



**The Permanent Mission of Sri Lanka to the United Nations and other International Organizations in Geneva**

Human Rights Council

**35<sup>th</sup> Regular Session**

**Agenda Item 3,**

**Interactive Dialogue on the Report of the Special Rapporteur on the Independence of Judges and Lawyers  
on the Mission to Sri Lanka,**

29 April to 7 May 2016

Statement by

**H.E. Mr. Ravinatha P. Aryasinha  
Ambassador / Permanent Representative of Sri Lanka**

(Geneva, 12 June 2017)

**Interactive Dialogue with the Special Rapporteur on the  
Independence of Judges & Lawyers  
12 June 2017**

Mr. President

Thank you for this opportunity to share the views of the Government of Sri Lanka on the report A/HRC/35/31/Add.1 prepared by Ms. Mónica Pinto, the former Special Rapporteur on the independence of judges and lawyers, following her visit to Sri Lanka, and presented to this Council by her successor, Mr. Diego García-Sayán. We take this opportunity to congratulate Mr. Diego García-Sayán on his appointment as Special Rapporteur on this important subject, and while expressing support for the mandate, affirm Sri Lanka's interest in continuing to engage with him and his office.

Ms. Pinto undertook an official country visit to Sri Lanka, at the invitation of the Government, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment from 29<sup>th</sup> April to 7<sup>th</sup> May 2016. This was the first visit to the country by a Special Rapporteur on the subject of the independence of judges and lawyers, and the Government of Sri Lanka was pleased to have received the Special Rapporteur, especially at a time when, with the mandate of the people, received at two important elections in the country in 2015, Sri Lanka has set out to undertake reform pertaining to the rule of law and governance.

During the past 2 ½ years, the National Unity Government, under the leadership of President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe, has set out to strengthen engagement with the United Nations systems and procedures and the international community as a whole in an open, inclusive and constructive manner. We believe that such engagement and deliberation has contributed positively to the endeavors of the Government to strengthen, promote and protect human rights, good governance including democratic institutional structures, and development in the country.

As this Council is aware, as part of the Government's engagement with the UN system and procedures, Sri Lanka in December 2015, extended a standing invitation to the UN Special Procedures Mandate Holders. Since then, we have had productive visits and

interactive dialogues with the Working Group on Enforced and Involuntary Disappearances; the SR on Minority Issues, the SR on Torture, and the SR on the promotion of truth, justice, reparations and guarantees of non-recurrence.

Based on the specific needs of the country, and in particular, in the context of the ongoing reconciliation process in the country, we have invited several Special Procedures to undertake country visits during the course of this year as well. This includes the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism in July 2017, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, and the Working Group on Arbitrary Detention.

The Government believes that these visits will and the dialogues and conversations in relation to these specific subject areas will serve to assist the Government and contribute to the Government's efforts in fulfilling its obligations to the people of the country, in promoting and protecting human rights, strengthening democratic institutions, and good governance.

In keeping with the Government's commitment to transparency and open and inclusive engagement, the Special Rapporteur on the Independence of Judges & Lawyers was granted unrestricted and unhindered access to all the places that she wished to visit, and every effort was taken to facilitate practically all the meetings that Ms. Pinto requested with government officials. During the visit to Sri Lanka, Ms. Pinto and her team visited Colombo, Anuradhapura, Jaffna and Kandy. We are pleased that the Report acknowledges the cooperation extended by the Government during the visit. We will continue to extend such cooperation to all the Special Procedures that visit the country in future as well.

Mr. President,

The legal system of Sri Lanka consists of statute law and common law derived mainly from the Roman Dutch law, the English Common law, and certain personal laws of which the application is limited in scope. The system of judicial administration and organization in Sri Lanka is based on Chapters XV and XVI of the 1978 Constitution. Pursuant to the

above constitutional provisions, the existing structure of the judiciary comprises the Supreme Court, Court of Appeal, Provincial High Courts, District Courts, Magistrates' Courts and primary courts. The Supreme Court is the country's apex court, headed by the Chief Justice. The Supreme Court's principal jurisdictions include constitutional, final appellate and fundamental rights jurisdictions.

The present Constitution of Sri Lanka that has been in force since 1978, is founded upon the separation of powers between the Legislature, the Executive and the Judiciary. According to Article 3 of the Constitution, sovereignty rests with the people, and includes the power to govern, fundamental rights and franchise. Article 4 vests the exercise of the legislative power of the people in Parliament, and the exercise of the executive power of the People in the President. Except the powers pertaining to Parliamentary privileges and immunities, the judicial power of the people is exercised by courts of law, tribunals and institutions expressly established by law. In respect of lawyers, the Attorney General, who is the chief legal advisor to the State, is the head of the Official Bar, whereas the President of the Bar Association of Sri Lanka is traditionally considered the head of the Unofficial Bar.

Since the Presidential Election of January 2015, a number of important steps have been taken by the Government to uphold the independence of the judiciary and lawyers, some of which I wish to highlight.

The Parliament of Sri Lanka, on 28 April 2015, enacted the 19<sup>th</sup> Amendment to the Constitution, which, amongst several other progressive reforms, introduced constitutional safeguards to uphold the independence of the judiciary and the bar. The most significant among these are: safeguards to the process of appointment of senior judges; appointment of the Attorney-General, the Attorney-General's Department, and appointment of the members of the Judicial Services Commission (JSC).

Prior to the 19<sup>th</sup> Amendment to the Constitution, the authority to appoint the Chief Justice and other judges of the superior courts rested solely with the President. With the enactment of the 19th Amendment, the Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and of the Court of

Appeal can be appointed by the President only upon the approval of the appointments by the Constitutional Council.

The Constitutional Council, which the Special Rapporteur in her Report has acknowledged as a promising reform, is comprised of 10 members. This includes the Prime Minister; the Speaker; the Leader of the Opposition; a Member of Parliament nominated by the President; 2 Members of Parliament and 3 civil society members (reflecting the pluralistic nature of the Sri Lankan society) nominated by the Prime Minister and the Leader of the Opposition; and a Member of Parliament nominated by other political parties / groups represented in Parliament which the Prime Minister and the Leader of the Opposition do not represent. Additionally, in the discharge of its functions relating to the appointment of judges to the Supreme Court and the Court of Appeal, the Constitutional Council is required to obtain the views of the Chief Justice.

In terms of the 19<sup>th</sup> Amendment, the appointment of the Attorney General by the President is subject to the approval of the Constitutional Council. Previously, the President had the authority to appoint the Attorney General on the observations of the Parliamentary Council. Under the previous government (before 8 January 2015), the Attorney General's Department was placed directly under the President, instead of its correct and traditional placement under the Ministry of Justice. This was rectified by the new Government soon after its election in January 2015, by placing the Department under the Ministry of Justice.

The 19<sup>th</sup> Amendment clearly stipulates the composition of the Judicial Services Commission, i.e., that it shall comprise the Chief Justice and the two most senior judges of the Supreme Court appointed by the President subject to approval by the Constitutional Council. The Chief Justice is required to be the Chairman of the Judicial Services Commission and the President is required to obtain the approval of the Council to remove any members of the Judicial Services Commission for cause assigned. Under the previous constitutional provisions, the President had the sole discretion to appoint any 2 judges of the Supreme Court to function as members of the Judicial Services Commission alongside the Chief Justice (also appointed by him) who was to be the Chairman of the Commission.

We recognize that the infusion of independence to the Judicial Services Commission is critical, because, under the Constitution, the Judicial Services Commission is vested with authority over the appointment, transfer, dismissal and disciplinary control of judicial officers in the lower courts. Judges of the High Court are appointed by the President on the recommendation of the Judicial Services Commission.

Candidates are selected to the post of State Counsel in accordance with a scheme of recruitment and procedure formulated by the Public Service Commission, which is vested with, inter alia, the power of appointment and promotion of public officers, in terms of the Constitution. In the conduct of interviews, for the recruitment of State Counsels, an objective evaluation criteria on the professional and academic qualifications and experience gained by candidates as well as their oratorical skills demonstrating their competency and capacity to make submissions in court are taken into account. Change of duty station of State Counsel is made based on an assessment formulated using several criteria such as the types of cases and the volume of cases pending in a particular court, number of sessions a particular officer has conducted prosecutions in a particular courts, personal preferences of the State Counsel. All State Counsels and all other officers of the Attorney General's Department are governed by the rules of the Public Service Commission, the Establishment Code and the rules of the Supreme Court promulgated under Article 136 of the Constitution with regard to their conduct and etiquette as Attorneys-at-law.

