

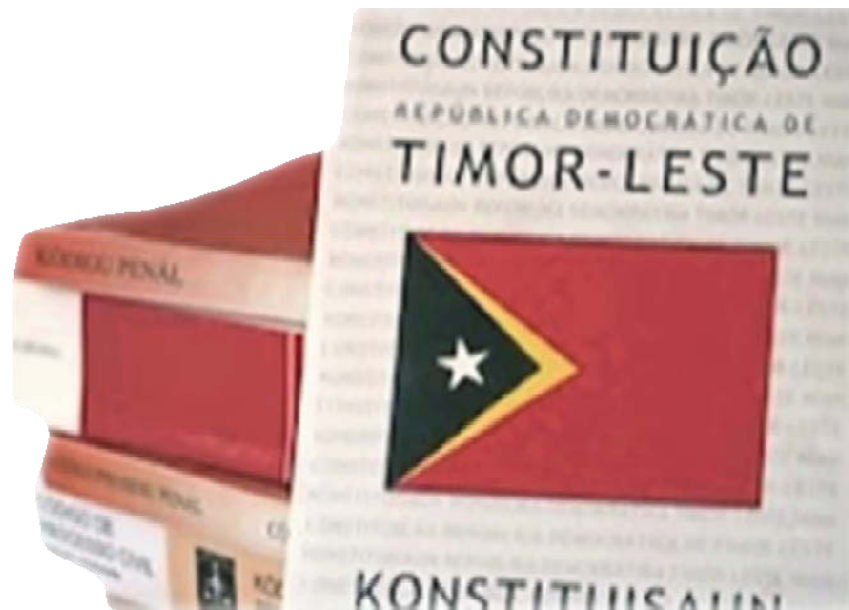


JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Dismissal of international officials and advisors in the Timor-Leste judicial sector

An analysis of the constitutionality, legality and impact of Parliamentary Resolution No. 11/2014 and Government Resolutions No. 29/2014 and 32/2014

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Introduction

1. JSMP is a local NGO which has been dedicated to observing and working to improve the judicial and legislative systems in Timor-Leste over the last 13 years. JSMP believes in a democratic society that guarantees justice and human rights for all. JSMP's role is to promote a judicial system which is transparent and independent so that it works to effectively ensure justice for all people.
2. JSMP has observed the following events regarding the dismissal of international officials and advisors in the justice system. These events have caused concerns in relation to the independence and functioning of the justice system in Timor-Leste.
3. On 24 October 2014 the National Parliament held a closed session and passed Resolution No. 11/2014 (**Appendix 1**). In this resolution the Parliament urged the Government to conduct an audit of the justice sector and called for the termination of the contracts of all international officials working in the judiciary, the Public Prosecution Service, the Public Defenders' Office, the Anti-Corruption Commission and the Legal Training Centre.
4. Immediately afterwards, also on 24 October 2014, the Government adopted Resolution No. 29/2014 (**Appendix 1**). The Government's resolution decided to establish a commission (composed of both national and international experts) to audit the judicial system and "for reasons of force majeure and national interest" that the relevant ministries should terminate and not renew contracts for international advisors in judiciary, the Public Prosecution Service, the Public Defenders' Office, the Anti-Corruption Commission and the Legal Training Centre.
5. On 31 October 2014, the Government adopted Resolution No. 32/2014 (**Appendix 2**) which purported to revoke the visas or work permits of eight named international judicial officers (five judges, two prosecutors and one Anti-Corruption Commission investigator) and ordered those individuals to leave Timor-Leste within 48 hours. It authorised the migration service, the police and security forces to implement the resolution.
6. This report considers the immediate and ongoing impacts of these resolutions and analyses their legal validity, options for bringing legal challenges to the resolutions, and provides JSMP's recommendations for addressing some of the concerns raised.

Implementation of the resolutions so far

I. Courts

7. Prior to the passing of the resolutions, 7 international judges were working in the Timorese courts: 3 in the Court of Appeal, 2 in the Dili District Court, 1 in the Baucau District Court and 1 in the Suai District Court.

8. On 28 October 2014 the President of the Court of Appeal formally communicated with the Judge Administrators of the District Courts (**Appendix 3**) to inform them that the two resolutions of 24 October 2014 were without legal effect and that all judges should continue to carry out their functions.
9. Initially the judges continued their work, however, following Government Resolution No. 32/2014, the judges originating from Portugal (6 of the 7 international judges) were advised by the Portuguese governing body for judges, the Superior Council of Magistracy, to depart from Timor-Leste.¹ The other international judge was from Cape Verde. All of the international judges have now departed Timor-Leste.
10. On 6 November 2014 the Timor-Leste Superior Council of Judicial Magistrates publicly stated that the resolutions were not legal and called on the Government and National Parliament to revoke them.²

II. Public prosecutors

11. Prior to the resolutions, 4 international public prosecutors were working in the Public Prosecution Service. Initially the international prosecutors were continuing their roles, however, following Government Resolution No. 32/2014 the two prosecutors named in the resolution left Timor-Leste immediately and the other two prosecutors have also now departed.

III. Public Defenders

12. No international public defenders are currently working in the Public Defenders' Office. The office does make use of international technical advisors and currently has an adviser to administration and an adviser to the Public Defender General. The Public Defender's Office has reportedly suspended the work of international advisors until the expiry of their contracts.

IV. Anti-Corruption Commission

13. The Anti-Corruption Commission is believed to employ three international staff: one investigator and two advisers to the Commissioner. The investigator was named in Government Resolution No. 32/2014 and has now departed from Timor-Leste.

V. Legal Training Centre

14. The Legal Training Centre (LTC) has suspended the work of all international staff, with pay, until the expiry of their contracts in December 2014. This included several international trainers. As a consequence of losing trainers, the LTC has suspended its training program which was due to commence in November 2014.

VI. Audit

15. JSMP understands the Ministry of Justice is responsible for preparing terms of reference for the proposed audit of the justice sector, however, information is not currently available regarding how the Ministry of Justice proposes to implement the audit.

¹ The Superior Council of Magistracy in Portugal withdrew its authorisation for the Portuguese judges in Timor-Leste and determined they should return to Portugal: See Press Release, 4 November 2014, <http://www.csm.org.pt/imprensa/comunicados/525-juizes-timor-leste>

² See Jornal Independente, 10 November 2014, "KSMJ Ezije Dada Hikas Rezolusaun, Governu Dehan La'e"

