

Legal Note on Government Resolution N°. 32/2014, 31 October 2014

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The following is a brief analysis of the Government Resolution revoking the visas of five international judges, two international prosecutors and one police officer working with the Anti-Corruption Commission (CAC). This resolution follows two previous resolutions of the National Parliament and Government, passed on 24 October, terminating all existing contracts of international staff working in justice sector institutions.

Key points

- This resolution orders the Immigration Service to immediately revoke the work permits of those international judicial officers identified in the resolution, and notify them to leave Timor-Leste within 48 hours. This is on the ground that their employment contracts were effectively terminated under the previous Government resolution (Govt. Resolution N°. 29/2014). We understand that judicial officers were notified sometime on Monday 3 November.
- The Government has not proven valid grounds for revoking the work visas under the Immigration and Asylum Law (9/2003). Contracts with judicial officers cannot not be terminated by resolution. Judicial officers (judges, prosecutors and public defenders) can only be removed from office by the Superior Council of Magistrates. The government has not yet proven that this is an issue of “national security”.
- This resolution can be interpreted as directed at circumventing the judiciary’s refusal to comply with previous resolutions (NP Resolution N°. 11/2014 and Govt. Resolution N°. 29/2014). This subsequent resolution violates the principle of separation of powers and independence of the judiciary. These principles are enshrined in the Constitution.

Background

1. On 31 October 2014, the Government passed resolution N°. 32/2014, which:

- orders the Immigration Service to immediately revoke the work permits of eight judicial officers identified by name in the resolution, and notify to those individuals
- orders the named individuals to leave Timor-Leste within 48 hours, and
- authorises the police and security forces to implement the resolution, including compelling those named individuals to leave Timor-Leste.

Legal Analysis

- The Government has only referred to Article 36 of the Immigration and Asylum Law (9/2003) as grounds for revoking the visas of judicial officers, and not Article 63. Article 36 provides for issuing of work permits. Article 63 deals with grounds for expulsion.
- Under Article 63, foreigners may be expelled if they have entered or remain illegally in Timor-Leste. Other grounds for expulsion are: committing acts against national security, public order or good morals; their presence constitutes a threat to the interests and dignity of Timor-Leste; they have interfered in the political participation of Timorese citizens, or engaged in other prohibited acts; or committed acts which would have prevented their entry into Timor-Leste.
- Notably however, judicial officers can only be removed from office by the Superior Council of Magistrates. Their contracts cannot be terminated by a government resolution. They have valid continuing employment contracts, are complying with the conditions of the work permits, and are not engaging in illegal activity in Timor-Leste.
- Judicial officers subject to this resolution can challenge the revocation of their visas as invalid under the Immigration and Asylum Law (9/2003). The Immigration Service needs to prove that their employment contracts have been validly terminated under the relevant Timorese law pertaining to the particular type of contract under which they were engaged for services. They could also challenge the decision of the Immigration Service as unconstitutional, as it interferes the independence of the judiciary.

Other issues

- There is a risk that judicial officers who attempt to challenge the cancellation of their work permits may be charged with overstaying their visas and expelled from Timor-Leste.
- There are currently seven international judges and four international prosecutors. This resolution identifies only five judges, two prosecutors and one police officer working with CAC. It is unclear why these particular individuals have been targeted. JSMP is confirming which

jurisdiction these judicial officers worked in, and the types of cases handled. The Court of Appeal judge identified in the resolution was involved in Lucia Lobato's corruption case.

- Judicial officers identified in the resolution:
 - Cid Orlando de Melo Pinto Geraldo – Judge, Court of Appeal (Portugal)
 - Julio Gantes Costa – Judge, Dili District Court (Portugal)
 - Eduardo Neves – Judge, Dili District Court (Portugal)
 - Pedro Miguel Figueiredo – Judge, Suai District Court (Portugal)
 - Carlos Camara – Judge, Baucau District Court (Portugal)
 - Luis Landim – Prosecutor, Dili (Cabo Verde)
 - Gloria Alves – Prosecutor, jurisdiction TBC (Portugal)
 - Jose Brito – Police officer, CAC (Portugal)

Other relevant information:

- Four of the five judges identified in the resolution are on UNDP contracts (exact type unknown).
- Type of contract is an LoA between UNDP, Ministry of Justice and the Court or Office of the Prosecutor General (OPG) – then the relevant institution signs directly with the individual.
- UNDP has three advisors to OPG – only two have been asked to leave. Portuguese media today reports that the two asked to leave were handling the corruption cases of Lucia Lobato and Emilia Pires. (<http://expresso.sapo.pt/magistrados-portugueses-saem-de-timor-no-primeiro-voo-que-conseguirem=f896463>)
- At least one judge named in the resolution is leaving Timor-Leste today. So far, no one is aware of any judicial officer preparing to challenge the resolution and the decision of the Immigration Service.

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