



Currently released so far...
251287 / 251,287

Articles

Brazil
Sri Lanka
United Kingdom
Sweden
Global
United States
Latin America
Egypt
Jordan
Yemen
Thailand

Browse latest releases

2011/08

Browse by creation date

66 72 73 75 78 79 85 86
87 88 89 90 91 92 93 94
95 96 97 98 99 00 01 02
03 04 05 06 07 08 09 10

Browse by origin

A B C D F G H I
J K L M N O P Q
R S T U V W Y Z

Browse by tag

A B C D E F G H
I J K L M N O P
Q R S T U V W X
Y Z

Browse by classification

CONFIDENTIAL

Viewing cable 08DILI294, TIMOR-LESTE: COURT OF APPEALS FINDS BUDGET ALLOCATION

If you are new to these pages, please read an introduction on the structure of a cable as well as how to c with others. See also the FAQs

Reference ID	Created	Released	Classification
08DILI294	2008-11-19 08:57	2011-08-30 01:44	UNCLASSIFIED//FOR OFFICIAL USE ONLY

VZCZCXRO4492
OO RUEHCHI RUEHCN RUEHHM
DE RUEHDT #0294/01 3240857
ZNR UUUUU ZZH
O 190857Z NOV 08
FM AMEMBASSY DILI
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4148
INFO RUEHLMC/MILLENNIUM CHALLENGE CORP IMMEDIATE
RUEHZA/ASSOCIATION OF SOUTHEAST ASIAN NATIONS
RUEHKO/AMEMBASSY TOKYO IMMEDIATE 0905
RUEHWL/AMEMBASSY WELLINGTON IMMEDIATE 0973
RUEHBY/AMEMBASSY CANBERRA IMMEDIATE 1229
RUEHLI/AMEMBASSY LISBON IMMEDIATE 1076
RHMFUU/CDR USPACOM HONOLULU HI
RUEHDT/AMEMBASSY DILI 3636

UNCLAS SECTION 01 OF 02 DILI 000294

SENSITIVE
SIPDIS

MCC FOR VP HEWKO; STATE FOR EAP/MTS

E.O. 12958: N/A
TAGS: PGOV EFIN ECON TT
SUBJECT: TIMOR-LESTE: COURT OF APPEALS FINDS BUDGET ALLOCATION
ILLEGAL

DILI 00000294 001.2 OF 002

¶1. (U) Summary. Timor-Leste's Court of Appeals ruled on October 27 that the Government's allocation of monies from the Petroleum Fund into a newly-created Economic Stabilization Fund (ESF) violates the Constitution's provisions against secret budgets. The Court also found that any transfers from the Petroleum Fund to the state budget above USD 396.1 million in 2008 would be illegal. Despite the opposition FRETILIN party's claims that this creates an "institutional crisis," the reality is that the ruling may be little more than a slap on the wrist, since it only prohibits future spending from the ESF, and transfers from the Petroleum Fund to the state budget to date are beneath the legally established threshold. Moreover, the Court made several serious procedural errors that are generating calls for discipline of its three judges, only one of whom is Timorese. Nevertheless, the ruling shows that the GOTL's fiscal actions are subject to judicial constraints. While publicly stating that it has not done anything wrong, the GOTL has indicated that it will abide by the ruling, and is busy finding other sources to fund rice imports, the only budget item directly affected. End summary.

¶2. (U) On October 27, Timor-Leste's Court of Appeals found that the GOTL acted unconstitutionally in allocating USD 240 million to a new Economic Stabilization Fund (ESF). The ESF, part of the GOTL's controversial supplementary budget passed last summer, is a new measure intended to stabilize the economy by providing subsidies for food staples, building materials, and fuel. The Court of Appeals held that the allocation to the ESF was not adequately justified and therefore violated the Constitution's provisions against secret budgets. However, the existence of the ESF per se is not illegal; it withstood a court challenge filed by the opposition FRETILIN party last August.

CONFIDENTIAL//NOFORN
SECRET
SECRET//NOFORN
UNCLASSIFIED
UNCLASSIFIED//FOR
OFFICIAL USE ONLY

Community resources

Follow us on Twitter
Check our Reddit
Twitter this
Digg this page
Contact us on IRC

courage is contagious

¶3. (U) The Court also found that any transfers from the Petroleum Fund to the state budget above USD 396.1 million in 2008 would be illegal since they would violate the Estimated Sustainable Income (ESI) formula, a legal limit on withdrawals from the Fund. According to the Petroleum Fund Law, transfers above ESI to the state budget must be justified as being in Timor-Leste's "long-term interests." ESI amounts to interest income from estimated petroleum wealth, and petroleum wealth is estimated using conservative price and production projections based on the only field currently in operation. In its supplemental budget, the GOTL calculated ESI as USD 396.1 million. However, we understand the GOTL's withdrawals from the Petroleum Fund to date amount to USD 300 million, leaving an addition USD 96.1 million the GOTL can legally withdraw in 2008.

¶4. (U) Finally, the Court also held that its decision would not apply retroactively to expenditures to date, including the roughly USD 14 million for rice subsidies from the ESF. It will, however, prevent the GOTL from further spending from the ESF. The ruling becomes effective once published in the government's official gazette. As of November 19, that has not occurred.

Government Accepts Ruling, But Angered By Procedural Snafus

¶5. (SBU) The Vice Prime Minister (VPM) told us that the government is currently assessing how best to cope with the one real budgetary conundrum the ruling created: how to finance rice imports through February 2009. He said an effort will be made to tap other currently budgeted accounts rather than seek any further legislative fixes in 2008. The draft 2009 budget is scheduled to be submitted to Parliament the week of November 24, ¶2008. In any case, the Court's ruling will be respected, said the VPM, although by doing so the government does not acknowledge any misdeed. Indeed, the VPM emphasized, the Court in its ruling committed several procedural errors. These included failing to deliver a solicitation for information from the Parliament directly to the Speaker of the Parliament and instead dropping the summons with a clerk (note: the appeal and the ruling largely deal with actions by the Parliament and not the government; the Speaker of the Parliament separately issued a sharp condemnation of the Court's failure to follow prescribed procedure; the Speaker claims he never saw the summons because his clerk failed to bring it to his attention). In addition, the Court's own procedural requirements stipulate that it physically meet in plenary when hearing a case against the government. This time, no such plenary session occurred. Instead, the court's ruling was prepared by the two international judges present in Timor and hand-carried to

DILI 00000294 002.2 OF 002

Portugal to get the signature of the Chief Justice, reportedly prone for the past three months on a Lisbon hospital sickbed.

¶6. (SBU) Due to these and other irregularities, president Ramos Horta told us that he is convening a special meeting of his judicial council (a five-person advisory body selected by the President, Speaker and Prime Minister) on November 18, 2008. The meeting is being held, said the President, to review the procedures followed by the Court and to determine whether any disciplinary actions are needed. The President predicted that a likely "punishment" would be to not extend the contracts of the two foreign judges currently sitting on the Court of Appeals (one from Portugal, the other from Guinea-Bissau). He saw no alternative but to accept the Court's ruling, however, as a means of protecting the integrity of the constitution and its checks and balances.

FRETILIN Piles On

¶7. (U) Considerable confusion has arisen due to the fact that the Court's decision has not yet been published in the official Jornal da Republica. However, the opposition FRETILIN party lost no time in attempting to leverage the decision against the government, drawing on copies of the decision provided to the National Parliament on November 13. On that date, FRETILIN

issued a press release claiming that the decision meant the Alliance for a Parliamentary Majority (AMP) coalition government headed by Prime Minister Xanana Gusmao now faced an "institutional crisis" because the government no longer has any money to spend from the budget. In a November 15 meeting with PolOff, FRETILIN Member of Parliament Jose Teixeira echoed the Court's findings concerning the ESF's lack of transparency. He complained that that an explanation and justification by the Government of Timor-Leste (GOTL) to the National Parliament was needed for this legislation, "which was not done." Teixeira went on to accuse the AMP government of "forcing through the National Parliament in undemocratic fashion" the supplementary budget last July. Specifically, he accused AMP Members of Parliament of collaborating with the "government's agenda" without pressing for a transparent debate or prodding for explanations or justifications from the government. He reiterated that the party has called for the Prime Minister and Minister of Finance to appear before the National Parliament to explain the government's budget execution to date.

¶8. (U) The AMP government responded on November 14, charging that FRETILIN had manipulated the figures it cited; reminding that the Court had held last August that the ESF was legal; and stressing that the Court had specifically determined that expenditures to date from the ESF were not illegal.

¶9. (U) Portuguese judge Ivo Nelson Rosa was the primary author of the Court's decision. Rosa has stirred controversy in the past, particularly when he clashed last year with President Ramos-Horta over the issuance of an arrest warrant for military renegade Alfredo Reinado and his followers, and his role in this decision has irritated some Timorese. President Ramos-Horta alluded to this in a comment to the press, noting he is unsatisfied when internationals are standing in front and making (problematic) decisions that obstruct (progress for) the Timorese people.

¶10. (SBU) Comment: While not pretty, and not yet concluded, the above saga suggests an earnest effort by Timorese actors to honor the judgment of its highest court, a judgment that at its core refers to the constitutional goal of full adherence to the principle of government transparency in budget formation. Further, it strongly reaffirms the disciplines contained in the Petroleum Fund Law on use of its resources beyond the legally established estimated sustainable income available to the government for ongoing expenditures. Whether the judges on Timor's court of appeal face sanctions for their alleged procedural fumbles remains to be seen, as does whether this episode leads to a personnel change in the court. Regarding the integrity of the Petroleum Fund, however, as one senior official told us, "although we can't say so publicly, we're pretty happy with the decision." End Comment.
KLEMM