



General Assembly

Distr.: General
20 February 2013

English only

Human Rights Council

Twenty-second session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by the International Movement Against All Forms of Discrimination and Racism (IMADR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Independence of judiciary in Sri Lanka

Attacks and interference regarding independence of judges and lawyers in Sri Lanka¹

Today, lawyers and judges in Sri Lanka are subject to systematic political and physical attacks.² The independence of the judiciary is widely recognized as a safeguard with respect to the protection of human rights and the rule of law, and serves as an essential check on the other branches of the State. As such, these attacks, and the coercive climate they engender, constitute a significant threat to the independence of the Sri Lankan judicial system, the maintenance of the rule of law, and the protection and promotion of human rights.

Sri Lanka's legal obligations

Sri Lanka, as a State Party to the International Covenant on Civil and Political Rights, is bound to provide a “competent, independent and impartial tribunal [or court] established by law”³ - “an absolute right that is not subject to any exception”.⁴ The Human Rights Council has emphasized that the integrity of the judicial system, namely the independence and impartiality of the judiciary, are essential prerequisites for the protection of human rights and the non-discriminatory administration of justice.⁵ Under international human rights law, the Government has a duty to not only guarantee the “independence of the judiciary from political interference by the executive branch and legislature”,⁶ but to take special measures secured by law, including “security and physical protection,”⁷ to protect members of the legal system from conflicts of interest and intimidation,⁸

Attacks against the judiciary

The judiciary in Sri Lanka is currently subject to widespread interference, including, but not limited to: written and verbal threats, bribery, unjustified transfers, and violence. The Asian

¹ The Human Rights Centre Clinic at the University of Essex undertook research and analysis in preparation of this submission.

² ‘UN independent expert concerned over reports of intimidation of judges in Sri Lanka’ (UN News Centre, 31 December 2012) <http://www.un.org/apps/news/story.asp?NewsID=43859#.URBiRULF_ww> accessed 28 January 2013. See also: *Authority without accountability: The crisis of impunity in Sri Lanka* (International Commission of Jurists, 2012).

³ Article 14, *ICCPR*, entered into force 23 March 1976 and Sri Lanka acceded on 11 June 1980.

⁴ *HR Committee General Comment 23*, CCPR/C/GC/32, 23 August 2007, par. 19.

⁵ Human Rights Council resolution, ‘*Integrity of the judicial system*’, A/HRC/RES/19/31, 18 April 2012; see also UN Human Rights Council resolution 17/2 of 16 June 2011; *Report of the Human Rights Council on its Tenth Session A/HRC/10/29*, 20 April 2009. See also: Principle 2, *UN Basic Principle on the Independence of the Judiciary*, adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985; Principle 4, *UN Guidelines on the Role of Prosecutors*, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders held at Havana from 27 August to 7 September 1990.

⁶ *HR Committee General Comment 23*, CCPR/C/GC/32, 23 August 2007, par. 19.

⁷ Statement 40, *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*, adopted by the Sixth Conference of the Chief Justices of Asia and the Pacific held in Beijing on 19 August 1995.

⁸ *Ibid.* See also: Principle 11, *UN Basic Principles on the Independence of the Judiciary*.

Human Rights Commission reports that high-ranking officials, including President Rajapaksa, may be responsible for some of these activities.⁹

Contemporary instability in Sri Lanka is illustrated by the events surrounding the impeachment of the Chief Justice, discussed below. In 2012, Parliament began proceedings to impeach the Chief Justice. This process was opposed by the Supreme Court and ruled unconstitutional.¹⁰ During and after these proceedings attacks against lawyers and members of the judiciary, particularly those seen as opponents to the Government or tied to the Chief Justice's defence efforts, "dramatically increased"¹¹ and turned violent, escalating to physical assaults and attempted assassinations.¹²

The International Commission of Jurists notes that this interference has eroded accountability and the rule of law and caused a "constitutional crisis of unprecedented dimensions".¹³ The situation in Sri Lanka may be illustrated by reference to a number of contemporary case studies.

