



Address to the Nation
on the 47th Anniversary
of the Proclamation of Independence
By
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President of the Republic
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Beloved people of Timor-Leste,
National and community leaders,
Respected Sovereign Envoys of all nations of the world
Honoured Guests from Indonesia Nusa Tenggara Timor

Special welcome to the esteemed guests who are among us and will be honored today:

- Governor of NTT, Indonesia, Viktor Bungtilu Laiskodat
- Gusti I Made Agung Sudjana, Indonesia
- Major-General Martin John Duner, New Zealand
- Prof. Noel Bayley, Cardiologist, Melbourne

Today in my first public address to the Nation as we celebrate our National Independence Day, I will focus on the State of our Justice, one of the pillars of our Democracy and State.

Forty seven years ago today, people gathered under the hot and steamy Dili sun. A car arrived and our First President Francisco Xavier do Amaral alighted and moved to the steps at the front of the Palacio do Governo.

A small table had been set up and on it was the text of the Unilateral Declaration of Independence. President Francisco Xavier do Amaral read out the brief declaration proclaiming the birth of the Democratic Republic of Timor-Leste.

Dark clouds of war were hanging above us and naturally the mood was a very somber one. Five minutes before 6pm on this day 47 years ago we cut the centuries old umbilical cord that connected our two peoples, the people of the Rising Sun, the brave descendants of Grandfather Lafaek, and the brave Portuguese adventurers, navigators, traders and missionaries who had come ashore in Lifau in 1515 and 500 years of their presence among us, the Portuguese flag was solemnly lowered. Though we were all young and inexperienced, our hearts bleeding from the feelings of abandonment by the colonial authorities, we showed great maturity and respectfully safeguarded the Portuguese flag alongside our own.

Why did we insist upon a Democratic Republic? Was this merely a word used without embracing the ideals and spirit that it carries? Or was it that Avo Xavier, Nicolau Lobato and others really believed that what we must build was a State truly just and democratic. Or did we intend those words with no special significance?

Avo Xavi, Nicolau Lobato and all others believed in and still hold true to the belief that the Timorese people have a mission founded in a democratic spirit that we must build upon for the 21st century.

Our Founders knew that we would always need to be vigilant and to work to build our own special culture of mutual respect that at all times seeks to achieve and reaffirm equality, the right to education, to work and to the exercise of political rights. The special vocation and mission of the Timorese people in the world recognises religious plurality, freedom of thought and speech as pillars of the State and nation.

Avo Xavi, Nicolau Lobato and Avo Nana and all other leaders are internationalists. They didn't believe we could isolate ourselves from the world.

The 28th of November does not simply mark the day upon which Timorese people sought and declared their independence. The 28th of November marks the day upon which the Timorese people sought and declared their independence to form a system of government that would protect their freedom in every aspect and build a socially inclusive economic system.

What we should take from this is that in our Constitutional system inclusion means that there is a Constitutional duty to ensure social justice.

We created a State in order to uphold human rights, social inclusion, of women empowerment and equality of all, freedom of assembly and of speech. Our desire was to create a State where people did not have to live in fear of unjust surveillance, arbitrary detention, enforced disappearances, facts still very common in this XXIst Century.

We created a State to ensure that people went to prison only when absolutely necessary, and where the system of **justice** always looked for alternatives before the ultimate decision of the deprivation of liberty was taken. These values of democracy, human rights, respect for the rule of law and justice along with economic justice and sustainable inclusion are what we enshrined in our national Constitution in 2002 when our independence was restored.

We did not found a State for the purposes of creating unjust laws or practices. We did not found a State that would see people jailed for each and every misdemeanour. We did not found a State that would keep people in detention without trial for months. We did not found a State to be filled by unelected individuals serving in overlapping police and judicial institutions that are created via copy pasting and trample upon the sacred principles enshrined in our Constitution.

We did not found a State where people presumably innocent must wait years to have their day in court for their cases to be heard and where the process goes on without end. Let us not forget the principle that justice delayed is justice denied. We founded a State based on the universal values of democracy and rule of law so that we could ensure that each and every person in our country would not have to relive the nightmares of our past.

Forty seven years later, we both misuse or don't use at all the laws that we have created to ensure our freedom and full respect for human rights. Some of our laws are enforced without thought or discretion in a way that can itself result in injustice. Other laws seem to remain in the cupboard, only brought out to show visitors what we have done, but which are never actually implemented.

Is this the kind of situation and system of law and justice that we struggled and fought for over so many years? At times interactions between our police, society and the media do not appear to be healthy. This not only undermines the rule of law and democracy but breeds practices and attitudes towards the media, local and international, that are far from healthy for a just democracy.

Such attitudes are undermining our society and values. Our Democratic State and its values were founded in response to attacks on our rights to freedom to expression. We did not found a State so that people could engage in misguided responses to what they don't like in the media.

On the other hand, we did not find a Democratic State so that journalists could be enlisted by the police, PSIC, Ministério Público, CAC, or others to garner public support, or to colour public perception, about people who are being investigated, but who have still not yet been found guilty of any crime.

When the media is enlisted to cover arrests or searches, and to declare people guilty before an investigation or trial is completed, the independence of both the legal system and the media is itself undermined. On occasions it might appear that the media has become a mere tool in the hands of the police or the State.

Like our State institutions, our media and journalists, are young. Like everyone else they may make mistakes doing their job. But is the appropriate response to inexperience or legitimate mistakes by journalists to have them investigated by the police?

The police must always work to uphold the legitimacy of the law. The law establishes police procedures not only to safeguard the rights of the accused but also to safeguard the legitimacy of the work of the police. When procedures, for example in cases of arrest and searches, are not followed, or when the media is enlisted to declare people guilty before an investigation or trial is completed, the legitimacy of both individual investigations and of the whole justice system are undermined. Respect for human rights and the presumption of innocence do not undermine the work of the police, but in fact work to build their legitimacy.

I have spoken above about arbitrary arrest and detention. The law establishes procedures under which people can be detained for questioning or when a case is being investigated. But the powers of preventative detention to question a suspect or whilst awaiting investigation or trial are not to be treated as the norm or as mandatory in every case. They are in fact the last resort, only to be used when there is clearly no other option available to protect the integrity of an investigation. They are in fact the last resort in the same way that a penal sentence should be the last resort. What is mandatory at all times is to consider ways in which to protect and maintain a citizen's liberty.

We should always look for ways to resolve disputes without adding to our overcrowded and under resourced jails. Justice should be restorative. We should ensure that the measures the law provides to detain people are used in a manner that is consistent with the democratic values held dear by our Founders. People should not be jailed simply because the power exists to do so.

How do we compensate a person who has been detained on suspicion of committing a crime, who is held for months, or even years without facing a trial? Held in overcrowded jails that do not meet the minimum conditions required by international human rights? Who are treated as if they are already guilty? And who have families facing enormous financial

pressures as a result? How do we compensate these people when they eventually are found not guilty of having committed a crime?

It seems to be the case that for a person in such a situation it is extremely hard, albeit impossible, for them to challenge their detention without trial. There appears to be no expedited or urgent way that they can bring their case before the courts to have their case reassessed. Even when a case does get to a hearing, and the person pledges to hand over their passport and put up large sums as a personal guarantee their application for liberty is denied. And at times that denial appears to be based upon the flimsiest reasons and in breach of the values that this nation was founded upon.

As the United Nations and a number of international covenants have stated, pre-trial preventative detention should only be used when other non custodial options, including bail and the posting of personal guarantees are not available. Overcrowding of jails and inefficient pre-trial investigation procedures are reasons, given by the United Nations, as to why people should not be kept in preventative detention. Nevertheless, in Timor-Leste this message seems to have not been heard.

Our prisons continue to be overcrowded. Becora prison, built to accommodate no more than 250 people currently holds close to 400 people. The conditions of the cells and other facilities are well below accepted standards. But the police and prosecutors continue to request, and the Tribunals in the vast majority of cases, seem to agree, that we should continue to keep people in pre-trial detention even when there is no risk of them re-offending and the overall circumstances of the cases do not require it.

