

# EXHIBIT E



# YASANTHA KODAGODA

## President of the Court of Appeal

### Career

Mr. Kodagoda joined the Attorney General's department in 1989 and was promoted in 2005 to Deputy Solicitor General and then again in 2015 by the Sirisena Government to Additional Solicitor General and then President of the Court of Appeal (also approved by the Constitutional Council)<sup>1</sup>. He's also been a visiting lecturer at the Kotalawela Defence University<sup>2</sup>.

The Constitutional Council that approved Kodagoda's appointment to the Court of Appeal reportedly comprised the following people:

*"The meeting was chaired by Speaker Karu Jayasuriya and attended by all its members including Prime Minister Ranil Wickremesinghe, Opposition Leader Mahinda Rajapaksa, Justice Minister Thalatha Athukorala and the President's nominee, MP Mahinda Samarasinghe."<sup>3</sup>*

This is significant because MP Mahinda Samarasinghe was accused by international investigators of attempting to influence and bribe a material witness in a case in which Kodagoda was representing the state<sup>4</sup>. See ITJP Press Release on Mr. Samarasinghe<sup>5</sup>.

In 2019 Kodagoda is reported to have been serving as Deputy Head of the Criminal Division of the Attorney-General's Department which made him responsible for all investigations and prosecutions involving Sri Lanka's Criminal Investigation Department (CID)<sup>6</sup>. This included the corruption and criminal cases pursued since 2015 against Gotabaya Rajapaksa<sup>7</sup>:

*"Kodagoda currently serves as Deputy Head of the Criminal Division of the Attorney-General's Department, and oversees all investigations and prosecutions involving the Criminal Investigation Department (CID). These include investigations involving the Avant Garde floating armoury, abduction of Keith Noyahr, murder of Lasantha Wickrematunge and disappearance of Prageeth Ekneligoda....He has also represented the state in several Fundamental Rights applications, including those filed by former Defence Secretary Gotabaya Rajapaksa and former Sri Lankan Ambassador to Russia Udayanga Weeratunga<sup>8</sup>."*

### Past Allegations

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<sup>1</sup> Yasantha gets green light to head Court of Appeal, 24 March 2019,

<http://www.sundayobserver.lk/2019/03/24/news/yasantha-gets-green-light-head-court-appeal>

Additional Solicitor General and President's Counsel, 22 February 2015, The Sunday Times Lanka, <http://www.sundaytimes.lk/150222/plus/additional-solicitor-general-and-presidents-counsel-136590.html>

<sup>2</sup> Ibid

<sup>3</sup> Yasantha gets green light to head Court of Appeal, 24 March 2019,

<http://www.sundayobserver.lk/2019/03/24/news/yasantha-gets-green-light-head-court-appeal>

<sup>4</sup> IIGEP alleged regarding Mr. Samarasinghe who was human rights minister at the time in the Rajapaksa government, "...intimidation and/or attempted bribery of a material witness from the very Minister responsible for protecting human rights in Sri Lanka, but it was intimidation from a person who was, and remains part of the GoSL's team that represents Sri Lanka at international forums on human rights..".

<sup>5</sup> <http://www.itjpsl.com/assets/press/6-march-press-release-corrected.pdf>

<sup>6</sup> [Kodagoda to head Sri Lanka's appeals court despite complicity in impunity](https://www.tamilguardian.com/content/kodagoda-head-sri-lankas-appeals-court-despite-complicity-impunity), 25 March 2019, Tamil Guardian, <https://www.tamilguardian.com/content/kodagoda-head-sri-lankas-appeals-court-despite-complicity-impunity>

<sup>7</sup> <https://www.onlanka.com/news/four-sc-judges-decline-to-hear-gotas-plea.html>

<sup>8</sup> <http://www.sundayobserver.lk/2019/03/24/news/yasantha-gets-green-light-head-court-appeal>

Concerns have been previously raised about the integrity and impartiality of Additional Solicitor General Yasantha Kodagoda who is alleged to have covered up serious human rights abuses under several different governments in the past.

It is of concern that Mr. Kodagoda was in January 2016 appointed to the Government's National Protection Authority for witness protection. For more see the ITJP's report Putting the Wolf to Guard the Sheep:Sri Lanka's Witness Protection Authority.

#### **(a) Udalagama Commission of Inquiry/IIGEP 2007-8**

The Udalagama Commission was mandated to investigate 16 cases of serious violations of human rights, among which were the ACF killings and the Trincomalee Five Killings.

The Asian Human Rights Commission raised concerns in a public letter to the Sirisena Government in September 2016 about Mr. Kodagoda, saying:

*"His public role before the Udalagama Commission of Inquiry is well known given that Mr. Kodagoda was specifically and negatively named by members of the International Independent Group of Eminent Persons (IIGEP) monitoring that Commission. Mr. Kodagoda was the Lead Counsel for the Attorney General at the Commission even though the Commission was inquiring into actions of state officers in regard to failure to properly investigate and prosecute certain cases of gross human rights abuses in regard to which he had been himself involved at the preliminary stage of advising on the investigations. This represented a clear conflict of interest. In addition, while the role of the Attorney General's Department's officers was to assist the Commission, Mr. Kodagoda aggressively cross examined the witnesses who came before the Commission, in a vigorous attempt to protect state agents against whom these witnesses were giving evidence. We are also aware that, regarding the detention of Tamil prisoners at Boosa camp<sup>9</sup>, he prevented discussions on the arrest and detention of Tamil prisoners without grounds for reasonable suspicion<sup>10</sup>".*

Similar concerns were raised by the International Independent Group of Eminent Persons (IIGEP) who observed the Udalagama Commission<sup>11</sup>. The international experts examined evidence in several of the cases under investigation, including the killing of five youths and the wounding of others in Trincomalee in January 2006 and the killing of the seventeen Action Contre la Faim (ACF) aid workers in Muttur in August 2006.

A confidential report to donors who funded the IGEP process outlines how at the public and also the closed hearings on 14 May 2007 into the ACF killings, Mr. Kodagoda tried to pin the killings on the LTTE by arguing whoever was in control of Muttur Town centre on that day would likely be responsible<sup>12</sup>. This report alleges

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<sup>9</sup> These prisoners would have been held by TID where fellow National Authority member Mr. Nandana Munasinghe worked.

<sup>10</sup> SRI LANKA: AHRC writes to the Ministers of Foreign Affairs and Justice on the Torture Committee under the National Human Rights Action Plan, 13 September 2016, Asian Human Rights Centre, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-141-2016/>

<sup>11</sup> Ibid

<sup>12</sup> "With regard to the ACF killings these claims caused controversy. The Daily News of 4<sup>th</sup> morning quoted cabinet spokesman Keheliya Rambukwelle claiming (on the 3<sup>rd</sup> night) that 'Muttur town is under the total control of the Security Forces'. But the same spokesman after the SLMM statement pointed to the security forces as the party most likely behind the ACF killings, maintained that the crime, committed around the 4<sup>th</sup> morning according to post mortem reports, was the work of the LTTE", according to University Teachers for Human Rights (Jaffna) Sri Lanka, Special Report No.30, 1 April 2008, <http://www.uthr.org/SpecialReports/Spreport30.htm>

that there were many pieces of evidence, including a government press release, known to Mr. Kodagoda that established that it was in fact government commandos and other security forces that controlled Muttur at the relevant time<sup>13</sup>. The later UN report corroborated this based on information from the Scandinavian ceasefire monitors, SLMM<sup>14</sup> and clearly concluded, *“there are reasonable grounds to believe that members of the security forces committed the extrajudicial executions of the ACF staff”* (paragraph 238).

