

Rede Defensor Direitos Humanos
(RDDU)
Rua Karketu Mota-ain Nù. 08, Farol, Dili Timor-Leste
No. Telefone: (+670) 77259858, 77372095
E-mail: joanicogomes58@gmail.com

22 April 2020

His Excellency Dr. Francisco Guterres “Lu Olo”
President of Republic of Timor-Leste
Dili

Subject: General Observations regarding the Implementation of a State of Emergency

His Excellency President of Republic,

Firstly we would like to inform that the Human Rights Defenders Network/*Rede Defensor Direitos Humanos* (RDDU) was established in 2008 (when there was a State of Siege) and is comprised of activists from a range of human rights organisations in Timor-Leste, with the aim of carrying out monitoring and advocacy on human rights. To date the RDDU has cooperated with the Ombudsman for Human Rights and Justice (PDHJ) and other relevant State entities.

In the current circumstances, where we face the threat of the corona virus, we would like to express our deep appreciation for the prevention measures taken by the State in declaring a State of Emergency to concentrate resources and efforts to prevent or combat the spread of this virus. From a human rights point of view, the measures taken by the State mean that the State has fulfilled its obligations to safeguard the right to life (Art. 29 of the Timor-Leste Constitution) and the right to health (Art. 57 of the Timor-Leste Constitution).

Based on the Declaration of His Excellency the President of the Republic, a State of Emergency is in place for one month, from 27 March until 26 April 2020, with the possibility for this period to be extended because this outbreak is not yet under effective control around the world.

As citizens of Timor-Leste we feel we have the responsibility to participate in and contribute towards solving problems facing our nation by carrying out our role. Therefore, observations made by members of the RDDU enable us to participate and contribute towards solving problems in the short term, and therefore we can all overcome this emergency and go back to living like normal again. Our observations and advocacy are not intended to undermine the work of the competent authorities or to exacerbate the situation. We also really hope that in the short term we will be free from the threat of the Covid-19 and live normally again. We intend for our observations to be like a ‘mirror’ for the competent authorities so they can improve measures, to make them more effective and efficient in preventing this outbreak, and to avoid new problems from emerging in society.

In Law No. 3/2008 on the '*Regime regarding State of Siege and State of Emergency*', Article 19 (*Functioning of the organs of management and monitoring*) states that during a State of Emergency the Superior Council for Defence and Security, that is chaired by His Excellency the President of the Republic, shall be kept in permanent session to manage and monitor the implementation of the State of Emergency. Therefore at this opportunity we would like to present the results of our general observations regarding implementation efforts carried out by Government authorities over 4 weeks so that attention can be given and for necessary corrective measures to be taken to ensure effective implementation and not to give rise to new problems.

We have noted the following progress:

1. This is the first time that the authorities and officers who are implementing the State of Emergency have had to respond to this type of calamity and outbreak. We have only ever experienced a State of Siege that needed implementation measures that were quite different in nature. Therefore when initiating this State of Emergency our officers were strongly influenced by their experiences relating to the State of Siege, and therefore they have erroneously implemented the rules set out in Government Decree No. 3/2020 without observing the rules provided for in Presidential Decree No. 29/2020 or Law No. 3/2008 (Regime regarding State of Siege and State of Emergency), and subsequently Timor-Leste National Police/*Polisi Nasional Timor-Leste* (PNTL) officers have acknowledged their mistakes and have taken measures to improve their conduct. We really appreciate the acknowledgement of the PNTL General Commander regarding errors that have been made (Media News *Timor Post*, 2 April 2020).
2. We believe that the PNTL should not be blamed for making mistakes, as they were caused by inadequate experience and knowledge about the nature of the threat/enemy (Covid-19 outbreak) as well as a lack of knowledge about the rules set out in Government Decree No. 3/2020 and the rules set out in Presidential Decree No. 29/2020. Things have moved quickly, and they did not have adequate preparation or equipment, however the PNTL has had a strong desire to 'protect' our nation from the threat of Covid-19, and therefore they have gone out into the field with minimal resources to implement orders from their superiors. After noting the reaction of community members, the PNTL institution has started to improve itself, and therefore their behaviour has changed day by day.
3. Also, health workers have had the same experiences as police officers. They have lacked knowledge and equipment, but have remained committed to uphold their profession, and they have worked hard to carry out their role to safeguard the nation from the Covid-19 outbreak. At the start health workers faced a range of challenges from the community who were ignorant about the threat of Covid-19, and therefore they rejected the enforcement of quarantine measures in their neighbourhoods. However, gradually the Ministry of Health with the support of other ministries has managed to consolidate its work and each day the health workers have been improving their performance – even though facilities are still inadequate. For the last two weeks the quarantine services have started to become well organized and implemented – even though there has been some disappointment with food in the quarantine centres as well as the 'incident' that occurred at the quarantine centre in Hotel Vila Verde. Sanitation services have started setting up water tanks and soap in Dili, and health workers have also visited the neighbourhoods to distribute information about the prevention of this outbreak.

