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November 21, 2012

H.E. Mahinda Rajapaksa
President of the Democratic Socialist
Republic of Sri Lanka
President's House
Temple Trees
Colombo 3
Sri Lanka

H.E. Chamal Jayantha Rajapaksa
Speaker of the Parliament of Democratic
Socialist Republic of Sri Lanka
Speaker's Official Residence
Parliament Road
Battaramulla
Sri Lanka

## Your Excellencies:

I am writing on behalf of the New York City Bar Association ("Association") to respectfully urge Sri Lanka's government to comply with its obligations under international law and ensure the continued existence of a "competent, independent and impartial" judiciary in Sri Lanka. The Association is an independent, non-governmental organization of 23,000 lawyers, judges, law professors and government officials from the United States and 50 other countries. Throughout its 142-year history, the Association has consistently maintained that an independent judiciary and an independent legal profession are essential to the rule of law in all jurisdictions.

The Association has monitored recent events in Sri Lanka with growing concern. The initiation of impeachment proceedings against Chief Justice Shirani Bandaranayake, the violent assault of the Secretary of the Judicial Services Commission, and recent amendments to the laws and Constitution of Sri Lanka, all potentially undermine judicial independence. Importantly, the need for an impartial and independent judiciary in Sri

<sup>&</sup>lt;sup>1</sup> International Covenant on Civil and Political Rights, Art. 14.1 (1966). Sri Lanka has been a party to the ICCPR since 1980.

Lanka has never been more acute. Earlier this year, the U.N. Human Rights Council passed a resolution calling on the government to investigate human rights abuses allegedly committed by both sides during Sri Lanka's Civil War.<sup>2</sup> As has been recognized by many international agreements and continually reaffirmed by the United Nations General Assembly, "the rule of law and proper administration of justice [...] play a central role in the promotion and protection of human rights." We, therefore, urge all parties involved in the dispute to ensure respect for the rule of law and judicial independence at all times.

Under the United Nations' Basic Principles on the Independence of the Judiciary, Sri Lanka has an obligation to respect and observe the independence of the judiciary, and to protect judges from "improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason." Based on publicly available evidence, the Association expresses serious reservations as to whether Sri Lanka is complying with these obligations. As noted in a November 2012 report by the International Commission of Jurists, a non-governmental organization composed of eminent judges and lawyers from around the world, "[i]nterference in the judiciary has been a long-standing issue in Sri Lanka that has significantly impaired the ability of the Sri Lankan government to meet its obligation to provide justice and accountability."

In 2010, Sri Lanka's Parliament adopted the 18th Amendment to the Constitution, granting control over judicial appointments to a Parliamentary Council. Given that the President's party controls over two-thirds of the seats in Parliament, this change effectively gave the President complete control over the appointment of key public service posts, including the judiciary and members of the Judicial Service Commission ("JSC"). According to the International Commission of Jurists, the "result was a significant erosion of the independence and impartiality of the Sri Lankan judiciary." The tension was exacerbated by the September 2012 decision of the Sri Lankan Supreme Court in the *Divineguma Bill Determination*. In its decision, the Court rebuked attempts by the central government to seize control from provincial councils of the multi-million dollar development budget. The Court's decision was attacked by state television and radio as overstepping the Court's constitutional authority. In the following days, Mr. Manjula Tillekeratne, Secretary of the JSC, issued numerous statements condemning perceived attacks on judicial independence and threats against the well-being of the justices. These threats materialized on October 7, 2012, when Mr. Tillekeratne was

 $<sup>^2</sup>$  UN Human Rights Council, Resolution 19/2, Promoting Reconciliation and Accountability in Sri Lanka, A/HRC/RES/19/2 (April 3, 2012).

<sup>&</sup>lt;sup>3</sup> G.A. Res. 50/181, U.N. Doc A/RES/50/181 (Dec. 22, 1995); G.A. Res. 48/137, U.N. Doc A/RES/48/137 (Dec. 20, 1993); see also International Commission of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: Practitioners Guide No. 1, Geneva, 2007 (International Commission of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors), p. 3.

<sup>&</sup>lt;sup>4</sup> Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Independence of the Judiciary* (Geneva: UN High Commissioner for Human Rights, 1985); *see also*, G.A. Res. 40/146, U.N. Doc. A/RES/40/146 (Dec. 13, 1985).

<sup>&</sup>lt;sup>5</sup> Int'l Comm'n of Jurists, *Authority without accountability: The crisis of impunity in Sri Lanka* (Geneva: International Commission of Jurists, 2012), p. 3.

<sup>6</sup> Id., 4.

attacked by unidentified assailants and sustained serious injuries. To date, no arrests have been made. It is imperative that the Sri Lankan government investigate this outrageous assault to the fullest extent possible and provide protection to justices in order to ensure that the judiciary remains free from violence and intimidation.

On November 1, 2012, it was announced that Sri Lanka's Parliament had initiated impeachment proceedings against Chief Justice Bandaranayake. The charges include, but are not limited to, allegations that the Chief Justice misused her position and failed to adequately declare all of her assets. The Association makes no comment on the substance of the allegations, as it is not in a position to review any evidence of alleged wrongdoing. However, the Association joins the United States Department of State in expressing concern that the impeachment proceedings could "impede the efficacy and independence of Sri Lanka's judiciary." According to reports, Chief Justice Bandaranayake's request for more time to prepare a defense was refused, and she was ordered to attend an impeachment hearing on Friday, November 23, 2012. The Association urges the government to ensure that any impeachment proceedings are conducted in a fair and impartial manner, and respect the principles of due process.

The importance of an independent and impartial judiciary in the preservation of a free and democratic society governed by the rule of law cannot be overstated. The Association urges the government of Sri Lanka to take all steps to ensure that the rule of law is preserved and protected.

Respectfully,

Cary Mel

Carey R. Dunne

cc: The Honorable Hillary Clinton Secretary of State U.S. Department of State 2201 C Street NW Washington, DC 20520

> The Honorable William J. Burns Deputy Secretary of State U.S. Department of State 2201 C Street NW Washington, DC 20520

<sup>&</sup>lt;sup>7</sup> Press Release, U.S. Dep't of State, Impeachment Proceedings Brought Against Sri Lankan Chief Justice (Nov. 2, 2012).

<sup>&</sup>lt;sup>8</sup> Agence France-Presse, *Sri Lanka order top judge to attend impeachment case*, Asia Pacific News (Nov. 19, 2012), http://www.channelnewsasia.com/stories/afp\_asiapacific/view/1238215/1/.html.