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Countries at the Crossroads 2012 - Sri Lanka

2012 Scores

Accountability and Public Voice Score: 3.08

Civil Liberties Score: 3.58

Rule of Law Score: 2.48

Anti-Corruption and Transparency Score: 3.12

Introduction

In May 2009, the Sri Lankan government ended the 25-year insurrection of the Liberation Tigers of Tamil Eelam (LTTE). Many had high expectations that the end of the war would usher in a new era of peace, security, and democracy. However, over the last two years, Sri Lanka has experienced a continued erosion of democratic and human rights, particularly in the north and east of the country.

For a small island nation, Sri Lanka has a remarkable amount of ethnic diversity and conflict. The Sinhalese, concentrated in the central and southwestern areas of the country, are the largest ethnic group, comprising 74 percent of the population.^[1] Some Sinhalese claim to be the original civilized inhabitants of the island. Sinhalese speak the Sinhala language and although there are some Christians among them, most are Buddhists. Sri Lankan Tamils, 12.7 percent of the population, are the descendants of early settlers on the island. The Tamils speak the Tamil language, and are mostly Hindus, though the smaller Catholic community and its clergy play important social and political roles. They represent a majority in the northern province and much of the eastern areas of the island with large concentrations in Colombo, the country's largest city, and Kandy. Tamil-speaking Muslims comprise 7.1 percent of the population and live in strong concentrations along the eastern coast and in parts of the Sinhalese areas, especially in the larger cities. The final large ethnic group is the Indian Tamils who comprise 5.5 percent of the population and live primarily in the hill country of central Sri Lanka. Indian Tamils speak Tamil, and are mostly Hindus. The community descends from indentured laborers brought from southern India in the mid-19th century, and largely consider themselves to be culturally distinct from the Sri Lankan Tamils.

At independence from Great Britain in 1948, the dominant pre-independence political movement became the United National Party (UNP), which appealed primarily to the Sinhalese ethnic majority. The Tamils, who had been part of the independence movement with the founders of the UNP, formed their own party, the Tamil Congress. Both parties split in the 1950s, with a faction of the UNP, led by S.W.R.D. Bandaranaike, creating the Sri Lanka Freedom Party (SLFP), while a faction of the Tamil Congress formed the Federal Party, which later became the Tamil United Liberation Front (TULF).

Growing youth unemployment and the government's failure to resolve economic and social problems resulted in the development of violent youth movements among both the Sinhalese and the Tamils in the 1960s and 1970s. The Janatha Vimukthi Peramuna (JVP) among the Sinhalese and the LTTE among the Tamils challenged the traditional political parties, with the Maoist JVP leading bloody insurrections against the government in 1971 and 1988-1989.

Beginning in the mid-1970s, when it was created, the LTTE led a violent campaign for a separate state of "Tamil Eelam" in the northeast, where it controlled large amounts of territory until its military defeat in May 2009. The LTTE militarily destroyed a number of other Tamil groups which were fighting against the government in the 1970s and 1980s, ultimately establishing their sole dominance in the fight against the government. Some of these groups and some more recent ones have created political parties and now contest elections. The most important of these groups are the Eelam People's Democratic Party and two breakaway factions from the LTTE headed by former military leaders Karuna and Pilliyan.

The Tamil civil war dominated Sri Lanka for more than 25 years. The military defeat of the LTTE allowed the government to begin to address economic issues that had been largely ignored because of the war. While the Sri Lankan economy has been strong over the last two years, the government has faced many allegations of undemocratic behavior, stifling dissent, and condoning violent attacks against its opponents. In addition, the government has been accused of committing war crimes in its military campaign against the LTTE and trying to displace Tamil landowners while attempting to settle Sinhalese on traditionally Tamil lands.^[2]

Accountability and Public Voice

Sri Lanka has a long history of relatively free and fair elections; however, elections have been marked by violence and irregularities since 1989. The elections of 2010, while not as violent as other recent elections, had serious irregularities. On January 26, 2010, President Mahinda Rajapaksa was reelected to office in the first national election since the defeat of the LTTE. He was first elected as president in 2005. In 2010, he received 57.9 percent of the vote against the united opposition^[3] candidate and war hero General Sarath Fonseka, who received 40.2 percent.^[4] The Centre for Monitoring Election Violence (CMEV) described the election as marred by blatant partisanship by the state controlled media and the failure of the police to obey the election commissioners' orders to cease illegal campaigning.^[5] The election was followed by the interdiction or transfer of many police personnel (including 18 deputy inspector generals) for following the election commissioner's orders during the campaign. Two weeks after the election, the losing candidate, General Fonseka, was arrested on non-election related grounds. The following August and September, he was stripped of his military honors and the parliamentary seat he won in April 2010.

