

PAKOTE SEMINÁRIU INDEPENDÉNSIA JUDISIÁRIU

Parte 1

SEMINAR PACK
JUDICIAL INDEPENDENCE

9 Novembru 2015

SEMINÁRIU INDEPENDÉNSIA JUDISIÁRIU

Sesta, 6 Novembru 2015, 9:00 AM - 2:00 PM

Orchard Room, Timor Plaza Hotel

Programa semináriu

9:00 AM – 9:30 AM	Rejistu & kafé
9:30 AM – 9:40 AM	Bemvindu ofisiál <ul style="list-style-type: none"> Ms. Susan Marx Country Representative, Fundasaun Ázia
9:40 AM – 10:10 AM	Prinsípiu independénsia judisiáriu <ul style="list-style-type: none"> Oradór-bainaka: Dr. Juis Phillip Rapoza Prezidente Tribunál Rekursu, Massachusetts, Estados Unidos Amérika (2006–2015) Juis Internasionál & Koordenadór, Painél Espesiál ba Krime Grave iha Timor-Leste (2003–2005)
10:10 AM – 10:30 AM	Padraun internasionál & Rapporteur Espesiál kona-ba Independénsia Juis no Advogada sira <ul style="list-style-type: none"> Oradór: Ms. Anjet Lanting Asesora Direitus Umanus, Eskritóriu Koordenadór Rezidente Nasoins Unidas nian
10:30 AM – 10:50 AM	Perspetiva husi Governu Timor-Leste <ul style="list-style-type: none"> Oradór: Dr. Rui Pereira Asesór ba SE Sr. Dionísio Babo Soares
10:50 AM – 11:10 AM	Situasaun independénsia judisiáriu iha Timor-Leste <ul style="list-style-type: none"> Oradór: Mr. Casimiro dos Santos Adjuntu Diretór, Judicial System Monitoring Programme Profesór lei internasionál & prátika diplomasia, Universidade da Paz
10:10 AM – 11:30 AM	Kafé & rejista perguntas ba painél <ul style="list-style-type: none"> Bainaka sira iha oportunidade hodi hakerek perguntas ba oradór sira
11:30 AM – 12:30 PM	Perguntas ba painél & diskusaun nakloke
12:30 PM – 2:00 PM	Taka semináriu Almosu

SEMINAR

JUDICIAL INDEPENDENCE

Friday, 6 November 2015, 9:00 AM - 2:00 PM

Orchard Room, Timor Plaza Hotel

Seminar program

9:00 AM – 9:30 AM	Registration & coffee
9:30 AM – 9:40 AM	Official welcome <ul style="list-style-type: none"> Ms. Susan Marx Country Representative, The Asia Foundation
9:40 AM – 10:10 AM	Principle of judicial independence <ul style="list-style-type: none"> Keynote speaker: Judge Phillip Rapoza President of the Court of Appeal, Massachusetts, United States (2006–2015) International Judge & Coordinator, Special Panels for Serious Crimes in Timor-Leste (2003–2005)
10:10 AM – 10:30 AM	International standards & the Special Rapporteur on the Independence of judges and lawyers <ul style="list-style-type: none"> Speaker: Ms. Anjet Lanting Human Rights Adviser, Office of the UN Resident Coordinator
10:30 AM – 10:50 AM	Perspectives from the Government of Timor-Leste <ul style="list-style-type: none"> Speaker: Dr. Rui Pereira Adviser to SE Sr. Dionísio Babo Soares
10:50 AM – 11:10 AM	Situation of judicial independence in Timor-Leste <ul style="list-style-type: none"> Speaker: Mr. Casimiro dos Santos Deputy Director, Judicial System Monitoring Programme Professor of international law & diplomacy, Universidade da Paz
10:10 AM – 11:30 AM	Coffee & registration of questions for the panel <ul style="list-style-type: none"> Participants have opportunity to submit written questions to the speakers
11:30 AM – 12:30 PM	Questions for the panel & open discussion
12:30 PM – 2:00 PM	Close seminar Lunch

Prinsípiu independénsia judisiáriu

DR. JUIS PHILLIP RAPOZA

Prezidente Tribunál Rekursu, Massachusetts, Estados
Unidus Amérika (2006–2015)

Juis Internasionál & Koordenadór, Painél Espesiál ba
Krime Grave iha Timor-Leste (2003–2005)



RESPEITA NO PROTEJE JUDISIÁRIU NIA INDEPENDÉNSIA

Meritizimu. Phillip Rapoza
Juiz Prezidente (reformadu)
Tribunál Rekursu Massachusetts

Hato'o iha:

Semináriu Públiku kona-ba Independénsia Judisiál
Orchard Room, Timor Plaza Hotel
Dili, Timor Leste
6 Novembru 2015

Bainaka, kolega, oradór, no maluk sira ne'ebé ha'u respeita:

Molok hahú ha'u-nia apresentasaun, uluk liu ha'u hakarak hato'o obrigadu ba *The Asia Foundation* tanba organiza semináriu ida-ne'e kona-ba independénsia judisiál. Fundasaun halo serbisu barak hodi realiza programa ne'e ohin loron, no ha'u laran-ksolok katak sira lori ita hamutuk no fó forum ba ita hodi konsidera tópiku ida-ne'ebé importante tebes. Ha'u laiha duvida katak ita hotu-hotu sei hetan benefísiu husi sira-nia esforsu.

Ha'u mós hakarak hato'o obrigadu ba oradór sira ne'ebé hola parte iha programa ne'e ohin loron ne'ebé sei fahe sira-nia perspectiva rasik kona-ba kestaun sira ne'ebé ita sei diskute. Ikus liu, ha'u hakarak hato'o obrigadu ba Ita-Boot sira hotu ne'ebé partisipa ohin loron, tanba ho Ita-Boot sira-nia prezensa, hatudu katak tópiku ne'e iha natureza séria tebetebes.

Mai ita hahú...

Onra boot mai ha'u atu partisipa ohin loron hodi fahe observasaun no reflesaun balu ho Ita-Boot sira kona-ba importánsia atu respeita no proteje judisiáriu nia

independénsia. Maski ha'u-nia komentáriu sei ko'alia kona-ba kestaun ida ne'ebé signifikativu tebes, ha'u sei ható'o lia-menon ida ne'ebé aplikavel la'ós de'it iha ne'e iha Timor-Leste maibé mós iha mundu tomak. Ha'u ko'alia hanesan ne'e tanba independénsia judisiál nu'udar prinsípiu universál ne'ebé aplika iha nasaun hotu-hotu no iha kontinente hotu-hotu. Loos duni, prinsípiu kona-ba independénsia judisiál la'ós de'it rekoñesidu iha lei sira ne'ebé vigora iha nasaun ida-idak, maibé konsagra mós iha lei internasionál, ne'ebé aplika ba nasaun hotu-hotu.

Maibé, ha'u tenke subliña kedas katak prinsípiu universál la'ós automatikamente hetan aseitasaun universál. Iha mundu tomak no iha nivel hotu-hotu ema balu deskonfia ba judisiáriu ne'ebé independente no iha kazu balu hanoin katak ida-ne'e ameasa sira-nia interese. Nu'udar rezultadu, la suficiente atu temi de'it termu "independénsia judisiál" no la'o ba oin, ho hanoin simples ida katak bainhira uza de'it termu ne'e bele realiza konseitu ne'ebé termu ne'e reprezenta. Tuir loloos, atu respeita no proteje independénsia judisiál presiza barak liu duké temi de'it slogan ida. Ema hotu-hotu ne'ebé preokupadu tenke matan-moris ho kompromisu ativu hodi garante judisiáriu nia independénsia.

Esforsu hanesan ne'e aplika mós iha ha'u-nia nasaun rasik, Estados Unidos. Ha'u serbisu nu'udar juis ba tinan 24 no serbisu nu'udar Juiz Prezidente ka Prezidente iha tribunál rekursu iha ha'u-nia estadu. Durante período ne'e ha'u haree esforsu hodi limita judisiáriu nia independénsia institusionál no mós juis individuál nia independénsia atu foti desizaun. Maski esforsu hirak-ne'e la hetan susesu, ha'u aprende lisaun ida: laiha sistema justisa, inklui ha'u-nian rasik, iha ne'ebé judisiáriu nia independénsia bele konsidera garantidu, no ema balu sempre kestiona tribunál sira-nia autoridade ne'ebé loos.

Tanba ne'e, luta hodi hetan judisiáriu independente sai nu'udar luta internasionál, no ha'u tenke subliña katak luta ne'e kontinua. Luta ne'e la'ós de'it envolve juis sira, maibé ema hotu-hotu ne'ebé valoriza estadu-direitu, ne'ebé sai baze ba governasaun demokrátika hotu-hotu. Maski independénsia judisiál konserteza relaciona ho oinsá juis sira ezerse sira-nia autoridade, prinsípiu ne'e hamosu impaktu ba área luan, la'ós de'it ba juis sira rasik. Loos duni, iha impaktu ba ema hotu-hotu

ne'ebé hakru'uk ba lei sira ne'ebé vigora iha sosiedade, ne'ebé signifika ema hotu-hotu, sein exesaun.

Mai ita ko'alia agora kona-ba konseitu independénsia judisiál no ezamina ida-ne'e saida loloos no tanbasá importante tebes.

Uluk liu, mak importante liu hotu, independénsia judisiál nu'udar pre-rekizitu ba juis sira atu foti desizaun ne'ebé justu no imparsiál. Juis individuál tenke iha kapasidade atu hala'o sira-nia funsaun judisiál ho halo-tuir lei, livre husi influénsia ka interferénsia esterna husi setór públiku ka privadu. Dala ruma konseitu ne'e bolu independénsia atu foti desizaun, tanba kada juis tenke deside kazu sira ne'ebé lori ba nia oin, bazeia de'it ba lei ne'ebé aplikavel ba kazu partikulár, no la'ós bazeia ba nia interesse rasik, ka parte esternu nia interesse ka instrusaun. Importante tebes atu foti desizaun ho independénsia hodi garante katak administra justisa ho justu no imparcialidade no halo-tuir lei ne'ebé vigora. Ho nune'e, independénsia judisiál importante tebes hodi garante integridade husi prosesu judisiál. Mak importante mós, konfiansa públika ba sistema tribunál depende ba fiar ida ho razaun forte katak tribunál sira, no juis ne'ebé serbisu iha ne'ebá, iha neutralidade hodi tane aas lei, no sira-nia desizaun la'ós rezultadu husi influénsia ka interferénsia ruma husi li'ur.

Integridade judisiál nia karakterístika sira mak independénsia, kompeténsia, imparcialidade no justisa. Importánsia husi valór hirak-ne'e la diferente entre sistema legál ida no sistema legál seluk, no valór hirak-ne'e aplika ba kada tribunál iha kada nasaun. Loos duni, Deklarasaun Universál kona-ba Direitus Umanus deklara katak: "Ho igualdade tomak, ema hotu-hotu iha direitu ba audiénsia justa no públika husi tribunál ida ne'ebé independente no imparsiál" (Artigu 10). Atu hanesan ne'e mós, Pakto Internasionál kona-ba Direitu Sivil no Polítiku deklara katak ema hotu-hotu iha direitu ba julgamentu ne'ebé justu iha "tribunál ida ne'ebé competente, independente no imparsiál" (Artigu 14).

Valór hirak-ne'e mós konsagra iha Konstituisaun Timor-Leste. Artigu 121.2 deklara katak "kuandu kaer sira-nia funsaun juis sira ema independente no tenke tuir de'it Konstituisaun, lei no sira-nia konxiénsia." Loos duni, Konstituisaun mós fó

protesaun importante hodi proteje juis sira enkuantu dezempeña sira-nia funsaun judisiál ho independénsia. Artigu 121.4 deklara hanesan tuirmai: “Atu garante juis sira-nia independénsia juis sira labele hetan responsabilidade tanba sira-nia julgamentu ka desizaun, salvu iha situasaun ne’ebé lei prevee.” Ho nune’e, labele hasai juis husi sira-nia kargu ka kastiga sira ba erru legál ne’ebé sira halo ho konfiansa lejítima, no mós labele hatún sansaun ba sira tanba promove ka la konkorda ho interpretasaun partikulár ba lei.

