

6 September 2009

To:

1. His Excellency Dr. José Ramos-Horta, President of the Republic
2. His Excellency Mr. Kay Rala Xanana Gusmão, Prime Minister – Government of RDTL
3. His Excellency Mr. Fernando “Lasama” de Araújo, President of National Parliament
4. Her Excellency Ms. Ana Pessoa, General Prosecutor of the Republic

CC:

1. His Excellency Msgr. Carlos Alberto, Pr, Bishop of Dili Diocese
2. His Excellency Msgr. Basilio do Nascimento, Pr, Bishop of Baucau Diocese
3. Excellencies Presidents of the Party Caucuses in the National Parliament
4. His Excellency Provedor for Human Rights and Justice
5. Organization of families of victims
6. Public, via the mass media

Regarding: Freeing former Laksaur Militia member, Maternus Bere

According to some media sources, on 30 August 2009 the Timor-Leste government freed a former Laksaur militia leader highly suspected for his involvement in the attack on 6 September 1999 on people who took refuge in the church in Suai. Three priests (Father Hilario Madeira, Pr, Father Tarsisius Dewanto, SJ, and Father Francisco Soares, Pr) and about one hundred civilians died in the attack.

As an organization working to strengthen the rule of law, justice and human rights in Timor-Leste, we call upon the government to explain Maternus Bere’s release from preventive detention. According to our information, Maternus Bere’s release was based on an order from the Prime Minister, conveyed to the Justice Minister. We consider this act illegal government interference in the court’s competency, a violation of Timor-Leste’s constitution, the Penal Code and The Code of Penal Procedure that govern in the country.

In 2003, the office of the General Prosecutor issued the indictment that authorized Maternus Bere’s arrest. He is accused, as former commander of the Suai Laksaur militia, together with 13 other militia members, of crimes against humanity, including: murder, destruction (*extermination*), disappearances, torture, inhuman acts, rape, deportation and persecution in the District of Covalima from April until September 1999. Maternus Bere is a principal suspect in the indictment and was arrested on 8 August 2009 when he returned to Timor-Leste from West Timor. The other suspects remain in West Timor, Indonesia. The Suai District Court ordered Maternus Bere be held in preventative detention until trial.

According to our information, on 30 August 2009 Maternus Bere was released from preventive detention after the Justice Minister telephoned the Becora Prison Director and told him to release Maternus Bere from the prison; and the Prime Minister authorized the Justice Minister to issue the order.

According to Timor-Leste’s laws, only a judge has the power to make decisions on suspects held in preventive detention. Judges may use the cautionary measure of preventive detention when they consider a suspect might flee to escape justice and if there is strong evidence that the suspect committed crimes that could result in a sentence longer than three years. In this case, the judge ordered the suspect be held in preventive detention because it was very likely that Maternus Bere would flee back to West Timor over the border if he was released, and because he is a suspect in a case of serious crimes that could result in up to 25 years imprisonment. However, for a suspect held in preventive detention to be freed, only a judge can make the decision, and only in certain circumstances.

In the case of Maternus Bere there was no judicial order to release him from preventive detention. This is a violation of Timor-Leste’s constitution that insures the separation of powers between the sovereign organs and states that the judiciary must be free to function independently, without pressure from parliament, the president or Government. According to Article 7 of the Code of Penal Procedure, the judiciary must only obey laws in force in Timor-Leste, not obeying political interests. Additionally,

Article 8 obliges public authorities, including the government, to cooperate with the court in criminal judicial proceedings in Timor-Leste. The actions of the current government in freeing Maternus Bere violate their obligation to facilitate the functioning of the courts.

The government also violated Article 160 of the Constitution that states that crimes against humanity must be tried in a national or international court, because it is clear that if Maternus Bere returns to Indonesia, he will not be tried by any court. According to Timor-Leste's laws and international law, victims have the right to justice for the crimes they have suffered.

According to Timor-Leste's Penal Code, it is criminal behavior to prevent an investigative process or preventive action (such as preventive detention) of the courts. At the same time, this action demonstrates "abuse of power" because the Government is violating its obligation to facilitate justice in the country.

These events are a big threat to our legal and justice systems, and to the sovereignty of Timor-Leste. The Timorese people did not fight for their independence to create a state that violates people's right to justice, rather we fought for a nation where the law would apply equally to everyone.

This action seriously wounds the victims who have not yet fully recovered ten years after liberating our country. The victims and survivors of the massacre at the Suai church who participated in the National Congress of Victims of Past Human Rights Violations on 2-4 September 2009 at the Pope John Paul II Center in Comoro, expressed their unhappiness with the political attitudes of some of our leaders. They feel that the decision to free the former Laksaur militia leader is an insult to their sacrifice. The victims and survivors question the integrity of some of our national leaders because they appear to defend the interests of the people and government of Indonesia over those of the Timorese people -- especially the martyrs of the nation. For example in 2003, when some TNI (Indonesian National Military) members raped a woman from Oecusse, our government did not take strong measures to defend the dignity of the victim. Victims and we who have signed this statement have begun to lose trust in the sovereignty of our sovereign organs and their ability guarantee the rights of Timorese citizens.

Therefore, with this opportunity, those of us who have signed below, using our constitutional right as Timorese citizens request:

1. The Prime Minister and Justice Minister to meet the population and victims in Suai to explain to them why the Government of Timor-Leste freed Maternus Bere without following legal procedures.
2. The General Prosecutor of the Republic to investigate the actions of the government intervention in the functioning of the courts.
3. The representatives of the people in the National Parliament to quickly debate this event and approve a resolution that obliges the government to take responsibility for its unconstitutional action.
4. The Provedor for Human Rights and Justice also must campaign against the decision of the government that does not protect the Timorese people's right to justice.

That is the extent of our request, and we await positive action from you so that we can salvage our independence and sovereignty, and the democracy of our beloved country.

More than 100 people signed this statement.