



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release
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The Appointment of the President of the Court of Appeal is necessary and valid pursuant to Article 110 of Law 11/2004 Amending the Statute of Judicial Magistrates

JSMP considers the decision of the President, Taur Matan Ruak, to appoint Deolindo dos Santos as the President of the Court of Appeal to be necessary and valid pursuant to the law.

The appointment and swearing-in of the new President of the Court of Appeal on 28 April 2017 occurred in response to the letter of resignation submitted by the outgoing President of the Court of Appeal, Guilhermino da Silva, who submitted his written resignation based on health reasons that prevent him from continuing to occupy this position.

“This appointment is included in the scope and nature of the competencies granted to the President and pursuant to Article 110.4 of Law No. 11/2004 Amending the Statute of Judicial Magistrates,” said Luis de Oliveira Sampaio, Executive Director of JSMP.

Article 110.4 of Law No. 11/2004 Amending the Statute of Judicial Magistrates states that (the original text is in Portuguese):

“The President of the Court of Appeal shall be appointed by the President of the Republic from among the judges of the said Court, for a four-year, renewable term of office”.

Article 110 of the Statute of Judicial Magistrates does not refer to ratification by the National Parliament.

This appointment aligns with the intention of the National Parliament, that was clearly articulated in Parliamentary Resolution No. 5 /2003, dated 22 July 2003, on Presidential Decree No. 06/2003. This resolution states that the position of the President of the Court of Appeal does not necessarily need to be ratified by the National Parliament, because the Court of Appeal is carrying out the function of the Supreme Court of Justice temporarily or for a transitional period only.

Presidential Decree No. 06/2003 states that (the original text is in Portuguese) ...*“The National Parliament of the Democratic Republic of Timor-Leste, after examination and after having been informed that Presidential Decree No 04/2003 of 10 March of the current year has been published, decides that it is not necessary to ratify the appointment of the President of the Court of Appeal, taking into account that the Court of Appeal temporarily assumes the powers conferred by the Constitution until the installation and commencement of functions of the Supreme Court of Justice pursuant to Article 164 (2).*

JSMP believes that the National Parliament needs to adhere to Law No. 11/2004, Amending the Statute of Judicial Magistrates, that was approved by the National Parliament itself. According to this law the appointment of Deolindo dos Santos as the President of the Court of Appeal is valid and legal.

The National Parliament also needs to be consistent with and needs to adhere to the Resolution that the National Parliament itself produced, to avoid public confusion about the functioning of the public and democratic bodies and institutions of the State in terms of decision making. It is important that this decision should fall within the limits of the Constitution and the law.

JSMP also believes that there are several important and fundamental grounds that are relevant to this appointment:

1. This appointment provides a solution to the unresolved issue regarding the leadership of the Court of Appeal, whereby the National Parliament itself demanded for the President to appoint a new President of the Court of Appeal. However, at that time the President refused to carry out the appointment because it could affect the health of the President of the Court of Appeal who was still recuperating;
2. This appointment is in response to the letter of resignation submitted by the outgoing President of the Court of Appeal and most importantly will ensure the effectiveness and regular functioning of the Court of Appeal and at the same time its ongoing responsibility to function as the Supreme Court of Justice; and there are no reasons for any undue delays, and
3. This appointment is also important to anticipate any electoral disputes/complaints that occur during the parliamentary elections and to ensure that the Court of Appeal continues to function in order to respond to any electoral disputes or other disputes that fall within the competence of the Supreme Court of Justice, and also to announce the results of the parliamentary election.

JSMP has also observed that previously the National Parliament was unable to ratify Guilhermino da Silva after he was appointed by the President. JSMP believes that when the Supreme Court of Justice is established, then it will be mandatory for the appointment and swearing-in process to adhere to the provisions of the Constitution and the laws that are relevant to such appointment.

JSMP considers that this appointment is urgently required to also respond to the concerns of members of parliament who have always questioned the productivity of the outgoing President Judge Guilhermino Silva in relation to his medical condition that according to reports prevents him from carrying out his functions effectively.

JSMP recommends for politicians to avoid politicizing and using party politics in relation to judicial institutions and to avoid influencing or exerting unnecessary political pressure to

guarantee that the judicial institutions can exercise their functions independently and impartially according to the Constitution and the law.

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