

Mandates of the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 44/8 and 45/10.

We would like to bring to the attention of your Excellency's Government information we have received concerning the **adverse impact that the 20th Amendment to the Constitution of Sri Lanka may have on the independence of the judiciary and the separation of powers, as well as on the independence of institutions which are essential to the establishment of guarantees of non-recurrence of past gross violations of human rights and serious violations of international humanitarian law**, in particular the Human Rights Commission and the National Police Commission.

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The 20th Amendment to the Constitution of Sri Lanka (hereinafter, "the Amendment") was passed into law on 22 October 2020, with a qualified majority of two thirds. It was adopted after two days of deliberation, overruling the Opposition's request for at least four days of debate.

The Amendment introduces far-reaching changes to the Constitution, and may alter the balance of power between the different branches in favour of the President of the Republic. It eliminates most of the reforms introduced with the 19th Amendment, adopted in 2015, which the former Special Rapporteur on the independence of judges and lawyer welcomed in her country report on Sri Lanka (A/HRC/35/31/Add.1, paras. 4-5).

In this communication, we do not aim at providing a comprehensive analysis of the Amendment and its compatibility with international human rights standards. We focus solely on those changes that fall within the scope of the mandates entrusted to us by the Human Rights Council, namely those regarding (i) the procedure for the selection, appointment and dismissal of senior judges and high-ranking officials in the administration of justice, and (ii) the design and implementation of transitional justice measures aimed at addressing gross human rights violations and serious violations of international humanitarian law in countries transiting from conflict or authoritarian regime.

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Before explaining our concerns on the content of the above-mentioned Amendment, we wish to remind your Excellency's Government of its obligations to

protect and promote the independence of the judiciary and the separation of powers and to adopt measures to ensure the rights to truth, justice, reparation and guarantees of non-recurrence in connection to gross human rights violations and serious violations of international humanitarian law.

The independence of the judiciary is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. It refers to both the individual and the institutional independence required for decision-making.

The independence of the judiciary is an essential component of the democratic principle of separation of powers, which stipulates that the executive, the legislature and the judiciary constitute three separate and independent branches of Government. According to this principle, the Constitution, laws and policies of a country must ensure that the justice system is truly independent from other branches of the State, and it is the duty of all State institutions to respect and protect the independence of the judiciary.

The core of the principle of judicial independence is the complete liberty of the judge to hear and decide the cases before them on the basis of facts and in accordance with the law, without any improper interference or pressure, direct or indirect, from any outsider – be it Government, pressure group, individual or even another judge.

Article 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded on 11 June 1980, provides that everyone is entitled to a fair and public hearing “by an independent and impartial tribunal established by law.”

In General Comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee stressed that the requirement of independence of a tribunal “refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature.” The Human Rights Committee clearly stated that “[a] situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal” (para. 19).

The principle of the independence of the judiciary has also been enshrined in the Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly in 1985. The Principles provide, inter alia, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that judges shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

The Basic Principles also provide guidance on a series of further requirements, including qualifications and selection of judges (principle 10), conditions of service

(principle 11), security of tenure (principle 12) and disciplinary, suspension or removal proceedings (principles 17-20). With regard to the accountability of judges, the Basic Principles provide that judges can only be removed for serious misconduct, disciplinary or criminal offence or incapacity that renders them unable to discharge their functions (principle 18). Any decision to suspend or remove a judge from office should be taken in accordance with a fair procedure (principle 17), and be taken in accordance with established standards of judicial conduct (principle 19).

At the regional level, the principles of judicial independence and separation of powers are enshrined in the Commonwealth (Latimer House) Principles on the Three Branches of Government, adopted in 2003. The Principles acknowledge that “[a]n independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice,” and set out specific principles on judicial appointments and the suspension or removal of judges. They expressly state that “[i]nteraction, if any, between the executive and the judiciary should not compromise judicial independence.”

In light of the above-mentioned standards, the 20th Amendment to the Constitution may fall short of international standards and adversely affect the independence of the judiciary as well as the separation of powers, particularly in relation to the wide discretionary powers that the Amendment confers to the President of the Republic in relation to the selection, appointment and removal of the Chief Justice and judges of the Supreme Court, the president and judges of the Court of Appeal, members of the Judicial Service Commission and the Attorney-General.

