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Viewing cable 06DILI228, EAST TIMOR UPDATE: WHAT IS THE PRESIDENT THINKING?

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Reference ID	Created	Released	Classification	Origin
06DILI228	2006-05-11 19:24	2011-08-30 01:44	SECRET	Emb

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RUEHWL/AMEMBASSY WELLINGTON PRIORITY 0330
RUEHBR/AMEMBASSY BRASILIA PRIORITY 0131
RHHMUNA/HQ USPACOM HONOLULU HI
RUEAIIA/CIA WASHINGTON DC
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S E C R E T SECTION 01 OF 03 DILI 000228

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DEPT FOR EAP/MTS
NSC FOR HOLLY MORROW
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E.O. 12958: DECL: 5/11/2016
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SUBJECT: EAST TIMOR UPDATE: WHAT IS THE PRESIDENT THINKING?

REF: (A) DILI 189; (B) DILI 203; (C) DILI 213; (D) DILI 219; (E) DILI 220

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CLASSIFIED BY: Grover Joseph Rees, Ambassador, U.S. Embassy
Dili, Department of State.
REASON: 1.4 (b), (d)

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¶1. (S) Summary: Despite the widespread popular belief in East Timor that the ongoing political and security crisis can only be resolved if the President invokes the constitutional provision permitting the dismissal of the Prime Minister, President Gusmao and his close associates have made clear to Emboffs and other interlocutors that he would not consider such an action unless the situation were to become far worse than it is now. His reluctance is motivated by several overlapping practical and legal concerns. First, although the President reportedly agrees with an analysis by his legal advisors that he has the constitutional power to dismiss the Prime Minister when it is "necessary to ensure the regular functioning of the democratic institutions," it is not clear that this point has been reached.

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Second, the President believes that no matter how strong the legal and factual case for dismissal might become, it is not out of the question that elements of the armed forces (FDTL) and possibly of the police (PNTL) loyal to him might defy any such action by the President, leading to further bloodshed. Finally, the President believes there is an excellent chance Alkatiri will be defeated in the upcoming Fretilin Party Congress, which would greatly enhance the prospects for an immediate and peaceful change of government. President Gusmao is deeply disappointed in Alkatiri, believes there are credible reports of many more killings during the weekend of April 28-30 than have been officially reported, and is worried --- despite his view that the majority of FDTL and PNTL would be loyal to the President in a crisis --- about the possibility of illegal violence by elements in FDTL led by Colonel Lere. End Summary.

¶2. (S) In two recent meetings with President Xanana Gusmao and numerous discussions with his close political associates and others who have spoken with the President, Emboffs have learned that President Gusmao has no intention of yielding to what appears to be the widespread popular demand (see Reftels) that he dismiss Prime Minister Mari Alkatiri and oversee the formation of a new government. Gusmao has generally avoided direct answers to questions about what actions he might consider taking in various circumstances, instead urging Ambassador and other interlocutors to do everything possible to calm the situation in order to avoid the need to consider difficult options. However, he told a senior United Nations Office in Timor-Leste (UNOTIL) official yesterday (May 10) that dismissal of the Prime Minister is not an action he would consider under anything like the present circumstances. The President indicated that it would be particularly inappropriate to consider such an option so soon before the Fretilin Party Congress scheduled for May 17-20, which he suggested might resolve or at least clarify the situation.

¶3. (S) Despite his present unwillingness to consider dismissing the Prime Minister, the President reportedly believes he has the constitutional authority to do so if the situation were to degenerate to the point where governmental institutions could not function effectively. The President's Chief of Staff, Agio Pereira, told Ambassador Rees that the President's legal advisors have prepared an analysis of the President's powers under the Constitution to deal with a crisis of this sort. Although Pereira declined to share the analysis with Ambassador, he referred to article 112 of the Constitution, which provides in pertinent part that the President may "dismiss the Prime Minister . . . when it is necessary to ensure the normal functioning of the democratic institutions, after consultation with the Council of State." The Council of State is a

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constitutionally mandated institution composed of prominent individuals appointed by the President, the Parliament, and the Government. The majority of the members of the Council, including several of those appointed by the Government, are generally regarded as thoughtful and independent. Article 112 does not require that the Council support the President's decision, only that he consult with the Council. (Note: The legal advisors who prepared the analysis for the President are believed to be two Portuguese law professors who were formerly provided as advisors to the President by UNOTIL. Although they have returned to Portugal, they have continued to advise the President on issues such as the criminal defamation provisions of the proposed Penal Code.)

4) (C) Although Article 112 also contains other language that could be construed as further limiting the President's power of dismissal to a list of specified situations --- e.g., the beginning of a new legislature, the rejection of the Government's program for the second time by Parliament, and the approval of a motion of censure --- the most straightforward reading of the provision is that these circumstances are cases that automatically "entail" (implicam) the Prime Minister's dismissal, whereas the broader "necessary to ensure the normal functioning of democratic institutions" clause is an additional grant of discretion to the President. All the relevant actors appear to agree with the President's interpretation on this point, although the Prime Minister grudgingly refers to this

grant of power as a "constitutional coup d'etat." See Ref D.

5) (C) Pereira told Ambassador the President has no present plans to invoke article 112, and does not believe that the current crisis will degenerate to the point where replacing the Prime Minister would be necessary to preserve democratic institutions. Rather, the chief of staff says the analysis the President requested from his legal advisors was just to make sure he understood the constitutional situation in anticipation of a wide range of possible scenarios. This is consistent with what the President himself has told Ambassador and others in recent conversations, in which he has repeatedly urged a united message that the situation is getting better and life is returning to normal.

6) (S) Notwithstanding this upbeat assessment of the current situation, the President has told Ambassador that he blames Alkatiri for the current crisis, both because he ignored institutional problems within the military (FDTL) that a commission headed the President himself identified in a report two years ago, and because he unconstitutionally and ill-advisedly called in the military without consulting the President, whom the Constitution designates as Commander in Chief. He also told Ambassador that "if I had been consulted I would not have agreed."

7) (S) Although the President does not claim to know for sure how many people were killed in Dili and Tasitolu over the weekend of April 28-30, he regards as highly credible the allegations that there were many more deaths than the 5 officially reported. The President believes this partly because of his long familiarity with Colonel Lere, the alleged ringleader of the alleged atrocities, of whom he says, "even when we were fighting in the jungle he would do this sort of thing." The President is also deeply suspicious of the motives of FDTL members who denied him access to Tasitolu at gunpoint on April 29 when he arrived unannounced to investigate the claims of mass killings. According to Pereira, the President saw a dead body on a hillside near FDTL headquarters in Tasitolu before he was turned away, and a secretary who was traveling with him also saw the body. The President suggested that "it might be better for the investigation of Tasitolu to proceed slowly. People need more time to find courage to say what they saw. And Matan Ruak needs time to get into full control of FDTL." The President says Matan Ruak is now more or less back in charge, but that Lere now has his own relationship with the Prime Minister and very strong reasons to resist any effort to

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find the truth. According to the President, Lere is now saying that "we will take orders only from the Government, not from Xanana. And if they try to blame us, then we'll see."

8) (S) (Please strictly protect the information in this paragraph.) Despite his firm intention not to invoke his power under article 112 to dismiss the Prime Minister, the President has clearly been conducting a discreet but detailed survey over the last few days of who in the FDTL and police (PNTL) would support him in the event circumstances were to change to the point where he found it necessary to invoke this power, or in other extreme circumstances such as an attempted coup d'etat by Colonel Lere or Minister of the Interior Rogerio Lobato. The President believes the substantial majority in both institutions would follow his orders, including the "Los Palos Group" of about 300 FDTL members under Lt. Col. Aluk as well as Police Commissioner Paulo Martins and the vast majority of PNTL members. Although the President did not allude to the dissident military police and other FDTL and PNTL members who are currently AWOL under the leadership of Major Alfredo Reinado and Major Marcos Tilman, it is clear that these groups would also follow his orders. See Ref E. The President told Ambassador that "they used to say the army belonged to Xanana and the police belonged to the Government. It was never really true. But now it is more complicated." He believes Alkatiri rejected the ex-FDTL petitioners' demands and then activated the FDTL to quell the April 28 riot partly in order to change this equation by bringing the whole armed forces over to his own side. Now, according to the President, Alkatiri has discovered that his move backfired: the public now associates the Prime Minister

with Colonel Lere and the real or perceived military excesses of April 28 and the ensuing days, while a majority both FDTL and PNTL would still follow the President if a constitutional crisis were to occur. Despite these elaborate scenario planning, the President reiterated that he has no intention of taking action against Alkatiri, either constitutional or unconstitutional. Rather, he wants to know what support he could count on in the event he needed to assert his authority as Commander in Chief to stop an illegal action by elements in the military.

9) (S) One reason the loyalties of the military are of great interest to the President is that he believes that during the days after April 28 he himself was the object of an "action", which he says may have been only a surveillance action, by what he believes to have been a group of FDTL members who conducted operations behind his house during the night of Wednesday, May 3. The President's military advisor, Lt. Col. Pedro Klamar Fuik, told Embassy USDR that he has previously received death threats and threats against his family, and that he is still under unspecified pressure from FDTL members associated with Colonel Lere.

10) (C) The President also told Ambassador that if the Fretilin Party Congress is held on schedule May 17-20 there is an excellent chance that Ambassador Jose Luis Guterres will defeat Alkatiri. However, the President fears that "if there is more violence, they will use it as an excuse to postpone the Congress. If it is held now, Alkatiri cannot win."

11) (C) Comment: Embassy Dili is confident that President Gusmao intends to act in strict accordance with the Constitution. It is also clear that he understands the likely human costs of an imprudent use of a constitutional grant of authority that should only be used in the most extreme circumstances. He does, however, appear to be preparing for a wide range of possible scenarios, including those in which he might have to intervene in a constitutional crisis caused by others. End comment.

REES