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DR. CLÁUDIO XIMENES: COURTS MUST BE INDEPENDENT, IMPARTIAL AND DECIDE ACCORDING TO THE LAW OR THEY WILL BE OF NO VALUE

The chief justice of the highest court in Timor-Leste explains the functioning of the Court of Appeal and the role of the courts for peace. According to Claudio Ximenes the courts have to render decisions with independence, impartiality and strictly according to the law. Furthermore judges have to have the courage to resist to any pressure, otherwise courts will be worthless, and people will do justice with their own hands.

What is the role of the Court of Appeal within the context of the legal system of Timor-Leste?

Currently, the Court of Appeal acts as the highest court in the country. The Court of Appeal performs the duties of the Supreme Court, until such court is established. Furthermore it holds the competence of the Superior Court of Administration, Tax and Accounts. At present, this section is not operational. The government's accounts are scrutinized by independent auditors contracted by the government. As a constitutional court, it decides whether the laws are approved according to the constitution. This occurs either because the issue is raised in abstract terms or because it comes before the court as an appeal in an actual proceeding.

In addition to that, if appeals are filed against judgments from the district courts, these come before the Court of Appeal, isn't that correct?

Exactly, this falls within the responsibility of a Court of Appeals to review decisions by lower courts, in this case, the district courts.

Are international judges still necessary in order for the justice system to function properly?

Generally speaking, the Court of Appeal and district courts still rely on international judges. We currently have only 13 Timorese judges, who are trained sufficiently only to perform their duties at the district court level, and they still require support from more experienced judges. Furthermore, we still need to continue training lower court judges and thus we need judges to provide training at the Judicial Training Center of Timor-Leste, which is responsible for training judges, prosecutors and public defenders. We also need international judges to mentor them in their daily

court activities. Also, none of the Timorese judges are sufficiently trained as yet to assume responsibilities in the Court of Appeal. Therefore, international judges are sitting at the CA. We need to begin training some of these judges to later assume positions on the CA and international judges will be needed for this. Four more international judges have now been recruited for the district courts. We expect them to begin working in September. We also need to recruit one or two more judges to the CA, because, since Justice Ivo Rosa left, we have only two judges.

How long do you predict it will take for the judicial system to be completely Timorese?

If we continue at the present pace of training Timorese judges, three per year, international support will continue to be necessary until 2020.

There has been some debate about interference from political powers in the judiciary.

Can you explain why it is so important that there be a clear separation between the two?

The central reason for avoiding interference in the legal system and courts from those with political power or from other branches of government is related to the need to ensure independence of the courts, and particularly of judges who decide concrete cases. When a judge

hands down a decision, it must be done with independence. That means that he or she cannot receive instructions from any individual, group, entity, etc. It also means that the judge must have the courage to resist any and all pressure that may be brought to bear.

It is also related to the need for the judge to be impartial, to have no bias towards any party. Obviously,



Editorial:

In the fourth edition of SCIT we are pleased to publish an interview with the Chief Justice of the Court of Appeal, Dr. Claudio Ximenes, where he offers a keen explanation of the role of the judge, of the courts and the current status of the courts in Timor-Leste. I would like to call your attention to his words in regard to the need for independence and impartiality of the judges. We also continue to give notice of SCIT's initiatives and efforts to inform the population, in particular the victims, about our mandate and the judicial mechanisms established in the country to address past human rights violations. Furthermore, we try to keep you up to date with other initiatives undertaken by the civil society to address the needs of the victims.

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Investigating 1999 to assist bringing Justice in Timor-Leste

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In Short....

•**National Consensus Dialogue: need for further debate on Justice. Between the 16th and the 19th of June, the leaders of the country gathered in an initiative of President Ramos Horta to debate justice and reconciliation for past Human rights violations. The Dialogue, moderated by Bishop Gunnar from Norway, led to consensus on issues of reparations and recognition of the victims but no agreement was reached in regard to justice mechanisms to address those violations. Some want to stop the judicial process, others are in favour of continuing investigation and prosecutions.**

•**New penal code entered into force on the 7th of June.**

whenever a judge renders a decision, he or she considers one party to be right and the other wrong, which means that one party always is left dissatisfied with the judgment. What is essential is that the court's judgment be solely rendered according to the law and the facts that the court considers to be proven in the proceedings, and nothing else. The court and the judge either can render judgments independently, impartially and strictly according to the law, or they will be worthless. The moment it becomes possible to influence a court decision, instead of obeying the law, people will try and find someone who can influence the judge or get money to bribe the judge. Either that, or they won't even take the matter to court. They will gather their men and weapons and take justice into their own hands. In such a case, corruption and use of force substitute law and justice, and courts become of no purpose. **What can courts and the judicial system do to support peace?**

The purpose of the court and the judge is to resolve conflicts, and conflict resolution is one of the mechanisms for social peace. Therefore the purpose of the judge rendering a decision is to resolve a conflict and provide peace in a social milieu

disturbed through the violation of someone's rights.

As a former judge on the Special Panels for Serious Crimes, what is your opinion regarding this process?

The serious crimes process was a mechanism, in my view, that sought to try the incidents that took place in 1999 as quickly as possible. So they did their investigations, tried the cases, and, as was foreseeable, they ran into a set of impassible material obstacles, in bringing to justice and even investigating the people involved in the crimes from 1999. There isn't much that can be done about it, it is a reality we must live with. So, cases are pending and will continue pending as long as the accused are not on Timorese soil to be tried. Therefore, I don't see any possibility of doing any more than has been done so far. Every once in a while a case or two appears for judgment but it is very rare. Right now there is an accused pending trial precisely because there is no international judge to participate on the panel. This is because two international judges must be on the panel and at the moment we only have one available. We hope to be able to bring some of the accused to trial and that we can still collect evidence regarding the incidents.

NGOs help to establish network of victims

A group of Timorese and one international NGO, working under the umbrella of the forum for non-governmental organizations, FONGTIL, is helping to establish a network of victims of past human rights violations (74-99). Since last March, the group has been conducting meetings with the victims and relatives of victims, across the country. As a result, a network of victims is being established. This has the main objective of defending their interests and their points of view in the wider national debate about possible solutions to address pending issues regarding justice, reconciliation and reparations. The district assemblies are also electing their delegates to the National Congress that will take place in Dili between the 2nd and 4th of September. "We need to express our point of view to the authorities



Group of victims in Ainaro debating proposals to address their needs

and to help them decide", said one of the victims representatives. Meetings in Los Palos, on the 7 and Maliana on 15th July will complete the round of district consultations. SCIT and Human Rights Unit have been participating to provide information to the victims.

Serious Crimes and Human Rights teams from UNMIT in Maucatar sub-district Bringing information where the media does not reach

"This was very good. We had never heard what you told us today, we don't have radios or television". That was how the population from the village of Ougui, Maucatar, Covalima district, reacted after a one day session of information conducted by UNMIT Human Rights and Transitional Justice Unit and the Serious Crimes Investigation Team. The session focussed on a review of the work of the CAVR and CAV and its recommendations, on the status of the Serious Crimes process and the



Men women and children listened and discussed issues related to justice and rights

proposals for reparations that are being prepared and discussed by civil society organizations and members of parliament. The dialogue about justice was lively among this community who lives close to the border. "Friendship with Indonesia is very important for us, but justice has to be made", said one of the villagers, who is a candidate in the coming suco elections.