

Mandates of the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL LKA 5/2019

18 December 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 34/5 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged decision not to permit practicing law to human rights lawyer Kumaravadivel Guruparan, in connection with his peaceful human rights work.

Dr. Kumaravadivel Guruparan is a human rights lawyer based in Jaffna. He is the founder and executive director of the human rights organisation Adayalam Center for Policy Research, and also a senior lecturer of the Department of Law at the University of Jaffna, a position he has held since September 2011.

As a lawyer, Dr. Guruparan is involved in several high profile legal cases pending before court, including cases related to alleged enforced disappearances of civilians in the north and east of the country, carried out apparently by the military. As a result of his work, Dr. Guruparan has faced threats, intimidations and attempts to suppress his work. As a human rights defender, Dr. Guruparan advocates on behalf of victims of human rights violations, many of whom are from vulnerable and impoverished communities.

According to the information received:

On 7 August 2019, three officers from the Terrorism Investigation Department visited the Adayalam Center office premises in Jaffna and demanded access to staff records and programme work being carried out by the organisation. As mentioned before, Mr. Guruparan is the executive director of the centre.

On 21 August 2019, the Sri Lanka Army sent a letter to the University Grants Commission (UGC), questioning the basis on which Dr. Guruparan was permitted to practice as a lawyer in court. According to the information received, despite clear departmental procedures at the University permitting Dr. Guruparan to practice law, the UGC took a decision on 5 September that Dr. Guruparan should no longer be permitted to practice, and forwarded this decision to the University of Jaffna.

On 9 November 2019, in its first official meeting since receiving the UGC letter, the Jaffna University Council decided to no longer permit Dr. Guruparan to practice as a lawyer in Sri Lankan courts.

Without prejudging the accuracy of these allegations, we would like to express serious concern at the reported decision not to permit human rights lawyer Dr. Kumaravadivel Guruparan to practice law, apparently in retaliation for his activities as a lawyer and a human rights defender. This decision may have an adverse impact on the free and independent exercise of the profession of lawyer in Sri Lanka, as well as on the realisation of the right to a fair trial, in particular to the right to legal representation of one's choice.

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 is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Additional information and/or any comment(s) you may have on the above-mentioned allegations;
2. Information on the legal procedure and grounds invoked for demanding access to documentation concerning the work carried out by the Adayalam Center for Policy Research;
3. Detailed information on the measures taken to ensure that Dr. Guruparan can freely and independently exercise the legal profession; and how the grounds for the decision not to permit Mr. Guruparan to practice as a lawyer and the process followed, including the competence of the UGC and the University Council, comply with international standards;
4. Information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers to perform their professional functions freely and without any intimidation, threat, harassment or improper interference;
5. Information on measures taken to ensure the effective realisation of the right to a fair trial in Sri Lanka, and in particular to the right to legal representation of one's choice;
6. Information on the measures taken to ensure that human rights defenders in Sri Lanka are able to carry out their legitimate work in a safe and

enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence 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.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to article 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Sri Lanka on 11 June 1980. Article 14 provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to communicate with counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that lawyers should be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency’s Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990. Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. Principle 17 states that where the security of lawyers is threatened as a result of discharging their functions, the authorities are responsible for their adequate safeguard. Finally, Principle 18 affirms that lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.

In addition, the Basic Principles address the issue of disciplinary proceedings in Principles 26 to 30. Principle 26 establishes that “Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms”. According to Principle 27, “Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice”. Furthermore, Principle 28 states that “Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review”. Finally, according to Principle 29, “All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles”.

We would also like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and

realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, article 9, paragraph 3 (c) of the Declaration provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.