There were serious conflicts of interest in the way the Commission was established. The warrant for the Commission of Inquiry was drafted by Yasantha Kodagoda, who previously had been an Attorney General’s advisor to the original and ongoing police investigators, in at least the ACF Case, and subsequently, became the lead counsel for the Commission, and the Government’s drafter of the amendments to the Commissions of Inquiry Act and the draft witness protection bill. IIGEP’s confidential report, which ITJP has a copy of, says none of the investigations into these cases came close to meeting international norms and standards. The 2015 UN Investigation (paragraph 236) said, *“This case was not effectively investigated, illustrating the entrenched impunity enjoyed by perpetrators and the challenges met in furthering accountability at the domestic level in Sri Lanka...The Executive interfered with the inquest and shifted the case to a jurisdiction in a Sinhalese area where Tamils had difficulty attending the proceedings. The magistrate initially assigned the case was threatened.”*

In their confidential report, the IIGEP experts say a senior Government minister and high-ranking officers of the security forces threatened, intimidated or attempted to influence witnesses into silence, or providing false testimony or fleeing the country. The UN Investigation later corroborated this saying:

*“Shortly after the events, the families of the killed students started receiving threats including in writing; stones were thrown at their house; electricity was turned off in their home at night-time and they were harassed by security forces at checkpoints and other public locations. ...One family member who refused to be silenced received a call from a Government Minister who offered him financial rewards if he stopped talking about the case. Families of the killed students were forced to relocate and eventually left the country”* (paragraph 1238).

The Commission, with the assistance of the IIGEP, arranged for testimonies of key witnesses overseas to be obtained by video-link from abroad. However the Chair of the Commission prevented the use of the video-link statements, upon the advice of the Attorney-General. Finally in June 2008 the Sri Lankan Government not only refused funding for video conferencing but ordered the Commission not to receive evidence from witnesses located abroad.

IIGEP experts believed the only reasonable inference was that the Government knew, through the Mr Kodagoda being on the Commission’s Panel of Counsel, that the proposed evidence was harmful to the security forces. The Commission was ordered not to receive the video evidence ironically on the grounds that it was necessary to enact ‘protecting legislation’ to protect witnesses first. The fallacy of this is that the Commission and the Government, including Mr. Kodagoda, knew that these victims and witnesses were safe abroad.

IIGEP experts say it was Mr. Kodagoda who amended the draft witness protection legislation to say that a government representative approved of by the Attorney General must be present in the foreign land with

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<sup>13</sup> In addition cabinet spokesman Keheliya Rambukwelle told the BBC Sinhala Service that Muttur was under Government control on 3<sup>rd</sup> night.

<sup>14</sup> Paragraph 235, OISL 2015 says, *“there cannot be any other armed groups than the security forces who could have been behind the act”*.

the witness when he or she testifies long distance. No witness testifying against the security forces will agree to their location being known so this became a way to protect perpetrators not witnesses.

This provision remains a huge problem for the future Truth Commission and special judicial mechanism planned in Sri Lanka given thousands of mainly Tamil witnesses and victims who could give important testimony against the security forces are now in exile abroad<sup>15</sup>.

The concerns over Kodagoda also surface in Wikileaks where a telex quoting IIGEP says all the questioning on the first day of the commission was done not by the commissioners but by Kodagoda whose "line of questioning was leading and that it was obvious that he was trying to finger the local Muslim "Home Guard" as the perpetrators."<sup>16</sup>

The US Embassy offers the following comment:

"COMMENT: The problem of the Attorney General's interference in the operation of the Col is not hypothetical. The AG's office has never initiated a prosecution against anyone in the Government. The President directly appointed the AG, like many other key Commissioners and government officials, by circumventing Article 17, one of the key checks and balances in the Sri Lankan Constitution. AG C.R. De Silva and Deputy Solicitor General Kodagoda are considered proteges of the Chief Justice of the Supreme Court, who holds extreme views on the conflict. Kodagoda's role in the Col appears aimed at tightly controlling the process to ensure that nothing reflects negatively on the GSL."

#### **(b) The All Island Commission on Disappearances of Persons (1998-2000)<sup>17</sup>**

This earlier commission had questioned Mr. Kodagoda, as a representative of the Attorney General's department, about his role in delayed and failed investigations into cases referred to the Missing Persons Unit of the AG's Department, as well the release of security force officials alleged to have been involved in the killing of Tamils.

Significantly there have been very few convictions from the 1998-2000 commissions though they identified thousands of alleged perpetrators:

*"The Zonal Commissions identified several thousand suspected perpetrators in more than 1,000 cases. In addition, the "All Island" Commission identified several hundred individuals allegedly responsible for disappearances... In 1994, the Sri Lankan Human Rights Commission started processing the 16,305 complaints referred to it by the "All Island" Commission and eventually identified 2,127 cases to be investigated further. However, in July 2006, the Human Rights Commission decided not to pursue the analysis of these cases "unless special directions are received from the Government...Of the several thousand suspected perpetrators that the commissions identified, less than 500 were indicted and even fewer were convicted."<sup>18</sup>*

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<sup>15</sup> Press release: *Exiled Victims Cannot Testify in Sri Lankan Embassies*, 8 July 2016, ITJP, <http://www.itjpsl.com/assets/press/8-july-2016-ITJP-press-release.pdf>

<sup>16</sup> 07COLOMBO742\_a  
[https://www.wikileaks.org/plusd/cables/07COLOMBO742\\_a.html](https://www.wikileaks.org/plusd/cables/07COLOMBO742_a.html)

<sup>17</sup> "On December 9, 1994, President Chandrika Bandaranaike Kumaratunga issued three Presidential Proclamations, appointing three different Commissions of Inquiry to look into the "Involuntary Removal or Disappearance of Persons" over the course of the conflict. The three Zonal Commissions were each responsible for the following provinces: i) the Central, North West, North Central and Uva Provinces; ii) the Northern and the Eastern Provinces; iii) the Western, Southern, and Sabaragamuwa Provinces. In 1998, the work of these three commissions was complemented by an "All Island" Commission, which was tasked to investigate cases that the Zonal Commissions were not able to address", *Commissions of Inquiry: Sri Lanka*, <http://www.usip.org/publications/commissions-of-inquiry-sri-lanka>

<sup>18</sup> Ibid

It is worth noting the All Island Commission on Disappearances of Persons operated under the Government of former President Chandrika Kumaratunga who became chairperson of the Office for National Unity Reconciliation in the Sirisena Government<sup>19</sup>.

### **(c) National Human Rights Action Plan 2016**

Given his past, it was surprising that the Sirisena government also put Mr. Kodagoda in charge of the sub-committee looking at torture when drafting the new National Human Rights Action Plan for the next 5 years. This appointment was questioned in the media to no avail<sup>20</sup>.

### **(d) War Crimes Denial**

Furthermore, in public events Mr. Kodagoda has said that the Sri Lankan military recaptured the East of Sri Lanka with “near zero civilian casualties”, which was contradicted by the reports of the UN and independent human rights groups<sup>21</sup>

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<sup>19</sup> ONUR website: <http://onur.gov.lk/index.php/en/about-onur>

<sup>20</sup> One article said, “*he has played a negative role in the prevention of torture*” and added that “*In addition, while the role of the Attorney General’s Department’s officers was to assist the Commission, Mr. Kodagoda aggressively cross examined the witnesses who came before the Commission, in a vigorous attempt to protect state agents against whom these witnesses were giving evidence. We are also aware that, regarding the detention of Tamil prisoners at Boosa camp, he prevented discussions on the arrest and detention of Tamil prisoners without grounds for reasonable suspicion,*” AHRC said. *Govt. Asked To Review Appointment Of Deputy Solicitor General Yasantha Kodagoda As Head Of ‘Torture Prevention’ Committee*, 14 September 2016, Colombo Telegraph, <https://www.colombotelegraph.com/index.php/govt-asked-to-review-appointment-of-deputy-solicitor-general-yasantha-kodagoda-as-head-of-torture-prevention-committee/> and original article at SRI LANKA: AHRC writes to the Ministers of Foreign Affairs and Justice on the Torture Committee under the National Human Rights Action Plan, 13 September 2016, AHRC, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-141-2016/?searchterm=kodagoda>

<sup>21</sup> *Us State Department report is an extraordinary rendition of events in Sri Lanka*, 15 March 2008, <http://federalidea.com/focus/archives/381>