

**Sri Lanka and the  
Breakdown of the  
Rule of Law –  
An Action Plan**

**A Citizens Report**

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**Scarborough, Ontario, Canada**

## Sri Lanka: The Demise of the Rule of Law

### Overview

The legal system of Sri Lanka has undergone many influences to reach its current configuration including Dutch/Roman law, British Common Law, and local traditional law. Sri Lanka gained its independence in 1948 and became a unitary state with a parliamentary democracy and unicameral Parliament. The majority of Sri Lanka's population is of Sinhalese ethnic origin, while ethnic minorities include Tamils in the North and East, Estate Tamils (Tamils of South Indian origin) and Muslims.

Ethnic conflict between the Sri Lankan government and groups claiming to represent Tamils over the past 25 years has caused the political and legal systems of Sri Lanka to be in turmoil. During much of this time, the citizens of Sri Lanka, and in particular dissidents, national minorities and vulnerable populations such as women and children, have been targeted for unjustifiable repression by the Sri Lankan government and its military and police forces. Sinhalese leaders commonly and indiscriminately refer to Tamils as Terrorists. Tamil leaders commonly decry Sri Lankan Government actions as ethnic cleansing and State Terrorism against an oppressed minority.

A Norwegian-mediated peace process resulted in a Cease Fire Agreement (CFA) signed in February 2002. The CFA lasted until mid-January 2008, when the Sri Lankan government unilaterally withdrew from the peace process.

### Issue

The Sri Lankan government has taken a number of regressive measures that have effectively eliminated the Rule of Law in that country. Judges who render decisions that are deemed by the government to be opposed to its wishes are removed. Journalists who criticize the government are threatened and, in some cases, killed. Opposition parliamentarians who voice positions contrary to the wishes of the government are abducted and assassinated. Ordinary citizens routinely "disappear."

### Discussion

A fundamental and very basic principle of all democratic governments is to implement and fiercely protect the Rule of Law. In turn, citizens in a democracy have a valid and reasonable expectation that they will be governed pursuant to that principle and the fundamental corollary to it, that the judiciary will be independent. In that the Rule of Law is the foundation upon which democracy is built and maintained, the fact that the rule of law in Sri Lanka has been seriously eroded, should be of grave concern to all other democratic states. If the cracks in the democratic foundation of Sri Lanka persist and become even more significant, Sri Lanka, as a democratic nation, will inevitably crumble into fractious, and increasingly bloody, disarray.

Sri Lanka is currently witnessing a collapse of the Rule of Law. The grievous violations of basic human rights and virtual elimination of due process, provide ample evidence that the nation is rapidly spiraling out of control.

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In the same manner that the Rule of Law is the foundation for democracy, an independent judiciary is the foundation of the Rule by Law. The Judicial Services Commission of Sri Lanka (JSC) has the authority, under Sri Lanka's Constitution, to appoint, transfer, dismiss and discipline members of the judiciary. The International Bar Association (IBA) has criticized the JSC's arbitrary removal of judges from office without proper inquiry or disciplinary hearing. The IBA has expressed concern about the apparent lack of accountability, breach of natural justice, potential for undue influence and disregard of appropriate and equitable procedures, shown by such capricious disciplinary measures.

Sri Lankan judges involved in cases concerning opposition political parties were, and are, often targeted for unfair disciplinary measures, such as removal from office, transfer to distant courts, and/or demotion. Since appointments to the Sri Lankan judiciary are not merit-based, they are frequently subject to political interference. The implication arising from this flaw is self-evident: the judiciary's ability to impartially determine cases based on the law is seriously impeded.

Judges and lawyers are the guardians of equity and justice and the primary advocates for human rights in a democracy. As the Canadian government has discovered in Pakistan, judges and lawyers became the first targets of an oppressive regime. In Sri Lanka, judges and lawyers are at risk. On November 10, 2006, Nadarajah Raviraj, a 44-year-old lawyer from the Jaffna district who was active in Homes for Human Rights (a non-governmental organization (NGO)), was shot dead in Colombo by agents or supporters of the Sri Lankan government.

Next to Iraq, Sri Lanka has the largest number of disappearances in the world. It is reported, and has been confirmed by Sri Lankan government officials, that a person is abducted every five hours in Sri Lanka. Kidnappings, abductions and killings have tragically become commonplace. Many international NGOs, including Human Rights Watch and Amnesty International, have called for the end of the apparent impunity to justice enjoyed by agents of the government in Sri Lanka, a nation with an extraordinary number of extrajudicial killings, political assassinations and disappearances. The Sri Lankan government has consistently failed to adequately investigate, let alone bring those responsible to a proper court of justice.

The Presidential Commission of Inquiry set up to investigate gross human rights violations in Sri Lanka has been called into question by donor countries, such as the United States and the European Union, as well as international NGOs, including Human Rights Watch. They note that the Sri Lankan government has failed to properly investigate and prosecute those responsible for the horrific abuses of the past two years, including the killings of seventeen local aid workers employed by the French-based NGO, *Action Contre la Faim* (Action Against Hunger).

Other examples of the breakdown in the rule of law in Sri Lanka include the lack of independence of ostensible oversight bodies, such as the National Police Commission and the National Human Rights Commission, which has been downgraded to observer status

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by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the international body that regulates national human rights institutions.

The erosion of the Rule of Law in Sri Lanka has resulted in the breakdown of fundamental tenets of democracy in that country and has manifest itself in extra-judicial killings, enforced disappearances, physical and mental torture, discrimination, and wide-spread human rights violations. Solutions that merely gloss over these cracks in the foundation of this nation will only temporarily mask the serious flaws that undermine basic democracy in Sri Lanka. Real solutions that address the structural defects in the Rule of Law are the only means to re-build democracy in that nation.

### **Suggested Call for Action**

**H**istorically, the Canadian government has led the Commonwealth in bringing peaceful resolution to conflicts involving member states. The year 2008 marks both the 60<sup>th</sup> anniversary of the independence of Sri Lanka and the 25<sup>th</sup> anniversary of the 1983 Troubles that marked the start of armed civil conflict in that nation. We therefore request that Canada might consider the following actions:

- Encourage the Sri Lankan government to restore the Cease Fire Agreement and fully comply with all its terms, including that the government resume talks leading to a peaceful resolution of the conflict through internationally-supported peace negotiations;
- Through intermediaries, encourage the group known as the Tamil Tigers to fully comply with the terms of the restored Cease Fire Agreement, including that the group resume talks leading to a peaceful resolution of the conflict through internationally-supported peace negotiations
- Consider imposing economic and diplomatic sanctions on the Sri Lankan government for gross human rights violations against the Tamil minority, including directly tying any and all foreign aid given to the Sri Lankan government to improvements in the human rights record, as the U.S. Congress did in December 2007, and as is currently under active consideration by the European Union
- Support the international call to appoint a United Nations Special Envoy for Sri Lanka to monitor and guard against human rights abuses and to assist the peace process, as recommended by the UN High Commissioner for Human Rights.
- Expressly require peace negotiations to include negotiations about a distinct Tamil Province within a Sri Lankan Federation.

### **Background on Sri Lanka**

Following centuries of colonial rule by the Portuguese, Dutch and British, Sri Lanka gained its independence in 1948 and became a unitary state with a parliamentary democracy and a unicameral Parliament.

The majority of Sri Lanka's population is of Sinhalese ethnic origin while ethnic minorities include Tamils in the North and East, Estate Tamils (Tamils of South Indian origin) and Muslims. By the passage of the Ceylon Citizenship Act of 1948, nearly one million Tamils were disenfranchised to reduce Tamil representation in Parliament from 33% to 20%, making it impossible for the Tamils to exercise an effective opposition to Sinhalese policies inimical to them.

Constitutional protections intended to safeguard both national and ethnic minorities have been systematically eliminated by successive Sri Lankan governments. As a consequence, Tamil parliamentarians began non-violent campaigns to pursue a degree of regional autonomy for their communities, beginning on or about 1956 and following the passage of the 'Sinhala Only' Official Language Bill. This Bill made Sinhalese the only official state language and required all civil servants to speak Sinhalese.

The Standardization Act, passed in 1970, resulted in preferential treatment for Sinhalese students attempting university entrance. It also required Tamil students to obtain higher marks for entrance to university than their Sinhalese counterparts. Tamil youth, feeling discriminated and disenfranchised by government policies, began to advocate a separate Tamil state of Eelam.

In 1972, a Republican Constitution replaced the British Crown/Governor General system. The Executive Presidential System, adopted in 1978, transferred substantive powers to the President and significantly diminished the role of Parliament.

The Tamil minority, representing about 30% of the population, has virtually no reasonable prospect of influencing the selection of President. Within the Sri Lankan Parliament, Tamil members are excluded from majority Sinhalese political parties and are effectively without practical influence or power.

In May 1976, Tamil political parties met in convention and unanimously resolved to restore and reconstitute a "Free, Sovereign, Secular, Socialist State of Tamil Eelam, based on the right of self-determination inherent in every nation". In the general elections of 1977, this mandate was endorsed by an overwhelming majority of the Tamil electorate (95%).

As a consequence, in 1979 the Sri Lankan government declared emergency rule and passed the Prevention of Terrorism Act (PTA). Described by the International Commission of Jurists as "the worst act of its kind in the world, including South Africa", it subjects Tamils to arbitrary arrest, torture and detention without trial. Tamil Members of Parliament are barred from discussing secessionist claims in parliament.

Sri Lankan authorities condoned the Anti-Tamil riots of July 1983 where, in excess of 5,000 Tamils were killed by armed Sinhalese mobs with the complicity of Sri Lankan military and police forces.

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These actions have led to a civil war that has extended for over 25 years causing the political and legal systems of Sri Lanka to be in turmoil. During much of this time, the citizens of Sri Lanka, and in particular dissidents, national minorities and vulnerable populations such as women and children, have been targeted by segments of the Sri Lankan government and its military and police forces. Sinhalese leaders commonly and indiscriminately refer to Tamils as Terrorists. Tamil leaders commonly decry Sri Lankan Government actions as ethnic cleansing or State Terrorism against an oppressed minority.

A Norwegian-mediated peace process resulted in a Cease Fire Agreement (CFA) signed in February 2002. The CFA lasted until mid-January 2008. On 1<sup>st</sup> of January 2008, Tamil parliamentarian Tyagarajah Maheshwaran of the United National Party (UNP) was murdered while attending New Year prayers at a Hindu temple. He was the first minority Tamil politician to join a majority Sinhalese-dominated political party from the south, after the commencement of the Sri Lankan civil war. He was known for his efforts to highlight human rights abuses against minority Sri Lankan Tamils, both in Parliament and in the media. He had generally voiced support for the war effort against the cessationist LTTE (Tamil Tigers), but had also spoken out against abuses and misconduct perpetrated by the government against the Sri Lankan civilian population.

Just before his death, Maheshwaran accused the rival Eelam People's Democratic Party (EPDP), a close ally of the Sinhalese government, of being behind a series of murders which targeted civilians in the Jaffna peninsula. He also stated that he was about to reveal serious human rights violations committed by various paramilitary groups assisting the government. Tamil leaders have cited his killing as a provocative breach of the Peace Process. On the 2<sup>nd</sup> of January 2008, the day after Maheshwaran's murder, the Government of Sri Lanka unilaterally withdrew from the peace process, citing wide-scale ceasefire breaches by the LTTE.

Tamil leaders have, and continue to accuse the Sri Lankan police and military of gross and systematic abuses during the extended period of the civil war.