Ne’ebé importante mós, Artigu 121.3 husi Konstituisaun deklara katak “Juis sira ema inamovível, bele hetan suspensaun, transferénsia, apozentasaun ka demisaun tuir de’it lei haruka.” Konserteza, klaru katak juis sira tenke komporta an ho kompeténsia no étika, maibé maski ema ruma kestiona juis ida nia hahalok, só autoridade independente mak bele julga kestaun ne’e – Konsellu Superiór Majistratura – bazeia ba padraun konduta judisiál ne’ebé estabelese tiha ona, ne’ebé tenke halo-tuir prosesu lei ne’ebé loloos. Bazikamente, Konstituisaun klarifika momoos katak tenke proteje juis sira-nia independénsia enkuantu sira hala’o sira-nia papél hodi foti desizaun.

Kona-ba ida-ne’e, ha’u presiza subliña katak, dispozisaun sira iha Konstituisaun Timor-Leste korresponde loloos ho prinsípiu sira ne’ebé hatuur ona iha instrumentu internasionál balu ne’ebé kontein iha Ita-Boot nia materiál sira, inklui Deklarasaun Beijing kona-ba Prinsípiu Judisiáriu nia Independénsia iha Rejiaun Ázia-Pasífiku, Prinsípiu Bangalore kona-ba Konduta Judisiál, no Karta Universál ba Juis.

Iha aspetu daruak husi independénsia judisiál nia importánsia. Juis individuál la’ós de’it tenke independente baihira foti desizaun, hanesan ha’u foin diskute, maibé área judisiál ne’e tomak tenke independente husi setór governu sira seluk, ne’ebé ketaketak. Judisiáriu nia independénsia institusionál bazeia ba separasaun poder, ne’ebé esensiál ba funsionamentu iha Estadu demokrátiku. Setór ezeutivu no lejizlativu kompartilla tarefa difisil hodi lida ho problema polítiku no sosiál iha sociedade ida ne’ebé sira administra. Maibé, iha parte seluk, tribunál sira iha responsabilidade atu esplika lei nia signifikadu, julga disputa no determina direitu no responsabilidade sira ba ema sira ne’ebé mai ba tribunál nia oin. Iha Estadu demokrátiku nia laran, kada setór tenke hala’o nia papél rasik.

Dala ida tan, prinsípiu hirak-ne'e rekoñesidu iha nivel internasionál no sai prinsípiu fundamentál ba demokrasia ida. Tanba ne'e judisiáriu nia independénsia institusionál rekoñesidu iha lei internasionál no mós lei ne'ebé vigora iha nasaun ida-idak. ONU nia Assembleia Jerál aprova "Prinsípiu báziku sira kona-ba Judisiáriu nia Independénsia," ne'ebé inkluidu iha Ita-Boot sira-nia materiál no deklara hanesan tuirmai: "Estadu tenke garante judisiáriu nia independénsia no konsagra 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."

Konsistente ho presupostu ne'e, Artigu 119 husi Konstituisaun deklara katak iha Timor-Leste "Tribunál sira independente no hakru'uk de'it ba Konstituisaun no lei." Loos duni, importánsia husi judisiáriu nia independénsia institusionál iha Timor-Leste subliña iha Artigu 118.1 husi Konstituisaun, ne'ebé deskreve tribunál sira nu'udar "órgaun soberania" no, tanba ne'e, sai nu'udar ai-riin ida husi ai-riin haat iha Estadu Timor-Leste. Hanesan deklara iha seksaun refere, "Tribunál sira nu'udar órgaun soberania ho kompeténsia hodi administra justisa hodi povu nia naran."

Labele kestiona judisiáriu nia papél importante tebes atu anunsia significadu husi lei no aplika lei iha kazu ne'ebé lori ba tribunál sira-nia oin. Artigu 118.3 deklara katak "Tribunál sira-nia desizaun ema hotu tenke tuir no autoridade naran ida nia desizaun tenke fó fatin ba desizaun ne'e." Artigu 2.2 reforsa tan garantia konstitusionál kona-ba independénsia judisiál, ne'ebé konfirma katak lei iha autoridade aas liu iha sosiedade no Estadu rasik "tuur iha Konstituisaun no lei nia okos." Loos duni, Artigu 2.3 hatuur katak Estadu nia asaun iha valór kuandu kumpre Konstituisaun. Bazikamente, bele sukat validade husi Estadu nia asaun bainhira haree karik Estadu kumpre ka lae ba Konstituisaun no lei.

Artigu sira husi Konstituisaun ne'ebé ha'u foin mensiona importante tanba dala ruma setór seluk husi governu bele iha interese, no mós pontudevista, kona-ba kestaun sira ne'ebé lori ba tribunál sira-nia oin. Maibé, judisiáriu nia independénsia la'ós de'it permite, maibé obriga, juis sira atu foti sira-nia desizaun bazeia de'it ba lei no faktu

ne'ebé apresenta ba sira. No sira tenke halo nune'e mézmuke rezultadu ikus bele kontráriu ho área seluk husi governu nia hakarak. Karik juis sira deside kazu bazeia ba influénsia husi ofisiál estadu sira seluk ka bazeia ba sira-nia hakarak rasik, juis sira sei la dezempeña sira-nia devér hanesan hatuur ona iha Konstituisaun Timor-Leste, ne'ebé iha Artigu 121.2 hatete katak "juis sira ema independente no tenke tuir de'it Konstituisaun, lei no sira nia konxiénsia" Aleinde ida-ne'e, karik setór governu sira seluk hakarak influénsia, interfere ka ignora de'it judisiáriu nia independénsia, hanesan temi iha "Prinsípiu Báziku" ne'ebé Assembleia Jerál ONU adota ona, asaun hanesan ne'e "viola instituisaun governamentál hotu-hotu nia devér hodi respeita no observa judisiáriu nia independénsia." Ne'ebé importante mós iha kontestu Timor-Leste, hanesan ha'u nota tiha ona, Timor-Leste nia Konstituisaun hatuur katak Estadu la'ós aas liu, maibé tuir loloos Estadu tenke hakru'uk ba Konstituisaun no lei.

Iha situasaun ne'ebé Estadu envolidu iha prosesu ida iha tribunál sira-nia oin no la kontente ho juis nia desizaun, Estadu iha opsaun hanesan de'it ho parte seluk ruma, nomeadamente bele ható'o rekursu. Bainhira estadu-direitu funsiona ho didi'ak, prátika ida-ne'e sei akontese. Maibé, ha'u tenke nota katak maski Estadu ható'o rekursu, dala ruma bele lakon, ne'ebé dala ruma akontese iha nasaun demokrátika iha mundu tomak. Loos duni, demokrasia loloos la signifika katak Estadu tenke manan iha kazu hotu-hotu - depoizde ható'o rekursu hotu-hotu ne'ebé disponivel – maibé Estadu tenke simu katak desizaun judisiál ne'e finál, no kazu ne'e taka ona. Ho respeito, ho sujere katak dispozisaun sira husi Konstituisaun ne'ebé ha'u temi ona signifika katak "Tribunál sira-nia desizaun ema hotu tenke tuir no autoridade naran ida nia desizaun tenke fó fatin ba desizaun ne'e" (Artigu 118.3) no Estadu ne'e rasik "tuur iha Konstituisaun no lei nia okos" (Artigu 2.2).

Labele tolera Estadu ida ne'ebé abandona de'it asaun judisiál no afirma an nu'udar parte ikus ne'ebé halo rezolusaun iha kestaun ida ne'ebé lori ba tribunál sira-nia oin. Bainhira Estadu foti asaun hanesan ne'e, mézmuke refere ba "interese nasional", Estadu hatudu nia hakarak hodi troka desizaun husi juis sira ne'ebé hetan autoridade iha Konstituisaun hodi rezolve kazu ho maneira ida ne'ebé "ema hotu tenke tuir no autoridade naran ida nia desizaun tenke fó fatin ba desizaun ne'e" (Artigu 118.3).

Ema hotu-hotu ne'ebé serbisu iha órgaun soberanu haat iha Timor-Leste, inklui sira iha nivel sira ne'ebé aas liu hotu, iha responsabilidade atu respeita separasaun podér entre kada setór governu. Kada setór ka órgaun Estadu iha devér hodi respeita responsabilidade seluk ne'ebé pertense ba parte sira ne'ebé serbisu iha Estadu nia setór ka órgaun seluk. Tanba ne'e, importante tebetebes katak tenke iha kompromisu iha nivel aas liu hotu hodi promove kultura respeito ba separasaun podér, ne'ebé sai nu'udar elementu integrál husi estadu-direitu.

Iha dalan oioin hodi realiza respeito ba judisiáriu iha kontestu ne'e. Hirak-ne'e inklui fornimentu rekursu no finansimentu adekua ba setór judisiál, kompensasaun adekuada ba juis no ofisiál judisiál, disponibilidade inspesaun judisiál hodi permite juis sira hetan progresu iha sira-nia karreira, asesu ba edukasaun legál ne'ebé kontínuu no meius seluk hodi hetan dezvoltamentu profisionál no rekoñesimentu tomak ba liberdade asosiasaun ba membru judisiáriu.

Pontu ikus ne'e signifikadu tebes, no iha referénsia mós iha ONU nia "Prinsípiu Báziku," ne'ebé ha'u temi tiha ona. Prinsípiu 9 iha dokumentu refere, uza lia-fuan tuirmai: "Juis sira iha liberdade atu forma no tama asosiasaun juis hodi representa sira-nia interese, promove sira-nia formasaun profisionál no hodi proteje sira-nia independénsia judisiál." Aleinde ida-ne'e, Artigu 43.1 husi Konstituisaun Timor-Leste hatuur katak "iha garantia ba ema hotu [konserteza inklui juis sira] nia liberdade ba asosiasaun, naran karak la'ós atu promove violénsia no tuir lei." Bazikamente, lei internasionál no Konstituisaun Timor-Leste apoia estabelesimentu asosiasaun independente ba juis Timoroan sira.

Molok ha'u kontinua ho parte ikus husi ha'u-nia apresentasaun, ha'u hanoin presiza nota mós katak juis sira iha kada nasaun ne'ebé ko'alia lia-Portugés iha mundu ne'e estabelese tiha ona asosiasaun refere. Konserteza sira hein sira-nia kolega judisiál iha Timor-Leste atu foti asaun hanesan no tama ba asosiasaun juis nian.

Iha aspetu datoluk husi independénsia judisiál ne'ebé ha'u mensiona, maibé agora ha'u hakarak diskute direktamente molok remata ha'u-nia komentáriu. Ha'u refere ba relasaun entre independénsia judisiál no demokrasia ne'e rasik. Hanesan ha'u nota

tiha ona, judisiáriu nia independénsia esensial ba estadu-direitu. Loos duni, labele iha estadu-direitu sein independénsia judisiál. No ita hotu-hotu mós hatene, labele iha demokrasia sein estadu-direitu. Tanba ne'e prinsípiu kona-ba independénsia judisiál sai fundamentál ba estadu-direitu no mós ba konseitu demokrasia.

Prinsípiu báziku husi estadu-direitu mak Estadu ne'e rasik sujeitu ba lei. Loos duni katak nasaun ida só bele absolutamente demokrátiku, bainhira autoridade estadu nian hakru'uk ba lei no konstituisaun. Hanesan ha'u nota ona, Konstituisaun Timor-Leste rekoñese prinsípiu báziku ida-ne'e, no afirma katak Estadu rasik “tuur iha Konstituisaun no lei nia okos” (Artigu 2.2). Loos duni, ONU nia Sekretáriu Jerál deskreve estadu-direitu nu'udar “prinsípiu governasaun iha ne'ebé ema, instituisaun no entidade hotu-hotu, tantu públiku komu privadu, inklui Estadu ne'e rasik, hakru'uk ba lei sira ne'ebé promulga ba públiku, aplika ho iguál no julga ho independénsia.” (“Relatóriu husi Sekretáriu-Jerál: Estadu-direitu no justisa tranzisionál iha sosiedade konflitu no pós-konflitu” 2004)

Tuir relatóriu ida-ne'e husi Sekretáriu Jerál, estadu-direitu mós presiza “kumprimentu ba prinsípiu kona-ba supremasia lei, igualdade iha lei nia okos, responsabilizasaun ba lei, aplika lei ho justu, separasaun poder, serteza jurídika, evita arbitrariedade no transparénsia prosesuál no jurídiku.” Ha'u hanoin ha'u bele dehan katak só bele garante valór hirak-ne'e bainhira judisiáriu iha nasaun ida bele opera livremente iha lei no Konstituisaun nia okos, sein ta'uk ka sein favór no laiha influénsia husi li'ur ka limitaun la loos. Ida-ne'e sai ai-riin sentráal ba judisiáriu ne'ebé independente, no karik laiha judisiáriu ne'ebé independente estadu-direitu no nasaun demokrátika labele tahan kleur.

