

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

Ref.: AL KIR 1/2022  
(Please use this reference in your reply)

17 August 2022

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 44/8.

In this connection, I would like to bring to the attention of your Excellency's Government allegations I have received concerning actions taken by the Executive to reportedly shorten the appointment of high court judge David Lambourne and the ensuing judicial crisis in Kiribati.

According to the information received:

Mr. David Lambourne, Kiribati's former Solicitor-General, was appointed Judge of the High Court on 10 May 2018, with no term limit specified at the time of appointment. He was not asked to sign a contract at the time of his appointment.

Judge Lambourne left Kiribati in February 2020 to attend a conference in Australia, but was unable to return, due to Covid-19 regulations.

After spending most of 2020 in Australia, Judge Lambourne travelled to Fiji in November 2020 to await a seat on one of the repatriation flights operating to Kiribati.

But while in Fiji, Judge Lambourne was told that Kiribati's government would only issue a work permit to allow him entry if he signed a contract with a backdated three-year term (which would see his appointment end on 30 June 2021). Judge Lambourne's work permit had expired while he was in Australia, unable to return to Kiribati due to Covid-19 restrictions.

He initially declined, but eventually signed in April 2021 under duress after the government stopped paying his salary and refused to allow him on any of the eight repatriation flights. After signing the contract, payment of Judge Lambourne's salary resumed, but ceased again on 1 July 2021.

It should be noted that the High Court was not functioning from 1 January 2021 to 9 August 2021, due to vacancy in the position of Chief Justice (the only other judge of the High Court). In June 2021, following a serious outbreak of Covid-19 in Fiji, Judge Lambourne returned to Australia to await authorisation to return.

In August 2021 Judge Lambourne sued Kiribati's Attorney-General, to challenge the government's assertion that his appointment had expired, to seek resumption of his salary and other allowances, and to compel the government to allow him to return to Kiribati to perform his judicial functions. He also

challenged the constitutionality of amendments to the High Court Judges (Salaries and Allowances) Act 2017, which purported to require that he be appointed for a fixed term.

On 11 November 2021 a judgement from Kiribati's Chief Justice, found the government's actions to be unconstitutional. The Chief Justice held that Lambourne had been appointed for life, and as such the contract and amending legislation were unconstitutional and ordered immigration authorities to facilitate Lambourne's return to the country.

Kiribati's Attorney General subsequently appealed against the ruling to the court of appeal. She has publicly stated that the Government is still very keen to correct the appointment, that was never known that it would be for a lifetime and would work on correcting this appointment following available avenues, either in the court of appeal or to change the constitution.

Kiribati's government has taken steps to prevent Judge Lambourne from resuming his position in the capital, South Tarawa.

On 13 May 2022, the Beretitenti (The President of Kiribati) has set up a Tribunal, to investigate "complaints and allegations from the public" against High Court Judge Lambourne. On 16 May 2022 he suspended Judge Lambourne from performing his judicial functions pending the conclusion of the Tribunal's investigations. The suspension was said to be without salary.

Judge Lambourne has been prevented not only from performing the functions of his office in recent months but more also in making preparations and in participating in his own defence as he was not able to return to Kiribati for many months as a result of the suspension of authority to travel imposed by government authorities. The source indicates that payment of Judge Lambourne's remuneration stopped from 1 April 2021 to mid-May 2021, then again from 1 July 2021 until the Chief Justice's order in November 2021. Payment stopped again after his suspension on 16 May 2022. The suspension of Judge Lambourne's remuneration and allowances prior to the outcome of the investigation by the Tribunal is not in line with the Constitution, the High Court Judges (Salaries and Allowances) Act 2017 and the Judicial Salaries and Allowances Regulations 2018.

On 30 June 2022, as the nation's Chief Justice was about to begin hearing a constitutional challenge by Lambourne to his suspension, the government also suspended the Chief Justice. Hence, there is currently no functional high court in Kiribati.

On 1 August 2022, the day that the country's borders reopened, Judge Lambourne returned to Kiribati. On arrival he was issued a visitor's visa valid for 1 month, despite the earlier orders of the Chief Justice.

On 11 August 2022, officials arrived at Lambourne's residence in Tarawa, shortly before 6 a.m. with a deportation order, and a same-day airline ticket to Fiji. The first deportation order received by Judge Lambourne, signed by the Secretary for Foreign Affairs, indicated that he was in Kiribati unlawfully because he had breached the condition of a temporary visa (visitor's visa) by

working without a proper visa.

After an urgent application by Judge Lambourne, the Court of Appeal ordered the government not to deport the judge. Despite this order, police and immigration officials sought to forcibly deport him at Bonriki international airport. The Fiji Airways captain refused to take the judge on board, given the Court's injunction and Lambourne's unwillingness to travel.

In the course of the afternoon Judge Lambourne was served with a second deportation order, this one signed by the Beretitenti, which purported to declare that the judge was a "risk or threat to security". The captain of the aircraft still refused to comply with the government's request that he take Lambourne to Fiji.

The government detained Judge Lambourne, after the failed attempt to deport him.

On 12 August 2022, after a further urgent application to the Court of Appeal, the Court ordered that Lambourne be released, subject to the conditions that he reside at his house and not go to the courthouse. He was released at approximately 6 p.m., some 6 hours after the court made its order.

