



## *Press Release*

**2 February 2017**

### **Letter expressing solidarity with former Minister of Finance Emilia Pires is a form of political interference in the judicial system**

On 25 January 2017, the Minister of Planning and Strategic Investment, Xanana Gusmão, expressed solidarity with the defendant Emilia Pires. This act of solidarity took the form of a nine page open letter given directly to the Lusa Agency.

This letter was written after the former Minister Emilia Pires sent an open letter to the President of the Republic, Taur Matan Ruak, to challenge the proceedings and decision of the Dili District Court that heard and decided her case on 20 December 2016. In her letter Emilia Pires requested for the President to set up an international commission of eminent persons to not only examine her case, but also to examine the formal justice system in general.

In his letter of solidarity, Minister Xanana Gusmão stated that the former Minister of Finance, Emilia Pires, and the former Vice Minister of Health, Madalena Hanjam, are victims of injustice as the result of State actions. In addition to strongly criticizing judicial actors, he also questioned the court actors' knowledge of Portuguese and stated that they do not understand Portuguese, but yet they have tried cases and applied laws written in Portuguese and signed rulings that they don't understand.

“JSMP strongly condemns this political stance which continues to interfere in the judicial system. Such a practice seriously threatens our judicial independence and violates the principle of separation of powers set out in the Timor-Leste Constitution,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

This is not the first time judicial magistrates have been pressured and had their work discredited. There have been many cases reflecting this trend, which have occurred when court decisions are not favorable to political interests, and this trend threatens our democracy.

In a democratic State like Timor-Leste, judicial institutions must be independent and free from any form of political interference regarding judicial decisions and such judicial decisions should only be challenged through the appropriate legal mechanisms.

This interference seriously undermines the work of the judicial sector and undermines those public institutions that the State established and has invested in over a long period of time. This also undermines public confidence in relation to the smooth functioning and credibility of the judicial institutions and violates principles of equality and universality that are provided for in

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a range of laws because it has drawn special attention to the case involving the former Minister Emilia Pires to discredit and undermine the judicial authorities that have been administering justice for a long time across the entire nation.

We are very appreciative that previously Minister Xanana Gusmão demonstrated his civic duty and collaborated with this process and appeared as a witness. Often we see leaders in other post-conflict nations who do not act in this manner. However, his letter is counter-productive to the initial good will that Minister Gusmão demonstrated in relation to this case.

JSMP agrees that all citizens have the right to challenge and question court decisions that are considered unfair and in violation of their fundamental rights as enshrined in the Timor-Leste Constitution, the Universal Declaration of Human Rights, as well as those international rights that Timor-Leste has adopted in its legal framework, and the laws that protect these rights.

JSMP also encourages the courts to respect and uphold the rights of all citizens to a fair trial and ensure that all judicial decisions are credible and only based on the facts and evidence produced during the trial. JSMP has drawn attention to these issues on many occasions and has outlined these issues in JSMP observations and recommendations.

Any challenge regarding the shortcomings of a judicial decision must be done through the appropriate legal mechanisms, not through an open letter which is a direct intervention on the work of the judiciary. JSMP encourages Emilia Pires to use the existing legal mechanisms before reaching the premature conclusion that the Timor-Leste judicial system is weak, below standard and is violating the fundamental principles regarding the rule of law.

The Timor-Leste Constitution guarantees that court decisions are binding (Art. 118.3 of the Timor-Leste Constitution) and that the courts are independent and subject only to the Constitution and the law (Art. 119 of the Timor-Leste Constitution). In performing their functions, judges are to be independent and owe obedience only to the Constitution, the law and to their own conscience (Art. 121.2 of the Timor-Leste Constitution). To guarantee their independence, judges may not be held liable for their judgments and decisions ... (Art. 121.4 of the Timor-Leste Constitution). Therefore, in the exercise of their functions, judicial bodies may not contradict or violate these constitutional principles.

The only lawful way to contest this decision is to lodge an appeal to a higher court, namely the court of second instance, the Court of Appeal. Also, a final appeal can be made to the court of third instance, the Supreme Court of Justice, which is currently operating out of the Court of Appeal, because Timor-Leste does not yet have a Supreme Court of Justice (Art. 110.1 of Law No. 8/2002 as amended by Law No. 11/2004).

The Supreme Court of Justice is the last legal recourse available in the justice system of Timor-Leste. This court has the competence to assess the constitutionality and legality of court decisions at the first and second instances (Art. 126. 1 (d) of the Timor-Leste Constitution).

What's more, the rights to access and guarantee of fair hearing are set out in the Universal Declaration of Human Rights (Art. 10) and also the International Convention on Civil and Political Rights (ICCPR) (Art. 14.1) which Timor-Leste has adopted in its internal legal system (Art. 9 of the Timor-Leste Constitution).

If the former Minister of Finance, Emilia Pires, believes that she is innocent or that her actions do not constitute a crime or violation of the law, then international law (ICCPR) and the Universal Declaration of Human Rights (UDHR) protects a person's right not to be convicted for an act or omission that is not against the law (Art. 15.1 ICCPR and Art. 11.2 UDHR).

Timor-Leste is a State Party to these international legal instruments and the defendant Emile Pires or any other citizen who is affected by a court decision can use these mechanisms to defend themselves and their legal rights, when national mechanisms and institutions fail to guarantee fair justice.

Any citizen or individual who is part of a State, that is a member of the United Nations and has ratified international conventions, can make a complaint against its own State, when the fundamental rights that are set out in international law are violated and if that person is not able to obtain justice in their own country.

Individual complaints are addressed to the special procedures of the United Nations Human Rights Commission. However, in addition to ratification, State Parties must also recognize the competence of the Commissions to examine individual complaints and must also sign protocols relating to these Conventions.

*“A complaint under one of the four treaties can be brought only against a State that satisfies two conditions. First, it must be a party to the treaty in question, having ratified or otherwise accepted it. Second, the State party must have recognized the competence of the committee established under the relevant treaty to consider complaints from individuals.*

*Anyone can lodge a complaint with a committee against a State that satisfies these two conditions claiming that his or her rights under the relevant treaty have been violated”. (Excerpt of Fact Sheet No. 7/Rev.1 from the United Nations High Commissioner for Human Rights “Complaint Procedures”).*

When no appeal has been lodged in accordance with the existing legal mechanisms and procedures, automatically the decision made by the court of first instance is considered to “*be final.*” This means the convicted person Emile Pires must serve the prison sentence issued by the court.

On the other hand, in relation to examining or inspecting the functioning of the justice system or the courts and their judicial magistrates, the courts in Timor-Leste have the appropriate mechanisms to deal with this issue.

The body that has the competence to oversee the management and discipline of Judicial Magistrates is the Superior Council of Judicial Magistrates (Art. 128.1 of the Timor-Leste Constitution and Art. 15.1 (d) of Law No. 8/2002 as amended by Law No. 11/2004).

This council also has the competence to remove or exercise disciplinary action regarding Judicial Magistrates (Art. 15.1 (a) Law No. 8/2002 as amended by Law No. 11/2004) when Judicial Inspection finds that they have not carried out their work properly or adequately (Art. 23.1 of Law No. 8/2002 as amended by Law No. 11/2004).

In accordance with the aforementioned constitutional foundations and legal grounds, JSMP recommends for all citizens, political leaders and important figures or founders of the State-Nation to contribute towards improving and strengthening the formal justice system, which is

still young and fragile, through the appropriate legal mechanisms, to avoid undermining or destroying this system.

JSMP recommends for members of the sovereign organs to respect the principle of separation of powers set out in Article 69 of the Timor-Leste Constitution to perform their duties, and to respect the independence of the judicial bodies that administer justice on behalf of the State-Nation.

JSMP recommends for the President of the Republic to refrain from making any decisions on the creation of an international commission to examine the work of the judiciary as requested by Emilia Pires, because a mechanism such as this is not provided for in the Constitution or any law. The role of the President is to guarantee the smooth functioning of democratic institutions (Art. 74.1 of the Timor-Leste Constitution), which does not mean that the President should intervene in the work of the judiciary. The President of the Republic can only intervene when the institutions are not functioning or when there is institutional instability.

JSMP also recommends for the political leaders from the sovereign organs to put national interests above individual or group interests to avoid destroying the State's-Nation's justice system that has been built over a long period, through massive effort and investment.

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