Mr. President,

In addition to the safeguards introduced in April 2015 through the 19<sup>th</sup> Amendment, provisions contained in Chapter XV of the Constitution have continuously sought to uphold the independence of the judiciary by stipulating the following:

- ❖ The tenure of the office of the judges of the Supreme Court and the Court of Appeal are guaranteed under the Constitution.
- ❖ Judges of the Supreme Court and the Court of appeal hold office during good behaviour and cannot be removed except by an Order of Parliament

made after an address to Parliament supported by a majority of the total number of Members of Parliament has been presented to the President for removal on the ground of proved misbehavior and incapacity.

- ❖ The salaries and the pension of the Judges of the Supreme Court and Court of Appeal are paid from the Consolidated Fund and cannot be reduced after they are appointed. The same rule applies with regard to the salaries of members of the JSC.
- ❖ Interference with the judiciary is a punishable offence. Judges are also vested with a degree of immunity from suit for acts performed in their judicial capacity. In addition to these, Sri Lankan courts have varying powers to deal with persons for Contempt of Court to prevent unwarranted attacks on the authority of the judiciary and to ensure the sanctity of its orders.
- ❖ Interference with the decisions and the members of the JSC is a punishable offence, and immunity has been constitutionally granted to members of the JSC for acts done in good faith in the performance of their duties.

We are pleased that the Special Rapporteur has stated in her Report that pressure exerted on Judges to influence their decision-making has “largely ceased under the new government and that no recent direct attack has been reported to the Rapporteur.” The Report also states that there was “a clear perception, during the visit, that after the change of government, some Judges had started affirming their Independence,” and that Judges feel more secure in their authority and more confident in the belief that they will be adequately protected. The Special Rapporteur has also stated that the general environment in which lawyers work, including their sense of security, has greatly improved since January 2015.

Mr. President,

Sri Lanka, being a multi-ethnic country, has two official languages, Sinhala and Tamil, and English is the link language. As such, the judicial language vary in terms of the language used by the parties. Either Sinhala or Tamil in lower Courts and English in

Higher Courts. If there are language barriers, the service of an interpreter is used. Almost all lawyers are conversant in either Sinhala or Tamil and English. We recognize, however, that much more needs to be done to ensure proficiency in all languages.

The National Unity Government has also launched a comprehensive constitutional reform agenda with the aim of reforming the executive presidency, reforming the electoral system and ensuring meaningful power-sharing. A Constitutional Assembly was established through which Parliament sits as one Assembly tasked with debating and promulgating a new Constitution. A Steering Committee consisting of twenty-one members was appointed, and the Prime Minister was unanimously appointed as the Chairman of the Steering Committee.

Six Sub-Committees were thereafter appointed to advise the Steering Committee and make appropriate recommendations on specific thematic issues. As referred to by the Special Rapporteur in her Report, one of the six sub-committee's focuses on the Judiciary, and the topics of focus include Judiciary, Courts Structure, Judicial review, Jurisdiction of Courts including the fundamental rights jurisdiction, and Constitutional Court. Among the inputs considered by these sub-committees was the report of the Public Representations Committee (PRC) which conducted countrywide public consultations to receive representations from the public on constitutions reforms. The report of the PRC was handed over to the Prime Minister in May 2016 and its recommendations have been studied and incorporated as much as possible by the sub committees in their work and by the Steering Committee as well.

Following their deliberations, the 6 sub-committees submitted their reports, for the consideration of the Steering Committee of the Constitutional Assembly, on 19 November 2016. The Steering Committee of the Constitutional Assembly is currently discussing the reports of the sub-committees and other related matters that they are tasked with in the process of Constitutional reform. It is expected that the Steering Committee will complete its work shortly, enabling discussion of the draft constitution reforms in the Constitution Assembly in the coming months.

Mr. President, we thank the Special Rapporteur on the Independence of Judges & Lawyers once again, for accepting the invitation of the Government and undertaking a visit to Sri Lanka. Sri Lanka considers its engagement with Special Procedures as an

important component of its reconciliation and governance reform efforts, including steps being taken to uphold the human rights of all our citizens. Accordingly, we will continue to stay engaged with the Special Procedures Mandate Holders in the spirit of open and constructive engagement, for the benefit of all the people of our country.

Thank you.