

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

Ref.: OL USA 36/2025

(Please use this reference in your reply)

15 October 2025

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 the proposed legislation known as Senate Bill 58 of the General Assembly of North Carolina ("SB58"). SB58 was introduced on 5 February 2025, approved by the North Carolina Senate on 11 March 2025, and is now being considered before the House.¹

Recalling that international human rights standards related to the right to a fair trial provide guidance on the how to protect lawyers and prosecutors from improper interference, I would like to offer the following observations regarding the compatibility of the draft bill with international human rights law obligations binding on the United States of America, taking into consideration it ratified the International Covenant on Civil and Political Rights (ICCPR) on the 8 June 1992.

ICCPR includes international standards on the right to a fair trial and the independence of the judiciary. I would also like to recall that much of the Universal Declaration of Human Rights (UDHR), including its provisions relating to the right to a fair trial, has become binding customary law.

At the outset, I wish to highlight with concern the context in which this reform is taking place, given that legislation has already imposed restrictions on the Attorney General through Session Law 2024-57, enacted in December 2024. This amends section 20-32.6 of the General Statutes to provide that, whenever the validity or constitutionality of an act of the General Assembly or a provision of the Constitution of North Carolina is the subject of an action in any State or federal court the Attorney General is not authorized to take any position that is contrary to or inconsistent with the position of the General Assembly.

Session Law 2024-57 also inserts a new section 114-2.8 into the General Statutes, entitled "Limitation on participation in foreign litigation", which provides that the Attorney General shall not advance any argument before a state or federal court in another state that would result in the invalidation of any statute enacted by the General Assembly.²

I also wish to recall the broader nationwide context. Concerns regarding U.S. President Donald Trump dismissing and reassigning a considerable number of federal

¹ <https://www.ncleg.gov/BillLookup/2025/S58>

² <https://www.ncleg.gov/BillLookup/2023/S382>

prosecutors and staff of the Department of Justice soon after taking office were expressed in my previous communication dated 17 February 2025 (AL USA 7/2025). As of the date of this communication, no response has been received from your Excellency's Government.

This action also takes place in a context in which multiple executive orders have been issued by President Donald Trump purporting to ban certain law firms from entering government buildings or obtaining government contracts, while stripping firm lawyers' security clearances, and barring the government from hiring lawyers from the named firms. My concerns about these actions were expressed in a communication (AL USA 15/2025) to your Excellency's Government on 6 May 2025. As of the date of this communication, no response has been received from your Excellency's Government.

In this communication, I do not intend to offer an exhaustive analysis of the draft legislation. Instead, I focus on the provisions that may not be in line with the relevant human rights standards and may infringe on the role of the Attorney General of North Carolina, the separation of powers, and the compatibility of SB58 with international human rights law and standards.

The Attorney General is a lawyer and elected official whose powers and duties as the head of the Department of Justice are defined by the Constitution and Statutes of North Carolina. The role encompasses representing state government in legal matters, instituting and intervening in legal proceedings on behalf of the state, and handling all criminal appeals from state court trials.³ In this role, the Attorney General—like those from other states in the U.S. federal system—engages in cases where the legality of the actions of the federal government is in question.

Proposed amendments on the North Carolina Attorney General's powers

SB58 would amend section 114-2 of the North Carolina General Statutes, which governs the powers and duties of the Attorney General.⁴ The amendment inserts a requirement that the Attorney General shall not, in any state or federal court "File an action that would result in the invalidation of an executive order issued by the President of the United States" or "advance any argument in a pending action" which would have that outcome. SB58 provides that the Attorney General shall not take these actions "as a party, amicus, or any other participant".

These proposed amendments may further undermine the professional functions of the Attorney General as the state government's chief legal officer, threatening the separation of powers in North Carolina. A directive that the Attorney General shall not challenge Presidential executive orders would appear to constitute improper interference in the Attorney General's professional functions by the legislative branch.

Right to a fair trial and the requirement of independent and impartial tribunals

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

³ <https://ncdoj.gov/about-ncdoj/duties-and-responsibilities/>

⁴ https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_114.html

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 personnel in the judiciary, such as the one proposed by the amendments, is incompatible with the notion of an independent tribunal (general comment No. 32, para. 19).

Importance of the separation of powers and requirements to protect prosecutors and lawyers from interference

As it relates to the separation of powers, I highlight that it is closely entwined with international standards on the independence of the judiciary, as guaranteed by, *inter alia*, article 14(1) ICCPR. In a 2009 report to the United Nations Human Rights Council, the Special Rapporteur on the Independence of Judges and Lawyers stressed that “[t]he principle of the separation of powers, together with the rule of law, are key to the administration of justice with a guarantee of independence, impartiality and transparency”.⁵ Furthermore, robust defense of the separation of powers is necessary to safeguard participatory systems of government. In a 2017 report to the Human Rights Council, by the former Special Rapporteur highlighted that “respecting the rule of law and fostering the separation of powers and the independence of justice are prerequisites for the protection of human rights and democracy.”⁶ Most recently, my thematic report observed that “When States act to weaken the independence of the judiciary, the autonomy of the prosecution or the free exercise of the legal profession, this may undermine the capacity of justice systems to play their part in securing meaningful democratic governance.”⁷

Finally, I would like to refer your Excellency’s Government to the Guidelines on the Role of Prosecutors⁸, and in particular guideline 4, which states: “States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability”.

I would further like to refer your Excellency’s Government to the UN Basic Principles on the Role of Lawyers⁹, and in particular principle 16, 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.

As the international standards cited in this letter make clear, autonomous legal officers, who act in accordance with their professional duties to uphold the rule of law, should not have their discretion to do so prescribed or limited by political branches of government.

⁵ A/HRC/11/41, para. 18

⁶ A/HRC/35/31

⁷ A/HRC/56/63, para 20.

⁸ Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁹ 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.

General comment No. 31 (2004) of the United Nations Human Rights Committee notes that the obligations of the ICCPR are binding on every State Party as a whole. It further clarifies that “All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party ‘may not invoke the provisions of its internal law as justification for its failure to perform a treaty’. Although article 2, paragraph 2, allows States Parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, the Committee reminds States Parties with a federal structure of the terms of article 50, according to which the Covenant’s provisions ‘shall extend to all parts of federal states without any limitations or exceptions’” (general comment No. 31, para. 4).

As it is my responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our 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 observations.
2. Please explain how the above-mentioned amendments to SB58 comply with the United States of America’s obligations under international law, in particular with the rights to due process and fair trial guarantees, enshrined in international human rights instruments, including in the ICCPR.
3. Please indicate the measures taken or planned to be taken by your Excellency’s Government to review the proposed amendments in light of the observations shared above, with the meaningful participation of legal experts and civil society.

I stand ready to engage in dialogue with Your Excellency’s government on this very important matter and to provide any technical advice it may require in ensuring the proposal is fully compliant with international human rights obligations.

I also wish to respectfully request that your Excellency’s Government brings our concerns to the relevant executive, legislative and judicial authorities of the State of North Carolina.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government

will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting your reply, I strongly urge careful review of the proposed amendments, since as they stand, they may pose a real risk of violation of harm to the separation of powers and the guarantee of independent and impartial administration of justice, as guaranteed by article 14 of the ICCPR.

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers