

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

Ref.: AL UGA 1/2023
(Please use this reference in your reply)

27 March 2023

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 44/8.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations of interference in the judicial independence of a Justice Esther Kitimbo Kisaakye of the Supreme Court of Uganda, as well as the subjection of that Justice to allegedly unfair disciplinary procedures, possibly in retaliation for carrying out her judicial functions.

Justice Esther Kitimbo Kisaakye was appointed as a Justice to the Supreme Court of Uganda in October 2009. Apart from the Chief Justice, Justice Kisaakye is the most senior Justice of the Supreme Court, having served more than thirteen years.

According to the information received:

On 1 February 2021, [REDACTED] also known as [REDACTED], submitted a petition to the Supreme Court seeking to nullify the election results on the grounds that the election was fraudulent and the result unfair. Justice Kisaakye was one of the nine Supreme Court Justices empaneled to hear and determine [REDACTED] election petition. [REDACTED] had run as a candidate in opposition to President [REDACTED] in the 14 January 2021 presidential election. President [REDACTED] was declared the winner of the election.

On 5 February 2021, [REDACTED] sought to amend his petition. The Court unanimously disallowed his request on 9 February 2021. On 17 February 2021, he requested an extension of time to file additional affidavits. The Court disallowed this request on 19 February 2021, with Justice Kisaakye dissenting.

On 24 February 2021, [REDACTED] asked to withdraw his original petition. The Court unanimously allowed the withdrawal on 5 March 2021. On 5 February 2021, [REDACTED] a lawyer who was not part of this petition, sought the recusal of Chief Justice [REDACTED]. In a summary ruling, the Chief Justice declined to recuse himself on 23 February 2021. Justice Kisaakye reportedly had her own ruling on the recusal and other pending filings.

Attempt to deliver reserved rulings on the 18th and 19th of March 2021

The Supreme Court fixed 18 March 2021 as the date for delivery of the Justices' reasoning for their decisions in [REDACTED] election petition and related matters. The Chief Justice and seven Justices delivered the majority ruling. Reports indicate that, following a disagreement about whether Justice Kisaakye could deliver her dissenting ruling on the same day without first

having shared a draft with her colleagues, Justice Kisaakye proceeded into the courtroom to deliver her ruling. However, when Justice Kisaakye entered the Courtroom to deliver her dissent, police officers assigned to the Chief Justice allegedly confiscated her files, the Court's lights were shut off, and the Courtroom was locked up. Despite the lights having been turned off, Justice Kisaakye used a duplicate file to deliver part of her rulings on [REDACTED] petition. It is alleged that on the next day, 19 March 2021, the Chief Justice directed the police to close the Court and deny entry before Justice Kisaakye could deliver her ruling on the petition regarding the Chief Justice's recusal.

Reports indicate that to date, Justice Kisaakye has not been able to retrieve her files.

Investigation by the Judicial Service Commission

On 20 March 2021, the Judicial Service Commission began an investigation into the events of March 18th and 19th. It is alleged that the Judicial Service Commission received two complaints from the Chief Justice regarding Justice Kisaakye, and complaints from others, including [REDACTED] and [REDACTED] concerning the Chief Justice. Justice Kisaakye reportedly was not made aware of the investigation against her at the time it was initiated. On 24 March 2021, the Chief Justice allegedly removed Justice Kisaakye as Administrative Justice of the Supreme Court and replaced her with a more junior Justice.

During the pendency of these complaints against Justice Kisaakye, she was granted leave for medical reasons to obtain treatment concerning a vision disability. There is a dispute concerning how long her leave was to be, and the number of days to which she was entitled, with the Chief Justice alleging that she was absent without his permission. The Chief Justice included this allegation among his complaints against Justice Kisaakye before the Judicial Service Commission.

On 25 July 2022, the preliminary findings of the Judicial Service Commission were given to Justice Kisaakye. Thereafter, the Commission appears to have initiated a disciplinary inquiry, though the proceeding reportedly did not include procedural protections.

Justice Kisaakye has allegedly been excluded from the duty rosters of the Court. The Chief Registrar also reportedly removed Justice Kisaakye's Research Assistant, which she requires due to her disability.

