



Press Release on the impeachment proceedings against Chief Justice Dr. Shirani Bandaranayake

13 November 2012, Colombo, Sri Lanka: The Centre for Policy Alternatives (CPA) expresses grave concern over the initiation of impeachment proceedings against Chief Justice Dr. Shirani Bandaranayake. A number of reports in the press reveal that several charges against her have now been placed before Parliament in the form of a Resolution presented to the Speaker. The context within which these proceedings have been instituted, the procedure established by Parliament for impeachment hearings in Standing Order 78A, and the content of a number of charges against the Chief Justice are deeply troubling.

Context

The context and timing of the institution of impeachment proceedings strongly point to a deliberate effort by the government to extinguish any embers of resistance to the executive from the judiciary. In the Town and Country Planning (Amendment) Bill and the Divineguma Bill Determinations, the Supreme Court held that the Bills in question required prior reference to all Provincial Councils before being placed on the Order Paper of Parliament. The Chief Justice presided over the nominated bench in both cases. These judgments halted the government's attempt to weaken the meagre extent of devolution provided by the Thirteenth Amendment to the Constitution by attempting to pass laws that were in respect of Provincial Council subjects. A brief narration describing the events following the communication of the Court's decision in respect of the Divineguma Bill is telling.

The Supreme Court's Determination in respect of Supreme Court (Special Determination) 1 – 3/2012 challenging the Divineguma Bill was communicated to the Speaker on or about the 17th of September 2012. Thereafter, a statement issued by Mr. Manjula Tillekeratne, Secretary of the Judicial Services Commission – of which the Chief Justice is the Chairman – was published in the

Sinhala press on the 19th of September¹. This statement alleged that efforts were underway to destroy the independence of the judiciary, and made veiled references to what was later revealed by the President himself to be an effort by him to summon the members of the Commission to a meeting at Temple Trees. The statement was issued in the context of a sustained effort by some commentators on state television and radio to vilify the Chief Justice and the Court for ruling against the government in the Divineguma Determination. Subsequent to the JSC's first statement, on or around the 28th of September 2012, Mr. Tillekeratne made a chilling revelation that he believed that "[a] situation has arisen where there is a danger to the security of all of us and our families beginning from the person holding the highest position in the judicial system."² This fear materialised on the 7th of October, when in a brazen attack in broad daylight, Mr. Tillekeratne sustained serious injuries after being stabbed repeatedly by unidentified assailants while he was inside his parked car on Hotel Road, Mount Lavinia. CPA condemned this attack and drew attention to the intimidation of dissenters and the prevailing climate of impunity in a statement released on the 10th of October 2012. On the 16th of October, we drew attention to the appearance of posters in Sinhala the previous day vilifying CPA Executive Director Dr. Paikiasothy Saravanamuttu as one seeking to divide the country, for his opposition to the Divineguma Bill. Meanwhile, the Secretary of the Ministry of Defence and a number of influential members of the government have publicly called for the repeal of the Thirteenth Amendment.

We are convinced therefore, that the institution of impeachment proceedings against the Chief Justice is the regime's latest - and most dangerous - effort to stifle dissent, destroy the independence of the judiciary and undermine any prospects for the implementation of the minimal guarantees of devolution in the Thirteenth Amendment.

Procedure

CPA is also concerned that the procedure laid down in Standing Order 78A of Parliament for impeachment proceedings are incompatible with the principles of natural justice. Under this procedure, the Speaker refers the allegations in the Resolution containing the allegations to a Select Committee of Parliamentarians, which is tasked with investigation and reporting to Parliament. The process of investigation and decision making in relation to charges of misbehaviour are clearly judicial, or quasi-judicial in nature. Thus, the accepted rules of natural justice should and must apply. However, there is no explicit bar on Members of Parliament who signed the 'Notice of a Resolution' functioning in the Select Committee, or voting in Parliament to present an address to the President for removal of the Chief Justice. Moreover, although removal of a Judge can be carried out only or "proved misbehaviour or incapacity," by placing the investigation process in the hands of Members of Parliament themselves, the Standing Orders open a wide door for partisan decision making, which fundamentally undermines the rule against bias. In other jurisdictions, the right to natural justice in impeachment proceedings is preserved by ensuring the independence of those tasked with inquiring into the alleged charges. In India, for instance, the Judges Inquiry Act of 1968 provides that the Speaker shall constitute a three member committee including a sitting judge of

¹ *Lakbima* article 19 September

² <http://www.dailymirror.lk/news/22281-jsc-secretary-says-danger-to-their-security-.html>

the Supreme Court, a sitting judge of one of the High Courts and a distinguished jurist to investigate allegations during an impeachment proceeding.

We are deeply concerned therefore, that in the prevailing climate of threat to the independence of the judiciary and sweeping executive control over Parliament, the lack of due process rights renders the impeachment process little more than a modern inquisition.

Charges

CPA is also troubled by a number of charges contained in the Resolution now placed before Parliament. Some charges appear to fault the Chief Justice for the substance of judicial decisions penned by her. These charges have a chilling effect on members of the judiciary, and point to an effort to systematically dismantle any remaining independence within judicial ranks. We have observed that one of the charges reported in the press appears to refer to CPA. The charge as reported reads, "Whereas, the Supreme Court special rulings petition No. 02/2012 filed by the institution called Centre for Policy Alternatives to which the Media Publication Section 'Groundview' that had published an article of the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake, while she was a lecturer of the Law Faculty of the University of Colombo prior to becoming a Supreme Court judge, has been heard and a ruling given." We note in this respect that the case filed by CPA was in fact SC (SD) 3/2012, that CPA came into existence in June 1996, that our online publication *Groundviews* was only established in 2006 which was ten years after Dr. Bandaranayake took oaths as a Justice of the Supreme Court, and that *Groundviews* has to date not received nor published a single contribution by Dr. Bandaranayake. While other charges are also of concern, we desist from publicising our comments at this stage.

Conclusion

In conclusion, we note the widespread expressions of consternation from all strata of society in response to the institution of impeachment proceedings. We are heartened by these expressions of concern over the trajectory of governance in Sri Lanka, and urge that all citizens continue to express outrage over the rapid dismantling of the institutions that sustained our struggling democracy. The independence of the judiciary is fundamental to the architecture of any democracy, and unless we unite to resist these latest attempts to extinguish it, the truncated freedoms and rights we still enjoy are in imminent jeopardy.

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The **Centre for Policy Alternatives (CPA)** was formed in the firm belief that there is an urgent need to strengthen institution- and capacity-building for good governance and conflict transformation in Sri Lanka and that non-partisan civil society groups have an important and constructive contribution to make to this process. The primary role envisaged for the Centre in the field of public policy is a pro-active and interventionary one, aimed at the dissemination and advocacy of policy alternatives for non-violent conflict resolution and democratic governance. Accordingly, the work of the Centre involves a major research component through which the policy alternatives advocated are identified and developed.