

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

Ref.: AL LKA 3/2024
(Please use this reference in your reply)

23 July 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 a reported crisis in the judiciary due to delays in key appointments, allegations of corruption and obstacles to the work of legal professionals that may impact the right to a fair trial in the country.

According to the information received,

A crisis in the judiciary, as well as obstacles to the legal profession are affecting the right to a fair trial in the country.

Appointments to key positions facing delays

On 30 April 2024, the Supreme Court issued an interim stay order to the President and the Constitutional Council, preventing them from nominating judges to the Supreme Court, except for the position of Chief Justice. The order was to be in place until 4 October 2024.

The Supreme Court issued this interim order while allowing the hearing of a petition submitted by a lawyer against the decision taken by the Constitutional Council. The decision in question was the rejection of the nomination submitted by the President for the appointment of the incumbent President of the Court of Appeal, [REDACTED] as a Supreme Court Judge.

The Constitutional Council is a body set up to examine the suitability of nominations made by the Executive to high-level posts. Article 41C of the Constitution states that no person shall be appointed to any of the scheduled offices, which includes the office of the Inspector General of the Police (IGP) unless such appointment has been approved by the Council upon a recommendation made to the Council by the President. Even an appointment to act in an office for a period exceeding 14 days, or for successive periods not exceeding 14 days, also must be approved by the Council. Article 41E (4) requires the nine- member Council to endeavour to reach a unanimous decision, failing which, any decision must be supported by not less than five members to be valid.

On 18 June 2024, the Council rejected the President's request to extend the appointment of the Attorney General for six months. An acting Attorney General took the post on 1 July 2024 and was later appointed.

On 19 June 2024, the Minister of Justice spoke in Parliament about the delay in the filling of vacancies at the Supreme Court and at the Court of Appeal.

During his speech, he revealed that Chief Justice Jayantha Jayasuriya had proposed the appointment of [REDACTED], currently the President of the Court of Appeal, to the Supreme Court. He also said that the Appellate Commission had proposed that [REDACTED], currently a member of the Court of Appeal, be appointed as that court's President.

He also disclosed that Speaker [REDACTED] had informed him in writing that the Constitutional Council was unable to decide on the Supreme Court Appointments with three members in favour and three others opposed.

Previously, on 26 November 2023, the President had announced the appointment of a Parliamentary Select Committee (SC) "to determine future procedures" for appointments since the current situation has created a backlog in courts.

Allegations of corruption in the judiciary

In his 19 June statement to Parliament, the Minister of Justice made serious allegations against the judiciary as well. The allegations the Justice Minister made included a charge that the judges were obtaining electricity and water illegally from the court premises in Mt. Lavinia, that suspects held for narcotic offences at the Fort Magistrate Court had been wrongfully released, and that the attendance machine used for judicial officials had been altered. The Minister reported to have referred these concerns to the Judicial Services Commission on 8 May 2024. A President's counsel's alleged influence on the judiciary, the failure to address grievances of lower court judges, and the Secretary continuing in service in the Judicial Service Commission for a nine-year period are among the other allegations stated by the Minister.

The Judicial Service Commission (JSC) responded to the allegations levelled against the judiciary by Justice Minister [REDACTED]. Speaker [REDACTED] announced he had received the JSC's observations. These were tabled in Parliament on 9 July and are pending consideration.

Meanwhile, the Judicial Service Association (JSA), representing the Magistrate and District Court Judges, is due to hold a special general meeting to discuss what they called 'the negative impacts of malicious statements against judicial decisions or judges and issues related thereto'. The Colombo Law Society also issued a statement on 21 June, condemning the statement made by Justice Minister Rajapakshe.

After the session, the Supreme Court has reportedly decided to expedite and take up on 25 July the case on which it previously issued an interim stay order on the President and the Constitutional Council preventing them from nominating judges to the Supreme Court of Sri Lanka.

Intimidation of lawyers during Yukthiya anti-drug operation

Operation Yukthiya is an ongoing anti-drug operation conducted by the Sri Lankan Police following directives from the Ministry of Public

Security. Starting from 17 December 2023, the police, the Special Task Force and the Sri Lankan Army has carried out island wide raids with 38,525 suspects being arrested as of 17 January 2024.

UN experts have already expressed concerns about the operation in January [2024](#), and called on authorities to immediately suspend and review so-called Operation 'Yukthiya' and to focus on policies based on health and human rights.

On 18 December 2023 in Matara the public security minister [REDACTED] declared that many leading lawyers charge millions of rupees to appear in court on behalf of "drug traffickers". He said a special campaign would be launched to expose lawyers who speak against the 'Yukthiya' operation and appear on behalf of drug traffickers.

He said a handful of lawyers and other people including some online media operators who depend on the money of drug traffickers are engaged in efforts to disrupt the ongoing Yukthiya operation. The Minister also mentioned various insults made through social media, various complaints to the international community together with some representatives of non-governmental organizations.

In February 2024, the Lawyers Collective, a recently formed civil society group in a letter to Justice Minister [REDACTED], expressed grave concerns in the manner the Public Security Minister is exercising his powers in relation to the 'Yukthiya' Anti-Drug Campaign. The organisation said the campaign must conform to the Rule of Law and cannot be a passionate, personal, initiative that the Minister seeks to implement outside the law.