Likely impacts of the resolutions

I. Judicial independence and related impacts

16. Independence of the courts, judges and other judicial officers is an important principle enshrined in the Timor-Leste Constitution (discussed further below). In a democratic state like Timor-Leste, it ensures that people can be confident of fair treatment in the justice system and that the nation is governed in accordance with the rule of law. The resolutions of 24 October and 31 October will have a negative impact on judicial independence in the following ways.
17. First, judges themselves are likely to be influenced by the demonstrated readiness of the Government and Parliament to attempt to remove judicial officials from office, including in response to judicial decisions which are unfavourable to the Government or Parliament. Judicial actors can now expect the Government or Parliament to carry out similar acts or put pressure on them in the future. Not only those international judges who were targeted in this case, but all judges, may be more wary of making decisions which they think are correct according to the law but which are contrary to the interests of Government. This is a problem because judges need to be able to decide cases according to the law, not according to what favours the Government.
18. Secondly, public perception of judicial independence is likely to be damaged as a result of the resolutions. People may doubt whether they will receive a fair trial before a truly independent court in Timor-Leste, because the Government or Parliament can exert pressure on judicial institutions. This may cause people not to want to engage with the justice system (for example as a complainant or witness) which can undermine the effectiveness of the courts.
19. There will also be an impact on the independence of the other affected bodies including the Public Prosecution Service, the Public Defenders' Office, the Anti-Corruption Commission and the Legal Training Centre. People working in these institutions need to perform their roles with some independence, because they must conduct investigations, prepare defences or conduct training that is correct according to the law, even if the law is different to the position of the Government. People in these institutions may now be more reluctant to take positions or express opinions contrary to those of the Government or Parliament. The public may therefore lose confidence in the ability of these institutions to operate independently and effectively.
20. For example, prosecutors may be less able to pursue cases which involve members of the Government or which might show the Government had done something illegal. Investigators at the Anti-Corruption Commission may not be able to carry out effective investigations of members of the Government or Parliament without fear of the Government or Parliament taking action against them. These impacts are of particular concern because there are currently a number of corruption allegations involving members of the Government under investigation.
21. Events since the resolutions of 24 October 2014 may have further contributed to the perception of interference by the Government in judicial independence, in particular:
 - a. The Government's Resolution No. 32/2014, which ordered eight named international officials to leave Timor-Leste threatened immediate action to remove the listed judicial officials even after the President of the Court of Appeal had stated the earlier resolutions were invalid. This compelled the officials to leave Timor-Leste. This challenged judicial independence in two

ways: first by contradicting the clear statement of the President of the Court of Appeal; and second by removing the ability of those officials to effectively challenge the legality of the resolutions through the legal process.

- b. On 18 November 2014 the Prime Minister attended the Dili District Court without any official invitation and met privately with the Judge Administrator, Mr Duarte Tilman. In that meeting the Prime Minister reportedly expressed his respect for the courts' decisions and independence, but at the same time delivered documents relating to a matter or matters under investigation. There are concerns that this could continue the appearance of improper interference in the courts.³
22. The effect of the resolutions is also likely to be felt outside the judicial sector. Many people, including civil society, could feel reluctant to speak or act contrary to the interests of the Government or Parliament because they fear action being taken against them. The threat of expulsion without due process according to law may especially cause foreigners working in other sectors to refrain from acts or statements which are unfavourable to the Government. This could have a negative impact on government accountability and freedom of expression in Timor-Leste.
23. The audit process and audit findings could make these problems worse, or could mitigate them. If the audit is used to put more pressure on the judiciary to act in a particular way or to justify more interference, the impact on judicial independence will increase.

II. Functionality of the justice system

24. The institutions affected by the resolutions have already felt significant impacts on their ordinary functions because of the loss of judicial officials and advisors. There will continue to be significant impacts on the functioning of these institutions and therefore on access to justice in Timor-Leste.

II.1 Court proceedings and access to justice

(i) Retrials and delays

25. While the numbers of international judicial officials may not seem substantial, they constitute a significant portion of the human resources in the justice sector, which is already relatively small. For example, the 7 international judges constituted over a quarter of the judiciary, which in total included only 29 judges.
26. In the short term, the departure of judicial officials is causing delays to legal proceedings which are currently underway. This is particularly the case for cases before the courts in which an international judge or prosecutor was involved. The District Courts have ordered or will order retrials in many cases which had involved an international judge or prosecutor. These include serious cases involving violence against women and children like rape and infanticide.⁴ The people involved in those

³ JSMP Press Release, "Visit of the Prime Minister to the Dili District Court could raise a range of questions", 18 November 2014

⁴ See, for example, JSMP Press Release 6 November 2014, "Suai and Baucau District Courts adjourn trials and order retrials for cases which involve international judges" <http://jsmp.tl/wp-content/uploads/2014/01/Tribun%C3%A1-Distrit%C3%A1-Suai-no-Baucau-adia-prosesu-julgamentu-hodi-halo-rejulgamentu-ba-kazu-sira-ne%E2%80%99eb%C3%A9-involve-juis-internasion%C3%A111.pdf>; JSMP Press Release 2 December 2014, "Parliamentary and Government Resolution continues to affect productivity and normal functioning at the Baucau District Court" http://jsmp.tl/wp-content/uploads/2014/01/PrRezolsaPrPNGovernu-Kontinua-Afeita-Funionamentu-ihTDBaucau_-ENGLISH.pdf,

cases, including victims, defendants and witnesses, must repeat a process which is already long and difficult.

27. The sudden departure of judges and prosecutors without any plan for transition to Timorese colleagues will create significant additional work for the Timorese judges, prosecutors and staff who remain. The Courts do not have additional resources to deal with this work. This is likely to delay the processing of cases for some time into the future, preventing people from obtaining justice.
28. As a result, people are likely to lose confidence in the ability of the justice system to provide justice quickly and effectively. This could set back the development of community confidence in the justice system considerably.

(ii) Domestic violence

29. A large proportion of cases that come before the courts involve crimes of domestic violence against women and children. The trial process is already traumatic for victims of those crimes and now many will have to repeat the process. Many organisations have been working for some time to improve access to justice for victims of domestic and gender based violence. These vulnerable victims already face significant challenges in accessing the justice system and the effects of this action have the potential to discourage victims further and set back gains which had been made in this area.

(iii) Serious Crimes

30. In some specific types of cases, proceedings will not be possible under the current law without the involvement of international judges. Specifically, the law continues to require that cases of “serious crimes” committed in 1999, such as crimes against humanity, be heard before a panel of two international judges and one Timorese judge.⁵ There are cases of this nature pending in the Dili District Court. It is not clear how these cases will be dealt with.

(iv) Corruption cases

31. There are currently a number of corruption cases involving current or former members of the Government or other high profile officials before the Court. Like other cases, these cases are likely to be delayed as a consequence of the removal of resources from the courts. Some of the international judges and/or prosecutors were involved in those cases and their departure will cause particular delays. For example, the trial of Emilia Pires, Minister for Finance, may be delayed and a recent case involving the ex-Minister for Education which was not yet finalised will need to be retried because the judge involved has now left.⁶ These impacts can also create a perception that instances of corruption will not be properly prosecuted in the future, as discussed further below.

JSMP Press Release, 5 December 2014, “Dili District Court adjourns trial involving infanticide because the judge was dismissed by Parliamentary and Government Resolutions” <http://http://jsmp.tl/wp-content/uploads/2014/01/PrWCJUTribunl-Distrital-Dili-adia-julgamentu-ba-kazu-infantisidiu-tanba-juis-titular Rezulusaun ENGLISH.pdf>

⁵ UNTAET Regulation 2000/15 on the Establishment of Special Panels with Exclusive Jurisdiction over Serious Criminal Offences, section 22; as kept in force by the Criminal Procedure Code, Decree Law No.13/2005, article 3.

⁶ Case No. 63/14/TDD

II. II Future resources and training

32. Longer term, all work in these institutions is likely to be slowed while the institutions try to find sufficient numbers of adequately skilled and experienced replacements for international staff. There was already a shortage of skilled and experienced human resources in the justice sector, which was the main reason why international officials and advisors had been retained. Therefore it is likely to be difficult for these institutions to find replacement personnel quickly.
33. The Legal Training Centre (LTC) is likely to experience particular problems, which may then affect other parts of the justice sector. There were a number of international trainers working with the LTC who will be difficult to replace from within Timor, particularly because they need to have substantial experience as well as very good Portuguese language skills. In the short term, the removal of international trainers has postponed the start of the next training session which was due to begin in November 2014. This could become a problem for currently practising private lawyers who have a 31 December 2015 deadline to complete their training through the LTC or lose the right to practice.⁷ In the longer term, these delays will exacerbate the shortage of qualified officials in the sector.
34. There are also general concerns about the impact on the quality of legal training and legal work performed in the justice sector. Despite the Parliament and Government's criticisms of the technical capacity demonstrated by international officials and advisors, there are still significant capacity limitations among national legal professionals, who will no longer have assistance from their international colleagues. Some international officials or advisors may not have performed to the standard desired, however, removing all of them without a plan for replacement is not a very effective solution.

III. Indirect consequences outside the justice sector

III. I Corruption

35. Combating corruption is vital to an effective democracy functioning under the rule of law. Undermining the independent and effective functioning of judicial institutions and the Anti-Corruption Commission is likely to lead to increased corruption and increase the perception of corruption.
36. There are currently a number of corruption investigations underway, including some involving members of the current Government. The resolutions might impact the prosecution of those cases by: (a) slowing the progress of investigations and trials; (b) discrediting the investigations that have occurred so far; and (c) pressuring judicial officers who may prosecute or decide these cases into making decisions that favour the Government.
37. This perception may be increased by the further actions of the Prime Minister at around the same time as the resolutions. On 22 October 2014 the Prime Minister delivered a letter to the National Parliament requesting the Parliament not to authorise the removal of immunity of members of the Government who have been accused but not yet convicted of crimes, in order to allow them to continue to perform their duties until their mandates expire. Although not directly connected to the resolutions, there is some concern that this request could be seen as placing political pressure on the National Parliament to take action which could delay the progress of corruption cases

⁷ Under Decree Law No. 39/2012 which amends Law No. 11/2009 on the Juridical Regime Governing Private Legal Professional and Lawyers Training.

and could impact on the perception of the State's commitment to combat crimes of corruption.⁸

38. More generally, if the Anti-Corruption Commission and the process for pursuing corruption matters through the courts is seen as ineffective or subject to improper influence, people may be more willing to engage in corrupt practices or believe that corrupt practices will not be properly investigated or punished.

III.II Investment in Timor-Leste

39. These actions are likely to affect investor confidence in Timor-Leste by:
- Decreasing confidence in the ability of the Timorese judicial system to resolve disputes consistently in accordance with the law and without improper interference;
 - Increasing fears about corruption;
 - Increasing fears about the risk of unpredictable government actions that might affect investments.
40. In general, the economic impact of the resolutions will make Timor-Leste a less attractive place to do business, and international investors in particular may be less willing to invest in Timor-Leste. This could have negative impacts on the economic development of Timor-Leste.

III.III Relations with Portugal, Community of Portuguese Language Countries (CPLP) and other Nations

41. Because the majority of international judges, prosecutors and advisors in the justice sector are from Portugal, these actions have had and may continue to have a negative impact on the bilateral relationship with Portugal. Following the resolutions there was a strong reaction in the Portuguese media, the Portuguese Council of Magistracy recalled the Portuguese judges, and the Portuguese Government expressed concern about the decision.⁹ The Government of Portugal also stated its intention to review judicial cooperation with Timor-Leste.¹⁰
42. In Timor-Leste, the President of the Republic expressed concern about the potential effect of the reaction to the resolutions on relations with Portugal and CPLP nations.¹¹
43. The Minister of Justice visited Portugal from 17-18 November 2014, and met with his Portuguese counterpart and members of the Portuguese Superior Council of

⁸ See JSMP Press Release, Letter from the Prime Minister represents political pressure on the National Parliament, 18 November 2014, <http://jsmp.tl/wp-content/uploads/2014/01/Letter-from-the-Prime-Minister-represents.pdf>

⁹ See, for example, Observador, 4 November 2014, "Judiciary responds to Timor and sends back all Portuguese judges" <http://observador.pt/2014/11/04/magistratura-responde-timor-e-manda-regressar-todos-os-juizes-portugueses/>; Observador, 4 November 2014 "Magistrates Union considers "gross violation" of East Timor expulsion" <http://observador.pt/2014/11/04/sindicato-de-magistrados-considera-grosseira-violacao-expulsao-de-timor-leste/>; Diaro de Noticias Portugal, 4 November 2014, "Supreme Judicial Council sends back all judges", [http://www.dn.pt/inicio/portugal/interior.aspx?content_id=4219969&page=-1](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=4219969&page=-1;);

¹⁰ See Sapo, 5 November 2014, "Minister of Justice suspends judicial cooperation with Timor-Leste", <http://expresso.sapo.pt/ministra-da-justica-suspende-cooperacao-judiciaria-com-timor=f896727>

¹¹ See report in Tempo Semanal, 9 November 2014, "TMR calls on Government and Parliament to respect judiciaries' independence" <http://www.temposemanal.com/politika/tmr-calls-on-goverbment-and-parliament-to-respect-judiciaries-independence>

- Magistracy in an attempt to restore confidence. Portuguese officials were clear in expressing their disappointment regarding the expulsion of judicial actors.¹²
44. This impact on the bilateral relationship could affect the substantial support Timor-Leste receives from Portugal in the form of aid and technical assistance. Portuguese and other foreign experts who could provide useful assistance may also be less likely to come to Timor-Leste for fear of being expelled.
 45. In addition, some officials and advisors affected by the resolutions originate from other CPLP nations – for example, one of the expelled judges originates from Cape Verde. This, and the general impression that Timor-Leste may no longer welcome international assistance, has the potential to impact on Timor-Leste's CPLP relations. Concerns have been expressed in some of those nations, such as a statement of concern from the Association of Brazilian Magistrates.¹³ The Minister for Justice has also visited Cape Verde to try to restore relations.
 46. The impacts described above, in particular the perception that the Government might not act according to the law, weaknesses in the justice system, and impacts on investment may have further consequential impacts on relations with other nations. For example, Timor-Leste's continuing bid to join ASEAN may now face additional challenges.

Legality of the resolutions

47. This report finds that the resolutions are not consistent with the laws of Timor-Leste for a number of reasons including: violation of the constitution, inconsistency with existing legislation, breach of human rights, and procedural irregularities. These are discussed below.

I. Constitutionality

48. The Timorese Constitution protects the independence of the judiciary as well as the separation of powers more broadly. These principles overlap and are interdependent but can also be considered separately.

