

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

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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 35/11.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged threats that President Duterte addressed to **chief justice Sereno** as a result of her professional activities in defense of the independence of the judiciary, and the unprecedented decision of the Supreme Court of the Philippines to oust its chief justice, which seem to be directly related to the attacks of the President.

According to the information received:

Ms. **Maria Lourdes Sereno** was appointed Chief Justice of the Supreme Court of the Philippines by President Benigno Aquino III on 24 August 2012.

On 7 August 2016, President Duterte, in a televised speech, read a list of names of personalities whom he accused to be involved in illegal drug activities; among those named, there were seven judges.

On 8 August 2016, Chief Justice Sereno wrote a letter to the President expressing her concern on the premature announcement of an informal investigation against the seven judges. The letter reads in part:

“However, Mr. President, a premature announcement of an informal investigation on allegations of involvement with the drug trade will have the unwarranted effect of rendering the judge veritably useless in discharging his adjudicative role.

(...)

With all due respect, Mr. President, we were caught unprepared by the announcement. It would matter greatly to our sense of constitutional order, if we were given the chance to administer the appropriate preventive measures without the complications of a premature public announcement.

(...)

To safeguard the role of the judges as the protector of constitutional rights, I would caution them very strongly against “surrendering” or making themselves

physically accountable to any police officer in the absence of any duly-issued warrant of arrest that is pending.”

On 9 August 2016, President Duterte, in a public response, would have publicly warned Chief Justice Sereno not to create a crisis, saying that otherwise he would declare martial law.

On 16 August 2016, the Supreme Court resolved to treat the 7 August 2016 speech of President Duterte as evidence, and ordered a *motu proprio* fact-finding investigation on four of the seven judges.¹ The Court invited the Philippines National Police Director General, the Philippine Drug Enforcement Agency Director General, as well as the heads of the statutory authorities mandated to obtain information on illegal drugs activities, to submit Complaint-Affidavits or other information on the judges.

On 6 December 2016, the Supreme Court, after considering all the submissions, declared that “no evidence has been put forward to link [three of the judges] to the use, proliferation, trade or involvement in illegal drugs.” Only the investigation against one judge remained pending.

Around that time, rumours of a possible impeachment of Chief Justice Sereno allegedly began to circulate.

On 8 July 2017, the Speaker of the House of Representatives confirmed that Chief Justice faced the prospect of impeachment.

On 30 August 2017, an impeachment complaint was filed by Mr. Lorenzon Gadon, an attorney at law. Attorney Gadon is the president of the Constitutional Reformers to Federalism, a group that supports President Duterte’s constitutional reform in favour of federalism. In the complaint, the Chief Justice Sereno is accused of betraying public trust by:

- 1) Sending “a strongly-worded but misplaced reply to President Duterte on the Judges linked to drugs thereby inviting a head-on collision between the Presidency and the Judiciary.”
- 2) Preventing “the Justices of the Court of Appeals to do a courtesy call on President Duterte.”
- 3) Attacking “the imposition of Martial Law in a commencement address, while the validity of Martial Law was still pending before the Supreme Court, and later continued to participate in the Court’s deliberations.”

¹ One of the seven judges named was already dead, one had already been dismissed from service, and the other had retired.

4) “Pervert[ing] justice by meeting the Presiding Justice and Associate Justices of the Court of Appeals and instructing them not to comply with the processes of the House of Representatives and to immediately question its processes before the Supreme Court.”

Several observers commented on the encroachment by the House Committee on Good Government and Public Accountability on judicial power and its independence. The Integrated Bar of the Philippines, for example, issued a statement, opining that “while the authority of the House of Representatives to hold persons in contempt and order their detention is beyond question, the determination of whether or not the right of the Ilocos 6 against self-incrimination was properly invoked is, however, a justiciable issue that is well within the authority of the judiciary to determine.”

The Gadon complaint was endorsed by sixteen lawmakers paving way for its referral to the Justice Committee.

On 13 September 2017, the Justice Committee of the House of Representatives found the complaint filed by Mr. Lorenzon Gadon admissible in form and substance, and hearings thereafter commenced.

The Committee denied the Chief Justice Sereno’s motion to cross-examine the witnesses. Representative Reynolds Umali allegedly said that they would not allow the lawyers of Chief Justice Sereno to conduct cross examination, because that was not allowed by the rules of the House. According to him, only the Chief Justice herself as the respondent could be allowed to do that.

On 1 March 2018, Ms. Maria Lourdes Sereno took “leave of absence” from office. Reportedly, her spokesperson used the term “wellness” leave and “time” to prepare her defense. According to some sources, the Chief Justice was pressured to take leave, or even resign, by many of the other justices.

On 8 March 2018, after 17 hearings over 5 months, the Justice Committee allegedly voted that the complaint against Chief Justice Sereno was well-founded. The Committee later approved six articles of impeachment against Chief Justice Sereno.

