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## **ATTACKS ON JUDICIARY AND LEGAL PROFESSION UNDERMINE THE RULE OF LAW AND PREVENT ACCOUNTABILITY WITHIN SRI LANKA**

- The Sri Lankan justice system cannot ensure accountability for human rights violations and war crimes because the judiciary has been deprived of its independence and impartiality, and lawyers suffer intimidation, hindrance, harassment and improper interference.
  - Since the end of the conflict in 2009, the Government has been systematically dismantling institutional limits on its power.
  - Judicial appointment and removal processes have become highly politicized. The unlawful impeachment of the Chief Justice in 2013 has exerted a deep and widespread 'chilling effect' on the judiciary.
  - Judges and lawyers remain vulnerable to intimidation, threats and executive interference.
  - These conditions exacerbate impunity and undermine the rule of law.
- There has been little if any progress at the national level in the proper investigation and resolution of human rights cases in a manner consistent with international law.
  - This is true even of the most emblematic cases, and is despite repeated calls from the international community, Sri Lankan civil society, and recommendations of domestic bodies (including the Lessons Learned Reconciliation Commission).
- Victims of gross human rights violations and war crimes will be denied their rights under international law to remedy and reparations, including to truth and to justice, unless the international community ensures the creation of a credible, independent and impartial accountability mechanism for Sri Lanka.

### **I. IMPEACHMENT OF THE CHIEF JUSTICE AND JUDICIAL DISMISSALS**

- No transparent, independent, impartial and fair procedure for the removal or discipline of judges exists today in Sri Lanka.
- The illegal and highly politicized impeachment of Chief Justice Dr Shirani Bandaranayake in January 2013, followed by the equally politicized appointment of Mohan Peiris as her successor, is emblematic.
- The removal of Chief Justice Bandaranayake was widely condemned for disregarding international standards on the independence of the judiciary and contravening international human rights obligations, including:
  - the right to a public hearing;
  - the right to timely disclosure of allegations and evidence;
  - the right to call, and to confront or cross-examine witnesses;
  - the right to adequate time to prepare a defence;
  - the right to be defended by counsel of one's choice;
  - the right to appeal; and
  - the burden of proof.

- The UN Human Rights Committee already warned in 2003 that the lack of a fair procedure for the removal of judges violated Sri Lanka's obligations under the International Covenant on Civil and Political Rights.
- Members of the judiciary consequently remain vulnerable to politically-motivated removal or disciplinary proceedings. In such a climate, victims of gross human rights violations and crimes under international law cannot be expected to depend on national mechanisms alone to deliver effective justice or redress.

## **II. POLITICIZATION OF JUDICIAL APPOINTMENTS**

- The 18th Amendment to the Constitution, passed in 2010, effectively gives President Mahinda Rajapaksa unilateral authority to make all appointments to the Supreme Court, the Court of Appeal and the Judicial Service Commission.
- The politicization of judicial appointments has become more apparent with two recent appointees to the Supreme Court. In both cases, appointments were made on the basis of political loyalty, apparently without due consideration of seniority, proven competence, integrity or independence.
  - In January 2013, immediately following the impeachment of Chief Justice Bandaranayake, the President appointed his own former legal advisor and Attorney-General Mohan Peiris as the new Chief Justice. Mohan Peiris had never served as a judge. During his 33-month tenure as Attorney-General, he did not prosecute a single case of crimes committed against journalists, human rights defenders or lawyers. In November 2011, he apparently misled the UN Committee against Torture on the fate of missing journalist Prageeth Eknaligoda implying, without foundation, that Mr Eknaligoda was living in a foreign country.
  - In January 2014, President Mahinda Rajapaksa appointed the eighth most junior person of the Attorney General's office, Buveneka Aluvihare, to the Supreme Court. Buveneka Aluvihare was one of two individuals who successfully prosecuted and obtained a conviction against General Sarath Fonseka, President Mahinda Rajapaksa's main political rival in the 2010 election.
- Obviously well-qualified candidates who had issued rulings unfavourable to the government were apparently passed over in the appointment process. For instance, the President of the Court of Appeal, Justice Sriskandarajah would have been next in line for appointment on the Supreme Court if his seniority and long-standing record of integrity, proven competence and independence were taken into account. He had however issued a judgment against President Rajapaksa's wishes in the challenge to the impeachment of Chief Justice Bandaranayake, quashing findings of the Parliamentary Select Committee that formed the supposed basis for impeachment.