1.1 Judicial independence

49. The Constitution makes clear that the courts (section 119) and judges (section 121(2)) are independent and subject only to the Constitution and the law. This is important to ensure that the courts and judges are able to make decisions in accordance with the law even if those decisions do not favour the State.
50. In order to ensure the independence of judges, the Constitution also:
 - a. guarantees judges security of tenure and provides that they may not be transferred, suspended, retired or removed from office other than in accordance with the law (section 121(3)).
 - b. establishes a special body, the Superior Council for the Judiciary, as “the organ of management and discipline of the judges of the courts,” which is

¹² Government of Timor-Leste media release, “Minister of Justice concludes visit to Portugal”, 21 November 2014, <http://timor-leste.gov.tl/?p=10903&lang=en>

¹³ Association of Brazilian Magistrates, “International Union of Magistrates condemns expulsion of Portuguese judges of East Timor” at <http://novo.amb.com.br/?p=249>

given the role of appointing, assigning, transferring and promoting judges (section 128).

51. Together, the provisions in the Constitution guaranteeing judicial independence, and the role given to the Superior Council for the Judiciary to manage and discipline judges, establish that only the Superior Council may terminate a judge's employment, not the Parliament or Government. The Superior Council is able to appoint international judges under section 111 of the Statute of Judicial Magistrates¹⁴ and also has an exclusive role in evaluating and dismissing judges (see further below at paragraph 78).
52. In addition, judges can only be dismissed on proper grounds and according to the procedures set out by law. This has been confirmed by the Court of Appeal in a previous case involving Portuguese Judge Ivo Rosa, in which the Court said that to allow judicial dismissals not according to the strict requirements of the applicable law would allow "the exercise of judicial functions... to become vulnerable to pressures and persecutions of various kinds, namely, of a political nature".¹⁵ The Court of Appeal specifically held that constitutional guarantees of judicial independence apply equally to international judges as to their national counterparts.¹⁶
53. The Constitution does not clearly state which organs of state are competent to audit the works of the courts. However, the Superior Council has a specific constitutional mandate to oversee the work of the courts. This indicates that audits should be commissioned by the Superior Council, not by the Government or Parliament. The constitutional guarantee of an independent judiciary also means that any audit of the judicial system will only be consistent with the Constitution if it is carried out in an independent manner and not as a means of exerting political pressure on the judiciary.
54. Public perception is also an important part of judicial independence. In the Ivo Rosa case the Court of Appeal emphasised the importance of public perception in upholding judicial independence. It noted that "[t]he circumstances and the manner in which the decision was taken allowed that it appeared in the eyes of the mass media, and was communicated by them, as being motivated by political reasons, linked to the decision taken by the appellant."¹⁷ These resolutions were presented as the Government's response to unfavourable court decisions in relation to tax revenues, and corruption allegations. Because these reasons appear political, this can increase public perception that the resolutions are an interference with judicial independence. This reinforces the conclusion that the resolutions amount to a violation of the constitutional principle of judicial independence.

I.II Separation of powers

55. Timor-Leste's organs of state are the President of the Republic, the National Parliament, the Government and the Courts (section 67 of the Constitution). Under the principle of separations of powers, each organ of the state plays a complementary and specific role, with its powers limited and checked by those of the other organs. Thus no organ may exercise control over another organ.

¹⁴ Statute of Judicial Magistrates, Parliamentary Law No.8/2002 as amended by Law No.11/2004.

¹⁵ Court of Appeal, *Decision on the appeal of Judge Ivo Rosa against the non-renewal of his contract by the Superior Council of the Judiciary*, 31 December 2008, unofficial translation to English online at: <http://www.easttimorlawandjusticebulletin.com/2009/02/east-timor-court-of-appeal-decision-re.html>

¹⁶ *Ibid.*

¹⁷ *Ibid.*

56. The Timorese Constitution expressly guarantees “the principle of the separation and interdependence of powers” in section 69. Part III of the Constitution sets out in detail the limits on each organ’s powers and describes how the organs relate to each other. The principle of the separation of powers is violated if one organ of state tries to take action which falls outside its constitutionally defined powers, or which encroaches upon a mandate or independence which the Constitution confers on another organ.
57. Specific roles and powers are conferred under the Constitution to each of the National Parliament, the Government, the Courts and the Public Prosecution Service. Therefore this legal issue is specifically relevant to the resolutions’ purported actions in relation to the Courts and the Public Prosecution Service.

(i) Independence of the Courts

58. As set out above, the Constitution guarantees the independence of the courts and judges (section 119 and 121(2)). Accordingly the Constitution gives no powers to Parliament or Government to instruct or manage the courts or judges, and no power to remove judges from office. Only the Superior Council for the Judiciary may do this (as explained above at paragraph 51). As an independent body established for managing the Courts, the Superior Council of the Judiciary also appears to be the most appropriate body to conduct audits of court functioning.

(ii) Independence of the Public Prosecution Service

59. The Public Prosecution Service is also established and structured under the Constitution. The Constitution contains no express provision enshrining the independence of the public prosecution, but it does include some safeguards clearly intended to ensure such independence. The Prosecutor-General is the highest authority within the public prosecution (section 133(1)). He or she reports and is accountable to the National Parliament but is appointed by the President of the Republic for fixed terms of six years (section 133(3)). All public prosecutors are accountable only to the Prosecutor-General (section 132(2)). They may be appointed, assigned, transferred, promoted, or subjected to disciplinary action only by the Prosecutor-General (section 132(5) and only in accordance with the law (section 132(4)).

(iii) Powers of the National Parliament

60. The National Parliament is the organ of state with principal legislative powers (section 92). Parliament’s Resolution No. 11/2014 refers to section 92 suggesting that this is the source of its authority to make the resolution. Section 92 says that the Parliament is the organ that represents all Timorese citizens and has legislative, oversight (supervisory) and political decision-making powers. Those powers are then set out in sections 95 to 98.
61. The legislative function, which is the most substantial part of the Parliament’s role, is set out in section 95 paragraphs (1) and (2) of the Constitution. It includes broad powers to make laws on basic issues of domestic and foreign policy (section 95(1)) as well as a number of areas in which the Parliament has exclusive legislative powers.¹⁸ These are powers to make laws which apply generally, rather than decisions on specific matters.

¹⁸ The Parliament may also authorise the Government to undertake legislative action (Government decree laws) on certain specified subjects (section 96).

