

# Australian Tamil Congress

## A Unified Voice for All Tamils



The Honorable Julia Bishop MP  
Department of Foreign Affairs and Trade  
R.G. Casey Building  
John McEwen Crescent  
Barton ACT 0221, Australia  
Dear Foreign Minister,

25 September 2013

1. On behalf of concerned Tamil Australians, we write to bring to your attention the serious threat that the Commonwealth's inaction on Sri Lanka and the consequent damage this could do to the Commonwealth's reputation and good standing in the international community. Given that threat, we urge you to take steps to have the situation in Sri Lanka placed on the agenda of the meeting of Commonwealth Ministerial Action Group (CMAG) this week in New York.

2. We here describe the ongoing serious challenges to the Rule of Law, including the illegal impeachment of the Chief Justice last year, the ongoing human rights crisis in Sri Lanka, and the failure of the Government of Sri Lanka to seek accountability and reconciliation to redress the widespread atrocities committed at the end of the Sri Lankan civil war in 2009. The impeachment of the Chief Justice itself is of sufficient seriousness to require action by CMAG, but coupled with the systematic attacks on the freedom of expression, most recently during the provincial elections in the majority northern Tamil province, and the culture of impunity that exists due to the lack of any accountability for past and ongoing human rights violations (discussed in more detail below), the need for CMAG to act to protect the Commonwealth's commitment to its principles is stark and immediate.

3. Given its responsibility to uphold the Commonwealth's principles and guidelines, including the Harare and Latimer Declarations and the guidelines set out at the 2011 Perth CHOGM meeting, CMAG has a responsibility to address these matters formally. Failure to do so risks seriously damaging the Commonwealth's reputation for upholding the basic principles that bind our community of nations together.

4. We strongly urge you to fulfill the responsibility you have as a member of CMAG and request a formal consideration of Sri Lanka at the CMAG meeting this week in New York, including requesting the Commonwealth Secretary-General to table the legal opinions he commissioned on the impeachment of the Chief Justice, one of which, by the Honourable Justice P.N. Langa, former Chief Justice of South Africa, describes the impeachment as a "*direct violation of the Rule of Law and contravenes the Commonwealth Values and Principles as agreed to by member states.*"

### (i) Illegal Impeachment of the Chief Justice

5. At the end of last year, the Government impeached Chief Justice Shirani Bandaranayake of the Supreme Court in retaliation for the Supreme Court's ruling on the *Divi Neguma* Bill, a law

concentrating vast powers under the economic development minister, the President's brother Basil Rajapaksa. The Supreme Court ruled that the law was unconstitutional, as these powers belong with the local provincial councils in Sri Lanka. The Speaker of Parliament, another of the President's brothers, Chamal Rajapaksa, appointed an eleven-member parliamentary select committee (PSC) to investigate charges of unexplained wealth and misuse of power against the Chief Justice one day after the Supreme Court ruling. The hearings were held on five days, after which the PSC presented its report to Parliament. The PSC did not outline its procedures, did not allow sufficient time for the Chief Justice to examine the evidence against her, and did not permit any cross-examination of witnesses. The four opposition members of the PSC withdrew from the hearings as unfair. The resulting findings of guilt on three of the first five charges levied against the Chief Justice were determined solely by members of the President's party. The President ratified the motion to impeach on 11 January 2013, and two days later replaced the Chief Justice with Mohan Peiris, a former attorney general of Sri Lanka and more recently a legal adviser to the President's Cabinet.

6. The Commonwealth Secretary-General issued a series of statements expressing his deep disappointment over the dismissal of the Chief Justice and his concern for the present "constitutional impasse" in Sri Lanka, which he said runs counter to core Commonwealth principles. He reaffirmed the Commonwealth's principle of the inviolability of the Rule of Law in a statement on the impeachment proceedings on 15 November 2012:

"The Commonwealth's principal consideration is that the provisions of Sri Lanka's constitution are upheld with regards to the removal of judges, respecting the independence of the judiciary...The Commonwealth's Latimer House Principles, which govern the relationship between the three branches of government, are a cornerstone of our association's values. All our member states have committed themselves to upholding the Latimer House Principles so that citizens' faith and confidence in democratic culture is assured and the rule of law is maintained."

7. The international community, including the United Nations Special Rapporteur on the independence of judges and lawyers, and the International Commission of Jurists, as well as the Sri Lankan Bar Association and judiciary, has also spoken out against the proceedings, describing them as politically motivated, impermissible, unconstitutional, and an attempt to curb judicial independence. For CMAG to remain silent on this in face of the near universal condemnation of the impeachment seriously undermines its own reputation. This illegal action by the government was a fundamental contravention of the rule of law, and hence of one of the Commonwealth's most basic and closely held principles.

