

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
UA NPL 2/2017

5 May 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 26/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received regarding the impeachment motion filed against the Chief Justice, Ms. **Sushila Karki**, and the alleged serious interference in the independence of the judiciary such a process could represent.

According to the information received:

On 30 April 2017, two ruling parties, the Nepali Congress and the Communist Party of Nepal (Maoist Centre), filed an impeachment motion against Chief Justice Sushila Karki, pursuant to article 101(2) of the Constitution of 2015. As per article 101(6) of the Constitution, the Chief Justice was immediately suspended from her functions until the end of the impeachment proceedings. The Chief Justice had reportedly been instrumental in addressing human rights cases and taking a strict approach to corruption-related cases since she had taken office.

The motion was reportedly brought forward on allegations that the Chief Justice had encroached on the jurisdiction of the executive branch. It was filed soon after a ruling of the Supreme Court, sitting in full bench, revoking the Cabinet's decision of 12 February to appoint a new Inspector General of Police in violation of existing processes and regulations.

On 30 April 2017, the Supreme Court had also found three former Inspectors General of Police and other senior officials guilty of corruption in the so-called "Sudan corruption case".

Moreover, the Supreme Court, headed by Chief Justice Karki, had also prioritized a writ challenging the appointment of the chief of the Commission for Investigation of Abuse of Authority and, on 8 January 2017, the Court had ruled to suspend his appointment because he reportedly did not meet the minimum qualification requirements.

In addition, the impeachment process against the Chief Justice was launched in a context where judges defending the Constitution and the rule of law have allegedly been the subjects of threats, including from political leaders. Nepal's judiciary, including the Supreme Court, has also been criticized recently by officials close to the Government in relation to a number of high profile human rights cases.

The impeachment motion was filed shortly before the Chief Justice's mandatory retirement on 7 June 2017. This has reportedly given rise to suspicions that it is aimed at preventing the Chief Justice's participation in judicial activity until then.

I wish to express serious concern regarding the impeachment motion filed against Chief Justice Karki and the grave consequences such a process could have on the independence of the judiciary and the separation of powers in Nepal. I am particularly concerned about the alleged grounds leading to the filing of the impeachment motion, which do not appear to be in compliance with international standards on the matter, and the allegations according to which the impeachment motion appears to be politically motivated.

The 2015 Constitution guarantees in its preamble "an independent, impartial and competent judiciary". The independence of the judiciary is protected, inter alia, under the International Covenant on Civil and Political Rights, to which your Excellency's Government acceded in 1991, and the UN Basic Principles on the Independence of the Judiciary.

According to Basic Principles on the Independence of the Judiciary, judges can be suspended or removed only for reasons of incapacity or behaviour that renders them unfit to discharge their duties, and only in accordance with fair procedures ensuring objectivity and impartiality (Principles 17 to 19; see also Human Right Committee, General Comment no. 32, CCPR/C/GC/32, para. 20).

I also wish to underline the legitimacy of the Supreme Court's function of judicial review of the constitutionality or legality of executive decisions, administrative orders and legislative acts. This function serves only to ensure that the executive and legislative branches carry out their responsibilities according to law, and that their determinations or acts do not exceed their accorded powers. When the executive or legislative branches seek to limit, or even suspend, the power of judicial review, it constitutes an interference with judicial independence. In the case of Nepal, the judicial review function of the Supreme Court is enshrined in the Constitution.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful to receive

any additional information and any comment you may have on the above-mentioned allegations.

While awaiting a reply, I urge your Excellency's Government to take all necessary measures to protect the independence of the judiciary and of the Chief Justice, including immediate steps to withdraw the impeachment motion. In this context, I wish to kindly request that your Excellency's Government share a copy of this letter with his Excellency the Prime Minister and the Parliament.

I also seize this opportunity to inform your Excellency's Government that I may express my concerns on the matter publicly in the near future. If that is the case, I would indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers