



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

London, 2 January 2013

STATEMENT

Sri Lanka: Impeachment of Chief Justice

The Bar Human Rights Committee of England and Wales (BHRC) is concerned at the circumstances surrounding the impeachment of the Chief Justice of Sri Lanka, Shirani Bandaranayake, and at reports of attacks against the judiciary and the legal profession within Sri Lanka.

The independence of the judiciary and the rule of law

The independence of the judiciary is fundamental to the rule of law, and we condemn any move to restrict or compromise that independence. The rule of law is integral to the protection of fundamental human rights, and without it the basic principles of democracy are at risk. These principles are enshrined in international law¹ and reflected in the Constitution of Sri Lanka.

It is fundamental that judges should not be removed from office except on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law.² They should never be removed on the basis of decisions they have made which are unfavourable to the Government. This is reflected in the Sri Lankan Constitution at Article 107.

Furthermore, it is a basic tenet of constitutional democracy that governments are required to respect the rights of lawyers and the courts to carry out their professional duties without intimidation, harassment or proper interference. We believe that this is paramount to upholding and protecting the human rights of the individual.

Impeachment of Chief Justice

Shirani Bandaranayake was appointed Chief Justice in May 2011.

¹ 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.

² Committee for Human Rights, General Comment 32, CCPR/C/GC/32; 23 August 2007.

On 1st November 2012, a resolution signed by 117 members of Parliament was presented to the Speaker of Parliament, Chamal Rajapaksa, calling for the Chief Justice to be removed from her post. The resolution contained 14 charges against the Chief Justice.

Events leading to impeachment motion

On 10th August 2012, the Divi Neguma Bill was presented to Parliament by Minister for Economic Development, Basil Rajapakse. The Bill was challenged on constitutional grounds before the Supreme Court. The Chief Justice chaired a panel of three judges hearing the case. On 18 September 2012, the Secretary of the Judicial Service Commission (JSC) issued a public statement raising concerns about attempts to improperly influence the judiciary:

“that the JSC has been subjected to threats and intimidation from persons holding different status. Various influences have been made on the JSC regarding decisions taken by the Commission keeping with the service requirements. Recently the JSC was subjected to various influences after the Commission initiated disciplinary action against a judge.

Moreover an attempt to convince the relevant institutions regarding the protection of the independence of the judiciary and the JSC over the attempt to call for a meeting with the chairperson of the JSC, who is the Hon Chief Justice and two other Supreme Court judges, was not successful. The JSC has documentary evidence on this matter.

On 7th October 2012, the author of the statement, Manjula Tillekeratne, was attacked by unidentified assailants in Colombo while he was waiting in his car for his children.

On 1st November 2012, the Supreme Court (chaired by the Chief Justice) determined that the Devi Neguma Bill presented by Minister for Economic Development, Basil Rajapaksa, would be unconstitutional unless approved by referendum.

On the same day, 117 Members of Parliament (members of the Government Parliamentary Group) presented a resolution to Speaker Chamal Rajapakse for the removal of the Chief Justice. The resolution contained 14 charges.

Parliamentary Select Committee

On 14 November 2012, the Speaker of Parliament appointed a Select Committee of 11 Members of Parliament (seven Cabinet Ministers and four Members from Opposition parties) to investigate and report to Parliament on the allegations set out in the resolution.

The resolution was delivered to the Chief Justice and she was required to respond to the charges by 22 November 2012. A request for further time was refused.

On 20 and 23 November, the Chief Justice requested disclosure of the evidence, witnesses and documentary evidence, upon which the allegations were based. Nothing was provided. The inquiry took place between 3 – 7 December 2012.

Counsel for the Chief Justice requested the Select Committee to waive the secrecy provisions and conduct an open and public inquiry and that independent observers be permitted to watch the proceedings. Both requests were refused by the Government majority in the Select Committee.

On 6 December 2012, the Chairman of the Select Committee stated that no oral evidence would be led to establish the allegations and, consequently, an opportunity to cross examine witnesses did not arise. On the same day, the Select Committee handed over a bundle of documents consisting of approximately 1000 pages and required the Chief Justice to respond by 1.30 pm on the next day.

