

In the
Tribunal de Recurso of the Democratic Republic of Timor-Leste

Names of Petitioners

- Fernanda Mesquita Borges, East Timorese citizen, born in Dili, President of Partido Unidade Nacional (PUN) and Member of National Parliament, resident in Taibesi;
- Jose Luis de Oliveira, East Timorese citizen, born in Baucau, Director of Associação HAK, resident in Fatuhada;
- Padre José Filipe de Jesus Pereira de Araújo, East Timorese citizen, born in Bobonaro, Program Coordinator, Justice and Peace Commission, Diocese of Dili, resident in Liquiçá;
- Padre Angelo Salsinha Trindade, East Timorese citizen, born in Ermera, Director, Youth Departament, Diocese of Dili, resident in Bidau-Lecidere;
- José Amaral, East Timorese citizen, born in Viqueque, Advocacy Team Leader, FONGTIL, resident in 4 de Setembro;
- Maria Afonso de Jesus, East Timorese citizen, born in Dili, ANTI Board, resident in 4 de Setembro;
- Edio Saldanha Borges, East Timorese citizen, born in Dili, ANTI Board, resident in Santa Cruz;
- Sisto dos Santos, East Timorese citizen, born in Lospalos, Coordinator, Front Universitariu Timor Leste, resident in Mate La Hotu B.T.
- Maria Manuela Leong Pereira, East Timorese citizen, born in Covalima, National Coordinator, ICTJ-Timor Leste Program
- Higinio Posinato Zamor E Silva, East Timorese citizen, born in Viqueque, Assistant Coordinator, Justice and Peace Commission, Diocese of Dili, resident in Comoro.
- Luis de Oliveira Sampaio, East Timorese citizen, born in Liquiçá, Lawyer, member of Associação de Advogados de Timor Leste, resident in Lahane

**On Petition to Examine the Constitutionality of Presidential
Decree No. 53/2008 of 19 May 2008**

**To the Court of Appeal of the Democratic Republic of Timor-
Leste**

YOUR EXCELLENCY
PRESIDENT COURT OF APPEAL
DILI – Timor-Leste

We, the petitioners named in this petition submit through our lawyer Natércia Barbosa de Deus, whose office is located at Associação HAK, Rua Gov. Serpa Rosa, Farol Dili, in accordance with article 48 of the Constitution of the Republic of Timor-Leste request the intervention of the Court of Appeal to examine the Constitutionality of Presidential Decree No. 53/2008 of 19 May 2008.

This request is based on the foundations of the democratic rule of law, in the perspective of justice and, especially, respectful of the ideals proclaimed by the East Timorese people, in an ongoing homage to all those who fell in the struggle for the country's independence, to all who suffered and still suffer the irreparable loss of their loved ones.

The petitioners submit to the Court's scrutiny the matters listed below, demanding, as allowed by law, an examination of the issues that form the basis for an examination of the Constitutionality of Presidential Decree No. 53/2008 of 19 May 2008.

The petitioners require the Tribunal to decide on the following issues of constitutionality:

1. Presidential Decree No.53/2008 of 19 May 2008 is invalid for failure to comply with the requirements of RDTL Constitution section 85

Section 85 paragraph (i) provides that the president may grant pardons or commutations of sentence, "after hearing the Government".

In the present case the President did not “hear the Government” before granting the pardons, as explicitly determined by the Constitution of the country.

A public notice issued by the Chefe Gabinete of the Ministry of Justice, João Bosco Filipe Alves Correia (*Suara Timor Lorosae*, 13 June 2008, p8) states that:

*“On 19 May 2008 the Government sent a list of all prisoners to his Excellency the President of the Republic with recommendations, [that] if there are to be pardons as announced by the President of the Republic in the message to the Timor-Leste Nation in the National Parliament when he returned from treatment in Australia, to **consider reduce the years of sentence by three months for 83 prisoners who haven’t yet completed half their sentence in order to receive conditional liberty, and for 17 prisoners who have already completed half of their sentence the government recommends to reduce their sentence by six months. Special for prisoners who have been sentenced because of a sexual violation or domestic violence, the government recommends to reduce their sentences by only two months for all of them.**” [emphasis original]*

In addition, Member of Parliament, Fernanda Borges requested the President of the National Parliament, on 27 May 2008, to obtain all information, in writing, from His Excellency the Prime Minister and the Minister of Justice, the following information:

- (a) Number of prisoners convicted and sentenced on 20 May 2008;
- (b) Opinion expressed by Government under section 85 (i) of the Constitution of the Republic on the clemencies awarded by the President of the Republic through Presidential Decree No. 53/2008 of 19 May 2008.

On 6 of June 2008, the Prime Minister Kay Rala Xanana Gusmão sent pertinent information related to the process of clemencies awarded by the President of the Republic.

This information confirms that the Minister of Justice sent Letter No 158 to the Prime Minister on 19 May 2008 with the following recommendations and the list of 83 convicted prisoners in conditions for the commutation of sentences.

The Ministers recommendation is as follows:

“Effectively, considering the term of execution of the sentence we propose to Your Excellency for the prisoners who have already met half of their sentence, a reduction from six to twelve months. For those who committed crimes of sexual violence and domestic violence, a reduction of their sentence at two months is proposed. For all the others, that is, those who have not reached half of the fulfillment of their sentences, we propose a reduction of three months”.

On the same day, 19 May 2008, the President of the Republic sent the proposal of presidential pardons for 20 May 2008 to the Prime Minister, copied to the Minister of Justice.

The President of the Republic sent together the Presidential Decree and five annexes with the nominal list of 94 prisoners, including prisoner Rogério Lobato, to whom the President proposed to partially pardon half of the sentence.

In sequence, on 20 May 2008, the Prime Minister sent a letter to the President of the Republic, to recommend the following:

“However, as far as the prisoner Mr Rogerio Lobato is concerned, given the sensitivity of the case, and, given the firm opposition of the Church and Civil Society, considering also the fact of practically not being so subjected to the privation of liberty, like other inmates, I am of the opinion that he could be awarded pardon of one year reduction only, with the condition of returning to prison in the country.

As pressupposed by article No. 2 of the Presidential decree itself that the “concession of pardon is dependent from the good behaviour in prison”, it would be good that Mr Rogerio Lobato returned as soon as possible to the prison of Becora”.

This being the recommendation of the Ministry of Justice and the Prime Minister, the President only “heard the Government” on the issue of clemencies that he intended to award on 19 May 2008. Surprisingly, this was the same day on which Presidential Decree No. 53/2008 appeared in the *Jornal da Republica*. This makes it extremely unlikely that the Government’s recommendations were read by the President of the Republic and taken into account before he made his decision and provided Decree No. 53/2008 to the *Jornal da Republica* for printing.

In any event, it is clear from public notice issued by the Chefe Gabinete of the Ministry of Justice that *even if* the President did read the Government’s recommendations before issuing Presidential Decree No. 53/2008, the Government’s views were not taken into account by the President in its entirety and with the necessary care.

Not only did the President issue far more significant commutations of sentence than those recommended by the Government, but he failed to provide lesser commutations for those convicted of sexual violations or domestic violence, as recommended by the Government. It is also worrying that the President of the Republic has not taken into consideration the observations and the recommendations of the Prime Minister about the prisoner Rogério Lobato, thereby demonstrating his intention of not applying the requirement prescribed in article 2 of the Presidential Decree which stipulates that “the concession of pardon remains dependent on good prison behavior” and thus strengthens the argument that he did not hear the Government (see Anex).

While the Constitution does not require that the President is limited in the grant of pardons to following the Government’s recommendations precisely, the clear intention of section 85 paragraph (i) of the Constitution is that the President will take the Government’s recommendations into account when granting pardons and commutations. It is clear that in this case, the Head of State did not proceed in this way. The President chose to act his own way, not observing what is prescribed by law.

2. Presidential Decree No.53/2008 of 19 May 2008 is invalid for failure to comply with due process

Section 85, paragraph (i) cannot simply be looked at in isolation, but needs to be read on the context of the whole of the RDTL Constitution, and the objectives and spirit of that Constitution. When the Constitution is viewed as a whole, in a comprehensive and articulated way, as effectively it should be, following José Joaquim Gomes CANOTILHO and Jorge MIRANDA, among other Constitutional law experts, it is clear that a requirement of due process applies to the exercise of constitutionally-granted powers including the President's power to grant pardons and clemencies.

