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Ref. HR/60

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights (Chief, Special Procedures Branch), and has the honour to refer to the Urgent Appeals from Ms. Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers addressed to H.E. Ravinatha Aryasinha, Ambassador/Permanent Representative of Sri Lanka to the UNO in Geneva, dated 2<sup>nd</sup> November and 27<sup>th</sup> December 2012, respectively.

The Permanent Mission of Sri Lanka has the honour to transmit herewith a letter dated 7<sup>th</sup> January 2013 addressed to Ms. Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers from H.E. Ravinatha Aryasinha, Ambassador/Permanent Representative of Sri Lanka to the UNO in Geneva, in response to the Urgent Appeals from Ms. Knaul addressed to the latter referred to above. A copy of the Report of the Parliamentary Select Committee on the Impeachment of the Chief Justice as well as a copy of article which appeared in the 'Island' newspaper of 27<sup>th</sup> December 2012 containing an eyewitness account of the outcome of the Bar Association Meeting, are annexed herewith for the perusal of the Special Rapporteur.

The Permanent Mission of Sri Lanka would appreciate acknowledgement of receipt of the annexed letter from the Ambassador/Permanent Representative of Sri Lanka by the office of the Special Rapporteur on the Independence of Judges and Lawyers (OHCHR).

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (Chief, Special Procedures Branch) the assurances of its highest consideration.

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Chief, Special Procedures Branch  
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52 rue des Pâquis, CH-1201 Geneva

Ms. Gabriela Knaul  
Special Rapporteur on the Independence of Judges and Lawyers  
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*The Ambassador*



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HR/60

7<sup>th</sup> January 2013

Ms. Gabriela Knaul  
Special Rapporteur on the Independence of Judges and Lawyers

1. I write with reference to your Urgent Appeals dated 2 November and 27 December, 2012, addressed to me in your capacity as Special Rapporteur on the Independence of Judges and Lawyers.

2. With regard to your position on the procedures followed in the ongoing process of the impeachment of the Chief Justice, as contained in the two communications under reference and your press statement, your observations seem to have been formulated on the basis of misinformation which I believe needs to be corrected. At the outset I wish to state that this impeachment process is entirely a domestic issue which has been dealt with by a sovereign country in accordance with its own internal rules and procedures applicable to the situation.

3. In this context, I wish to make the following comments on the contents of your letter :-

(a) The motion of impeachment against the Chief Justice was handed over to the Speaker by a group of Parliamentarians on 1<sup>st</sup> November 2012. When accepted, this became a public document. It is, therefore, mischievous and false to state that the said motion was "leaked to the media". Further, your criticism regarding public disclosure of the Chief Justice's bank accounts is unacceptable, because, in the light of the nature of the charges against her, the provision for banking secrecy cannot be used.

(b) Your reference to the composition of the Parliamentary Select Committee (PSC), in particular the Speaker's action in rejecting the Opposition's proposal to increase their number to six, is misconceived. As one would expect, the established practice is that since the present Government enjoys a two thirds majority in the Parliament, it is represented in every Parliamentary Committee as the majority. The composition of the PSC under reference, reflects the political party representation in the Parliament. It is therefore unrealistic and contrary to all democratic values to expect a PSC to consist of a majority of Opposition Members of Parliament.

(c) It may be noted that the request to the Chief Justice to respond within one week, is in compliance with the time frames in previous instances of impeachments. Moreover, you would appreciate that sufficiency of time is a relative concept and depends on the nature of the charges, the character of the supporting evidence and other attendant circumstances. Charges against the incumbent Chief Justice and the documentary evidence provided in support, included her own Declaration of Assets and Liabilities, property transactions, deeds, and Inland Revenue documents, prepared either by herself or on her behalf. Consequently, there was no necessity for lengthy periods to be accorded for the review of her own documents in the cause of natural justice. Allegations about the brevity of the time period granted to the Chief Justice have to be examined against the nature of the charges. A perusal of the charges would establish that the time frame given has been no impediment to the delivery of justice.

(d) With regard to the Supreme Court recommendation to the PSC of a deferment of its inquiry until the Courts determination on the validity of Standing Order 78A, it may be noted that the Chief Justice sought a Stay Order from the Court against the PSC, which was rejected, thereby allowing the PSC to continue its work. This consideration is not reflected in your communications.

(e) There were no attempts to deny the Chief Justice legal assistance at the PSC hearings, and her senior counsel in fact thanked the Committee for the courtesies extended. On the allegation that the procedure to be adopted at the inquiry was not discussed, is incorrect considering that the application procedure is laid down in the Parliament Standing Order 78A, under which the impeachment process is being conducted.

(f) The Chief Justice's request at the PSC's second hearing for a public trial, being turned down is nothing exceptional, as the PSC was acting under the procedures laid down in Standing Order 78A, which does not provide for this. Judges who had faced impeachments in the past also did not have public trials, as the Standing Order does not provide for the participation of observers, either international or local. Therefore, the incumbent Chief Justice has not received treatment contrary to the precedents in this regard and the PSC has acted within the parameters of the existing legislative framework.

(g) With regard to the Chief Justice's objection to two MPs in the PSC on the basis of judgments by her against them or their family members, it may be noted that this argument of bias is unfounded having regard to the case law which has been exhaustively examined by the PSC. The Courts continue to deliver a plethora of judgments and it is untenable to maintain that, therefore one has prejudices over the Courts or Judges, as a whole, merely because of a judgment concerning one's own family or a relative. Further, it is reiterated that given the nature of the charges leveled against the Chief Justice, all that was required was to refer to the documents in her own possession, with which either she or the

lawyers were familiar, and present her defence. Moreover, the PSC has been acting under the Standing Order and therefore, no necessity arose to "adopt a procedure" anew.

(h) It is incorrect that the Chairman of the PSC overruled the argument of bias against two Committee members without consulting the other members as in fact they were consulted. The allegation of bias was rejected for reasons set out in the Report submitted by the PSC to Parliament (copy enclosed).

(i) With regard to the handing over of approximately 1000 pages of documents to the Chief Justice and requiring her to respond by the same afternoon, it is necessary again to emphasize that they were related to her own personal bank accounts, transactions and other assets, and therefore, there was no need for an extended period of time to respond. There was not a single document which she or her representatives would have been seeing for the first time. With regard to your comments regarding the "principles of fair trial and due process guarantees", you would appreciate that there are differences between a fact finding body and a Court of law. The PSC ensured that the principles of natural justice were upheld.

(j) There is no evidence in the record of proceedings that the Chief Justice was subject to humiliation by any member of the PSC. Her withdrawal from the proceedings of the PSC, was a choice she made, and thereby renounced her own rights. This unilateral action seems to have been tactical due to her inability to defend herself against the charges. Thereafter, the PSC was compelled to carry out its proceedings ex-parte.

(k) The Opposition members of the PSC also withdrawing from the Committee, seems to have been tactical. It is regrettable that the Opposition members were unable to cross-examine the witnesses in order to ascertain for themselves the nature of the charges, and the evidence.

(l) The Report of the PSC could be submitted to the Speaker, on any day; the only stipulation is that the Standing Order requires a compulsory interval of 30 days before it can be taken up for debate in Parliament. As the Report was submitted on 8 December 2012, it could be taken up for debate from 9 January 2013 onwards. The Speaker has not promised a ten day debate as alleged, but said that he would allocate adequate time for the debate.

(m) H. E. the President has stated his intention to appoint a panel of experts to give him an advisory opinion following the Parliamentary process.

(n) The outcome of the Bar Association meeting on the 15<sup>th</sup> of December was not consensual and the three Resolutions were adopted arbitrarily through division amidst chaos. (I enclose herewith an eye witness account published in the Sri Lanka media on Friday 28<sup>th</sup> December 2012).

4. It is regrettable that attention is being skillfully deflected from the substantive evidence to a discussion about due process and fairness. It is noteworthy that your communications contain no references to the behavior of the Chief Justice, which is the basis of the impeachment. This is surprising in the attitude of those who are concerned with the integrity of the highest office in the country's judiciary. The Government of Sri Lanka has followed the due procedure that is set out in the Constitution of Sri Lanka. Additionally this procedure adopted by the Government in respect of the impeachment of the Chief Justice is in conformity with principles relating to disciplinary proceedings against Judges contained in the Basic Principles on the Independence of the Judiciary, endorsed by the UNGA in 1985, particularly with those you have cited in your communication of 27 December 2012, one of which also states that a charge or complaint against a judge should be processed expeditiously.

5. References made in your letter to the incompatibility of Sri Lanka's laws with internationally accepted legal principles seem an obvious indication of bias, bringing into question whether this matter has been approached on your part with an open mind. Bringing into question the paramount law of a sovereign nation by you is regrettable and unacceptable. This is offensive to our country. It is a sovereign right of the Government of a country to enact required laws compatible with the domestic legal framework and its international obligations. In this context, Sri Lanka is within its legal competence and I do not think it fit for an external entity to bring into question the country's laws in the manner you have sought to do. It may also be noted that Sri Lanka prides itself on a traditional Parliamentary democracy and a judiciary of the highest standard. Moreover, the Constitution of the country enshrines adequate safeguards to ensure the independence of these vital arms of a functioning democracy.

6. With regard to your reference to incidents concerning M/s. Manjula Thilakaratne, Gunaratne Wanninayaka and Wijayadasa Rajapaksha and alleged intimidation by a Minister of the Magistrate in Mannar and an attack against a District Judge of Point Pedro, you have commented there in that the 'facts reported' might "form a part of a pattern of attacks...". This is categorically rejected, as your assumption is baseless. Prejudgment in this manner is not in keeping with your office nor with the Organization you represent. These are cases which are being probed by the law enforcement agencies and the investigations are continuing. The allegation against a Minister for intimidation of the Mannar Magistrate is a matter presently before Courts. As this is sub-judice, and investigations are being pursued on the incidents concerning the aforementioned, it would be inappropriate to comment on them at this time. Following investigations conducted with regard to the alleged attack on the house of the Point Pedro District Judge, it has been revealed that a tender coconut had fallen on the roof and no person had been involved in this incident, and the Judge had informed that she did not wish to proceed in this regard. It may also be noted that adequate security has been provided to all the Judges including Mr. Manjula Thilakaratne, District Judge of Point Pedro, Magistrate of Mannar, Members of the Judicial Service Commission and other members of the Judiciary.



Ravinatha Aryasinha  
Ambassador/ Permanent Representative

## BASL meeting of Dec. 15: An eyewitness account

December 27, 2012, 8:26 pm



The Assembly of the Attorneys at law took place on the morning of the 15th December at the Colombo District Court compound. The podium of the meeting was on the back veranda of the High Court No: 03 and temporary structures were put up on the compound adjacent to the chambers allotted to the district judges. The place of assembly was structured as an elongated rectangle, narrow at front which ran down the length of the compound towards the lawyers canteen. Those assembled at the back of the assembly could have hardly seen the stage. The whole arrangement was for an anticipated crowd of a thousand to thousand five hundred Lawyers and was totally inadequate for a meeting where each and every member could participate and be heard. The arrangement was such that those conducting the meeting were totally cut off from a good part of those assembled. The meeting started around a quarter to eleven in the morning. The President of the BASL started the meeting speaking in English saying that around 400 lawyers submitted a request for a general meeting to pass a resolution requesting Lawyers not to appear before a newly appointed Chief Justice and he also said that he received another request for a general meeting by around 300 lawyers.

The President of the BASL Mr. Wijedasa Rajapakshe, President's counsel said that he had vetoed both resolutions and proceeded to read three other resolutions in English whose authorship he never revealed. The three resolutions were completely new to the participants of the meeting and were never explained by the President. The president did not explain the meaning of the resolutions but read them briskly. The whole introductory speech and the presentation of his three resolutions were all done in English. He put the resolutions to the House saying each person would only be allowed to speak for three minutes. By now the time would have been well past 11.00 am, the President having taken around twenty minutes or more to speak.

The House was asked to respond to the three resolutions which were read only once by the President. No one was given the text of the resolutions in writing. (But a photo copy of a letter written by the Law firm Neelakandan and Neelakandan to Speaker Chamal Rajapaksa on behalf of the Chief Justice referring to alleged derogatory remarks said to have been made by two members of the PSC to the Chief Justice were distributed to each and every member present at the meeting.) Prior notice of the three resolutions which were moved by the BASL President at the meeting, were not given to the members.

The assembly of lawyers was asked to respond to the three resolutions not knowing the content or implications of the resolutions. Further, instead of putting the three resolutions to vote one after the other, the President preferred to put to the assembly all the resolutions together so as to confuse those assembled. In fact the first resolution asking His Excellency the President to reconsider the impeachment had already been passed at an earlier BASL general meeting held nearly a month ago. The first resolution to be put together with the second resolution was to confuse those present on 15th December 2012. In fact the text of the three resolutions were read by those who attended the general meeting of 15th, only the day after, in the newspapers. Those members who were privy to those resolutions on or before the 15th were only the close associates of the President of the BASL, or those who actually drafted them.

The second resolution calls upon Parliament to enact new procedural laws before further proceedings are taken on the impeachment process against the Chief Justice. Parliament has already acted in pursuance of the impeachment motion presented by 117 members of parliament under the Article 107 of the constitution and the relevant standing orders of parliament. The Select Committee has made its report, which has found the Chief Justice guilty of 3 charges out of the first five charges. It has examined and made the report within the stipulated period. The report had been tabled on the 08th December 2012 in parliament and was now in the cooling off period of one month.

To urge Parliament to enact procedural laws at this juncture before further proceedings are taken in the Impeachment motion is to negate all steps taken already according to the constitutional provisions already in place. A new set of procedural laws would attract the criticism of changing rules of procedure to bail out the besieged Chief Justice. To ask for a change of procedural rules at this stage is to ask a batsman who had been ruled out, to come to the pitch and start his innings again under a new set of rules of cricket.

The manner in which the President of the BASL conducted the meeting and for him to say that the resolutions were passed unanimously is to hide the pre-planned exercise which was executed by the President of the BASL with many others. As I narrate the details of the proceedings of the BASL general meeting below, it would be clear to the reader as to what actually happened. Only the English language was used by the President in reading out his three resolutions. This was a deliberate act on his part as a considerable number of lawyers who work mainly in the Sinhala language would be kept in the dark as to the contents and gravity of the second and third resolutions.

As stated earlier the floor was opened for comments. A lawyer from Hambantota was the first to speak. There were others who took the floor. A district judge, who has had to vacate his judicial post on the insistence of the JSC tried to explain some things and was not allowed to speak by the chair. There was another Attorney who tried to repeat certain comments made by the President Wijedasa Rajapakse recently regarding the impeachment, who was stopped and ordered to sit down by the chair. Yet another who tried to speak was not allowed. The participants were at a loss to understand as to what that particular Attorney tried to say. Some who tried to speak against the resolutions were interrupted by some unruly elements. Attorney at law Mr. Katulanda when interrupted by these elements asked as to why the freedom of speech is not allowed here. It was clear that the President did not mind the hecklers' unruly behaviour and did not take any action to stop them. At the very beginning of the meeting President's Counsel Srinath Perera the United National Party Organiser for the Moratuwa electorate and UNP Provincial Council member took the floor and said that lawyers are blamed by the public and seemed to have a bad image and that we should be unanimous so as to avoid a division in our ranks. He did not dwell on the contents of the resolutions and made every endeavour to show that the resolutions are innocuous and tried to pose as a reasonable man only concerned for the good name of the legal profession. I was surprised by the sedate demeanour presented by Srinath Perera at this meeting in contrast to the volatile speaker I saw in him a few days earlier at the New Town Hall at a seminar organised by the JVP against the impeachment motion where he blamed those lawyers who according to him are stooges of the Rajapaksa regime. He said that the whole legal system of Sri Lanka was sure to crumble if the CJ is impeached and that he is even ready to lay down his life in opposition to the impeachment.

At the BASL meeting on the 15th, President's Counsel Ali Sabry also made certain comments followed by others. Mr. Jeff Alagaratnam Counsel for one of the petitioners who had asked for a writ of prohibition from the Court of Appeal against the impeachment also spoke. By now ten to fifteen speakers would have tried to speak out. The time was now around a quarter to twelve and there were more than ten Attorneys queued up at the two microphones. Mr. Wijedasa Rajapakse suddenly decided that this was the moment he had been waiting for. In a trembling voice the President said something about the resolutions which I couldn't gather. Some members close to the podium put up their hands whilst some others said "no". I was seated around twenty rows from the podium and when I turned back to look at the rest of the audience, those members at the back of the Assembly seemed to know nothing of what was happening.

I heard clearly the last words the President said as he got up from his seat, " I terminate the meeting " . He then immediately walked out at around a quarter to twelve whilst the rest of the officials of the BASL were still on their seats. Everybody in the Assembly was simply flabbergasted. Nobody seemed to know what was happening and what had happened except that the President of the meeting had abruptly vacated his chair and disappeared.

The meeting had hardly gone for more than an hour. Many had waited to express their views. Lawyers who had come from all parts of the island began to look around vacantly and would not come to terms with what had happened. Then slowly the crowd began to stand from their seats as though wakened from a deep slumber. They began to intermingle. The opportunity they had waited to express themselves had been denied to them by their President and no formal vote had

been given to them. Soon thereafter pandemonium broke out. Verbal expression had given way to physical expression. Soon the crowd became boisterous and began to shout slogans.

I witnessed on this day the worst conduct on the part of a Chairman with regard to a meeting being conducted and terminated. All norms of conducting a meeting had been breached by the President. He had come with one purpose, to conduct a sham meeting and to terminate it abruptly and leave the premises and claim to a group of journalists elsewhere that all three resolutions were passed unanimously and make way for his accomplices to make use of the supposed unanimity for international consumption.

K. Amaranath P. Rajakaruna

Attorney-at-Law