Parliamentary elections were held on April 8, 2010. The 225-member unicameral parliament is elected for a six-year term by proportional representation. A record 7680 candidates, representing 36 political parties and 306 independent groups, contested the elections. President Rajapaksa's United People's Front (UPFA) won an overwhelming victory with 60.3 percent of the vote and 144 seats. The United National Party continued as the largest opposition party, receiving 29.3 percent of the vote and 60 seats.^[6] The CMEV described the election as deeply flawed by violence and intimidation against opposition candidates.^[7] In addition, Tamils in both the national and parliamentary elections experienced problems exercising their right to vote. Many internally displaced Tamils did not have national ID cards, could not obtain them, or could not travel to their home village and were therefore unable to vote. During the war, government security forces used the confiscation of national ID cards as a way to control the travel of Tamils. This problem and the intimidation of voters led to an extremely low voter turnout of 61.3 percent in the parliamentary elections.^[8] Until the 2010 election, voter turnout had been above 75 percent in all but one parliamentary election since 1960.

The 2011 local council elections were even more problematic. The elections were held on three different dates in 2011 with the government selecting the provinces to hold elections on those dates based on political advantage and the holding of the 2011 Cricket World Cup in Sri Lanka. The UPFA won control of 270 local governments out of 311

contested. The Tamil National Alliance (TNA), an alliance of several Tamil parties but dominated by members of the TULF, won control of 32 local governments and dominated the elections in the Tamil areas. The once powerful UNP was able to win control of only nine councils. As with the 2010 national elections, widespread irregularities were reported. The CMEV, which did not monitor all of the elections, reported on one of the election days that there was "one report of murder, a grenade attack, seven incidents of assault, seven incidents of intimidation including five reports of an intimidating presence around the polling station, the obstruction of polling agents, voters and election monitors, as well as the chasing away of voters."^[9]

Electoral violence and intimidation have continued to make campaigning a dangerous activity. In order to guard themselves from potential attackers, many politicians have assembled armies of thugs who provide protection. This has added to the increased campaign violence because the distinct bands of thugs often clash when they encounter each other. In addition, many of the thugs are involved in the criminal underworld and receive protection in return if their candidate wins election. Much of the electoral violence (including both verbal and violent attacks) occurs between members of the same party because of the preference voting system, which determines one's place on the proportional representation list. [Under the system, voters cast votes for parties, which determine how many seats each party wins. Who wins elections is determined by preference votes. Thus, candidates from the same party compete against each other.^[10]]

Sri Lanka lacks campaign finance legislation. While elections have traditionally required relatively small budgets, the costs have been increasing and television advertising is now used extensively in national elections. As a result, access to financial resources has become a requirement in parliamentary elections.

Sri Lanka's quasi-presidential system, similar to the French system, has never had a true separation of powers between the branches of government. President Rajapakse has increasingly tried to centralize power, especially judicial power in the executive branch, and has refused to obey several related Supreme Court rulings. For example, one decision ordered the president to observe the constitution's 17th amendment, which stipulates that a non-partisan Constitutional commission rather than the executive has the authority to appoint members of independent commissions, including those related to civil services rules, the judiciary, human rights, the conduct of elections, police appointments, corruption by public officials, government audits, and the drawing of electoral district boundaries.^[11] President Rajapaksa refused to obey the Supreme Court's order to follow the constitution's 17th amendment and, instead, he appointed loyalists to several important posts and subsequently used his two-thirds majority in parliament to pass the 18th amendment in September 2010.^[12] The 18th amendment repealed the creation of the Constitutional Council, thus giving the president the power to directly appoint the members of the independent commissions and the judiciary. It also removed term limits on the president, allowing President Rajapakse to run for additional terms of office. At the time, President Rajapaksa was serving his second and final term of office and argued that term limits create a "lame duck" president in his or her second term. Critics fear that he will be able to win election for life.^[13]

The president has appointed many of his own family to powerful positions, thus increasing significantly the family's political control and domination. The president's brothers each have prominent positions: Gotabaya Rajapaksa is secretary to the Ministry of Defense and Urban Development, Basil Rajapaksa is minister of economic development and chair of the Presidential Task Force on the Northern Province, and Chamal Rajapaksa is speaker of parliament and former minister of ports and aviation and irrigation and water management. Other relatives have been appointed as ambassadors to Russia and the United States as well as heads of banks and corporations. In the 2010 parliamentary elections, the president's 25-year-old son, Namal Rajapaksa, was elected to parliament and is currently being groomed for further advancement. Basil is believed to be the president's most trusted advisor, while Gotabaya, who was the chief architect of the defeat of the LTTE, is in charge of the nation's security and intelligence apparatus. He has been accused of allegedly ordering the murder of opposition politicians and journalists as well as Tamil civilians during the war.