Lawsuit

In October 2022, Justice Kisaakye filed suit against Chief Justice [REDACTED] and others for alleged obstruction of justice and other claims related to the Commission's investigation against her. The case asked the Constitutional Court to determine the constitutionality of allegedly retaliatory actions taken against Justice Kisaakye for carrying out her judicial functions. In court filings, Chief Justice [REDACTED] and other defendants denied wrongdoing. Despite Justice Kisaakye having filed her constitutional complaint many months ago, as of the time of this letter, the Constitutional Court has not held

any proceedings in relation to the case.

On 24 February 2023, the Judicial Service Commission completed its inquiry. The Judicial Service Commission decided in its preliminary findings to close Justice Kisaakye's complaint because she allegedly did not file a formal written statement. However, it evaluated all of the Chief Justice's complaints against her. On 8 February 2023, the Judicial Service Commission concluded that a *prima facie* case was established regarding Justice Kisaakye's alleged misconduct and recommended that the President appoint a tribunal to investigate the question of the removal of Justice Kisaakye from office.

While I do not wish to prejudge the accuracy of the specific allegations, I am concerned about what may be improper interference in the exercise of a Supreme Court Justice's judicial independence. I am especially concerned that actions may have been taken to prevent a Supreme Court Justice from delivering her rulings in an election fraud case. I am further concerned about allegations that a Justice's right to a fair disciplinary procedure may have been violated, and that she now faces potential suspension. Were she suspended, it would be on the basis of allegations not subject to judicial scrutiny, in a context where Justice Kisaakye alleges serious violations of due process, and before the Constitutional Court has determined whether the Judicial Service Commission's actions were constitutional.

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 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the applicable rules and procedures regarding investigations by the Judicial Service Commission. Please indicate the legal basis for these rules and procedures, explain whether there have been any recent changes to these rules and policies, and explain how these rules and procedures are compatible with international human rights law, including the right of judges to a fair disciplinary procedure.
3. Please clarify the steps taken to ensure Justice Kisaakye's due process rights are protected and that her right to a fair hearing was and will be upheld. Please clarify that Justice Kisaakye will not be removed at the recommendation of a tribunal applying rules not adequately secured by law.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. 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.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the above allegations appear to be in contravention of provisions of international law, in particular the rights to judicial independence, freedom of expression, and fair disciplinary procedures, in accordance with the Basic Principles on Judicial Independence and the Bangalore Principles on Judicial Conduct.

The first Basic Principle directly focuses on judicial independence. It prohibits, *inter alia*, any “improper influences, inducements, pressures, threats, or interferences” in judicial decision-making. Moreover, “any inappropriate or unwarranted interference with the judicial process” violates the principal of judicial independence. The first Principle requires that the judiciary “ensure that judicial proceedings are conducted fairly and the rights of the parties respected.”

The second Basic Principle covers freedom of expression and association. Judicial officers are entitled to such freedom, but in the exercise thereof, they shall conduct themselves in a manner that preserves the dignity, impartiality, and independence of the judiciary. The third Principle on conditions of service and tenure states that the “term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.” The last Basic Principle on discipline, suspension, and removal, notes the following complaints made against judges in their professional capacity “shall be processed expeditiously and fairly under an appropriate procedure,” with judges entitled to a fair hearing. Further, judges can only be subjected to suspension or removal due to incapacity or behavior that makes them unfit to perform their duties.

The values enshrined in the Bangalore Principles are complementary. Regarding the first Value on independence, judges shall be independent in relation to society and parties to disputes, and independent of judicial colleagues. Judges also “shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.” The Commentary on the Bangalore Principles elaborates that judicial independence means freedom from undue external influence and freedom from other judges’ undue influence (para 39).

The second Value of Impartiality demands that judicial officers conduct their duties without favor, bias, or prejudice, and if they are unable to decide a matter impartially, they shall, thus, disqualify themselves from participating in that matter. The third Principle of integrity implies that judges shall ensure that their “conduct is above reproach in the view of a reasonable observer.”

The Bangalore Principles conclude with the principle of competence and diligence. This principle mandates that judges “shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.” It further notes that judges “shall maintain order and decorum in all proceedings.” The Commentary explains that the notion that judges “shall not engage in conduct incompatible with the diligent discharge of judicial duties” includes the

fair distribution of work and prohibits the misuse of court staff (paras 216 and 219).