be considered innocent until a final decision has been issued by the court (Article 34 (1) of the RDTL Constitution and Article 14 (2) of the International Covenant on Civil and Political Rights).

Article 113 (1)³ of the RDTL Constitution states that:

Where a member of the Government is charged with a criminal offence punishable with a sentence of imprisonment for more than two years, he or she shall be suspended from his or her functions so that the proceedings can be pursued.

With reference to the scope of the aforementioned definition, JSMP believes that in a case where the indictment has reached the court and the offence carries a penalty in excess of two years imprisonment, then automatically the member of government concerned must cease his/her functions until the final decision is handed down to ensure that the legal process can proceed unimpeded.

In order to preempt and prevent any controversy or misunderstanding in relation to the Court's eventual decision, JSMP believes that politically and legally it would be better for the National Parliament to adhere to Article 113 (1) of the Constitution and suspend the Deputy Prime Minister from his office until the Court announces its final decision, rather than merely to facilitate proceedings.

JSMP's stance is based on considerations presented below and the real culture of political maturity that exists at present in Timor-Leste.

From a political angle, suspension until the final decision is handed down would show that the AMP coalition is firm in its promise to respect the spirit of the Constitution and its commitment to stamp out corruption in Timor-Leste. Secondly, if the Court then fails to convict the Deputy Prime Minister because elements of the law have not been proven, for example because the Public Prosecutor has not presented a strong case to convince the Court to find the defendant guilty, then this will be a major victory for the Deputy Prime Minister himself, as well as a victory for the AMP coalition in the eyes of the public.

From a legal angle, JSMP believes that if the National Parliament adheres to the provisions set out in Article 113 (1) of the Constitution, this will signal a different approach in regards to the commitment and political will of the AMP coalition to develop and strengthen the justice sector, and at the same time reflect a political stance that demonstrates adherence to the spirit and mandate of the RDTL Constitution.

Moreover, such a suspension will have a positive impact on the court and allow it to carry out its functions unimpeded and in accordance with the Constitution; this will help reduce the likelihood of counterproductive responses to the Court's decision in the future.

Therefore, JSMP is a little concerned that a partial or temporary suspension could create a dilemma for the court in carrying out its functions unimpeded and the court could be subject to political pressure, even if the court has pursued all available steps to fulfill its legal and constitutional obligations. In other words, even if the court decides this case correctly in accordance with the law, there still might be a negative reaction and questioning by the public, and certain political elements and interested parties will continue to criticize the court's decision due to the reasons outlined above.

³ RDTL Constitution Tetum Version from Court of Appeal .

In addition, as mentioned previously, if the court completes the trial after cross-checking all of the facts and witnesses presented, and then decides that there is insufficient evidence to prove the crime of corruption or misuse of power, as charged in the Prosecutor's indictment, then the public may react and claim that the court issued this decision because it was unable to freely carry out its functions, or that the court was subject to pressure by certain parties.

Furthermore, if the court cannot prove, or cannot be convinced about the facts or the legal basis put forward by the Public Prosecutor, and the court decides to dismiss this case, other legal avenues are available to restore and rehabilitate the good name of the Deputy Prime Minister if he wins the case and feels that he has been prejudiced by the Public Prosecutor's unproven accusations or his privacy has been violated as an individual and also as a member of a sovereign organ.

JSMP monitored the plenary discussion on the 5th and 6th April at the National Parliament regarding the suspension from office of the Deputy Prime Minister and noted that arguments were presented both for and against the proposal. This process eventually resulted in the drafting of two resolutions, namely Draft Resolution No. 62/II on the partial suspension from office of the Deputy Prime Minister José Luis Guterres, and Draft Resolution No. 63/II on the need to protect the regular functioning of the Office of the Prosecutor General, in relation to the questioning of the Prosecutor General Ana Pessoa Pinto, who is unable to provide testimony to the court because a quorum could not be formed.

JSMP believes that the National Parliament has given careful consideration to this resolution, however JSMP still urges and encourages all parties to respect and adhere to the Constitution as the highest source of law in Timor-Leste.

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