

REPORT DRAFTED BY REQUEST OF THE PRESIDENCY COMMITTEE OF THE  
INTERNATIONAL ASSOCIATION OF JUDGES FOR THE ADMISSION OF THE Association of  
Judicial Magistrates of São Tomé and Príncipe – (ASSIMAJUS) AS MEMBER

Report drafted by rapporteurs Mr. Rafael de Menezes (Brazil) and Mr. Momblé Messey (Ivory Coast)

Obs.: owing to translation costs, this text in English is a summary of the complete report available in Portuguese.

Recife, Brazil, April 2016

1 – Indication of the rapporteurs

The International Association of Judges received an application from the Association of Judicial Magistrates of São Tomé and Príncipe for its admission as ordinary member. While meeting in Barcelona in October 2015, the Presidency Committee thus decided to appoint Mr. Rafael de Menezes, from Brazil, and Mr. Momblé Messey, from Ivory Coast, as rapporteurs for the admission report.

2 – Situation of the country

São Tomé and Príncipe, officially the Democratic Republic of São Tomé and Príncipe, is a country located in Africa, composed of two main islands (Ilha de São Tomé and Ilha do Príncipe), with a total area of 1001 km<sup>2</sup> and approximately 192 thousand inhabitants. In spite of not having any land borders, it is relatively close to the coasts of Gabon, Equatorial Guinea, Cameroon and Nigeria.

The country is a semi-presidential Republic, with President Manuel Pinto da Costa as head of state and Patrice Trovoadá as Prime Minister and chief of government.

São Tomé and Príncipe is member of the following international organizations:

CPLP – Community of Portuguese Language Countries


UN – United Nations

AU – African Union

ECCAS – Economic Community of Central African States

3 – Visit to São Tomé and Príncipe by rapporteur Rafael de Menezes, Brazilian judge

The visit occurred between March 13<sup>th</sup> and 17<sup>th</sup> 2016, during a seminar on Justice, Environment and Citizenship Reforms organized by the Association of Judicial Magistrates of São Tomé and Príncipe – ASSIMAJUS and the International Union of Portuguese-speaking Judges – UIJLP. Many organizations and authorities were visited.



Rafael de Menezes  
Juiz

#### 4 – LEGAL SYSTEM OF SÃO TOMÉ AND PRÍNCIPE

The country was a Portuguese colony until its independence in 1975, when a single-party communist regime was implemented and coffee and cocoa plantations were nationalized. In 1985, ten years after the independence, the economic opening of the country began. A new constitution was adopted in 1990, instituting a multi-party system. The current constitution of the Republic dates from 2003. The Democratic Republic of São Tomé and Príncipe is a sovereign and independent State which aspires to build a free, fair society based on the principle of solidarity, defending the rights of man and active solidarity with all men and all people. The secular State ensures religious freedom. The economy allows private property of means of production, aiming at national independence, development and social justice. All citizens are equal under law, enjoy equal rights and are subject to the same duties, regardless of their social origin, race, sex, political tendencies, religious beliefs or philosophical convictions. Women have the same rights and duties as men, and their full participation in politics, economy, society and culture is guaranteed. The Constitution ensures the right to life as well. Death penalty, torture and cruel penalties are prohibited.

#### 5 – JUDICIAL SYSTEM OF SÃO TOMÉ AND PRÍNCIPE

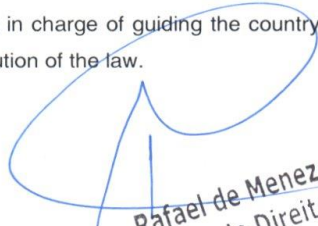
The Courts are bodies of sovereignty and are competent to administer justice on behalf of the people. The administration of justice charges Courts with assuring the defense of rights and the legally protected interests of the citizens, settling public and private conflicts of interest and preventing law violations. The Courts are independent, being subject only to the law. The decisions of the court are reasoned and mandatory for all public and private entities, and they prevail over those of any other authority. Court hearings are public, except when the court itself decides otherwise by a reasoned decision, with the purpose of safeguarding the dignity of the people and public morality or to ensure its good functioning. By general rule, the judges are irremovable and cannot be transferred, suspended, forced to retire or fired. Also by general rule, the judges can not be held accountable for their decisions.

Judicial system and structure of Courts: 1 – Constitutional Court; 2 – Supreme Court of Justice and 3 – Court of first instance

#### 6 – System of Government in São Tomé and Príncipe

The President of the Republic is the Chief of State and the Supreme Commandant of the Armed Forces. In addition to representing the Democratic Republic of São Tomé and Príncipe, the president guarantees national independence and the unity of the State, and ensures the good functioning of institutions. The president is elected by direct universal suffrage for a five-year mandate.

The Prime Minister is the Chief of Government, as an executive and administrative body of the State, being in charge of guiding the country's general politics, coordinating public action and ensuring the execution of the law.



Rafael de Menezes  
de Direito

#### 7 – High Council for the Judiciary

The High Council for the Judiciary ( Superior Council of Judicial Magistracy , CSMJ) is the body that manages and disciplines judicial magistracy, and its composition and competences are determined by law 14/2008 of November 10, 2008, from article 141 on. The CSMJ is not defined by the Constitution, only by law 14. The Superior Council has five members: one appointed by the judges, another appointed by the Justices, a third one is the Chief Justice, a fourth is appointed by the Parliament and the last one is appointed by the President of the Republic. So three members are judges, and two are not. There is a sixth member appointed by the judicial staff, but this sixth one only takes parts in sessions that discusses employees questions.