8. Subsequently, the Commonwealth Secretariat apparently commissioned two legal opinions on the impeachment that we understand the Secretary-General has yet to release to CMAG. In

one of these, by way of a memorandum to the Commonwealth Secretary-General, dated 5 March 2013, the Honourable Justice P.N. Langa, former Chief Justice of South Africa and respected jurist, concluded at paragraph 10 (a):

“It will be clear from what is stated above, that I view the decision of the Government to ignore the rulings of the Supreme Court as unconstitutional and *sowing the seeds of anarchy*. This conduct is a *direct violation of the Rule of Law and contravenes the Commonwealth Values and Principles as agreed to by member states*. It is also a serious violation of the doctrine of the Separation of Powers which is enshrined on the Constitution of Sri Lanka.” (emphasis added)

This opinion was published by the Colombo Telegraph on 9 September 2013 and is attached to this letter as an Annex. It is incumbent upon CMAG members to avail themselves of these expert opinions to enable them to fulfill their responsibilities as a member of CMAG.

### (ii) Ongoing Human Rights Violations, including Freedom of Expression

9. Since the end of war in Sri Lanka over four years ago, the human rights situation on the island continues to deteriorate. There are frequent and disturbing reports of reprisals against human rights defenders, including journalists and students. The incident at Weliveriya on August 1 this year where government forces used excessive force in quelling a demonstration by unarmed citizens seeking access to clean drinking water, resulted in three people being killed and many injured, and the attack on a Tamil candidate during the recent provincial elections, many of whose attackers the election monitor present reported wore military uniforms, are but two of the most recent examples.

10. There are also continued attacks on journalists in Sri Lanka, which are uninvestigated and unsolved by the Sri Lankan police. More than 30 journalists are believed to have been killed since 2005. On November 28, 2012 during a student protest, the editor of the *Uthayan* in Jaffna was attacked by police and military forces. During the above mentioned incident at Weliveriya, a photo journalist was assaulted by the military and hospitalized. In addition, the murder of journalist Lasantha Wickrematunge remains unsolved, and the journalist Pradeep Ekneligoda remains “disappeared.” Other serious violations are the subject of ongoing inquiry by the Human Rights Council.

### (iii) Failure to Address Accountability for War Crimes committed by both sides at the end of the Sri Lankan civil war

11. Further, the Government of Sri Lanka has made no progress towards an effective accountability process for the serious and widespread atrocities committed by both sides during the civil war. The Lessons Learnt and Reconciliation Commission (LLRC), which was the Government’s answer to calls for accountability, has been widely criticized by governments,

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human-rights NGOs, and civil society alike for failing to meet international standards for such commissions. The findings of the 2011 Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka (Panel of Experts' Report), and the UK Channel 4 documentary, "No Fire Zone", document serious allegations of war crimes, and crimes against humanity continue to surface through eyewitness accounts and ongoing independent reviews. The Panel of Experts' Report, in particular, identifies crimes against humanity committed by the government (and the LTTE), including murder, extermination, imprisonment, persecution and disappearances. This independent report also states that the Government's own Lessons Learnt and Reconciliation Commission (LLRC) report is "deeply flawed" and "fails to satisfy key international standards of independence and impartiality."

12. The complete absence of credible investigations and prosecutions of the violations committed during the war has led to a cycle of impunity. In November 2011, the Committee Against Torture issued a troubling report on Sri Lanka, finding consistent allegations of widespread use of torture by state actors in post-war Sri Lanka. The UN Human Rights Council has recently twice passed resolutions on Sri Lanka. The UN High Commissioner for Human Rights Navi Pillay, at the conclusion of her recent visit to Sri Lanka in August this year, raised serious concerns about the "surveillance and harassment" of human rights defenders in Sri Lanka.

13. We strongly urge you to fulfill the responsibility you have as a member of CMAG and ensure that the fundamental principles of the Commonwealth are upheld by asking for a formal consideration of Sri Lanka at the CMAG meeting this week in New York, including requiring the Commonwealth Secretariat to table the expert opinions it has commissioned on the impeachment of the Chief Justice.

14. We commend the strong leadership that the Commonwealth has shown in previous cases where its members have called into question the basic principles on which the community is founded and urge you to insist upon the same standards for Sri Lanka. To ignore the serious and ongoing breaches of the Commonwealth principles undermines our Commonwealth community and tarnishes the Commonwealth's reputation.

15. Please accept, Your Excellency, the assurances of our highest consideration.

Yours sincerely

Dr Raj Rajeswaran  
Chairman  
Australian Tamil Congress  
**cc: The Australian Permanent Mission to the United Nations**