

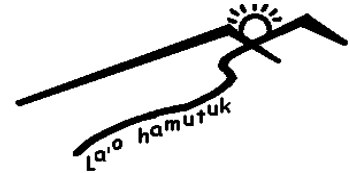
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LA'O HAMUTUK ANALYSIS REGARDING THE CASE OF RELEASING FORMER LAKSAUR MILITIA MATERNUS BERE BY LEADERS OF RDTL¹

On 30 August 2009, some Timorese leaders freed Maternus Bere, the former leader of the Laksaur Militia (Laksanakan Sapu Rata) in Suai who was indicted for committing crimes against humanity in 1999. This decision by the President of the Republic and Prime Minister violates the Constitution of RDTL Article 160 about serious crimes which states that "Acts committed between the 25th of April 1974 and the 31st of December 1999 that can be considered crimes against humanity, of genocide or of war shall be liable to criminal proceedings with the national or international courts."

Under Article 160 of the Constitution of RDTL, the UN/RDTL Special Panel for Serious Crimes of the Dili District Court issued a warrant to arrest Maternus Bere in 2003, subsequent to Serious Crimes Unit indictment No./09/2003. He was named together with Egidio Manek, deputy commander of the Laksaur Militia, and others who committed crimes against humanity in Suai during 1999, including "murder, extermination, enforced disappearance, torture, inhumane acts, rape, deportation and persecution." The former leader militia Maternus Bere must be brought to a national or international court for trial. The decision to free him betrays the state's commitment made by ratifying the Rome Convention for the International Criminal Court (ICC).

Freedom for Maternus Bere by the President and Prime Minister undermines the principles of a democratic state under rule of law based onto article 1(1) of the Constitution of RDTL which states that "The Democratic Republic of Timor-Leste is a democratic, sovereign, independent and unitary State based on the rule of law, the will of the people and the respect for the dignity of the human person." Freedom for Maternus Bere who was captured by PNTL and imprisoned pending trial is illegal, because the decision to free him must be by a court, not a non-judicial organs. We understand that President of the Republic José Ramos-Horta and Prime Minister Xanana Gusmão instructed the Minister of Justice to release Maternus Bere without a decision from a judge, but we do not yet know their motives for releasing this alleged perpetrator, and have seen no formal declaration from the President and Prime Minister of their reasons. However, we have learned that the Indonesian Minister of Foreign Affairs Hassan Wirayuda threatened not to attend the 10th anniversary commemoration of Timor-Leste's referendum until Bere was turned over to the Indonesian Ambassador in Dili.

¹ RDTL – República Demokratika Timor-Leste / Democratic Republic of Timor-Leste

We believe that the leaders' decision does the following:

1. Diminishes the credibility of Timor-Leste as a sovereign nation and our Constitutional dignity, as consecrated in Constitution of RDTL Article 2
2. Undermines our self-image as a democratic state governed under rule of law
3. Discards Timor-Leste's values of justice, values of humanity and values of independence.
4. Disrespects martyrs' human rights and the rights of victims.
5. Shows that Timorese leaders do not respect our Constitution and violate the principles of justice and separation of powers.
6. Sets a bad precedent for constitutionality and national sovereignty in the future, as Timor-Leste has given away its ability to say "no" to Indonesia or other nations when they ask Timor-Leste to violate our own laws or constitution.

We believe that state leaders should not have released Maternus Bere without a decision from a judge, because these leaders, including the President and Prime Minister, have no jurisdiction over criminal justice. That competence belongs to the courts, as defined by Article 118(1) of the Constitution of RDTL: "Courts are organs of sovereignty with competencies to administer justice in the name of the people." And the decision of a tribunal is higher than any other authority's decision, including the President of the Republic, National Parliament and Prime Minister, as described in Constitution Article 118(3): "Court decisions shall be binding and shall prevail over the decisions of any other authority."

This decision by Timorese leaders damages Timor-Leste's reputation as a democratic state under rule of law, weakening Timor-Leste's Judicial System, demonstrating abuse of power and violating the Constitution and the nation's commitment and principles.

Therefore, La'o Hamutuk demands that:

1. All citizens including the President, Prime Minister, National Parliament and Government must respect and obey the Constitution as the highest law in Timor-Leste.
2. All state organs in Timor-Leste must know their own functions and the separation of power defined in the Constitution.
3. Timorese leaders must show and defend the state's objectives consecrated in Constitution Article 2: "(1) Sovereignty rests with the people, who shall exercise it in the manner and form laid down in the Constitution. (2) The State shall be subject to the Constitution and to the law. (3) The validity of the laws and other actions of the State and local Government depends upon their compliance with the Constitution."
4. State leaders must respect and obey decisions made by the judicial organs.
5. The state of Timor-Leste must carry out the indictment from the Serious Crimes Unit No./09/2003 to arrest Maternus Bere and his militia colleagues and to put them on trial.

6. The entire state and nation of Timor-Leste must reject impunity for perpetrators of serious crimes against humanity in the past and in the future.
7. The state of Timor-Leste should not give amnesty to perpetrators who commit serious crimes in Timor-Leste.
8. Timor-Leste and Indonesia should establish an extradition agreement to extradite perpetrators who committed crimes against humanity between 1974 and 1999 in Timor-Leste, so that they can be put on trial here.

Impunity for perpetrators of crimes against humanity hinders Timor-Leste's process of democratization, showing that judicial institutions are not strong enough to defend people's rights to justice. Impunity limits victims' ability to receive compensation or recuperation, legitimizing and legalizing past and future violence against society, and contradicting the state's obligation to guarantee and promote the fundamental rights of citizens, to respect the nation's principles of democratic rights.

Constitution Article 2(2) states "The State shall be subject to the Constitution and to the law," meaning that laws applies to everyone, including national leaders. Therefore, when citizens or leaders do not comply with the law, this violates the constitution and creates legal instability, while obstructing our process of national development, creating abuse of power. This is the path toward dictatorship, where people in power do not obey the Constitution.

The leaders' decision has implications for Timor-Leste's sovereignty in relation to Indonesia. This decision puts Timor-Leste under the control of Indonesia's Government, surrendering Timor-Leste's principles of independence, as well as our national sovereignty.

La'o Hamutuk is an independent organization which has monitored and analyzed the process of development in Timor-Leste since 2000. We believe that developing and strengthening our judicial system, respecting human rights, respecting our Constitution and avoiding abuses of power will help Timor-Leste develop as a nation which defends and promotes principles of democratic rights and good governance to serve the interests of its citizens. Therefore, we are very concerned and distressed about the decision to free Maternus Bere, which violates our Constitution and compromises our national sovereignty.

More information on the Bere case in Tetum and English is at
<http://www.laohamutuk.org/Justice/99/bere/09MaternusBere.htm>