



London, 17 January 2013

## **FURTHER STATEMENT**

### **Sri Lanka: Impeachment of Chief Justice**

The Bar Human Rights Committee of England and Wales (BHRC) raises grave concerns at the decision of the President of Sri Lanka, Mahinda Rajapaksa, to remove the Chief Justice, Shirani Bandaranayake, following an inquiry by a Parliamentary Select Committee which the Supreme Court has held to be unconstitutional.

#### **Impeachment and removal of Chief Justice**

The BHRC recalls its statement of 2 January 2013<sup>1</sup> expressing serious concerns about the inquiry conducted by the Parliamentary Select Committee (PSC), including findings made on 7 December 2012 that the Chief Justice was guilty of misconduct. The BHRC notes that many of these concerns were shared by the international community, including the United Nations Special Rapporteur for the independence of the judiciary and lawyers.<sup>2</sup>

On 1 January 2013, the Supreme Court of Sri Lanka ruled that the establishment of a PSC by Standing Order rather than by primary legislation was unconstitutional. The Supreme Court determined that the PSC had no legal power or authority to make a finding adversely affecting the legal rights of a judge. In so doing the Supreme Court echoed concerns expressed by the UN Human Rights Committee in December 2003 that the procedure for the removal of judges under the Sri Lankan constitution is “incompatible with article 14 [of the

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<sup>1</sup> Bar Human Rights Committee Statement: Sri Lanka: Impeachment of Chief Justice, 2 January 2013: [http://www.barhumanrights.org.uk/sites/default/files/documents/news/sri\\_lanka\\_statement\\_jan\\_2013\\_0.pdf](http://www.barhumanrights.org.uk/sites/default/files/documents/news/sri_lanka_statement_jan_2013_0.pdf)

<sup>2</sup> UN Special Rapporteur for the Independence of Judiciary and Lawyers, Statements of 14.11.12 and 31.12.12 [http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?NTID=PRS&MID=SR\\_Independen\\_Judges](http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?NTID=PRS&MID=SR_Independen_Judges).  
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International Covenant on Civil and Political Rights], in that it allows Parliament to exercise considerable control over the procedure for removal of judges.”<sup>3</sup>

On 7 January 2013, the Court of Appeal of Sri Lanka, exercising writ jurisdiction, applied the Supreme Court decision and quashed the findings of the PSC as having no legal validity.

On 10 and 11 January 2013, Parliament debated the findings of the PSC report and an impeachment motion against the Chief Justice and voted to impeach the Chief Justice by a majority of 106 votes (155 voting for; 49 against).

On 13 January 2013, President Mahinda Rajapaksa dismissed Chief Justice Bandaranayake with immediate effect.

### **The independence of the judiciary and rule of law**

The BHRC 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. Furthermore, the principle of separation of powers is an essential component in any democratic society operating under the rule of law.

Indeed, in its order of 2 January, the Supreme Court of Sri Lanka cited the judgment of Sharvananda J in *Visuvalingam v. Liyanage* (1983) 1 SLR 203:

The Rule of Law is the foundation of the constitution and independence of the judiciary and fundamental human rights are basic and essential features of the constitution. It is a lesson of history that the most valued constitutional rights pre-suppose an independent judiciary through which alone they can be vindicated.

The BHRC deprecates the Government of Sri Lanka’s disregard for the rulings of the Supreme Court and the Court of Appeal by acting to remove Chief Justice Bandaranayake from office on the basis of the PSC report. Due process declared the PSC report to have no legal validity; serious issues were raised -and ignored -with respect to basic fair hearing proceedings before the PSC.

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<sup>3</sup> UN HRC concluding observations of Dec 2003:  
<http://www.unhcr.org/refworld/publisher.HRC.,LKA,3fdc69a67.0.html>

The Government of Sri Lanka has acted in breach of the country's constitution and in apparent flagrant denial of the fundamental rule of law.

## **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.

**END.**

### **BHRC website**

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

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