



JUDICIAL SYSTEM MONITORING PROGRAMME
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A policy of reconciliation must reflect principles of justice and respect for the constitutional order:

Eurico Guterres will still be an accused person in the massacres that occurred before and after the referendum in Timor-Leste

The policy of reconciliation promoted by the President of the Republic and the Prime Minister must reflect the principles of justice and mandatory Constitutional norms enshrined in the Constitution of the Democratic Republic of Timor-Leste (C-RDTL).

Article 160 of the Timor-Leste Constitution states that crimes committed between 1974 and the 31st of December 1999 can be considered crimes against humanity of genocide or of war and shall be liable to criminal proceedings with the national or international courts. This means that crimes that occurred during 1999 in the context of the population consultation or referendum shall proceed to trial if there are no amendments to the Constitution.

JSMP believes that the provisions of Article 160 of the Timor-Leste Constitution are a constitutional order and mandate that bind all State entities and must be respected, including by the President of the Republic. The President of the Republic plays a very significant role in this State to defend and demand for all entities to abide by the principles enshrined in the Timor-Leste Constitution.

Eurico Guterres (EG) was a key and decisive perpetrator in a range of violations, atrocities and massacres that occurred previously in Timor-Leste, during and after the referendum in 1999. Therefore, the UN Serious Crimes Unit charged EG as the perpetrator of crimes against humanity, including homicide, persecution and other inhumane and cruel acts.

“...Until now, Eurico Guterres is still considered to be an accused person for atrocities and crimes against humanity that occurred during and after the referendum in Timor-Leste in 1999 and until now his status as a defendant has not been revoked therefore the Office of the Prosecutor-General of the Republic has an important role to play in ensuring and defending legality in accordance with the law”, said Mr. Casimiro dos Santos, Acting Executive Director of JSMP.

Even though Eurico Guterres was tried by the Ad-Hoc courts in Jakarta, these proceedings were strongly criticized by a range of entities because at that time it was suspected that this trial did not fulfil the requirements of a fair trial in accordance with international law and the proceedings were an effort and attempt to bypass demands

for an international court. Professor David Cohen, 2003, a famous expert in the field of international human rights law and transitional justice, expressed strong criticism regarding the trial of Eurico Guterres, and he stated that this trial was intentionally designed to fail.

Although we are aware of the major difficulties and challenges of bringing the main perpetrators and intellectual actors to justice, the State still needs to respect victims and survivors by making policies that dignify and honour them, to avoid undermining their sense of justice. The policy initiated by the President of the Republic and the Prime Minister to invite EG and his group who were involved in a range of crimes in the past does not only overstep Constitutional limitations, it also insults and offends victims and survivors who have suffered and experienced tragedy and dark times in the past. Reconciliation should not just represent the perspective of those in power/the leaders, but rather it should come from victims, survivors and between the people.

Reconciliation should be a national agenda or an agenda of the entire State, therefore these initiatives should go through the appropriate mechanisms with the involvement of all entities and sovereign organs, particularly the National Parliament as the representative body of the people to discuss this policy and for it to be approved/ratified before the President of the Republic and the Prime Minister promote this policy.

If this process is dealt with in a transparent and inclusive manner it will make it possible to represent the voice of the victims in these processes. Therefore, the initiative for reconciliation should not create the impression that it is a personal or specific initiative from one or two leader who are now in power. State issues should be dealt with in accordance with State protocols and solemnity, to ensure that processes are carried out in accordance with order and within the scope of constitutional obligations.

In the summary of the Chega! Report, the Special Panel for Serious Crimes stated that Eurico Guterres was responsible and accused of being involved in a range of crimes before, during and immediately after the referendum, including:

1. *The destruction of property against a civil population, inhumane acts against a civil population, the killing of six people and the forced disappearance of six people in relation to an attack on the Dili Diocese on 5 September 1999;*
2. *Destruction of property against a civil population and other inhumane acts against an unknown number of civilians in relation to attacks at the Compound of Bishop Belo, Canossian Convent and Red Cross on 6 September 1999;*
3. *Other inhumane acts in relation to an attack on Acaçio Riberio on 6 September 1999; and*
4. *Forced deportation or forced transfer of a civilian population between the 5th and the 9th of September 1999.*

JSMP believes that the Public Prosecution Service or the Office of the Prosecutor-General of Timor-Leste are aware of these cases, and actually they should exercise their institutional role to advise the President of the Republic to respect and obey the Constitutional order.

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