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PAKOTE SEMINÁRIU
INDEPENDÉNSIA JUDISIÁRIU
Parte 2

SEMINAR PACK
JUDICIAL INDEPENDENCE

9 Novembru 2015

Australian Aid

The Asia Foundation

Padraun internasionál & Rapporteur Espesiál kona-ba Independénsia Juis no Advogada sira

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Aprezentasaun husi Ms. Anjet Lanting, Asesora Direitus Umanus, Nasoins Unidas
Seminário kona-ba Independénsia Judisiáriu
9 Novembru 2015

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Introdusaun

Independénsia judisiáriu mai hosi konseitu separasaun podér. Independénsia judisiáriu importante atu:

- garante estadu direitu,
- fó remédiu efetivu ba konflitu ruma, krime, disputa sivíl no violasaun direitus umanus,
- ho nune'e atu prevene impunidade no prevene kazu foun

1. Padraun internasionál ne'ebé garantia independénsia judisiáriu

Padraun internasionál rekoñese importánsia Independénsia judisiáriu. Padraun ne'e aplika iha Timor-Leste, haree ba Konstituisaun no liu hosi ratifikasaun tratadu relevante

Estandarte xave:

- Deklarasaun Universal Direitus Umanus, Artigu 10
- Paktu Internasionál Direitu Sivíl no Polítiku, Artigu 14
- Komentáriu Jerál 32 hosi Komité Direitus Umanus kona-ba igualdade iha lei nia oin no julgamentu justu

Iha tan instrumentu relevante tolu seluk relasiona ho asuntu independénsia judisiáriu:

- Prinsípiu Báziku kona-ba Independénsia judisiáriu - adota hosi Asembleia Jerál hosi vota unánime iha tinan 1985
- Liña Orientadór kona-ba Papél Prokuradór no

- Prinsípiu Báziku kona-ba Papél Advogadu - rua ne'e, adota iha Kongresu ONU kona-ba Krime no Tratamentu ba Arguidu iha tinan 1990

Saida mak norma ne'e hatete:

- Ema hotu iha direitu ba julgamentu justu no públiku hosi tribunál independente, imparsiál no kompetente
- La iha exesaun ba direitu ne'e - direitu nee mak absolutu
- Hatete katak independénsia judisiáriu tenke garante iha lei, di'ak liu iha Konstituisaun

Estandarte kona-ba independénsia judisiáriu foka liuliu ba independénsia juis:

- Presiza independénsia iha nivel rua - institusionál no indivíduu

Independénsia institusionál liga ho:

- Administrasaun internu – ezemplu tribunál deside juis ne'ebé atu julga kazu
- Asuntu finanseiru – presiza rekursu natoon atu prevene interferénsia hosi liur – órgaun judisiáriu presiza envolve iha prosesu orsamentu
- Foti desizaun – instituisaun Estadu seluk tenke respeita desizaun, maske la konkorda, no la bele halo interferénsia arbiru
- Independénsia institusionál liga ho autonomia judisiál katak judisiáriu iha kompeténsia eskluzivu relasiona ho asuntu ho natureza judisiál ne'ebé ema lori iha nia oin, inklui deside katak tama iha mandate ka lae
    - Ezemplu: Komunikadu Tribunál Rekursu iha tinan 2009 relasaun ho kazu Maternus Bere ne'ebé sai hosi prizaun - Tribunál nota katak la iha órgaun naun-judisiál ne'ebé iha podér atu hasai prizioneiru, no inspector jerál sei haree ba saida mak akontese iha insidente ne'e.

Independénsia individuál liga ho:

- Atór judisiáriu no hala'o knaar – sira-nia direitu no devér atu foti desizaun, halo akuzasaun no fó asisténsia legál bazeia ba lei, sein interferénsia hosi liur, sein ameasa katak sei iha sansaun no krítiku pesoál
- Nomeasaun juis no prokuradór - tenke bazeia ba integridade no kualifikasaun
- Seguransa ba serbisu ba longu prazu – ezemplu to'o pensaun, ka to'o termu hotu – iha objetivu atu masimiza independénsia, hamenus risku katak juis ka prokuradór bele hetan presaun hosi liur, no katak ema lakon fiar iha judisiáriu
- Saláriu adekuadu
- Promosaun bazeia ba fatór objetivu
- Responsabilizasaun – hala'o hosi órgaun independente no imparsiál no prosesu loloos tuir lei (prinsípiu 17-20, no interpretasaun Komité Direitus Umanus ONU ba Artigu 14 Paktu International kona-ba Direitu Sivíl no Polítiku)

- Liberdade ba espresaun no asosiasaun atu defende independénsia – haree ba deklarasaun husi Tribunál Rekursu kona-ba rezolusaun hodi hasai asesór internasionál husi instituisaun judisiál iha tinan 2014
- Formasaun – liuhosi orgaun idak-idak nian
- Direitu no devér atu garante julgamentu justu – difisil atu halo karik independénsia la iha

Relasaun ho advogadu – Prinsípiu Báziku bandu:

- Atu identifika advogadu ho kauza nia kliente
- Tribunál la bele rekuza advogadu atu fó asisténsia legál iha kazu ne'ebé juis kaer
- Ikus, Komité Direitus Umanus ONU hatete advogadu presiza iha autorizasaun atu serbisu ho livre, la presiza hetan autorizasaun hosi ezekutivu

2. Mekanizmu monitorizasaun iha nivel internasionál hodi proteje estandarte independénsia judisiáriu

Iha órgaun xave 3:

- Komite Direitus Umanus ONU
- Konsellu Direitus Umanus ONU
- Prosedura Espesial

Komité Direitus Umanus:

- Peritu independente
- Halo monitorizasaun kona-ba implementasaun Paktu Internasionál Direitu Sivíl no Polítiku (PIDSP), liu hosi revizaun ba relatóriu tratadu – Timor-Leste seidauk relata kona-ba PIDSP
- Komité bele simu keixa, maibé Timor-Leste seidauk ratifika Protokolu Fakultativu ba PIDSP

Konsellu Direitus Umanus:

- Membru na'in 47, hili hosi Asembleia Jerál, membru mak reprezentante husi Estadu sira
- Halo monitorizasaun liuhosi Revizaun Periódiku Universál – revizaun sei la'o iha fin de tinan 2016

Prosedura Espesiál:

- Prosedura Espesiál hili hosi Konsellu Direitus Umanus
- Peritu independente, partikularmente Relatora Espesiál (Special Rapporteur) ba Independénsia Juis no Advogadu

Orgaun hotu bele hatoo deit rekomendasaun ba membru ONU, depende ba vontade polítika atu implementa'.

3. Funsaun Relatora Espesiál (Special Rapporteur) kona-ba Independénsia Juis no Advogadu

- Mekanismu Konsellu Direitus Umanus
- Ema ida ne'ebé independente
- Funsaun xave:
  - Husu klarifikasaun hosi Governu sira kona-ba alegasaun ba violasaun independénsia Judisiáriu liuhusi karta alegasaun ka pedidu urjente. Surat ba Governu konfidensiál hafoin haruka ba Governu, maibé iha tempu badak publika iha webpage Prosedura Espesiál
  - Relatora/Rapporteur ne'e bele mós halo media release, no hatama sumáriu kona-ba komunikasaun sira ho Estadu iha ninia relatóriu anuál.
- Tau-matan ba progresu iha protesaun independénsia
- Estuda asuntu espesífiku – hanesan: labarik nia direitu, akontabilidade judisiál, funsaun Ministériu Públiku
- Vizita nasaun sira

Saida mak Relator/a Espesiál kona-ba Independénsia Juis no Advogadu halo ona relasiona ho Timor-Leste to'o agora

- Relatora/Rapporteur Param Cumaraswamy vizita ona Timor-Leste dala rua – iha tinan 2001 no tinan 2002
- Halo ona intervensaun:
  - Ezemplu, iha tinan 2001 ho UNTAET – intervein iha amendamentu ba regulamentu ne'ebé fó podér ba Ministru Justisa hodi muda juis ba servisu iha Ministériu Justisa ba tempu temporáriu. Tanba ne'e iha impaktu ba juis sira nia independénsia.
  - Tinan 2002 – juis hato'o preokupasaun ba Relatora/Rapporteur kona-ba ezbosu Estatutu Majistradu sira. Nia vizita no partisipa iha debate iha parlamentu kona-ba ezbosu lei ida ne'e no konsege rezolve preokupasaun sira, no juis fila ba servisu. Nia halo submisaun kona-ba aspetu seluk iha ezbosu lei, maibé la simu resposta hosi Estadu.
  - Iha tinan 2014 – Relatora/Rapporteur haruka karta alegasaun ba Governu Timor-Leste kona-ba rezolusaun husi governu ne'ebé despede majistradu no asesora internasionál sira. Nia nota rezolusaun ne'e hanesan risku ba independénsia judisiáriu, no hato'o opiniaun katak asaun governu nian nu'udar interferénsia sériu, ho posibilidade ba efeitu negativu ba juis nasionál sira. Governu Timor-Leste seidauk responde.

Konkluzaun

- Iha padraun/estandarte internasionál forte ne'ebé garantia independénsia judisiáriu – inklui juis, prokuradór no advogada sira
- Iha mós mekanizmu iha nivel internasionál ne'ebé tau-matan ba Estadu nia kumprimentu ba padraun no bele halo intervensaun
- Ator judisiariu iha mundu tomak bele asesu Mekanizmu sira ne'e – hanesan Komité, Konsellu no Relatora/Rapporteur hodi promove independénsia judisiáriu
- Objetivu xave mak atu asegura administrasaun justisa ne'ebé justu no efetivu iha kada membru ONU, no garante estadu de direitu

OUR RIGHTS
OUR FREEDOMS
ALWAYS

Padraun Internasionál relasaun ho Independénsia Judisiáriu

Aprezentasaun hosi ONU – Direitus Umanus iha Timor-leste

Seminário 6 Novembru 2015

Konteudu

1. Instrumentu Legal Internasional relasaun ho Independénsia Judisiáriu

2. Mekanizmu Monitorizasaun ONU relasaun ho Independénsia Judisiáriu

2a. Relatora Espesiál ba Independénsia Juis no Advogadu

Instrumentu Internasionál Xave kona-ba Independénsia Judisiáriu (ONU)

- Deklarasaun Universal Direitus Umanus
- Paktu Internasionál Direitu Sivíl no Polítiku
- Komentáriu Jerál 32 hosi Komité Direitus Umanus
  Igualdade iha Tribunal no Julgamentu Justu
- Prinsípiu Báziku Independénsia Majistratura
- Liña Orientadór Papél Prokuradór
- Prinsípiu Báziku Papél Advogadu

Mekanizmu Direitus Umanus ONU

1. Bazeia ba Konvensaun Direitus Umanus

- Komité Direitus Umanus
- Komité
- Komité
- Komité
- Komité
- Komité
- Komité
- Komité

2. Bazeia ba Karta ONU

Konsellu Direitus Umanus

- Prosedura Espesiál
  - Relator kona-ba Independénsia Juis Advogadu
- Revizaun Periódika Universal

Fonte Informasaun Util

Jerál:

- Website Gabinete Altu Komisáriu Direitus Umanus (OHCHR): www.ohchr.org

Mekanizmu ONU – jerál:

- http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx

Relatora Espesiál Independénsia Juis no Advogadu:

- http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx

ONU – Direitus Umanus iha Timor-Leste:

- Uma ONU – eis Obrigado Barracks, Eskritóriu 10

Prinsípiu báziku sira kona-ba Judisiáriu nia Independénsia

Adota husi Kongresu Nasoins Unidas Dahituk kona-ba Prevensaun Krime no Tratamentu ba Infratór ne'ebé hala'o iha Milan husi 26 Agostu to'o 6 Setembru 1985 no aprova husi Asembleia Jerál nia rezolusaun 40/32 iha data 29 Novembru 1985 no 40/146 iha data 13 Dezembru 1985

[preámbulu – la tradús]

Judisiáriu nia independénsia

1. Estadu tenke garante judisiáriu nia independénsia no tenke konsagra prinsípiu ne'e iha Konstituisaun ka lei sira ne'ebé vigora iha rai laran. Instituisaun governamentál no instituisaun seluk hotu-hotu iha devér hodi respeita no observa judisiáriu nia independénsia.