Along with the decline in the fairness of elections, there has been a weakening of government accountability and independence of the bureaucracy. The 18th amendment to the constitution has given the president a great deal of power to interfere with the bureaucracy. However, even without the 18th amendment, the once-independent bureaucracy had already been politicized. Politicians interfere with the appointment, transferring and hiring of public servants. Many bureaucrats avoid any action that might anger either the ruling party or the opposition members who might ultimately come to power. Those who do not cooperate with government officials are often punished with transfers to unfavorable locations.^[14]

Sri Lanka has never had many civil society groups that contribute to the drafting of legislation in parliament. Sri Lankan politics are highly personalized and groups seeking government action must contact individual members of parliament directly. Although there is a committee structure in parliament, there are few hearings on pending legislation and very little opportunity for groups to provide input into legislation. Thus, civil society groups have not been able to exercise effective oversight of the actions and behavior of the government. The Centre for Policy Alternatives (CPA) was created in 1996 to provide such oversight, but despite a record of publishing professional and nonpartisan policy analyses, it has not had a significant impact.

The government is extremely hostile towards nongovernmental organizations (NGOs). The government views any independent NGO as a threat and has sought to intimidate them as well as pass legislation to control their behavior. As of October 31, 2011, there were 1347 registered NGOs,^[15] including over 300 international groups. The government has created regulations that require NGOs to report the source of their funding and how they are spending their money. The harassment of NGOs increased in 2010. In March 2010, the CPA and Transparency International Sri Lanka (TISL) complained to the president that the State Intelligence Services was creating a list of individuals supportive of the opposition, including the leaders of the CPA and of Transparency International.^[16] In July 2010, NGOs working in the northern district were limited by new restrictions on their activity, including the government's refusal to allow their vehicles to travel to the area.^[17] In September 2010, a new law began requiring international and local NGOs working in the country to register with the Ministry of Defense. In November 2010, the government asked the International Committee of the Red Cross (ICRC) to close all offices in northern Sri Lanka and operate exclusively from Colombo, arguing that country's needs have changed since the end of the war.^[18] ICRC complied with the request, even though they believed that there still was a need for offices in the northern district.

During the period from 2000 to 2009, there were many violent attacks against NGOs and their employees. Since then, these attacks have stopped and there has been increasing international pressure on Sri Lanka to punish the attackers. In particular, there has been significant pressure to hold accountable those responsible for the murder of 17 aid workers from Action Against Hunger, who were shot to death in Mutur in August 2006. Human Rights Watch issued another call for government action on August 3, 2011, the fifth anniversary of the murders.^[19] Most observers believe government security forces killed them.^[20]

There has been a sharp deterioration of media freedom and independence since the 2004 national elections. In recent years, journalists who report on sensitive issues like corruption, human rights abuses, and military strategy have been subject to harassment, intimidation, and physical attacks. Among the most high-profile murders was that of Lasantha Wickramatunga, editor and founder of the *Sunday Leader* and *Morning Leader* newspapers, on January 8, 2009. Almost a year later, on January 24, 2010, Prageeth Ekneligoda, a journalist and cartoonist who worked for the *Lankaenews* website, disappeared and, to date, has not been found. On July 29, 2011, Gnanasundaram Kuhanathan, the editor of the Tamil-language daily *Uthayan*, was severely beaten and left for dead. Finally, prominent journalist and editor of the *Sunday Leader*, Frederica Janz, reported in October 2011 that she was receiving many telephone death threats.^[21] In its annual ranking of press freedom in 2010, Reporters without Borders ranked Sri Lanka 158th out of 178 countries in the world.^[22] In 2011, the International Federation of Journalists reported in its annual South Asia report that the situation had improved in the last year from the violence and attacks against the media in 2010. Despite the improvement, the report also pointed out that attacks do continue, that journalists

operating in the north and east are closely monitored by the police and security forces, and that journalists in general cannot "practice their craft without fear of reprisal."^[23]

In addition to the attacks on individual journalists, the pro-UNP *Lankaenews* office was fire bombed in January 2011.^[24] The bombing followed a series of hacking incidents which ultimately led the website to be blocked by its web service provider in October 2011. The government later announced that it had shut down six news sites and was now requiring all electronic news sites to register with the Ministry of Mass Media and Information.^[25] Among the sites that were shut down, *LankaWayNews.com* was the official news site of the main opposition party, the United National Party. Along with the violent attacks, there has been continued use of strict libel laws to control and intimidate the press. In one high profile case, General Fonseka, a 2010 presidential candidate, was found guilty of making false statements to *Sunday Leader* editor, Fredericka Janz, about Gotabaya Rajapaksa, the brother of the president and secretary to the Ministry of Defense. Fonseka claimed that Gotabaya ordered the army to shoot any LTTE leaders who surrendered to them in May 2009. This case, known as the "White Flag" case, and others like it have served to intimidate anyone who gives interviews to the press.

