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**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandate of the Special Rapporteur on the independence of judges and lawyers**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 17/2.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding serious allegations of interference in and threats to the independence of the judiciary in Sri Lanka. In particular, I would like to draw the attention of your Excellency's Government to information I have received regarding intimidation and an attack against the Secretary of the Judicial Service Commission, Mr. **Manjula Tillakeratne**, as well as attacks against a judge of Point Pedro District and a Magistrate from the Mannar Magistrate Court.

According to the information received:

On 17 July 2012, the Minister of Industries and Commerce, Mr. X, allegedly called a Magistrate from the Mannar Magistrate Court in the Northern Province of Sri Lanka to demand that he reverse a decision he took in a case the previous day. The Magistrate reportedly declined to change his order and complained to the Judicial Service Commission about the interference.

On 18 July the Minister is alleged to have personally met with the Secretary of the Judicial Service Commission, Mr. Manjula Tillakeratne, and required that the Magistrate of Mannar be transferred forthwith. On the same day a mob, allegedly instigated by Minister Badhiudeen, reportedly attacked the Magistrate and the High Courts of Mannar, as well as the police station, threatening judges and lawyers, damaging property, and forcing the police to fire tear gas to disperse them.

It is reported that, as a result, on 20 July lawyers went on a country-wide strike. The Bar Association of Sri Lanka allegedly passed a resolution condemning the intimidation of the Magistrate and urging action against the Minister. It is alleged that no apologies for the attacks were issued from the Government or the President and that, to the contrary, State media was used to

criticise the Mannar Magistrate, even suggesting that he was a LTTE sympathiser.

On 25 July, seven senior lawyers reportedly moved the Court of Appeal under Article 105(3) of the Constitution of Sri Lanka to deal with the Minister of Industries and Commerce for contempt of court. The Bar Association of Sri Lanka allegedly later associated itself with the petition. It is reported that the case is still pending.

On 18 July, in another case, it is reported that unknown persons, allegedly believed to belong to Sri Lanka's military intelligence, attacked the house of a Point Pedro District Judge with coconuts in Jaffna, causing damage to the roof of the residence. The attack reportedly took place one day after a protest was held in Nellyyadi against the death of a Tamil prisoner which the judge had refused to legally ban after a petition from the police.

On 18 September 2012, the Judicial Service Commission reportedly issued a statement denouncing attempts to interfere with and propaganda against the judiciary, and particularly the Judicial Service Commission. The statement allegedly also suggested that a high official had attempted to influence the Judicial Service Commission in relation to a disciplinary matter taken up by the Commission against a District Court judge. It is reported that several lawyers or groups of lawyers made public pronouncements supporting the Judicial Service Commission and judges in general. The Bar Association of Sri Lanka allegedly passed three resolutions in support of the Judicial Service Commission.

On 28 September, the Secretary of the Judicial Service Commission reportedly issued a statement where he claimed that he and his family were under threat. Shortly after, on 7 October 2012, the Secretary was allegedly attacked by four unidentified men, who had first identified him as the Secretary of the Commission. It is reported that one of the assailants whipped him with a gun, while the others beat him with their fists and an iron rod. As a result, he was reportedly admitted to the Colombo National Hospital to treat his injuries.

On 8 October, judges reportedly went on strike as a reaction to the attack against the Secretary, and the Bar Association of Sri Lanka allegedly decided to follow their decision to strike. A protest march is also alleged to have taken place near the main court complex. It is reported that no successful investigations have taken place up to date.

In addition, on 9 October 2012, the Speaker of Parliament allegedly made a statement where he criticized the decision of the Supreme Court to accept a petition challenging the validity of a bill on rural development (so-called Divinaguma Bill) stating that the decision had not been conveyed to the Speaker of Parliament following the appropriate procedure. It was further reported that on the day that the petition challenging the Divinaguma Bill had been taken up by the Supreme Court, the husband of the Chief Justice of the Supreme Court, who had previously resigned as Chairman of a bank after a scandal, was summoned before the Commission to Investigate Allegations of

Bribery and Corruption. It is alleged that this Commission is controlled by the President, and that this particular case is being used by the Government to put pressure on the Chief Justice to resign. In this context, it is further reported that the group leader of a political party that made the complaint to the Commission to Investigate Allegations of Bribery and Corruption against the husband of the Chief Justice declared he believed their complaint was not being properly investigated but instead was being used to reach the Chief Justice.