On 11 August 2022 the Beretitenti (The President of Kiribati), acting under s.138 of the Constitution, purported to "recall, vacate and nullify" respondent's appointment of 10 May 2018 as a Judge of the High Court and reappointed him for a term that expired on 30 June 2021.

The Court of Appeal has fixed a further hearing for 10 a.m. on 19 August 2022, at which it will hear the substantive application for permanent orders preventing the deportation and/or further detention of Judge Lambourne. At that hearing he will also seek to challenge the validity of the order referred to in the previous paragraph.

Without prejudging the accuracy of these allegations, I would like to express my serious concern at the information received regarding the actions taken by Your Excellency's government to shorten the duration of Judge Lambourne's appointment as a High Court Judge in Kiribati. If confirmed, this would constitute a serious breach of the Basic Principles on the Independence of the Judiciary. The reported measures taken against Judge Lambourne would go against the principle that judges can only be dismissed for serious reasons of misconduct or incompetence, and in accordance with fair procedures guaranteeing the objectivity and impartiality provided for by constitution or law.

In this regard, I would like to recall that the guarantee of the right to a fair and public hearing by an independent and impartial tribunal, provided in article 10 of the Universal Human Rights Declaration; highlighting that a competent court is one of the guarantees of a fair trial. The rights to equality before the courts and tribunals, to a fair trial, and to effective remedies are key elements of human rights protection and serve as a procedural means to safeguard the rule of law.

Furthermore, I am concerned about the information received about the obstacles that have been reportedly put in place to impede his return to Kiribati: the

suspension of his remuneration, the denial of a work permit; and about the reported obstacles to the exercise of his functions as a Judge, and to his defence in the proceedings brought before him. I would also like to recall that the guarantees provided in article 10 of the Universal Human Rights Declaration, require that in the determination of any charge against any individual, everyone is entitled to a number of minimum guarantees, including the right to have adequate time and facilities for the preparation of his or her defence, the right to communicate with counsel of his/her own choosing, and the right to defend himself/herself in person or through legal assistance of his/her own choosing.

Finally, I am seriously alarmed at the information provided that another High Court Judge, while considering the case of Judge Lambourne, was removed from office. I am deeply concerned at the information received that due to the suspension of Judge Lambourne and that of the Judge considering his case, Kiribati does not currently have a functioning High Court.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the actions taken in the case of Judge Lambourne are compatible with Your Excellency's Government's obligations under article 10 of the UDHR and the Basic Principles on the Independence of the Judiciary, and in particular principles 11, 12, 17, 18 and 19.
3. Please provide an update on the Mr. Lambourne's proceedings, hearing of 19 August, and on the measures taken to ensure he is able to resume his work, in line with his 2018 appointment as a high court judge.
4. Please indicate the measures taken to ensure the independence of the judiciary in Kiribati; and the right to a fair trial in the country. In particular, please describe the measures taken to address the lack of High Court in Kiribati.
5. Please provide information on the measures taken to ensure that the term of office of judges in Kiribati, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement are in line with international standards described in the Annex.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be

presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the Universal Declaration of Human Rights (UDHR) and refer to its article 10, which guarantees "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

As affirmed by the Human Rights Committee: "The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them". (General Comment No. 32, para.19).

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, establish that all governmental and other institutions must respect and conform to the independence of the judiciary (Principle 1) and that judges will decide cases impartially, on the basis of the facts and in accordance with the law, "without any restriction and without undue influence, incitement, pressure, threat or interference, direct or indirect, from any sector or for any reason" (Principle 2).

The UN Basic Principles on the Independence of Judges also provide that: "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.....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 (Principles 11 and 12)."

The Basic Principles mentioned above also establish that "[n]o undue or unwarranted interference shall be made with the judicial process" (Principle 3), and that everyone has the right to be tried by the ordinary courts of justice in accordance with the procedures legally established (Principle 5).

In 2009 report to the United Nations Human Rights Council, the mandate on Independence of Judges and Lawyers recalled that "[t]he principle of the separation of powers, together with the rule of law, are key to the administration of justice with a guarantee of independence, impartiality and transparency" (A/HRC/11/41, para. 18). Furthermore, in the 2017 report to the Human Rights Council, the Special Rapporteur

on that mandate highlighted that “respecting the rule of law and fostering the separation of powers and the independence of justice are prerequisites for the protection of human rights and democracy” (A/HRC/35/31, para. 16).

According to the Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region, adopted at the 6th Conference of Chief Justices, held in Beijing in August 1997, and signed by the Chief Justice of the Republic of Kiribati, the “(i)ndependence of the Judiciary requires that; a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and b) The judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature” (paragraph 3). The statement also notes that: “(j)udges should be subject to removal from office only for proved incapacity, conviction of a crime, or conduct that makes the judge unfit to be a judge” (paragraph 22); and “(t)he remuneration and conditions of service of judges should not be altered to their disadvantage during their term of office, except as part of a uniform public economic measure to which the judges of a relevant court, or a majority of them, have agreed” (paragraph 31). The statement also highlights that “Executive powers which may affect judges in their office, their remuneration or conditions or their resources, must not be used so as to threaten or bring pressure upon a particular judge or judges” (paragraph 38).