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INTERNATIONAL COMMISSION OF JURISTS' (ICJ) SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF THE REPUBLIC OF NAURU

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Composed of 60 eminent jurists and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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ICJ's SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF THE REPUBLIC OF NAURU

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Universal Periodic Review of Nauru by the Human Rights Council.

2. In the context of this review, the ICJ wishes to bring to the Working Group's attention its concerns regarding the lack of respect by the authorities for the independence of the judiciary in Nauru, related to the rule of law crisis that erupted in January 2014.

3. Furthermore, this submission also addresses Nauru's international human rights treaty status and its reporting obligations under these treaties.

4. Thus, rather than providing a full survey of Nauru's human rights record, the scope of this submission is limited.

Independence of the judiciary

5. Australia administered Nauru as a dependent territory until 1968 and the two countries retain strong bilateral relations. Australian judges and magistrates often serve on Nauru courts.

6. On 19 January 2014, Nauru's President, Baron Waqa, summarily dismissed and expelled Resident Magistrate Peter Law, in defiance of an injunction issued by Chief Justice Geoffrey Eames. Subsequently Chief Justice Eames, who was in Australia at the time, had his visa cancelled, impeding his return to Nauru. Both judicial officials are Australian citizens.

7. On 13 March 2014, Chief Justice Eames resigned, thus ending the stalemate created by the officials of the executive branch of government of Nauru, who continued to deny him entry to Nauru, despite the absence of formal impeachment proceedings in Parliament, as prescribed in the Constitution.[1]

8. The ICJ considers that these actions of members of the executive branch of the government are inconsistent with the government's obligation to respect the independence of the judiciary and have undermined and continue to undermine judicial independence.

9. International standards, including the UN Basic Principles on the Independence of the Judiciary clarify that "the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."[2]

10. The ICJ is concerned that the treatment of Chief Justice Eames and Resident Magistrate Law is fundamentally inconsistent with these requirements.

11. With regard to the dismissal and deportation of Resident Magistrate Law, it appears that he had no access to a formal and fair procedure before an independent and impartial body in Nauru to challenge his dismissal, which consisted of nothing more than a unilateral termination of his contract by the President of Nauru, who did not provide Magistrate Law with any specific allegation, evidence to support the allegation or the opportunity to respond. According to the information available to the ICJ, the government presented allegations of misconduct only after his forced removal from Nauru, and only through the media.

12. It is widely accepted that when judges have security of tenure in office, they are less vulnerable to pressure from those who can influence or make decisions about their terms of office. Thus, as a safeguard of the independence of the judiciary, the UN Basic

Principles on the Independence of the Judiciary provide that "[t]he term of office of judges, their independence, security, adequate remuneration, conditions of service and the age of retirement shall be adequately secured by law".[3] Further, "[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists".[4] With regard to removal, the UN Basic Principles on the Independence of the Judiciary affirm that "[j]udges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties."[5] Allegations of such incapacity or misconduct "shall be processed expeditiously and fairly under an appropriate procedure", in which "the judge shall have the right to a fair hearing".[6] The elements of a fair hearing comprise, among other things, the right of the judicial officer to be fully informed of the allegations against him or her, the right to present a full defence, and for the removal proceedings to be decided or be under the control of an independent and impartial tribunal.

13. In view of the above-referenced international standards, the ICJ is concerned that the security of tenure of Resident Magistrate Law was not sufficiently guaranteed, and that his dismissal was arbitrary.

14. Furthermore, it appears that, in a manner fundamentally incompatible with the rule of law, numerous officials wilfully and flagrantly disregarded the temporary injunction issued by Chief Justice Eames ordering the halting of the deportation of Resident Magistrate Law until further review.

15. Pursuant to international standards, "[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision."[7]

16. Moreover, Chief Justice Eames never received any explanation of the specific reasons for the Nauru government's cancellation of his visa. While media reports made vague references to "cronyism and corruption" and indicated that the President and government officials expressed the opinion that the presence of Chief Justice Eames (like that of Resident Magistrate Law) was not in the national interest, in fact, the ICJ is unaware of any specific allegations at any time of any proved incapacity or judicial misconduct on the Chief Justice's part.

17. The ICJ considers that the revocation of Chief Justice Eames' visa is tantamount to his suspension and removal, without any process, contrary to international standards safeguarding the independence of the judiciary.

18. The treatment by the government of Resident Magistrate May and Chief Justice Eames not only violates their rights, but also risks having a chilling effect on the independence of other judges of Nauru. It undermines the respect for the rule of law, and jeopardizes the right to fair trial and the right to an effective judicial remedy for alleged violations of human rights before independent and impartial courts in Nauru.

<u>International instruments and mechanisms</u>

19. Nauru is a State Party to the following, of the core human rights treaties:
    - The Convention on the Elimination of All Forms of Discrimination against Women;
    - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment and its Optional Protocol;
    - The Convention on the Rights of the Child; and,
    - The Convention on the Rights of Persons with Disabilities.

20. Nauru has signed but not yet ratified:
    - The International Convention on the Elimination of All Forms of Racial Discrimination;
    - The International Covenant on Civil and Political Rights and its first Optional Protocol; and,

- The first two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

21. Nauru has not yet signed, ratified or acceded to:
    - The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol;
    - The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
    - The International Convention for the Protection of All Persons from Enforced Disappearance;
    - The second Optional Protocol to the International Covenant on Civil and Political Rights;
    - The third Optional Protocol to the Convention on the Rights of the Child on a communications procedure; or,
    - The Optional Protocol to the Convention on the Rights of Persons with Disabilities.

22. Nauru's report to the Committee on the Rights of the Child has been overdue since 1996. Its report to the Committee on the Elimination of Discrimination Against Women has been overdue since 2012. Its report to the Committee Against Torture has been overdue since 2013, and its report to the Committee on the Rights of Persons with Disabilities was due in 2014.

Recommendations

23. In light of the above, with regard to the independence of the judiciary, the ICJ recommends that:
    a. The Government of Nauru immediately reverse and remedy the actions taken against the Chief Justice and Resident Magistrate; and,
    b. The Government and Legislature of Nauru take steps to ensure that similar actions will not re-occur in future, including by ensuring that the independence of the judiciary is secured and safeguarded in Nauru law, including in the form of concrete procedural safeguards as those set out in international standards such as the Basic Principles on the Independence of the Judiciary, and that public officials throughout the Nauru government respect the independence of the judiciary and the rule of law, and implement orders of the judiciary.

24. With regard to international instruments and mechanisms, the ICJ recommends that:
    a. Nauru become a State Party to all core human rights treaties; and,
    b. Nauru file overdue reports to Treaty Bodies and fulfil its reporting obligations.

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[1] Constitution, S. 51(1) provides: "A judge of the Supreme Court may not be removed from office except on a resolution of Parliament approved by not less than two-thirds of the total number of members of Parliament praying for his removal from office on the ground of proved incapacity or misconduct."
[2] UN Basic Principles on the Independence of the Judiciary, Principle 2.
[3] UN Basic Principles on the Independence of the Judiciary, Principle 11.
[4] UN Basic Principles on the Independence of the Judiciary, Principle 12. Also see Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 16(b); Universal Charter of the Judge, Article 8.
[5] UN Basic Principles on the Independence of the Judiciary, Principle 18. Also see Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, Article 22.
[6] UN Basic Principles on the Independence of the Judiciary, Principle 17. Also see Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 28; Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, Article 26; Commonwealth (Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence, Part VI(1)(a).
[7] UN Basic Principles on the Independence of the Judiciary, Principle 4. Further also see the standards cited at para. 12 (above).