Molok ha'u-nia komentáriu remata, ha'u hakarak sita eis Prezidente Estados Unidos, Woodrow Wilson, ne'ebé sai nu'udar profesór lei konstitusionál molok nia eleitu ba pozisaun ne'ebé aas liu hotu iha ami-nia nasaun. Nia hatete, Governu konstitusionál nia valór hanesan de'it ho nia tribunál sira; la di'ak liu, la aat liu. Governu nia lei sira só constitui [deklarasaun kona-ba nia prinsípiu sira]. Governu kumpre nia promesa, ka la kumpre, liuhosi nia tribunál sira.” (Governu Konstitusionál iha Estados Unidos (1911) p. 16)

Kolega sira, maski iha diferença formál ruma entre sistema justisa iha Timor-Leste no iha ha'u-nia nasaun rasik, lia-fuan hirak-ne'e aplika ba ita hotu-hotu. Ita-nia direitus umanus ne'ebé fundamentál liu hotu – karik lejislatura mak kodifika , konsagra iha konstituisaun, ka bazeia ba lei internasionál – representa promessa de'it, to'o momentu ita-nia tribunál sira garante atu kumpre promessa hirak-ne'e. No dala ruma promessa ida ne'ebé importante liu hotu mak atu realiza justisa.

Justisa la'ós de'it direitu umanu báziku. Justisa mós nesesidade umana ne'ebé báziku. Ita, ida-idak, presiza hahán no bee, uma no seguransa. Maibé ita mós presiza justisa hodi moris ho dignidade no valór. Ita-nia sistema judisiál iha responsabilidade atu garante katak ita-nia direitu fundamentál, promessa bázika husi sociedade civilizada, bele sai realidade iha mane no feto sira-nia moris ne'ebé mai ba tribunál sira-nia oin. Ho nune'e, literalmente no figurativamente, ita-nia tribunál sira iha papél atu aplika lei iha sirkunstánsia réal. Ba Ita-Boot sira ne'ebé serbisu nu'udar juis, ida-idak iha oportunidade hodi realiza ida-ne'e loroloron iha kada kazu ne'ebé lori ba Ita-Boot nia oin.

Juis sira iha responsabilidade atu foti desizaun sira ne'ebé importante liu hotu ba ema sira-nia moris, ne'ebé mai ba tribunál nia oin, inklui desizaun ne'ebé afeta sira-nia moris, liberdade, direitu, devér no propriedade. Independénsia judisiál garante katak sei foti desizaun hanesan ne'e ho justu no imparcialidade. Importante mós, judisiáriu nia independénsia institusionál ajuda hodi mantein separasaun podér no ekilíbriu ne'ebé tenke eziste entre órgaun soberania sira. Kona-ba ida-ne'e, no relasiona ho aspetu sira seluk, independénsia judisiál proteje estadu-direitu no mós nasaun demokrátika.

Hodi taka ha'u-nia komentáriu, ha'u bele dehan katak independénsia judisiál la'ós de'it prinsípiu jurídiku de'it. Independénsia judisiál nu'udar valór sosiál ne'ebé sai ai-riin sentrá ba demokrasia no ida-ne'e iha importánsia fundamentál. Nu'udar ema indíviduu, ita-nia valór sira define ita, no sociedade sira mós hanesan. Karik ita haka'as an ka la haka'as an hodi mantein valór husi independénsia judisiál sei ikus liu determina ita-nia sociedade.

Ho nune'e, karik judisiáriu iha nasaun ida bele ka labele hala'o nia devér sira sein influénsia esterna la'ós de'it afeta ita-nia juis enkuantu sira dezempeña sira-nia papél judisiál. Ida-ne'e afeta kada membru sosiedade no kada membru sosiedade iha responsabilidade hodi kumpre nia responsabilidade atu respeita no proteje judisiáriu nia independénsia.

Obrigadu ba Ita-Boot sira-nia atensaun.

**RESPECTING AND PROTECTING
THE INDEPENDENCE OF THE JUDICIARY**

Hon. Phillip Rapoza
Chief Justice (ret.)
Massachusetts Appeals Court

Delivered at:
Public Seminar on Judicial Independence
Orchard Room, Timor Plaza Hotel
Dili, Timor-Leste
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Honored guests, esteemed colleagues, fellow speakers and friends:

Before starting my presentation I would like to take just a moment to thank The Asia Foundation for sponsoring this seminar on judicial independence. Today's program reflects a significant amount of work on the part of the Foundation and I am so very pleased that they have brought us together and provided us a forum for considering this very important subject. I have no doubt that we will all benefit from their efforts.

I also want to thank the several speakers on today's program who will be sharing with us their own perspectives with respect to the matters we will be discussing. Finally, I want to thank all of you for being here today and, by your presence, for underscoring the very serious nature of today's topic.

So let us begin...

It is a great honor to be here today to share with you some observations and reflections on the importance of respecting and protecting the independence of the judiciary. My remarks will deal with a matter of considerable significance, although the message I bring is applicable not only here in Timor-Leste but also around the world. I say this because judicial independence is a universal principle that applies in every country and on every continent. Indeed, the principle of judicial independence is not only recognized in the laws of individual nations, but is also enshrined in international law, which applies to all nations.

I should add at the very beginning of my remarks, however, that universal principles do not automatically achieve universal acceptance. Around the world and at all levels there are those who view an independent judiciary with suspicion and in some cases as a threat to their own interests. As a result it is not enough simply to invoke the phrase “judicial independence” and move on, as if the mere use of the term can bring the concept it represents into existence. In fact, respecting and protecting judicial independence requires more than just reciting a slogan. It requires that all those concerned remain vigilant and actively committed to ensuring the independence of the judiciary.

Such efforts apply even to my own country, the United States. I have been a judge for 24 years and have served as Chief Justice or President of my state’s court of appeals. During that time I have witnessed efforts to limit both the institutional independence of the judiciary as well as the decisional independence of individual judges. Although those efforts have been unsuccessful, the lesson is this: there is no system of justice, including my own, in which the independence of the judiciary can be taken for granted or where the rightful authority of a country’s courts is immune to challenge.

The struggle for an independent judiciary is thus an international effort and, I should add, a continuing one. It is one in which not only judges are involved, but also all those who value the rule of law, upon which all democratic governance is based. Although judicial independence obviously relates to how judges exercise their authority, that principle has an impact that extends far beyond judges themselves. Indeed, it extends to all those who are subject to the laws of society, which means everyone, without exception.

Let us now turn to the concept of judicial independence and examine what it is and why it is so important.

First and foremost, judicial independence is a prerequisite to fair and impartial decision making by judges. Individual judges must be able to perform their judicial functions in accordance with the law, free of any outside influence or interference from either the public or private sector. Sometimes referred to as decisional independence, every judge must decide the cases before him or her based solely on the law applied to the facts of a particular case, and not on the basis of his or her own interests or the interests or instructions of outside parties. Independent decision making is thus crucial to ensure that justice is done fairly and impartially and in accordance with the law. In this way, judicial independence is critical to ensuring the integrity of the judicial process. Just as important, public confidence in the court system depends on a well-founded belief that the courts and the judges who serve in them are neutral servants of the law and that their decisions are not the result of any outside influence or interference.

The hallmarks of judicial integrity are independence, competence, impartiality and fairness. The importance of these values does not vary from one legal system to another and they apply to every court in every country. Indeed, the Universal Declaration of Human Rights asserts: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal” (Article 10). Similarly, the International Covenant on Civil and Political Rights states that every person is entitled to a fair trial before a “competent, independent and impartial tribunal” (Article 14).

These same values are enshrined in the Constitution of Timor-Leste. Article 121.2 states that “[i]n performing their functions, judges are independent and owe obedience only to the Constitution, the law and to their own conscience.” Indeed, the Constitution goes on to provide important safeguards to protect judges in the independent performance of their judicial functions. Article 121.4 states as follows: “To guarantee their independence, judges may not be held liable for their judgments and decisions, except in circumstances provided for by law.” Judges thus cannot be removed from office or punished for legal errors made in good faith, nor can they be sanctioned either for espousing or disagreeing with a particular interpretation of the law.

Just as importantly, the Constitution provides in Article 121.3, that “[j]udges [shall] have security of tenure and, unless otherwise provided for by law, may not be transferred, suspended, retired or removed from office.” Of course, it goes without saying that judges must conduct themselves both competently and ethically, but even when a judge’s ethical conduct is called into question, the matter must be determined by an independent authority - the Conselho Superior da Magistratura - according to established standards of judicial conduct and with full

due process of law. In sum, the Constitution could not make it any clearer that the independence of judges in their role as decision-makers must be safeguarded.

In this respect, I should add, the provisions of the Timorese Constitution are fully consistent with the principles articulated in a number of international instruments contained in your materials, including the Beijing Statement of Principles of the Independence of the Judiciary in the Asia Pacific Region, the Bangalore Principles of Judicial Conduct, and The Universal Charter of the Judge.

There is a second aspect to the importance of judicial independence. Not only must individual judges be independent in their decision making, as I have just discussed, but the judicial branch as a whole must itself be independent of the other, separate branches of government. The institutional independence of the judiciary is grounded in the separation of powers, which is essential to the functioning of a democratic state. The executive and legislative branches share the difficult task of dealing with political and social problems within the societies that they govern. The courts, on the other hand, are called upon to announce the meaning of the law, adjudicate disputes and determine the rights and responsibilities of those who come before them. Within a democratic state, each branch thus has its own role to play.

Once again, these are internationally recognized principles that are fundamental to the operation of a democracy. The institutional independence of the judiciary is thus recognized under international law as well as the law of individual nations. The General Assembly of the UN has endorsed the “Basic Principles on the Independence of the Judiciary,” which is contained in your materials and which states as follows: “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.”

Consistent with that proposition, Article 119 of the Constitution of Timor-Leste states that “[c]ourts are independent and subject only to the Constitution and the law.” Indeed, the importance of the institutional independence of the judiciary in Timor-Leste is underscored by Article 118.1 of the Constitution, which describes the courts as “organs of sovereignty” and, as such, one of the four pillars of the Timorese state. As stated in that section, “Courts are organs of sovereignty with competencies to administer justice in the name of the people.”

The pre-eminent role of the judiciary in announcing the meaning of the law and applying it in cases that come before the courts is beyond question. Article 118.3 states that “Court decisions shall be binding and shall prevail over the decisions of any other authority.” The constitutional guarantee of judicial independence is further reinforced by Article 2.2, which affirms that the law is the highest authority in society and that the state itself “shall be subject to the Constitution and to the law.” Indeed, Article 2.3 goes on to say that the validity of the actions of the state depend upon their compliance with the Constitution. In sum, the validity of any state action must be measured against whether or not it complies with the Constitution and the laws.

The articles of the Constitution that I have just cited are important ones because there will be occasions when other branches of government may have an interest, if not a point of view, regarding matters that come before the courts. The independence of the judiciary, however, not only allows but requires that even in

such cases judges must make their decisions based solely on the law and the facts before them. And they must do so even if the eventual result may run contrary to the wishes of another branch of government. If judges were to decide cases under the influence of other state officials or based on their wishes, they would not be performing their duty as required by the Timorese Constitution, which states in Article 121.2 that “judges are independent and owe obedience only to the Constitution, the law and to their own conscience.” Moreover, to the extent that other branches of government might seek to influence, interfere with or simply ignore the independence of the judiciary, in the words of the “Basic Principles” adopted by the UN General Assembly, doing so “violates the duty of all governmental institutions to respect and observe the independence of the judiciary.” Just as important in the Timorese context, as I have already noted, this country’s Constitution provides that the state is not above, but is in fact subject to both the Constitution and the law.