The Office of the Provedor for Human Rights and Justice has recently highlighted the appalling conditions in which people are held in preventative detention in our country. And we have seen what can happen in these circumstances with the life of one young man being lost in detention because of incompetence or worse. Let me repeat, preventative detention is not the norm and is not mandatory in every case. Preventative detention is in fact the last resort, when there is clearly no other option available to protect the integrity of an investigation.

Preventative detention and prison sentences reflect the communities need to prevent continuing crime and to rehabilitate offenders. This should not be confused with the public's desire for blood, as often happens in cases that are debated in the media. Tribunals must always ignore the media and public debate when they have to decide whether to detain people during an investigation, or when convicting them and imposing penalties. Principles such as the presumption of innocence, legality, the separation of powers and rehabilitation are what Tribunals should base their decisions on.

Whether the media or others think that certain people accused of, or found guilty of, crimes should be severely punished is never relevant to the application of legal principles.

Speaking of legal principles, it is important to note that when lawyers and judges apply legal principles to a particular case they must do more than simply cut and paste material from another case, law or country. This practice is not the application of legal principles to a particular set of facts or case but simply a kind of intellectual laziness that is all too predominant in our system of justice.

Lawyers and Judges must read, think and write about the issues in front of them, not just copy and paste from somewhere else.

Did Avo Xavier, Nicolau Lobato and Avo Nana found a State so that people could be held without trial, in overcrowded prisons, indefinitely, because of a fear of media criticism, a refusal to look at non custodial options and inefficient pre-trial investigation procedures? Did we found a State so that lawyers and judges simply copied and pasted material from other cases instead of properly considering the circumstances of each case and law?

I will address now some concerns in regards drug policies. For many years among several other activities, I was honored to serve with the late Kofi Annan and many other eminent personalities as a Commissioner on the Global Commission on Drug Policy. The debate around drugs policy in Timor-Leste has been ill-informed and relies on prejudices inherited from the past. It is out of step with the situation in many other countries.

If Timor-Leste legalised medical marijuana and proactively took advantage of the changes taking place around the world in relation to drugs policy we could reap economic and social benefits. Our current laws in relation to cannabis deny Timor-Leste many benefits: medical marijuana, farmer income, taxes, tourism.

Our current legal and judicial system leaves a lot to be desired. Some of our laws are used in ways that cause mistakes by public servants. At the same time these cases cause people at each and every level of our government to fear and avoid making decisions for the benefit of our people. The result is not growing corruption in Government but cement inertia.

We need to differentiate between mistakes, urgency, administrative error and corruption. Labelling each and every error by a public servant or a Minister as corruption is not justice but our legal system seems to continually confuse these things.

The situation contributes to the retardation of the delivery of public services. Daily public servants, from the lowest to the highest, even Ministers, are reluctant to make decisions or

act in the public interest because they fear making mistakes that may lead them to be accused of corruption. This governmental inertia is one of the things that holds back the development of the country and the delivery of services to our citizens, guests and investors.

We should turn a blind eye to corruption, but we should place things in their proper context and circumstances. We must treat each case, individually, for what it really is. Intellectual laziness is never justice. Is, for example, a decision at the highest level to urgently provide hospital beds, from whatever source, and whether flawed or not, really a case of corruption deserving of the maximum sentence available under the law?

Maximum sentences set by law are for the most serious of cases and not for what may well be administrative mistakes. The law is a blunt and unjust instrument unless it is tempered with mercy and reason. We have to stop applying laws as if they were mechanical devices where Y must always follow X without any room for thought and context. Jailing each and every person who makes an administrative mistake will not improve our system of governance.

Justice delayed is justice denied. Investigators, police, lawyers, prosecutors, public defenders and judges are all responsible when cases take years and years to be resolved. Unresolved doubt hangs over the heads of our citizens and often condemns them without trial. Waiting endlessly for ten years or more for the tribunals to make a final decisions is not justice.

How is it that our legal system can arrive at decisions which are later found to contain nearly one hundred grounds for doubt and error? How is that our legal system can accumulate so many apparent errors in one case? How is it that Tribunals can make decisions that fail to address the legal and factual requirements of a case? How is it that Courts appear to make decisions based, not on the law, but on what the media or some others demand? Again investigators, police, lawyers, prosecutors, public defenders and judges are all responsible when such errors and doubts hang over the decisions of our Courts. Such errors do nothing to build and maintain faith in the legal system of our country. How can we ever hope to develop our country when investors and others have no faith in our system of justice?

On this day the President traditionally grants pardons to people in our jails who have been convicted of crimes. A pardon is a Presidential decision to allow a person to be relieved of some or all of the legal consequences resulting from a criminal conviction. Pardons are sometimes seen as a mechanism for combating corruption, allowing a particular authority to circumvent a flawed judicial process, to free someone who is seen as wrongly convicted. In any case the granting of a pardon is a vital mechanism of mercy and clemency, tempering harsh, or inequitable effects of our criminal legal system.

Today, without controversy I grant pardons to 6 people, as set out in the Presidential Decree to be published, in accordance with the law.

However, there are some cases, that I would have liked to grant pardons but for which, to avoid confrontation, I have decided to wait. There are other cases that I could have considered granting pardons to but I have been unable to because of problems with the administration of the process. The fact is that not all of the applications for pardons that were submitted have been provided to my office for processing. Whatever the reason is we must remember that we are dealing with people's lives and administrative tardiness is not an excuse.

Let me make it clear, *section 85 i) of the Constitution* makes it clear that It is exclusively incumbent upon the President of the Republic to grant pardons and commute sentences. Yes, it is true that the Constitution requires that the President must hear and consult with the Government. But neither the Government nor the Parliament may restrict or confine the exercise of this constitutional power.

However, this is what Parliament has purported to do. *Article 4 of the Pardon's Law (LAW NO. 5/2016 of 25 May Procedure For Granting A Permit And Sentence Commutation)* in my view unconstitutionally restricts the exclusive power of the President by excluding certain types of crimes from the power of pardon. This law illegally limits the constitutional power of the President to grant pardons. In its current form the law can lead to some absurd results.

For example, studies from around the world tell us that 75% of women in prison have suffered from serious physical violence by people close to them. 82% of women in prison have been severely physically or sexually abused as children. And 94% have suffered physical or sexual abuse during their lifetimes. At the same time we know that most of the women in jail in Timor-Leste (85%) are imprisoned for crimes of murder, violence or sexual abuse of one form or another.

Should a woman who responds to years of domestic violence, by assaulting or even killing her abusive husband, be denied the right to a pardon? Shouldn't her situation and the context of the crime itself have caused the Tribunal to decide not to imprison her in the first place? Or at least having a sentence that takes the facts and context into account? But the current law as it stands, is unconstitutional and restricts the President's power to grant a pardon in such a case.

The Government and Parliament need to bring the current law into line with the Constitution. If it doesn't I will have to consider what action I should take to remedy the situation myself. By the time of the 48th anniversary of the Declaration of Independence I hope that

the exercise of the President's Constitutional power can be exercised freely and without controversy or confrontation.

Our nation grew out of a struggle, founded upon values that sought to ensure that the application of laws is done with equity, with mercy and with reason. To not do this fails to respect and honour the legacy of those who fought for this nation and for justice. To not do this fails to respect the special mission and vocation of the Timorese people in the world.

Sovereignty is not achieved by replacing a flawed foreign legal system with an equally national one. This is not sovereignty, and it is not justice or democracy.

Our current legal and judicial system leaves a lot to be desired. To honour those who fought for our nation we must do better.

I wish to congratulate each and every citizen and each and every guest in our country, and honour their ongoing contribution to building our nation and our very special mission and vocation.

As we know the task is not easy. We all make mistakes, and we all benefit from the hindsight that follows our mistakes. We should always be wary of turning mistakes into something which they are not, that is crimes.

Our task is a complex one, but one that would be lighter if all thought leaders and decision makers were to work together, cooperatively and with the values and the spirit upon which Avo Xavier and Nicolau Lobato founded our independence 47 years ago today.

May God the Almighty and the Merciful bless us all.

J. Ramos-Horta