

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

Ref.: AL USA 19/2024
(Please use this reference in your reply)

24 June 2024

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 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning statements in media and posts in social media that judges and prosecutors in trials are "corrupt puppets" of the Biden administration, politically motivated, and include threats to life and integrity of justice officials. Further, these comments may amount to interference with their independence and their work, while at the same time weaken public trust in the US justice system.

According to the information received:

Former President and current presidential candidate of the Republican party, Donald Trump, has been posting threatening and demeaning messages on social media against judges and prosecutors involved in criminal and civil cases against him. These posts have targeted the judge who oversaw his recent conviction in New York, the judge who presided over his civil fraud trial in New York, and prosecutors in several pending cases against him in both federal and state courts.

Donald Trump has labelled the judges variously as "highly conflicted", a "corrupt puppet", and "crazy", and one of the judge's courtrooms as a "kangaroo court". The former president has described federal and state prosecutors as "corrupt" and "deranged". He has labelled several prosecutors who are African American as "animals" or "rabid", as well as calling them "racist". He has called the cases against him "a hoax" and a "con job". Trump has routinely made similar statements during press conferences and rallies.

Trump supporters have reportedly swiftly replied to such posts with a blitz of online and offline attacks. The comments have often turned ugly. Some have called for judges hearing cases against Trump or prosecutors pursuing charges to be killed, and several individuals have faced criminal charges for making such threats. Reports indicate that at least one of the judges presiding over a criminal case and one of the federal prosecutors pursuing charges against Donald Trump have been subject to "swatting," in which police respond to false reports filed with the purpose of setting off a threatening or potentially dangerous response by officers.

The repeated posts and statements by Trump and the menacing responses from his followers illustrate a pattern of attacks against the judges handling the criminal and civil suits against him, casting the judges and prosecutors in his trials as corrupt puppets of the Biden administration, bent on torpedoing his White House bid.

These attacks have been echoed by other elected officials.

For example,

- Commenting on a jury's decision convicting Donald Trump in a New York hush money case, House Speaker Mike Johnson said it was a "shameful day in American history" and the charges were "purely political."
- Ohio Senator J.D. Vance said the verdict was a "disgrace to the judicial system."
- Louisiana Rep. Steve Scalise, the second most highly-ranked House Republican, said that the decision was "a defeat for Americans who believe in the critical legal tenet that justice is blind."
- "This verdict says more about the system than the allegations," said South Carolina Sen. Lindsey Graham, who has been one of Trump's most frequent allies.
- Following Donald Trump's attacks on a state prosecutor who indicted him for illegally trying to overturn President Biden's win in that state, U.S. Congressman Jim Jordan called the criminal case a "witch hunt".

Media reports further suggest that an examination of websites revealed dozens of hostile comments attacking the competence and credibility of conservative jurists as well. The targets include the judges who have issued a number of rulings favourable to the former president. Posters have attacked these judges as "corrupt" and suggested they be tried for espionage.

While I do not wish to prejudge the accuracy of these allegations, I express serious concern at reports that judges and prosecutors in different States of the country are facing harassment and intimidation from public officials in the US administration and from members of the general public that go beyond the accepted limits of freedom of expression under international human rights law.

I take this opportunity to highlight that according to international standards, it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, including by protecting it from intimidation and political interference, and to ensure that all judges and prosecutors are able to perform all of their professional functions without intimidation, hindrance, harassment, improper interference or sanctions.

These attacks are of special concern when they come from current and former government officials. Some of these statements by government officials may amount to interference in the independence the judiciary and improper interference in the legal profession. Politicians and public officials "play an important role in shaping the media agenda, public debate and opinion and that, as a result, ethical behaviour and attitudes on their part, including in their public communications, are essential for promoting the rule of law, the protection of human rights, and for ensuring public

trust in democratic systems of governance”¹.

I emphasize in addition that public officials should not make statements that are likely to promote intolerance, discrimination or dis/misinformation and should, instead, take advantage of their leadership positions to counter these social harms and to promote intercultural understanding and respect for diversity. I highlight that the exercise of the rights provided for under article 19 of the International Covenant on Civil and Political Rights carries with it special duties and responsibilities; in this instance, those duties include the respect of the rights or reputations of others.

Incitement and threats against justice operators can diminish the rule of law, jeopardize the judges’ and lawyers’ personal and professional integrity, and undermine judicial independence.

Online attacks and threats create a hostile environment for the judges and prosecutors seeking to play their important role in the legal system. If confirmed, the lack of protection from harassment suffered by lawyers and judges exercising their functions described in the allegations would amount to a breach of a number of international and regional standards relating to the right to a fair trial.

States must put in place all necessary measures to ensure the protection of all officials working in the justice system, including by ensuring the general public understands their work.

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 on the measures taken to protect and ensure the respect of justice officials in the United States, including those at international level, in your country.
3. Please provide information on the measures taken to raise awareness in the country of the role of the administration of justice.

I would appreciate receiving a response within 60 days. Past 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.

¹ 2121 Joint Declaration on Politicians and Public Officials and Freedom of Expression

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, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, I would like to highlight the relevant provision of the International Covenant on Civil and Political Rights (ICCPR), which the United States of America ratified on the 8 June 1992, as well as the Universal Declaration of Human Rights, which reflects customary international law.

As it relates the right to a fair trial, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law. Access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice; and provides a set of procedural guarantees that must be made available to all persons, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its general comment no. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. She should also be able "to advise and to represent persons charged with a criminal offense in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

I also bring to your attention the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4), which recalls that "under international human rights standards, which are intended to guide legislation at the national level, expression labeled as "hate speech" can be restricted under articles 18 and 19 of the International Covenant on Civil and Political Rights on different grounds, including respect for the rights of others, public order, or national security. States are also obliged to "prohibit" expression that amounts to "incitement" to discrimination, hostility or violence (art. 20, para. 2, of the Covenant and, under some different conditions, art. 4 of the International Convention on the Elimination of All Forms of Racial Discrimination)". The Plan of Action, proposes a six-part threshold test was proposed for expressions considered as criminal offenses:

- (a) Context: Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated;

- (b) Speaker: The Speaker's position or status in the society should be considered, specifically the individual's or organization's standing in the context of the audience to whom the speech is directed;
- (c) Intent: article 20 of the International Covenant on Civil and Political Rights anticipates intent. Negligence and recklessness are not sufficient for an act to be an offence under article 20 of the Covenant, as this article provides for "advocacy" and "incitement" rather than the mere distribution or circulation of material. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience.
- (d) Content and form: The content of the speech constitutes one of the key foci of the court's deliberation and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed;
- (e) Extent of the speech act: Extent includes such elements as the reach of the speech act, its public nature, its magnitude and size of its audience. Other elements to consider include whether the speech is public, what means of dissemination are used, for example by a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public;
- (f) Likelihood, including imminence: Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.

Finally, I would like to bring attention to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, Italy), 26 August-6 September 1985).

Principle 1 provides that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

Principle 2 provides that the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

Principle 4 states 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. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

Principle 6 entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.