62. In addition to these traditional legislative roles, section 95(3) provides the Parliament with other responsibilities and powers which are not legislative in nature, since they involve making decisions in specific cases rather than adopting laws of general application. Thus, for example, the Parliament is authorised to have particular roles in the appointment of judicial officials: it ratifies the appointment of the President of the Supreme Court of Justice and the High Administrative, Tax and Audit Court (section 95(3)(a) and elects one member of the Superior Council for the Judiciary and the Superior Council for the Public Prosecution (section 95(3)(c)).
63. However, the words of section 95(3) make it clear that these specific non-legislative powers granted to the Parliament are limited to those listed in section 95(3). This limit to Parliament's powers can also be inferred from the principle of the separation of powers (section 96) read together with those sections of the Constitution which set out the definitions of the various organs of state (sections 74, 92, 103 and 118). Because the role of Parliament is to create policy and laws, the principle of separation of powers requires that any other acts of Parliament are limited to those expressly listed. Otherwise the Parliament is interfering in mandates conferred by the Constitution to other organs.
64. Therefore, it is clear that while the Parliament may enact laws of general application, it may only make decisions on specific cases where expressly empowered to do so by the Constitution. No provision of the Constitution empowers the Parliament to determine that contracts of specific categories of public officials shall be terminated or not-renewed. This is by nature not a legislative act of general application.
65. In addition, as indicated above, the dismissal of certain officials (judges and public prosecutors) are mandates provided exclusively to other institutions or persons – the Superior Council for the Judiciary and the Prosecutor-General. Similarly, initiating a specific ad hoc audit does not appear to be a legislative act and does not fall within any of the executive Parliamentary powers in section 95(3).
66. Therefore, it does not seem that there is a valid Constitutional basis for Parliament to make Parliamentary Resolution No. 11/2014.

(iv) Powers of the Government

67. The Government is responsible for conducting and executing the general policy of the state and of public administration (section 103). Appointing and dismissing public servants (or determining whether to terminate or not renew their contracts) and initiating audits would ordinarily fall within the executive functions of Government under the Constitution.
68. However, as explained above, the Constitution expressly provides powers to appoint and dismiss certain officials, in particular judges and public prosecutors, to other persons or institutions. Therefore the Government does not have power to decide to terminate or not renew the contracts of these officials.
69. The Government's ability to initiate audits over courts, judges and prosecutors may also be limited, because the courts and prosecution service must be independent from the Government and an audit conducted by the Government could interfere in that independence.
70. In respect of other officials, including those working in Public Defenders' Office, the Anti-Corruption Commission and the Legal Training Centre, the separation of powers

may not prevent the Government from deciding to dismiss them. However any such dismissal would need to comply with legislation as explained further below.

71. The separation of powers also does not appear to prevent the Government from conducting audits of these institutions. The Organic Statute of the Ministry of Justice creates a specialist office within the Ministry with the power to conduct audits within the Ministry as well as of the Public Defenders' Office and the Legal Training Centre (articles 6-7). However, the Statute does not state that this power is exclusive and, since these agencies are under the authority of the Government, a Government-commissioned audit appears permissible.

I.III Conclusions regarding constitutionality

72. As the analysis above indicates, the guarantees of judicial independence and the principle separation of powers set out in the Constitution prohibit the Parliament or the Government from deciding to terminate or not renew the contracts of judges and public prosecutors. Such decisions could only be made by the Superior Council for the Judiciary or the Prosecutor-General respectively.
73. An argument may also be made that the independence of the Courts and Public Prosecution Service also prevent the commissioning of audits by the Parliament or Government over those institutions. Especially where such an audit is a means of exerting political pressure on the judiciary it is likely to violate the principles of judicial independence.
74. For these reasons, the resolutions appear to be contrary to the Constitution to the extent they relate to the Courts and Public Prosecution Service. Because the resolutions are outside the constitutional powers of the Parliament and the Government they should be considered invalid and therefore as having no legal effect (see section 2(3) of the Constitution). This conclusion is consistent with the directive of the President of the Court of Appeal of 29 October 2014, which stated the resolutions of 24 October 2014 were without legal effect.
75. In respect of the other institutions affected by the resolutions – the Public Defenders' Office, the Anti-Corruption Commission and the Legal Training Centre – the position is slightly different. Parliament has no clear power enabling it to make decisions for the dismissal of other public officials, nor to initiate audits of specific public institutions, but the Government may have such powers. However, these measures must be done in compliance with any legislation in place as discussed further below.

II. Conformity with existing legislation

II.I Institutional laws

76. The courts and public prosecution service are established by the Constitution but are also regulated by legislation. The Public Defenders' Office, Anti-Corruption Commission and Legal Training Centre are not constitutionally created, but exist by virtue of legislation which regulates their composition and governance. The resolutions of 24 October 2014 may conflict with the relevant legislation regulating these institutions.
77. Legislation, whether a Parliamentary Law or a Government Decree Law, creates laws which apply generally, whereas actions taken by Parliamentary or Government resolution are usually specific executive actions – for example, to elect a member of the Superior Council of the Judiciary, or to ratify an international treaty. Such executive

actions must comply with relevant existing general laws unless there is a specific exception provided for in those laws.¹⁹ Therefore, if the actions taken by these resolutions conflict with existing legislation, they could be considered invalid.

(i) Judges

78. The Statute of Judicial Magistrates (Law No.8/2002, amended by Law No.11/2004) details the structure of the judiciary, including the Superior Council of the Judiciary. It sets out procedures for the appointment of judges, evaluation of judges' work and for their disciplining and dismissal. It provides the Superior Council with the ability to appoint international judges to the judiciary of Timor-Leste on a provisional basis (section 111(2)).
79. Consistent with the Constitution, the Law provides that the Superior Council of the Judiciary is responsible for managing, evaluating, disciplining, dismissing judges (articles 8(1) and 15(1)(a)) and that judges shall not be reassigned, suspended, promoted, made to retire, removed from office or otherwise have their situation changed except as provided for under the Law (article 6).
80. The use of the resolutions to purportedly dismiss judges has failed to comply with the requirements of this law, according to which the Superior Council should oversee a proper evaluation or disciplinary process prior to any dismissal.

(ii) Public prosecutors

81. The public prosecution is regulated by the Statute of the Public Prosecution Service (Law No.14/2005). The Law provides that the Prosecutor-General's Office, and specifically the Superior Council for the Public Prosecution, is responsible for the removal from office, evaluation, disciplining etc of public prosecutors (articles 9 and 17). It sets out procedures for the evaluation and disciplining of public prosecutors by the Superior Council.
82. The dismissal of international prosecutors as a result of the resolutions does not comply with the procedures set out in this Law for the dismissal public prosecutors.

(iii) Public defenders

83. The Public Defenders' Office is created by the Organic Statute of the Ministry of Justice (Decree Law 12/20008, articles 15-16) and the Statute of the Public Defenders' Office (Decree Law No. 38/2008). The Office is subject to oversight by the Ministry of Justice, but is granted technical and functional independence (article 1(2) of the Statute of the Public Defenders' Office, article 15 of the Organic Statute of the Ministry of Justice). The Office is headed by the Public Defender General, but the Law also establishes the Superior Council of the Public Defender's Office. The Superior Council is responsible under the Law for evaluating, disciplining and removing public defenders (article 14(1) of the Statute of the Public Defenders' Office). The Statute of the Public Defenders' Office sets out procedures for the evaluation and disciplining of public defenders by the Superior Council.

¹⁹ The Constitution does not give an explicit hierarchy of laws but it can be implied that executive action by resolution should comply with general laws from the Constitutional principles that Parliament (or Government under authority from Parliament) makes laws for general application and that the State, including Parliament and Government, must perform their roles subject to the law (Article 2).

84. The dismissal of public defenders based on the resolutions is not in accordance with the procedures set out in this Law. However, this may apply only to public defenders themselves, and not to advisors assisting them in their work.

