

18 August 2022

LAWASIA STATEMENT OF CONCERN FOR THE RULE OF LAW IN KIRIBATI

LAWASIA, the law association for Asia and the Pacific, expresses its grave concern for the rule of law in Kiribati. It is the view of LAWASIA that the detention and attempted deportation of High Court Puisne Judge David Lambourne is a blatant attack on the judiciary, undermining both the rule of law and access to justice in Kiribati. The recent attempt to deport Justice Lambourne, in contravention of Court orders, is a clear abrogation of the rule of law.

LAWASIA is troubled by a media release from the Office of the President stating that Justice Lambourne's original appointment has been revoked and a new appointment back dates the expiry of his tenure to 30 June 2021.¹ LAWASIA highly regards the UN Basic Principles on the Independence of the Judiciary which notes that Judges should have guaranteed tenure until a mandatory retirement age or the expiry of their term of office.² Additionally, the instrument disallows 'inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.'³

It is our understanding that the recent treatment of Justice Lambourne has not occurred in isolation but forms part of a wider campaign to undermine the separation of powers in Kiribati. In May 2022, the government of Kiribati suspended Justice Lambourne and refused to allow him into the country. The Chief Judge of the High Court, Justice Hastings was similarly suspended

¹ Office of Te Beretitenti, Media Release dated 15 August 2022 (online)
<https://www.facebook.com/ob.gov.ki/posts/buuta-ana-manga-tang-te-tautaeka-ni-kaitaraa-te-moti-iaon-ana-keiti-david-lambou/379716884336856/>

² United Nations, *Basic Principles on the Independence of the Judiciary*, adopted 6 September 1985 (online)
<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> [12].

³ United Nations, *Basic Principles on the Independence of the Judiciary*, adopted 6 September 1985 (online)
<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> [4].

with immediate effect prior to the commencement of a challenge brought by Justice Lambourne to facilitate his return to Kiribati.⁴

We are deeply concerned about the effect of access to justice in Kiribati, as reports indicate that the suspension of the only two judges of the High Court of Kiribati has resulted in a backlog of around 2000 cases,⁵ which is significant in a country with an estimated population of just over 100 000 people.⁶

We extend our concern of the effect of the suspensions of both Chief Justice Hastings and Justice Lambourne on the wider judiciary in Kiribati, as the terms of the only two Court of Appeal judges have expired, and under the Kiribati constitution they can only be replaced with the involvement of the Chief Justice. LAWASIA is deeply concerned for the rule of law in Kiribati as there is no functioning judiciary at the High Court and Court of Appeal level.

LAWASIA calls on the government of Kiribati to respect the rule of law and immediately cease its campaign against the judiciary. We similarly call on the government to drop the attempts to deport Justice Lambourne and reinstate both Chief Justice Hastings and Justice Lambourne as a matter of urgency.

The Law Association for Asia and the Pacific (LAWASIA)

⁴ K Pender for *The Guardian*, 'Kiribati faces constitutional crisis after government suspends both high court justices' dated 1 July 2022 (online) <https://www.theguardian.com/world/2022/jul/01/kiribati-faces-constitutional-crisis-after-government-suspends-both-high-court-justices>

⁵ A Burgess for *ABC News*, 'Kiribati court grants David Lambourne bail, slams attempts to deport High Court justice back to Australia' dated 12 August 2022 (online) <https://www.abc.net.au/news/2022-08-12/kiribati-court-grants-david-lambourne-bail-slams-deportation-bid/101326452>

⁶ The World Bank 'Population total – Kiribati' (online) <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=KI>