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Parliamentary Council

The Amendment abolished the Constitutional Council, which was established by the 19th Amendment, and re-established the Parliamentary Council.

According to article 41 A, para. 1, the Constitutional Council consisted of ten members:

- three *ex-officio* members (the Prime Minister, the Speaker, who served as the chairperson of the Council, and the Leader of the Opposition in Parliament);
- four other Members of the Parliament (one appointed directly by the President; two appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition; one appointed by the President and nominated by agreement of the majority of the Members of Parliament belonging to political parties or independent groups); and
- three persons of eminence and integrity who have distinguished themselves in public or professional life and who are not members of any political party, nominated jointly by the Prime Minister and the Leader of Opposition and approved by the Parliament.

In nominating the two MPs and three eminent persons referred to above, the Prime Minister and the Leader of the Opposition had to consult the leaders of political parties and independent groups represented in Parliament “so as to ensure that the Constitutional Council reflect[ed] the pluralistic character of Sri Lankan society, including professional and social diversity” (article 41 A, para. 4).

The Council was in charge of recommending to the President the appointment of the chairs and members of a number of independent commissions, including the Human Rights Commission, the Public Service Commission and the National Police Commission (article 41 B).

In relation to the appointment of high-ranking judicial officials, the Council had to approve the nominees of the President of the Republic for the position of Chief Justice and judges of the Supreme Court, president and judges of the Court of Appeal, members of the Judicial Service Commission (other than the Chairperson) and Attorney-General (article 41 C, para. 1). The Council had to seek the views of the Chief Justice for the appointment of judges of the Supreme Court and the president and judges of the Court of Appeal (article 41 C, para. 4). According to article 41 C, para. 3, these persons could only be removed from office in the cases provided for by the Constitution or ordinary legislation.

In her country mission report on Sri Lanka, the former Special Rapporteur on the independence of judges and lawyer, Ms. Monica Pinto, welcomed the adoption of the 19th amendment to the Constitution, and in particular the re-establishment of the Constitutional Council, which was meant to mitigate the President’s influence in the appointment of senior judicial officials (A/HRC/35/31/Add.1, paras. 4-5 and 11). Nevertheless, she noted with concern that the majority of the Council’s members were politicians, and that the lack of a clear procedure for the selection and appointment of senior judges, members of the Judicial Service Commission and the Attorney-General raised concerns over the possible arbitrariness and political manipulation of the process (A/HRC/35/31/Add.1, paras. 35-36 and 52).

These concerns are now amplified by Clause 6 of the 20th Amendment, which repealed the entire Chapter VII A of the Constitution and re-established the Parliamentary Council.

Unlike the Constitutional Council, the Parliamentary Council is composed exclusively of politicians. It comprises three *ex-officio* members (the Prime Minister, the Speaker, and the Leader of the Opposition in Parliament) and two Members of Parliament appointed by the Prime Minister and the Leader of the Opposition, respectively (article 41 A, para. 1). Unlike the Constitutional Council, the new Parliamentary Council does not include any “person of eminence and integrity” who is not member of any political party.

In choosing the two MPs, the Prime Minister and the Leader of the Opposition no longer have to consult the leaders of political parties and independent groups represented in Parliament, so as to ensure that the Council reflect the pluralistic character of Sri Lankan society. As a result, the Members of Parliament appointed to the Parliamentary Council are chosen solely along political lines, and may owe their allegiance to the Government or the main party in opposition.

The composition of the Parliamentary Council may cast serious doubts as to the actual and perceived independence of the body that is tasked by the Constitution to participate in the appointment of the chair and members of independent State Commissions and senior judicial officers.

These doubts could be further exacerbated by the extensive powers that the 20th Amendment grants to the President of the Republic in relation to the appointment of the chair and members of independent State Commissions and the persons to be appointed to senior judicial offices.

The 19th Amendment aimed at ensuring that important public commissions recognised in the Constitution were independent of Presidential control. The appointment and removal of members of the commissions by the President was subject to the oversight of the Constitutional Council, and a number of provisions were introduced to strengthen the work of the commissions.

