

UIM RESOLUTION
ABOUT THE PORTUGUESE JUDGES WORKING IN EAST-TIMOR
ADOPTED BY THE CENTRAL COUNCIL
ON 11TH NOVEMBER 2015 IN FOZ DO IGUAÇU

1. Introduction

Judges, prosecutors and public defenders, mostly from Portuguese-speaking countries, have formed part of Timor-Leste's judicial system since the restoration of independence in 2002. Others work as judicial advisers in associated bodies like the Anti-Corruption Commission and the Judicial Training Centre. Over time, suitably trained East Timorese have progressively replaced these positions. Some 50 current judicial officers are foreign nationals, including an estimated 12 per cent of judges. International judges are required by law to have five years' experience.

The parliament and the government of East-Timor have decided to end the international judiciary cooperation agreements and expelled several Portuguese Judges who were there because of those agreements (East-Timor parliament Resolution n.º 11/2004 from 24/10 and government Resolutions n.ºs 29/2014 from 24/10 and 32/2014 from 31/10).

Those judges were seconded to East-Timor under an international cooperation agreement but were assuring in full their judicial tasks.

Timor-Leste's Constitution provides guarantees for the separation of powers, and for judicial independence. As in other jurisdictions, judges cannot be dismissed by a simple parliamentary motion. This requires a process of the Superior Council of the Judiciary (Conselho Superior da Magistratura Judicial), which has managerial and disciplinary oversight of judicial officers. Such processes are addressed to individual judicial officers accused of misconduct or poor performance.

The SCJ (CSMJ) comprises the president of the Court of Appeal and members appointed respectively by the president, the government, parliament and the legal profession. This body is charged with regulating the judiciary to minimise the scope for direct government interference.

It is not for the parliament or the government to remove judicial officers through a resolution. This can only be done in accordance with the law. Removing judicial officers arbitrarily, whether international or national, threatens the rule of law and a citizen's right to a fair trial in Timor-Leste.

While the legality of the resolution is being questioned by a range of political and judicial figures, the resolutions from the parliament and the government clearly undermine the principles of an independent judiciary. There is deep speculation over the meaning of the resolution, but the response seems to be conflating a number of issues.

The Timor's President of the Court of Appeal (also President of the Superior Council of the Judiciary) issued a directive to all Chief Justices stating the resolutions have no effect and that international judges and court staff shall continue their functions.

Those resolutions were taken without the knowledge and the agreement of East-Timor Judges Superior Council whose president decided not to accept that decisions and declared them ineffective. The Council has also Stated that it is the only organism that has the competence to nominate, transfer or dismiss Judges and also to evaluate their knowledge and to sanction them.

The Portuguese Government, through the Ministry of Foreign Affair and Ministry of Justice, decided, is reassessing the judicial cooperation policies with East-Timor.

This situation is an offence to the principles of autonomy and independence of judges which has been universally proclaimed

2. Request

Given these circumstances, the Portuguese Association of Judges (Associação Sindical dos Juizes Portugueses) also on behalf of other judges associations of Portuguese speaking countries and of the International Union of Portuguese speaking judges, requests IAJ-UIM to adopt the following resolution condemning this violation of the principle of the separation of powers and of the independence of the courts and to demand the East-Timor government and parliament the non interference on the judiciary.

3. Proposed resolution

Considering that:

1. East-Timor government and parliament decisions that expelled several Portuguese Judges who were there because of international judiciary cooperation agreements (East-Timor parliament Resolution n.º 11/2004 from 24/10 and government Resolutions n.ºs 29/2014 from 24/10 and 32/2014 from 31/10) are a threat to the basic principles of judicial independence and rule of law and seriously endanger the independence of the judiciary;

2. Furthermore, the decisions constitute a serious attack on the trust and the legitimacy of justice in East-Timor and also all the States which are involved in international judicial cooperation;

UIM adopt the present resolution condemning this violation of the principle of the separation of powers and of the independence of the courts and requiring the East-Timor government and parliament not to interfere in the judiciary.