Concerning the removal of Chief Justice Dr. Shirani Bandaranayake

Your Excellencies,

The International Commission of Jurists and the undersigned senior judges and eminent jurists from around the world condemn the recent removal of Chief Justice and urge you to act immediately to restore the independence of the judiciary by reinstating the legal Chief Justice, Dr. Shirani Bandaranayake. We are gravely concerned that recent actions to remove the Chief Justice have been taken in contravention of the Constitution, international human rights law and standards, including the right to a fair hearing, and the rule of law.

Judicial independence and the separation of powers are the bedrock of the rule of law. International standards such as the United Nations Basic Principles on the Independence of the Judiciary stress that judicial independence is a fundamental requirement in promoting human rights and preserving rule of law. The United Nations General Assembly in Resolution 65/213 of 1 April 2011 reaffirmed that an independent and impartial judiciary is essential for the protection of human rights, the rule of law, good governance and democracy.

The irremovability of judges is a main pillar of judicial independence. Judges may be removed only in the most exceptional cases involving serious misconduct or incapacity. And in such exceptional circumstances, any removal process must comport with international standards of due process and fair trial, including the right to an independent review of the decision. Members of the judiciary must never be subject to removal on the basis of judicial decisions rendered in the legitimate exercise of their professional functions.

The United Nations Special Rapporteur on the Independence of Judges and Lawyers and the United Nations Human Rights Committee have raised concerns that the procedure for removing judges under Article 107 of the 1978 Constitution and the complementary Standing Orders do not adequately guarantee the right to a fair trial rights and due process under Article 14 of the International Covenant on Civil and Political Rights.

Finally, Sri Lanka’s actions run against the regionally applicable standards set out in the *Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region*.

**The threats to the separation of powers, independence of the judiciary and rule of law in the impeachment case in Sri Lanka are revealed by the following sequence of events:**

On 1 November 2012, a resolution signed by 117 Members of Parliament was presented to the Speaker of the House, Chamal Rajapakse, to initiate impeachment proceedings against the Chief Justice. The resolution contained fourteen allegations relating to misconduct and non-disclosure of financial assets.

On 14 November 2012, a Parliamentary Select Committee was established pursuant to Parliamentary Standing Orders 78A and Article 107(3) of the 1978 Constitution to investigate the charges. The Parliamentary Select Committee was composed of seven Cabinet Ministers and four members from the opposition political parties.

On 22 November 2012, the Supreme Court of Sri Lanka requested Parliament to suspend the impeachment proceedings until the Court could decide on the constitutionality of Parliamentary Standing Orders 78A. Parliament disregarded the Supreme Court’s request and the Chief Justice appeared before the Parliamentary Select Committee for the first time on 23 November 2012.

On 6 December 2012, Chief Justice Bandaranayake walked out of the impeachment hearing in protest over the denial of a fair hearing. The Chief Justice was not provided timely and full disclosure of the evidence in relation to the charges; was not given adequate time to respond to the charges; was denied the right of cross-examination; and was treated in a derogatory and disrespectful manner by Members of Parliament and denied the right to a public hearing. On the same day, the four opposition Members withdrew from the Parliamentary Select Committee.

On 7 December 2012, the seven remaining members of the Parliamentary Select Committee concluded their investigation on the first five charges, finding the Chief Justice guilty on three charges.

On 1 January 2013, a three-member panel of the Supreme Court ruled that the impeachment procedure set out in Standing Orders 78A was not constitutionally valid, holding that such procedures could only be established ‘by law’ enacted by Parliament.

On 7 January 2013, the Court of Appeal, relying on the judgment of the Supreme Court, issued a writ quashing the findings of the Parliamentary Select Committee on the basis the Committee lacked authority to make such a finding.

On 11 January 2013, in utter defiance of the Supreme Court judgment and the Court of Appeal order, Parliament passed a motion with 155 votes, to impeach Chief Justice Dr. Shirani Bandaranayake.

On 13 January 2013, President Mahinda Rajapakse signed a decree removing the Chief Justice from her post and delivered the document to her official residence in the morning.

On 15 January 2013, President Mahinda Rajapakse nominated three candidates to replace Chief Justice Bandaranayake. Former Attorney-General Mohan Peiris was approved by the Parliamentary Council and sworn in as Chief Justice. Prior to his appointment, Mohan Peiris served as the legal advisor to President Rajapakse and was widely known for defending the conduct of the Sri Lankan government and
consistently blocking efforts to hold State officials accountable for gross human rights violations.

On the same day, Chief Justice Bandaranayake issued a public statement strongly denying all of the charges against her and asserting her status as the legal Chief Justice of Sri Lanka. She said, “The accusations leveled against me are blatant lies. I am totally innocent of all charges...Since it now appears that there might be violence if I remain in my official residence or my chambers I am compelled to move…”

Attacks against the judiciary have escalated to the point of physical violence in recent months. In July 2012, Government Minister Rishad Bathiudeen threatened a magistrate in Mannar and then allegedly orchestrated a mob to pelt stones at the Mannar courthouse. In early October 2012, four individuals assaulted the Judicial Service Commission Secretary Manjula Tilakaratne in broad daylight.

The undersigned jurists urge your High Excellency President Mahinda Rajapakse and Honorable Speaker Chamal Rajapakse to act immediately to restore the independence of the judiciary by reinstating the legal Chief Justice Dr. Shirani Bandaranayake and enacting a law in Parliament to govern the impeachment process. Such a law must comply with Sri Lanka’s obligations under international human rights law and standards.

Yours Sincerely,

Justice Md. Abdul Matin
Former judge at the Appellate Division of the Supreme Court, Bangladesh

Justice Md. Abdur Rashid
Former Judge at the Supreme Court, Bangladesh

Justice Ajit Prakash Shah
Former Chief Justice of the Delhi High Court, India

Justice Bharat Raj Uprety
Former Justice at the Supreme Court, Nepal

Aitzaz Ahsan
Former President of the Supreme Court Bar Association, Pakistan
Former Justice and Interior Minister of Pakistan
Leader of the Pakistan Lawyers’ Movement
Senior Advocate, Supreme Court, Pakistan

Asma Jahangir
Former President of the Supreme Court Bar Association, Pakistan
Chair of the Human Rights Commission, Pakistan
Senior Advocate, Supreme Court, Pakistan

Justice Azhar Cachalia
Judge at the Supreme Court of Appeal, South Africa

Justice Moses Hungwe Chinhengo
Former judge at the High Court, Zimbabwe and Botswana

Justice Anaclet C. Chipeta
Judge at the High Court, Malawi

Justice Maclean Kamwambe
Judge at the High Court, Malawi

Justice Qinisile Mabuza
Judge at the High Court, Swaziland

Justice Mbufto Mamba
Judge at the High Court, Swaziland

Justice Thomas Masuku
Former Judge at the High Court, Swaziland

Justice D. Madise
Judge at the High Court, Malawi

Justice Cecil Dennis Morrison
Judge at the Court of Appeal, Jamaica

Justice John Dowd AO QC
Former judge at the Supreme Court of New South Wales, Australia
Justice C. Baardman
Judge at the Court of Appeal of The Hague, the Netherlands

Justice Dragana Boljevic
Judge at the High Court of Belgrade, Serbia
President of Judges’ Association of Serbia and Secretary General of MEDEL (Magistrats Européens pour la Démocratie et les Libertés)

Justice E.D. Bonga-Sigmond
Judge at the Court of Amsterdam, the Netherlands

Justice Gerrard Boot
Judge at the Court of Amsterdam, the Netherlands
Board member of Judges for Judges

Justice Geert Corstens
President of the Supreme Court, the Netherlands

Justice E. de Rooij
Judge at the Court of Amsterdam, the Netherlands

Justice Radmila Dicic
Acting President of the Belgrade Court of Appeal and Judge of the Supreme Court, Serbia

Justice Rodolfo Gonzalez
Judge at the Constitutional Chamber of the Supreme Court, El Salvador

Justice Omer Hadziomerovic
Judge at the Belgrade Court of Appeal, Serbia

Justice Augusto J. Ibáñez Guzmán
Former President of the Supreme Court, Colombia

Justice Fernando Cruz Castro
Judge at the Constitutional Chamber of the Supreme Court, Costa Rica

Justice Æsne Julsrud
Judge at the District Court of Drammen, Norway

Justice Kalthoum Kennou
Investigative judge at the Tribunal of Tozeur, Tunisia

Justice César Landa
Former President of the Constitutional Court, Peru

Justice Ketil Lund
Former Judge at the Supreme Court, Norway

Justice José Antonio Martín Pallín
Emeritus Judge at the Supreme Court, Spain

Justice Florentín Meléndez
Judge at the Constitutional Chamber of the Supreme Court, El Salvador

Justice Egbert Myjer
Former judge at the European Court of Human Rights

Justice Reynato Puno
Former Chief Justice, Supreme Court of the Philippines

Justice M.D. Ruizeveld
Senior judge at the Court of Amsterdam, the Netherlands

Justice Joülen Schukking
Judge at the Court of Utrecht, the Netherlands
Board member of Judges for Judges

Justice R.C. Stam
Judge at the Administrative High Court for Trade and Industry, the Netherlands

Justice F.M.P.M. Strengers
Senior judge at the Court of Amsterdam, the Netherlands

Justice Philippe Texier
Judge at the Social Division of the Court de Cassation, France

Justice Stefan Trechsel
Judge at the Trial Chamber III, International Criminal Tribunal for the Former Yugoslavia

Justice Tamara Trotman
Judge at the Court of Rotterdam, the Netherlands
Vice-President of Judges for Judges
Justice N.L.J.M. Tuijn  
Deputy Chief Justice, Judge at the Court of Appeals of Den Bosch, the Netherlands

Justice Vilenas Vadapalas  
Judge at the General Court, European Union

Justice E.J. van der Molen  
Judge at the Court of Noord-Holland, the Netherlands

Justice Gerritjan van Oven  
Judge at the Court of Appeals of The Hague, the Netherlands  
President of Judges for Judges

Justice T.N.I. van Voorst Vader  
Judge at the Court of Amsterdam, the Netherlands

Justice T. Wolters  
Judge at the Court of Appeal of Leeuwarden, the Netherlands

Justice E. Raúl Zaffaroni  
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Secretary General of the Société Internationale de Defense Sociale

Prof. Dr. Myrna Villegas Díaz  
Universidad Central, Chile

Bar Human Rights Committee of England and Wales

Commonwealth Magistrates’ and Judges’ Association