According to the new article 41 A, para. 1, the President of the Republic is no longer bound by the opinion of the Parliamentary Council. The President only has “to seek the observations” of the Council in making appointments to independent State commissions and to the judiciary, but there is no obligation on the part of the President to even consider the observations.

Similar provisions apply to the removal of these individuals. Para. 10 of article 41 A provides that the person appointed to be the chairperson or a member of an independent State commission or any of the persons appointed to the judicial offices can only be removed from office in the manner provided for in the Constitution or in ordinary legislation; however, where no such provision is made, “such person shall be removed by the President”.

(i) *Appointment and dismissal of the chairperson and members of independent State commissions*

The unfettered powers entrusted to the President in relation to the appointment and dismissal of the chairperson and members of independent commissions risk undermining the independence of public service institutions which had been established by the Constitution to guarantee democratic checks and balance and respect for the rule of law, by dismantling their most essential characteristic which effectively sheltered them from undue influence.

We are particularly concerned about the impact that such procedures may have on two institutions which are essential to the establishment of guarantees of non-recurrence of past gross human rights violations and serious violations of international law, in particular the Human Rights Commission and the National Police Commission.

The aforementioned provisions of the 20th amendment are incompatible with the Principles relating to the Status of National Institutions (The Paris Principles) and have effectively placed the National Human Rights Commission of Sri Lanka at risk of losing its A accreditation status with the GANHRI. We would like to recall that National Human Rights Institutions (NHRIs) that comply with the principles relating

to the status of national institutions play a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level and, consequently, are a vital guarantee of non-recurrence of past atrocities and of sustainability of transitional justice processes.

The National Police Commission was established under the 19th Amendment as oversight body of the policing in Sri Lanka and was in charge of the appointment, promotion, transfer, disciplinary control and dismissal of police officers, as well as mandated to investigate public complaints and complaints of any aggrieved person made against a police officer or the police service and provide redress as provided by law. The NPC's independence from presidential control was key to fulfilling the institution's oversight role. This role could be compromised under the 20th Amendment which grants the President unrestricted power over the appointment and removal of members of the NPC, undermining its independence and in turn that of the police service.

As noted by the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, following his visit to Sri Lanka “from a prevention standpoint, the establishment of dispersed, multilevel and effectively coordinated civilian oversight mechanisms under a clear constitutional mandate and with operative judicial supervision is indispensable”. In this regard, the Special Rapporteur specifically recommended the establishment of multilayered civilian oversight systems of the security system (armed forces, police and intelligence services) (A/HRC/45/45/Add.1 para. 75 and 95 iv).

The former Special Rapporteur clarified in a Joint study on the contribution of transitional justice to the prevention of gross violations of human rights and international humanitarian law, prepared alongside the UN Special Adviser on the Prevention of Genocide, that critical measures to strengthen resilience and prevent the recurrence of violence include building a professional and accountable security sector by establishing robust oversight mechanisms; establishing impartial institutions for overseeing political transitions; and strengthening the capacities of national structures, including legislative bodies, the judiciary and national human rights institutions, to uphold good governance, human rights and the rule of law. The study noted that oversight over and accountability by all parts of the executive are elements of the exercise of power in accordance with the rule of law in a constitutional regime. This is especially important with security forces given the monopoly they hold over the use of force. In countries where even basic oversight mechanisms are weak or completely absent, the risk of future atrocities is high. As stressed in the study, such accountability and oversight would be most successful if security institutions answer to a combination of formal accountability mechanisms such as external oversight (parliamentary oversight committees, executive oversight, independent civilian complaint and review bodies, ombudsperson offices and judicial review) and internal rules and mechanisms (ethics codes, internal discipline and line management), along with strong informal accountability provided through the scrutiny of non-governmental actors, such as the media, human rights organizations and other civil society organizations monitoring the security sector (A/HRC/37/65 paras 25, 46, 47 and 48)

In this regard, we would like to recall General Comment No. 31 (2004) of the Human Rights Committee, which sets out the duty of States, pursuant to article 2 of ICCPR, to take measures to prevent a recurrence of a human rights violations. Such measures may require changes in the State Party's laws or practices (par. 17). Furthermore, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, adopted in February 2005, recalls the need to adopt guarantees of non-recurrence of human rights violations and establishes the duty of States to undertake institutional reforms and other measures necessary to ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government institutions (principle 35). Furthermore, States must ensure civilian control of military and security forces as well as of intelligence agencies. To this end, States should establish effective institutions of civilian oversight over military and security forces and intelligence agencies, including legislative oversight bodies (principle 36.c).

