



## JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

### JUSTICE UPDATE

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## Leadership Crisis in the Judicial Organs of TL

The post of president of the Court of Appeal has been vacant for almost one year, a situation that should have been avoided because it has exacerbated problems associated with judicial administration. This post has been left vacant because the incumbent president is receiving medical treatment in Portugal. Also, there are no legal provisions that stipulate the replacement of the president of the Court of Appeal if the incumbent is unable to perform his/her duties and obligations within a prescribed period of time for any particular reason. Given his current health, the question is can the president of the Court of Appeal still lead this judicial institution?

At the start of March 2009 the President of the Republic stated that he did not recognize the interim president of the Court of Appeal. JSMP received information that the interim president of the Court of Appeal was appointed by the incumbent Claudio Ximenes as a temporary measure to fill the vacuum. In response to the statement of the President of the Republic the interim president of the Court of Appeal, who is also the president of the Dili District Court, said that she is only providing leadership and not acting in the capacity as interim president. The question is, when the ailing incumbent president appointed the interim president, was this appointment legally valid or should the interim president have been selected and appointed by the President of the Republic? There are no legal provisions that clearly and specifically cover this issue. Article 110.6 of Law number 11/2004 on the Supreme Council for the Judiciary states

that the President of the Court of Appeal shall be sworn in before the President of the Republic and all other judges of the said Court shall be sworn in before the President of the Court of Appeal. Therefore it could be interpreted that the appointment of the interim president by the incumbent president of the Court of Appeal has not violated any existing laws.

Pursuant to Article 124.4 of the Constitution the President of the Republic has the authority to appoint the president of the Court of Appeal/Supreme Court of Justice, and according to Article 15.1 of Law No. 11/2004 it shall be incumbent upon the Superior Council for the Judiciary to appoint, assign, re-assign and promote judicial magistrates to fill the post of president of the Court of Appeal to deal with the leadership crisis in the aforementioned judicial institution. This is an urgent issue because the president of the Court of Appeal provides the highest level of leadership in the judicial sphere, and this important organ of the state should not be left without leadership and the current crisis should not have occurred.

The post of the president of the Court of Appeal is extremely vital because the incumbent also performs the role of president of the Supreme Court of Justice as well as the President of the Superior Council for the Judiciary. Timor Leste has not yet established a Supreme Court of Justice, therefore only the Court of Appeal can carry out the functions of the Supreme Court, which includes providing leadership. The Constitution also states that the Supreme Court of Justice is the highest court of law and the guarantor of a uniform enforcement of the law, and has jurisdiction throughout the national territory.

Pursuant to Article 124.3 of the Constitution and Articles 29.1 and 110.4 of Law No.11/2004, the President of the Republic can select and appoint the president of the Court of Appeal/Supreme Court of Justice from among judges carrying out their duties at the Court of Appeal. Based on the observations of JSMP, there are

three career judges who have been carrying out their duties at the Court of Appeal who are permanently assigned to the Dili District Court. According to the aforementioned legal provisions, the three national judges who are currently working at the Court of Appeal are eligible to be selected as the president of the Court of Appeal, at the very least for an interim period (not only as a substitute), unless there are other interests at play.

Reports about the substitution of the president of the Court of Appeal have focused on the issue of human resources as well as other regulations that relate to the selection of a new replacement. After considering the various arguments about this issue it is undeniable that the main concern is the perceived lack of understanding that career judges (national judges) have about legal theory, practice and doctrine. This perception refers to the quality of the legal facts and considerations provided by other career judges in the cases they have decided during the last 8 years.

In addition to the constitutional mandate and the capabilities of the judges, there are other factors that influence the performance of the Court of Appeal, namely the role of supporting organisations. Although the Court of Appeal is staffed by judges who have the highest integrity and possess a deep understanding of legal theory, the role of the Court of Appeal will be restricted without the support of other parties who present cases before the court. In other words, prosecutors, lawyers, NGOs (who work in the field of law and human rights) and the community, who also influence the performance of the Court of Appeal.

Another issue concerns the fact that the Court of Appeal has often become the focus of attention for certain circles in the community, including the academic sphere and NGOs because their legal information is not well communicated. For example, decisions issued by the court are not well documented and the wider community can not access such information. This means that those seeking

justice, academics or those wishing to exert control over this judicial body have not been able to receive information about court decisions.

Based on monitoring conducted by JSMP, the judicial institutions in Timor Leste are centralized and closed to the public, meaning that any individual or NGO (including JSMP) that wishes to get information about court decisions (both at the district and appeal levels, except for the Baucau District Court) have to first obtain official permission from the president of the Court of Appeal, however the Court of Appeal rarely grants such permission. In this context, NGOs are criticized because they are unable to provide adequate case analysis and consequently there are no or very few publications about selected court decisions. The Court of Appeal is the only entity to have issued a compilation of decisions issued at the appellate level in 2005 entitled 'Jurisprudence and Doctrine'.

Based on monitoring conducted by JSMP, there is a leadership crisis in this judicial body because the authorities have placed all of their hopes on one person who they believe has the capacity to handle the post of president of the Court of Appeal and they think that the other career judges do not yet have the capacity to take on this post, an assumption focusing on their perceived lack of understanding of legal theory, practice and doctrine.

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