2. Judisiáriu tenke deside kestaun sira ne'ebé lori ba sira-nia oin ho imparsialidade, bazeia ba faktu no halo-tuir lei, sein restrisaun ruma, influensia ne'ebé la loos, insentivu, presaun, ameasa ka interferénsia, direta ka indireta, husi parte ruma ka tanba rasaun ruma.

3. Judisiáriu iha jurisdisaun ba kestaun hotu-hotu ne'ebé iha natureza judisiál no iha autoridade eskluziva hodi deside karik kestaun ida ne'ebé entrega ba judisiáriu hodi hetan desizaun korresponde ka lae ho nia kompeténsia hanesan hatuur ona iha lei.

4. Labele iha interferénsia la apropriadu ka la justifikadu ba prosesu judisiál, no mós desizaun judisiál husi tribunál sira sei la sujeitu ba revizaun. Prinsípiu ne'e sein prejuizu ba revizaun judisiál ka mitigasaun ka komutasaun pena husi autoridade kompetente ba sentensa ne'ebé judisiáriu hatún ona, ne'ebé halo-tuir lei.

5. Ema hotu-hotu iha direitu atu hetan julgamentu husi tribunál baibain sira ne'ebé uza prosedimentu legál ne'ebé estabelese tiha ona. Labele kria tribunál sira ne'ebé la uza prosedimentu sira husi prosesu legál ne'ebé estabelesidu loloos hodi troka jurisdisaun ne'ebé pertense ba tribunál baibain ka tribunál judisiál.

6. Prinsípiu kona-ba judisiáriu nia independénsia fó direitu ba no obriga judisiáriu atu garante katak prosedimentu judisiál tenke hala'o ho justu no tenke respeita parte sira-nia direitu.

7. Kada Estadu-Membru iha devér atu fó rekursu adekuadu hodi fasilita judisiáriu atu hala'o nia funsaun sira ho loloos.

Liberdade espresaun no asosiasaun

8. Halo-tuir Deklarasaun Universál kona-ba Direitus Umanus, membru judisiáriu hanesan de'it ho sidadaun seluk, iha direitu ba liberdade espresaun, fiar, asosiasaun no reuniaun; maibé bainhira ezerse direitu hanesan ne'e, juis sira tenke konduta an sempre ho maneira ida hodi prezerva dignidade husi sira-nia kargu no judisiáriu nia imparsialidade no independénsia.

9. Juis sira iha liberdade atu forma no tama asosiasaun juis ka organizasaun seluk hodi reprezenta sira-nia interese, promove sira-nia formasaun profisionál no hodi proteje sira-nia independénsia judisiál.

Kualifikasaun, selesaun no formasaun

10. Ema sira ne'ebé hili ona hodi simu kargu judisiál tenke iha integridade no kapasidade no formasaun ka kualifikasaun apropriada iha área direitu. Kualkér métodu ba selesaun judisiál tenke fó protesaun hasoru nomeasaun judisiál ne'ebé bazeia ba objetivu la loos. Bainhira hili juis sira, labele iha diskriminasaun hasoru ema ida bazeia ba rasa, kór kulit, seksu, relijiaun, opiniaun polítika ka opiniaun seluk, orijen nasionál ka sosiál, propriedade, estadu moris ka estadu seluk, maibé rekizitu ida katak ema ne'ebé kandidata an ba kargu judisiál tenke sai sidadaun iha nasaun refere, sei la konsidera nu'udar rekizitu diskriminatóriu.

Kondisaun servisu no mandatu

11. Mandata ba juis sira, sira-nia independénsia, seguransa, remunerasaun adekuada, kondisaun servisu, pensaun no idade reforma tenke hetan protesaun adekuada iha lei.

12. Juis sira, bele nomeadu ka eleitu, tenke iha mandatu ne'ebé garantidu to'o idade reforma obrigatória ka to'o sira-nia mandatu remata, bainhira mandatu ne'e eziste.

13. Promosaun ba juis sira, bainhira sistema hanesan ne'e eziste, tenke bazeia ba fatór sira ne'ebé objetivu, liuliu kapasidade, integridade no esperiénsia.

14. Alokasaun kazu ba juis sira iha tribunál laran nu'udar kestaun interna husi administrasaun judisiál.

Segredu profisionál no imunidade

15. Judisiáriu tenke tane aas segredu profisionál relasiona ho deliberasaun no informasaun konfidensiál ne'ebé sira hetan enkuantu hala'o sira-nia devér aleinde iha instánsia públika, no laiha obrigasaun atu fó sasin kona-ba kestaun hanesan ne'e.

16. Sein prejuizu ba kualkér prosedimentu dixiplinár ka direitu ba rekursu ka kompensasaun husi Estadu, no halo-tuir lei nasionál, juis sira tenke iha imunidade pesoál ba asaun sivíl ba danu monetáriu tanba aktu la loos ka omisaun enkuantu ezerse sira-nia funsaun.

Dixiplina, suspensaun no demisaun

17. Akuzasaun ka keixa hasoru juis ida enkuantu nia hala'o nia kapasidade judisiál no profisionál tenke prosesa ho lailais no justu ho prosedimentu apropriadu. Juis iha direitu ba julgamentu ne'ebé justu. Investigasaun ba kestaun ne'e durante faze inisiál tenke konfidensiál, exetu juis husu seluk.

18. Juis sira só sujeitu ba suspensaun ka demisaun tanba laiha kapasidade ka komportamentu ne'ebé halo sira inaptu hodi ezerse sira-nia devér.

19. Kualkér instánsia dixiplinár, suspensaun ka demisaun nian tenke hala'o ho maneira ne'ebé tane aas padraun konduta judisiál ne'ebé estabelesidu.

20. Desizaun sira ne'ebé hatún iha instánsia dixiplinár, suspensaun ka demisaun sei sujeita ba revizaun independente. Prinsípiu ida-ne'e dalaruma la aplika ba desizaun husi tribunál ne'ebé aas liu hotu no desizaun sira husi lejizlatura iha instánsia impeachment ka instánsia sira ne'ebé atu hanesan.

Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia , their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Liña Orientadora Kona-ba Prokuradór nia knaar

Adota husi Kongresu Daualuk Nasoins Unidas nian kona-ba Prevensaun Krime no Tratamentu ba Infratór sira, Havana, Kuba, 27 Agostu to'o 7 Setembru 1990

Tradusaun la'os ofisial

Konsidera katak tuir Karta Nasoins Unidas nian, povu sira iha mundu tomak afirma, entre buat seluk, sira-nia determinasaun atu harii kondisaun sira atu nune'e bele mantein nafatin justisa, no proklama objetivu ida atu hetan kooperasaun internasionál hodi promove no enkoraja respeitu ba direitus umanus no liberdade fundamentál sira lahó diskriminasaun bazeia ba rasa, seksu, lian ka relijiaun,

Konsidera katak Deklarasaun Universál kona-ba Direitus Umanus konsagra prinsípiu igualdade iha lei nia okos, prezunsaun inosénsia no direitu ba audiénsia ne'ebé justu no nakloke ba públiku husi tribunál ida-ne'ebé independente no imparsiál,

Konsidera katak dala barak sei iha lakuna entre vizaun ne'ebé sai baze ba prinsípiu hirak-ne'e no situasaun reál,

Konsidera katak organizasaun no administrasaun justisa iha nasaun hotu tenke hetan inspirasaun husi prinsípiu hirak-ne'e, no presiza esforsu hodi hetan realizasaun,

Konsidera katak prokuradór sira hala'o knaar importante ida iha administrasaun justisa nian, no regra sira ne'ebé regula oinsá implementa knaar importante sira tenke promove sira-nia respeitu no kumpre ba prinsípiu sira ne'ebé temi ona iha leten, atu nune'e bele kontribui ba justisa kriminál ida-ne'ebé justu no ekuitativu no protesaun efetivu ba sidadaun sira hasoru krime,

Konsidera katak importante tebes atu garante katak prokuradór sira iha kualifikasaun profisionál ne'ebé presiza hodi hala'o sira-nia knaar, liuhosi hadi'a métodu rekrutamentu nian no formasaun legál no profisionál, no fornese meiu nesesáriu hodi hala'o sira-nia funsaun loloos atu kombate kriminalidade, liuliu iha ninia forma no dimensaun ne'ebé foun,

Konsidera katak Asembleia Jerál, liuhosi ninia Rezolusaun 34/169 loron 17 Dezembru 1979, adota ona Kódigu Konduta ba Autoridade sira ne'ebé Aplika Lei, liuhosi rekomendasaun Kongresu Dalimak Nasoins Unidas nian kona-ba Prevensaun Krime no Tratamentu ba Infratór sira,

Konsidera katak Rezolusaun 16 husi Kongresu Daneen Nasoins Unidas nian kona-ba Prevensaun Krime no Tratamentu ba Infratór sira, hato'o apelu ba Komisaun kona-ba Prevensaun no Kontrolu Krime nian atu inklui iha ninia prioridade sira elaborasaun kona-ba liña orientadora sira ne'ebé relasiona ho independénsia juis sira nian no selesaun, formasaun profisionál no estatutu ba juis no prokuradór sira,

Konsidera katak Kongresu Dahituk Nasoins Unidas nian kona-ba Prevensaun Krime no Tratamentu ba Infratór sira adota tiha Prinsípiu Báziku kona-ba Independénsia Judisiáriu, ne'ebé tuirfalimai hetan aprovasaun husi Asembleia Jerál iha ninia rezolusaun 40/32 loron 29 Novembru 1985 no rezolusaun 40/146 loron 13 Dezembru 1985,

Konsidera katak Deklarasaun Prinsípiu Báziku kona-ba Justisa ba Vítima sira husi Krime no Abuzu Podér rekomenda sasukat sira ne'ebé tenke adota iha nivel internasionál no nasionál hodi hadi'ak asesu ba justisa no tratamentu justu, restituisaun, kompensasaun no asisténsia ba vítima sira husi krime,

Konsidera katak, iha Rezolusaun 7 husi Kongresu Dahituk Komisaun simu apelu hodi konsidera nesesidade ba liña orientadora sira relasiona, entre sira seluk, selesaun, formasaun profisionál no estatutu prokuradór sira, sira-nia knaar no konduta, meiu hodi hasa'e sira-nia kontribuisaun ba sistema justisa kriminál ne'ebé funsiona didi'ak no sira-nia kooperasaun ho polísia, ámbitu husi sira-nia poder sira ne'ebé la restritu, no sira-nia knaar iha prosedura kriminál, no hodi hato'o relatóriu kona-ba asuntu hirak-ne'e ba kongresu sira ONU nian iha tempu oin mai,

Liña orientadora ne'ebé hakerek iha okos, ne'ebé prepara hodi ajuda Estadu Membru sira hala'o sira-nia knaar atu garante no promove efetividade, imparsialidade no ekuidade justisa prokuradór sira nian iha prosedimentu sira, tenke hetan respeitu no konsiderasaun husi governu sira iha enkuadramentu lejizlasaun no prátika nasionál, no tenke hato'o ba prokuradór sira, no mós atór sira seluk, hanesan juis, advogadu, membru husi ezekutivu no lejizlatura no públiku en jerál. Liña orientadora ne'e formula tiha ho objetivu prinsipál hodi ajuda prokuradór públiku sira, maibé bele mós aplika, bainhira apropriadu, ba prokuradór sira ne'ebé nomeia ho maneira ba objetivu espesífiku.

