

Commonwealth Secretary General
Commonwealth Secretariat
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31st Oct 2014

Dear Sir

Sri Lanka: Violation of the Commonwealth Charter

I write to record my concerns on the failure of the Commonwealth Secretariat to ensure the compliance of values by a Member Nation, namely the Government of Sri Lanka, which seems to have been permitted to violate the core values and principles of the Commonwealth Charter, in spite of being the current Chair-in-Office of the Commonwealth of Nations. Two examples of such abuses are set out below.

a. Abuse of Executive Power to alter the Constitution to serve private interests

The Constitution of Republic Sri Lanka provides for two terms to any person elected to the office of the President. The relevant provisions in the Constitution were done away with the support of certain Judges in the Supreme Court, who were under duty to uphold the peoples' judicial power under the Constitution. The amendment which made way for a third term for the incumbent President should have been tested at a referendum. However, the Bench headed by Justice Bandaranayake let the said amendment to become law, subject to approval by a 2/3 majority of the members in the Legislature, which is currently under absolute control of the Executive President, with members bought over from the Opposition.

b. Appointment of law Officers (Public Officers) to the Superior Courts

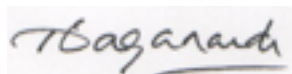
The leading nations in the Commonwealth do appoint no law officers of the government to the Judiciary. For instance not a single law officer from the Crown Prosecution Service is appointed to the Office of the Judge in the Court of Appeal or Supreme Court in the UK. This practice is strictly adhered purely to observe the Rule of Law, Independence and Impartiality of the Judges in the superior Courts.

This principle too has been openly abused by the Government of Sri Lanka with the appointment of faithful law officers from the Attorney General's Department to the Supreme Court and to the Court of Appeal making the justice system in the country a mockery. At the moment both Judges in the Writ Court of the Court of Appeal, where people challenge unlawful actions by the government authorities, have been appointed from the law officers serving in the Attorney General Department.

In this background, being a senior lawyer I have protested and opted to stop my practice altogether in the Court of Appeal. Further I have requested the Bar Association, the professional body of the unofficial bar, (copy of the letter sent to Bar Association enclosed) to take effective measures to restore the core Commonwealth Values of Rule of Law, good governance, as it is quite apparent that the Judiciary has now been made to protect the interests of the Executive.

Therefore, it is hereby respectfully requested to initiate a dialog with the Government of Sri Lanka to ensure adherence to the Commonwealth values, which require upholding of Good Governance and Rule of Law by all member nations.

Yours faithfully



Nagananda Kodituwakku
(Attorney-at-Law (Sri Lanka) & Solicitor (England & Wales))