Withdrawal of Chief Justice

The Chief Justice then withdrew her participation in the proceedings; counsel for the Chief Justice stated that it was not possible to continue to accept the legitimacy of a body steeped in partiality and hostility towards the Head of the Judiciary. The Chief Justice did so reiterating that she was willing to face any impartial and lawful tribunal.

Withdrawal of Opposition members of Select Committee

On the same day, the four opposition members also withdrew from the Select Committee; their reasons were set out in a three page letter to the Speaker of Parliament and addressed in a joint news conference the following day.

They cited a number of concerns which had not been addressed by the Committee:

- The absence of a clear direction regarding the procedure to be followed by the Select Committee;
- Whether documents were to be made available to the Chief Justice and her lawyers and sufficient time afforded to study the documents;
- The standard of proof that would be required;
- The need to arrive at a definition of “misbehaviour”;
- The absence of the opportunity to cross-examine witnesses;

The members concluded:

We also find that we are groping in the dark and proceeding on an ad hoc basis. . . . The lawyers appearing for the Chief Justice asked for time to study the documents. This was refused. Apart from the Chief Justice, we the Members of the Select Committee ourselves need sufficient time to study these documents. Furthermore the Chief Justice had not been provided with either a List of Documents or a List of Witnesses. . . . We also regrettably note that during these proceedings, the treatment meted out to the Chief Justice was insulting and intimidatory and the remarks made were clearly indicative of preconceived findings of guilt. We are therefore of the view that the Committee should, before proceeding any further, lay down the procedure that the Committee intends to follow in this inquiry; give adequate time to both the Members of the Committee and the Chief Justice and her lawyers to study and review the documents that had been tabled and afford the Chief Justice privileges necessary

to uphold the dignity of the Office of the Chief Justice while attending proceedings of the Committee. If these matters are attended to, we feel that the Chief Justice should be invited to continue her participation in these proceedings. However, if the Committee is not agreeable to these proposals of ours we will be compelled to withdraw from the Committee.

The Findings of the PSC

On 7 December 2012, the remaining 7 members of the Parliamentary Select Committee continued in the absence of the Chief Justice and concluded a report which found the Chief Justice guilty on 3 charges, not guilty on 2 charges and arrived at no adjudication on the remaining 9 charges.

The Sri Lankan Parliament is due to debate the report and vote on the motion for impeachment on 8 January.

BHRC Concerns

The Bar Human Rights Committee reiterates that an independent judiciary, free of any interference from the executive and legislative branches, is a necessary precondition for the fair administration of justice and the promotion and protection of human rights.³ Judges should not be removed from office except for serious misconduct, and such a determination is itself a judicial determination which should be carried out by an independent and impartial tribunal which affords the accused person a fair hearing.⁴

We have serious concerns about the inquiry conducted by the PSC.

- The PSC was composed of politicians, despite performing a judicial role. The majority were from the Government, at a time when the Chief Justice had been deciding on matters affecting the Government.
- The hearings were not public and no independent international observers were present.
- There appears to have been a wholesale failure to have regard to or respect the basic tenets of the right to a fair hearing: timely disclosure of evidence, adequate time to prepare, the right to test the evidence.
- In addition, it was reported that the Chief Justice was addressed in a way that was “Insulting and intimidating”.
- The PSC failed to address concerns raised by the Chief Justice or by members of the PSC themselves, and purported to conclude a report within 24 hours finding the Chief Justice guilty.

³ International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*, (Geneva, 2007) pp. 3-4.

⁴ Article 14, International Covenant on Civil and Political Rights (1966).

We call on the Government of Sri Lanka to observe respect for the independence of the judiciary, and not to act on the report of the Parliamentary Select Committee until these concerns have been addressed.

We note that the Chief Justice has applied to the Court of Appeal to quash findings of the PSC. The application is to be heard on 3 January, but in the meanwhile Court of Appeal has advised the relevant authorities not to act in derogation of the rights of the Chief Justice until the application is heard and concluded.

We hope that the decision of the Court of Appeal will be respected and complied with.

NOTES FOR EDITORS

1. The Bar Human Rights Committee of England and Wales (“BHRC”) is the international human rights arm of the Bar of England and Wales. It is an independent body concerned with protecting the rights of advocates, judges and human rights defenders around the world. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda.

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BHRC website

<http://www.barhumanrights.org.uk/>

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