Kualifikasaun, selesaun no formasaun

1. Ema ne'ebé hili nu'udar prokuradór tenke iha integridade no abilidade, no mós formasaun no kualifikasaun ne'ebé apropriadu.

2. Estadu Membru tenke garante katak:

a) Kritériu selesaun ba prokuradór tenke konsagra garantia atu evita nomeasaun ne'ebé bazeia ba parsialidade ka prejuizu, no la inklui diskriminasaun ruma ne'ebé bazeia ba rasa, kór kulit, seksu, lian, relijiaun, opiniaun polítiku ka seluk, orijen nasionál, sosiál ka étniku, propriedade, birth, estatutu ekonómiku ka seluk, maibé buat ne'e labele konsidera hanesan diskriminatória atu ezije kandidatu ba tuur iha gabinete prokuradoria ne'e ema sidadaun nasionál ida hosi rai ne'ebé envolvidu ne'e;
b) Prokuradór tenke iha edukasaun no formasaun apropriadu no tenke iha koñesimentu kona-ba prinsípiu no ética ne'ebé relasiona ho sira-nia knaar, kona-ba provizaun sira ne'ebé konsagra iha Konstituisaun no lei sira seluk hodi proteje suspeitu no vítima nia direitu, no kona-ba direitus umanus no liberdade fundamentál ne'ebé rekoñese iha lei nasionál no internasionál.

Estatutu no kondisaun servisu

3. Prokuradór sira, nu'udar ajente esensiál husi administrasaun justisa, iha momentu hotu-hotu, tenke mantein onra no dignidade husi sira-nia profisaun.
4. Estadu Membru tenke garante katak prokuradór sira bele hala'o sira-nia funsaun profisionál lahó intimidasaun, obstákulu, tormentu, interferénsia ne'ebé la própriu ka situasaun ne'ebé la justifika ba obrigasaun sivil no kriminál ka obrigasaun seluk.

5. Prokuradór no sira-nia família tenke hetan protesaun fíziku husi autoridade sira bainhira sira-nia seguransa pesoál hetan ameasa tanba hala'o sira-nia funsaun nu'udar prokuradór.

6. Lei, regra ka regulamentu tenke inklui kondisaun servisu ne'ebé razoável ba prokuradór sira, rekompensa ne'ebé adekuadu no, bainhira apropriadu, tempu mandatu, pensaun no idade ba reforma nian tenke tau iha lei ka regra ka regulamentu sira ne'ebé publikadu.

7. Promosaun ba prokuradór sira, bainhira sistema ne'e eziste, tenke bazeia ba fatór sira ne'ebé objetivu, liuliu kualifikasaun profisionál, abilidade, integridade no esperiénsia, no tenke determina tuir prosedura ne'ebé justu no imparsiál.

Liberdade espresaun no asosiasaun

8. Hanesan sidadaun sira seluk, prokuradór iha direitu ba liberdade ba espresaun, fiar, asosiasaun no reuniaun. Partikularmente, sira tenke iha direitu atu partisipa iha diskusaun públiku kona-ba asuntu sira ne'ebé relasiona ho lei, administrasaun justisa no promosaun direitus umanus, no atu tama ka forma organizasaun lokál, nasionál ka internasionál no atende sira-nia soru-mutu, no la hetan dezvantajen profisionál tanba hala'o asaun ne'ebé kumpre lei ka tanba sai membru iha organizasaun ne'ebé kumpre lei. Bainhira prokuradór sira implementa direitu hirak-ne'e, sira-nia hahalok tenke kumpre lei no padraun no étika ne'ebé rekoñese iha sira-nia profisaun.

9. Prokuradór sira tenke iha liberdade atu forma no tama asosiasaun profisionál ka organizasaun sira seluk hodi reprezenta sira-nia interese, hodi promove sira-nia formasaun profisionál no proteje sira-nia estatutu.

Knaar iha prosedimentu sira kriminál nian

10. Gabinete prokuradoria nian tenke restritamente separadu hosi funsaun sira judisiaria nian.

11. Prokuradór sira tenke hala'o papél ativu ida iha prosedimentu kriminál, ne'ebé inklui inisiasaun prosedimentu kriminál nian, no bainhira hetan autorizasaun husi lei ka tuir prátika lokál, relasiona ho investigasaun ba krime, tenke garante katak investigasaun ne'e kumpre lei, no tenke monitoriza implementasaun desizaun husi tribunál no funsaun sira seluk nu'udar parte ne'ebé hahii interese públiku.

12. Prokuradór tenke hala'o sira-nia knaar ho maneira ne'ebé kumpre lei, justu, konsistente no lailais, no tenke respeita no proteje ema nia dignidade no hahi'i direitus umanus, ho nune'e fó kontribuisaun hodi asegura prosedimentu kriminál ne'ebé loloos no sistema justisa kriminál bele funsiona didi'ak.

13. Bainhira hala’o sira-nia knaar, Prokuradór sira tenke:

(a) Hala’o sira-nia funsaun ho imparsialidade no evita diskriminasaun políticu, sosiál, relijiozu, rasiál, kulturál, seksuál ka diskriminasaun sira seluk;

(b) Protégé interese públiku, halo asaun ho objetividade, konsidera didi’ak suspeitu no vítima nia pozisaun, no fó atensaun ba sirkunstánsia hotu-hotu ne'ebé relevante, seraké fó vantajen ka dezvantajen ba suspeitu;

(c) La bele divulga informasaun ne'ebé sira kaer, anaunserke presiza divulga hodi hala’o sira-nia knaar ka hahi’i justisa;

(d) Konsidera opiniaun no preokupasaun husi vítima sira bainhira afeta sira-nia interese pesoál no garante katak vítima sira hetan informasaun kona-ba sira-nia direitu tuir Deklarasaun Prinsípiu Báziku sira kona-ba Justisa ba Vítima sira husi Krime no Abuzu Podér.

14. Prokuradór sira la bele hahú ka kontinua investigasaun kriminál, ka tenke halo esforsu hotu hodi hapara lai investigasaun kriminál, bainhira investigasaun imparsiál ida hatudu katak akuzasaun la iha fundamentu.

15. Prokuradór sira tenke fó atensaun espesiál hodi halo investigasaun kriminál ba krime sira ne'ebé komité husi ofisiál públiku, liuliu korrupsaun, abuzu podér, violasaun sériu ba direitus umanus no krime sira seluk ne'ebé rekoñese iha lei internasionál, no bainhira hetan autorizasaun tuir lei ka tuir prátika lokál, investigasaun ba ofensa sira hanesan ne’e.

16. Bainhira prokuradór simu evidénsia kontra suspeitu ne'ebé sira hatene ona, ka iha razaun forte atu fiar katak, evidénsia ne’e hetan liuhosi métodu ne'ebé la kumpre lei, ne'ebé konstitui violasaun sériu ba suspeitu nia direitus umanus, liuliu asaun ne'ebé envolve tortura, tratamentu ka kastigu ne'ebé kruél, dezumanu no degradante, ka abuzu sira seluk ba direitus umanus, prokuradór sira la bele uza evidénsia ne’e kontra ema seluk, aleinde sira ne'ebé uza métodu ne'ebé refere, ka informa tribunál kona-ba ida-ne’e, no tenke foti pasu hotu-hotu ne'ebé nesesáriu hodi garante katak sira ne'ebé uza métodu hanesan ne’e sei lori ba justisa.

Funsaun sira ne’eb’e la restrita

17. Iha nasaun sira ne'ebé prokuradór sira hetan funsaun sira ne’ebé la restrita, lei, regra ka regulamentu ne'ebé publika tiha ona tenke determina liña orientadora hodi hametin ekuidade no abordajen ne'ebé konsistente hodi foti desizaun durante prosesu investigasaun kriminál, inklui hahú ka hapara prosedimentu judisiál.

Alternativu husi prosesu kriminál

18. Tuir lei nasionál, prokuradór sira tenke konsidera didi'ak posibilidade atu hapara prosedimentu judisiál, la kontinua prosesu ho ka lahó kondisaun ruma, ka transfere kazu kriminál husi sistema justisa formál, ho respeitu tomak ba suspeitu no vítima nia direitu. Atubele alkansa objetivu ida-ne'e, estadu membru sira tenke konsidera didi'ak posibilidade atu adota métodu transferénsia hodi hamenus kazu sira ne'ebé bou hamutuk iha tribunál, no mós atu evita estigma ne'ebé relasiona ho detensaun molok julgamentu, akuzasaun no kondenasaun, inklui mós efeitu negativu ne'ebé ligadu ho detensaun.

19. Iha nasaun sira ne'ebé prokuradór sira hetan funsaun sira ne'ebé la restrita atu foti desizaun atu halo ka la halo prosesu kontra labarik, tenke fó konsiderasaun espesiál ba natureza no gravidade husi infrasaun, protesaun ba sosiedade, no mós personalidade no istória labarik nian. Bainhira foti desizaun ida-ne'e, prokuradór sira tenke foka sira-nia konsiderasaun ba alternativu sira ne'ebé disponivel atu prosesa tuir lei no prosedimentu sira justisa juvenil nian ne'ebé relevante. Prokuradór sira tenke uza sira-nia esforsu diak liuhotu atu foti asaun prokuradoriál nian kontra labarik sira apenas ba kondisaun ne'ebé restritamente nesesáriu.

Relasaun ho ajénsia ka instituisaun governu nian sira seluk

20. Atubele garante justisa no efikásia prosesu judisiál, prokuradór sira tenke koopera ho polísia, tribunál sira, advogadu sira, no ajénsia ka instituisaun governu nian sira seluk.

Prosesu Dixiplinár

21. Infrasaun dixiplinár prokuradór sira-nian tenke bazeia ba lei ka regulamentu sira ne'ebé vigora. Keixa hasoru prokuradór sira ne'ebé akuza katak sira atua iha maneira ida-ne'ebé hatudu momoos sai hosi ámbitu padraun sira profesionál nian tenke prosesa ho justu no rápidu tuir prosesu ne'ebé apropriadu. Prokuradór sira iha direitu ba julgamentu ne'ebé justu. Desizaun tenke depende ba revizaun independente.