Attack on the Magistrate's Court of Mannar and threats to the magistrate

On 17 July 2012, a day after the Magistrate of Mannar made an order regarding a dispute between Tamil and Muslim fishermen, Government Minister, Rishard Badiudeen, telephoned the Magistrate and demanded that he reverse the order, accusing the Magistrate of "working against the Muslims".¹⁴ According to an interview with the Asian Tribune, the Minister threatened that "Mannar town would burn"¹⁵ and that the Magistrate would "face severe consequences";¹⁶ allegations denied by the Minister. On 18 July 2012, after another failed attempt to persuade the Magistrate to change his decision, the Minister met with the Secretary of the Judicial Services Commission and demanded the Magistrate be transferred,¹⁷ prompting the Magistrate to file a complaint with the Judicial Service Commission.¹⁸ The Magistrate Court and High Court of Mannar were subsequently attacked by a mob, purportedly instigated by the Minister, which threw stones and set

⁹ 'Judicial independence in a coffin' (Asian Human Rights Commission, 8 October 2012) <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-194-2012>> accessed 28 January 2013.

¹⁰ 'Sri Lanka: The Supreme Court requests the PSC to withhold the impeachment inquiry' (Asian Human Rights Commission, 23 November 2012) <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-239-2012>> accessed 28 January 2013.

¹¹ 'UN independent expert concerned over reports of intimidation of judges in Sri Lanka' (UN News Centre, 31 December 2012) <http://www.un.org/apps/news/story.asp?NewsID=43859#.URBiRULF_wv> accessed 28 January 2013.

¹² See examples below

¹³ ICJ condemns impeachment of Sri Lanka's Chief Justice' (ICJ, 11 January 2013) <<http://www.icj.org/icj-condemns-impeachment-of-sri-lankas-chief-justice/>> accessed 28 January 2013.

¹⁴ Hemantha Warnaulasuriya, 'How a cabinet Minister threatened a Magistrate cum Additional District Judge' (23 July 2012) <<http://dbsjeyaraj.com/dbsj/archives/8427>> accessed 4 February 2013.

¹⁵ 'Goons behind attacks on Tamil settlement and the Judge in Mannar' (Asian Tribune, 20 July 2012) <<http://asiantribune.com/news/2012/07/19/goons-behind-attacks-tamil-settlement-and-judge-mannar>> accessed 4 February 2013.

¹⁶ Ibid.

¹⁷ S.S. Selvanayagam, 'Court of Appeal rules out preliminary objections in Badiudeen case, fixes trial for 13 February' (Daily FT, 6 September 2012) <<http://www.ft.lk/2012/09/06/court-of-appeal-rules-out-preliminary-objections-in-badiudeen-case-fixes-trial-for-13-february/>> accessed 4 February 2013.

¹⁸ Arthur Wamanan and Sandun Jayawardana, 'Mannar incident puts Rishad in hot water' (The Nation, 22 July 2012) <<http://www.nation.lk/edition/news-online/item/8571-mannar-incident-puts-rishad-in-hot-water.html>> accessed 4 February 2013.

fires,¹⁹ while State media labeled the Magistrate a Liberation Tigers of Tamil Eelam (LTTE) sympathizer.²⁰ Mr. Badhiudeen has denied the allegations against him²¹ and his case for contempt of court is still pending.

Attack on the Secretary of the judicial service commission

After the Judicial Services Commission was subjected to threats, intimidation and a vilifying public campaign run by State-controlled media,²² the Commission's Secretary, Manjula Tillekaratne, issued a statement on 28 September 2012 expressing concern for "the security of all of us and our families beginning from the person holding the highest position in the judicial system."²³ On 7 October 2012, the Secretary was accosted by gun-wielding assailants while stopped in his car on a public road, and beaten with a pistol, an iron rod, and bare fists.²⁴ The President ordered a police investigation into the attack, but it was never completed.

Impeachment of the chief justice

On 23 November 2012, impeachment proceedings on charges of professional and financial misconduct and abuse of power began against Chief Justice, Shirani Bandaranayake.²⁵ Lawyers and Sri Lankan civil society suspect that the proceedings are connected to Bandaranayake's opposition to the Divinaguma Bill – a bill that would centralize power, limit checks and balances, and give more authority to the Ministry of Economic Development, the President's brother.²⁶ The Supreme Court held that Parliament was unable to hold such an inquiry against a judge without passing a specific law to that effect. Further questions regarding the proceedings arose when it was reported that when asked by a former Chief Justice why he was moving to impeach Bandaranayake the President responded: "I didn't want to, but she got too big for her boots."²⁷

¹⁹ Authority without accountability: The crisis of impunity in Sri Lanka (International Commission of Jurists, 2012) p. 6.

²⁰ 'Recent developments adverse to independence of judiciary' (The Sri Lankan Guardian, 11 December 2012) <<http://www.srilankaguardian.org/2012/12/recent-developments-adverse-to.html>> accessed 4 February 2013.

²¹ 'Sri Lanka minister gets bail in fishing settlement case' (BBC News, 27 August 2012) <<http://www.bbc.co.uk/news/world-asia-19392456>> accessed 7 February 2013.

²² Sri Lanka: ICJ deplores attack on the Secretary of the Judicial Services Commission' (ICJ, 9 October 2012) <<http://www.icj.org/sri-lanka-icj-condemns-attack-on-the-judicial-services-commission/>> accessed 28 January 2013.

²³ Ibid.

²⁴ Authority without accountability: The crisis of impunity in Sri Lanka (International Commission of Jurists, 2012) p. 6.

²⁵ 'Sri Lanka chief justice walks out of impeachment hearing' (Australia News Network, 7 December 2012) <<http://www.abc.net.au/news/2012-12-07/an-slanka-impeach/4414076>> accessed 4 February 2013.

²⁶ 'Sri Lanka: An overview of the state of human rights in Sri Lanka in 2012' (Asian Human Rights Commission, 14 December 2012) <<http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-011-2012.pdf/view>> accessed 4 February 2013.

²⁷ 'Impeachment: 'She Got Too Big For Her Boots' – Mahina Rajapaksa Talked to Former CJ Sarath Silva' (Colombo Telegraph, 2 November 2012) <<http://www.colombotelegraph.com/index.php/impeachment-she-got-too-big-for-her-boots-mahinda-rajapaksa-talked-to-former-cj-sarath-silva/>> accessed 4 February 2013.

Bandaranayake was found guilty on three of the five charges and impeached by Parliament on 11 January 2013.²⁸ The Court of Appeal declared the impeachment unconstitutional.²⁹ Despite significant opposition, the President's senior advisor, Mohan Peiris was appointed and sworn in as the new Chief Justice.³⁰ The impeachment and subsequent appointment of the Chief Justice has drawn criticism from the US, UK and the Commonwealth, among others,³¹ condemnation from the International Commission of Jurists, and public declarations from the Bar Association of Sri Lanka and the Lawyers Collective that they refuse to recognize the legal standing of the new Chief Justice.³²

Threats and attacks against lawyers

The Lawyers Collective allege that the Government of Sri Lanka is engaged in a campaign intended to instigate adverse public opinion against lawyers and judges, the consequences of which leaves them open to physical attacks.³³ An example presented in this regard is the attempted assassination of Gunaratne Wanninayake – a lawyer who worked against the impeachment of the Chief Justice – on his way home from work on 18 December 2012.³⁴

In similar incidents, gun shots were fired at the houses of MP Wijayadasa Rajapake, President of the Bar Association, and Parliamentarian Wijedasa Rajapaksa, in the early morning of 20 December 2012. Both victims retrieved three ammunition cartridges from outside their homes, but police insist the incidents can be attributed to firecrackers, and not gunfire.³⁵ Investigations are pending.

During the week following the Chief Justice's impeachment, four prominent lawyers involved in the Chief Justice's defense – Romesh de Silva PC, Jayampathi Wickremarathna PC, MA Sumanthiran MP and JC Weliamuna – received threatening letters, naming them as traitors and declaring that drastic measures would be taken to silence them.³⁶ On 17

²⁸ 'Sri Lanka Chief Justice Shirani Bandaranayake is Impeached' (BBC News, 11 January 2013) <<http://www.bbc.co.uk/news/world-asia-20982990>> accessed 28 January 2013.

²⁹ 'Sri Lanka: The President and the parliament should desist from any actions that are unconstitutional and illegal by proceeding further on the impeachment' (Asian Human Rights Commission, 8 January 2013) <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-008-2013>> accessed 28 January 2013.

³⁰ 'Sri Lanka: appointment of new Chief Justice undermines Rule of Law' (ICJ, 15 January 2013) <<http://www.icj.org/sri-lanka-newly-appointed-chief-justices-long-record-of-blocking-justice/>> accessed on 4 February 2013.

³¹ See for example: 'Sri Lanka: Impeachment of Chief Justice Shirani Bandaranayake' (Lawyer's Rights Watch Canada, 16 January 2013) <<http://www.lrwc.org/impeachment-of-chief-justice-shirani-bandaranayake/>> accessed 5 February 2013.

³² 'Mahinda removes chief justice after assassinated all norms of the State' (The Sri Lanka Guardian, 13 January 2013) <<http://www.srilankaguardian.org/2013/01/mahinda-removes-chief-justice-after.html>> accessed 5 February 2013.

³³ The Lawyers Collective, 'Sri Lanka: Lawyers collective urges protection for lawyers' (Asia Human Rights Commission, 18 December 2012) <<http://www.humanrights.asia/news/forwarded-news/AHRC-FPR-065-2012>> accessed 5 February 2013.

³⁴ Lawyers Collective condemn attack on Wanninayake' (Daily FT, 19 December 2012) <<http://www.ft.lk/2012/12/19/lawyers-collective-condemn-attack-on-wanninayake/>> accessed 28 January 2012.

³⁵ BASL president warned' (Sri Lanka Brief, 20 December 2012) <<http://www.srilankabrief.org/2012/12/wijedasa-rajapaksha-shooting-in-front.html>> accessed 28 January 2013.

³⁶ Sri Lanka: Romesh de Silva PC, Jayampathi Wickremarathna PC, MA Sumanthiran MP and JC Weliamuna (a senior lawyer) receive threatening letters' (Asian Human Rights Commission, 18 January 2013) <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-024-2013>> accessed 28 January 2013.

January 2013, it was also announced that a plot to assassinate JC Weliamuna had been uncovered.³⁷

Threats have also been made against those protesting against the Government's actions. On 21 January 2013, a female lawyer who supported the impeached Chief Justice, was leaving a police station after filing an assault complaint when her vehicle was stopped and an unknown man attempted to strangle her. The lawyer was able to call attention to the situation and the assailant fled before the attack turned fatal.³⁸ No suspect has been arrested or charged.

On 5 February 2013, the International Bar Association Human Rights Institute released a statement voicing its concern regarding the decision by the Sri Lankan Government to deny its high-level delegates entry to the country.³⁹ The delegation, consisting of respected international figures and headed by a former Chief Justice of India, was scheduled to meet with legal professionals, representatives of Government, media and civil society to discuss the development of the legal profession, rule of law, and the independence of the judiciary. Each delegate had been issued a visa for the February visit, but these were revoked or suspended.⁴⁰ The Government claims that the information provided regarding the reasons for the country visit was inaccurate. The International Bar Association "wholly refutes"⁴¹ this allegation, and expressed its disappointment at the lack of cooperation by the Sri Lankan authorities.⁴² The Government's lack of transparency and unwillingness to have objective parties look at current threats to its judiciary brings its commitment to upholding the rule of law into question.

Conclusion

International standards, including those put forward by the Human Rights Council, such as the 'UN Basic Principles on the Independence of the Judiciary', stress that judicial independence is critical for upholding the rule of law and promoting and protecting human rights. The threats and physical attacks currently being carried out against lawyers and members of the judiciary in Sri Lanka indicate an attempt to interfere with legal proceedings and decisions. The impunity which the perpetrators of these attacks have enjoyed, the Government's lack of transparency, and failure to ensure the required protection with respect to lawyers and judges, stands in conflict with Sri Lanka's binding obligations under international human rights law and should be addressed urgently by the UN Human Rights Council.

³⁷ Ibid.

³⁸ Female lawyer supporting ex-CJ strangled' (Sri Lanka Brief, 21 January 2013) <<http://www.srilankabrief.org/2013/01/female-lawyer-supporting-ex-cj-strangled.html>> accessed 28 January 2013.

³⁹ 'IBAHRI seriously concerned by decision of Sri Lankan government to block entry of high-level delegates' (International Bar Association Human Rights Institute, 5 February 2013) <<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=785d2595-46be-4221-810c-4571b6ab02cf>> accessed 7 February 2013.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.