2.1. The sources of a due process requirement

The sources of this due process requirement are found in the principles which underlie the RDTL Constitution, namely:

(1) The rule of law and respect for the fundamental rights of individuals

- Section 1, paragraph 1 of the Constitution provides that the Timor-Leste is a democratic state based on the rule of law, the will of the people and the respect for the dignity of the human person;
- Section 6 of the Constitution provides that the fundamental objectives of the state include to guarantee and promote fundamental rights and freedoms of the citizens and the respect for the principles of the democratic state based on the rule of law.

From these principles, it is clear that decisions made by organs of sovereignty which involve the determination of citizens' fundamental rights, must be made in accordance with due process. Due process is essential in the making of such decisions to limit opportunities for

conflicts of interest, nepotism and other forms of interference with appropriate decision-making that may than vest arbitrariness. It is also a means by which to reassure citizens that where their fundamental rights are concerned. In the face of legal due process, which functions as boundaries for decisions which will not be taken arbitrarily, but rather will be made by following clear procedures and according to certain criteria defined by law.

Where the President exercises his right to grant pardons or commutations, the fundamental rights of two sets of citizens are affected: the rights of prisoners to their liberty (which has been suspended by a court and may be returned by the President), and, equally, the rights of victims to have the perpetrators of crimes tried and punished by a court of law, legally provided for and constituted for this end. If decisions are taken by the President without due process, prisoners or victims, or both, who do not benefit from the decision may feel that their rights have been determined without due consideration according to fair criteria.

(2) The doctrine of the separation of powers

The RDTL Constitution provides in section 69 that “organs of sovereignty, in their reciprocal relationships and exercise of their functions shall observe the principle of separation and interdependence of powers established in the Constitution.”

Thus, while the President is “the Head of State and the symbol and guarantor of national independence and unity of the State and of the smooth functioning of democratic institutions” and “the Supreme Commander of the Defence Force” (section 74), the Courts “are organs of sovereignty with competencies to administer justice in the name of the people” and “court decisions shall be binding and prevail over the decisions of any other authority” (section 118(1) and (3)).

According to this separation of roles, it would ordinarily be the Courts who determine criminal responsibility in a particular case, and decide on a convicted person’s sentence.

However in no state is the separation of powers absolute and the power of a President to issue pardons and commutations in specific cases is an accepted and relatively common deviation from the separation of powers doctrine.

The historical process of Law and of the construction of the modern State has observed these singularities for the configuration of the process of exercise of power. This matter has been dealt with by the classical theoreticians of the study of contemporary Power.

However, precisely because this Presidential power constitutes a deviation from the separation of powers, it must be regulated. This care of juridical and legislative nature, comes from the extreme necessity to limit abuses, in such a way to ensure that Power is not used in such a way as to fundamentally undermine the role of the Courts. The making of the modern and the contemporary State found inspiration in this vision, thereby preventing authoritarianism or benefits for some sections. France, like Spain as well as Portugal, among many other countries, keep an observant eye to avoid the extreme of having a President, in the exercise of his prerogative, pardoning all prisoners after their conviction. The law confers due respect towards the decisions of the Judges and the Courts because of the need to contain the exercise of the power of the Executive, with legal limitations. This is an order, *de facto* and *de jure*, not a fiction.

2.2. The content of the due process requirement

The usual means by which to establish and implement a system of due process for pardons would be through the creation of a law establishing both process and criteria by which Presidential pardons are to be granted. Until such a law is passed in Timor-Leste, the organs of sovereignty involved in the grant of Presidential pardons (not only the President, but the Government, which is to be heard on the issue) are obliged to take steps to establish and publicize a clear and transparent procedure. This should involve:

- the formal seeking of advice from the Government;
- the provision of recommendations from the Government to the President, based on clear criteria;
- a fair consideration by the President of the government's recommendations;
- a decision from the President that is also referable to the criteria mentioned above.

The construction of the criteria used in deciding on the grants of pardons are relatively similar across jurisdictions. They should at a minimum include:

- the prisoners' behaviour while in prison,
- the gravity and nature of the crime committed, and
- the prisoner's rehabilitation and potential for successful reintegration into the community (including the risk of re-offending).

In the present case that East Timor faces, it seems that only the most minimal attempt was made to seek input from the Government (as set out above), and no reference was made in the process to criteria for the grant of clemencies. The President, acted, with "authority" that is not derived from the law. In doing so, he acted hurting the law of his own country.