The Sri Lankan media sector has traditionally been dominated by the Lake House Publishing group, which was taken over by the government in the 1970s. The Lake House newspapers are used to present the government position on political issues. In addition, the government has its own radio and television outlets. A recent trend has been the takeover of control of print and electronic media outlets by political supporters of the government. The *Island/Divaina*, *Lakbima*, and *Nation* newspapers are controlled by politicians, while the Asia Broadcasting Corporation was only allowed to go back on the air after the brother of the owner joined the government.^[26]

Civil Liberties

The government's campaign against the LTTE led to a large number of human rights violations. The most serious of these violations ended with the defeat of the LTTE. However, certain kinds of abuse and human rights violations have continued. The Sri Lankan security forces have a long history of torturing and using excessive force against detainees and there has been no decline in the use of torture against LTTE suspects over the last two years. In addition there has been a sharp increase in the "kidnappings" of Tamils. Human Rights Watch has repeatedly documented the use of torture against Tamil suspects and of Tamils deported from western countries.^[27]

Along with the torture of Tamil detainees, there has been a significant rise in the number of deaths of detainees of all ethnic communities. In most of the cases, details of the deaths of those in detention are questionable. Many times, police have claimed that suspects, long after being detained, were suddenly able to find weapons, thereby requiring the police to shoot them. In a report issued in 2011, the Asian Human Rights Commission described 323 police torture cases out of 1500 total cases during the 13-year review period (1998-2011).^[28]

While the Sri Lankan courts have upheld the guarantees in the constitution that protect civil rights and liberties, the courts are slow to act and some cases have lingered in the courts for years. Many of the cases of torture are beyond their reach. The 1979 Prevention of Terrorism Act (PTA) remains in place and allows for detention of "terrorism" suspects without legal representation or safeguards for an unlimited time. In addition, petitioners against the security forces are often intimidated and receive death threats, making many Sri Lankans reluctant to seek redress of grievances. Although the government has promised to enact witness and victims protection legislation, no action has been taken and the murder and intimidation of witnesses and victims is common.^[29] In addition, detainees taken under the PTA do not have to be reported to or produced before the courts. In many cases, the security forces refuse to provide information or obey court orders. For example, the Supreme Court has issued rulings ordering the security forces to release or charge all detainees held longer than 90 days, but this has been largely ignored.^[30]

During the war, hundreds of thousands of Sinhalese, Muslims, and Tamils were displaced by the fighting. Several hundred thousand others, mostly Tamils, fled to India and

western countries seeking refugee status. At the end of the war, there were significant numbers of refugees and internally displaced persons (IDPs), including many who were living in IDP camps (20 years or more). While many of the refugees and IDPs were Muslims and Sinhalese, the majority were Tamils. Most of these Tamils were placed in detention centers; after the war in 2009, there were a total of 300,000 Tamils in these centers. At the start of 2012, the UNHCR considered 295,720 Sri Lankans as a "population of concern," down from 589,639 a year earlier.^[31] According to UNHCR, the "population of concern" includes internally displaced people and refugees, both in formal camps or living with relatives. Almost all of the "population of concern" is Tamil, and constitutes about 25 percent of Sri Lanka's total Tamil population. In September 2011, of those seized at the end of the war, 9,000 IDPs remained in the notorious Menik Farm "Welfare Camp," 57,000 were living in host communities,^[32] and 142,000, displaced before 2008, were still unable to return to their homes.^[33] Another 200,000 displaced Tamils have been "returned" to their homes but either did not receive back their land or faced other difficulties maintaining a normal life. In addition, 141,063 Tamils were listed as refugees by the UNHCR in June 2011, while another 8,603 had applied for asylum in other countries. Finally, 3,000 Tamils accused of being LTTE fighters were still held in "rehabilitation camps" as of September 1, 2011.^[34] International pleas for a resolution of problems faced by displaced communities have been ignored by the government. Amnesty International called on the United Nations Human Rights Council to address the issue in September 2011.^[35]