22. Prosedimentu dixiplinár kontra prokuradór sira tenke garante avaliasaun no desizaun ne'ebé objetivu. Prosedimentu ne'e tenke hala'o tuir lei, kódigu konduta profisionál no padraun no étika sira seluk ne'ebé estabelese tiha ona, no tuir liña orientadora ne'e.

Aplikasaun liña orientadora

23. Prokuradór sira tenke kumpre liña orientadora ne'e. Prokuradór sira mós tenke halo buat hotu hodi prevene no ativivamente kontra kualker violasaun ruma.

24. Prokuradór sira ne'ebé iha razaun atu fiar katak violasaun ba Liña orientadora ne'e akontese tiha ona ka sei akontese, tenke informa sira-nia autoridade superiór, no bainhira presiza, ba autoridade ka órgaun kompetente sira seluk ne'ebé iha autoridade hodi hala'o revizaun ka substituisaun.

Prinsípiu Báziku Kona-ba Papél Advogadu sira-nian

Tradusaun la'os ofisial

Adota husi Kongresu Nasoins Unidas-nian ba daualuk kona-ba Prevensaun Krime no Tratamentu ba Infratór sira, Havana, Kuba, loron 27 fulan Agostu to'o loron 7 fulan Setembru tinan 1990.

Konsidera katak iha Karta Nasoins Unidas nian komunidade mundu nian afirma, entre sira seluk, sira-nia determinasaun atu estabelese kondisaun hirak ne'ebé atu nune'e bele mantein nafatin justisa, no proklama nu'udar sira-nia objetivu ida maka alkansa kooperasaun internasionál hodi promove no enkoraja respeitu ba direitus umanus no liberdade fundamentál lahó diskriminasaun bazeia ba rasa, seksu, lian ka relijiaun,

Konsidera katak Deklarasaun Universál kona-ba Direitus Umanus proklama prinsípiu ba igualdade iha lei nia okos, prezunsaun inosénsia, direitu ba audiénsia públiku ida ne'ebé justu husi tribunál ida ne'ebé kompetente, independente no imparsiál, no garantia hotu-hotu ne'ebe nesesária ba defeza ema ida-idak ne'ebé hetan alegasaun ofensa penál,

Konsidera katak Paktu Internasionál kona-ba Direitu Sivíl no Políticku mós proklama direitu atu hetan julgamentu sein demora ne'ebé la bele justifika no direitu ba audiénsia ida-ne'ebé justu no públiku husi tribunál ne'ebé kompetente, independente no imparsiál ne'ebé estabelese tuir lei,

Konsidera katak Paktu Internasionál kona-ba Direitu Ekonómiku, Sosiál no Kulturál fó-hanoin fila-fali kona-ba obrigasaun ba Estadu sira tuir Karta ne'e atu promove respeitu universál no kumpre ba direitus umanus no liberdade,

Konsidera katak Prinsípiu sira kona-ba Protesaun ba Ema Hotu iha Kualkér Forma Detensaun ka Prizaun hatuur katak ema ne'ebé hetan detensaun iha direitu atu hetan asisténsia husi advogadu, inklui atu komunika no konsulta ho nia,

Konsidera katak Regra Mínimu sira kona-ba Tratamentu Ema dadur rekomenda, partikularmente, atu garante katak prizioneiru sira ne'ebé seidauk hetan julgamentu tenke iha asesu ba asisténsia legál no komunikasaun konfidensiál ho advogadu,

Konsidera katak garantia sira kona-ba protesaun ba sira ne'ebé hasoru "pena-de-morte" reafirma direitu ba ema ida-idak ne'ebé sai suspeitu ka akuzadu relasiona ho krime ida ne'ebé bele hetan "pena-de-morte" atu hetan asisténsia legál ne'ebé adekuadu iha faze hotu-hotu husi prosesu, tuir Paktu Internasionál kona-ba Direitu Sivíl no Políticku, artigu 14,

Konsidera katak Deklarasaun kona-ba Prinsípiu Báziku Justisa nian ba Vítima Krime no Abuzu Podér rekomenda hodi foti medida iha nivel internasionál no nasionál atu hasa'e asesu ba justisa no tratamentu ne'ebé justu, restituisaun, kompensasaun no asisténsia ba vítima sira krime nian,

Konsidera katak protesaun adekuada ba direitus umanus no liberdade fundamentál ne'ebé direitu ema hotu-hotu nian, seraké ekonómiku, sosiál no kulturál, ka sivíl no políticku, hatuur katak ema hotu-hotu tenke hetan asesu efetivu ba servisu jurídiku ne'ebé fornese husi advogadu sira ne'ebé independente,

Konsidera katak asosiasaun profisionál advogadu sira-nian hala'o papél esensiál atu hahi'i norma no étika profisionál, proteje sira-nia membru husi persegisaun no restrisaun no interferénsia imprópria, fornese

servisu legál ba ema hotu-hotu ne'ebé presiza, no koopera ho instituisaun governu no instituisaun sira seluk hodi haree kle'an liu objetivu justisa no interese públiku,

Prinsípiu Báziku kona-ba Papél Advogadu sira, ne'ebé mensiona iha kraik ne'e, formula tiha ona atu ajuda Estadu Membru sira hala'o sira-nia tarefa hodi promove no garante katak advogadu sira bele hala'o sira-nia funsaun ho maneira adekuada, tenke hetan respeitu no konsiderasaun husi Governu iha sira-nia enkuadramentu lejizlasaun no prátika no tenke lori ba atensaun advogadu sira-nian no mós ema sira seluk, hanesan juis, prokuradór, membru sira ezekutivu no lejizlativu nian, no públiku en jerál. Prinsípiu hirak-ne'e mós aplika, bainhira presiza, ba ema sira ne'ebé hala'o funsaun advogadu maski la tama iha kategoria profisionál advogadu nian.

Asesu ba advogadu no servisu jurídiku

1. Ema hotu-hotu iha direitu atu hetan asisténsia husi advogadu ida ne'ebé sira rasik hili atu proteje no estabelese sira-nia direitu no atu defende sira iha faze hotu husi prosesu penál.

2. Governu sira tenke asegura katak iha prosedimentu efikás no mekanizmu adekuadu atu garante katak ema hotu-hotu hetan asesu efetivu no iguál ba advogadu sira iha sira-nia territóriu no tuir sira-nia jurisdisaun, lahó diskriminasaun ruma ne'ebé bazeia ba rasa, kór, orijen étniku, seksu, lian, relijiaun, opiniaun polítiku ka opiniaun seluk, orijen nasionál ka sosiál, pozisaun ekonómika, nasimentu, situasaun ekonómika ka kondisaun seluk.

3. Governu sira tenke asegura katak iha fundu no rekursu seluk ne'ebé sufisiente hodi fornese asisténsia jurídiku sira ba ema kiak no, karik nesesáriu, ba sira seluk ne'ebé kbiit-laek. Asosiasaun profisionál advogadu sira-nian tenke koopera hodi organiza no fornese servisu, meiu no rekursu sira seluk.

4. Governu no asosiasaun profisionál advogadu sira-nian tenke promove programa hodi informa ba públiku kona-ba sira-nia direitu no devér iha lei-nia okos no advogadu sira-nia papél importante hodi proteje sira-nia liberdade fundamentál. Tenke fó atensaun espesiál hodi ajuda ema kiak no kbiit-laek hodi permite sira implementa sira-nia direitu no karik nesesáriu husu asisténsia ba advogadu sira.

Garantia espesiál kona-ba asuntu ne'ebé relasiona ho justisa penál

5. Governu sira tenke asegura katak ema hotu-hotu hetan informasaun imediata husi autoridade kompetente kona-ba sira-nia direitu atu hetan asisténsia husi advogadu ne'ebé sira rasik hili depoizde hetan kaer ka detensaun ka bainhira hetan akuzasaun kriminál.

6. Kualkér ema ne'ebé la iha advogadu, bainhira de'it presiza advogadu hodi hahi'i justisa, iha direitu atu hetan advogadu ida ho esperiénsia no kompeténsia maka proporsionál ho natureza ofensa nian ne'ebé dezigna ba sira hodi fornese asisténsia jurídiku ne'ebé efikás no gratuita, karik sira falta meiu sufisiente atu selu servisu hirak-ne'e.

7. Governu sira mós tenke asegura katak ema hotu-hotu ne'ebé hetan kaer ka detensaun, hamutuk ka lahó alegasaun kriminál, tenke hetan asesu imediatu ba advogadu, no iha kualkér kazu labele liu oras haatnulu resin ualu konta husi tempu nia hetan kaer ka detensaun.

8. Ema sira ne'ebé hetan kaer, detensaun ka prizaun tenke hetan oportunidade, tempu no meiu ne'ebé adekuada atu hetan vizita no halo komunikasaun no konsulta ho advogadu, sein demora, interferénsia ka sensura no iha konfidensialidade tomak. Ofisiál sira reforsu lei nian bele haree konsulta sira-ne'e, maibé sira labele rona.

Kualifikasaun no treinu

9. Governu, asosiasaun profisionál advogadu nian no instituisaun edukasaun tenke asegura katak advogadu hetan edukasaun no treinu apropriadu no garante katak sira hatene kona-ba prinsípiu no devér étiku advogadu nian no kona-ba direitus umanus no liberdade fundamentál sira ne'ebé rekoñese tiha ona iha lei nasionál no internasionál.

10. Governu, asosiasaun profisionál advogadu nian no instituisaun edukasaun tenke asegura katak laiha diskriminasaun kontra ema ida relasiona ho nia asesu ba profisaun advogadu nian ka atu hala'o profisaun ne'e bazeia ba rasa, kór, seksu, orijen étnika, relijiaun, opiniaun polítiku ka opiniaun seluk, orijen nasionál ka sosiál, propriedade, nasimentu, kondisaun ekonómiku ka kondisaun sira seluk, ho esepsaun katak ezijensia, katak advogadu ida tenke ema sidadaun nasionál rai ne'ebé envolvidu ne'e, labele konsidera hanesan diskriminatória.

11. Iha nasaun sira ne'ebé eziste grupu, komunidade ka rejiaun ne'ebé ninia nesesidade ba servisu jurídiku la prienxe, liuliu iha fatin ne'ebé grupu sira ne'e iha kultura, tradisaun ka lian keta-ketak ka sai vítima ba diskriminasaun iha tempu pasadu, maka Governu, asosiasaun profisionál advogadu nian no instituisaun edukasionál tenke foti medida espesiál hodi fornese oportunidade ba kandidatu husi grupu hirak-ne'e atu tama ba profisaun advogadu nian no tenke asegura katak sira simu treinu ne'ebé apropriadu ho grupu ida-idak nia nesesidade.

Devér no responsabilidade

12. Advogadu sira tenke mantein beibeik onra no dignidade husi sira-nia profisaun nu'udar ajente esensiál iha administrasaun justisa nian.