Presidential Decree No. 53/2008 mentions "good prison behaviour" (article 2). However it is clear that this was not applied in practice. The clearest demonstration of this is the inclusion of Rogerio Tiago Lobato as a beneficiary of clemency, notwithstanding that he has twice failed to comply with orders of the Dili District Court demanding his return to Timor-Leste (see again the statement issued by the Ministry of Justice, *Suara Timor Lorosae*, 13 June 2008, p8 and the letter of the Prime Minister, 20 May 2008 to the President of the Republic).

No regard was paid, the consideration required by law, to the nature and gravity of the crimes committed or the extent of rehabilitation or likelihood of re-offending. Thus, it is clear that this omission created the opportunity for the issuance of clemencies to all nine of the men

still serving sentences for crimes against humanity committed in 1999. These men were provided with the same level of clemency offered to other prisoners, despite the heinous nature of the crimes they committed. This is also despite the fact that one of those men, Joni Marques, as recently as September 2007 made clear in a public forum that he has no feelings of remorse in relation to his crimes, including the murder of a group of clergy (Commission of Truth and Friendship Public Hearing, Dili, 26 September 2007).

Despite the suffering of the victims and their families, in crimes of various nature, the President sought, as signatory to the often-cited Decree, to place on an equal footing all offenders, all convicted, all crimes, ignoring the nature of suffering that crimes against humanity, against history and the sovereignty of the East Timorese people, provoked on its own.

These facts suggest that in fact no regard was had to criteria such as these when the decision for the grant of pardons was made. Rather, the evidence suggests that the decision was made without looking at individual cases, but simply by way of a blanket approach, taking the part for the whole, ignoring the specificities, the context, and the memory. The only way in which different prisoners were treated differently was based on the length of the sentence given to them and the amount of time served already. This represents a clear failure to undertake even the most basic form of due process.

This infringes not only the rights of the victims to have the offenders in their cases dealt with according to the law and due process, but also the rights of prisoners to have their individual circumstances considered in relation to reductions in sentence or pardons. After all the prisoners that deserved the clemencies cannot be beside the ones that have been unjustly compensated.

3. Presidential Decree No.53/2008 of 19 May 2008 is invalid for violating the principle of separations of powers by infringing on the exclusive powers of the Parliament

While section 85 paragraph (i) allows the President to grant pardons and commutations of sentence, section 95(1) provides that it is the Parliament which is responsible for making laws. In particular section 95(3) paragraph (g) provides that it is incumbent on the National Parliament to grant amnesty.

The role of a legislative body such as the National Parliament (RDTL Constitution section 92) is to make rules of general application. Other organs of sovereignty implement these rules or enforce them, but it is only the National Parliament which may create such rules. This is the genuine power of the Parliament.

With this in mind, and drawing also on the established practice from other countries such as Portugal, it is clear that section 85 paragraph (i) of the Constitution did not intend to provide the President with the power to pass laws of general application regarding clemency (that is, a law which sets out categories of persons who receive clemency) but rather with the power to identify specific individuals who are to benefit from clemency measures. This was not the spirit that inspired the legislator of the Constituent when writing article 85 and the above mentioned clause. A law that establishes the categories of people that could receive clemency can not be written by the President. The Presidential power is limited by both the Constitution as well as by the public interest of the country, as well as its history. A law on Clemencies can not come from a spontaneous initiative distant from the Parliament.

By setting out, in articles 1-3 of Presidential Decree No.53/2008, rules of general application whereby the grant of clemencies are to be determined, the President of the Republic has taken on a legislative role, and intruded into the domain of the National Parliament.

In fact, articles 1-3 of Presidential Decree No.53/2008 are the sort of provisions which the Constitution's drafters might have had in mind when they provided the National Parliament with the power to grant amnesty under section 95(3)(g) – that is, by way of a rule of general application which sets out which persons will benefit from a waiving of criminal liability or a reduction of sentence.

The President's issue of such a decree is therefore an infringement upon the exclusive powers of the National Parliament, and a violation of section 69 of the Constitution which requires respect for the separation of powers. Since the decree, in the general form in which it was written, is beyond the powers granted to the President of the Republic, it is *ultra vires* and without any effect.

4. Presidential Decree No.53/2008 of 19 May 2008 is tainted by a conflict of interest.

The fundamental rules of natural justice require that where public officials participate in decision making, they must be impartial and not under any form of conflict of interest. While the Constitution does not state this expressly, it is implied from the references in the Constitution to the rule of law (for example, section 1(1), 6(b)).