(ii) *Appointment and dismissal of senior judges and other high-ranking officials*

The procedure for the appointment and dismissal of the Chief Justice and the judges of the Supreme Court, the president and judges of the Court of Appeal, the members of the Judicial Service Commission and the Attorney-General is not in line with international standards related to the independence of the judiciary and the separation of powers.

While the procedure and the authorities involved in the selection and appointment of senior judges and other high-ranking officials vary from one country to another, we cannot but notice that the wide discretionary powers attributed to the President of the Republic would not provide sufficient safeguards to prevent political interference in the selection of the candidates, with political considerations prevailing over their qualifications and experience.

The procedure for the selection and appointment of senior judges and other high-ranking officials should be based on objective criteria previously established by the Constitution or ordinary legislation. Decisions should be solely based on merit, having regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, independence and impartiality.

This is not the case in Sri Lanka, where the appointment of senior judges and other high-ranking officials only depends on the decision of the President of the Republic, who is not even required to consider in good faith the observations made by the Parliamentary Council. This selection procedure may lead to the politicisation of judicial appointments, with political considerations prevailing over objective criteria set out in international and regional standards (merit, qualifications, integrity, sense of independence and impartiality, etc.).

This process may also have an adverse impact on the actual and perceived independence of the candidates chosen by the President of the Republic. These persons may feel pressured, in cases involving the President or the executive branch of power, to decide in favour of the State authorities out of gratitude or in order to minimise the risk of being removed from office. On the other hand, ordinary members of the judiciary or independent commissions may be inclined in similar cases to uphold the

Government's position in order to improve their chance of being promoted to a senior judicial position in the future. In both cases, the independence and impartiality of the judge and heads of independent commissions could be under threat, and the perception of their independence and impartiality is irremediably compromised.

In this regard, in his country visit report on Sri Lanka the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, stressed the need to institutionalize and strengthen the independence of the judiciary. He pointed out that good governance cannot rely solely, or even mainly, on individuals of great virtue and noted that while progress had been made in terms of the appointments to the High Courts (through the adoption of the 19th amendment to the Constitution in 2015), a lot of work remained to be done regarding security of tenure, conditions of service, personnel administration and disciplinary matters in the judiciary, including promotions and dismissals (A/HRC/45/45.Add.1 para.72 and 95.ii)

The above-mentioned joint study points to the risk to prevention posed by efforts to undermine judicial independence by court-packing, which refers to increasing the number of judges, in particular on higher courts, in order to create majorities sympathetic to the executive, and by manipulating judicial appointments, promotions and arbitrary disciplinary procedures (A/HRC/37/65, para 37).

In a report on guarantees of non-recurrence of serious human rights violations, the mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, highlighted that independent judiciaries can crucially help to prevent violations by checking executive powers and by adjudicating conflicts impartially and independently, and has called upon States to include in their policies initiatives geared towards strengthening internal (individual) and external (institutional) judicial independence and ensure that their judicial systems comply with relevant standards, including the Basic Principles on the Independence of the Judiciary. The report further notes that enshrining the principles of the separation of powers, the independence of the judiciary, the non partisan role of the security forces and a bill of rights is indicative of a new beginning, and that special attention should be paid to providing for oversight, accountability and strong human rights protection mechanisms (A/HRC/30/42 paras 108 and 110).

In this regard, we would also like to bring to your Excellency's attention to principle 36 (b) of the aforementioned Updated Set of Principles, which urges States to undertake all necessary measures to assure the independent, impartial and effective operation of courts in accordance with international standards of due process.

Judicial Service Commission

Clause 25 of the Amendment introduces far-reaching changes to the composition of the Judicial Service Commission, a constitutional organ with important responsibilities in relation to the appointment, promotion, transfer and discipline of judges (except the judges of superior courts and the High Court).

Article 111 D, para. 1, of the Constitution, as introduced by the 19th Amendment, provided that the Judicial Service Commission consisted of the Chief

Justice, who served as Chairperson, and the two most senior judges of the Supreme Court. The three members of the Commission were “appointed by the President subject to the approval of the Constitutional Council”. The selection criteria set out in this provision did not leave any discretion to the executive branch in the choice of the members of the Commission.

