



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release

National Parliament

18 November 2014

**Letter from the Prime Minister represents
political pressure on the National Parliament**

On 22 October 2014 the chair of the National Parliament received an official written request from the Prime Minister, Kay Rala Xanana Gusmão.

The aim of this letter was to request the National Parliament to not authorise the removal of immunity of members of the government who have been accused of committing crimes but where the facts have not yet been proven, so they can continue to perform their duties until their mandates expire. In this way, the government will be able to function properly, and there will be no threat to the continuity of government and management of the State.

Article 113 of the RDTL Constitution states that where a member of the government is charged with a criminal offence punishable with a sentence of imprisonment of more than two years, he or she shall be suspended from his or her functions so that the proceedings can be pursued. This means that the immunity of a member of government is automatically suspended/removed, but normally the court will request permission from the National Parliament to remove the immunity of a member of government, which has been the practice to date.

On 4 November 2014, the National Parliament officially distributed this letter to each bench in Parliament for consideration in accordance with Article 114 of the RDTL Constitution. This article states that no member of the government may be detained or imprisoned without the permission of the National Parliament, except

for a felonious crime punishable with a maximum sentence of imprisonment of more than two years and crimes that are in *flagrante delicto* (caught in the act).

“JSMP encourages the National Parliament to respect the RDTL Constitution which states that the court does not need the permission of the National Parliament to initiate proceedings against a member of the government accused of a crime punishable with a sentence of imprisonment above two years. In circumstances like this, members of the government must be automatically suspended,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

JSMP believes that Article 114 of the Constitution which was referenced as legal grounds in the aforementioned request is not justifiable because this article only applies to crimes that are punishable with a sentence of imprisonment of less than two years and that are not in *flagrante delicto*.

Based on provisions set out in the Penal Code most of the crimes characterized as corruption (crimes committed in the performance of public functions) are punishable with a sentence of imprisonment above two years, therefore Article 114 of the Constitution does not need to be taken into account.

Even though the letter was ‘only a request’, JSMP believes that this letter could give rise to multiple interpretations and in the end lead to negative conclusions, and practices like this can place political pressure on the National Parliament to refrain from contributing towards the strengthening of the justice system, especially the commitment of the State to combat crimes of corruption.

The Commissioner of the Anti-Corruption Commission (CAC) Adérito Tilman in his welcome speech when he met with Committee A of the National Parliament also responded to the Prime Minister’s letter and said that if the members of parliament did not remove the immunity of members of the government, the court will not try corruption cases until the mandates of the government members have expired, and only then will proceedings be initiated against them. The Commissioner of CAC stated that “the letter could damage the good name of Timor-Leste in the eyes of the international community in relation to efforts to combat corruption.”

In 2012 JSMP conducted a study on the issue of immunity and published a report titled ‘Parliamentary Privilege and Immunity in Timor-Leste’. This report is

available at: <http://jsmp.tl/wp-content/uploads/2012/05/Parliamentary-privilege-and-immunity-June-2012-FINAL.pdf>

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