In the present case a clear conflict existed in respect of the prisoner Rogerio Tiago Lobato, who, besides being convicted by a Court, is cousin of the Minister of Justice. The Minister of Justice was therefore directly involved in the process of providing recommendations to the President of the Republic.

Through *Ofício* No. 158, of 19 May 2008, the Minister recommended to the Prime Minister the granting of clemency to her cousin, prisoner Rogerio Lobato, knowing that the prisoner did not follow court orders. The fact of this close family relation, is in itself, sufficient to demonstrate a conflict of interest.

This conflict of interest in turn taints the whole process of the grant of clemencies to this one individual, precisely because the Ministry of

Justice would have been heard. The “hearing” of the Government is an essential part of the process for the grant of pardons. Under section 85 paragraph (i) of the Constitution, the verb “to hear” there is consigned, and can not be ignored. Therefore, when not observed what is determined by law, the process itself is jeopardized, and as such, the granting of clemency is vitiated and flawed.

5. Presidential Decree No.53/2008 of 19 May 2008 violates section 160 of the Constitution

Section 160 of the RDTL Constitution requires that crimes against humanity, genocide and war crimes committed between 25 April 1974 and 25 October 1999 shall be liable to criminal proceedings with the national or international courts. While the Constitution does not make it explicit, the clear purpose of this provision is to implement Timor-Leste’s obligation under international law to prosecute, try and punish the perpetrators of serious international crimes (on these obligations see further below). For this reason, it is clear that the phrase “criminal proceedings” in section 160 refers not only to the trial process, but also includes the imposition of a judicially determined sentence.

In this respect international crimes are singled out for different treatment than other, “normal”, crimes by the Constitution. While normal crimes need not be subjected to criminal proceedings, international crimes must be.

It follows from this that section 160 of the Constitution provides an exception to the President’s power to issue pardons and commutations of sentence. This is because these measures have the effect of removing the prisoner in question from the control of the courts and thus from the “criminal proceedings” required by section 160.

For this reason, Presidential Decree No.53/2008 is invalid in so far as it applies to nine individuals convicted of crimes against humanity committed between 25 April 1974 and 25 October 1999 (Sixto Barros, Januario da Costa, Joao da Costa, Paulo da Costa, Mateus Lao, Joni Marques, Cesar Mendonca, Mateus Punef and Gonsalo dos Santos)

6. Presidential Decree No.53/2008 of 19 May 2008 violates fundamental rights and rules of international law enshrined in the Constitution

Finally, the Presidential Decree violates the requirements of international human rights law, incorporated into the RDTL Constitution, to try and punish persons responsible for crimes against humanity.

6.1. International human rights law and the RDTL Constitution

The fundamental principles of customary international law are imported into the RDTL Constitution via section 9(1). In addition, section 23 makes clear that the Constitution must be interpreted in accordance with the Universal Declaration of Human Rights, thus effectively making that document a part of Timorese constitutional law.

6.2. International Law and clemencies for crimes against humanity

Under international crimes (genocide, crimes against humanity and war crimes) are considered to be the concern of all humanity, and therefore not a matter to be dealt with simply at the sovereign discretion of the state in which they occur, they are not to be addressed by the spontaneous and personal initiative of a President.

Given its monstrosity, its wide-ranging scope and the cruel range of its nature, these crimes do not bring, in itself, matter to be dealt with simply following the sovereign discretion of the state where they occur.

Because of this, customary international law requires the effective prosecution of international crimes. That is why, it is necessary the effective prosecution of international crimes, and the international competent body has dealt with this issue, not allowing an office

holder of the executive of any country to discharge individually, the magnanimous dimension of the pardon of a crime that can not be pardoned. This rule may arise, among other sources, from:

- the right of victims to an effective remedy (UDHR, article 8); and
- the right of all persons to a fair and public hearing by an independent and impartial tribunal in the determination of his/her rights and obligations (UDHR article 10, RDTL Constitution section 26).