"The manner in which you are conducting this campaign and making public statements on the media indicates that you will consider any laws that you think restrict your authority as obstacles that you have every right to disregard and that all who comment or criticise the manner in which the campaign is conducted are drug dealers and drug addicts," it noted.

The organisation said the Minister had repeatedly referred to lawyers in this manner, despite a statement from the Bar Association of Sri Lanka objecting to this attack on the legal profession.

"Your statements are a violation of the fundamental rights of citizens. They also fail to recognise the right of lawyers to represent clients. They do so in conformity with professional responsibilities to the Court, in the administration of justice. Your statements which amount to a rejection of international law show a surprising ignorance of the obligations of the State of Sri Lanka and its Government under ratified international human rights treaties," it said.

The Bar Association of Sri Lanka (BASL) passed a resolution in April 2024 demanding the resignation of public security minister Tiran Alles, or else the president remove him from the position. The BASL also said it would resort to local as well as international legal action if the minister was not removed.

The information suggests that the government is also mobilizing Buddhist monks to criticise lawyers. In April 2024, a well-known Buddhist monk issued a public statement that certain lawyers are influencing preventive efforts against crime and drugs. And that the operation to eliminate the underworld and drugs started by Minister Tiran Alas should not be hindered.

On 7 July, the President also raised concerns about the work of lawyers, stating “After the arrest of these individuals, some lawyers who advocate for human rights have come forward in their defence. This raises questions for me”.

Without prejudging the accuracy of these allegations, I would like to express my serious concern at what appears to be an undue delay in the appointment of key positions to the administration of justice, particularly to the high courts in Sri Lanka, which could potentially affect the exercise of judicial authority in the country, and constitute a violation of international human rights standards relating to the right to a fair trial and the independence of the judiciary.

In this regard, I would like to recall that the right to a fair and public hearing by an independent and impartial tribunal is provided for in international human rights standards, and that a competent and independent tribunal is one of the guarantees of a fair trial. The requirement of independence concerns, in particular, the procedure and qualifications for the appointment of judges, the guarantees relating to their security of tenure and the guarantees of respect for their independent decisions.

I am concerned about the allegations brought forward as well during the Minister’s statement to Parliament and urge the Sri Lankan authorities to carry out an effective investigation into them.

As it relates to the legal profession, I am concerned about the language used to refer to their work on drug related cases, as well as what may constitute obstacles to their work. The legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system. It contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference.

Verbal attacks are of special concern when they come from 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 recall 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

¹ 2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression.

to promote intercultural understanding and respect for diversity. I would like to highlight that the exercise of the rights provided for under article 19 of ICCPR carry with it special duties and responsibilities, in this instance, we highlight 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 interests, and undermine judicial independence.

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 indicate the measures taken to ensure that appointments for the judiciary under consideration comply with the international standards described in the annex.
3. Please indicate the measures taken to guarantee the independence of judges and magistrates in the country, in compliance with the Principles of Independence of the Judiciary. Both instruments are described in the annex.
4. Please indicate the measures taken to ensure that the judicial body has the necessary means to guarantee access to justice for all persons, including the most vulnerable.

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.

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 refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Sri Lanka on 11 June 1980. Article 14 of the Covenant provides a set of procedural guarantees that must be made available to persons charged with a criminal offence so as to uphold the right to a fair trial and equality of all persons before the courts and tribunals.

Article 14 (1) 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 provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing. Article 14 3) stipulates that, in the determination of any criminal charge, everyone should have adequate time and means to prepare his defence and to communicate with counsel.

I also wish to recall that United Nations human rights instruments recognize the right of access to counsel. Article 14(3)(b) of the International Covenant on Civil and Political Rights (ICCPR) protects the right of anyone facing a criminal charge "to communicate with counsel of his own choosing." The UN Human Rights Committee (HRC) has interpreted this right to include prompt access to counsel, private and confidential attorney-client meetings and communications, and freedom of attorneys from "restrictions, influence, pressure or undue interference from any quarter." Article 14 of the ICCPR is derogable in emergencies; however, the HRC has asserted that "The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights."

Moreover, principle 18(3) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that, "The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order."

Similarly, the principle 8 of the UN Basic Principles on the Role of Lawyers states that, "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality." I would also like to refer your Excellency's Government to the Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court (A/HRC/30/37). These principles and guidelines, elaborated by the Working Group on Arbitrary Detention at the

request of Member States of the Human Rights Council, provide universal guidance applicable to persons deprived of their liberty.

I would also like to refer your Excellency's Government to principle 16 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990) which 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, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

The Basic Principles on the Role of Lawyers provide that all persons "are entitled to call upon the assistance of a lawyer of their choice", and that adequate protection of human rights and fundamental freedoms requires "that all persons have effective access to legal services provided by an independent legal profession". They recognise that the primary obligation to protect lawyers and enable them to exercise their functions freely lies with the State authorities. States are required to adopt all appropriate measures to ensure that lawyers are able to perform all of their professional functions "without intimidation, hindrance, harassment or improper interference". Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (principles 16 (a) and 17).