13. Devér advogadu nian ba sira-nia kliente tenke inklui:

(a) Fó konsellu ba kliente sira kona-ba sira-nia direitu no obrigasaun, no kona-ba servisu sistema jurídiku bainhira iha relevánsia ho kliente sira nia direitu no obrigasaun jurídiku;

(b) Ajuda kliente sira tuir maneira hotu-hotu ne'ebé apropriadu, no foti asaun jurídiku hodi proteje sira-nia interese;

(c) Ajuda kliente sira iha tribunál ka autoridade administrativa, bainhira apropriadu.

14. Advogadu sira, bainhira proteje direitu husi sira-nia kliente no promove kauza justisa, tenke respeita direitus umanus no liberdade fundamentál ne'ebé rekoñese tiha ona iha lei nasionál no internasionál no tenke atua ho livre no badinas beibeik tuir lei, no mós norma no étika ne'ebé rekoñese tiha ona iha profisaun jurídiku.

15. Advogady sira tenke respeita beibeik lealmente interese sira kliente sira-nian.

Garantia sira ba funsionmentu advogadu sira nian

16. Governu tenke asegura katak advogadu sira (a) bele hala'o sira-nia funsaun profisionál sein intimidasaun, impedimentu, abuzu ka interferénsia imprópria; (b) bele la'o no halo konsulta livre ho sira-nia kliente iha nasaun laran ka iha rai li'ur; no (c) labele terus, ka hetan ameasa ho akuzasaun ka sansaun

administrativa, ekonómiku ka sansaun sira seluk ba kualkér asaun ne'ebé sira foti tuir devér profisionál, padraun no étika sira ne'ebé rekoñese tiha ona.

17. Bainhira advogadu sira-nia seguransa hetan ameasa tanba hala'o sira-nia funsaun, sira tenke hetan salvaguarda adekuada husi autoridade sira.

18. Advogadu sira labele identifika ho sira-nia kliente sira ka sira-nia kliente sira-nia kauza nu'udar rezultadu atu hala'o sira-nia funsaun sira.

19. La iha tribunál ka autoridade administrativa ida ne'ebé rekoñese tiha ona direitu advogadu ida atu fó konsellu tenke rejeita fali atu rekoñese direitu advogadu atu mosu iha nia oin hodi akompaña nian kliente exetu advogadu ne'e deskualifika tiha ona tuir lei no pratika nasionál no tuir prinsípiu hirak-ne'e.

20. Advogadu sira tenke goza imunidade sivil no kriminál ba deklarasaun relevante sira ne'ebé halo ho fiar di'ak iha apelu sira eskrita ka orál ka iha sira-nia aparesimentu sira profesionál nian iha tribunál, autoridade tribunál ka autoridade jurídiku seluk ka autoridade administrativu nia oin.

21. Autoridade sira ne'ebé kompetente iha devér hodi asegura katak advogadu iha asesu ba informasaun, arkivu no dokumentu ne'ebé apropriadu iha sira-nia posesaun ka kontrolu ho tempu natoton hodi permite advogadu sira atu fornese asisténsia jurídiku ne'ebé efikás ba sira-nia kliente. Asesu ne'e tenke fornese iha tempu apropriadu no lalais.

22. Governu sira tenke rekoñese no respeita katak komunikasaun no konsulta hotu-hotu entre advogadu sira no sira-nia kliente nu'udar parte husi sira-nia relasaun profisionál sempre konfidensiál.

Liberdade ba espresaun no asosiasaun

23. Advogadu sira hanesan sidadaun sira seluk iha direitu ba liberdade espresaun, fiar, asosiasaun no reuniaun. Partikularmente, sira tenke iha direitu atu tuir diskusaun publika kona-ba problema sira ne'ebé relasiona ho lei, administrasaun justisa. promosaun no protesaun direitus umanus no tuir ka harii organizasaun lokál, nasionál ka internasionál no tuir sira-nia enkontru, sein hetan restrisaun profisionál bazeia ba sira-nia asaun ne'ebé tuir lei, ka tanba tama organizasaun ne'ebé tuir lei. Atu ezerse direitu hirak ne'e, advogadu sira tenke sempre lori sira nia an tuir lei no padraun no étika ne'ebé rekoñese tiha ona iha profisaun jurídiku.

Asosiasaun profisionál advogadu sira-nian

24. Advogadu sira iha direitu atu forma no tuir asosiasaun profisionál ne'ebé auto-administrativa hodi reprezenta sira-nia interese, promove sira-nia edukasaun no treinu ne'ebé kontínuu no proteje sira-nia integridade profisionál. Korpu ezekutivu husi asosiasaun profisionál sira tenke eleitu husi membru sira no tenke ezerse ninia funsaun sein interferénsia husi li'ur.

25. Asosiasaun profisionál ba advogadu sira tenke koopera ho Governu sira hodi asegura katak ema hotu-hotu hetan asesu efetivu no hanesan ba servisu jurídiku no katak advogadu sira bele, sein interferénsia impropria, fó konsellu ba no ajuda sira-nian kliente tuir lei no padraun no étika profisionál ne'ebé rekoñese tiha ona.

Prosesu Dixiplinár

26. Kódigu-konduta profisionál ba advogadu sira tenke estabelese husi profisaun jurídiku liuhosi ninian órgaun sira ne'ebé apropriadu, ka liuhosi lejizlasaun, tuir lei no kostume no padraun nasionál, no mós norma no padraun internasionál ne'ebé rekoñese tiha ona.

27. Alegasaun ka keixa ne'ebé hasoru advogadu sira ne'ebé relasiona ho sira-nia kapasidade profisionál tenke prosesa ho maneira ne'ebé loloos no justu tuir prosedimentu sira ne'ebé apropriadu. Advogadu sira iha direitu atu hetan audiénsia justa, inklui direitu atu hetan asisténsia husi advogadu ne'ebé sira rasik hili.

28. Prosesu dixiplinár kontra advogadu sira tenke lori ba komisaun dixiplinár imparsiál ida ne'ebé estabelese husi profisaun jurídiku, iha autoridade estatutu independente nian ida nia oin, ka iha tribunál nian oin, no tenke depende ba revizaun judisiária independente nian ida.

29. Prosesu dixiplinár hotu-hotu tenke determina tuir kódigu konduta profisionál no padraun no ética sira seluk husi profisaun jurídiku ne'ebé rekoñese tiha ona no tuir prinsípiu hirak-ne'e.

Special Rapporteur on the Independence of Judges and Lawyers

Introduction

In 1994, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, decided to appoint, for a period of three years, a Special Rapporteur on the independence of judges and lawyers. Like other Special Procedures, this mandate was assumed by the Human Rights Council (General Assembly resolution 60/251), and extended for one year, subject to the review to be undertaken by the Council (Human Rights Council decision 2006/102).

In June 2008, the mandate of the Special Rapporteur on the independence of judges and lawyers was subject to review undertaken by the Human Rights Council and extended for a period of three years. In resolution 8/6, the Human Rights Council recalled earlier Commission on Human Rights resolutions, including 1994/41, 1995/36, 2002/37 and 2005/33, and General Assembly resolutions, including 40/32 and 45/166. In resolution 17/2, the Human Rights Council recalled its resolutions 8/6, 12/3, 13/19 and 15/3. The mandate of the Special Rapporteur was most recently extended for another period of three years by Human Rights Council resolution 26/7. As per his/her mandate, the Special Rapporteur is requested:

(a) To inquire into any substantial allegations transmitted to him or her and to report his or her conclusions and recommendations thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations, including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To identify ways and means to improve the judicial system, and make concrete recommendations thereon;

(d) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers and court officials;

(e) To apply a gender perspective in his or her work;

(f) To continue to cooperate closely, while avoiding duplication, with relevant United Nations bodies, mandates and mechanisms and with regional organizations;

(g) To report regularly to the Council in accordance with its programme of work, and annually to the General Assembly.

In the discharge of these functions:

(a) The Special Rapporteur acts on information submitted to his/her attention concerning alleged violations relating to the independence and impartiality of the judiciary and the independence of the legal profession by sending allegation letters and urgent appeals to concerned Governments to clarify and/or bring these cases to their attention. See Individual Complaints. The communications sent by the Special Rapporteur (both urgent appeals and allegations letters) are published in the next communication report of special procedures. See Communications reports

(b) The Special Rapporteur conducts country visits upon the invitation of the relevant Government. The Special Rapporteur submits a report on the visit to the Human Rights Council, presenting his/her findings, conclusions and recommendations. See Country Visits

(c) The Special Rapporteur presents annual thematic reports to the Human Rights Council (June session) and the General Assembly highlighting important issues or areas of concern related to the mandate. See Annual Reports

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA
TLS 1/2014:

17 November 2014

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 26/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations **of interference of the executive and legislative powers in the independence of the judiciary and the deleterious effects it could have on the continued prosecution of cases, including cases of crimes against humanity, and access to justice in Timor-Leste.**

In this context, I would like to acknowledge that Timor-Leste has made great progress in building its judicial institutions over the past decade. National capacity has steadily increased since 2006 with the graduation of national judges, prosecutors and public defenders, as well as other judicial personnel, from Timor-Leste's Legal Training Centre. However, I understand that, in this on-going process of increasing and strengthening national capacity in the justice sector, the role of international judicial personnel (judges, prosecutors, and other personnel performing line functions, as well as those providing technical assistance) has been essential. According to numbers received, international staff represents about 13% percent of the overall number of personnel performing line functions in the justice sector.

According to the information received:

On 24 October 2014, in a closed session attended by the Prime Minister, the National Parliament adopted a resolution calling on the Government to undertake an audit of the justice sector. The Government then adopted a resolution on the same day. Among other things, both resolutions called for the immediate termination of the contracts of all international judicial personnel and advisers working in the justice sector (in different courts, the Prosecutor's Office, the

Office of the Public Defender, the Anti-Corruption Commission and the Legal Training Centre of the Ministry of Justice).

The decision to terminate international judicial personnel appears to have been prompted by a number of rulings in the Timor-Leste courts favouring foreign oil companies against the State. The Prime Minister has allegedly publicly and harshly criticized the judiciary for its handling of these cases, as well as anti-corruption cases against current or former members of the Government, on a number of occasions. For instance, on 4 November, in a live radio and TV interview, the Prime Minister cited specific alleged instances of possible incompetence of and irregularities committed by the judiciary, mentioning in particular the cases between the State and the oil companies.

The Parliamentary resolution notes that international taxation cases filed by oil companies against the State, as well as other cases before national courts, revealed "weaknesses in the judicial system", and highlighted that "legal irregularities have negatively impacted the cases, exposing the country to external threats relating to its sovereignty and national security." The resolution further notes that the Anti-Corruption Commission "has not acted in line with the criminal evidence presented to it", and that international advisers have "showed a lack of technical knowledge." The resolution also requests the Government to coordinate from then on the contracts for the justice sector.

During the week of 27 October – 2 November 2014, the President of the Court of Appeal reportedly instructed all international judges to continue working, while the Minister of Justice issued letters to international staff in the Legal Training Center informing them that their work was being suspended with immediate effect. Prosecutors were also reportedly instructed to continue working, but without going to court. Staff at the Office of the Public Defender continued to work.