(iv) The Anti-Corruption Commission

85. The Commission is created and regulated by Law No. 8/2009 on the Anti-Corruption Commission. This Law provides for a Commissioner to head the Commission, appointed by the National Parliament (article 7). The Law provides for staff to work under the Commissioner, but does not expressly regulate procedures for their recruitment, evaluation, or dismissal. The Law states that these staff are covered by the public service regime (article 13).
86. Based on this, Government intervention to remove international officials employed in the Commission does not necessarily violate the terms of the Law, but would still need to comply with other laws such as the Labour Code or Statute of the Civil Service.

(v) Legal Training Centre

87. The LTC is created by the Organic Statute of the Ministry of Justice (Decree Law 12/2008, articles 15 and 17) and Ministerial Diploma 30/2009 of the Ministry of Justice on the Organic Structure of the Judicial Training Centre. Like the Public Defenders' Office, these laws state that the LTC has "technical autonomy" from the Ministry of Justice but is otherwise under the Ministry's management (article 15 of the Organic Statute of the Ministry of Justice, article 1(1) of Ministerial Diploma 30/2009).
88. As the Legal Training Centre is under government management, it may be within the power of the Government to remove international officials working in the Legal Training Centre, but proper procedures need to be complied with such as those set out in the Labour Code.

II.II *Statute of the Civil Service and the Labour Code*

89. Under the definition provided in article 3 of the Statute of the Civil Service ("a person recruited and appointed to a permanent position in the public Administration..."), people who are working in public administrations on a temporary basis are not classified as civil servants. As foreigners are generally employed or appointed on a temporary basis, it appears that the Statute of the Civil Service would not apply to them. This means that the Labour Code (Law No.4/2012) would instead apply, although ordinarily the Labour Code is not applicable to civil servants (article 2(2)).
90. The Labour Code contains relevant minimum requirements that must be complied with for the termination of any employee in Timor-Leste. First, it prohibits discrimination including on the grounds of nationality (article 6(2)). Dismissal from a job on a discriminatory ground (including nationality) is expressly prohibited (article 41(1)).
91. Secondly, an employer may only dismiss a worker for "good cause" (article 50). Dismissal of a worker without a "just cause" is also prohibited by the Constitution (section 50(3)). A list of circumstances amounting to "good cause" are set out in the Code. All of these circumstances relate to unequivocal breaches of duty by an employee. The resolutions provide no evidence of clear breaches of duty as described in the list in article 50 by any individual, and therefore it does not appear that there is "good cause" for dismissal of the international judicial officials and advisors.

92. Finally, even where “good cause” exists for the dismissal of an employee, correct procedure must be followed including a disciplinary process and an opportunity for the employee to be heard (article 51).
93. Therefore, the parts of the resolutions which call for the termination and non-renewal of contracts may be invalid for inconsistency with the Labour Code. Any steps taken by the relevant state institutions to implement the decisions would then constitute violations of the Labour Code.
94. If the Statute of the Civil Service was instead applicable to any of these officials, it also provides only certain circumstances in which dismissal may occur – for grave disciplinary offences or proven professional incompetence – and correct procedure must be followed (article 97). Such procedures were not followed in this case.

II.III Immigration and Asylum Act

95. Government Resolution No. 32/2014 purports to implement the Immigration and Asylum Act (Law No. 9/2003) but does not comply with the terms of that Law.
96. First, the resolution assumes that Government Resolution 29/2014 of 24 October 2014 was effective to terminate the employment of judges and public prosecutors. For the reasons explained above, this is not the case. Even if there had been an effective termination of employment for all eight persons named in the resolution, this does not itself provide a basis for an immediate order to leave the country.
97. The resolution implies that a loss of employment automatically leads to the revocation of an otherwise valid work permit. This is not stated in article 36 of the Immigration and Asylum Act (which is referred to in the resolution), nor elsewhere in the law.
98. Although the loss of employment might be a basis for the revocation of a work permit, this could not apply immediately but only after a reasonable time has elapsed for challenging a wrongful dismissal from employment. This time is necessary to make the Labour Law (which regulates dismissals and allows for legal challenge) effective for employees who are foreigners on a work permit.
99. This means that “remain[ing] illegally in the national territory”, one of the bases for expulsion proceedings under article 63, is not made out in respect of the eight persons named in the resolution.
100. The resolution suggests that it relies on other bases for expulsion by adopting language used in the Act: “national security, public order and morality” (article 63(1)(b)) and “a threat to the interests and the dignity of the Democratic Republic of Timor-Leste” (article 63(1)(e)). However, it is difficult to see how these bases for expulsion could apply in this case, particularly given the resolutions do not make any specific factual allegations against the named individuals. Therefore, the requirements of article 63 are not satisfied and an order to leave the territory under article 64(1) is without legal basis.
101. In addition, even if there was a basis to commence expulsion proceedings, persons are entitled to full due process of law, including the right to be heard (articles 71(2) and 73(1)). The correct process for expulsion under the Act does not appear to have followed in this case.

II.IV Conclusions regarding compatibility with existing legislative frameworks

102. Based on the analysis above it can be concluded that the resolutions’ purported dismissal of certain public officials is inconsistent with Timorese law.

103. In relation to judges, public prosecutors and public defenders (though not advisors working with them) dismissal by virtue of the resolutions is inconsistent with the institutional laws which regulate the evaluation, disciplining and dismissal of these officials. This inconsistency may mean that the purported dismissals are without legal effect since they were beyond the powers of the institutions issuing them.
104. In respect of all persons purportedly dismissed as a result of the resolutions, including officials in the Anti-Corruption Commission and the Legal Training Centre, as well as advisors in all institutions, dismissal pursuant to the resolutions would violate the Labour Code. Under the Labour Code, the individuals who were dismissed may have a right to be re-instated and paid compensation (section 55).
105. Finally, the order to leave the territory issued in Government Resolution No. 32/2014 also does not appear to have a valid basis under the Immigration and Asylum Act.

III. Human rights principles

106. The Timorese Constitution enshrines some human rights principles. However far more are imported by section 9 of the Constitution, which provides that customary international law and the provisions of international conventions ratified by Timor-Leste are applicable in domestic law. The most relevant of these are the provisions of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Timor-Leste by Parliamentary Resolution No. 3/2003.

III.I Right to a fair trial

107. Section 34 of the Constitution provides some fair trial guarantees, at least in relation to criminal proceedings. A broader right to a fair trial is imported into Timorese law via section 9 of the Constitution from article 14 of the ICCPR.
108. Article 14 of the ICCPR guarantees that in both civil and criminal cases all persons “shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” The UN Human Rights Committee, which supervises implementation of the ICCPR, has held that the guarantee of a fair trial in article 14 requires that judges be free from political interference, pressure or intimidation, and that this requires them to have secure tenure regulated by law:

“Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary.”²⁰
109. The Human Rights Committee has identified violations of article 14 where judges have been dismissed by executive action, rather than through the appropriate institution for judicial oversight (equivalent to the Timorese Superior Council for the Judiciary).²¹ Decisions by the Inter-American Court of Human Rights and the European Court of

²⁰ UN Human Rights Committee, General Comment No. 32, (2007), paras 19-20.

