

**High Excellency President Mahinda Rajapakse
Honorable Speaker of the Parliament Chamal Rajapakse
Sri Jayawardenepura Kotte
Sri Lanka**

January 23, 2013

Concerning the removal of Chief Justice Dr. Shirani Bandaranayake

Your Excellencies,

The International Commission of Jurists and the undersigned senior judges and eminent jurists from around the world condemn the recent removal of Chief Justice and urge you to act immediately to restore the independence of the judiciary by reinstating the legal Chief Justice, Dr. Shirani Bandaranayake. We are gravely concerned that recent actions to remove the Chief Justice have been taken in contravention of the Constitution, international human rights law and standards, including the right to a fair hearing, and the rule of law.

Judicial independence and the separation of powers are the bedrock of the rule of law. International standards such as the *United Nations Basic Principles on the Independence of the Judiciary* stress that judicial independence is a fundamental requirement in promoting human rights and preserving rule of law. The United Nations General Assembly in Resolution 65/213 of 1 April 2011 reaffirmed that an independent and impartial judiciary is essential for the protection of human rights, the rule of law, good governance and democracy.

The irremovability of judges is a main pillar of judicial independence. Judges may be removed only in the most exceptional cases involving serious misconduct or incapacity. And in such exceptional circumstances, any removal process must comport with international standards of due process and fair trial, including the right to an independent review of the decision. Members of the judiciary must never be subject to removal on the basis of judicial decisions rendered in the legitimate exercise of their professional functions.

The United Nations Special Rapporteur on the Independence of Judges and Lawyers and the United Nations Human Rights Committee have raised concerns that the procedure for removing judges under Article 107 of the 1978 Constitution and the complementary Standing Orders do not adequately guarantee the right to a fair trial rights and due process under Article 14 of the International Covenant on Civil and Political Rights.

Sri Lanka's actions further violate the core values of the Commonwealth of Nations enunciated in the *Singapore Declaration 1971*, the *Harare Declaration 1991* and the *Latimer House Principles on the Three Branches of Government 2003*. The *Latimer House Principles* call on member States to uphold the rule of law by protecting judicial independence and maintaining mutual respect and cooperation between Parliament and the Judiciary.

Finally, Sri Lanka's actions run against the regionally applicable standards set out in the *Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region*.

The threats to the separation of powers, independence of the judiciary and rule of law in the impeachment case in Sri Lanka are revealed by the following sequence of events:

On 1 November 2012, a resolution signed by 117 Members of Parliament was presented to the Speaker of the House, Chamal Rajapakse, to initiate impeachment proceedings against the Chief Justice. The resolution contained fourteen allegations relating to misconduct and non-disclosure of financial assets.

On 14 November 2012, a Parliamentary Select Committee was established pursuant to Parliamentary Standing Orders 78A and Article 107(3) of the 1978 Constitution to investigate the charges. The Parliamentary Select Committee was composed of seven Cabinet Ministers and four members from the opposition political parties.

On 22 November 2012, the Supreme Court of Sri Lanka requested Parliament to suspend the impeachment proceedings until the Court could decide on the constitutionality of Parliamentary Standing Orders 78A. Parliament disregarded the Supreme Court's request and the Chief Justice appeared before the Parliamentary Select Committee for the first time on 23 November 2012.

On 6 December 2012, Chief Justice Bandaranayake walked out of the impeachment hearing in protest over the denial of a fair hearing. The Chief Justice was not provided timely and full disclosure of the evidence in relation to the charges; was not given adequate time to respond to the charges; was denied the right of cross-examination; and was treated in a derogatory and disrespectful manner by Members of Parliament and denied the right to a public hearing. On the same day, the four opposition Members withdrew from the Parliamentary Select Committee.

On 7 December 2012, the seven remaining members of the Parliamentary Select Committee concluded their investigation on the first five charges, finding the Chief Justice guilty on three charges.

On 1 January 2013, a three-member panel of the Supreme Court ruled that the impeachment procedure set out in Standing Orders 78A was not constitutionally valid, holding that such procedures could only be established 'by law' enacted by Parliament.

On 7 January 2013, the Court of Appeal, relying on the judgment of the Supreme Court, issued a writ quashing the findings of the Parliamentary Select Committee on the basis the Committee lacked authority to make such a finding.

On 11 January 2013, in utter defiance of the Supreme Court judgment and the Court of Appeal order, Parliament passed a motion with 155 votes, to impeach Chief Justice Dr. Shirani Bandaranayake.

On 13 January 2013, President Mahinda Rajapakse signed a decree removing the Chief Justice from her post and delivered the document to her official residence in the morning.

On 15 January 2013, President Mahinda Rajapakse nominated three candidates to replace Chief Justice Bandaranayake. Former Attorney-General Mohan Peiris was approved by the Parliamentary Council and sworn in as Chief Justice. Prior to his appointment, Mohan Peiris served as the legal advisor to President Rajapakse and was widely known for defending the conduct of the Sri Lankan government and

consistently blocking efforts to hold State officials accountable for gross human rights violations.

On the same day, Chief Justice Bandaranayake issued a public statement strongly denying all of the charges against her and asserting her status as the legal Chief Justice of Sri Lanka. She said, "The accusations leveled against me are blatant lies. I am totally innocent of all charges...Since it now appears that there might be violence if I remain in my official residence or my chambers I am compelled to move..."

Attacks against the judiciary have escalated to the point of physical violence in recent months. In July 2012, Government Minister Rishad Bathiudeen threatened a magistrate in Mannar and then allegedly orchestrated a mob to pelt stones at the Mannar courthouse. In early October 2012, four individuals assaulted the Judicial Service Commission Secretary Manjula Tillekaratne in broad daylight.

The undersigned jurists urge your High Excellency President Mahinda Rajapakse and Honorable Speaker Chamal Rajapakse to act immediately to restore the independence of the judiciary by reinstating the legal Chief Justice Dr. Shirani Bandaranayake and enacting a law in Parliament to govern the impeachment process. Such a law must comply with Sri Lanka's obligations under international human rights law and standards.

Yours Sincerely

Justice Md. Abdul Matin

Former judge at the Appellate Division of the Supreme Court, Bangladesh

Justice Md. Abdur Rashid

Former Judge at the Supreme Court, Bangladesh

Justice Ajit Prakash Shah

Former Chief Justice of the Delhi High Court, India

Justice Bharat Raj Uprety

Former Justice at the Supreme Court, Nepal

Justice C. Baardman

Judge at the Court of Appeal of The Hague, the Netherlands

Justice Dragana Boljevic

Judge at the High Court of Belgrade, Serbia
President of Judges' Association of Serbia and Secretary General of MEDEL (Magistrats Européens pour la Démocratie et les Libertés)

Justice E.D. Bonga-Sigmond

Judge at the Court of Amsterdam, the Netherlands

Justice Gerrard Boot

Judge at the Court of Amsterdam, the Netherlands
Board member of Judges for Judges

Justice Azhar Cachalia

Judge at the Supreme Court of Appeal, South Africa

Justice Moses Hungwe Chinhengo

Former judge at the High Court, Zimbabwe and Botswana

Justice Anaclet C. Chipeta

Judge at the High Court, Malawi

Justice Fernando Cruz Castro

Judge at the Constitutional Chamber of the Supreme Court, Costa Rica

Justice E. de Rooij

Judge at the Court of Amsterdam, the Netherlands

Justice Rodolfo Gonzalez

Judge at the Constitutional Chamber of the Supreme Court, El Salvador

Justice Åsne Julsrud

Judge at the District Court of Drammen, Norway

Justice Kalthoum Kennou

Investigative judge at the Tribunal of Tozeur, Tunisia

Justice Ketil Lund

Former Judge at the Supreme Court, Norway

Justice D. Madise

Judge at the High Court, Malawi

Justice José Antonio Martín Pallín

Emeritus Judge at the Supreme Court, Spain

Justice Florentín Meléndez

Judge at the Constitutional Chamber of the Supreme Court, El Salvador

Justice Reynato Puno

Former Chief Justice, Supreme Court of the Philippines

Justice Jolien Schukking

Judge at the Court of Utrecht, the Netherlands
Board member of Judges for Judges

Justice F.M.P.M. Strengers

Senior judge at the Court of Amsterdam, the Netherlands

Justice Stefan Trechsel

Judge at the Trial Chamber III, International Criminal Tribunal for the Former Yugoslavia

Justice N.L.J.M. Tuijn

Deputy Chief Justice, Judge at the Court of Appeals of Den Bosch, the Netherlands

Justice E.J. van der Molen

Judge at the Court of Noord-Holland, the Netherlands

Justice Radmila Dacic

Acting President of the Belgrade Court of Appeal and Judge of the Supreme Court, Serbia

Justice Augusto J. Ibáñez Guzmán

Former President of the Supreme Court, Colombia

Justice Maclean Kamwambe

Judge at the High Court, Malawi

Justice César Landa

Former President of the Constitutional Court, Peru

Justice Qinisile Mabuza

Judge at the High Court, Swaziland

Justice Mbufto Mamba

Judge at the High Court, Swaziland

Justice Thomas Masuku

Former Judge at the High Court, Swaziland

Justice Egbert Myjer

Former judge at the European Court of Human Rights

Justice M.D. Ruizeveld

Senior judge at the Court of Amsterdam, the Netherlands

Justice R.C. Stam

Judge at the Administrative High Court for Trade and Industry, the Netherlands

Justice Philippe Texier

Judge at the Social Division of the Court de Cassation, France

Justice Tamara Trotman

Judge at the Court of Rotterdam, the Netherlands
Vice-President of Judges for Judges

Justice Vilenas Vadapalas

Judge at the General Court, European Union

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Judge at the Court of Appeals of The Hague, the Netherlands
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