On 31 October 2014, in another resolution published on 3 November, the Government ordered the revocation of the work or other permits to stay in the country of eight named international judicial staff (five judges, two prosecutors and one adviser to the Anti-Corruption Commission) on the basis that their contracts were terminated. They were ordered to leave the country within 48 hours. The resolution indicates "national security, public order, morality, national interest and dignity of the nation" as grounds for the revocation of the permits. This resolution singled out eight individuals, but the situation of all remaining international staff is uncertain with reports indicating that more international staff have left the country since, when at the same time some international staff of the Legal Training Center were reinstated. It is not fully clear how many other international personnel have been or will ultimately be affected.

The information received however indicates that according to the Constitution, neither the Government nor the Parliament has powers to dismiss judicial personnel; dismissal of judicial personnel are regulated by the laws on Judicial Magistrates (8/2002 as amended), the Prosecution Service (14/2005 as amended) and the Public Defender's Office (38/2008).

The immediate termination of contracts of all the international judicial personnel, including judges and prosecutors, is likely to have a negative effect on the capacity of the justice sector to discharge their professional functions, which in turn may lead to serious challenges for the proper administration of justice, including an increasing number of pending cases; and difficulties to ensure due process and respect defendants' rights, including that to be tried without undue delay. The termination of these contracts may also reduce the number of mobile court sessions, which have been essential to increasing access to justice for those living in areas where no court is located.

Moreover, the removal of international judges and prosecutors may also render the prosecution of serious criminal offences and otherwise complex cases more difficult as international judges and prosecutors have so far been determinant in supporting their national colleagues in such cases. The prosecution of related to the 2006 crisis could also be suspended as they were led by international prosecutors.

The dismissal of international judges and prosecutors may also result in the suspension of trials in cases of serious crimes, including crimes against humanity committed in 1999. Indeed, according to UNTAET Regulation 2000/11 on the Organization of Courts in East Timor and UNTAET Regulation 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences two international judges must be part of the panels of judges that have exclusive jurisdiction to try cases of genocide, war crimes, and crimes against humanity, as well as murder, sexual offenses, and torture committed between 1 January and 25 October 1999.

Moreover, the Legal Training Center is a key component in the nationalization of the State's justice sector; according to numbers received, from zero prior to 2006, there are at present a total of 64 qualified national judges, prosecutors and public defenders in Timor-Leste, all trained in this Center. The Center has also trained court clerks and notaries as well as private lawyers. 12 nationals are also currently being trained to become trainers of the Legal Training Center.

Grave concern is expressed about the apparent interference of the executive and legislative powers in the independence of the judiciary, in contradiction of the fundamental principle of the separation of powers, and about the apparent disregard for the rule of law. Serious concern is also expressed at the immediate termination of

contracts of all international judicial personnel and the deleterious effect this could have on the continued prosecution of cases, including cases related to serious criminal offences, due process and defendants' rights, access to justice, in particular in remote areas, and the prosecution of crimes committed in 1999. The dismissal of the international members of the judiciary and prosecution services may also have a chilling effect on the remaining national members of these institutions, thereby jeopardizing their independence.

While I recognize that the reduction of the number of international judges, prosecutors and other legal professionals is a legitimate path to follow to reach the goal of these institutions being fully run by nationals, I would like to underline that this should be a process that is implemented in full conformity with national laws and procedures, as well as the international human rights obligations of the State.

In this context and without prejudging the accuracy of the situation described above, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues.

The abovementioned allegations appear to be in contravention of the Basic Principles on the Independence of the Judiciary which states, inter alia, that all governmental institutions must respect the independence of the judiciary; that the judiciary shall decide matters before them impartially, without any improper influences, pressures, threats or interferences; and that judges can be removed only for reasons of incapacity or behaviour that renders them unfit and according to established standards of judicial conduct after proceedings respecting the right to a fair hearing. The independence of the judiciary is a fundamental principle which is also enshrined in the International Covenant on Civil and Political Rights, as interpreted by the Human Rights Committee, to which Timor-Leste acceded in 2003.

I would also like to bring to your Excellency's attention the Guidelines on the Role of Prosecutors, which provide, inter alia, that disciplinary proceedings against prosecutors must be based on law and established standards of conduct and ethics, and that prosecutors have the right to a fair hearing.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the independence of the judiciary in Timor-Leste in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and comment which you may have on the above mentioned allegations.

2. Please provide detailed information on the process followed regarding the terminations and explain how such measures complied with international human rights standards regarding the dismissal of judges and prosecutors, as well as the fundamental principles of the independence of the judiciary and the separation of powers.

While awaiting a reply, I urge the Parliament and Government of Timor-Leste to reconsider their resolutions and initiate a dialogue with the relevant partners, including the United Nations, to address the current situation and map an appropriate way forward. Any intervention with regard to the justice sector has to be made in full compliance with Timor-Leste's Constitution and international human rights obligations and should respect the fundamental principle of independence of the judiciary.

I reserve the possibility of publicly expressing my concerns in the near future as I am of the view that the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release would indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

I also seize this opportunity to kindly request that your Excellency's Government share a copy of this letter with His Excellency the Prime Minister, the Speaker of Parliament and the President of the Court of Appeal.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

NEWS RELEASE

UNITED NATIONS HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

UN human rights expert urges Timor-Leste to reconsider dismissal of international judges and prosecutors

GENEVA (25 November 2014) – The UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, today warned that the audit of the justice sector and the dismissal of all international judicial personnel announced in Timor-Leste puts at risk the independence of the judiciary in the country. Ms. Knaul indicated she had already raised the issue with the authorities and urged them to reconsider their decision.

In two separate resolutions dated 24 October, the Timor-Leste Parliament and Government called for an audit of the courts and the immediate contract termination of all international judicial personnel and advisers working in the justice sector. In another resolution dated 31 October, the Government singled out eight international staff – five judges, two prosecutors and one adviser – and ordered them to leave the country within 48 hours.

“The resolutions represent a serious interference in the independence of the judiciary,” Ms. Knaul said. “I am troubled that the decision may have been taken in retaliation for court judgments which displeased members of the Government and the Parliament.”

The human rights expert stressed that the immediate dismissal of international judicial personnel could undermine the proper administration of justice in Timor-Leste, including access to justice and due process guarantees. “It may also have a chilling effect on national members of the judiciary, affecting their independence,” she warned.

“The removal of international judges and prosecutors may in particular disrupt the prosecution of serious and complex criminal cases as the role of international personnel has so far been determinant in supporting their national colleagues in such cases,” the Special Rapporteur explained. “This situation may further result in the suspension of trials in cases of crimes against humanity and other serious crimes committed in 1999, as the law requires that the panels set up to consider these crimes comprise of two international judges,” she cautioned.

Ms. Knaul acknowledged that Timor-Leste has made great progress in building its judicial institutions over the past decade. She also highlighted the essential role played by international judicial personnel in this on-going national capacity-building process.

“The reduction of the number of international judges, prosecutors and other legal professionals is a legitimate path to follow; however, this should be a process

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implemented in full conformity with international human rights law and standards, as well as national laws and procedures," the expert underlined.

"I urge both Parliament and Government to reconsider their decisions and initiate a dialogue with the relevant partners, including the UN, to address this serious situation and map an appropriate way forward in compliance with Timor-Leste's international human rights obligations," the Special Rapporteur concluded.

ENDS

Gabriela Knaul took up her functions as UN Special Rapporteur on the independence of judges and lawyers in 2009. Ms. Knaul has a long-standing experience as a judge in Brazil and is an expert in criminal justice and the administration of judicial systems.

The Special Rapporteurs are part of what is known as the Special Procedures of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity. Learn more, log on to: *http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx*

Check the UN Basic Principles on the Independence of the Judiciary: *http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx*

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Australian Aid

The Asia Foundation

Perspetiva husi Governu Timor-Leste

DR. RUI PEREIRA

Asesór Legál ba SE Sr. Dionísio Babo Soares

Intervensaun Iha Seminario Nebe Organiza husi The Asia Foundation ho topico "INDEPENDENCIA Judiciario".

Husi Dr. Rui Pereira dos Santos, Assesor Legal MAE

Introdusaun.

Ba dala uluk hau lori Sr. Ministro Estado Coordenador ba Assuntos Administrasaun no Justça hato'o obrigado wain tanba bele konvida ami hodi partisipa iha Seminario nee, maibe atu informa deit ba ita bot sira katak Sr. Ministro labele partisipa tanba iha assunto importante balun nebe Sr. Ministro tenke atende liu-liu preparasaun ba comemorasaun 500 anos contactos com os Portugueses e 40 anos Proclamação Independencia da República Democratica de Timor-Leste a agora da-daun halao hela servisu iha Ambeno.

Governo Timor-Leste, apresia tebes ho servisu nebe The Asia Foundation halao iha Timor, durante tinan 15, liu-liu tulun nebe fo iha area judiciario nian liu-liu tulun nebe foba iha Legal Aid sira tantu ba formasaun no programas balun nebe financia hosi The Asia Foundation. Asia Foundation mos halo printing ba livros lubuk ida iha area Judiciario nian, ida nee tulun tebes ita nia maluk juristas sira nebe halao knaar iha area judicial nian.

Refere ba Topico nebe iha kona-ba "Independencia Judiciario" nee interesante tebes atu ita diskuti iha forum ida nee liga ho raelidade Timor nia-nian. Nudar Membro do Governo nebe tau matan ba assuntos Administrasaun no Justiça sei foco uluk ba desenvolvimento sector justica, tantu husi parte infra-estrutura, recursos humanos, desenvolvimento institucional no seluk-seluk tan no iha parte ikus mak sei hare intervensaun Governo nian iha area judicial iha ka lae, nee so husi parte seluk mak bele hare no analiza dia-diak kona-ba ida nee.

Politica Governo nia iha Sector Justiça

Politica Governo iha seitor justica, hahu kedas husi I Governo Constitucional, liu-liu quadros legal sira oinsa atu transforma sistema judiciariu husi UNTAET nian mai iha Timor-Leste nian no plitica husi Estado nian klaru no previsto iha kedas Constituição RDTL artigo 118-136 nebe kontempla Tribunais, Ministerio Publico, no Advogados. Nunee mos iha artigo 163 CRDTL koalia kona-ba Organizasaun Judicial Transitoria, iha alinea 1 temi katak " Instansia Judisial kolektiva nebe iha dadaun Timor-Leste, integradu ho Juiz nasional no internasional, ho kompetesia atu julga krime grave sira kometidu iha 1 Janeiru too 25 Outubru 1999 funsiona nafatin durante tempu nebe presiza duni atu halao hotu prosesu nebe investiga dadaun nee".

Iha alinea 2 temi katak Organizasaun judisiaria nebe moris iha Timor-Leste iha momentu nebe Constituição moris funsiona nafatin too sistema judiciariu foun instala tiha no hahu nia funsaun. Nunee mos iha artigo 165 descreve kona-ba Direito Anterior katak " Lei no Regulamento sira nebe moris dadaun iha Timor-Leste sei aplika nafatin, iha parte nebe la viola Constituição ka prinsipiu sira nebe Constituição consagra too hetan alterção ka revogação.