The Committee is allegedly supposed to submit its resolution to the plenary, which will then vote whether to transmit the same to the Senate for trial.

On 5 March 2018, the Solicitor General filed a *quo warranto* petition before the Supreme Court, seeking to oust Chief Justice Sereno from office by a mode other than the current grounds for impeachment. While the President had been vocal about wanting to impeach the Chief Justice, he denied having had a hand in the *quo warranto* petition. According to the House Opposition Leader Edcel Lagman,

the filing of a *quo warranto* petition was an admission that the impeachment case was weak and would not succeed in the Senate.

On 9 April 2018, President Duterte publicly threatened Chief Justice Sereno by saying that she was his enemy and she had to be out of the Supreme Court. He then called upon Congress to fast track her impeachment. Subsequently, the Speaker of the House, Mr. Pantaleon Alvarez, informed the press that the impeachment of the Chief Justice would be considered as soon as the House of Representatives resume its sessions.

On 11 May 2018, the Supreme Court voted to oust Chief Justice Sereno over her supposed failure to meet the “integrity test” of her position despite earlier warnings that such a decision would trigger a constitutional crisis. Voting 8-6 in a special en banc session, the Court found Ms. Sereno guilty of unlawfully holding and exercising the Office of the Chief Justice. Accordingly, Ms. Sereno appointment as chief justice was declared void. The ruling is immediately executory.

On 13 April 2018, after a trip to China, President Duterte continued attacking Chief Justice Sereno, calling her “ignorant”, “dumb”, and “coward”. He recalled how Chief Justice Sereno called on judges whom he had publicly announced to be involved in illegal drug activities not to surrender to authorities without warrants of arrest having been issued against them: “You really should be removed. You should have been removed way before. You are dumb. Your mother is a wh***. Give way. If I were you, I would resign”.

The Supreme Court’s expulsion of Sereno, based on a Government petition, pre-empted the finalisation of the impeachment process that had been underway in Congress for months.

On 17 May 2017, 14 out of the 23 senators, including eight who are allies of President Duterte, issued a resolution asking the Supreme Court to review its decision to oust its chief justice, calling the ruling a “dangerous precedent” that infringed on constitutional powers of Congress to impeach senior officials. The senators are allegedly led by Senate President Aquilino Pimentel III, who said that Chief Justice Maria Lourdes Sereno could only be removed through congressional impeachment.

It also appears that opposition lawmakers are considering to impeach the 8 Supreme Court justices who voted to oust Maria Lourdes Sereno as chief justice. On 22 May, the House Opposition Leader, Mr. Edcel Lagman, said in a press conference that the 1987 Constitution only allowed the removal of State officials through impeachment by the House of Representatives and then conviction by the Senate, sitting as an impeachment court. He considered that no other procedure – and especially no *quo warranto* action – was allowed.

Without prejudging the accuracy of the information received, concern is expressed at the above allegations. The derogatory statements and threats by the President of the Philippines, which have been televised, broadcasted in radio, and carried by newspapers, and the ongoing process of impeachment against the highest-ranking magistrate in the country, maybe regarded as an attack to the independence of the judiciary. In particular, the statements of the President of the Republic against Ms. Sereno not only constitute direct intimidation of the Chief Justice, but may have a “chilling effect” on other independent judges, who may be deterred from asserting their judicial independence and exercising their freedom of expression.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to International Human Rights Law**, attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it 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 for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide detailed information concerning the factual and legal grounds for the impeachment in process of the Chief Justice, Ms. Maria Lourdes Sereno, and explain how these measures are compatible with international human rights norms and standards, in particular those which constitute the legal international obligations of the Philippines under the treaties it has ratified (ICCPR)
3. Please provide detailed information on the guarantees in place to protect and promote judicial independence, including legal means that judges may use to defend themselves against any threat to their independence.
4. Please provide detailed information on the outcome of *quo warranto* petition before the Supreme Court, and explain how such procedure and its outcome are compatible with international human rights norms and standards.

I would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I am considering to publicly express my concerns in the near future as, in my view, the information available to me is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to their human rights implications. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Annex

Reference to international human rights law

The independence of the judiciary is prescribed, inter alia, in the International Covenant on Civil and Political Rights (ICCPR), ratified by the State of the the Phillipines on 23 October 1986, and the United Nations Basic Principles on the Independence of the Judiciary.

Article 14 of the ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal established by law. In this regard, General Comment No. 32 (2007) of the United Nations Human Rights Committee notes that the element of independence requires the judiciary to be free from political interference by the executive branch, as well as the legislature. The Committee notes in particular that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal (General Comment No. 32, para. 19).

Additionally, the UN Basic Principles on the Independence of the Judiciary (hereinafter, the basic principles) state, inter alia, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that the judiciary shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

Moreover, according to the basic principles, on the discipline, suspension and removal of judges, a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge (principle 17); judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties (principle 18); all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct (principle 19); and decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings (principle 20).