## **III. IMPUNITY FOR ATTACKS AGAINST JUDGES AND LAWYERS**

- Since the end of the conflict, lawyers taking human rights cases have continued to face attacks in various forms designed to intimidate and deter them: physical violence including grenade and arson attacks; death threats or other threats of violence; harassment and threats to their professional careers, including through defamatory and inflammatory publications on Government websites. Judges have faced similar tactics. To date, no one has been prosecuted for these attacks.
- Among the incidents within the last 18 months:
  - The President of the Court of Appeal and a second Justice received threatening phone calls on the eve of hearing the impeachment case.<sup>1</sup> A Mannar District Court judge was threatened by a Government Minister to change a ruling; when he refused, a mob appeared at his Courthouse and threw stones.

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<sup>1</sup> Justice Sriskandarajah and Justice Anil Gooneratne.

- Four anti-impeachment lawyers received threatening letters and were defamed as terrorists in public posters across Colombo.<sup>2</sup> Another anti-impeachment lawyer was intimidated and threatened by four men carrying firearms.<sup>3</sup> Another lawyer acting in a petition against replacement Chief Justice Mohan Peiris on allegations of misconduct, received death threats on at least two occasions.<sup>4</sup> Within days after the Bar Association of Sri Lanka issued three resolutions condemning the impeachment of the Chief Justice, the outgoing Bar President heard three gunshots fired outside his home; the incoming Bar President, who is also an anti-impeachment lawyer, received death threats.<sup>5</sup> A human rights lawyer (and Board member of Transparency International) was intimidated by a group of individuals, and Media website Lank-e-News said that he being targeted for assassination.<sup>6</sup> He suffered grenade attacks against his home in 2008 and has received several death threats.
- The Secretary of the Judicial Service Commission (JSC, the regulatory body that oversees the appointment, promotion, transfer and discipline of judges) was assaulted by four men with a pistol and an iron bar in his car on a public street, resulting in his hospitalization.<sup>7</sup> The attack came after the JSC (through the then-Chief Justice as its chair) refused a summons by the President for a private meeting with him days before then-Chief Justice was to issue a judgment on a controversial bill. The JSC had shortly thereafter complained of interference 'from all quarters' undermining the independence of the judiciary, and the Secretary had warned that JSC members were in danger.

#### **IV. BROADER CONTEXT OF IMPUNITY AND UNDERMINING OF THE RULE OF LAW**

- The situation of judges and lawyers is both part of and contributes to a more general failure of national mechanisms to ensure accountability for human rights violations. For example:
  - No prosecutions in the cases of 22 journalists that have been murdered and many others that have disappeared in the past six years.
  - No arrests in relation to the 2006 massacre of 17 humanitarian aid workers in Muttur, despite evidence that the Sri Lankan security forces were responsible.
  - In relation to the 2006 killing of 5 students in Trincomalee, 12 Special Task Force officers were arrested in July 2013, yet the senior officer who had been alleged to be responsible for ordering the operation<sup>8</sup> was promoted to the appointed Deputy Inspector General and transferred to the Eastern Province.

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<sup>2</sup> Romesh de Silva PC, Jayampathi Wickremarathna PC, JC Weliamuna and MA Sumanthiran.

<sup>3</sup> Gunaratne Wanninayake.

<sup>4</sup> Nagananda Kodituwakku.

<sup>5</sup> Outgoing Bar President Wijedasa Rajapaksa PC, incoming Bar President Upul Jayasuriya.

<sup>6</sup> JC Weliamuna.

<sup>7</sup> Manjula Tillekaratne.

<sup>8</sup> The allegation and name of the senior officer appear in a 2006 report of the Human Rights Commission.