In order to ensure respect for pluralism within the judiciary, para. 2 provided that in case the Chief Justice and the two most senior Judges of the Supreme Court did not have any previous judicial experience serving as a judge of a Court of First Instance, the Commission would consist of the Chief Justice, the senior most judge of the Supreme Court and “the next most senior Judge of such Court, who (...) had experience as a judge of a Court of First Instance”.

In her report on Sri Lanka, the previous Special Rapporteur on the independence of judges and lawyers expressed the view that the independence, technical capabilities and legitimacy of the Judicial Service Commission could be enhanced, and recommended that its composition be enlarged so as to include “judges of other courts and tiers and other eminent experts, such as retired judges, lawyers or academics” (A/HRC/35/31/Add.1, paras. 39 and 106).

Under the new article 111 D, as introduced by the 20th Amendment, the composition of the Judicial Service Commission remains the same, but the provision gives the President a widespread discretionary power in the appointment of its members.

The Chief Justice remains an *ex-officio* member of the Commission. With regard to the selection of the two Supreme Court judges, the President may now choose *any* judge, without reference to his/her seniority or previous experience in the first instance court system. Furthermore, the President does no longer need the approval of the Constitutional Council (now Parliamentary Council) prior to their appointment.

Similar principle apply in relation to the removal of members of the Commission from office. New article 111 E, para. 6, of the Constitution provide that the President could remove any member of the Commission from office, without the approval of the Constitutional Council (now Parliamentary Council).

The deletion of criteria for the appointment of the members of the Commission further reduces the transparency in the appointment process, and raises serious concerns on the suitability of the persons appointed to this office, who might be selected in accordance with their actual or perceived political affiliation, rather than on the basis of their qualification and professional experience.¹ Similarly, the new procedure for the removal from office of a member of the Judicial Service Commission, which does no longer require the intervention of an independent body, may make it easier for the President of the Republic to exert pressure on the members of the Judicial Service Commission, whose careers is now dependent on maintaining good relations with the President. If the Commission is faced with a politically sensitive issue, its members may feel pressured to follow instructions from the

¹ As noted earlier, the Chief Justice and the judges of the Supreme Court are appointed directly by the President of the Republic, who only has to consult the Parliamentary Council (new article 41 A, para. 1).

President or other members of the executive power in order to minimise the risk of being dismissed or to increase their chance of being re-elected in the future.

With regard to the composition of the Judicial Service Commission, we would like to note that although there is no standard model that a democratic country is bound to follow in setting up its judicial council,² there is a tendency at the international level for these bodies to have a mixed composition, and for a majority of members to be judges elected by their peers (see for instance A/HRC/38/38, para. 66). When the composition of the council is mixed, it is desirable that a fair balance is struck between members of the judiciary and other ex officio or elected members. If the proportion of judges is too high, this could create “a risk of corporatism and insulate the council from any external oversight” A/HRC/38/38, para. 68).

In the case of Sri Lanka, the actual composition of the Judicial Service Commission is not in line with existing standards on the composition of national judicial councils, because its three judicial members are elected by the President of the Republic, i.e. the Head of State and Government.³

Although the Commission is not a judicial authority *per se* and does not exercise judicial functions, its broad powers in relation to the appointment, transfer, promotion and discipline of judges require that it be independent, i.e. free from any form of interference from the executive and legislative branches of power. In order to insulate judicial councils or equivalent independent bodies from external interference, politicization and undue pressure, international standards discourage the involvement of political authorities, such as parliament, or the executive, at any stage of the selection process (A/HRC/38/38, para. 76).

In the case of Sri Lanka, the unfettered power of the President of the Republic over the members of the Judicial Service Commission could undermine the independence of the body that is tasked by the Constitution to guarantee the independence and the autonomy of the judiciary.

Immunity of the President of the Republic

We are further concerned that clause 5 of the 20th Amendment, which repeals the provisions of the 19th Amendment on article 35 of the Constitution, establishes that the President will be immune from civil and criminal proceedings during his or her tenure. The clause establishes exceptions to this immunity for acts done by the President in his/her capacity as a Minister; for impeachment proceedings; for election petition relating to the validity of a referendum or presidential election; and for the election of a Member of Parliament. Clause 5 also obstructs the preexisting possibility for citizens to file Fundamental Rights Applications against the President.