²¹ Human Rights Committee, *Mundy Busyo et al v. Democratic Republic of Congo*, Communication No. 933/2000, CCPR/C/78/D/933/2000, 19 September 2003, para. 5.2.

Human Rights on the right to a fair trial have also found that parliamentary dismissal of judges constitutes a violation of this right.²²

III.II Prohibition on arbitrary expulsion

110. The ICCPR also protects aliens in the territory of a state from arbitrary expulsion (article 13). It guarantees that persons to be deported are first entitled to a hearing before a competent body.
111. Article 13 takes a broad view of "expulsion" which includes the issuing of an order to leave a state's territory. The ICCPR therefore requires that due process according to law, including a right to be heard, be accorded before any such order is issued, and that avenues to appeal any such order are made available.
112. In addition, article 13 has been interpreted as prohibiting collective expulsions.²³ Decisions on expulsion must be made individually, on the facts of each person's specific case.
113. It therefore appears that Government Resolution No. 32/2014 violates the principles contained in article 13 of the ICCPR which are imported into Timorese law by section 9 of the Constitution.

III.III Conclusions regarding human rights

114. The Timorese Constitution imports into Timorese law certain rules of international law, including human rights principles set out in the ICCPR. These include the guarantee of fair legal proceedings before an independent court. Actions taken by the Parliament and Government to remove judges from office constitute a violation of that guarantee. In addition, foreigners may not be arbitrarily or collectively expelled from the territory of the state, and are entitled to due process guarantees including the rights to be heard and to appeal. These violations of international human rights principles incorporated in Timorese law make the resolutions unlawful.

IV. Procedural irregularities

115. Pursuant to section 95(4)(c) of the Constitution, the National Parliament has adopted Rules of Procedure. These provide for publicity and transparency of parliamentary processes. In particular, article 85 of the Rules of Procedure provides that plenary meetings of the Parliament shall be public, and that any person shall be entitled to attend so long as certain rules of behaviour are complied with.
116. It therefore appears that closed plenary sessions are not permitted by the Parliament's own regulations. It is unclear whether this irregularity would have the effect of invalidating resolutions passed in the session.
117. Nevertheless, the use of a closed session immediately raises concerns. Even in other legal systems where the use of closed parliamentary sessions is sometimes permitted, there must be a relevant and compelling reason for ensuring the confidentiality of certain information (for example, to protect national security). This is because Parliament should be transparent in order to ensure its accountability to the people. Even if closed sessions were permitted by the Rules of Procedure, Parliament has not

²² Inter-American Court of Human Rights, *Constitutional Tribunal (Camba Campos et al.) v Ecuador*, Judgment, 28 August 2013; European Court of Human Rights, *Oleksandr Volkov v Ukraine*, Application no. 21722/11, Judgment, 9 January 2013.

²³ UN Human Rights Committee, General Comment No.15 (1986), para.10.

provided any legitimate reasons for closing the session to the public and preventing public scrutiny.

V. Relevance and sufficiency of justifications

118. A number of reasons are given in the resolutions which may explain the motivation behind them, or attempt to provide a legal justification for them. None of these reasons is sufficient to remove the legal impediments identified above.
119. The introductory paragraphs of Parliamentary Resolution No. 11/2014 refer to “complex” cases including more than 50 taxation cases relating to oil revenue brought against the State by contractors exploiting the Bayu Undan offshore gas fields. The resolution says that these cases “have revealed some weaknesses that our young justice system still suffers”, among them substantive and procedural “juridical irregularities” that have exposed Timor-Leste to “external threats to its sovereignty and subsequently national security.”
120. The resolution goes on to state that foreigners hired to work in the judicial sector have “revealed a lack of technical capacity” and that those working in the Anti-Corruption Commission have also proved unsatisfactory.
121. Government Resolution No. 29/2014 gives fewer reasons, citing the requests in Parliamentary Resolution No. 11/2014, and justifies the removal of international judges by reference to “*force majeure* and national interest.”
122. The following analysis briefly considers each of these justifications.

V.I Dissatisfaction with outcomes in specific cases

123. A government's dissatisfaction with the outcomes of specific court proceedings cannot provide sufficient justification for the removal of judicial officials. This is because it is the court's role to decide cases according to the law, not according to the government's wishes. Rather, this explanation supports the argument that the removal is an improper interference with the independence of judicial institutions.
124. In the event that the Government or Parliament is dissatisfied with the outcome of judicial proceedings, the first step is to appeal the decision according to the process provided for by law. If the outcome reveals a problem with the law, then the most appropriate response is for the Government or Parliament to amend or make new legislation.

V.II Lack of capacity of international judicial actors

125. The claim by the Parliament that all international officials should be dismissed because they have shown insufficient technical capacity is difficult to accept. This justification assumes that all international officials have performed inadequately, but the resolutions give no evidence of this. It also assumes the same challenges do not affect their Timorese counterparts (or those who will replace them following the resolutions).
126. This argument is further weakened by the fact that officials at three of the institutions targeted by the resolutions – the courts, the Public Prosecution Service and the Public Defenders' Office – are subject to regular evaluations of their work in accordance with the laws regulating those bodies. In all three institutions, an evaluation of “fail” leads to suspension from duties and the initiation of an inquiry into the ability of the individual to

perform their function.²⁴ Such evaluations should apply to international officials. This is the correct mechanism to deal with poor performance or incompetence, not the blanket removal of international officials.

127. In any event, this reason cannot justify an interference with the separation of powers, nor a breach of the right to a fair trial, nor a failure to comply with the proper procedures in place according to law for the removal of certain public officials. There is no exception in the Constitution or legislation that would allow this. Any concern with the capacity or competence of these officials must be dealt with through the legal mechanisms created for this purpose.

V.III National interest and security

128. The resolutions refer to “national interest” and threats to “national security” but do not give any further explanation of these interests or threats. In any event, the legal and constitutional principles discussed above do not contain any exception on either of these bases.
129. If there was a legitimate reason given for why the acts were in the national interest, it might be possible to argue this was a “good cause” for dismissal under the Labour Code. However, this could not provide a reason for failing to follow proper procedures under the Labour Code, the Constitution or other laws.

V.IV Force majeure

130. *Force majeure* is a legal concept used to justify the failure to comply with legal obligations (most often arising from a contract) where compliance has become impossible owing to an extraordinary occurrence outside the control of the parties. Most often it is applicable in the event of a natural disaster or a similarly extreme event such as the outbreak of war or civil unrest.
131. *Force majeure* is not an applicable exception under the Labour Code and is not relevant under the Constitution or any of the institutional legislation considered above.
132. It is also difficult to see what event could constitute *force majeure* in the present case. There has not been any unforeseen disaster or civil unrest. Usually with *force majeure* the legal breach is an omission, because undertaking some required act has become impossible due to events beyond the party’s control. In this case, the legal breach is a positive act by the Parliament and Government in passing the resolutions. Parliament and Government were not forced to pass the resolutions because of events beyond their control.

Possible Remedies

VI. Presidential veto?

133. Under the Constitution all statutes passed by the Parliament are transmitted to the President of the Republic who must, within thirty days, either promulgate the document as law or veto it, in which case it is returned to the Parliament for reconsideration (section 88). Before deciding whether to veto the President may request a judicial consideration of a statute’s constitutionality (sections 149 and 85(e)).

²⁴ Statute of Judicial Magistrates, Law No. 8/2002, as amended by Law No.11/2004, article 57(2); Statute of the Public Prosecution Service, Law No. 14/2005, article 53(2); Statute of the Public Defenders’ Office, Decree-Law No.38/2008, article 34(2).

134. However, the President's power to veto or request judicial consideration of constitutionality appears to only apply to laws passed by the Parliament under section 95(1) and (2). Acts undertaken by resolution under section 95(3), such as the approval of state visits by the President or the declaration of a state of emergency, do not ordinarily require promulgation by the President and therefore cannot be vetoed. This is logical given the kinds of acts which the Parliament is authorised to perform under section 95(3), which are not legislative in nature. This is also clear from the language used in sections 88 and 85(c), which limits the veto power to statutes. Section 85(a) grants the President of the Republic the power of promulgation in relation to statutes, but in relation to Parliamentary resolutions which approve agreements or ratify treaties, he or she may merely order publication.
135. Because the resolutions are not statutes, it seems the President of the Republic is not able to veto them, but he could possibly initiate an abstract constitutional challenge under section 150 of the Constitution (see further below at paragraph 141).

VII. Non-compliance

136. One option for dealing with the two resolutions of 24 October 2014 is for the affected institutions or individuals not to comply with them on the basis that they conflict with the Constitution and other laws, and are therefore without any legal effect. In the event that legal action is taken against the non-complying official or institution, the invalidity of the resolutions for the reasons given above can then be raised as a defence.
137. The President of the Court of Appeal's position that the resolutions are invalid and without any legal effect would support this approach.
138. However, in respect of Government Resolution No. 32/2014 simple non-compliance was impractical, since the consequences could have been detention or imprisonment. This resolution made it difficult for the non-compliance approach to be tested because it compelled those individuals named to leave and likely encouraged others to leave by threatening expulsion. As a result, the practical effect of the resolutions has been that international officials within the affected institutions have already left or are in the process of leaving.

VIII. Challenge to the legality of the resolutions

139. An alternative would be to challenge the validity of the resolutions through the courts. Two avenues for doing this may be available.
140. The first would be for a person directly affected by the resolutions to initiate a complaint/court action (whether from inside or outside Timor-Leste) challenging the lawfulness of any action taken to implement the resolutions. The simplest case would be for an international official or advisor who is removed from his or her work to bring a case for breach of contract or wrongful dismissal. The issue of all three resolutions' legal validity, whether under the Constitution and/or other legislation, could then be decided in the course of those proceedings.
141. Alternatively, an abstract constitutional challenge could be initiated under section 150 of the Constitution. This mechanism for seeking a declaration of unconstitutionality does not appear to be limited to statutes but could apply to any public act. Such a challenge could be brought by the President of the Republic or the Provedor for Human Rights and Justice (section 150(a) and (f)). It could also be brought by a group of Parliamentary Deputies (members of Parliament) representing one fifth of the Parliament (section 150(e)).

142. The potential disadvantage of this approach is that the court may limit its review only to questions of constitutionality, rather than reviewing other legal bases for the resolutions' invalidity such as their non-compliance with the Labour Law and the laws regulating the institutions.

Conclusions/Recommendations

143. It is clear that the resolutions passed on 24 October 2014, followed by the 31 October 2014 resolution, are likely to have serious negative effects for Timor-Leste. This is the case even if they are not revoked or challenged: the very fact of the Parliament and Government's actions has already in itself caused damage to the functioning and independence of the judicial system.

144. Particular impacts on the justice system include:

- a. The Government has shown that it is willing to interfere in the judicial system so that the future ability of the judiciary to decide matters impartially without threats or interference has been called into question. The ability of prosecutors and other lawyers to carry out their professional functions without interference has also been called into question.
- b. The functioning of the courts and access to justice has been affected in the short term, as many cases have been adjourned and require retrial because they were being heard by international judges or prosecuted by international prosecutors. The immediate removal of these judges and prosecutors without any provision for transition is causing hardship to people seeking justice, threatening their rights to a fair trial, and will continue to delay the processing of cases.
- c. The removal of significant resources (including judges, prosecutors and other judicial officers and advisors) from Timor-Leste's justice system will impede the ability of the justice system to process cases quickly and fairly, as there is not a sufficient pool of additional resources with expertise or capacity to fill the roles which are left vacant. People will lose confidence in the ability of the justice system to deal with cases fairly and effectively.

145. In addition, impacts will be felt outside the justice system. These impacts may include increased corruption or a perception of corruption, negative effects on foreign investment and negative effects on relations with other nations, particularly Portugal. There may also be an increased fear of speaking out against the Government or Parliament, which could affect people's ability to freely express their opinions about government actions and inhibit accountability and transparency.

146. It is important to take action to minimise these impacts. The damage could be mitigated by a strong show by the institutions affected by the resolutions that they will not be intimidated. Civil society should show their support for the independence of the courts and other judicial institutions, and continue to encourage the Parliament and Government to reaffirm their commitment to the separation of powers and judicial independence.

147. As set out above, a variety of legal problems are raised by the resolutions. The resolutions do not comply with the principles enshrined in the Constitution about the independence of the courts and judges, and they conflict with the principle of the separation of powers because neither the Government nor the Parliament has the legal power to dismiss judicial officers. The Superior Council of Judicial Magistrates

has that power in relation to judges and the Superior Councils for Prosecutors and Public Defenders have that power for those judicial officials. In addition, the resolutions do not comply with other laws such as the Labour Code and the Immigration and Asylum Law.

148. There are avenues for bringing the question of the resolutions' validity or legality before the courts either by individual legal action or by an abstract constitutional challenge initiated by the President of the Republic, the Provedor for Human Rights and Justice, or a group of Parliamentary Deputies.
149. These developments can also provide an opportunity to draw attention and raise public awareness of important principles for state activity, including the operation of the separation of powers under the Constitution, the importance of judicial independence and the promotion of the rule of law.
150. In order to address some of the concerns raised by these events, JSMP recommends that:
 - a. **The Courts, Public Prosecutor, Public Defender and Anti-Corruption Commission continue to carry out their roles in accordance with the Constitution and the laws of Timor-Leste.**
 - b. **The Parliament and Government restore public confidence in the judiciary by publicly declaring their commitment to judicial independence, and stating that the courts may make impartial decisions according to law, free from political interference.**
 - c. **The Parliament and Government remove fears of threats or interference by reaffirming their respect for judges' constitutional entitlement to security of tenure, and confirming judges', prosecutors' and public defenders' respective Superior Councils are responsible for disciplinary matters, including dismissals.**
 - d. **The Parliament and Government ensure continued access to justice for the Timorese people through the appropriate allocation of resources to the justice sector to enable the recruitment of capable and experienced judges, prosecutors and other judicial officers as soon as possible.**
 - e. **Civil society shows their support for the independence of the courts and other judicial institutions, and encourages the Parliament and Government to take the actions recommended above.**

Appendix 1

Appendix 2

Appendix 3