

FORUM ONG TIMOR LESTE THE EAST TIMOR NGO FORUM



Caicoli Street, Dili-East Timor, Phone: 742-2821; 731-8653

Statement from Civil Society regarding Appeals Court Decision: **The Law does not only apply to small and poor people**

Timor Leste, as a nation under the democratic rule of law (see box) needs to put the supreme law and its offspring higher than the interests of any political party or individual. It is important for everyone, including the sovereign organs of the state, to comply with and obey the decision issued by the Court of Appeals. This will continue to strengthen a democratic state governed under rule of law, giving confidence to every Timorese citizen and to the international community to participate in the process of strong and sustainable development for the future of Timor-Leste.

The objectives of the state, according to Article 6.b of the Constitution of RD/TL, include “To guarantee and promote fundamental rights and freedoms of the citizens and the respect for the principles of the democratic State based on the rule of law.”

Civil Society Organizations (CSOs) are important actors in Timor-Leste, with the responsibility to be a bridge between all the sovereign organs and the people of this country. To insure that everyone is included in the process of development in all sectors, it is important for accurate information to be distributed to every Timorese person, from the national level down to each aldeia.

CSOs have long had a clear position about the General State Budget, especially the 2008 mid-year adjustment. From the beginning, we questioned some parts, including the allocation of \$240 million to the Economic Stabilization Fund (ESF), and the Government’s intention to withdraw more money from the Petroleum Fund than the Estimated Sustainable Income (ESI = 3% of the money in the fund plus the expected revenues from Timor-Leste’s oil and gas reserves). Eventually, as we all know, the Appeals Court on 13 November 2008 sent its decision to Parliament saying that:

1. \$240 million allocated to the ESF violates the Constitution of the Democratic Republic of Timor-Leste (CRD/TL), which prohibits secret budgets within the state budget. Also, because the National Parliament cannot exercise its power to monitor such a budget.

Article 145.2 CRD/TL “The Budget law shall provide, based on efficiency and effectiveness, a breakdown of the revenues and expenditures of the State, as well as preclude the existence of secret appropriations and funds.”

2. Taking \$290.7 million more than the ESI (the ESI limits withdrawals to \$396.1 million), for a total withdrawal of \$686.8 million, from the Petroleum Fund is illegal because it violates the requirement of the 2005 Petroleum Fund Act that petroleum resources must be managed to benefit current and future generations. The Government failed to follow the requirements of Articles 8 and 9 to give a detailed explanation of why taking more money than the ESI is in the long-term interests of Timor-Leste.

Regarding this decision from the Appeals Court, some people have given their perspectives and opinions about how other sovereign organs should respond. From Civil Society, we see that it is important for everyone to put the interests of the nation above their individual or political interests. This issue is not a game, but an essential step in our actions to strengthen the judicial system in Timor-Leste, as a democratic state under law which follows the Constitution, where no one is above the law.

Article 2.2 CRDTL “The State shall be subject to the Constitution and to the law.”

Article 119 CRDTL “Courts are independent and subject only to the Constitution and the law.”

As a democratic state, we put the Constitution as the highest law in the land. Therefore, we see that there will be serious consequences which will affect Timor-Leste’s development if other sovereign organs refuse to comply with the decision of the Appeals Court:

- 1) It will weaken Timor-Leste’s judicial system, and will cause criminals to doubt that the courts will carry out their Constitutional functions, increasing impunity in the justice area.

Article 118.3 “Court decisions shall be binding and shall prevail over the decisions of any other authority.”

- 2) It is very likely to increase political instability and reduce security in the country, which could lead to a situation of fear and insecurity throughout the country. For example, a crisis like the one in 2006 could happen again.
- 3) It gives an ugly image to the international community, especially the investors we hope will come to develop industry in our country. Timor-Leste will lose confidence from the international community.
- 4) If some continue not to comply, not to follow the law like this, it creates an atmosphere of inequality before the law, where anyone may ignore the law. This can create an image that the law is only applied to poor and small people, but not to important ones.

By comparison, when sovereign organs truly comply with the decision of the Appeals Court:

- 5) It will save some money for the State Budget for 2009, which according to a Press Release is \$681 million. This budget takes \$589 from the Petroleum fund, once more \$181 million above the ESI (which the Government estimates at \$406.8 million).
- 6) It will create a good image for all Timorese people and the international community that Timor-Leste, as a democratic state under law, truly values the Constitution and all other laws. This will give confidence to investors and others to trust that the law in Timor-Leste will protect their rights and responsibilities. It will show that the law applies to everyone, not only small people.

After looking at these impacts, we from Civil Society offer the following recommendations:

- 1) All sovereign organs of the state must understand their powers and functions, to follow all laws in force in Timor-Leste, especially to comply with this decision from the Appeals Court.
- 2) The Government must stop using the Economic Stabilization Fund, according to the decision of the Court.
- 3) We ask the National Parliament, as part of their monitoring function, to ensure that the money from the ESF is returned to the state budget, and to prevent the 2009 and future budgets from following a similar scenario.
- 4) Nobody, neither national leaders, political party leaders, academics, or civil society in general, should politicize this decision. They should put the national interest above their personal or political interests.
- 5) All our people should obey decisions of the courts, and actively participate in strengthening Timor-Leste’s judicial system.
- 6) We encourage everyone, including civil society, to continue to demand that all sovereign organs comply with this court decision. We also encourage citizens to communicate with their representatives in Parliament, to strengthen each Parliament Member’s function and power under the Constitution.

- 7) As everyone knows, the media has an important role in developing this country, and we recommend to all media to communicate information professionally, according to independent and impartial principles of journalism.
- 8) The President of RDTL should consider his function and power according to Constitution Articles 74.1 and 149. As the Head of State, he should find a way to truly symbolize national unity, maintaining the validity of all laws.
- 9) Semi-autonomous agencies, especially the Banking and Payments Authority (BPA), should implement the decision of the Appeals Court, in regard to their function of managing the Petroleum Fund.

Dili, 26 November 2008.

Signed by

Together with the Timor—Leste NGO Forum:

NGO Hafoti

Fundasaun Balos

LABEH

Timor Visaun

CDP-Inurtil

TL Comp

La' o Hamutuk

Asosiasaun HAK

Habitat Timor-Leste

Ass. Estrela da Esperansa

Rede Hasatil

OFFD

SANTALUM

KSI

RHTO