The amendment of the presidential immunity provisions could have serious consequences for accountability of past and future human rights violations, including

² With regard to the composition of judicial service commissions, the Commonwealth (Latimer House) Principles on the Three Branches of Government recognise there are arguments for and against a majority of senior judges and in favour of strong representation of other branches of the legal profession, members of parliament and of civil society in general.

³ See for instance Universal Charter of the Judge, 2017, article 2-3.

those that have been committed during the conflict. In this regard, it is worth recalling that the Supreme Court has previously held that this immunity is only applicable during the period in which the President holds office as Article 35 of the Constitution shields only the doer of the act, and not the act itself, in which case judicial proceedings could be initiated upon him leaving office.

In this connection, we would like to recall the obligation to investigate and punish human rights violations and to combat impunity for such crimes, pursuant to Article 2 of ICCPR according to which States must ensure that any person whose rights were violated has an effective remedy, and that the competent authorities enforce such remedies when granted.

As established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). We would like to highlight that impunity for such violations can be an important element contributing to the recurrence of violations.

As established in the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, states are bound to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished (principle 19).

We would like to recall that international law sets limits to the adoption of immunities from criminal prosecutions for serious violations of human rights insofar as they foster impunity. The Human Rights Committee ruled that all impediments to establishing the legal responsibility of persons who have committed serious human rights violations should be removed. In its General Comment No. 31, the Committee established that in cases where violations such as torture, summary and arbitrary deprivations of life and enforced disappearances have been committed by a public official or State agent, the States concerned may not exempt the perpetrators from their personal legal responsibility through amnesties and prior immunities (para. 18).

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In a spirit of co-operation and dialogue, and in line with the mandate entrusted to me by the Human Rights Council, we would like to recommend that your Excellency's Parliament:

1. Amend provisions regarding the composition of the Parliamentary Council, so as to ensure that this body has a pluralistic composition and includes not only politicians, but also independent experts who are not members of any political party and reflect the pluralistic character of Sri Lankan society;
2. Eliminate the wide discretionary powers attributed to the President of the Republic in the procedure for the selection, appointment and

dismissal of the Chief Justice and judges of the Supreme Court, the president and judges of the Court of Appeal, members of the Judicial Service Commission and the Attorney-General, in order to mitigate the risk of political interference in the selection of candidates to senior judicial offices and high-ranking positions in the administration of justice.

3. Consider broadening the composition of the Judicial Service Commission, so as to ensure that it includes not only judges, but also lay members, chosen among lawyers, law professors, jurists, Bar members, as well as citizens of acknowledged reputation and experience.
4. Eliminate the wide discretionary powers attributed to the President of the Republic in the procedure for the selection, appointment and dismissal of members of the Judicial Service Commission, in order to mitigate the risk of political interference.
5. Introduce new modalities for the selection of the judge members of the Commission, following methods guaranteeing the widest representation of the judiciary at all levels.
6. Ensure that the review of the composition and functioning of the Parliamentary Council and the Judicial Service Commission is the result of an open, fair and transparent process, involving not only the Parliament and the Executive power, but also extensive public consultation with judges, prosecutors, lawyers and their professional associations;
7. Adopt any other appropriate measure to ensure the protection and promotion of the independence of the judiciary and the separation of powers.
8. Eliminate the wide discretionary powers attributed to the President of the Republic in the procedure for the selection, appointment and dismissal of members and the Chairperson of independent commissions established in the Constitution, including the Human Rights Commission and the National Police Commission in order to mitigate the risk of political interference with the selection of candidates and the independence of these institutions which are a vital guarantee of non-recurrence of past serious human rights violations and of sustainability of transitional justice processes.
9. Ensure that provisions for presidential immunity are not applicable to the prosecution and sanction of gross violations of human rights and serious violations of international humanitarian law, as established by international human rights standards.
10. Adopt any other appropriate measures to ensure the effective realization of the rights to truth, justice, reparation and guarantees of non-recurrence for gross violations of human rights and serious violations of international humanitarian law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence