

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

REFERENCE: UA G/SO 214 (3-3-16)  
NRU 1/2014

24 January 2014

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 17/2.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the removal of Resident Magistrate Peter Law in violation of an injunction issued by Chief Justice Geoffrey Eames; and the subsequent cancellation of the visa of Chief Justice Eames, who was in Australia at the time.

According to the information received:

On 19 January, 2014 the Nauru President Baron Waqa removed Resident Magistrate Peter Law from his post and ordered his deportation, which was carried out in violation of a subsequent injunction issued by Chief Justice Geoffrey Eames. Chief Justice Eames, who was in Australia at the time, had his visa cancelled, preventing his return to his position in Nauru.

The removal of Resident Magistrate Peter Law was done without any legal process, and was, according to the Government, allegedly done in response to an allegation of misbehavior by a former member of his staff. This allegation has not been addressed by any adjudicative body. Other reports indicate that Magistrate Law's removal was related to his decision to grant an injunction against a deportation order against two residents of Nauru, and to give leave to them to contest the deportation order before the Supreme Court, in contravention of the position of the Government of Nauru.

Serious concern is expressed that the removal of the magistrate without following due process, and in violation of an injunction issued by the Chief Justice, and that the subsequent cancellation of the visa of the Chief Justice, all violate the independence of the judiciary.

Without expressing at this stage an opinion on the facts of the case, I would like to appeal to your Excellency's Government to take all necessary measures to guarantee the independence of the judiciary and ensure that the judiciary is able to perform their professional functions without improper interference.

Regarding the removal of Resident Magistrate Peter Law, I would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary (the "Basic Principles"), 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, and in particular the following principles:

- Principle 17, which states: "A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.";

- Principle 18, which states: "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.";

- Principle 19, which states: "All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."; and

- Principle 20, which states: "Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings."

Regarding the allegation that the dismissal of Resident Magistrate Peter Law was connected to his decision to permit two residents to issue an injunction and allow them to appeal their deportation order to the Supreme Court in contravention of the Government's position on the matter; and regarding the allegation that the revocation of the visa of Chief Justice Geoffrey Eames is related to his injunction against the deportation of Magistrate Law, I would like to refer your Excellency's Government to the following principles contained in the Basic Principles regarding the impartiality and integrity of judges:

- Principle 2, which states: "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"; and

- Principle 4, which states: "There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or

to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law”.

Regarding the removal of Resident Magistrate Peter Law and the revocation of the visa of Chief Justice Geoffrey Eames, I refer to principle 11, which states: “The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.”; and principle 12, which states: “Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.”

It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your 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. Please provide the legal basis by which Resident Magistrate Peter Law was removed from his position, and by which he was deported and explain how these are in compliance with international human rights principles referred to herein.
3. Please provide the legal basis by which the visa of Chief Justice Geoffrey Eames was revoked and explain how these are in compliance with international human rights principles referred to herein.
4. Please indicate which measures are being taken to ensure the independence of the judiciary, and to prevent undue interference, pressure, threats or intimidation against judges and other members of the judiciary.

I undertake to ensure that your Excellency’s Government’s response will be available in the report I will submit to the Human Rights Council for its consideration.

While waiting for your response, I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. I also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

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

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers