

His Excellency Baron Waqa, MP  
President of the Republic of Nauru

3 March 2014

Excellency,

**Re: Independence of the Judiciary and the Republic of Nauru**

I write to you on behalf of the International Commission of Jurists (ICJ). Established in 1952 and composed of 60 eminent judges and lawyers from all regions of the world, the ICJ promotes and protects human rights through the rule of law, aiming among other things to guarantee the independence of the judiciary and legal profession.

The ICJ is deeply concerned by the summary dismissal and expulsion of Resident Magistrate Peter Law on 19 January 2014, and by on-going interference with Chief Justice Geoffrey Eames since that time in the discharge of his essential professional functions in the administration of justice in the Republic of Nauru, following the cancellation of his visa which prevents him from returning to the country. Such measures clearly violate international standards for the independence of the judiciary and rule of law.

In light of these standards (set forth more fully below), the ICJ respectfully calls on you and your Government to immediately to reverse and remedy the actions taken against the Resident Magistrate and Chief Justice. The ICJ also calls on your Government and the Parliament of Nauru to take steps to ensure that similar such actions will not occur, including by ensuring that the independence of the judiciary is secured in Nauru law both as a matter of principle and in the form of concrete procedural safeguards, and that public officials throughout the Nauru government respect and implement orders of the judiciary.

All indications are that the summary process surrounding the dismissal and deportation of Magistrate Law consisted of nothing more than a unilateral termination of his contract by you as President, without providing Magistrate Law with any specific allegations or evidence, nor any fair opportunity to respond. The removal was not therefore fair, transparent, independent or impartial, as required by international standards. Indeed, as regards the removal and expulsion, the information we have suggests that numerous officials have wilfully and flagrantly disregarded an injunction issued by the Chief Justice, again in a manner fundamentally incompatible with relevant international standards. As we understand it, the government presented allegations of any particular inappropriate conduct by Magistrate Law only after his forced removal from Nauru, and then only via media releases. We are unaware of any specific allegations at any time by the government of wrongdoing by the Chief Justice, other than by implication in recent government media statements, which make vague references to "cronyism and corruption" and that you and your government do not consider his presence in Nauru or that of Magistrate Law to be in the national interest.

The United Nations General Assembly has repeatedly emphasized that all States must respect and uphold judicial independence and the rule of law. To this end, in 1985 the General Assembly (in resolution 40/136) unanimously endorsed a set of *Basic Principles on the Independence of the Judiciary*. The General Assembly has repeatedly reaffirmed the Basic Principles since that time. Among other things, the Basic Principles elaborate on the imperative of the rule of law, and the right to an independent and impartial tribunal, as explicitly recognized in the *Universal Declaration of Human Rights*.

Article 1 of the Basic Principles provides that "[t]he independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country" and that "it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." Article 2 protects the judicial function from "any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason." Article 4 further affirms that "[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" other than by submitting judicial decisions to review by a higher judicial body. We are concerned that the treatment of the Resident Magistrate and the Chief Justice are fundamentally inconsistent with these requirements.

Article 11 of the Basic Principles provides that "the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law." Article 12 states that, "Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists." We are concerned that the security of tenure of the Resident Magistrate was not sufficiently guaranteed by law or in practice.

Article 18 of the Basic Principles affirms that, "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties." Article 17 requires that allegations of such incapacity or behaviour "shall be processed expeditiously and fairly under an appropriate procedure" in which "the judge shall have the right to a fair hearing". The elements of a fair hearing are further reflected in Principles 24 to 26 of the *Beijing Statement of Principles of the Independence of the Judiciary*, released following the 6th Biennial Conferences of Chief Justices of Asia and the Pacific, held in Beijing in 1995 and signed by nineteen Chief Justices of the region (including then-Chief Justice of Nauru, Chief Justice Sir Gaven Donne), as well as the 1998 *Commonwealth (Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence*, Part VI(1)(a). These elements include the right of a judicial officer to be fully informed of the allegations against him or her, the right to make a full defense, and for the removal proceedings to be decided by or otherwise under the control of an independent and impartial tribunal. We are concerned that the dismissal of the Resident Magistrate did not comply with these requirements. To the extent that the revocation of the visa of the Chief Justice constitutes a de facto suspension or removal, we are similarly concerned.

The actions taken against the Resident Magistrate and the Chief Justice do not only affect the interests of the individual judges concerned. Such disregard for the rule of law and independence of the judiciary jeopardizes the right to fair trial for all persons in Nauru who are involved or who may become involved in criminal or civil proceedings, or otherwise seek a remedy for alleged violations of human rights. It is also a matter of considerable concern to the international community.

We look forward to hearing from you on this very important and urgent matter.

Sincerely,

Wilder Tayler  
Secretary General  
International Commission of Jurists

cc. Minister for Justice Hon. David Adeang, MP  
cc. Minister for Home Affairs, Hon. Charmaine Scotty, MP