It is reported that the above-mentioned intimidation and physical violence are the latest in a series of attacks on and interference in the independence of the judiciary in Sri Lanka. It is alleged that most cases of attacks and or interference are not genuinely investigated and that perpetrators are not held to account.

Finally, it was reported that a procedure of impeachment against the Chief Justice of the Supreme Court has been launched by a motion of the Parliament submitted on 1 November 2012. It is alleged that this procedure was politically motivated and linked to decisions taken by the Supreme Court which displeased the Government.

I would like to express serious concern about the physical and mental integrity of Mr. Manjula Tillakeratne, as well as that of other judges and members of the judiciary in Sri Lanka. In addition, I am concerned that the facts reported in this case might form part of a pattern of attacks on, threats to and interference in the independence of the justice system in the country, and in particular the independence of the Judicial Service Commission.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw your Excellency's attention to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular, principle 1 states: "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."

I would also like to refer your Excellency's Government to principle 2 of the Basic Principles on the Independence of the Judiciary, which states: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

In this connection, I would further like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...]" The Human Rights Committee

explained in its General Comment No. 32 (CCPR/C/GC/32) that: “The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exceptions. [...] States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. [...] In order to safeguard their independence, the status of judges, including their term of office, their independence, security, adequate remuneration, conditions of service, pensions and age of retirement shall be adequately secured by law.”

In addition, I would like to underline the benefits and importance of having an independent body, in particular to select and appoint judges, such as the Judicial Service Commission, to strengthen the independence of the judiciary. Indeed, principle 10 of the Basic Principles on the Independence of the Judiciary states: “Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.”

In this context, I wish to remind your Excellency’s Government that my predecessors and I have recommended on various occasions that Member States “consider establishing an independent body in charge of the selection of judges, which should have a plural and balanced composition, and avoid politicization by giving judges a substantial say” (A/HRC/11/41).

Regarding disciplinary proceedings against members of the judiciary, I would like to refer your Excellency's Government to the following principles of the Basic Principles on the Independence of the Judiciary:

- Principle 17, which states: “A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.”
- Principle 18, which states: “Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.”
- Principle 19, which states: “All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.”
- Principle 20, which states: “Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.”

Furthermore, the Human Rights Committee explained in its General Comment No. 32 (CCPR/C/GC/32) that: “Judges may be dismissed only on serious grounds of

misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law.”

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government to protect the physical and mental integrity of Mr. Manjula Tillakeratne, as well as that of other judges and members of the judiciary who have reported interference, threats and/or attacks, including any investigation that might have been undertaken.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Manjula Tillakeratne?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the cases mentioned in the above summary. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate which measures are being taken by the authorities to ensure the safety of Mr. Manjula Tillakeratne, as well as that of other judges and members of the judiciary who have reported interference, threats and/or attacks, including the Point Pedro District judge and the Magistrate of the Mannar Magistrate Court.
5. Please provide detailed information on the measures taken to ensure the independence of the Judicial Service Commission and its adequate functioning, including the physical security of its members and its secretary.
6. Please indicate where the procedures of impeachment of the Chief Justice of the Supreme Court stand and how such procedures respect the international principles and standards on the independence of the judiciary, in particular article 14 of the International Covenant on Civil and Political Rights and the Basic Principles on the Independence of the Judiciary.
7. Please provide detailed information on the measures taken to ensure the independence of the justice system, prevent interference, threats and attacks against judges and other members of the judiciary, and punish the perpetrators of such interference, threats and attacks.

I undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above

mentioned persons are respected, to protect the physical and mental integrity of all judges and members of the judiciary, and to ensure the independence of the justice system. In the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. I also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of my highest consideration.

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Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers