



**P R I M E
M I N I S T E R**

**SPEECH BY
HIS EXCELLENCY THE PRIME MINISTER
KAY RALA XANANA GUSMÃO
ON THE OCCASION OF THE EXTRAORDINARY PLENARY SESSION
– DISCUSSION AND GENERAL VOTING ON DRAFT LAW NO. 15/III
(3) MAKING THE FIRST CHANGE TO LAW NO. 2/2014 OF 5
FEBRUARY, STATE BUDGET LAW 2014**

National Parliament, Dili
15 October 2014



Palácio do Governo,
Avenida Presidente Nicolau Lobato,
Dili, Timor-Leste

Your Excellency the President of Parliament

Your Excellencies the Vice-Presidents of Parliament

Your Excellencies, Presidents of the Specialist Committees

Distinguished Members of Parliament

Fellow Government Members

I thank you for allowing me to be here today, particularly since it was only two days ago that we requested Parliament to hold this debate.

This debate was indeed urgent, as otherwise the Government could not continue carrying out its activities without major disturbances.

The State General Budget 2014, which was comprehensively debated and approved by Parliament, included an excess withdrawal of \$271 million from the Petroleum Fund in order to cover the total estimated expenditure.

However, article 8 of the State General Budget Law 2014 states that the Government cannot make this excess withdrawal unless budget execution reaches 75% by the end of the third quarter of the year.

Budget execution was around 50% at the end of the third quarter, which means that the Government would not be able to make excess withdrawals. However, budget execution will increase in the last quarter of the year, for the reasons I will now list:

- First, the Government pays a 13th month salary in December. Therefore spending on salaries is always higher in the last quarter than in any previous quarter.

- Second, new civil servant positions that are approved and included in the budget at the beginning of the year are filled as the year progresses. This means the number of people on the payroll and salaries and wages expenditure is higher later in the year.

- Third, some capital and development projects are started and completed in one year. It takes time for these projects to be constructed

and contractors to invoice for payment. Therefore expenditure on capital and development is often higher in the last quarter of the year than in any other quarter.

- Fourth, it takes time for line ministries to procure goods and services and minor capital items. It also takes some time for companies to issue invoices for payment and for line ministries and the ministry of finance to process these. Therefore goods and services and minor capital spending are normally higher in the last quarter.

In short, execution should increase in this fourth quarter. These expenses must be paid. If the Government does not make an excess withdrawal there is the danger that debts will be carried over to fiscal year 2015. Also, using all of the money in the State account would put the balance below \$200 million, which is the reserve amount that the Ministry of Finance recommends maintaining at all times.

Mr Speaker

Messrs Vice-Speakers

Distinguished Members of Parliament

The Government is requesting a change to paragraph 5 of article 8 of Law no. 2/2014 of the SGB for this year, which currently reads:

'If, by the end of the third quarter, budget execution reaches 75%, the Government may withdraw from the Petroleum Fund an amount above the Estimated Sustainable Revenue, provided that it informs Parliament in advance and that it ensures a reserve of \$200 million in the Treasury Account.'

To read the following:

'When budget execution reaches 75%, the Government may withdraw from the Petroleum Fund an amount above the Estimated Sustainable Revenue, provided that it informs Parliament in

advance and that it ensures a reserve of \$200 million in the Treasury Account.'

We want to replace the sentence 'if, by the end of the third quarter' with the word 'when'. This will increase the period of time for making excess withdrawals.

We have also explained as clearly as we could the reasons for our request.

After reviewing our request for an urgent revision, Committee C stated that it '*considers that the request for urgency is not completely justified*' (page 10 of the Report).

On page 7, Committee C states that '***since the Budget and Financial Management Law controls the legality of other laws that go against it, thus having a standardising effect, failure to comply with it is sanctioned by the illegality of the offending law. As such, there is no doubt that the budget changes made under article 34 of the Budget and Financial Management Law comply with the provisions of chapters I and II of the same document.***'

This passage makes no sense whatsoever. At the very least, it is so removed from our request to change article 8.5 of Law no. 2/2014 that it is not up to me to make comments on it. Because if I was to make any comments, I would say it is mixing apples and oranges, since article 34 of Law no. 13/2009, mentioned in the Report by Committee C, says the following on budget changes:

'1. The Government may present alterations to the approved State Budget when the circumstances so justify it.

2. The structure and content of the budget alteration laws comply with the provisions of chapters I and II, the rules of which apply with the necessary adaptations.'

Chapter I encompasses the "Content and Structure" of the State General Budget, while Chapter II sets the rules for drafting the "State Budget Law".

It is Chapter III, which Committee C did not mention, that regulates “Budget Changes”.

The proposed revision to the SGB Law 2014, which is causing such a controversy, does not *‘submit changes to the current Budget’*, since otherwise the Government would have to present, as described in paragraph 2, *‘a structure’* of that Budget change in order to justify the *‘law content’* of that change.

Committee C did not take into account article 4 of Law no. 2/2014, on **‘Authorised Threshold for Funding the SGB’**, which reads:

‘Under article 7 of Law no. 9/2005 of 3 August, ex vi Law no. 12/2011 of 28 September (Petroleum Fund Law), the amount to be withdrawn from the Petroleum Fund in 2014 shall not exceed \$902.9 million and this transfer will only occur after complying with the provisions of article 8 of the said Law’.

Article 9 of Law no. 12/2011, on **‘Transfers Exceeding the Estimated Sustainable Income’** reads:

‘No transfer shall be made from the Petroleum Fund in a Fiscal Year in excess of the Estimated Sustainable Income for the Fiscal Year unless the Government has first provided Parliament with:

(a) the reports described in paragraphs 8. (a) and 8. (b);

(These sub-paragraphs of article 8 of Law no. 9/2005 read: ‘a) specifying the Estimated Sustainable Income for the Fiscal Year for which the transfer is made; b) specifying the Estimated Sustainable Income for the preceding Fiscal Year’);

(b) a report estimating the amount by which the Estimated Sustainable Income for Fiscal Years commencing after the Fiscal Year for which the transfer is made will be reduced as a result of the transfer from the Petroleum Fund of an amount in excess of the Estimated Sustainable Income;

(c) a report from the Independent Auditor certifying the estimates of the reduction in Estimated Sustainable Income in paragraph (b) above;

(d) a detailed explanation of why it is in the long-term interests of Timor-Leste to transfer from the Petroleum Fund an amount in excess of the Estimated Sustainable Income.'

All of these prerogatives were met when the draft State General Budget 2014 was submitted.

Eager to have the Government prove the need for urgency, Committee C says that *'We must also note that the plenary discussion should only take place after Parliament has been provided with a minimum set of information that, after being thoroughly reviewed, will enable it to assess the urgency of the matter.'* Immediately afterwards, it adds that *'the Government should submit each and every one of those documents.'* (page 8 of the Report)

The Speaker of Parliament has written to the Government requesting it to submit that **'minimum set of information'**, namely:

- *budget execution tables concerning revenues and expenditure by 30 September, as well as budget estimates by 31 December 2014, broken down by category and item, for the three funds and for the autonomous funds and services;*
- *justifications for situations of very low revenue or expenditure execution, or for almost depleted appropriations;*
- *information on State assets and liabilities;*
- *the situation of loans and borrowings by the State in 2014;*
- *certificates concerning withdrawals from the Petroleum Fund in 2014 and information on performance throughout the year;*
- *certificate – validated by the Central Bank – regarding the cash flow by Treasury and Special Fund accounts;*
- *information on compliance with the threshold (20%) for changes to budgets of services without administrative and financial autonomy;*
- *information on the percentage of single source procurement contracts (10% of the budget appropriations) signed by each Ministry;*

- detailed information on the expenses paid through the contingency reserve for whole of Government appropriations.'

All of this is evidently what Parliament considers to be a 'minimum set of information'. I must thank Parliament from the bottom of my heart for being kind enough not to have requested a 'maximum set of information'. Perhaps that is something to which we can look forward.

Mr Speaker

Messrs Vice-Speakers

Distinguished Members of Parliament

I want to ask Parliament not to ignore the very close relationship between paragraphs 5 and 6 of article 8 of the SGB Law 2014. Paragraph no. 6 says that: *'If, during the third quarter, it is estimated that the budget execution rate by the end of the year will fall below 80%, the Budget is to be revised by reducing the respective overall amount between the months of July and September.'*

The Government, despite being a mere executor, did not sit idly waiting for the end of September before informing Parliament that there is no rectifying Budget, as the letter of the law said *'between the months of July and September'*.

As executor of the programs, the Government took into account that the SGB 2014 only became executable almost in the 3rd month of the present year, i.e. in March, since the first two months were conducted under the duodecimal regime.

Between July and September, and knowing the efficiency of the administrative establishment, the Government strived to estimate the expenses that would be taking place *'until the end of the year'*, in order to find out the problems causing the delays and to fix those problems, as well as to determine the possibilities in terms of execution *'until the end of the year'*.

Still, with a very simple understanding of the relationship between the financial management issues and the management of the programs to be executed, one could think immediately that, since there is no rectifying budget, there will be no reduction in the overall amount. This leads one to assume that there will be more expenses, and more expenses require more money.

The 'minimum set of information' requested by Parliament corresponds after all to the requirement in article 8.4 of Law no. 2014, which says that *'Parliament shall hold a quarterly debate on the budget execution of each ministry, secretariat of State and autonomous fund'*. I believe that the spirit of the law seeks precisely to prevent anyone from *'ignoring that Parliament is a body tasked with the verification, rather than the mere administrative management'*, of the reports submitted by the Government at the end of every quarter.

Parliament should question instead the failure to comply with article 8.6, as that would require the Government to prove the estimated expenses. This *'thorough review'* would be assisted by that *'minimum set of information'* mentioned by Committee C on page 8 of its Report.

It may seem that article 8 is easy to implement and that one would only need to remove the \$271 million in 'excess withdrawal' for everything to work well.

Removing the 'excess withdrawal' would require cuts in all State institutions, since they cannot prove to have the ability to execute the amounts allocated to them in the State General Budget. This would entail the submission of a new budget structure, which presupposes a rectifying budget.

A rectifying budget would have to establish exactly how much money was cut, and from where, due to lack of execution capacity. This is so because only by submitting a new (rectifying) budget structure can we, as Committee C has written, *'ensure the financial transparency and clarity indicated by article 22 of the Budget and Financial Management Law'*. We agree this is the only way to *'take into account Parliament's task of ensuring budget control'* – page 10 of the Report by Committee C.

A rectifying budget must necessarily take into account the budget execution of all State institutions. I will now make that review here, so that we may all learn the binding nature of a new 'budget structure' on a Rectifying (whole of) State Budget.

Up until 30 September of the present financial year, the actual execution of the small State institutions was as follows:

President of the Republic	- 56.3 % (with commitments 56.3%)
Parliament	- 57.1 % (with commitments 57.5 %)
Courts	- 43.3 % (with commitments 56.1 %)
Public Prosecution	- 49.3 % (with commitments 68.5%)
Anti-Corruption Commission	- 52.5 % (with commitments 59.3 %)
Civil Service Commission	- 50.2 % (with commitments 54.8 %)
UNTL	- 52.1 % (with commitments 56.9 %)

I apologise for putting Parliament in the category of 'small State institutions', since we do not ignore that it is the second highest sovereignty body of the State. The execution presented for all these bodies is below 60%.

I only listed these figures to show that there is no place in the world where budget execution is a mere arithmetic operation of how much to spend per month, so as to get a high level of execution at the end of the year. I am aware that the distinguished Members of Parliament, particularly those in Committee C, know this better than anyone.

As the Head of Government, if I wanted to have quick budget execution, particularly in what concerns physical projects, I would not have focussed my efforts in ensuring the quality of the works. Indeed, I took drastic steps to change the mindset of 'doing things for the sake of doing them', just because there is money available.

We must choose between 'spending quickly' and 'spending well'. I have chosen the latter, which means that we cannot be hasty in approving works. There are many voices raised against us in relation to

the money approved in the SGB, which is always a form of forecasting expenses, and to the actual money we approve for carrying out works. This money tends to be less than what is approved by Parliament, because it follows strict criteria in terms of verifying designs and BoQs.

This exercise takes time, which in turn has an impact on the estimation of expenses. This estimation can never be exact, due to the lack of implementation capacity.

Mr Speaker

Messrs Vice-Speakers

Distinguished Members of Parliament

I would like to underline that Committee C has always been able to acknowledge *‘the nature of the issue and its importance to the conduct of the Country’*. This is precisely why our request is an urgent one.

Either we open the field of the governing action in terms of execution so that there is *‘considerable discretion in the application of the rule’* (page 7 of the Report by Committee C) or we will be left in a lose-lose situation at the end of the year. Indeed, we will be unable to respond to the possible increased physical execution, which entails an increased budget execution, while maintaining a reserve of \$200 million in the Treasury Account.

