

Mandate of the Special Rapporteur on the independence of judges and lawyers

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 26/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations **of interference of the executive and legislative powers in the independence of the judiciary and the deleterious effects it could have on the continued prosecution of cases, including cases of crimes against humanity, and access to justice in Timor-Leste.**

In this context, I would like to acknowledge that Timor-Leste has made great progress in building its judicial institutions over the past decade. National capacity has steadily increased since 2006 with the graduation of national judges, prosecutors and public defenders, as well as other judicial personnel, from Timor-Leste's Legal Training Centre. However, I understand that, in this on-going process of increasing and strengthening national capacity in the justice sector, the role of international judicial personnel (judges, prosecutors, and other personnel performing line functions, as well as those providing technical assistance) has been essential. According to numbers received, international staff represents about 13% percent of the overall number of personnel performing line functions in the justice sector.

According to the information received:

On 24 October 2014, in a closed session attended by the Prime Minister, the National Parliament adopted a resolution calling on the Government to undertake an audit of the justice sector. The Government then adopted a resolution on the same day. Among other things, both resolutions called for the immediate termination of the contracts of all international judicial personnel and advisers working in the justice sector (in different courts, the Prosecutor's Office, the

Office of the Public Defender, the Anti-Corruption Commission and the Legal Training Centre of the Ministry of Justice).

The decision to terminate international judicial personnel appears to have been prompted by a number of rulings in the Timor-Leste courts favouring foreign oil companies against the State. The Prime Minister has allegedly publicly and harshly criticized the judiciary for its handling of these cases, as well as anti-corruption cases against current or former members of the Government, on a number of occasions. For instance, on 4 November, in a live radio and TV interview, the Prime Minister cited specific alleged instances of possible incompetence of and irregularities committed by the judiciary, mentioning in particular the cases between the State and the oil companies.

The Parliamentary resolution notes that international taxation cases filed by oil companies against the State, as well as other cases before national courts, revealed “weaknesses in the judicial system”, and highlighted that “legal irregularities have negatively impacted the cases, exposing the country to external threats relating to its sovereignty and national security.” The resolution further notes that the Anti-Corruption Commission “has not acted in line with the criminal evidence presented to it”, and that international advisers have “showed a lack of technical knowledge.” The resolution also requests the Government to coordinate from then on the contracts for the justice sector.

During the week of 27 October – 2 November 2014, the President of the Court of Appeal reportedly instructed all international judges to continue working, while the Minister of Justice issued letters to international staff in the Legal Training Center informing them that their work was being suspended with immediate effect. Prosecutors were also reportedly instructed to continue working, but without going to court. Staff at the Office of the Public Defender continued to work.

On 31 October 2014, in another resolution published on 3 November, the Government ordered the revocation of the work or other permits to stay in the country of eight named international judicial staff (five judges, two prosecutors and one adviser to the Anti-Corruption Commission) on the basis that their contracts were terminated. They were ordered to leave the country within 48 hours. The resolution indicates “national security, public order, morality, national interest and dignity of the nation” as grounds for the revocation of the permits. This resolution singled out eight individuals, but the situation of all remaining international staff is uncertain with reports indicating that more international staff have left the country since, when at the same time some international staff of the Legal Training Center were reinstated. It is not fully clear how many other international personnel have been or will ultimately be affected.

The information received however indicates that according to the Constitution, neither the Government nor the Parliament has powers to dismiss judicial personnel; dismissal of judicial personnel are regulated by the laws on Judicial Magistrates (8/2002 as amended), the Prosecution Service (14/2005 as amended) and the Public Defender's Office (38/2008).

The immediate termination of contracts of all the international judicial personnel, including judges and prosecutors, is likely to have a negative effect on the capacity of the justice sector to discharge their professional functions, which in turn may lead to serious challenges for the proper administration of justice, including an increasing number of pending cases; and difficulties to ensure due process and respect defendants' rights, including that to be tried without undue delay. The termination of these contracts may also reduce the number of mobile court sessions, which have been essential to increasing access to justice for those living in areas where no court is located.

Moreover, the removal of international judges and prosecutors may also render the prosecution of serious criminal offences and otherwise complex cases more difficult as international judges and prosecutors have so far been determinant in supporting their national colleagues in such cases. The prosecution of related to the 2006 crisis could also be suspended as they were led by international prosecutors.

The dismissal of international judges and prosecutors may also result in the suspension of trials in cases of serious crimes, including crimes against humanity committed in 1999. Indeed, according to UNTAET Regulation 2000/11 on the Organization of Courts in East Timor and UNTAET Regulation 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences two international judges must be part of the panels of judges that have exclusive jurisdiction to try cases of genocide, war crimes, and crimes against humanity, as well as murder, sexual offenses, and torture committed between 1 January and 25 October 1999.

Moreover, the Legal Training Center is a key component in the nationalization of the State's justice sector; according to numbers received, from zero prior to 2006, there are at present a total of 64 qualified national judges, prosecutors and public defenders in Timor-Leste, all trained in this Center. The Center has also trained court clerks and notaries as well as private lawyers. 12 nationals are also currently being trained to become trainers of the Legal Training Center.

Grave concern is expressed about the apparent interference of the executive and legislative powers in the independence of the judiciary, in contradiction of the fundamental principle of the separation of powers, and about the apparent disregard for the rule of law. Serious concern is also expressed at the immediate termination of

contracts of all international judicial personnel and the deleterious effect this could have on the continued prosecution of cases, including cases related to serious criminal offences, due process and defendants' rights, access to justice, in particular in remote areas, and the prosecution of crimes committed in 1999. The dismissal of the international members of the judiciary and prosecution services may also have a chilling effect on the remaining national members of these institutions, thereby jeopardizing their independence.

While I recognize that the reduction of the number of international judges, prosecutors and other legal professionals is a legitimate path to follow to reach the goal of these institutions being fully run by nationals, I would like to underline that this should be a process that is implemented in full conformity with national laws and procedures, as well as the international human rights obligations of the State.

In this context and without prejudging the accuracy of the situation described above, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues.

The abovementioned allegations appear to be in contravention of the Basic Principles on the Independence of the Judiciary which states, inter alia, that all governmental institutions must respect the independence of the judiciary; that the judiciary shall decide matters before them impartially, without any improper influences, pressures, threats or interferences; and that judges can be removed only for reasons of incapacity or behaviour that renders them unfit and according to established standards of judicial conduct after proceedings respecting the right to a fair hearing. The independence of the judiciary is a fundamental principle which is also enshrined in the International Covenant on Civil and Political Rights, as interpreted by the Human Rights Committee, to which Timor-Leste acceded in 2003.

I would also like to bring to your Excellency's attention the Guidelines on the Role of Prosecutors, which provide, inter alia, that disciplinary proceedings against prosecutors must be based on law and established standards of conduct and ethics, and that prosecutors have the right to a fair hearing.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the independence of the judiciary in Timor-Leste in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and comment which you may have on the above mentioned allegations.

2. Please provide detailed information on the process followed regarding the terminations and explain how such measures complied with international human rights standards regarding the dismissal of judges and prosecutors, as well as the fundamental principles of the independence of the judiciary and the separation of powers.

While awaiting a reply, I urge the Parliament and Government of Timor-Leste to reconsider their resolutions and initiate a dialogue with the relevant partners, including the United Nations, to address the current situation and map an appropriate way forward. Any intervention with regard to the justice sector has to be made in full compliance with Timor-Leste's Constitution and international human rights obligations and should respect the fundamental principle of independence of the judiciary.

I reserve the possibility of publicly expressing my concerns in the near future as I am of the view that the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release would indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

I also seize this opportunity to kindly request that your Excellency's Government share a copy of this letter with His Excellency the Prime Minister, the Speaker of Parliament and the President of the Court of Appeal.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers