

GOVERNO

REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

INTERNATIONAL COURT OF JUSTICE

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES SUBMITTED BY THE GOVERNMENT OF TIMOR-LESTE

I. INTRODUCTION

1. I have the honour to refer to the Application submitted to the Court this day instituting proceedings in the name of the República Democrática de Timor-Leste ('Timor-Leste') against the Commonwealth of Australia ('Australia'), and to submit, in accordance with Article 36(1) and Article 41 of the Statute of the Court and Articles 73, 74, 75 and 78 of the Rules of the Court, an urgent request that the Court indicate provisional measures to preserve the rights of Timor-Leste under international law pending the determination of the issues raised by the Application.

II. CIRCUMSTANCES REQUIRING THE INDICATION OF PROVISIONAL MEASURES OF INTERIM PROTECTION

2. The facts underlying this request are set forth in the Application and, in summary, are as follows. On 3 December 2013 officers of the Australian Security Intelligence Organisation (ASIO), acting under warrants issued by the Attorney-General of Australia attended an office/residence in Canberra at 5 Brockman Street, Narrabundah, in the Australian Capital Territory, Australia and seized documents, data and other property which belong to Timor-Leste and /or which Timor-Leste has the right to protect under international law ('the documents and data') from those premises. The owner of the above-mentioned office/residence is Legal Adviser to and a Legal Representative of the Government of East Timor.
3. The seized documents and data include *inter alia*, documents and data containing correspondence between the Government of Timor-Leste and its

Legal es, among them documents relating to the conduct of the pending Arbitration under the Timor Sea Treaty between Timor-Leste and Australia.

4. The seized documents and data are believed to be currently in the possession of Australia.

III. THE CONSEQUENCES SOUGHT TO BE AVOIDED BY PROVISIONAL MEASURES

5. The objects of this request are (i) to protect the rights of Timor-Leste in the documents and data seized, and (ii) to prevent their use by Australia contrary to the rights and interests of Timor-Leste, and (iii) to end the unlawful impediment to the conduct by Timor-Leste of its affairs caused by the seizure and detention of the documents and data, in particular (but not exclusively) in relation to the conduct of the pending Arbitration under the Timor Sea Treaty between Timor-Leste and Australia ('the Arbitration').
6. It is Timor-Leste's concern that Australia will, by inspecting the seized documents and data, (a) inform itself of privileged advice given to Timor-Leste by its advisers concerning the Arbitration, and of Timor-Leste's position in relation to that Arbitration, (b) inform itself of privileged advice given to Timor-Leste by its advisers concerning other matters relating to the Timor Sea and its resources and of Timor-Leste's position in relation to those matters, and (c) inform itself of other matters confidential to Timor-Leste treated in the documents and data. Further, having so informed itself, Australia will have weakened irreversibly the position of Timor-Leste in relation to the Arbitration and to other matters to which the documents and data relate, to the detriment of Timor-Leste and the advantage of Australia.
7. Timor-Leste is also gravely concerned that, the seizure of the documents and data having been effected purportedly for reasons of Australia's national security, it is not credible that communications with the legal adviser from



whose premises the documents were seized are not under continuing surveillance by Australian Government agencies, and that it is accordingly impossible for Timor-Leste to conduct confidential communications with its legal advisers, either in relation to the Arbitration or in relation to other matters.

8. Timor-Leste is also concerned that, without knowledge of the extent to which Australia has already disclosed to third parties information obtained by Australia from the documents and data, Timor-Leste is unable to take effective action to minimize the harm caused by any such disclosure.

IV. THE REASON FOR URGENCY

9. Timor-Leste requested the return of the documents from the Australian Government on 10 December 2013, but they have not been returned. The evident risk is that the papers will be inspected and copied and that Australia will acquire confidential information that it will in practice thereafter be free to use for its own advantage and to the disadvantage of Timor-Leste, and that Australia may pass such information to third parties. Further, Timor-Leste's ability to prepare for the pending Arbitration is materially impaired.

V. MEASURES REQUESTED

10. Accordingly, Timor-Leste respectfully requests that the Court indicate the following provisional measures:
 - a. That all of the documents and data seized by Australia from 5 Brockman Street, Narrabundah, in the Australian Capital Territory on 3 December 2013 be immediately sealed and delivered into the custody of the International Court of Justice.

- b. That Australia immediately deliver to Timor-Leste and to the International Court of Justice (i) a list of any and all documents and data that it has disclosed or transmitted, or the information contained in which it has disclosed or transmitted to any person, whether or not such person is employed by or holds office in any organ of the Australian State or of any third State, and (ii) a list of the identities or descriptions of and current positions held by such persons.
 - c. That Australia deliver within five days to Timor-Leste and to the International Court of Justice a list of any and all copies that it has made of any of the seized documents and data;
 - d. That Australia (i) destroy beyond recovery any and all copies of the documents and data seized by Australia on 3 December 2013, and use every effort to secure the destruction beyond recovery of all copies that it has transmitted to any third party, and (ii) inform Timor-Leste and the International Court of Justice of all steps taken in pursuance of that order for destruction, whether or not successful.
 - e. That Australia give an assurance that it will not intercept or cause or request the interception of communications between Timor-Leste and its legal advisers, whether within or outside Australia or Timor-Leste.
11. Timor-Leste also respectfully requests that, pending the hearing and decision of the Court on this request for provisional measures, the President exercise his power under Article 74(4) of the Rules of the Court to call upon Australia:
- (i) immediately to deliver to Timor-Leste and to the International Court of Justice a list of each and every document and file containing electronic data that it seized from 5 Brockman Street, Narrabundah, in the Australian Capital Territory, on 3 December 2013;
 - (ii) immediately to seal the documents and data [and any and all copies thereof];
 - (iii) immediately to deliver the sealed documents and data [and any and all copies thereof] either to the Court or to 5




Brockman Street, Narrabundah, in the Australian Capital Territory; and

- (iv) not to intercept or cause or request the interception of communications between Timor-Leste (including its Agent HE Joaquim de Fonseca) and its legal advisers in relation to this action (DLA Piper, Sir E Lauterpacht QC and Vaughan Lowe QC).

12. In view of the gravity and urgency of the situation caused by the actions taken by Australia, Timor-Leste further respectfully requests that the Court set a hearing on this Request at the earliest possible date.

17 December 2013

Respectfully submitted,



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