In situations where the state is a party to litigation before the courts and is dissatisfied with a judge’s decision its recourse is the same as that of any other party, which is to appeal. This is the practice wherever the rule of law prevails. I should note, however, that even when it appeals, the state may not prevail in the end, which is not uncommon in democratic countries around the world. Indeed the true test of a democracy is not whether the state prevails in every case but whether – after all available appeals have been pursued - the state accepts the finality of the judicial decision bringing closure to the matter at hand. I would respectfully suggest that this is the meaning of the constitutional provisions I have already cited that “Court decisions shall be binding and shall prevail over the decisions of any other authority” (Article 118.3) and that the state itself “shall be subject to the Constitution and the law” (Article 2.2).

What is not allowable is for the state to dispense with judicial action and simply to assert itself as the final arbiter in a matter that is properly before the courts. When the state takes such an action, even when it does so in the name of the so-called “national interest,” it substitutes its wishes for the decisions of judges charged by the Constitution with resolving cases in a manner that is “binding and shall prevail over the decisions of any other authority” (Article 118.3).

It is the responsibility of all those who serve in the four organs of sovereignty of Timor-Leste, including those at the highest levels, to respect the separation of powers between the different branches of government. Each branch or organ of the state has a duty to respect the corresponding responsibilities of those who serve in another branch or organ of the state. It is thus imperative that at the highest level a commitment be made to promote a culture of respect for the separation of powers, which is a vital element of the rule of law.

There are many ways in which respect for the judiciary can be made manifest in this context. These include the provision of adequate resources and funding for the judicial branch, adequate compensation for judges and judicial officers, the availability of judicial inspections to permit judges to progress in their careers, access to continuing legal education and other means of professional development and full recognition of the freedom of association on the part of members of the judiciary.

This latter point is of particular significance and is referenced in the UN “Basic Principles,” which I have already cited. Principle 9 in that document states, and I quote, “Judges shall be free to form and join associations of judges . . . to

represent their interests, to promote their professional training and to protect their judicial independence.” Moreover, Article 43.1 of the Constitution of Timor-Leste provides that “[e]veryone [which of course, includes judges] is guaranteed freedom of association provided that the association is not intended to promote violence and is in accordance with the law.” In sum, the formation of an independent association of Timorese judges is supported by both international law and the Timorese Constitution.

Before moving on to the last part of my presentation, I believe it is also worth noting that the judges of every Portuguese-speaking nation in the world have established such associations. They are no doubt looking forward to the day when their judicial colleagues in Timor-Leste will take that same step and join their ranks.

There is a third aspect to judicial independence to which I have already alluded, but which I want to reference more directly before concluding these remarks. And that is the relationship between judicial independence and democracy itself. As I have already noted, the independence of the judiciary is essential to the rule of law. Indeed, there can be no rule of law without judicial independence. And as all of us also know, there can be no democracy without the rule of law. The principle of judicial independence is thus fundamental both to the rule of law and to the concept of democracy.

One of the basic principles of the rule of law is that the state itself is subject to the law. Indeed for a nation to be fully democratic, its state authorities must operate within the laws and the country’s constitution. As I have already noted, the Constitution of Timor-Leste recognizes this basic principle, and affirms that the

state itself “shall be subject to the Constitution and to the law” (Article 2.2). Indeed, the UN Secretary General has described the rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated.” (“Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies” 2004)

According to that same report of the Secretary General, the rule of law also requires “adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” I believe that it is fair to say that these values can only be ensured when a nation’s judiciary is able to operate freely under the law and the Constitution, without fear or favor and without outside influence or undue constraints. That is the essence of an independent judiciary, without which both the rule of law and a democratic state cannot long survive.

As I reach the end of my remarks, I would like to quote a former President of the United States, Woodrow Wilson, who was a professor of constitutional law before he was elected to our nation’s highest office. He said, “[A] constitutional government is as good as its courts; no better, no worse. Its laws are only [a statement of its principles]. It keeps its promises, or does not keep them, in its courts.” (Constitutional Government in the United States (1911) p. 16)

My friends, whatever may be the formal differences between the Timorese system of justice and that of my own country, those words apply to us all. Our

most fundamental human rights – whether they are codified by the legislature, enshrined in a constitution, or grounded in international law - are mere promises until our courts make sure that those promises are kept. And perhaps the most important promise of all is to see that justice is done.

Justice is not only a basic human right. Justice is also a basic human need. We, each of us, need food and water, shelter and safety. But we also need justice to live lives worth living. Our judicial system is charged with ensuring that our fundamental rights, the basic promises of a civilized society, become a reality in the lives of the men and women who come before our courts. Thus, both literally and figuratively, the role of our courts is to bring the law to life. For those of us who are judges, each of us has the opportunity to make that happen every day in every case that comes before us.

Judges are charged with the most significant decisions that can be made in the lives of those who come before the court, including decisions involving their families, freedoms, rights, duties and property. Judicial independence guarantees that such decisions will be made fairly and impartially. Just as importantly, the institutional independence of the judiciary helps to maintain the separation of powers and the balance that should exist between the organs of sovereignty. In this respect and others, judicial independence serves to safeguard both the rule of law and the democratic state.

In conclusion, let me say that judicial independence is more than just a legal principle. It is a social value that lies at the heart of the democratic experience and thus is of fundamental importance. As individuals, we are defined by our values

and societies are no different. Whether or not we strive to maintain the value of judicial independence will determine in the end what kind of society we will be.

Whether or not a country's judiciary is allowed to perform its duties free from outside influence thus does not affect just our judges in the daily performance of their judicial role. It affects every member of society and it is the responsibility of every member of society to rise to the challenge of respecting and protecting the independence of the judiciary.

Thank you all for your kind attention.

Exertu husi:

SISTEMA JUSTISA TIMOR-LESTE: AVALIASAUN ABRANJENTE NO INDEPENDENTE KONA-BA NESESIDADE SIRA (INDEPENDENT COMPREHENSIVE NEEDS ASSESSMENT - ICNA)

(Dili, Timor-Leste – 13 Outubru 2009)

8. Proteje Independénsia Judisiál no Respeita Separasaun Podér

Independénsia judisiál nu'udar pre-rekizitu ba estadu-direitu. Loos duni, integridade judisiál nia karakterístika prinsipál sira mak independénsia, kompeténsia, imparcialidade no justisa.¹ Importánsia husi valór hirak-ne'e la diferente entre sistema legál ida no sistema legál seluk, no valór hirak-ne'e aplika ba kada tribunál iha kada nasaun. Loos duni, Deklarasaun Universál kona-ba Direitus Umanus deklara katak: “Ho igualdade tomak, ema hotu-hotu iha direitu ba audiénsia justa no públika husi tribunál ida ne'ebé independente no imparsiál” (Artigu 10). Atu hanesan ne'e mós, Paktu Internasionál kona-ba Direitu Sivil no Polítiku deklara katak ema hotu-hotu iha direitu ba julgamentu ne'ebé justu iha “tribunál ida ne'ebé competente, independente no imparsiál” (Artigu 14).

Valór hirak-ne'e mós konsagra iha Konstituisaun Timor-Leste. Artigu 121.2 deklara katak “kuandu kaer sira nia funsaun juis sira ema independente no tenke tuir de'it Konstituisaun, lei no sira-nia konxiénsia.” Juis individuál la'ós de'it tenke independente bainhira foti desizaun, maibé setór judisiál ne'e rasik tenke independente husi setór governu sira seluk. Tanba ne'e, Artigu 119 husi Konstituisaun deklara katak iha Timor-Leste “Tribunál sira independente no hakru'uk de'it ba Konstituisaun no lei.” Hodi subliña independénsia judisiál nia importánsia, Konstituisaun refleto faktu katak tribunál sira nu'udar ai-riin ida entre Estadu Timor-Leste nia ai-riin haat, no tanba ne'e, sai nu'udar “órgaun soberanu” (Artigu 118.1).

Ho nune'e tenke kumpre independénsia judisiál ho maneira rua. La'ós de'it juis individual sira tenke hala'o sira-nia knaar judisiál ho maneira independente husi influénsia ka interferénsia husi li'ur, maibé podér judisiál tomak mós tenke funsiona ho maneira independente husi podér sira seluk Estadu nian. Presupostu ida-ne'e fundamentál no estabelesidu didi'ak iha direitu internasionál. “Estadu tenke garante judisiáriu nia independénsia no konsagra 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 Garantia ba independénsia judisiál ne'ebé hatuur ona iha Konstituisaun Timor-Leste reforsa tan iha Artigu 2.3, ne'ebé deklara katak lei nu'udar autoridade aas liu iha sosiedade nia laran no Estadu ne'e rasik “tuur iha Konstituisaun no lei nia okos” (Artigu 2.2).

Ho nune'e, tantu lei fundamentál iha Timor-Leste komu padraun internasionál respeita juis sira-nia independénsia atu foti desizaun, no setór judisiál nia independénsia institusionál.

¹ See, e.g. “The Bangalore Principles of Judicial Conduct” (2002).

² “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 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

Maibé, independénsia judisiál konserteza iha objetivu espesífiku. Independénsia judisiál nu'udar meius hodi antinje objetivu ne'e, ne'ebé subliña tanbasá tenke proteje forma independénsia rua ne'e hotu. Juis sira iha responsabilidade atu foti desizaun sira ne'ebé importante liu hotu ba ema sira ne'ebé mai ba tribunál nia oin, inklui desizaun ne'ebé afeta sira-nia moris, liberdade, direitu, devér no propriedade. Independénsia judisiál garante katak desizaun hanesan ne'e bazeia de'it ba lei ne'ebé aplika ba faktu sira iha kazu partikulár ida-idak, no la bazeia ba influénsia ka interferénsia husi li'ur. Iha kontestu ne'e, independénsia judisiál importante tebes hodi garante katak iha justisa ne'ebé imparsiál no justu.

Judisiáriu nia independénsia institusionál bazeia ba separasaun podér, ne'ebé esensiál ba funksionamentu iha Estadu demokrátiku. Setór ezekutivu no lejizlativu kompartilla tarefa difisil hodi lida ho problema polítiku no sosiál iha sosiedade ida ne'ebé sira administra. Maibé, iha parte seluk, tribunál sira iha responsabilidade atu esplika lei nia signifikadu, julga disputa no determina direitu no responsabilidade sira ba ema sira ne'ebé mai ba tribunál nia oin. Tanba ne'e juis sira dala barak tenke foti desizaun kona-ba kestaun ruma ne'ebé setór governu sira seluk iha interesse, no bele mós iha opiniaun.

Independénsia judisiál permite juis sira foti desizaun iha kazu hanesan ne'e bazeia de'it ba lei no faktu ne'ebé apresenta ba sira, mézmuke rezultadu bele kontráriu ho saida mak setór governu sira seluk hakarak. Karik juis sira decide kazu bazeia ba influénsia husi ofisiál estadu sira seluk ka bazeia ba sira-nia hakarak, juis sira sei la dezempeña sira-nia devér hanesan hatuur ona iha Konstituisaun Timor-Leste, ne'ebé hatete katak "juis sira ema independente no tenke tuir de'it Konstituisaun, lei no sira nia konxiénsia" (Artigu 121.2). Aleinde ida-ne'e, karik setór governu sira seluk hakarak influénsia, interfere ka ignora de'it judisiáriu nia independénsia, asaun hanesan ne'e viola "Instituisaun governamentál hotu-hotu nia devér hodi respeita no observa judisiáriu nia independénsia."³

Agora daudaun iha problema iha Timor-Leste relasiona ho independénsia judisiál. Ho exesaun uitoan de'it, maski juis sira iha Timor-Leste hatudu sira-nia independénsia atu foti desizaun iha kazu ne'ebé lori ba sira-nia oin, judisiáriu nia independénsia institusionál seidak hetan rekoñesimentu tomak husi atór estadu sira seluk.

Ema hotu-hotu ne'ebé serbisu iha órgaun soberanu haat, inklui sira iha nivel sira ne'ebé aas liu hotu, iha responsabilidade atu respeita separasaun podér entre kada setór governu. Importante tebes katak iha kompromisu hodi promove kultura respeito ba estadu-direitu no atu evita asaun sira ne'ebé bele ameasa estadu-direitu.

