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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 General Assembly resolution 60/251 and to Human Rights Council resolution 17/2.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning a number of acts of intimidation against the Chief Justice, Mr. **Salamo Injia**, which culminated in his arrest on 8 March 2012, and other alleged attempts to curtail the independence of the judiciary in Papua New Guinea, notably the passing of the Judicial Conduct Bill on 21 March 2012.

According to the information received:

On 2 August 2011, there was a change of Government and appointment of a new Prime Minister, Peter O'Neill. This reportedly followed four months of absence by the Prime Minister Michael Somare on medical grounds and intense political debate around leadership of the country. A special Supreme Court reference was reportedly filed by the East Sepik Provincial Executive challenging Mr. O'Neill's Government for not being constitutionally formed nor legitimate. On 12 December 2011, the Supreme Court reportedly ruled 3-2 in favour of the reinstatement of Mr. Michael Somare as Prime Minister and made a declaration that Mr. O'Neill's Government was unconstitutional. The Chief Justice was reportedly part of the majority bench.

Prior to the hearing of the 12 December 2011 case, on 10 November 2011, the National Executive Council (Cabinet) of Mr. O'Neill's Government reportedly suspended the Chief Justice on the grounds that there were allegations against him of abuse of office. In response, the Court's registrar reportedly took out contempt of court proceedings against the Deputy Prime Minister, Mr. Namah, and the Attorney-General, Mr. Marat. On 14 November 2011, the National Executive Council removed the suspension of the Chief Justice.

I have been also informed that, on 9 December 2011, Mr. O'Neill's lawyers sought an application in court that the Chief Justice step-aside from the case regarding the legality of the O'Neill's Government, alleging bias claiming that he was seen meeting with Mr. Arthur Somare (Michael Somare's son) when the reference hearing was in progress. This was reportedly declined by the court.

It is also reported that, following the 12 December 2011 decision that the O'Neill Government was illegal, the Parliament nevertheless supported Mr. O'Neill's election as Prime Minister. On 16 January 2012, the Attorney-General in the O'Neill Government reportedly filed a Supreme Court reference case, requesting the court to clarify 29 constitutional questions that related to the legality of the O'Neill Government.

According to information received in early February 2012, the arrival of the Chief Justice was delayed on the occasion of the opening ceremony of the legal year by 40 minutes by police who reportedly said they were sent to arrest him. It is reported that a large crowd gathered and the Chief Justice protested at the arrest and was allowed to proceed. In his opening remarks he reportedly said he would continue his defence of the Constitution despite the attempts to intimidate him.

On 2 February 2012, Mr. O'Neill announced that the Chief Justice had again been suspended from his position, on the same allegations of abuse of office. Police allegedly refused to allow the Chief Justice into the court house. On 3 February 2012, a three member bench of the Supreme Court ordered a stay of the suspension of the Chief Justice. It also reportedly directed the Registrar of the court to file contempt charges against Prime Minister O'Neill and his lawyers.

On 8 March 2012, the Chief Justice was reportedly arrested by police in Port Moresby, charged with perverting the course of justice, and released on the same day by a magistrate's court on bail.

After the 8 March 2012 arrest of the Chief Justice, the fellow judges of the Supreme Court reportedly made a public statement of concern, in particular objecting to the way in which the arrest was carried out as armed police reportedly apprehended the Chief Justice and then entered his chambers still armed.

On 13 March 2012, the National Court reportedly issued a permanent stay on proceedings and issued a restraining order preventing the police from arresting the Chief Justice. The judge allegedly said that the charges were an abuse of process and fundamentally flawed.

The Supreme Court reference case to clarify the 12 December decision is reportedly due to start in April 2012.

I have also been informed that, in this context, the Parliament passed on 21 March 2012 a Judicial Conduct Bill, which presents elements of concern with respect to

the independence of the judiciary vis-à-vis the legislative and executive powers. In particular, the Bill reportedly provides that if it appears that a possible breach of judicial conduct has taken place, the Parliament may refer a judge to the Head of State to appoint a tribunal to investigate the case and report back to the Parliament. The Parliament may then refer the case to the National Executive Council (Cabinet) or the Judicial and Legal Services Commission for the consideration of a process of removal of the concerned judge.

Concern is expressed that the arrest and charges against the Chief Justice may have been politically motivated, since there have been repeated attempts to stop the Supreme Court from hearing cases regarding the legality of the O'Neill Government. Further concern is expressed on the impact on the independence of the judiciary with respect to the recently passed Judicial Conduct Bill.

While I do not wish to prejudge the accuracy of the allegations concerning a number of acts of intimidation against the Chief Justice, Mr. Salamo Injia, which culminated in his arrest, I would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular:

- Principle 1: "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary".
- Principle 2: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".
- Principle 4. There shall not be any inappropriate or unwarranted interference with the judicial process [....]

With respect to the passing of the Judicial Conduct Bill, on a number of occasions this Rapporteurship has expressed concern with respect to the legislature or executive branches playing an important, if not decisive, role in disciplining judges. The Human Rights Committee has also raised its concern about parliamentary control over disciplinary proceedings regarding judges and about the dismissal of judges by the executive. In this respect, I would like to highlight the importance of the existence of an independent body or mechanism with the responsibility concerning disciplinary proceedings against judges. Furthermore, regardless of the type of disciplinary body, it is of utmost importance to guarantee an independent review of the decision of the disciplinary body, as provided by principle 20 of the Basic Principles on the Independence of the Judiciary.

It is my responsibility under the mandates provided by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. What is the current situation of Chief Justice Salamo Injia?
3. Could you please clarify on what grounds the arrest of Chief Justice Salamo Injia was ordered? Could you please also inform me as to who ordered his arrest by the police?
4. Please elaborate on the compatibility of the Judicial Conduct Bill with the international standards protecting the independence of the judiciary and notably the Basic Principles on the Independence of the Judiciary.

I would appreciate a response within sixty days. I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

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

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Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers