

The following articles, in reverse chronological order, contain news and analysis about the flight of Tiago and Fong Fong Guerra from Timor-Leste to Portugal, via Australia. Several of them are machine-translated from Portuguese. They include

- 25 Nov: Portuguese Justice has no request for intervention on couple who fled Timor-Leste (LUSA)
- 21 Nov: The Guerra Case - Contempt of the East Timorese Judiciary from as far as Europe (ETLJB)
Comment from Fausto “Nino” B. Ximenes
- 17 Nov: Timor-Leste has not yet issued a Portuguese extradition order or request – minister (LUSA)
- 16 Nov Ana Gomes asks Australia not to extradite Portuguese couple to Timor-Leste (LUSA)

Translated from <http://noticias.sapo.tl/portugues/lusa/artigo/23315646.html>

Justiça portuguesa sem pedido de intervenção sobre casal que fugiu de Timor-Leste

Portuguese Justice has no request for intervention on couple who fled Timor-Leste

Évora, Nov 25 (Lusa) - The Portuguese justice system has not received any “request to intervene” on the Portuguese couple who fled Timor Leste after being sentenced for embezzlement, the Justice Minister said today, admitting that this may still happen.

The couple “do not currently have any requests for intervention by the Portuguese justice system,” but “they may have,” admits Justice Minister Francisca Van Dunem, on the sidelines of the inauguration of the new Évora Judiciary Police.

Asked by Lusa agency, the minister said that her ministry also “has not received any requests from Timor-Leste” regarding the Portuguese Tiago and Fong Fong Guerra.

The couple arrived in Lisbon today, where they were welcomed by a dozen relatives, but declined to speak to journalists.

Their escape caused diplomatic tension between Portugal and Timor-Leste, with the subject raising criticism from political leaders and civil society, with articles demanding investigations of the Portuguese embassy in Dili.

Last week, the Portuguese Foreign Minister, Augusto Santos Silva, assured that the embassy in Dili respected the Portuguese legislation when granting passports to the couple.

Following the flight to Australia, Augusto Santos Silva ordered an urgent inquiry into the Diplomatic and Consular General Inspection, the conclusion of which was delivered on Thursday.

The Guerra couple renewed their citizen cards earlier this year, and more recently Portuguese passports were issued, prompting criticism in the Timorese press.

“Portuguese citizens are entitled to identification documents as Portuguese citizens, irrespective of their legal situation, provided they do not violate certain legal provisions. In this case, there was no such violation, according to our inquiry, the applicable Portuguese legislation was complied with and, therefore, the passports were assigned, in compliance with the law, “said Santos Silva.

Tiago and Fong Fong Guerra were convicted in August by a panel of judges of the Dili District Court to eight years in prison and to repay \$859,000 for embezzlement (fraudulent use of public money).

The Portuguese appealed the sentence, considering that it suffered from “irremediable nullities” more common in “undemocratic regimes”, based on manipulated and even prohibited evidence.

An “international extradition request for Portugal with provisional detention” was sent to the Portuguese Attorney General, Joana Marques Vidal, with knowledge to the Minister of Justice, Francisca Van Dunem, and the Minister of Foreign Affairs, Augusto Santos Silva, according to a letter from the lawyer of the couple to which Lusa had access.

<http://www.easttimorlawandjusticebulletin.com/2017/11/the-guerra-case-contempt-of-east.html>

21 November 2017

The Guerra Case - Contempt of the East Timorese Judiciary from as far as Europe

ETLJB 20 November 2017 Two Portuguese nationals, Tiago and Fong Fong Guerra, were convicted by a court in Dili of criminal offences under East Timorese law.

They apparently committed further offences when they unlawfully absconded from the jurisdiction last week and fled across the Timor Sea and are now in detention under Australian law.

Now, they will face the consequences of breaking Australian law as well. There is no extradition treaty between Australia and East Timor so it will be a problematical process for the East Timorese authorities to regain custody of these two outlaws and ensure that they face the judicial processes to the end in East Timor.

Aside from those legal problems, there has been a chorus of criticism and disrespect for the decision of the East Timorese court from the convicts themselves, Portuguese citizens, no less than former President Jose Ramos Horta himself, and now, representatives from the European Parliament.