The government fears the reestablishment of the LTTE and has continued to maintain strict security in the north and east since the end of the war. In addition, the security forces routinely target Tamils for extra scrutiny and restrictions on movement. In 2011, the government expanded the number of military stationed in the Tamil regions, especially the Jaffna peninsula. Tamils traveling to Sinhalese areas are routinely required to register with the police. No such registration requirement exists for Sinhalese citizens. In both Jaffna and Batticaloa, police registration of traveling Tamils began in 2011. As part of this registration process, the security forces have been interviewing Tamils in the north and east about their relatives living outside of the country. This effort has included photo registration as well. In a March, 2012 report, the International Crisis Group outlined the extent of the military control of northern Sri Lanka.^[36] The report contends that Tamil civilians are subject to registration by the military, intimidation from government controlled Tamil militia and violent suppression of dissent. The report argues that the Sri Lankan military has "become an army of occupation physically and psychologically."^[37]

Despite the fact that there have been no LTTE attacks since May 2009, the strict emergency laws implemented during the war remained in place until August 2011. On August 31, 2011, the wartime state of emergency lapsed, and with it the host of emergency regulations that had granted the government and security forces extra-constitutional powers. Among other things, the regulations, along with the PTA, allowed the unrestricted arrest and detention of terrorist suspects, powers that were applied disproportionately to Tamils. Despite the fact that the most draconian of the wartime laws, the PTA, was left in effect and continues to allow arrest and detention without charges, the U.S. State Department called the culmination of the state of emergency "a significant step towards normalizing life for the people of Sri Lanka."^[38] Human Rights Watch, however, called the lapsing of the emergency regulations a "cynical 'bait and switch' which would have no effect on arbitrary arrests."^[39]

A number of other war era rules and regulations continue to be enforced. For example, some of the strict wartime rules limiting sea fishing along the Jaffna coast have been reinstituted, seriously impacting the income of many Jaffna fishermen. According to some reports, the current restrictions are related to efforts aimed at allowing Sinhalese fishermen to fish in the northern waters. The government has also continued to set up security checkpoints throughout the country. While the number of checkpoints has reduced from wartime levels, Tamils are still harassed at the checkpoints and are sometimes made to pay bribes.^[40]

In a bizarre episode, Tamil civilians were terrorized by an outbreak of "grease devil" attacks in August and September 2011.^[41] The grease devil is a traditional story or urban legend in which a thief robs homes at night while dressed in only underwear and covered

in grease, making capture difficult. Almost all of the attacks occurred in the north and east and targeted Tamils and Muslims. Hundreds of attacks were reported. Many of them involved the attacker slashing the victim and fondling women, although there were also at least five deaths reported and hundreds were seriously injured or raped. In a number of cases, the attackers were chased and found safety in army, navy, or police camps or posts. Very few attackers were ever arrested. Almost all of the grease devil arrests were the result of vigilantes chasing the attackers. Theories abounded about the reason for the attacks. Most villagers accused the army for the attacks and a group composed of members of the Tamil National Alliance and members of parliament met with the president over the attacks on September 8, 2011.^[42] The attacks stopped after the meeting with the president.

Historically, the most serious assaults on civil liberties have included high numbers of attacks against opponents of the government. In 2010 and 2011 there was a sharp decline in the number of attacks against and murders of opposition members of parliament, although there was a slight increase at the end of 2011 and continuing into 2012. Human rights groups have called for government action in apprehending the perpetrators of some of the higher profile murder cases, but have met with a blanket denial of wrongdoing during the war years.^[43] As in the past, perpetrators of more recent attacks are almost never arrested and none have been successfully prosecuted.

Human rights have also been undermined by the weakening of the National Human Rights Commission over the last six years. Since May 2006, when the president appointed the five members of the commission in violation of the constitution, the commission has effectively stopped promoting human rights in Sri Lanka. The addition of the 18th amendment to the constitution in September 2010, authorizing the president to legally appoint the members of the commission, gave the president legal control of the commission.

Gender rights in Sri Lanka are strong relative to the other countries of South Asia. The constitution provides legal equality to women, though in some cases the government has failed to uphold those rights in practice. Women remain underrepresented in elected office and within the civil service. Only 10 women out of 225 members were elected to parliament in the April 2010 elections. The main gender issues facing the country are sexual harassment,^[44] discrimination in salary and promotion opportunities, and domestic violence. Despite the end of the war, there have been allegations of sexual abuse of women in the areas formally held by the LTTE. The International Crisis Group has documented many cases of sexual abuse against women and children.^[45] There have also been claims that female students were subjected to virginity tests by university and government officials.^[46] The government denies these allegations and very few of the alleged perpetrators have been prosecuted in the courts.

Constitutionally, ethnic and religious minorities have equal rights. However, in practice, these constitutional provisions have not been enforced. The current government is a broad coalition that includes extreme nationalist groups that view Sri Lanka as the rightful domain of the Sinhalese Buddhists and are intolerant of religious and ethnic minorities. Supporters of these groups are believed to have carried out numerous attacks against Christian churches since 2004. Beginning in 2010, Muslim and Hindu sites have also been targeted. On September 14, 2011, More than 100 monks led a crowd to destroy a Muslim shrine in Ampara district because, according to one of the monks, it was on land given to the Sinhalese Buddhists 2,000 years earlier.^[47] Initially, mosque officials did not report the attack out of fear and because police had been present while the shrine was destroyed. In a move aimed at Hindus, Buddhist monks threatened to stop the annual religious festival at the Munneswaran Hindu temple in Chilaw in Puttalam district in August 2011. The ceremony involves the sacrifice of thousands of animals and radical monks threatened to violently prevent it. A confrontation was averted when the monks received a court order prohibiting the protest campaign.^[48]

Another religious issue has been the construction of Buddhist shrines throughout the north and east of the country since the end of the war. These shrines have been built in areas where there has been no historical presence of Buddhists. Most of these shrines were built with the assistance of the military forces stationed in the north and east. Coinciding with the construction of the shrines has been an increased effort to "discover"

archeological evidence of the Sinhalese Buddhist nature of these areas, despite the fact that most of the north and east have been populated by Tamil Hindus and Muslims for over a millennium.^[49]

While the government has not enacted its very controversial proposed legislation to ban "unethical" conversions, the threat of the law's enactment continues. The Prohibition of Forcible Conversions Bill calls for fines of up to \$4,425 and up to seven years in prison for trying to convert a Sri Lankan citizen from one religion to another by using "force, fraud or allurement." The pending legislation was prompted by a report issued by the government-sponsored Commission on Unethical Conversions released in late January 2009, which also called for laws requiring new religious organizations to take an oath not to recruit new members, a government investigation of religious groups that became established in the country after 1972, a ban on any such groups that are found to be harmful, and the creation of a data center to collect individual complaints against religious groups.^[50]

Government job appointments and placement of development projects are based on patronage and support for government politicians. Sinhalese Buddhists dominate the political system and usually direct jobs and projects to members of their ethnic community. The educational system is divided between Sinhala and Tamil language schools. Those who study in Tamil and cannot speak Sinhala fluently are at a disadvantage when seeking employment in Colombo or with the civil service.

The government has done very little to provide opportunities for people with disabilities. Progress has been stymied by the high costs of increasing access to buildings, jobs, and education, and new efforts seem unlikely in the near future. Another vulnerable group, homosexuals, is subject to Section 365a of the penal code, which criminalizes homosexual behavior. However, such restrictions are not routinely enforced.

Sri Lanka has a strong workers' rights tradition, with over 1,500 unions registered. Workers are allowed to form and join unions, and strikes are permissible. However, each political party has created affiliated trade unions, and the parties in power typically support their unions at the expense of those linked to opposition parties, costing many workers their jobs. This pattern has continued under the Rajapaksa government. Political organizations are allowed to form, and the right of peaceful assembly is assured by the constitution, but permits are required for demonstrations. The police periodically carry out investigations and intimidation of opposition organizations and have been known to use excessive force against demonstrators who fail to obtain permits.

Rule of Law

The Sri Lankan judiciary has faced growing political pressure and the politicization of the judicial process has become a serious impediment to justice. Arbitrary transfer of judges is now common and occurs even in high profile cases. In addition, the 18th amendment to the constitution has increased the power of the President to appoint and control the judicial system.

The 17th Amendment to the constitution, promulgated in 2001, created an apolitical Constitutional Council to make independent appointment to several state bodies, including the Judicial Services Commission (JSC). The JSC has the power to transfer, dismiss and discipline lower court justices. After the terms of the initial Constitutional Council members lapsed in 2005, President Rajapaksa refused to reconstitute the body and instead made direct appointments to the JSC. In September 2010, parliament passed the 18th amendment to the constitution, which allows the president to control the judiciary with his own appointments to the higher courts and to the JSC. This new constitutional authority of the president greatly expanded what were already excessively large powers by the president to control the judiciary. The Asian Human Rights Commission has argued that the 1978 constitution had already destroyed the independence and fairness of the judicial system.^[51] [The political interference with the judiciary goes beyond the new constitutional authority of the president. Moreover, between 2005 and 2010, the work of the JSC was largely halted and activities to reform the judiciary, including efforts to create a code of conduct for judges, were delayed during this period.]New rules and regulations have increased the president's ability to control the attorney general. In addition, in January 2011, President Rajapaksa

reportedly threatened Supreme Court Chief Justice Ashoka de Silva, prompting a letter of resignation from the chief justice.^[52] Rajapaksa refused to accept the letter and despite the intimidation, the chief justice remained in office.