#### 8 – Selection of judges

By public exam for upright Santomean citizens with a Law degree and more than 25 years old. The public exam is organized by the High Council for the Judiciary.

#### 9 - INDEPENDENCE OF THE JUDICIARY

The Constitution of the country establishes the independence of the judiciary, which was confirmed during the visitations and observations in São Tomé.

Prerogatives of judges: the judge does not answer to orders or instructions to pronounce their verdict. The judge can not be held accountable for the content of their decisions pronounced in accordance with the law. The judge nomination is lifelong and their irremovability is assured at the headquarters of their Court. The judge is authorized to carry a weapon for self-defense and demand security from the State in cases of serious threats.

Duties and prohibitions imposed to the judge: they need to live in the city where the headquarters of the Court in which they work are located. Judges are prohibited of participating in partisan politics. They cannot make public statements about a process they are about to judge. They cannot carry out any other public or private activity, except for teaching and professional association activities.

#### 10 – Assimajus: funds, accounting and initiatives

The funds of the association result from the contribution of approximately six euros per member. A total of 23 members are registered out of the 27 judges of São Tomé and Príncipe (including judges of law, counsellors and retired judges). They also come from donations of public institutions (Supreme Court of Justice, Ministry of Justice and the government) and from a private financial institution (BISTP – International Bank of São Tomé and Príncipe) to bear travel expenses of the members for their participation in seminars, professional association activities and academic activities.

The association has two bank accounts at its disposal, one in Banco Equador, where the

Rafael de Menezes  
Juiz de Direito



contributions are deposited, and other in the aforementioned BISTP, where monetary donations are deposited.

As for the initiatives of the association, debates and round tables have been organized to discuss current issues of São Tomé, such as domestic violence and stable union. Similarly, the Assimajus promotes the defense of judges targeted by disciplinary procedures of the CSMJ, through hired lawyers. The association also communicates with the government and the National Assembly to improve and change work conditions and in legislative proposals. Lastly, the Assimajus organizes social gatherings during Christmas to contribute to the unification of judges.

It became evident that the Assimajus works in a clear and evident way for judicial independence.

#### 11 – Qualification and education of judges

No regulation obligates judges to study regularly and enhance their qualifications, but the judicial statute determines in its article 11 that judges may be dismissed from service to participate in courses, seminars and other activities for their education.

#### 12 – Remuneration of the judges

It is defined by law, and nowadays it is equivalent to nine hundred euros per month.

#### 13 – Interviewed authorities

A total of seven: 1) Mr. Kelve Nobre de Carvalho, deputy prosecutor of the Public Prosecutor's Office of São Tomé and Príncipe, 2) Ms. Celiza de Deus Lima, lawyer, ex-president of the Bar Association of São Tomé and Príncipe, 3) Mr. Frederique Samba Viegas D'abreu, Attorney-General, 4) Mr. Silvestre da Fonseca Leite, counsellor judge and inspector of the Supreme Court of Justice, 5) Mr. José Diogo, President of the National Assembly, 6) Mr. Patrice Trovoadá, Prime Minister, and 7) Mr. José António Bandeira, president of the Supreme Court of Justice.

#### 14 – Conclusions and recommendation

São Tomé and Príncipe is a young and small country that became independent only 40 years ago. Characterized by a wonderful climate, abundant nature, large access to the sea and to freshwater, fertile land, and forests, its two-hundred thousand inhabitants work together for the development of the country.

The Association of Judicial Magistrates of São Tomé and Príncipe is part of this national unit and has all the necessary conditions to join the IAJ.

The country is a democracy with a Constitution, young people attend school, the streets are safe, it is possible to travel within its territory without any difficulties, and it is integrated into the international community.

  
Rafael de Menezes  
Juiz de Direito

The politics and society of São Tomé are progressing, and after its independence in 1975, the country has respected the human rights of its citizens, within its economic boundaries.

The Constitution of the country and the visited authorities acknowledge the independence of powers, especially the judiciary, and the commitment of the Assimajus to enhancing the system.

Many challenges lie ahead, such as computerizing Justice, more promptness during trials, demanding work goals from judges, etc., but these factors are understandable for a young country with economic limitations that faced communism after its independence.

Thus, the rapporteurs appointed by the IAJ consider that, taking into account the legal system of the country and the dedicated work from the Assimajus **toward the independence of the judicial power**, the Association of the Judicial Magistrates of São Tomé and Príncipe – Assimajus **strongly** deserves to be admitted as a member of the IAJ.

Consulted documents:

- 1 – Constitution of the Republic of São Tomé and Príncipe
- 2 – Statute of Judicial Magistrates, law 14 from November 10, 2008
- 3 – Statute of the Association of Judicial Magistrates of São Tomé and Príncipe – Assimajus, from May 20, 2005

1<sup>st</sup> Rapporteur

2<sup>nd</sup> Rapporteur

Rafael de Menezes  
Juiz de Direito