No one has voiced support for the judges' decision or sought to refute the allegations that have been made about the competency of East Timorese judges and the legal system of East Timor. The Court can not speak for itself and it is high time that this interference with the independence of the judiciary stop and all efforts made by all stakeholders to make sure that these two persons face justice.

The Decision

The panel of judges at the Dili district court found the couple guilty and sentenced them to eight years in prison for embezzlement, ordering them to pay the state \$859,000 - the amount they embezzled. The court found them not guilty of two other charges: money laundering and forgery.

"The accused damaged the finances and the economy ... and defrauded the state of Timor," the presiding judge said. "They acted freely, deliberately and consciously, knowing that their conduct was not allowed in law and that they were criminally punishable."

In a message emailed to Lusa, the couple said they were "shocked" by the verdict, in a case that they described as a "lie" that had already stolen three years of their lives and those of their children, as well as "the confidence of the people who love" East Timor.

The Convicts

The Guerras themselves have demonstrated, by their conduct in fleeing the jurisdiction, a complete contempt for the rule of law in East Timor and a complete disrespect for the Courts and judicial processes. They should be handed over to Interpol for return to the Timorese jurisdiction to face the law; once they have served their time for violations of Australian law.

Ramos Horta

Jose Ramos Horta was reported in The Portugal following the conviction of the Guerras as saying that "It's a very sad day for justice in East Timor," Ramos Horta said in a message sent to Lusa. "I still believe that the appeal court will restore justice."

Maun Bo'ot Horta knows that he should not be saying anything about a matter that is before the Courts. He has attacked the independence and the competence of the judges' and the integrity of the decision. His comments are highly prejudicial and show a complete contempt for the judicial process. Jose should shut up. Alternatively, he should at the most be saying "Let Justice run its course. I can't comment any further".

Portuguese Citizens and The Portuguese Parliament

Family and supporters have campaigned on behalf of the pair since their arrest, claiming Guerra has been subject to unhygienic conditions, a lack of medical care and a lack of justice. A petition, reportedly signed by more than 3,500 people, was delivered to the Portuguese government last month, calling on it to extradite the couple from Timor-Leste.

The petition claims that “the Government of Portugal urge the Government of Timor-Leste to have this case transferred to Portugal, *since the Timorese judicial system has proven incapable of dealing with a case like this*”. And further: “*All the human rights of these Portuguese citizens have been violated in Timor-Leste....*” Apparently, this petition was presented to the Portuguese parliament by an organ of the Parliament itself.

How disgraceful. No juridical analysis, no grounds demonstrating incompetence of the Timorese judges, and no factual or legal arguments advanced to support these outrageous allegations against the East Timorese judges.

It includes a despicable emotional reference to the separation of the criminals from their children. That has never been a defence to a crime or sentencing.

The European Parliament

The latest reported intervention has been effected by Members of the European Parliament. Luciano Alvarez writes:

“Eleven members of the European Parliament, of various nationalities and political families, including three Portuguese, sent a letter to [the] head of European Union Diplomacy, asking that, *in the face of poor professional conduct prosecution and judges of Timor-Leste* “ the EU intensify support for justice in this country.”

The correspondence also requested contact with the the Timor-Leste authorities in order to to ensure that the appeal brought by the couple corresponds “in a credible way to international standards.” The best way to achieve this, they add, “would be to ensure that judges of the Timorese Court of Appeals are *assisted by experienced international judges*” in this matter.

The Ambassador

Portugal’s ambassador to Timor-Leste, Manuel Gonçalves de Jesus, has been accused of being suspected of authorising the Guerras to obtain new identification documents, which had been withdrawn including passports when Tiago and Fong Fong Guerra were found guilty and then convicted for crimes committed (embezzlement) in Timor-Leste, thereby enabling them to arrive properly documented in Australia on board a previously-arranged transportation to Australia. [Source: <https://timoragora.blogspot.hk/2017/11/embaixador-de-portugal-em-timor-leste.html>]

Utter Contempt of the Courts of East Timor

All of these parties, the convicts, the citizens and institutions of the Portuguese parliament, the Portuguese Ambassador to East Timor, the members of the European Parliament, past President and national hero, Jose Ramos Horta, have shown the most improper regard and contempt for the East Timorese judges, prosecutors, and legal processes. They have all undertaken the most scurrilous conduct in relation to the judiciary in East Timor. That should be noted. It should be a matter of grave concern to all jurists everywhere.

Comment from Fausto “Nino” B. Ximenes

Let me say at the outset that I’m in no way qualified to comment on the details of the case and hence cannot make a judgment as to whether justice was delivered in this court case. I do, however, find it particularly puzzling that everyone looks up to ‘maun boots’ for rescue whenever they found themselves

in trouble. What's worse, people use anecdotal opinions of 'maun boots' to make an overall judgment of what is otherwise a very technical affair, and as if their opinions hold ultimate truth and virtue.

I especially found it quite interesting that Horta is quoted here saying "it's a sad day for justice in East Timor". Let us not forget that in the recent past, Horta also handed over a former militia member accused of killing innocent civilians during the 1999 violence to Indonesian authorities. While we knew and understood the rationale behind the release and handover of the ex-militia member- let bygones be bygones - such political intervention does not mean that the crimes the former militia allegedly committed did not take place. In the Guerras' case, it is one thing to read yet another statement from Horta which may hold some weights by the mere fact of his caliber, but it is a completely different thing to take it on its face value without examining its technical merit.

The more important questions a critical reader should be asking is does that mean the two fugitives are completely innocent simply because one of the country's popular leaders held an opinion in their favor? Are the opinions based on technically sound evidence proving where the justice officials went wrong? Can the opinions of the politicians be used to justify our scrutiny of Timorese justice sector as a whole and so on?

I strongly believe not, unless you're in the courtroom and monitored the process from the beginning to the end and be able to pinpoint where the procedural flows are. Independent organizations like Judicial System Monitoring Programme (JSMP) normally would have their court monitors in the district courts on daily basis, sadly I see no commentary or reference is made to the organization that has the technical capacity and is constantly present in the courts.

What I see in this article is a mere amalgam of general anecdotes from the politicians of both sides, nothing more. It would have been different had there been a close study and analysis of case records to identify the gaps and inconsistencies in the interpretation of laws and application of legal procedures. Only by doing so, we can then understand where the technical failures are, if rights violations took place, how, and to what extent.

Furthermore, not only I found the statements that the Timorese justice personnel are inexperienced unsubstantiated and appallingly condescending, but also laughable as it is the cheap old song that everyone sings when things don't work in their favor or in favor of their friends and families. Although I understand it's our human nature to come in defense of our loved ones irrespective of whether their acts qualify such defense, I wouldn't go as far as dismissing the entire justice sector as incompetent, and claimed that defendants are better tried elsewhere outside the legal jurisdiction where the alleged crimes took place.

I have not once come across a perfect justice system on this planet, if there was a formula for one we would all be using it by now. The Timorese justice system is unquestionably far from perfect, but having worked within the field from my teenage years when the courts were being rebuilt from the ashes until fairly recently, I know we have made a great deal of progress with still much work to be done, undoubtedly.

What would be a better and more interesting read is a close and thorough case analysis of this and other cases of similar nature to identify where the gaps are in court proceedings, and even better, make constructive recommendations as to how courts can improve their performance. This kind of writing, on the other hand, helps nobody, unfortunately.

Translated from <http://24.sapo.pt/atualidade/artigos/timor-leste-ainda-nao-emitio-mandado-ou-pedido-de-extradicao-de-portugueses>

Timor-Leste ainda não emitiu mandado ou pedido de extradição de portugueses - ministra

Timor-Leste has not yet issued a Portuguese extradition order or request - minister

Díli, 17 Nov (Lusa) - The Timor-Leste Justice Minister told Lusa on Monday that the country's authorities have not yet issued any international arrest warrant or requested the extradition of a couple of Portuguese who fled to Australia.

"We are still completing the whole process," said Angela Carrascalão in Dili, referring to the case of Tiago and Fong Fong Guerra who fled to Darwin in northern Australia last week, by boat.

She said that to date Timor-Leste has not issued an international arrest warrant and that no extradition request has been made to Australia.

The issue continues to be accompanied by the Timorese political, diplomatic and judicial authorities, sparking wide debate in the local press and social networks.

One of the most commented aspects has to do with the decision of the Portuguese Embassy in Dili to issue travel documents that the two Portuguese had in their possession when they arrived in Darwin on November 9.

Critical articles and commentaries of the decision have dominated references to the case at a time when the diplomatic mission is 'between ambassadors', with the departure of the country of the former, Manuel Gonçalves de Jesus and yet without his successor, José Pedro Machado Vieira, arrived in Timor-Leste.

With ties to Macao, the couple Tiago and Fong Fong Guerra were sentenced in Dili Court to eight years' imprisonment for embezzlement, a case that was appealed to the Court of Appeal.

Tiago and Fong Fong Guerra fled Timor-Leste by boat to Darwin where they illegally entered last Thursday.

This week, José Ximenes, the Timorese Prosecutor-General, confirmed to Lusa that a warrant is being prepared, but he declined to confirm whether it had been issued or not and whether it was a national or international warrant.

The couple, who appealed the ruling, were, among other measures, prevented from leaving the country and are now in a detention center for illegal immigrants near Darwin airport.

Their situation remains unclear, with experts heard by Lusa explaining that the Australian law does not allow the extradition of the Portuguese, although they recognize that bilateral relations between the two countries makes the case "more complicated" and potentially "more time-consuming" to resolve.

"Australia can only extradite people to extradition countries, i.e. those countries identified in the Extradition Act, with whom there is an extradition agreement," Kevin Boreham, a professor of international law at the Australian National University in Canberra told LUSA.

"There is no extradition agreement with Timor-Leste and I think there is not even a cooperation agreement on criminal matters," he added.

Australia has extradition agreements with about 140 countries, including Portugal, but not with Timor-Leste, and the law allows Canberra to deal with "requests for mutual assistance" from any country with whom it does not have such an agreement, the final decision being taken by the Australian Attorney General.

The Attorney General's office said that "Australia may receive requests from a third country where the person targeted by the extradition request is not a citizen of that country."

"In case there is no direct bilateral agreement, a country can request the extradition of persons based on multilateral treaties in which domestic regulations are in force," the statement said.

Kevin Boreham explained that in practice and even in a scenario in which Timor-Leste issues a warrant for arrest or requests Australian support in detaining the couple, the same criteria of the Extradition Act continue to apply.

ASP // FV. Lusa/Fim

Translated from <https://timoragora.blogspot.hk/2017/11/ana-gomes-pede-australia-que-nao.html>

Ana Gomes asks Australia not to extradite Portuguese couple to Timor-Leste

Ana Gomes pede à Austrália que não extradite casal português para Timor-Leste

LUSA, 16 Nov -- Member of the European Parliament Ana Gomes wrote to the Australian authorities objecting to the extradition to Timor of the Portuguese couple who fled to Australia after being sentenced by the Timorese court for the crime they are accused of being unfounded.

“Having [Monday] learned that they were being detained in Australia and that, possibly, an arrest warrant and possibly a request for extradition by Timor, and having read the Australian laws on of extradition, I saw that objections to extradition could be raised,” Ana Gomes told Lusa.

“So I wrote to the Australian authorities - to the Attorney General and the Minister of Justice - saying that since I have been following the process since May 2015 and being an old friend from Timor, I am available to be heard and present all the information which I have on the case, for the purpose of raising an objection to extradition and for them to be repatriated to Portugal,” reported Ana Gomes.

Noting that she took this initiative because she was “convinced of their innocence and that they are being victims of an error of justice,” the former Portuguese ambassador to Indonesia, an observer attentive to the reality of Timor-Leste, explained that this error stems from “difficulties and incapacities of the Timorese system itself,” which is “a new and less experienced judicial system.”

The Portuguese couple, Tiago and Fong Fong Guerra, who fled last week to Darwin on a boat, awaited a weekly release to the authorities on a weekly basis, the result of an appeal against the sentence at first instance last August 24 to eight years of actual detention and the payment of \$859,000 for embezzlement, after being cleared of the accusations of money laundering and falsification of documents.

“As I know the details of the case, I know that the accusations are not at all consistent: embezzlement is a crime of which only officials of the East Timorese State can be accused, that is not the case, only this fact is, from my point of view, demonstrating that the accusations are unfounded and that the sentence is unfounded, and understanding the weaknesses of the Timorese judicial system and being absolutely convinced of their innocence, I think it is my duty to help those who are victims of a great injustice.”

Ana Gomes emphasised that, in the same way that she did it “in relation to many Timorese,” she also did it “in relation to these two Portuguese nationals, no doubt.”