Rekomendasaun sira

- Juis sira tenke iha mandatu ne'ebé seguru no juis sira labele sujeitu ba transferénsia, suspensaun, reforma ka demisaun husi nia kargu, exetu asaun ne'e hatuur ona iha lei, baihira iha mós razaun forte, no bazeia ba prosesu ne'ebé loloos. (Haree Artigu 121.3 husi Konstituisaun Timor-Leste)
- Juis sira labele hetan responsabilidade tanba sira-nia julgamentu ka desizaun, salvu iha situasaun ne'ebé lei prevee. Baihira autoridade ruma foti asaun kona-ba asuntu refere, tenke iha razaun forte no sujeitu ba prosesu lei ne'ebé loloos. (Haree Article 121.4 husi Konstituisaun Timor-Leste)
- Juis sira-nia dezvoltamentu karreira tenke klaru no nakloke ba ema hotu-hotu bazeia ba méritu no kualifikasaun. Prosesu rekrutamentu, formasaun, promosaun no dixeplina tenke transparente no uniforme ba kandidatu judisiál no juis hotu-hotu.

³ Ibid

- Juis sira tenke simu edukasaun kontínua iha Sentru Formasaun Jurídika kona-ba independénsia judisiál no separasaun poder no mós dispozisaun konstitusionál no legál sira ne'ebé relevante, no mós padraun internasionál ne'ebé relasionadu.
- Juis sira tenke simu beibeik formasaun kona-ba étika iha Sentru Formasaun Jurídika hodi orienta tan sira kona-ba oinsá tenke komporta an iha sira-nia moris pesoál no moris profisionál.
- Tenke estabeselese Asosiasaun Independente ba Juis Timoroan nu'udar organizasaun ida ne'ebé voluntáriu no profisionál ba juis sira, hodi representa sira-nia interese. Organizasaun ne'e sei funsiona hodi hatu'o lian husi nia membru sira no sei apoia sira iha sira-nia moris profisionál. Organizasaun ne'e sei koordena mós ho organizasaun sira ne'ebé atu hanesan iha nasaun sira seluk iha mundu tomak, hanesan Asosiasaun Internasionál ba Juis, Asosiasaun Juis Portugés no Asosiasaun Internasionál ba Juis Feto.
- Enkuantu juis Timoroan barak liu mak dezempeña kargu judisiál hotu-hotu iha sistema tribunál iha rai laran, sira tenke hetan beibeik apoiu husi asesór judisiál internasionál, mézmuke juis sira la hala'o funsaun operasionál loroloron. Tenke hili asesór sira bazeia espesifikamente ba sira-nia kompeténsia atu fó asesoria no atu hala'o papél ida ne'ebé fó apoiu ba juis sira seluk. Ho nune'e, sira tenke liuhosi prosesu rekrutamentu ne'ebé rigorozu hodi reflète funsaun hirak ne'ebé espesífiku. Aleinde ida-ne'e, tenke elabora matadalan relasiona ho sira-nia servisu asesoria no sira tenke hetan avaliasaun periódika, ne'ebé sei inklui mós juis Timoroan sira-nia kontribuisaun.

Excerpt from:

**THE JUSTICE SYSTEM OF TIMOR-LESTE: AN INDEPENDENT COMPREHENSIVE
NEEDS ASSESSMENT (ICNA)**

(Dili, Timor-Leste – 13 October 2009)

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XIII. Protecting Judicial Independence and Respecting the Separation of Powers

Judicial independence is a prerequisite to the rule of law. Indeed, the hallmarks of judicial integrity are independence, competence, impartiality and fairness.²⁷ The importance of these values does not vary from one legal system to another and they apply to every court in every country. Indeed, the Universal Declaration of Human Rights asserts: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal” (Article 10). Similarly, the International Covenant on Civil and Political Rights states that every person is entitled to a fair trial before a “competent, independent and impartial tribunal” (Article 14).

These same values are enshrined in the Constitution of Timor-Leste. Article 121.2 states that “[i]n performing their functions, judges are independent and owe obedience only to the Constitution, the law and to their own conscience.” Not only must individual judges be independent in their decision making, but the judicial branch itself must be independent of the other branches of government. Accordingly, Article 119 of the Constitution states that in Timor-Leste “[c]ourts are independent and subject only to the Constitution and the law.” In underscoring the importance of judicial independence, the Constitution reflects the fact that the courts are one of the four pillars of the Timorese state, and as such, are “organs of sovereignty” (Article 118.1).

Judicial independence must thus be observed in two ways. Not only must individual judges perform their judicial functions independent of outside influence or interference, but also the judicial branch as a whole must operate independently of the other, separate branches of government. This proposition is fundamental and is well established in international law. “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.”²⁸ The guarantee of judicial independence found in the Constitution of Timor-Leste is further reinforced by Article 2.3, which affirms that the law is the highest authority in society and that the State itself “shall be subject to the Constitution and to the law” (Article 2.2).

²⁷ See, e.g. “The Bangalore Principles of Judicial Conduct” (2002).

²⁸ “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 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

Both the fundamental law of Timor-Leste and international standards thus respect the decisional independence of judges and the institutional independence of the judicial branch.

Judicial independence is not, however, an end unto itself. Rather, it is a means to an end, which underscores why both forms of independence must be protected. Judges are charged with the most important decisions that can be made in the lives of those who come before the court, including decisions involving their lives, freedoms, rights, duties and property. Judicial independence guarantees that such decisions will be made solely on the basis of the law applied to the facts of a particular case, and not on the basis of outside influence or interference. In this respect, judicial independence is crucial to ensuring that justice is done both impartially and fairly.

The institutional independence of the judiciary is grounded in the separation of powers, which is essential to the functioning of a democratic state. The executive and legislative branches share the difficult task of dealing with political and social problems within the societies that they govern. The courts, on the other hand, are called upon to announce the meaning of the law, adjudicate disputes and determine the rights and responsibilities of those who come before them. Judges are thus often called upon to make decisions in which the other branches of government may have an interest, if not a point of view.

Judicial independence allows judges to make decisions in such cases based solely on the law and the facts before them, even if the eventual result may run contrary to the wishes of the other branches of government. If judges were to decide cases under the influence of other state officials or based on their wishes, they would not be performing their duty as required by the Timorese Constitution, which states that “judges are independent and owe obedience only to the Constitution, the law and to their own conscience” (Article 121.2). Moreover, to the extent that other branches of government might seek to influence, interfere with or simply ignore the independence of the judiciary, doing so violates the “duty of all governmental institutions to respect and observe the independence of the judiciary.”²⁹

The current situation in Timor-Leste as it relates to judicial independence is problematic. Although, with few exceptions, the country’s judges have consistently asserted their decisional independence in the cases that have come before them, the institutional independence of the judiciary is still not fully recognized by other state actors....

It is the responsibility of all those who serve in the four organs of sovereignty, including those at the highest levels, to respect the separation of powers between the different branches of government. It is imperative that a commitment be made to promote a culture of respect for the rule of law and to avoid those actions that would jeopardize it.

29 Ibid

Recommendations

- The tenure of judges must be secure and no judge should be subject to transfer, suspension, retirement or removal from office unless such action is provided for by law, supported by good cause and is subject to due process. (See Article 121.3 of the CRDTL)
- Judges should not be held liable for their judgments and decisions except as provided for by law. Any action taken in that regard by any authority must be supported by good cause and subject to the due process of law. (See Article 121.4 of the CRDTL)
- The career path of a judge should be clear and accessible to all based on merit and qualifications. The process of recruitment, training, promotion and discipline should be transparent and uniform for all judicial candidates and judges.
- Judges should receive continuing education at the Legal Training Centre in judicial independence and the separation of powers as well as all relevant constitutional and legal provisions and also pertinent international standards.
- Judges should continue to receive training in ethics at the Legal Training Centre to further guide them in the conduct of both their personal and professional lives.
- An independent Association of Timorese Judges should be established as a voluntary professional organization of judges to represent their interests. The organization will serve as a voice for its membership and will support them in their professional lives. The organization will also coordinate with similar organizations in other countries and around the world, such as the International Association of Judges, the Association of Portuguese Judges and the International Association of Women Judges.
- As Timorese judges increasingly fill all judicial positions in the country's court system, they should continue to have support from international judicial advisors, even when such judges are not performing line functions. The advisors should be selected based specifically on their ability to perform in an advisory capacity and to play a supportive role with fellow judges. They must thus be subject to a rigorous recruitment to reflect those particular functions. Moreover, guidelines should be elaborated with respect to their advisory services and they should be subject to periodic evaluations in which Timorese judges would also provide input.

Preámbulu

Juis sira husi Tribunál Penál Internasionál;

Nota kompromisu solene ne'ebé hatuur iha Artigu 45, Estatutu Roma husi Tribunál Penál Internasionál (“Estatutu”) no regra 5 (1) (a) husi Regra Prosedimentu no Evidénsia (“Regra sira”);

Hanoín-hikas prinsípiu sira kona-ba independénsia judisiál, imparcialidade no konduta loloos ne'ebé hatuur iha Estatutu no Regra sira;

Rekoñese nesiedade atu fó orientasaun kona-ba aplikasaun jerál hodi kontribui ba independénsia judisiál no imparcialidade no ho objetivu atu garante legitimidade no efetividade husi prosesu judisiál internasionál;

Ho konsiderasaun ba Nasoins Unidas nia Prinsípiu Báziku kona-ba Judisiáriu nia Independénsia (1985) no regra no padraun internasionál no nasional sira seluk relasiona ho konduta judisiál;

Ho konsiderasaun ba karakter internasionál husi Tribunál no dezafiu espesiál ne'ebé enfrenta juis sira husi tribunál ne'e enkuantu dezempeña sira-nia responsabilidade;

Konkorda hanesan tuirmai:

Artigu 1

Adota Kódigu

Juis sira adota Kódigu ida-ne'e bazeia ba Regulamentu 126 no tenke interpreta Kódigu ne'e bazeia ba Tribunál nia Estatutu, Regra no Regulamentu sira.

Artigu 2 Termu sira

Iha Kódigu Étika Judisiál ida-ne'e, termu “Tribunál”, “Estatutu”, “Regra sira” no “Regulamentu sira” iha signifikadu ne'ebé hatuur iha Tribunál nia Regulamentu sira.

Artigu 3

Independénsia Judisiál

1. Juis sira tenke tane aas independénsia husi sira-nia kargu no Tribunál nia autoridade no tenke konduta an ho apropriadu bainhira hala'o sira-nia funsaun judisiál.

2. Juis sira labele halo atividade ruma ne'ebé provavelmente sei interfere ho sira-nia funsaun judisiál ka afeta konfiansa ba sira-nia independénsia.

Artigu 4 Imparsialidade

1. Juis sira tenke imparsiál no garante aparénsia imparsialidade enkuantu dezempeña sira-nia funsaun judisiál.
2. Juis sira tenke evita konfliktu interese, ka tenke evita situasaun bainhira normalmente situasaun hanesan ne'e bele hamosu konfliktu interese.

Artigu 5 Integridade

1. Juis sira tenke konduta an ho probidade no integridade ne'ebé korresponde ho sira-nia kargu, ho nune'e hasa'e konfiansa públika ba judisiáriu.
2. Juis sira labele diretamente ka indiretamente simu presente, vantajen, priviléjiu ka rekompensa ruma, bainhira iha situasaun normál bele hanoin katak ida-ne'e sei influensia oinsá sira dezempeña sira-nia funsaun judisiál.

Artigu 6 Konfidensialidade

Juis sira tenke respeita konfidensialidade husi konsulta sira ne'ebé relasiona ho sira-nia funsaun judisiál no segredu deliberaun.

Artigu 7 Dilijénsia

1. Juis sira tenke iha dilijénsia enkuantu hala'o sira-nia devér no tenke dedika sira-nia atividade profisionál ba devér hirak-ne'e.
2. Juis sira tenke adota pasu sira ne'ebé razoavel hodi mantein no hasa'e koñesimentu, kapasidade no kualidade pesoál ne'ebé nesesáriu ba kargu judisiál.
2. Juis sira tenke hala'o devér judisiál hotu-hotu ho loloos no lailais.
3. Juis sira tenke hatu'o sira-nia desizaun no sentensa seluk ruma sein atrazu ne'ebé la nesesáriu.

