



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

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**Exoneration of Chief of Staff of the F-FDTL Major-General Lere:
Confusion over the Constitutionality of this move**

President Taur Matan Ruak has refused to accept Government's proposal to renew the mandate of the General Chief of Staff of the F-FDTL, Major General Lere Anan Timur. Instead, the President decided to exonerate Major-General Lere and nominate Vice-Chief of Staff of the F-FDTL, Brigadier General Filomeno Paixão de Jesus, for promotion. There is confusion around the constitutionality of this move, particularly whether the President is able to refuse Government's proposal.

Major General Lere's term as Chief of Staff of the F-FDTL ended on the 6th of October 2015. On the 27th of October 2015, the President received a proposal from Government to reappoint Lere for another four years. The President rejected this proposal due to the fact that Lere is already passed the F-FDTL retirement age of 60, and requested an alternative proposal from Government. The Government further proposed, another two times, to re-appoint Major General Lere to the position of Chief of Staff of the F-FDTL. The President rejected these proposals on the same grounds. The President then decided to unilaterally nominate the Vice-Chief of Staff, Brigadier General Filomeno Paixão de Jesus, for promotion to the position of Chief of Staff. Government and National Parliament have rejected this proposal, saying the President does not have the power under the Constitution to appoint the Chief of staff of the F-FDTL.

'JSMP calls on the parties to resolve this matter quickly and calmly so the President, National Parliament, the Government and the F-FDTL can continue to focus on their important roles of representing and protecting the people of Timor-Leste. JSMP also calls on parties to respect the Constitution and the laws of Timor-Leste', said Executive Director of JSMP, Luis de Oliveira Sampaio.

Article 86 of the Constitution gives the President a range of appointment powers. Article 86(m) states that: *'It is incumbent upon the President of the Republic, with regard to other organism to appoint and dismiss, following proposal by the Government, the General Chief of Staff of the Defence Force...'*. The Portuguese version of the Constitution says the President must make appoint or dismiss the Chief of Staff of the F-FDTL *'sob proposta do Governo'* and the tetun says *'tuir Governu nia proposta'*. Other laws reproduce this Article (see Decree Law no. 15/2006 Organic Statute of the F-FDTL (Article 8(2)), Decree No. 7/2014 of the Military Statutes for the Order of the F-FDTL (Article 74), and law no. 3/2010 on National Defense (Article 14(1)(e)).

The wording of the Constitution and these laws show that the President's appointment must conform with the proposal of Government, and that the President does not have the power to nominate another person. This can

also been seen from analyzing other powers given to the President under the Constitution. In particular, Article 86(h) gives the President the power to appoint, swear in and remove Government Members from office '*sob proposta do Primeiro-Ministro*', and Article 87(a) gives the President the power to declare war '*sob proposta do Governo*'. It is clear that the Constitution requires the President to abide by advice on these important matters, and not to make a unilateral decision.

However, it appears the President had a valid reason for rejecting Government's proposal as Major General Lere is already above the maximum F-FDTL retirement age. In accordance with Article 195(1) of Decree Law no. 7/2014, the maximum retirement age is 60, and Major-General Lere is 65. JSMP also understands that the President's nomination for Chief of Staff, Brigadier General Filomeno Paixão de Jesus, is 64 and also above the maximum retirement age.

JSMP asks the Office of the President and the Government to work together to identify solutions to this problem. JSMP thinks that if there are no suitable persons under 60 to assume leadership roles in the F-FDTL, then it may be necessary to change the law to raise the retirement age of F-FDTL members. The relevant law was based on the Portuguese system, where there are many experienced high-level military personal. However, until Timor-Leste is able to build more experienced military members at these levels, the age level may have to be raised.

JSMP understands that this matter has now been referred to the Court of Appeal. JSMP asks all parties respect the authority of the Court of Appeal to make independent decisions on constitutional issues. JSMP further asks all parties to allow the Court to make an independent decision based on the various legal considerations. When the Court hands down a decision on this issue, JSMP asks all organs of state to respect this decision. It is crucial that all organs of state continue act within the power conferred upon them by the Constitution and the laws of Timor-Leste, and that the leaders of the F-FDTL are appointed following the correct legal processes.

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