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Violation of the Government's commitment to the UN Resolution A/HRC/RES/30/1 and the failure of the judiciary to combat corruption

Introduction

The Government of Sri Lanka is a representative democracy but the corruption in the Legislature, Executive and the Judiciary undermines the Constitution and the rule of law leading to violation of human rights, compelling the people to seek justice from the international community. As a result, Sri Lanka is now in the forefront of the index of corrupt states, which has compelled the UN system to intervene and pass the resolution A/HRC/RES/30/1.

Yet, in spite of the UN Resolution, government continues to violate its obligations and undermines the independence of the Judiciary. Unfortunately, there is no culture in the legal profession and the Bar Association of Sri Lanka (the professional body of lawyers) to rise and defend the Judiciary and the rule of law and also lacking a commitment to combat corruption in the three organs of the government.

Right now, the author is the only lawyer who fights corruption in the three main organs of the government through the public interest litigation in the Supreme Court and presently there are 10 such cases instituted against those holding public office in the Legislature and Executive (MPs, Cabinet Ministers, Attorney General) and also in the Judiciary (4 former Chief Justices and 2 other serving judges of the Supreme Court).

Each of these 10 cases was first reported to the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) which is the national anti-graft body. Yet, no credible investigations were undertaken by the Commission, compelling the author to initiate action against the three Commissioners and the Director General of the CIABOC for condoning corruption. This is the first instance that all organs of the government and the Government's anti-graft body have been challenged in the Supreme Court for corruption.

As a direct result of these anti-corruption initiatives, there are three contempt cases initiated against the author in the Supreme Court by the Attorney General with the objective of disbarring the author from the practice, contravening the following international obligations.

- a) **Commonwealth Latimer House Principles (2003)** - The criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of the judicial functions (Accountability mechanism [paragraph vii (b)])

- b) **United Nations Basic Principles on the Role of Lawyers** - Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (**Rule 16**)

Patent Violation of the co-sponsored UN Resolution A/HRC/RES/30/1 by all three organs of the Government

A brief of five major cases (cited below) out of the 10 Supreme Court actions referred to above is presented in the annexures attached hereto illustrating the dismal failure on the part of the Government of Sri Lanka (GOSL) to honour its obligations under the co-sponsored UN Resolution A/HRC/RES/30/1.

- a) **Annexure I** : Abuse of office by the Attorney General to disregard the ruling given by the Supreme Court and to pass a legislation by fraudulent means usurping the people's sovereign right of franchise (SC/ Writs/ 05/2017)
- b) **Annexure II** : Judicial Corruption cases involving four former Chief Justices and two serving Judges in the Supreme Court (SC/Writs/3/2016) and SC/Writs/ 3/2017
- c) **Annexure III** : Appointment of rejected candidates to the legislature through a clause fraudulently introduced to the 14th Amendment to the Constitution, which has not been approved by the Parliament (SC/Writs/5/2015)
- d) **Annexure IV**: Abuse of Tax-free car permits by the Members of the Cabinet and the MPs, defrauding over 7 Billions of Government tax revenue (SC/Writs/ 7/2017)
- e) **Annexure V** : Abuse of judicial power to conceal a Petition filed in Court of Appeal challenging the candidacy of the then Executive President Mahinda Rajapakse in 2015 (CA/Writs/434/2015).

Reasons for the failure to combat corruption and to establish the Rule of Law

Reasons identified for the failure to combat corruption and to restore the rule of law are cited below. **These issues have never been exposed, discussed and addressed in any forum to date.**

1. Intimidation and interference with the judiciary by the Executive and the Legislature (**Annexure VI**)

2. Controlling of the 10-member Constitutional Council that makes appointments to the Superior Court System by corrupt elements in the Legislature and Executive.

The process adopted by the 19th Amendment to the Constitution (passed by the present government in May 2015) permitted 7 MPs in the Council after doing away with the former practice introduced by the 17th Amendment (October 2001), that permitted 7 people with eminence and integrity with only 3 MPs to the Council. The current process permits the corrupt elements in the Legislature and the Executive to deny upright people being considered for the Superior Court System, patently violating the doctrine of separation of powers and the Commonwealth Latimer House Principles (**Annexure VII**)

3. Dominance of political considerations over merits and seniority concerning judicial appointment to the Superior Court System by the Executive President whereas the role of the Constitutional Council is strictly limited only for recommendations [Article 41C (1) of the 19th Amendment enacted after the new government came into power]
4. The abuse of the office of the Attorney General to defend the corrupt elements in the Legislature, Executive and the Judiciary, whereas the law requires the office to represent and act for the people who exercise sovereignty in the Republic which include the Legislative, Executive and Judicial power (**Annexure VIII**)
5. Adopting of a flawed Practice of appointing public officers serving in the Government's prosecution service (Attorney General's Department) to the Judiciary.

It is observed that the judges who were former officials of the Attorney General's Department favouring the Attorney General and disregard the failure of the Attorney General to comply with the rules that is place to arrest delays in the dispenses of justice. Such an irregular practice is never adopted in the democracies like in the UK, where no officer serving in the Crown Prosecution service is considered for Judicial Appointments.

6. Absence of **accountability mechanism** for the judiciary that violates its constitutional obligations.

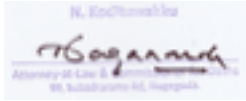
This is the fundamental reason for laws delays effectively denying justice to the people and resulting in people losing confidence in the justice system. Whereas the Constitution dictates that right violation Petitions [Article 126(5)] and Election related Petitions (Article 104H) shall be heard and determined within two months of filing such Petitions, such cases have been dragged on for well over 5 years due to the total lack of an accountability mechanism in the administration of justice.

7. Abuse of public office by the Attorney General to initiate contempt proceedings to discourage and reprimand those fights corruption in the government business.

The author, the only public interest litigation activist who fights corruption in the three organs of the government has already been persecuted for refusing to compromise integrity and to condone corruption.

8. Abuse of office by the Commissioners of the CIABOC to destroy the integrity of the Judiciary and to whitewash corrupt MPs and Ministers (**Annexure XI**)
9. Departing of its constitutional responsibility by the Bar Association of Sri Lanka, that has pledged its membership to uphold the rule of law with a commitment to combat corruption and abuse of public property (**Annexure X**)

Therefore, unless the UN System stresses the government of Sri Lanka to abide by the UN Resolution **A/HRC/RES/30/1** along with the implementation of a program to address the issues mentioned herein, an independent and upright judiciary can never be put in place in Sri Lanka. Such an initiative will only ensure the enforcement of the rule of law against any person holding any public office, whilst protecting the good judges from any intimidation. It will also do away with the burden on the UN System to bring in foreign judges to try human right violation cases. This is the way forward to regain the trust and confidence of the people in the justice system in the Republic of Sri Lanka.



Nagananda Kodituwakku

Public Interest Activist, Attorney-at-Law (Sri Lanka) & Solicitor (UK)