Artigu 8

Konduta durante prosedimentu judisiál

1. Enkuantu sira hala'o prosedimentu judisiál, juis sira tenke mantein orden, komporta an ho respeito ne'ebé normalmente aseitavel, sempre iha pasiénsia no kortezia ba partisipante no membru públiku ne'ebé presente no garante katak sira mós komporta an ho maneira hanesan.
2. Juis sira tenke ezerse vijilánsia hodi kontrola interrogatóriu ba sasin-na'in ka vítima sira ne'ebé halo-tuir Regra sira no fó atensaun espesiál ba partisipante sira-nia direitu atu hetan protesau iguál no lei tenke favorese sira iha instánsia sira.
3. Juis sira tenke evita konduta ka komentáriu ne'ebé rasista, sexista ka ho maneira seluk degradante no, ho másimu posivel, garante katak ema ruma ne'ebé partisipa iha instánsia labele hatu'o komentáriu ka hatudu konduta hanesan ne'e.

Artigu 9

Espresaun no asosiasaun públika

1. Juis sira tenke ezerse sira-nia liberdade espresaun no asosiasaun ho maneira ne'ebé korresponde ho sira-nia kargu no la afeta ka fó aparénsia katak afeta independénsia judisiál ka imparcialidade.
2. Maski juis sira livre hodi partisipa iha debate públiku kona-ba asuntu sira ne'ebé relasiona ho tópiku legál, judisiáriu ka administrasaun justisa, sira labele fó komentáriu kona-ba kazu sira ne'ebé pendente no labele ható'o opiniaun ne'ebé bele prejudika Tribunál nia reputasaun no integridade.

Artigu 10 Atividade Extra-Judisiál

1. Juis sira labele halo atividade extra-judisiál ruma ne'ebé la korresponde ho sira-nia funsaun judisiál ka Tribunál nia funsionamentu efikás iha tempu adekuaadu, ka bele afeta ka normalmente fó aparénsia katak sei afeta sira-nia independénsia ka imparcialidade.
2. Juis sira labele ezerse funsaun política ruma.

Artigu 11

Kumpre Kódigu

1. Prinsípiu sira ne'ebé konsagra iha Kódigu ne'e fó orientasaun kona-ba padraun étiku esensiál ne'ebé juis sira tenke halo-tuir bainhira dezempeña sira-nia devér. Padraun sira fó orientasaun no iha objetivu hodi tulun juis sira relasiona ho kestaun étika no profisionál ne'ebé sira enfrenta.
2. Laiha dispozisaun ruma iha Kódigu ne'e ho intensaun atu tau limitasaun ka restrisaun ba juis sira-nia independénsia judisiál.

CODE OF JUDICIAL ETHICS

ICC-BD/02-01-05

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Preamble

The judges of the International Criminal Court;

Noting the solemn undertaking required by article 45 of the Rome Statute of the International Criminal Court (the “Statute”) and rule 5 (1) (a) of the Rules of Procedure and Evidence (the “Rules”);

Recalling the principles concerning judicial independence, impartiality and proper conduct specified in the Statute and the Rules;

Recognising the need for guidelines of general application to contribute to judicial independence and impartiality and with a view to ensuring the legitimacy and effectiveness of the international judicial process;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary (1985) and other international and national rules and standards relating to judicial conduct;

Mindful of the international character of the Court and the special challenges facing the judges of the Court in the performance of their responsibilities;

Have agreed as follows:

Article 1

Adoption of the Code

This Code has been adopted by the judges pursuant to regulation 126 and shall be read subject to the Statute, the Rules and the Regulations of the Court.

Article 2

Use of terms

In this Code of Judicial Ethics the terms “Court”, “Statute”, “Rules” and “Regulations” shall have the meaning attached to them in the Regulations of the Court.

Article 3

Judicial independence

1. Judges shall uphold the independence of their office and the authority of the Court and shall conduct themselves accordingly in carrying out their judicial functions.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

Article 4

Impartiality

1. Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions.
2. Judges shall avoid any conflict of interest, or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest.

Article 5

Integrity

1. Judges shall conduct themselves with probity and integrity in accordance with their office, thereby enhancing public confidence in the judiciary.
2. Judges shall not directly or indirectly accept any gift, advantage, privilege or reward that can reasonably be perceived as being intended to influence the performance of their judicial functions.

Article 6

Confidentiality

Judges shall respect the confidentiality of consultations which relate to their judicial functions and the secrecy of deliberations.

Article 7

Diligence

1. Judges shall act diligently in the exercise of their duties and shall devote their professional activities to those duties.
2. Judges shall take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office.
3. Judges shall perform all judicial duties properly and expeditiously.
4. Judges shall deliver their decisions and any other rulings without undue delay.

Article 8

Conduct during proceedings

1. In conducting judicial proceedings, judges shall maintain order, act in accordance with commonly accepted decorum, remain patient and courteous towards all participants and members of the public present and require them to act likewise.
2. Judges shall exercise vigilance in controlling the manner of questioning of witnesses or victims in accordance with the Rules and give special attention to the right of participants to the proceedings to equal protection and benefit of the law.
3. Judges shall avoid conduct or comments which are racist, sexist or otherwise degrading and, to the extent possible, ensure that any person participating in the proceedings refrains from such comments or conduct.

Article 9

Public expression and association

1. Judges shall exercise their freedom of expression and association in a manner that is compatible with their office and that does not affect or appear to affect judicial independence or impartiality.
2. While judges are free to participate in public debate on matters pertaining to legal subjects, the judiciary or the administration of justice, they shall not comment on pending cases and shall avoid expressing views which may undermine the standing and integrity of the Court.

Article 10

Extra-judicial activity

1. Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the Court, or that may affect or may reasonably appear to affect their independence or impartiality.
2. Judges shall not exercise any political function.

Article 11

Observance of the Code

1. The principles embodied in this Code shall serve as guidelines on the essential ethical standards required of judges in the performance of their duties. They are advisory in nature and have the object of assisting judges with respect to ethical and professional issues with which they are confronted.
2. Nothing in this Code is intended in any way to limit or restrict the judicial independence of the judges.

ASOSIASAUN INTERNASIONAL BA JUIS (*International Association of Judges*)

KARTA UNIVERSÁL BA JUIS (*The Universal Charter of the Judge*)

<http://www.iaj-uim.org/universal-charter-of-the-judges/>

Preámbulu

Juis sira husi mundu tomak serbisu hodi elabora Karta ida-ne'e. Karta ida-ne'e nu'udar rezultadu husi sira-nia serbisu no aprova tiha ona husi asosiasaun membru sira husi Asosiasaun Internasionál ba Juis nu'udar norma jerál mínima.

Testu husi Karta ne'e hetan aprovasaun ho unanimidade husi delegadu sira ne'ebé tuir reuniaun Konsellu Sentráal husi Asosiasaun Internasionál ba Juis iha Taipé (Taiwán) iha Novembru 17, 1999.

Art. 1 Independénsia

Iha sira-nia serbisu tomak juis sira tenke garante ema hotu-hotu nia direitu ba julgamentu ne'ebé justu. Sira tenke promove ema individuu nia direitu ba audiénsia ne'ebé justa no públka iha tempu ne'ebé razoavel husi tribunál ne'ebé independente no imparsial ne'ebé harii tiha ona bazeia ba lei, hodi determina sira-nia direitu sivil no obrigasaun ka akuzasaun kriminal ruma hasoru sira.

Juis nia independénsia nesesáriu tebetebes hodi tane aas justisa imparsial bazeia ba lei. Juis nia independénsia mak indivisível. Instituisaun no autoridade hotu-hotu, karik nasional ka internacional, tenke respeita, proteje no defende independénsia ne'e.

Art. 2 Estatutu

Tenke garante independénsia judisial bazeia ba lei, ho kria no proteje kargu judisial ne'ebé iha independénsia jenuina no efetiva husi poder Estadu sira seluk. Tenke permite juis, ne'ebé kaer kargu judisial, atu ezerse poder judisial, livre husi presaun sosial, ekonómika no politika, no independente husi juis seluseluk no administrasaun judisiáriu.

Art. 3 Hakru'uk ba lei

Enkuantu hala'o devér judisial juis hakru'uk de'it ba lei no tenke konsidera de'it lei.

Art. 4 Autonomia Pesoál

Ema ruma labele fó ka koko atu fó kualkér orden ka instrusaun ba juis, ne'ebé bele influencia juis nia desizaun judisial, exetu, bainhira aplikavel, fó opiniaun iha kazu partikular bainhira hatu'o tiha ona rekursu ba tribunál aas liu.

Art. 5 Imparsialidade no moderasaun

Enkuantu hala'o devér judisial, juis tenke imparsial no tenke proteje imajen kona-ba nia imparsialidade.

Juis tenke hala'o nia devér ho moderasaun no atensaun ba dignidade husi tribunál no ema hotu-hotu ne'ebé envolvidu.

Art. 6 Efikásia

Juis tenke hala'o nia devér ho dilijénsia no efikásia sein atrazu ruma ne'ebé la nesesáriu.

Art. 7 Atividade iha li'ur

Juis labele hala'o funsaun seluk ruma, karik públka ka privada, ne'ebé simu la simu remunerasaun, ne'ebé la korresponde tomak ho juis nia devér no estatutu.

Juis la sujeitu ba kargu husi li'ur, sein nia konsentimentu.

Novembru 1999

Art. 8 Garantia ba kargu

Labele transfere, suspende ka hasai juis husi nia kargu, exetu hatuur ona iha lei no iha sirkunstánsia ne'e tenke bazeia ba desizaun ne'ebé halo-tuir prosedimentu dixiplinár ne'ebé loloos.

Tenke nomeia juis ho títulu vitalísio ka ho períodu no kondisaun hanesan ne'e, ho nune'e la ameasa independénsia judisiál.

Kualkér mudansa ba idade obrigatória ba reforma judisiál labele iha efeito retroativu.

Art. 9 Nomeasaun

Bainhira hili no nomeia juis ida, tenke kumpre kritériu ne'ebé objetivu no transparente bazeia ba kualifikasaun profisionál ne'ebé loloos. Karik labele fó garantia ho maneira seluk, tenke bazeia metin ba tradisaun ne'ebé estabesidu no komprovalu, no órgaun independente tenke halo selesaun, ne'ebé inklui representasaun judisiál ne'ebé substansiál.

Art. 10 Responsabilidade sivil no penál

Asaun sivil, iha nasaun sira ne'ebé permite asaun sivil, no asaun kriminál, inklui kapturasaun, ba juis ida, só bele halo iha sirkunstánsia ne'ebé garante katak labele influensia nia independénsia.

Art. 11 Administrasaun no asaun dixiplinár

Administrasaun judisiáriu no asaun dixiplinár ba juis sira tenke organizadu ho maneira partikulár hodi la ameasa juis sira-nia independénsia jenuina, no fó de'it atensaun ba konsiderasaun sira ne'ebé objetiva no relevante.

Bainhira labele fó garantia ho maneira seluk ne'ebé bazeia metin ba tradisaun ne'ebé estabesidu no komprovalu, órgaun sira ne'ebé independente tenke hala'o administrasaun judisiál no asaun dixiplinár, ne'ebé inklui representasaun judisiál ne'ebé substansiál.

Asaun dixiplinár hasoru juis ida só bele halo bainhira hatuur iha lei ne'ebé eziste ona no tenke kumpre regra prosedimentu ne'ebé hatuur ona.

Art. 12 Asosiasaun sira

Tenke rekoñese juis nia direitu atu tama asosiasaun profisionál hodi permite juis sira hetan konsulta, liuliu kona-ba oinsá aplika sira-nia estatutu, karik étiku ka seluk, no oinsá administra justisa, no hodi permite sira defende sira-nia interese lejítimu.

Art. 13 Remunerasaun no reforma

Juis tenke simu remunerasaun suficiente hodi garante independénsia ekonómika ne'ebé jenuina. Remunerasaun labele depende ba rezultadu husi juis nia serbisu no labele hamenus remunerasaun durante nia hala'o nia kargu judisiál.

