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Commonwealth Secretariat
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We, the Movement of Social Justice for the people of Sri Lanka, highly appreciate the Commonwealth's commitment to providing policy advice to all member countries including Sri Lanka, which is a member in the Commonwealth since 1948.

The rules formulated by the Commonwealth in May 2004 emphasise the importance of adherence to the Commonwealth (Latimer House) Principles, which govern issues such as striking a balance between the sovereign rights of the people of all member nations and harmonious exercise of such rights by the National Parliament, the Executive and the Judiciary, in keeping with the doctrine of separation of powers. These principles require careful restraint in the exercise of power within their respective Constitutional spheres so that the legitimate discharge of Constitutional functions by all organs would be smooth, respected and not encroached, especially by the Executive.

The failure of Government to safeguard the Independence of Judiciary

The Latimer House Principles stresses the need of an independent, impartial, honest and competent judiciary, which is absolutely essential in upholding the rule of law, sustaining public confidence in dispensing justice. It also recognises the judicial function of interpretation and application of national Constitution in consistence with International human rights conventions and International law, to the extent permitted by the Domestic Law of each Commonwealth country.

However, we observe that the Government of Sri Lanka (GOSL), the current holder of the Chair of the Commonwealth has miserably failed to respect and honour these principles and continues to keep the Judiciary in a firm grip of the Executive, leaving it with no independence at all.

The Constitution of the Republic of Sri Lanka enacted in 1978 recognises that the sovereignty is in the people, which includes the powers of the Government (Legislative, Executive and Judicial power), fundamental rights and franchise (Article 3). The law has recognized these rights as inalienable rights vested in the people and provides that they shall be exercised through the three arms of the government (Article 4) purely on trust and three organs to respect the powers vested in each other and not violate them in any manner.

Blatant abuse of people's power of franchise

Sri Lanka's new regime elected to office on 8th Jan 2015 promised the international community that it would strictly observe the rule of law, primarily set out in the Constitution, and good governance and the General Election was held on 17th August

2015. The existing Constitution also provides election of 196 MPs by people's franchise and another 29 MPs through the National List from the names of candidates published in the gazette by the Commissioner of Elections prior to the day of the General Election.

However, in May 1988 this provision of law has been amended by the Executive through fraudulent means in collaboration with the legislature and judiciary, allowing secretaries of the political parties to appoint candidates rejected by the people at a General Election without obtaining mandate from the people, a mandatory necessity, to surrender their power of franchise to political party secretaries in this manner.

New regime continues to violate the Commonwealth (Latimer House) Principles

The new regime elected to office in Jay 2015 too continues to abuse this flawed provision of law, (which is *ab initio void*) and has appointed 10 candidates nominated by the secretaries of the political parties as MPs through the said National List. All these candidates had been rejected by the people at the General Election held on 17th August 2015, prompting the people to condemn the Government's move as a blatant violation of people's right to franchise enshrined in the Constitution (Article 3). This is an entrenched provision, which cannot be amended without a mandate obtained from the people. The Constitution clearly states that any amendment made usurping the sovereign rights of the people in this manner, while defying the process specified in Chapter 12 of the Constitution, would become *ab initio void* and will have no legal effect [Article 82(6)] at all.

Therefore, on 13th Oct 2015 purely in the public interest, the said unlawful process adopted by the new regime was challenged in the Supreme Court by a British lawyer Nagananda Kodituwakku (*up until now no Sri Lankan Lawyer has been brave enough to challenge this 28-year old fraudulent act committed surreptitiously, involving all three organs of the government*) who primarily engage in public litigation matters. Considering the national importance in this case, the lawyer has made a request to the Chief Justice (K Sripavan) to appoint the full bench of the Supreme Court to hear and determine this case in terms of Article 132 (3) (iii). However, to dismay of all citizens, the Chief Justice [arbitrarily appointed to office by the Executive President, after effecting a constructive dismissal of the former Chief Justice Shirani Bandaranayake within 24 hours after her reinstatement to the office on 29th Jan 2015] who is obviously under intense pressure from Executive, has ruled that the abuse of the National List to appoint defeated candidates by the political party secretaries, is not a matter of national importance and refused to appoint the full bench of the Supreme Court to hear this all important case, and instead now attempts to discipline the lawyer who has made a [lawful request to the Chief Justice](#), for a hearing of the case by the full bench of the Supreme Court. In our opinion this attempt made by the Chief Justice is clearly tantamount to obstruction of justice.

The need for the intervention by the Commonwealth Secretariat

It is absolutely clear that the incumbent Chief Justice of Sri Lanka, who is due to retire next year has been forced to make this ruling as a result of direct encroachment of people's judicial power by the Executive, which is tantamount to clear violation of Sri Lanka's obligations under Commonwealth's (Latimer House) Principles concerning the judiciary. This leaves room for another dictatorship surreptitiously destroying core democratic principles, making the January 8th (2015) transfer of power a mockery. Therefore, we, as a body dedicated to ensure due respect and honour to the sovereign rights of the people by

the there organs of the government without encroaching powers of each other, urge the Commonwealth to take meaningful steps ensuring the Government of Sri Lanka honour and respect its obligations to the Commonwealth Charter and the Commonwealth (Latimer House) Principles applicable to all three organs of the Government.



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The General Secretary
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