4. Despite the political impasse and competition between political parties represented in parliament to form a government, we believe that it is positive that the party leaders have not tried to use the threat posed by the Covid-19 outbreak to gain power. We have observed that the political leaders have realized that our nation is facing a serious threat from this outbreak, and therefore they have collaborated, even though there is no joint team to help overcome this situation. Our respected leader Xanana has continued to provide moral support from behind the scenes regarding the work of the Government in preventing and combatting this outbreak – even though a member of his party was removed from the position of Vice Minister of Health, and members from all benches in the National Parliament have participated in a joint campaign through RTTL to convey messages on prevention relating to the Covid-19 outbreak. We are very touched with political gestures like this when facing the threat of this ‘common enemy’. We hope that this can continue.

Our concerns regarding the implementation of the State of Emergency are as follows:

1. Government Decree No. 3/2020 (measures for implementing the State of Emergency) has some shortcomings, as it does not provide clarity and has confused security officers who have had to implement the State of Emergency out in the field:
 - 1.1. There are no rules to make a distinction about which shops can remain open, and which shops cannot, there is no definition about opening hours and closing hours for shops to avoid stimulating the movement of people. The Government Decree does not assign powers to a relevant ministry to emit a ministerial diploma to regulate this issue in detail to provide clarity to those who are implementing the State of Emergency.
 - 1.2. Also, the markets have been disorganized for almost two weeks and no entity is present in the markets to check if the movement of shoppers is in accordance with the rules regarding the prevention of Covid-19. Article 30 of the Government Decree assigns powers to the security forces and civil protection officers, but we don't see any measures to empower the Civil Protection Officers to carry out their role in organizing and controlling movement in the markets or other locations based on rules regarding the prevention of this outbreak. Civil Protection Officers really need to be in attendance at the markets and also at *Banco Nacional Comercio Timor-Leste* (BNCTL) branches with loudspeakers to regularly advise sellers and buyers as well as BNCTL clients to respect the rules regarding physical distancing and hygiene. It is clear that prior to carrying out this role they need to be given a clear explanation about what they need to do based on the competencies attributed to them in the Government Decree.
 - 1.3. Also, the operation of public or group transport is not clearly regulated. The Government Decree prohibits the operation of group (public) transport and only allows for private transport, which implies discrimination against ordinary citizens (who have no private transport) who have an urgent need (to go to hospital, clinic, pharmacy or to buy food) and who cannot access transport. No responsibility has been attributed to a competent ministry to regulate and control this situation to prevent discrimination and to implement the rules regarding the prevention of Covid-19 in relation to public transport.
 - 1.4. There is no clear explanation about the movement of transport between municipalities, and in what circumstances it is allowed, and what the rules are regarding the prevention of Covid-19, and therefore a debate took place between the

Minister of Transport and Telecommunications and the PNTL General Commander about the quarantine rules for ferryboat trips between Dili – Oecusse.

- 1.5. There are no provisions about social and economic assistance for those who have been impacted by limitations on circulation and movement during the State of Emergency. The measures to prohibit the operation of public/group transport have had serious implications for drivers or traders who use transport to make a living. Most of them have a small daily income and do not have enough money in reserve, and therefore the State of Emergency has made their lives very difficult. Based on our observations at the Tasi-Tolu terminal, drivers of public transport have all stopped working and have no income, therefore they are involved in gambling with money and this tends to lead to an increase in criminality. Residents are starting to express disappointment that some of their property is being lost.
- 1.6. Also, there are no articles that regulate what sanctions apply to those who do not obey the rules, and what criminal, civil or administrative penalties can be imposed on them. As there are no sanctions, out in the field we have observed the police applying different ‘punishments’ in individual cases. For example, some people have been carrying a passenger on their motorcycle, including husbands and wives, and the police have asked one person to get off and walk on foot, but in some cases Timor-Leste Defense Force/*Falintil-Forças Defesa Timor-Leste* (F-FDTL) members have carried their wife on their motorcycle and police have not taken any action (directly observed by some members of the RDDU). We received information that in some places the police have hit some young people who have not followed the rules.
2. The Government is the entity responsible for implementation, and we have observed and noted that there is a lack of effective preparation, and perhaps some members of Government don’t really understand the rules and procedures that would enable them to act in a uniform manner. When the State of Emergency was first implemented the Ministry of State Administration together with the Secretary of State for Art and Culture organized traditional rituals in some locations where more than 50 people came together. Ceremonies like this seriously contradict the rules set out in Article 19 of Government Decree No. 3/2020.
3. We note that some ministers do not understand the rules set out in the Government Decree and they also don’t have the capacity to implement these rules in conformity with the standards set out in the Presidential Decree on the State of Emergency. We have not seen the Ministry working in the field of commerce performing its role in guiding police and other security officers to organize shops and business activities to adhere to rules regarding the prevention of Covid-19, and the Ministry of Transport and Communication is not concerned with the need to operate public transport to ensure that ordinary citizens do not suffer serious consequences from limitations placed on their ‘income seeking’ activities. Actually, the operation of public transport is permitted with limitations on the number of passengers (a maximum of half of their normal capacity), physical distancing, and observing rules regarding hygiene. Meanwhile we have seen that the Ministry of Solidarity Social and Inclusion has been ‘silent’ or has not been concerned with the circumstances of vulnerable citizens who have been severely impacted by the State of Emergency. Vulnerable persons do not have enough income to sustain themselves and they can die from hunger or they are very susceptible to contracting Covid-19.
4. One shortcoming we have seen is that there is no concerted effort by the relevant ministry to give guidance to police and other security officers, so they understand the rules about

effectively combatting ‘the Covid-19 enemy’. Police and other security officers have not implemented the rules consistently and we have often seen that they are simply seeking out ordinary citizens (a mere show of force). We have clearly noted that police and other security officers only understand that this Government Decree regulates what is prohibited, or limits the activities of the population, and they forget that the rules on prohibition as set out in the aforementioned Government Decree refer to all people, including civilians and the authorities. This situation was made worse when the F-FDTL Commander, Major General Lere Anan Timur, encouraged members of PNTL to use violence (hit) members of the population who do not obey the rules. This instigation conflicts with the competencies attributed by the Government Decree to police and other security officers in Article 30 to diligently ensure that people follow the rules. Not only ordinary citizens need to follow the rules, but police and other security officers and the authorities must also do so. Fortunately, several days later the Minister of Defence and Acting Minister Interior, Brigadier Filomeno Paixao, said that police officers are not allowed to hit citizens. It was noted that the superiors and the police and other security officers lacked understanding about the standards set out in the Presidential Decree and are only familiar with some of the rules (about prohibitions) in the Government Decree. Regarding the methods and approaches for implementing their competencies properly, as set out in the Government Decree, they do not understand how they are going to go about it. These circumstances have not just affected ordinary citizens, but a superior member of the PDHJ (Deputy Ombudswoman for Human Rights) who is granted competency to monitor human rights in the Constitution, as well as specific competence in Article 7 of Law No. 3/2008 (Regime regarding State of Siege and State of Emergency), and was also subjected to verbal abuse when she was intervening in a quarantine case in Vila Verde (9 April 2020).

5. The inconsistent implementation of the rules is the result of irregularities on the part of some police officers over the last week. Based on a news report on television (GMNTV, 20/4/2020 as well as direct observation) the police started to conduct operations against small scale traders (people selling coconuts and mobile traders in the Tasi Tolu area who were prohibited from selling their goods and their property was dismantled) on the basis that ‘the law prohibits their activities’. This is very ironic considering that at the outset PNTL officers closed down shops and the PNTL Commander General acknowledged that they had acted wrongly, and now the PNTL is starting to act the same way towards small scale traders who are forced to engage in business because they have no money to sustain their lives. Also, in the beginning the PNTL set up check points along the road to stop motorcycles carrying two people, but when some F-FDTL members were riding motorcycles the police were not brave enough to take any action. This was also the case with Article 17 of Government Decree No. 3/2020 on prohibiting meetings of more than five persons (if possible virtual meetings should be held or communication technology should be used), but the Council of Ministers and some ministries and also some members of parliament have had meetings with more than five participants and no action has been taken by police and other security officers. As the result of the inconsistent implementation of these regulations (four weeks of implementing the State of Emergency), the police have not been conducting operations along the road to stop two persons travelling together on motorcycles or meetings of more than five people.
6. These inconsistencies in implementation can seriously undermine the credibility of (trust in) the authorities, and sometimes people will ask if the declaration of a State of Emergency was pure in its intent or merely done for political purposes. Then the

Parliament also came up with a monitoring project during this State of Emergency. Many people questioned if funds should have been channelled directly to aid efforts to combat Covid-19 or for social assistance to those who have been impacted by the State of Emergency. Also, there is confusion why the National Parliament authorized the President of the Republic to declare a State of Emergency to limit the circulation or movement of people, but members of parliament have been seen moving around as per normal.

7. In addition, the public has even more concerns about police officers who have not really given priority to their ordinary work and are more concerned with the 'combat Covid-19 project'. In Oecusse, a victim of domestic violence went to seek assistance from the police, but the police did not attend with the excuse that they are now 'busy' with Covid-19.

With reference to our general observations, if the State of Emergency is to be extended, then we would like to ask for Your Excellency the President of the Republic and the Superior Council for Defence to consider these concerns and to insist on Government measures to change, correct and consolidate implementation as follows:

1. Improve the rules set out in the Government Decree to anticipate exceptional circumstances, and not to provide general limitations only. It is necessary to give competencies to the competent ministries to regulate measures in each area based on the prevailing circumstances, so that the limitations imposed as a result of the State of Emergency will focus on safeguarding the nation of Timor-Leste from the Covid-19 outbreak, and will not cause other problems. Therefore, the measures taken during the State of Emergency will be able to safeguard the people from Covid-19 as well as from death due to hunger or suffering caused by other violations. Article 5 of the Presidential Decree states that limitations imposed during a State of Emergency cannot affect key human rights (the right to life, physical integrity, right to be free from torture, etc).
2. Conduct efforts with due diligence so that all members of government do properly understand the threat of Covid-19 as well as the standards and rules issued by the State to organize the nation to be free from this threat. Also, the intention is not just to aid understanding or comprehension, but also to empower the ministries to carry out their role in line with the aims of the State of Emergency. In this way no more activities, actions or statements from certain ministries will contradict the aim of implementing a State of Emergency.
3. Improve and increase the capacity of police and other security officers to properly understand the rules and standards in place during the State of Emergency, as well as their capacity to carry out their competencies pursuant to Article 30 of the Government Decree.
4. Accelerate the implementation of social assistance packages to vulnerable people, with effective implementation using appropriate mechanisms, and not just carried out in the regular fashion. Most vulnerable persons are traders and informal workers who have come to Dili to make a living, and they are a long way from their home village, and therefore if the distribution of the subsidies or assistance packages are carried out in the regular manner, this would mean that those people who are most need will find it difficult to obtain assistance in a timely manner. When persons in need do not receive assistance, there will be consequences and they will die from hunger.

5. Ensure the functioning of the police so that they continue to attend to ordinary issues and concerns and improve their mentality and dedication. The police need to always be ready to attend to ordinary cases.
6. Empower Civil Protection officers to carry out their role in certain areas, for example in the markets or at BNCTL branches, so they can reduce the work of the police, because Article 30 of Government Decree No. 3/2020 also attributes duties to Civil Protection Officers.
7. Encourage and support civil society organizations to assist the Ministry of Health to disseminate information on Covid-19 prevention to traders at the markets by telling them to 'regularly wash your hands, maintain hygiene and uses masks' and also distribute masks free of charge.

These are our observations and our recommendations about implementing the State of Emergency. We hope that Your Excellency the President of the Republic and the members of the Superior Council for Defence and Security will consider these observations and recommendations.

Members of Human Rights Defenders Network (RDDU)

[illegible]