

East Timor Law and Justice Bulletin

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East Timor Government Continues the Destruction of Constitutional Democracy

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ETLJB 06/11/2014 The Government of East Timor is continuing the deconstruction of constitutional democracy by passing a resolution to deport foreign judicial officers. The resolution was passed on 31 October 2014 following the resolution of the East Timor National Parliament on 24 October 2014 to immediately terminate all existing contracts of international judicial officers including international advisers appointed to the Judiciary, the Public Prosecutor's Office, the Public Defenders Office and the Anti-Corruption Commission.

Both of the resolutions by the Government and the Parliament are *ultra vires* and unconstitutional. They are unlawful acts by the legislative and executive organs of the State and constitute blatant attacks on the fundamental democratic doctrines of the independence of the judiciary, the separation of powers, the Constitution and the rule of law.

According to a Press Release today (06 November 2014) by the country's leading law and justice monitoring civil society organisation, the Judicial System Monitoring Program, the Government resolution revokes the visas of five judges, two prosecutors and an official from the Anti-Corruption Commission, giving them 48 hours' notice to leave Timor-Leste.

JSMP states that "[t]his resolution illegally orders international judicial officers to leave Timor-Leste... [and] violates the principle of judicial independence which is fundamental to Timor-Leste's democracy and is enshrined in our Constitution," said JSMP Interim Director Casimiro dos Santos.

The resolution by the Parliament triggered a constitutional crisis since it was immediately answered by the President of the Court of Appeal last week who issued a directive stating that only the Superior Council of Judicial Magistrates could remove judges from their positions.

"This [government] resolution directly challenges the legal opinion of the President of the Court of Appeal, who is the highest judicial officer in Timor-Leste," said JSMP Interim Director Casimiro dos Santos.

JSMP believes that the Government's new resolution ordering the deportation of these judicial officers is not consistent with the laws of Timor-Leste. Under the Constitution and laws of Timor-Leste, judges can only be removed from office by the Superior Council of Magistrates and prosecutors by the Superior Council for the Public Prosecution. These are the proper mechanisms established by law to deal with the appointment, removal and discipline of judges and judicial officers.

JSMP also expressed concern that the Government's resolution is outside the limits of its constitutional powers. and believes that this resolution, as well as the earlier resolutions of National Parliament and the Government, constitute an interference with the independence of the judiciary and threaten the principle of the separation of powers.

JSMP also remains concerned about the serious impact this act will have on the justice system in Timor-Leste. The Suai and Baucau district courts have ordered retrials for some cases heard by international judges.

"Removing judges, prosecutors and other court officials creates more work for our justice system, and at the same time takes away important resources," says JSMP Interim Director Casimiro dos Santos.

The National Political Committee of FRETILIN has issued a statement calling on the Government not to exceed the limits on its powers and urging the President of the Republic to ensure the normal functioning of State institutions.

JSMP urged the National Parliament, the Government and the President of the Republic to immediately take appropriate action to restore judicial independence.

ETLJB respectfully agrees with the opinions expressed by JSMP, the communique from the FRETILIN National Committee and the Chief Justice's intervention. The actions by the Parliament and the Government are more characteristic of an authoritarian dictatorship than of a democratic State. While they may be compelled by the political agenda of the V Constitutional Government of East Timor, they are juridically erroneous and preposterous. ETLJB condemns the resolutions by the National Parliament and the Government as outrageous violations of democratic principles

In another breathtaking intervention clearly intended to thwart the rule of law and scotch efforts by the prosecution authorities to bring Members of Parliament to accountability for accusations of violations of the law, Prime Minister Xanana Gusmao is also [reported by Tempo Semanal on 4 November](#) to have written a letter requesting the representatives of the people in Parliament to consider not waiving the immunity of members of his government who have been accused by the Public Prosecutor.

"Through this, with great respect, I ask your Excellency for the National Parliament to not waive the immunity of Government members until the end of their mandates pursuant to article 114 of the RDTL Constitution", wrote Prime Minister Kay Rala Xanana Gusmao.

According to the Tempo Semanal report, the Prime Minister of the V Government wrote to the President of the National Parliament,

Vicente Guterres, who is also facing charges by the Public Ministry. The letter was also sent to members of the Parliament's chairmanship and the heads of every political group represented in Parliament on the 4th of November 2014.

The following extract from the letter was published by Tempo Semenal: "Considering the urgent nature of matters currently being followed up by members of my government. Considering that some members of my government have been prosecuted with penal charges regarding, alleged yet to be proven, acts performed during their official. Considering that if the National Parliament waives immunity of members of my government (as per article 111 RDTL Constitution) it will disturb the correct functioning and activities of the government, thus severely jeopardising the sustainability of the Government and the governance of the country. And, considering that national interest can only be safeguarded with a governing stability and the execution of all matters currently being followed up by the members of my government".

ETLJB also condemns this intervention by the executive in the legislature that constitutes an offensive onslaught against the Constitution, judicial independence, the separation of powers and the rule of law in East Timor.

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