Iha I Governo Constitucional, seitor Justica nia-nia desenvolvimento lao maibe ladun maximu tanba minimu de orsamento, fundus mina mos sei naton, maibe formasaun ba autor

judiciariu sira hahu halao tantu iha Centro Formaçáo Judiciario Caicoli-Dili e mos formação iha rai liur; liu-liu ba Portugal. Tama iha IV Governo Constitucional nia-nia desenvolvimento lao diak tebes, facilidades komesa diak, kondisõens servisu ba Tribunal, Procuradoria e Defensoria Pubica, infra-estrutura baziku balun komesa halo rehabilisaun no balun halo konstrusaun foun, planu orsamento anual mai rasik hosi kada instituisaun no lori ba defende iha Conselho de Ministros no Parlamento Nacional.

Kontinuasaun mai iha V Governo Constitucional, desenvolvimento sector justiça lao ho diak, desenvolvimento recursos humanos liu hosi formasaun ba juizes, procuradores e defensores publicas halao iha rai loron no mos ba rai liur liu-liu ba paises sira CPLP nian, nunee mos formasaun ba Advogados Privadas sira iha Centro Formação Judicial, Caicoli Dili.

Ministerio da Justiça kaer papel importante tebes iha nasaun ida nee, liu-liu oinsa atu halo kooperasaun de servisu ho paises amigos liu husi acordo nebe Governo Timor-Leste estabelese. Mesmu iha tempu hirak neba liuba, Governo hola decissão balun que lori impaktu mai iha sector justiça nia servisu loron-loron maibe decissão ida nee Governo hola tanba iha ligasaun ho interese nacional. Maibe politicamente Governo sei buka meius atu hadia hikas fali relasaun bilateral ho acordo de cooperacao sira nee ba futuru, Ministro rasik halo ona esforsu ida nee ho vizita nebe halo ba iha Portugal iha V Governo Constitucional nia mandato, agora mos hanesan Ministro Coordenador ba Assunto Administrasaun no Justiça, buka atu servisu hamutuk ho Ministro Justiça actual atu hare hikas assunto refere.

Hosi parte seluk bele mos loke dalan ba Timoroan sira iha area justiça atu hamrik kaer rasik kuda talin justica nian atu nunee sa decissao ida mak sai nee decissao mai husi ema Timoroan rasik, laos ema estranjeiru no hatudu dadauk ona katak Juises, Procuradores e Defensores Publicos Timoroan mos bele toma responsabilidade iha sector justiça nian, no mesmu ema internacional husik hela Timor, maibe sector justiça lao nafatin ba oin. Karik iha planu de cooperasaun ba futuru, ema internacional sira mai sai deit hanesan mentores, sira la hola parte iha decissão, atu nunee qualqer decissão ida nebe sai husi Tribunal, Procuradoria no Defensoria, nee mai husi ema Timoroan, para hamenus ona dependência de servisu husi maluk juristas sira husi rai liur.

Programa VI Governo Constitucional, 2015-2017 mos fo importansia ba iha sector justiça, ida nee bele hare iha pagina 77 husi Progrma do VI Governo Constitucional, iha neba hatetem katak ***"Governo ira continuaa a apostar no fortalecimento e na reforma do sector da justica, com vista a consolidar a estabilidade, a paz e o Estado de Direito. Iremos continuar a promover a craicao de um quadro normativo conducente a um pais moderno e progressista"***. Nunee mos iha parte seluk Governo hare medidas atu transforma sistema jurídico bs iha sistema ida nebe efectivamente uja bilingue liu hosi promosaun tradução ba leis sira atu garantia utilização ba linguas oficiais no liu-liu atu desenvolve tetum juridico, sai hanesan kondisõens ida atu cidadãos Timorense bele iha acesso ba justiça. Governo mos iha política atu halao desseminação servicos justiça nian ba iha Municipios, tantu iha ambito instituicões, atraves da distribuição e colocação de masgistrados, procuradores e defensores publicos iha territorio nacional[1].

[1] Hau nia ponto devista partikular iha parte ida nee, husi Procuradoria sira loke tan liras ba too ona iha Municipio Viqueque, Ermera no Municipio Bobonaro, prepara ona infra-estrutura hanesan edificio Ministerio Público ho residencia ba procurador sira atu hela. Parte tribunal no Defensoria Pública mak seidauk. Governo no Parlamento Nacional presiza halo lei foun hodi troka regulamento UNTAET nian konaba estabelecimento Tribunias nian nebe eziste dadaun tanba ligado ho competencia tribunal nian ho nia territoria rasik.

Atu informa ba iha ita bot sira katak, Ministro Dionisio Babo hanesan Ministro Estado Coordenador ba Assuntos Administaração no Justiça, tau atenasaun maka'as tebes iha area rua nee liu-liu oinsa atu desenvolve sistema ida nebe diak iha sector administrasaun pública no oinsa atu desenvolve sector justiça nebe diak iha Timor-Leste. Mandatu nee mai husi Decreto Lei No.6/2015 de 11 de Março que aprova Orgánica do VI Governo Constitucional iha artigo 15. E tau matan mos ba servisu sira husi Ministerio da Justiça, Secretária de Estado do Fortalecimento Institucional, Desentralização Administrativa e INAP.

Ministro mak sei halao coordenação no halo preparasaun no organização servisu governamental iha area gestão administração do Estado e Justiça, halo acompanhamento e avaliasaun ba serviços hotu no prestação serviços iha area administração no justiça. Kada fulan Ministro Coordenador halo encontro ordinaria dala ida ho membros do governo sira nebe iha nia responsabilidade no hato'o relatoriu ka informasaun ba Sr. Primeiro-Ministro.

Refere ba Topico nebe iha, ami prefere liu ba maluk sira nebe la hola parte iha Governo mak bele fo sira nia observasaun diak liu no imparsial liu ou karik observasaun sira nebe mai husi Meritisimo Dr.Juiz Phillip Rapoza husi Estados Unidos America, nebe uluk mos hola parte iha Especial Panel, karik hetan influnesia ou intervensaun ba iha sector judiciario iha tempu neba ou mai husi maluk sira hosi JSMP sira nia researh ou sira nia observasaun, maibe karik iha informasaun husi canal seluk karik iha intervensaun governo ka estado iha area judicial tuir hau nia ponto de vista pessoal karik kazu nebe lori ba Tribunal Recursos kona-ba judicial revew ba osan fundus estabilizasaun, karik kazu Maternos Bere, no Indulto sira nebe fo Presidente da Republica fo (kria ona polemica iha sociaedade Civil/iha publico nia let), maibe kazu sira nee balun iha hela prosesu nia laran.

Karik Seminario nee convida mos masgistrado timoroan sira atu mak sei esclarece iha duni indenpendencia judiciario ka lae. Hau rasik tinan lima servisu kaer processo crime ou civil iha Tribunal Distrital de Dili (2000-2005) iha processo importante balun hasoru membro do governo la hetan intervensaun politica husi ema ruma nebe iha poder politico, maibe karik agora mosu iha sector justica, so autor justica sira mak bele hatoo esclarecimento ruma mai ita iha forum ida nee, karik husi parte Governo/Estado bele alista no sei buka atu hadia iha futuru ba desenvolvimento sector justica atu servi diak liutan ita emar sira mak hamrok ka hamalaha ou bele hetan iha aceco diak ba justica iha ita nian rai Timor-Leste.

Obrigado wain ba ita bot sira nia atensaun.

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Situasaun independénsia judisiáriu iha Timor-Leste

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Aprezentasaun iha Semináriu Públiku kona-ba Independénsia Judisiáriu
Organiza husi: The Asia Foundation-TAF
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Hosi: Casimiro Dos Santos, Visé Direitor JSMP no Dosente Direitu Internasionál no Prátika Diplomasia iha Universidade da Paz

I. Introdusaun

Hanesan ita hotu hatene katak Independénsia judisiáriu sai xave ba demokrásia no proteje direitus umanu. Iha estadu demokrátiku ida hanesan Timor-Leste prinsipiu ida ne'e importante atu asegura katak povu bele konfia ba tratamentu justu iha sistema justisa no nasaun ne'ebé governa tuir estadu-de-direitu. Independénsia judisiáriu ne'e xave prinsipal ida ne'ebé bele proteje interese nasionál sira seluk.

II. JSMP ninia observasaun ba situasaun independénsia judisiáriu iha Timor-Leste

JSMP observa katak iha tinan hirak nia laran, tribunál halo esforsu makas hodi bele ezerse ninia funsaun tuir lei haruka, liu-liu mantein ninia independénsia hodi fornese justisa ba ema hotu. Maske nune'e, JSMP nota katak iha tinan rua ka tolu ikus ne'e, sistema judisiáriu hetan intervensaun direta no indireta hosi orgaun soberanu ka individu balun. Intervensaun sira ne'ebé mak tribunál hetan durante ne'e iha forma oi-oin, hahu hosi intervensaun ba prosesu kazu boot balun ne'ebé involve membru governu balun. Maske nune'e, JSMP rejista katak intervensaun ida ne'ebé makaas ka grave liu mak rezolusaun sira ne'ebé Parlamentu no Governu hasai iha Outobru 2014 hosi Parlamentu no Governu hodi hasai ofisiál internasionál balun. Tanba ne'e, iha oportunidade ida-ne'e hau atu esplika deit kona-ba rezolusaun refere tanba tuir JSMP, rezolusaun refere nu'udar forma hosi intervensaun ne'ebé hakanek independénsia judisiáriu no fo impaktu makaas ba funsionamentu sistema judisiáriu.

III. Rezolusaun hosi Parlamentu Nasionál no Governu

Iha 24 Outubru 2014, ita hotu hakfodak ho rezolusaun ne'ebé hasai hosi Parlamentu Nasionál ho Nú. 11/2014 kona-ba pedidu atu halo auditória ba setór judisiáriu no Rezolusaun Nú. 29/2014 hosi governu atu kria komisaun ida hodi halo auditória ba setór judisiáriu no hasai ofisiál no asesór internasionál sira iha sistema justisa. Rezolusaun ne'e aprova hosi Parlamentu Nasionál liuhosi sesaun plenaria ekstraordináriu no sekreta ka taka ba públiku. Tuir mai, iha 31 Outobru 2014, governu aprova rezolusaun ida ho Nú. 32/2014 hodi hasai ofisiál internasionál sira no asesór sira iha sistema justisa nian iha durasaun tempu oras 48 nia laran.Tuir rezolusaun sira ne'e hasai ho razaun ba interese nasionál. Maske nune'e, laiha esplikasaun klaru kona-ba interese nasionál refere.

JSMP preokupa tebes-tebes kona-ba efeitu hosi rezulusaun sira ne'e ba iha independénsia judisiáriu iha Timor-Leste no abilidade sistema justisa atu funsiona loro-loron.

IV. Konstitulidade hosi rezolusaun sira

- **Independénsia Judisiáriu**

Independénsia tribunál, juís no ofisiál justisa sira seluk ne'e mak prinsipiu importante ida ne'ebé konsagra ona iha Konstituisaun Timor-Leste. Ida-ne'e bele haree iha Konstituisaun RDTL artigu 119 no artigu 121 (2), ne'ebé halo klaru katak tribunál sira no juis sira ne'e independénte no hakruk deit ba Konstituisaun no lei. Ida-ne'e hatudu katak **tribunál no juis sira bele halo desizaun tuir lei la'os tuir interese governu ka individu ida.**

Atu asegura indepéndensia juis sira, Konstituisaun mós defini katak:

- Garante atu la bele hasai, hapara, muda, halo reforma ka hatún juis sira, wainhira lei la haruka (artigu 121(3).

- Estabelese orgaun espesífiku, Konsellu Superior ba Majistratura nu'udar "orgaun jestor no dixiplina ba juis sira hosi tribunál," ho kompeténsia atu nomea, koloka, transfere no promove juis sira (artigu 128).

- Iha artigu 111 hosi Estatuta Majistratura Judisiál hatene katak Konsellu Superior mak bele nomea juis internasionál nomós iha papel eskluzivu atu avalia no suspende juis sira.

Ida-ne'e hatudu momos katak so Konsellu Superior mak bele termina servisu juis sira, la'os Parlamentu ka Governu.

- **Prinsipiu seperasaun póder**

Tuir Artigu 69 Konstituisaun, Timor-Leste nia orgaun soberania sira mak Prezidente República, Parlamentu Nasional, Governu no Tribunál sira. Tuir prinsipiu separasaun ba podér, kada orgaun estadu/soberania ezerse papel espesifiku no komplementáriu, ho nia podér limitadu no kontrola hosi orgaun hirak ne'e. Tanba ne'e la iha orgaun ida mak ezerse kontrolu ba orgaun sira seluk.

Haree ba ida-ne'e, dala ida tan subliña katak loloos laiha fatin ba Parlamentu Nasionál ka governu atu hasai ofisiál judisiál liuhosi rezolusaun ida. Maibe Konsellu Superior mak bele termina servisu juis sira. Ho ida-ne'e, JSMP konsidera katak rezolusaun sira ne'e la tuir lei ka inkonstitusional.

JSMP hanoin katak hasai ofisiál ka juis sira la tuir lei tantu lei internasionál ka nasionál, fó ameasa ba estadu-de-direitu no direitu sidadaun ba julgamentu justu iha Timor-Leste.

V. Impaktu hosi rezolusaun sira ba sistema judisiáriu no asesu ba justisa

JSMP nota katak depoisde rezolusaun sira ne'e hasai, mosu impaktu boot ba funsionamentu ba sistema judisiáriu no afeita ba asesu ba justisa no;

- **Fo impaktu ba asesu ba justisa**

Funsionamentu tribunaĺ sira no asesu ba justisa hetan afeitadu, tanba kazu barak mak hetan adiamentu no rekere rejulgamentu tanba kazu sira antes ne'e julga hosi juis internasionál no akuza/alega hosi prokurador internasionál. Ida-ne'e hamosu difikuldade ba ema sira ne'ebé buka justisa, ameasa ba sira nia direitu ba julgamentu justu no kazu sira ne'e sei kontinua hetan adiamentu, purezemplu tuir JSMP ninian observasaun kazu barak mak tenke halo rejulgamentu no tenke iha redistribusaun kazu ba autór tribunál sira. Problema ida-ne'e mosu tanba laiha tranzisaun ka transferensia propriu ida.

- **Impede abilidade sistema justisa hodi prosesa kazu sira ho lalais no justu**

Hasai rekursu signifikativu (inklui juis, prokurador sira no ofisiál judisiál no asesór sira) hosi Timor-Leste ninia sistema justisa impede abilidade sistema justisa hodi prosesa kazu sira ho lalais no justu, tanba laiha rekursu adisionál ne'ebé sufisiente ne'ebé ho perísia no kapasidade hodi prienxe papel sira ne'e, ne'ebé sei mamuk hela.

- **Juis sira sei la bele servisu ho independénte tanba tauk**

Maske JSMP seidauk deskobre situasaun ida-ne'e maibe JSMP hanoin katak karik maneira intervensaun sira ne'e kontinua ida ne'e sei implika ba kapasidade hosi judisiáriu iha futuru atu deside kazu sira ho imparsialidade no iha posibilidade boot juis sira sei servisu la independente tanba hetan presaun psikolojiku tanba tauk sei hetan reasaun hanesan hosi orgaun soberanu iha futuru.

- **Hamihis konfiansa públiku ba sistema no afeita ba liberdade ba espresaun**

Intervensaun ida-ne'e sei hamihis konfiansa públiku ba sistema justisa ne'e rasik no lakohi uza sistema justisa formal tanba tauk la hetan julgamentu justu no bele impede ema atu espresa sira nia hanoin, liu-liu atu hato'o sira nia preokupasaun ka kritika hasoru governu kona-ba sira nia akuntabilidade no transparensia tanba tauk sei hetan reasaun hosi governu.

- **Impaktu ba Sentru Formasaun Judisiáriu**

Sentru formasaun judisiriu ne'ebé durante ne'e sai fatin hodi produs autór judisiáriu mós paradu tanba impaktu hosi rezolusaun ne'ebé mak Palamentu Nasional no Governu hasai.

- **Impaktu ba setór seluk-seluk**

Alende ne'e, impaktu ne'e sente/afeta mós iha liur sistema justisa. Impaktu sira ne'e inklui korrupsaun, efeitu negativu ba investimentu estranjeiru no efeitu negativu ba relasaun ho nasaun sira seluk. Impaktu imediata ne'ebé mak hetan ona mak Ministra Justisa Portugál suspende kedas kooperasaun entre Governu Portugál no Timor-Leste iha área justisa. Maske to'o ikus kooperasaun ne'e restora fali.

Aleinde ne'e, rezolusaun ne'e hamosu krítika internasionál hosi grupu importante majistradu sira, juis sira no advogadu sira, inklui Uniaun Majistradu Internasionál.

IV. Konkluzaun no rekomendasaun

Independénsia tribunál, juis no autor tribunál sira ne'e prinsipiu ida importante tanba bele asegura interese nasionál sira seluk hanesan proteje no promove direitus umanus no demokrásia inklui garante liberdade espresaun no asegura justisa ne'ebé justu ba ema hotu. Tanba ne'e, ema hotu, liu-liu orgaun soberanu sira tenke asegura no salva independénsia judisiáriu no husik tribunál hala'o ninian funsaun tuir lei haruka.

JSMP kumpriende katak impaktu hosi intervensaun liu hosi rezolusaun sira ne'e grave no konsidera hanesan todan boot ida maibe JSMP nafatin fó korajen hodi rekomenda atu:

1. Tribunál, Ministériu Públiku, Defensória Públiku no Komisaun Anti Korrupsaun tenke kontinua hala'o sira nia papél tuir Konstituisaun no Lei haruka;
2. Parlamentu no Governu tenke restora fali konfiansa públiku iha judisiáriu hodi deklara publikamente sira nia komitmentu ba independénsia judisiál, no hateten katak tribunál bele halo desizaun imparsiál tuir lei, livre hosi interferénsia polítiku;
3. Parlamentu no Governu tenke hakotu ameasa ka interferénsia liuhosi halo reafirmasaun ba sira nia respeitu ba juis nian direitu konstitusionál kona-ba seguransa ba sira nia pozisaun;
4. Parlamentu no Governu tenke asegura asesu ba justisa ba ema Timor-oan liuhosi alokasaun rekursu apropriadu ba setór justisa hodi bele halo lalais rekrutamentu ba juis, prokuradór no ofisiál judisiál sira seluk;
5. Sosiadade sivíl no ita hotutenkekontinua hatudu ita nia apoia independénsia tribunál no instituisaun judisiál sira seluk;
6. JSMP mós husu ba Parlamentu Nasional no Governu atu labele repete tan aktu intervensaun sira ne'e liu hosi kualker maneira no husik tribunál prosesa no deside kazu ruma tuir lei sira ne'ebé aplikavel no karik iha in-satisfasaun ruma ba prosesu balun, tenke dezafia ka kontesta liuhosi prosedimentu legál ne'ebé eziste.

SITUASAUN INDEPENDENSIA JUDISIARIU IHA TIMOR LESTE

JSMP-TIMOR LESTE

Konteudu

- Tansa independensia judisiariu importante?
- Oinsa JSMP ninian observasaun ba situasaun independensia judisiariu iha Timor-Leste?
- Rezolusaun sira iha Outobru 2014
- Impaktu rezolusaun ba Independénsia Judisiáriu
- Konkluzaun no rekomendasaun

Tansá independensia judisiariu importante?

- Independensia judisiariu mak nu'udar xave ba demokrasia no proteje direitus umanu.
- Atu iha konfiansa publiku ba sistema justisa formal
- Independensia judisiariu ne'e xave prinsipal ida ne'ebe bele proteje interese nasional seluk

JSMP ninian observasaun ba situasaun independensia judisiariu iha Timor-Leste

- Tribunal halo esforsu makas hodi mantein ninian independensia maibe dalaruma hetan intervensaun hosi orgaun soberanu ka individu balun
- Intervensaun sira ne'e hakanek independensia judisiariu
- Ema hahu kestiona kona-ba independensia sistema judisiariu

Rezolusaun sira ne’ebe hasai iha tinan 2014

- Iha loron 24 Outobru 2014, Parlamentu Nasionál hasai rezolusaun atu halo auditoria ba setór judisiáriu no hasai ofisiál internasionál sira

- Iha loron 31 Outobru 2014, governu hasai Rezolusaun tan hodi hasai ofisiál justisa internasionál sira iha durasaun tempu oras 48 nia laran.

- JSMP preokupa kona-ba efeitu hosi rezulusaun sira ne’e ba iha independénsia judisiáriu

Tansá rezolusaun sira konsideradu nu'udar intervensaun ida ba Independénsia Judisiáriu?

Independénsia Judisiáriu

- Konstituisaun RDTL Artigu 119; 121; 128
- Statutu Majistratura Judisiariu, Rejimentu Parlamentu Nu. 8/2002).

Prinsipiu seperasaun poder

- Konstituisaun RDTL Artigu 69.

Impaktu hosi intervensaun ba sistema judisiariu?

- Fo impaktu ba asesu ba justisa
- Impede abilidade sistema justisa hodi prosesa kazu sira ho lalais no justu
- Juis sira la bele servisu ho independente tanba tauk
- Hamihis konfiansa publiku ba sistema justisa formal
- impaktu ne’e bele sente/afeta mós iha liur sistema justisa

Konkluzaun no rekomendasaun

- Independensia tribunal, juis no autor tribunal sira ne'e prinsipiu ida importante tanba bele asegura interese nasional sira seluk hanesan proteje direitus umanus

- Akontensimentu pasadu konsidera hanesan lisaun ida ba orgaun soberno sira atu labele repete tan iha futuru no ida-idak tenke halao ninian papel tuir lei haruka no husu atu foti asaun hodi hadia situasaun ida-ne'e

Konkluzaun no Rekomendasaun

- Tribunál, Ministériu Públiku, Defensória Públiku no Komisaun Anti- Korrupsaun tenke kontinua hala'o sira nia papél tuir Konstituisaun no Lei Timor-Leste.
- Parlamentu no Governu tenke:
  - restora fali konfiansa públiku iha judisiáriu
  - hakotu ameasa ka interferénsia
  - asegura asesu ba justisa ba ema Timor-oan
- Sosiadade sivíl tenke hatudu sira nia apoia ba independénsia tribunál no instituisaun judisiál sira seluk.