In addition to political interference, the judicial system suffers from limited training of the justices. While, the criteria for appointment guarantee that the justices are knowledgeable of the law, Sri Lanka has lagged behind other countries in providing law reports on Supreme Court decisions. Most magistrates do not have easy access to the reports, making it difficult for judges to base their decisions on precedent set by other courts.

Under Sri Lankan law, defendants are presumed innocent until proven guilty, have the right to counsel, and are guaranteed a public trial in criminal cases. Nevertheless, due process rights are often denied in practice, particularly for displaced Tamils. Furthermore, a backlog of cases results in long delays, sometimes lasting more than 10 years.^[53] In November 2010, the secretary to the Ministry of Justice estimated that there was a backlog of nearly 700,000 cases pending in Sri Lanka's courts.^[54] Although there have been many announcements of efforts to speed up the process, none have been successful. The most recent effort was announced in a January 2011 statement by Minister of Justice Rauff Hakeem, which described the creation of 65 new court complexes to deal with the case backlog. In the past, small case loads and a lax judicial work ethic have limited the number of cases heard by judges. There is no system of legal aid to assist poor detainees.

Prosecutors are theoretically independent of political pressure, but in reality the prosecution process is highly politicized – especially since the Attorney General was placed directly under Presidential control – and the criminal justice system has been used increasingly to punish politicians who are out of power. Presidential candidate and war hero Fonseka was detained on February 8, 2010, shortly after he lost the January 2010 presidential elections. Fonseka was ultimately convicted and sentenced to 30 months in prison in September 2010 for "'disgraceful conduct' in military procurements,"^[55] and in August 2010, a military court martial stripped him of his medals and pension for "engaging" in politics while in uniform. His third trial, in 2011, was for revealing state secrets and resulted in a guilty verdict and a sentence of three additional years.^[56] [The "White Flag" case, as it is known, involved statements he made to *Sunday Leader* editor Frederica Janz in an interview in which he stated that the President's brother and defense ministry secretary Gotabaya Rajapaksa had ordered the shooting of LTTE leaders who surrendered in May 2009.] The prosecution of political opponents has led a number of former government politicians to switch parties to avoid prosecution under a new government. S.B. Dissanayake, one of the leaders of the UNP, who faced criminal charges as a UNP member, crossed over to the Rajapaksa government on December 7, 2009 and most charges against him were dropped.

The security forces, traditionally uninhibited by civilian interference, have become highly politicized. This is especially true of the police, where there is now direct political control of police actions. All branches of the security forces, including the police have been consolidated under Gotabaya Rajapaksa, the secretary to the Ministry of Defense and brother of the president. Although there have been instances of security force action in direct contradiction to political orders, these instances have been relatively rare. The case of General Fonseka has resulted in a purging of military officers who were associated with him and believed to support him. Some of these officers have been charged with criminal offences and most have been forced out of the military since Fonseka's bid for the presidency.

The security forces, especially the police, have also been required to take orders from government politicians during local and provincial elections. Until the early 1990s, the police were allowed to conduct their business without political interference during national elections. This pattern appears to have been abandoned under the Rajapaksa administration. The failure of police to enforce election laws during the 2010 presidential and parliamentary elections raises a serious threat to the future fairness of Sri Lankan elections.

Private ownership and property rights are guaranteed under the constitution and the government has generally upheld those rights in practice. However, the long delay in

civil cases makes court enforcement of property rights ineffective. This is compounded by the Roman-Dutch-based legal system which rewards possession of property and often makes it difficult to evict squatters, allowing them to occupy disputed land for decades as court cases slowly progress.

Another problem has been the seizure, on security grounds, of private land held by Tamils. During the war, large tracts of land in the north and the east were declared "high security zones" (HSZs) and were taken without compensation by the security forces. After the war, the government announced efforts to resolve issues related to wartime seizure of land as HSZs. In September 2011, the government announced that it was going to legally acquire or exchange land it holds in the HSZs. However, in early 2012, the government began an expansion of military bases in the north and, despite the assurances that land would be returned or that owners would be compensated, large tracts of land continue to be held by the security forces..

In addition to the seizure of land, many land records were lost during the war and, despite the fact that government land offices functioned during the LTTE occupation in the north and east, the government is highly suspicious of deeds issued during this period. Even more government records on land ownership were destroyed by the 2004 tsunami, particularly in the Mullaitivu District. As a result, many landowners and occupants of land do not have valid documents proving their ownership of the land. The Sri Lankan government has not taken any coordinated action to address this problem. In the absence of government action, a large number of fraudulent land claims have been made and squatters, often with security force support, have seized land.^[57]

Anti-Corruption and Transparency

Three significant types of corruption prevail in the Sri Lankan political system: bribes paid to obtain a favorable government action, bribe solicitation by government officials, and nepotism or cronyism. Under the Rajapaksa administration, very few steps have been taken to control corruption. Sri Lanka was ranked 91 out of 178 countries surveyed in Transparency International's 2010 Corruption Perceptions Index.^[58] It has been argued that corruption costs Sri Lanka 2 percent of its GDP each year.^[59]

Until the 1970s, Sri Lanka had a strong system of bureaucratic regulations that made the conduct of business very difficult and time consuming. Beginning in 1977, those regulations were relaxed and economic activity became much freer. The Rajapaksa government has reinstituted some limited regulations, such as the controls placed on NGOs.

