

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY
SRI LANKA**

ARTICLE 11 UNCAC

JUDICIAL AND PROSECUTORIAL INTEGRITY

SRI LANKA (EIGHTH MEETING)

Information requested from States parties in relation to integrity in criminal justice institutions (arts. 7, 8 and 11)

The Sri Lankan judicial system

- *The Sri Lankan judicial system has the Supreme Court at the apex, followed by the Court of Appeal, Provincial High Court, District Courts, Magistrates' Court and Primary Courts respectively. (The Primary Court currently functions as part of the Magistrate Court) Additionally, there are numerous tribunals such as the labour tribunals, Arbitration, University Appeal Boards, tax tribunals etc. The Supreme Court exercises the final appellate jurisdiction, writ jurisdiction, supervisory jurisdiction and original jurisdiction on Fundamental Rights Applications whilst the Court of Appeal exercises the appellate jurisdiction and writ jurisdiction. The High Court exercises both appellate and original criminal jurisdictions whereas the Magistrate Court exercises original jurisdiction for minor criminal offences. The District Court exercise original civil jurisdiction.*

Independence and integrity of the Judiciary

- *The Sri Lankan constitutional and legal framework to ensure the independence and integrity of the judiciary are provided for under the Constitution and the Judicial Service commission.*
- *The enactment of the 19th Amendment to the Constitution, with effect from 15th May 2015 which, amongst several other progressive reforms, introduced a number of constitutional safeguards to uphold the independence of the judiciary and the bar.*
- *The most significant among these provisions are: Safeguards to the process of appointment of senior judges*

- *Prior to the 19th Amendment to the Constitution, the President had the authority to appoint the Chief Justice and other judges of the superior courts on the observations of the Parliamentary Council. With the enactment of the 19th Amendment, the following safeguards have been introduced to the appointment process:*
- *The Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and of the Court of Appeal are appointed by the President only upon the approval of the said appointments by the Constitutional Council. (The Constitutional Council consists of 10 members, i.e., 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. The Council is headed by the Speaker)*
- *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.*

Appointment of the members of the Judicial Services Commission (JSC)

- *Judicial Service Commission controls the appointment, promotion and disciplinary control of Judicial officers.*
- *The infusion of independence to the JSC is important 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.*
- *The 19th 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 the approval by the Constitutional Council.*
- *The Chief Justice is required to be the Chairman of JSC.*
- *The President is required to obtain the approval of the Council to remove any member of the JSC 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 JSC alongside the Chief Justice (also appointed by him) who was to be the Chairman of the Commission.*
- *The President on the recommendation of the JSC and the Attorney General appoints judges of the High Court.*

In addition to the safeguards introduced through the 19th 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 behavior and cannot be removed except by an Order of Parliament made after an address of 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 or 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.*

Training programs for judicial officers

- *The Judicial Service Commission through the Judges Institute conducts training programs for Judges with a view to strengthen the integrity and prevent opportunities for corruption. Although there is no written Code of Conduct for Judicial Officers, Sri Lankan Judges have been enlightened on judicial ethics they bound by. In fact, even in other seminars conducted by other organizations for judicial officers this position has been referred to.*

Prosecutors

- *Prosecutors of the Attorney General's Department, the Commission to Investigate Allegations of Bribery or Corruption (only relating to bribery, corruption, assets and asset declaration related offenses) and in minor offenses Sri Lanka police and other government departments respectively carry out prosecutions. The members of the prosecution services are public officers and the Establishment Code, the rules governing the public service are applicable to the prosecutors too.*

- *In terms of the 19th Amendment, the appointment of the Attorney General (who is considered as the Leader of the Bar) is by the President subject to the approval of the Constitutional Council. Prior to 19th Amendment the President had the authority to appoint the Attorney General on the observations of the Parliamentary Council.*
- *The Attorney General is the custodian of the Rule of law and of the public interest in Sri Lanka. The functions of the Attorney General have always been performed by no other factor or consideration than upholding the public interest and the Rule of law.*
- *Coupled with the pressures on judicial independence there has been a move to have the Attorney General Department under the purview of the Ministry of Justice for establishment purposes and accordingly the Attorney General Department is presently under the purview of the Ministry of Justice.*
- *The Attorney General is also the leader of the Bar-not only of the Official Bar as one would think but the entire Bar. It thus follows that the Attorney General ensures the protection of judicial independence which is indispensable to the proper functioning of the Bar.*
- *The appointment and removal processes of the Attorney General under the current law confirm the independence of the office of the Attorney General of Sri Lanka. The appointment of the Attorney General falls within the purview of the 19th Amendment to the Constitution. The President has to obtain the approval of the Constitutional Council to appoint the Attorney General. The removal of the Attorney General has to be done under the terms of the Removal of Officers (Procedure) Act No 5 of 2002. Accordingly the Attorney General good behaviour (as opposed to at pleasure) and can be removed only by Parliament on specific grounds after inquiry.*
- *The Officers of the Attorney General's Department are public officers and the Establishment Code, the rules governing the Public Service are applicable to them. In terms of the Constitution the appointment, promotion, disciplinary control and dismissal of the Officers of the Attorney Generals Department are by the Public Service Commission. Additionally the rules of conduct and etiquette governing all Attorneys law are regulated by the Supreme Court under rules formulated in terms of Article 136 of the Constitution govern the Officers of the Attorney Generals Department.*

Declaration of Assets and Liabilities

- *Under section 3 of the Declaration of Assets and Liabilities Law No 1 of 1975, all Members of Parliament, **Judges**, all Public Officers of Government Departments and Local Authorities, Chairman and Staff of Public Corporations are required to declare Assets and Liabilities within three months of his appointment to the public office and thereafter annually.*

- *Failure to make such a declaration is liable for prosecution.*
- *Non-submission of the declaration is a ground for disciplinary control under Chapter 29 of the Establishment Code too. Section 29 of Chapter XLVIII of the Establishments Code deals with the procedure that is required to be followed in respect of 'offences disclosed in an Audit Report', regarding public officers.*

Transparency of Court Room Process

- *The Sri Lankan courts are open and public.*