Juis iha direitu ba reforma ho pensaun vitalísia ka pensaun ne'ebé korresponde ho nia kategoria profisionál.

Depoizde reforma labele prevene juis ida atu halo profisaun legál seluk tanba de'it nia uluk serbisu nu'udar juis.

Art. 14 Apoiu

Podér Estado sira seluk tenke fó meius nesesáriu ba judisiáriu ho nune'e iha rekursu suficiente hodi hala'o sira-nia funsaun ho loloos. Tenke fó oportunidade ba judisiáriu atu hola parte ka rona sira-nia opiniaun kona-ba desizaun sira ne'ebé relasiona ho asuntu ne'e.

Art. 15 Ministériu Públiku

Iha nasaun sira ne'ebé juis sira sai membru husi ministériu públiku (prokuradór), prinsípiu sira iha leten aplika mutatis mutandis ba juis hirak-ne'e.

INTERNATIONAL ASSOCIATION OF JUDGES

THE UNIVERSAL CHARTER OF THE JUDGE

<http://www.iaj-uim.org/universal-charter-of-the-judges/>

Preamble.

Judges from around the world have worked on the drafting of this Charter. The present Charter is the result of their work and has been approved by the member associations of the International Association of Judges as general minimal norms.

The text of the Charter has been unanimously approved by the delegates attending the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999.

Art. 1 Independence

Judges shall in all their work ensure the rights of everyone to a fair trial. They shall promote the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations or of any criminal charge against them.

The independence of the judge is indispensable to impartial justice under the law. It is indivisible. All institutions and authorities, whether national or international, must respect, protect and defend that independence.

Art. 2 Status

Judicial independence must be ensured by law creating and protecting judicial office that is genuinely and effectively independent from other state powers. The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary.

Art. 3 Submission to the law

In the performance of the judicial duties the judge is subject only to the law and must consider only the law.

Art. 4 Personal autonomy

No one must give or attempt to give the judge orders or instructions of any kind, that may influence the judicial decisions of the judge, except, where applicable, the opinion in a particular case given on appeal by the higher courts.

Art. 5 Impartiality and restraint

In the performance of the judicial duties the judge must be impartial and must so be seen.

The judge must perform his or her duties with restraint and attention to the dignity of the court and of all persons involved.

Art. 6 Efficiency

The judge must diligently and efficiently perform his or her duties without any undue delays.

Art. 7 Outside activity

The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge.

The judge must not be subject to outside appointments without his or her consent.

Art. 8 Security of office

A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure.

A judge must be appointed for life or for such other period and conditions, that the judicial independence is not endangered.

Any change to the judicial obligatory retirement age must not have retroactive effect.

Art. 9 Appointment

The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification. Where this is not ensured in other ways, that are rooted in established and proven tradition, selection should be carried out by an independent body, that include substantial judicial representation.

Art. 10 Civil and penal responsibility

Civil action, in countries where this is permissible, and criminal action, including arrest, against a judge must only be allowed under circumstances ensuring that his or her independence cannot be influenced.

Art. 11 Administration and disciplinary action

The administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence, and that attention is only paid to considerations both objective and relevant.

Where this is not ensured in other ways that are rooted in established and proven tradition, judicial administration and disciplinary action should be carried out by independent bodies, that include substantial judicial representation.

Disciplinary action against a judge can only be taken when provided for by pre-existing law and in compliance with predetermined rules of procedure.

Art. 12 Associations

The right of a judge to belong to a professional association must be recognized in order to permit the judges to be consulted, especially concerning the application of their statutes, ethical and otherwise, and the means of justice, and in order to permit them to defend their legitimate interests.

Art. 13 Remuneration and retirement

The judge must receive sufficient remuneration to secure true economic independence. The remuneration must not depend on the results of the judges work and must not be reduced during his or her judicial service.

The judge has a right to retirement with an annuity or pension in accordance with his or her professional category.

After retirement a judge must not be prevented from exercising another legal profession solely because he or she has been a judge.

Art. 14 Support

The other powers of the State must provide the judiciary with the means necessary to equip itself properly to perform its function. The judiciary must have the opportunity to take part in or to be heard on decisions taken in respect to this matter.

Art. 15 Public prosecution

In countries where members of the public prosecution are judges, the above principles apply *mutatis mutandis* to these judges.

November 1999

List of the delegations attending the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999

ARGENTINA

AUSTRIA

BELGIUM

BOLIVIA

BRAZIL

CAMEROON

CANADA

COSTA RICA

CZECH REPUBLIC

DENMARK

ESTONIA

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

FINLAND

FRANCE

GERMANY

GREECE

ICELAND

ISRAEL

ITALY

IVORY COAST

LATVIA

LIECHTENSTEIN

LITHUANIA

LUXEMBOURG

MOROCCO

NORWAY

PARAGUAY

POLAND (observer)

PORTUGAL

REPUBLIC OF CHINA (Taiwan)

ROUMANIA

SENEGAL

SLOVAKIA

SLOVENIA

SPAIN

SWEDEN

SWITZERLAND

THE NETHERLANDS

TUNISIA

UNITED KINGDOM

UNITED STATES OF AMERICA

URUGUAY

**THE BANGALORE PRINCIPLES
OF JUDICIAL CONDUCT**

2002

*(The Bangalore Draft Code of Judicial Conduct 2001
adopted by the Judicial Group on Strengthening Judicial Integrity,
as revised at the Round Table Meeting of Chief Justices
held at the Peace Palace, The Hague, November 25-26, 2002)*

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:
INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:
IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
- 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:
- Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3:
INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4:
PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
 - 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not

inconsistent with the perceived impartiality and political neutrality of a judge;
or

4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:
EQUALITY

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

- 5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:

COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"Court staff" includes the personal staff of the judge including law clerks.

"Judge" means any person exercising judicial power, however designated.

"Judge's family" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Kumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
- (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (f) The Idaho Code of Judicial Conduct 1976.
- (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (h) The Iowa Code of Judicial Conduct.
- (i) Code of Conduct for Judicial Officers of Kenya, July 1999.
- (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- (k) The Code of Conduct for Magistrates in Namibia.
- (l) Rules Governing Judicial Conduct, New York State, USA.
- (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- (o) The Code of Judicial Conduct of the Philippines, September 1989.

- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- (z) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by

way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

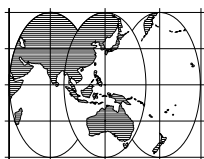
The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.

Beijing Statement

OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY IN THE LAWASIA REGION



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INTRODUCTION

Every two years since 1985, a conference of Supreme Court Chief Justices from the Asia Pacific region has been held in cooperation with the Judicial Section of LAWASIA, the Law Association for Asia and the Pacific. Since its inception, the conference has served as a useful forum for sharing information and discussing issues of mutual concern among the Chief Justices of the region.

At the 6th Conference of Chief Justices, held in Beijing in August 1997, 20 Chief Justices first adopted a joint Statement of Principles of the Independence of the Judiciary. This Statement was further refined during the 7th Conference of Chief Justices, held in Manila in August 1997. It has now been signed by 32 Chief Justices throughout the Asia Pacific region.

FOREWORD

The Beijing Statement of Principles of the Independence of the Judiciary finds its origins in 1982 in a statement of principles formulated by the Law Association for Asia and the Pacific (LAWASIA) Human Rights Standing Committee and a small number of Chief Justices and other Judges at a meeting in Tokyo (“the Tokyo Principles”). The decision to formulate the current Statement was made at the 4th Conference of Chief Justices of Asia and the Pacific in Perth, Western Australia in 1991. The Secretary of the LAWASIA Judicial Section, The Honourable Justice R D Nicholson, and I undertook the drafting of the Statement, a first draft of which was presented to the 5th Conference in Colombo, Sri Lanka, in 1993. In light of comments received at that conference and subsequently, and following further consideration at the conference in Beijing in August 1995, the Statement of Principles was adopted by the Chief Justices from 20 countries in the Asia Pacific. A revised version of the Statement as it is presented here was adopted in its final form at the 7th Conference of the Chief Justices in Manila in August 1997. The Statement has now been signed and subscribed to by 32 countries in the Asia Pacific region.

The Statement is a tribute to the determination of all signatories to leave aside differences in both legal and social traditions to formulate a single Statement on the Independence of the Judiciary.

The Honourable David K Malcolm
Chairman, Judicial Section, LAWASIA
Chief Justice of Western Australia

In every region of the globe, countries are wrestling with the complex challenges of legal and judicial reform, including the key question of developing and refining the role and functions of the judiciary. In this regard, the coming together of 32 Supreme Court Chief Justices from throughout the Asia Pacific region to issue a joint statement on the independence of the judiciary represents a significant step forward in addressing a crucial worldwide issue.

The Asia Foundation’s role in this effort dates back to 1984, when The Asia Foundation’s Senior Advisor for Judicial Administration and Judicial Systems, Judge J Clifford Wallace of the US Ninth Circuit Court of Appeals, recommended the establishment of a Conference of Chief Justices of Asia to provide a forum for interaction and cross-fertilization on important common issues. At the request of The Asia Foundation, the Judicial Section of LAWASIA agreed to be a co-sponsor. The first conference was held in Malaysia, in August 1985, and conferences (later adding the Pacific nations) have been held every two years since, ***most recently in the Philippines in 1997***. As the conference series has developed, it has become increasingly more effective both in its information-sharing role and in taking on important issues affecting legal development and reform in the region, as exemplified in the Chief Justices’ joint statement.

The Asia Pacific Chief Justices conference is now self-supporting, but The Asia Foundation is proud to have provided the necessary funding during its formative years to help the conference become established as an important regional forum. And we are extremely pleased now to have arranged for the printing of this important document.

William P Fuller
President, The Asia Foundation

PREAMBLE TO STATEMENT OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY

Beijing, 19 August 1995

Whereas 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 cooperation 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 the law;

Whereas the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant 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 the organisation 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 the 6th 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 the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at its meeting in Milan, Italy, from 26 August to 6 September 1985, adopted the *Basic Principles on the Independence of the Judiciary* by consensus;

Whereas the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended the *Basic Principles on the Independence of the Judiciary* for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

Whereas on 17-18 July 1982 the LAWASIA Human Rights Standing Committee met in Tokyo, Japan and in consultation with members of the judiciary formulated a *Statement of Principles on the Independence of the Judiciary in the LAWASIA Region* ("the *Tokyo Principles*") in the context of the history and culture of the region;

Whereas the 5th Conference of Chief Justices of Asia and the Pacific at Colombo, Sri Lanka on 13-15 September 1993 recognised that it was desirable to revise the *Tokyo Principles* in the light of subsequent developments with a view to adopting a clear statement of principles of the independence of the judiciary, and considered a first draft of a *Revised Statement of Principles on the Independence of the Judiciary* and requested the Acting Chairman of the Judicial Section of LAWASIA to prepare a second draft of the *Revised Statement* taking into account the views expressed at the 5th Conference of the Chief Justices and comments and suggestions to be made by the Chief Justices or their representatives; and

Noting that the 6th Conference of Chief Justices of Asia and the Pacific was held in Beijing in conjunction with the 14th LAWASIA Biennial, the primary object of which is:

"To promote the administration of justice, the protection of human rights and the maintenance of the rule of law within the region."

The 6th Conference of the Chief Justices of Asia and the Pacific:

Adopts the *Statement of Principles on the Independence of the Judiciary* contained in the annex to this resolution to be known as the *Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region*.

Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region

(As Amended at Manila, 28 August 1997)

INDEPENDENCE OF THE JUDICIARY

1. The Judiciary is an institution of the highest value in every society.
2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable to the implementation of this right.
3. Independence of the Judiciary requires that;
 - a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and
 - b) The judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature.
4. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.
5. It is the duty of the judiciary to respect and observe the proper objectives and functions of the other institutions of government. It is the duty of those institutions to respect and observe the proper objectives and functions of the judiciary.
6. In the decision-making process, any hierarchical organisation of the judiciary and any difference in grade or rank shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgement in accordance with Article 3 (a). The judiciary, on its part, individually and collectively, shall exercise its functions in accordance with the Constitution and the law.
7. Judges shall uphold the integrity and independence of the judiciary by avoiding impropriety and the appearance of impropriety in all their activities.
8. To the extent consistent with their duties as members of the judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly.
9. Judges shall be free, subject to any applicable law, to form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.

OBJECTIVES OF THE JUDICIARY

10. The objectives and functions of the judiciary include the following:
 - a) To ensure that all persons are able to live securely under the rule of law;
 - b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
 - c) To administer the law impartially among person and between persons and the State.

APPOINTMENT OF JUDGES

11. To enable the judiciary to achieve its objectives and perform its functions, it is essential that judges be chosen on the basis of proven competence, integrity and independence.
12. The mode of appointment of judges must be such as will ensure the appointment of persons who are best qualified for judicial office. It must provide safeguards against improper influences being taken into account so that only persons of competence, integrity and independence are appointed.
13. In the selection of judges there must be no discrimination against a person on the basis of race, colour, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, 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.
14. The structure of the legal profession, and the sources from which judges are drawn within the legal profession, differ in different societies. In some societies, the judiciary is a career service; in others, judges are chosen from the practising profession. Therefore, it is accepted that in different societies, different procedures and safeguards may be adopted to ensure the proper appointment of judges.
15. In some societies, the appointment of judges, by, with the consent of, or after consultation with a Judicial Services Commission has been seen as a means of ensuring that those chosen judges are appropriate for the purpose. Where a Judicial Services Commission is adopted, it should include representatives of the higher Judiciary and the independent legal profession as a means of ensuring that judicial competence, integrity and independence are maintained.

16. In the absence of a Judicial Services Commission, the procedures for appointment of judges should be clearly defined and formalised and information about them should be available to the public.

17. Promotion of judges must be based on an objective assessment of factors such as competence, integrity, independence and experience.

TENURE

18. Judges must have security of tenure.

19. It is recognised that, in some countries, the tenure of judges is subject to confirmation from time to time by vote of the people or other formal procedures.

20. However, it is recommended that all judges exercising the same jurisdiction be appointed for a period to expire upon the attainment of a particular age.

21. A judge's tenure must not be altered to the disadvantage of the judge during his or her term of office.

22. Judges should be subject to removal from office only for proved incapacity, conviction of a crime, or conduct that makes the judge unfit to be a judge.

23. It is recognised that, by reason of differences in history and culture, the procedures adopted for the removal of judges may differ in different societies. Removal by parliamentary procedures has traditionally been adopted in some societies. In other societies, that procedure is unsuitable; it is not appropriate for dealing with some grounds for removal; it is rarely, if ever, used; and its use other than for the most serious of reasons is apt to lead to misuse.

24. Where parliamentary procedures or procedures for the removal of a judge by vote of the people do not apply, procedures for the removal of judges must

be under the control of the judiciary.

25. Where parliamentary procedures of procedures for the removal of a judge by vote of the people do not apply and it is proposed to take steps to secure the removal of a judge, there should, in the first instance, be an examination of the reasons suggested for the removal, for the purpose of determining whether formal proceedings should be commenced only if the preliminary examination indicates that there are adequate reasons for taking them.
26. In any event, the judge who is sought to be removed must have the right to a fair hearing.
27. All disciplinary, suspension or removal proceedings must be determined in accordance with established standards of judicial conduct.
28. Judgements in disciplinary proceedings, whether held in camera or in public, should be published.
29. The abolition of the court of which a judge is a member must not be accepted as a reason or an occasion for the removal of a judge. Where a court is abolished or restructured, all existing members of the court must be reappointed to its replacement or appointed to another judicial office of equivalent status and tenure. Members of the court for whom no alternative position can be found must be fully compensated.
30. Judges must not be transferred by the Executive from one jurisdiction or function to another without their consent, but when a transfer is in pursuance of a uniform policy formulated by the Executive after due consultation with the judiciary, such consent shall not be unreasonably withheld by an individual judge.

JUDICIAL CONDITIONS

31. Judges must receive adequate remuneration and be given appropriate terms and conditions of service. The remuneration and conditions of service of judges should not be altered to their disadvantage during their term of office, except as part of a uniform public economic measure to which the judges of a relevant court, or a majority of them, have agreed.
32. 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.

JURISDICTION

33. The judiciary must have jurisdiction over all issues of a justiciable nature and exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
34. The jurisdiction of the highest court in a society should not be limited or restricted without the consent of the members of the court.

JUDICIAL ADMINISTRATION

35. The assignment of cases to judges is a matter of judicial administration over which ultimate control must belong to the chief judicial officer of the relevant court.
36. The principal responsibility for court administration, including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the judiciary, or in a body in which the judiciary is represented and has an effective role.
37. The budget of the courts should be prepared by the courts or a competent authority in collaboration with the

courts having regard to the needs of the independence of the judiciary and its administration. The amount allotted should be sufficient to enable each court to function without an excessive workload.

RELATIONSHIP WITH THE EXECUTIVE

38. Executive powers which may affect judges in their office, their remuneration or conditions or their resources, must not be used so as to threaten or bring pressure upon a particular judge or judges.
39. Inducements or benefits should not be offered to or accepted by judges if they affect, or might affect, the performance of their judicial functions.
40. The Executive authorities must at all times ensure the security and physical protection of judges and their families.

RESOURCES

41. It is essential that judges be provided with the resources necessary to enable them to perform their functions.
42. Where economic constraints make it difficult to allocate to the court system facilities and resources which judges consider adequate to enable them to perform their functions, the essential maintenance of the rule of law and the protection of human rights nevertheless require that the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources.

EMERGENCY

43. Some derogations from independence of the judiciary may be permitted in times of grave public emergency which threaten the life of the society but only for the period of time strictly required by the exigencies of the situation and under conditions prescribed by law, only to the extent strictly consistent with internationally recognised minimum standards and subject to review by the courts. In such times of emergency, the

State shall endeavour to provide that civilians charged with criminal offences of any kind shall be tried by ordinary civilian courts and detention of person administratively without charge shall be subject to review by courts of other independent authority by way of *habeus corpus* or similar procedures.

44. The jurisdiction of military tribunals must be confined to military offences. There must always be a right of appeal from such tribunals to a legally qualified appellate court of tribunals to a legally qualified appellate court or tribunal or other remedy by way of an application for annulment.

It is the conclusion of the Chief Justices and other judges of Asia and Pacific listed below that these represent the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary.

SIGNATORIES AT BEIJING, 19 AUGUST 1995

The Hon Sir Gerard Brennan AC KBE
Chief Justice of Australia

The Hon Mr Justice A. T. M. Afzal
Chief Justice of Bangladesh

HE Mr Wang Jingrong
Vice-President, Supreme People's Court of the
People's Republic of China
(Representing HE President Ren Jianxin,
President of the Supreme People's Court)

The Hon Sir Ti Liang Yang
Chief Justice of Hong Kong, SAR

The Hon Shri Justice S. C. Agrawal
Justice of the Supreme Court of India
(Representing The Hon Mr Justice A. M.
Ahmadi, Chief Justice of India)

The Hon Justice S. H. Soerjono
Chief Justice of Indonesia

The Hon Yun Kwan
Chief Justice of the Republic of Korea

The Hon D. Dembereltseren
Chief Justice of Mongolia

The Hon U Aung Toe
Chief Justice of the Supreme Court of The
Union of Myanmar (Burma)

The Rt Hon Mr Justice Biswanath Upadhyaya
Chief Justice of Nepal

Monsieur Le Premier Président Olivier Aimot
Premier Président of the Court of Appeal of
New Caledonia

The Rt Hon Sir Thomas Eichelbaum GBE
Chief Justice of New Zealand

The Hon Mr Justice Sajjad Ali Shah
Chief Justice of Pakistan

The Hon Sir Arnold K. Amet
Chief Justice of Papua New Guinea

The Hon Andres R. Narvasa
Chief Justice of the Philippines

The Hon Justice Yong Pung How
Chief Justice of Singapore

The Hon Mr Justice P. R. P. Perera
Justice of the Supreme Court of Sri Lanka
(Representing The Hon Mr Justice G. P. S. De
Silva, Chief Justice of Sri Lanka)

The Hon Charles Vaudin D'Imecourt
Chief Justice of Vanuatu

The Hon Mr Justice Pham Hung
Chief Justice of Vietnam

Tiavaasue Falefatu Maka Sapolu
Chief Justice of Western Samoa

SUBSEQUENT SIGNATORIES:

The Hon Sir Timoci Tuivaga
Chief Justice of Fiji

The Hon Kim Yong Joon
President of the Constitutional Court of Korea

The Hon Tun Dato Sri Mohd Eusoff b. Chin
Chief Justice of Malaysia

The Hon Justice V Alllear
Chief Justice of the Republic of the Seychelles

The Hon Sir John Muria
Chief Justice of the Solomon Islands

The Hon Nigel Hampton
Chief Justice of Tonga

SIGNATORIES AT MANILA, 28 AUGUST 1997:

The Hon Richard Brunt Lussick

Chief Justice of the Republic of Kiribati

The Hon Daniel Cadra

Chief Justice of the High Court

(Representing the Hon Allan Fields Chief
Justice of the Marshall Islands)

Chief Justice Sir Gaven Donne

Chief Justice of Nauru and Tuvalu

Chief Justice Vyacheslav M. Lebedev

Chief Justice of the Supreme Court Russian
Federation

SUBSEQUENT SIGNATORIES:

The Hon Toru Miyoshi

Chief Justice of Japan

(Subject to reservation in attached Statement,
as regards Article 9.)

The Hon Justice Sadka Makkamakkul

President of the Supreme Court of Thailand

THE OPINION OF THE CHIEF JUSTICE OF JAPAN

Concerning “Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region”

The independence in exercising the judicial function is firmly guaranteed to all the judges in Japan by the Constitution along with their compensation and status. This constitutional guarantee turns it unnecessary for the judges to make efforts to improve their working and economic conditions unlike workers in other professions, standing on an equal footing with their employers, who need to demand improvement against them. There are, therefore, no rights for the judges to form or join a labour union.

On the other hand, regarding the question of whether or not the judges are able to “form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate” other than a labour union, it is understood as follows. The judges are especially required to be politically neutral to perform their duties, and it is also demanded that not only trial and judgement should be fair but also attitudes of judges must be relied on to be fair by the general public. Because of these conditions, the judges are not permitted to form or join an association that takes on a political coloration and arouses people’s suspicion about fairness. And it may cause danger of raising a doubt about political neutrality that the judges, who are firmly guaranteed their status and independence as mentioned before and enjoy their, so to speak, special status, “form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.” To take into consideration the abovementioned factors, it is understood that there are some cases where those actions are deemed undesirable.

On the basis of the understanding that Article 9 of the Statement is not contrary to the law and system that are mentioned above, I express my agreement to “BEIJING STATEMENT OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY IN THE LAWASIA REGION.”

ABOUT LAWASIA

LAWASIA is a professional association of representatives of Bar Councils and law associations, individual lawyers, law firms, and corporations principally from the Asia Pacific region. LAWASIA facilitates its members' participation in the fastest growing economic region in the world.

The Association provides an invaluable opportunity for lawyers to come together to exchange ideas and information on regional issues and to establish a network of working relationships in the dynamic Asia Pacific region.

LAWASIA's primary objective is to foster professional and business relationships between lawyers, businesses and government representatives in the region.

It also promotes the rule of law in a diverse range of political, cultural, social and economic contexts throughout the region.

ABOUT THE ASIA FOUNDATION

The Asia Foundation is a private, non-government organisation dedicated to supporting programs that contribute to a peaceful, prosperous, and open Asia Pacific community. Drawing on four decades of experience in Asia, the Foundation collaborates with partners from the public and private sectors in the region to support through grants and other programs the development of institutions, leadership, and policy in four broad program areas: governance and law; economic reform and development; women's political participation; and regional relations.

With a network of 13 offices throughout Asia, an office in Washington DC and headquarters in San Francisco, the Foundation funds programs in these areas at both a country and regional level.

The Asia Foundation is funded by contributions from corporations, foundations, individuals, governmental organisations in the US and Asian, and an annual appropriation from the US Congress.