The requirements that international crimes be prosecuted and tried are linked to the objective of *punishing* those who are found guilty of such crimes. References to the need not merely to try but also to *punish* international crimes are included in several international instruments:

For example

- General Assembly Resolutions 3(I) (1946), 95(I) (1946), 170 (II) (1947), 2338 (XXII) (1967),
- The Principles of the Nuremberg Tribunal, Principle I: “Any person who commits an act which constitutes a crime under international law is responsible therefore and *liable to punishment*”. (emphasis added).
- Genocide Convention, article I: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent *and to punish*.”
- Updated Set of principles for the protection and promotion of human rights through action to combat impunity, principle 19, Duties of states with regard to the administration of justice: “States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal

justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried *and duly punished*.” (emphasis added)

- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Adopted by General Assembly Resolution 60/147), paragraph 4: “In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, *the duty to punish her or him*.” (emphasis added)
- See also General Assembly Resolutions: 2391 (XXII) (1968), 2712 (XXV) (1970), 2840 (XXVI) (1971), and 3021 (XXVII) (1972).

Statements of the requirement to punish crimes against humanity have also been made by international courts. The Inter-American Court of Human Rights has stated that

“Since the individual and the whole of mankind are the victims of call crimes against humanity, the General Assembly of the United Nations has held since 1946 that those responsible for the commission of such crimes *must be punished*.” (*Almonacid-Arellano et al v Chile*, 26 September 2006, para.106.)

And that:

“...States cannot neglect their duty to investigate, identify, *and punish* those persons responsible for crimes against humanity by enforcing amnesty laws *or any other similar domestic provisions*.” (*Almonacid-Arellano et al v Chile*, 26 September 2006, para.114)

It is clear that a small or token amount of time in jail could not satisfy the spirit of this requirement to penalize in face of the nature of the crime committed.

In respect of measures of clemency and how they relate to this principle, the rules and practice of the existing international tribunals established by the United Nations or with United Nations involvement to try those suspected of genocide, crimes against humanity and war crimes are relevant. It is significant that the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone *all* prohibit custodial states (the states where prisoners convicted by the tribunals are held) from applying their usual domestic rules for clemency measures to individuals convicted of international crimes by the tribunals. Instead all three bodies require that the decision to reduce sentences must be made by the judges of the tribunal themselves, taking into account set criteria (ICTY Statute article 28, ICTR Statute article 27, SCSL Statute article 23; see ICTY Rules of Procedure and Evidence Rule 125; ICTR Rules of Procedure and Evidence Rule 126 and ICTY Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal, 15 August 2006.)

When read together with the numerous international instruments requiring that persons suspected of international crimes be tried, and if found guilty sentenced, by courts, it is clear that international law does not permit the granting of pardons or clemencies in respect of international crimes, except by judicial officers and according to clear procedures and criteria. When far from this circumstance, the initiative of the Decree on Presidential Clemencies is not based on any legal guarantee.

In the context of the RDTL Constitution, this means that international crimes are outside the scope of the President's power to grant pardons and commutations. For this reason, in granting commutations of sentence to the nine individuals named above, who have been convicted of crimes against humanity, the President acted outside his constitutional power, and therefore invalidly.

7. 7. RELIEF SOUGHT

For the reasons set out above the petitioners request the court to examine this petition in the light of the Constitution of the Democratic Republic of East Timor, international law and general principles of justice and:

- 1) order the production of all documents relevant to the process by which the mentioned decree was formulated, including correspondence between the President of the Republic and the Government. Some documentes provided by the Government relating to the recommendations on presidential clemencies are annexed.
- 2) based on the grounds set out above, declare the Presidential Decree 53/2008 of 19 May 2008 contrary to the constitution, based on the pertinent judicial provisions and either:
 - (a) declare the decree *void ab initio* and without effect; or
 - (b) quash the decree.

Imbued by the the highest respect for Your Excellency, President and Judge, the Court examining this case, and devoting the respect of the petitioners to the constitutional principles that guide Democracy, the petitioners, require therefore that this request be appraised, with publicity ensured for the matter, to safeguard the memory of those who fought for independence, and in solidarity and respect for their respective families and all the East Timorese, those who have fallen, those who are still building this Nation and the future generations.

Dili, 26 June 2008

SIGNATURE OF THE PETITIONERS

Fernanda Mesquita Borges

José Luis de Oliveira

Padre José Filipe de Jesus Pereiran de Araújo _____

Padre Angelo Salsinha Trindade _____

José Amaral _____

Maria Afonso de Jesus _____

Edio Saldanha Borges _____

Sisto dos Santos _____

Maria Manuela Leong Pereira _____

Higinio Posinato Zamor E Silva _____

Luis de Oliveira Sampaio _____

The Solicitor, with attorney power to act:

Natercia Barbosa de Deus

Dili, 26 June 2008