On pages 7 and 8 of its Report, Committee C says that, in view of the discretion allowed in the interpretation of ‘budget structures’ and ‘law contents’ – of which I have spoken earlier on – Parliament may *‘consider that (the Budget Overview) is (only) sufficient for a preliminary review, which must necessarily be incomplete and have gaps, of the submitted request for urgency’*.

On page 6 of our ‘Budget Overview’ we discuss the issue of ‘Cash Management and Excess Withdrawals’.

I will read a passage: *‘Holding large amounts of cash is not beneficial. The reason for this is that money held in the Government’s accounts receives an interest rate that is lower than the yield on*

Petroleum Fund investments. Holding large amounts of cash in the Government's accounts does not therefore maximise investment'.

I would remind the Distinguished Members of Parliament that the Government submits the Annual Report on the Petroleum Fund at the end of every year, showing the investment returns of the Fund. In August of this year, the Fund's returns were already \$2.7 billion. From January to August 2014 the Fund generated \$600 million. The Petroleum Fund, which was created in 2005, presently totals around \$17 billion.

On the other hand, and returning to the subject of the debate, we said that: *'The Government is therefore requesting through this rectification budget that it can make an excess withdrawal from the Petroleum Fund of up to \$271 million when budget execution reaches 75%.'* What comes next is the more important part: *'The final amount to be withdrawn will depend from the execution rate, from the revenue collection rate and from the need to keep a cash balance of at least \$200 million.'* This was from page 9 of the 'Budget Overview' submitted by the Government, which Committee C had the opportunity of reading.

This means that withdrawals are not an immediate and total operation, as it never happened in relation to the overall amounts in the successive SGBs. When money is not spent, it is kept as balance and considered as a funding source for the next SGB. This is shown clearly in Table 4 on page 6 of the Government's document, which refers to the 'Use of the cash balance', in the amount of \$400 million, from fiscal year 2013, as a 'funding source for the 2014 Budget'.

I mention this because the request by Committee C concerning the 'minimum set of information' includes 'certificates on PF withdrawals and information on the performance of the Fund' and a 'certificate validated by the Central Bank on the cash flow of Treasury Accounts'.

That entire 'minimum set of information' would only be applicable when, under article 8.5 of the SGB Law 2014, with or without revision, the Government 'informed Parliament in advance' that it would be 'making an excess withdrawal from the Petroleum Fund'.

However, at this time we are not asking for our possible request of excess withdrawal to be considered legal.

Your Excellency the President of Parliament

Your Excellencies the Vice-Presidents of Parliament

Your Excellencies, Presidents of the Specialist Committees

Leaders of the Parliamentary Parties

Distinguished Members of Parliament

Before I conclude, please allow me to say a few words, in my humble opinion about the applicability, the spirit and the letter of the law.

I believe that the Distinguished Members of Parliament can recall vividly the debates and the reasons that led to the wording of article 8. Should anyone not remember, they can always make use of the recordings of all the Plenary sessions during the debate on the SGB 2014.

What the Government recalls is that, after considering every reason for the weak budget execution compared with the money requested, the Ad Hoc Commission decided in principle to lower the overall amount from \$1.5 billion to \$1.3 billion. However, that reduction was not possible. Instead, the overall amount remained at \$1.5 billion, with a few readjustments.

Here at the Plenary it was agreed to maintain the overall amount at \$1.5 billion, provided that everyone would strive to improve execution. The spirit of that article was in general to request more accountability from line ministries and public administration, and particularly greater commitment and dedication when implementing programs. In simple words, I would say 'making budget execution more dynamic'.

The letter of the law is what converts that intent into words. I hear people saying that a law is only good or effective when it is applicable.

Our State completed 12 years of existence 4 months ago. We draft laws to guide the actions of the State establishment and we must be

constantly assessing whether or not they are applicable. This perception comes from our perception of the reality in which we live or that we face.

In this case, the effectiveness of paragraph 5 is blocked by the constraints that exist in a 12-year old State. In order to overcome this situation, the letter of the law should provide 'discretion' in terms of interpretation and application.

It was this way of thinking that led us to request Parliament to correct the existing gap or impediment in a law that was drafted with good intentions but that was realistically not applicable in its previous wording.

Dili, 15 October 2014

Kay Rala Xanana Gusmão