In November 2011, President Rajapakse reversed a policy of privatization that was first instituted in 1977 and followed by both UNP and SLFP governments. On November 3, the government announced the takeover of 37 "underperforming and underutilized companies."^[60] On November 11, parliament passed a law authorizing the immediate takeover and future takeover of any company that the government believes might negatively affect the national economy.^[61] Among the companies seized were prominent Colombo landmarks such as the Hilton Hotel and the Sevanagala Sugar Company, which is owned by Daya Gamage, an important financial supporter of the opposition UNP.

After the election of the Rajapaksa government there were several privatization corruption scandals. The parliamentary Committee on Public Enterprises (COPE), which is charged with ensuring that financial discipline is upheld within public corporations, has presented several reports documenting corruption in the sale of government enterprises over the last few years.^[62] For example, in 2008, the Supreme Court determined that the sale of Lanka Marine Services, under the previous UNP government, had been corrupt. Milinda Moragoda, the UNP minister responsible for supervising the sale later crossed over to the Rajapaksa government and in 2009 was named minister of justice and charged with directly supervising the attorney general who was prosecuting those responsible in Moragoda's UNP ministry for the corrupt sale. The attorney general chose to not prosecute the case.^[63]

Despite the widespread phenomenon of illegal gain by public officials, Sri Lanka has not enacted effective financial disclosure laws. While a 1975 law obliges high officials to make annual declarations of their assets, these declarations are not independently

audited, and through 2010, no member of parliament has ever been prosecuted or punished for failing to disclose their finances.

The Sri Lanka Bribery Commission was created in 1994 as the only agency dealing solely with corruption prevention. The 18th amendment gives the president the power to appoint and remove members of the commission including the director general. The commission has been largely ineffective. It has no disciplinary control and has limited resources for adequate staff, reducing its ability to investigate cases. In 2010, the commission had no members for nearly three months after its members' terms expired. Transparency International, in its latest figures, showed that in 2008, the commission received 2668 complaints and referred 1351 for investigation. Out of these cases, 63 cases were filed (308 were pending) and 23 convictions were obtained.^[64] The inability of the commission to prosecute more than 60 to 70 cases a year means that the backlog of cases will continue. In 2010, Transparency International Sri Lanka (TISL) released the National Integrity Report, which assessed key pillars of the Sri Lankan governance system. The report gave Sri Lanka's anti-bribery commission very low to minimal scores.^[65]

In addition to the Bribery Commission and the COPE, the auditor general and the Public Accounts Committee hold anticorruption mandates. The auditor general is charged with monitoring all government entities and delivering its annual reports to the Public Accounts Committee (PAC) in parliament, which oversees governmental efficiency and financial discipline. However, the power of these bodies to address corruption has been vastly diminished as a result of political interference.^[66]

The failure to enforce corruption laws is accompanied by a general failure of the government to properly account for expenditures and to enforce tax laws. Less than 2.5 percent of the population pays income taxes. According to Transparency International, the auditor general's office "lacks financial, human and physical resources to perform its functions effectively."^[67] The auditor general's office is authorized to have 1,777 employees, but there were 703 vacancies in 2008.^[68] Misuse and misappropriation of state funds identified by the auditor general must first be reported to the government. The auditor general does not have the authority to take action against any person except for members of local government. There appears to be very little interest in addressing the problems with the auditor general's office, either in the government or in civil society, which has organized intermittent campaigns but failed to force government action.

Sri Lanka does not have a freedom of information law. In 2003, a bill was approved by the cabinet, but it was never brought before parliament. The government has traditionally been relatively open in making government records available to the public, but the process has become increasingly decentralized in recent years, as the government has allowed individual offices to issue their own publications rather than through a central government publications office. This makes it difficult to find material or even to know what is available.

Parliamentary proceedings, including the extensive debate in November over each year's budget proposal, are published and made widely available to the public. In the Open Budget Initiative's 2010 Open Budget Index, Sri Lanka received a score of 67 percent, meaning it provides "significant information to the public."^[69] However, despite the annual reporting of the auditor general and the PAC on government income, spending, and financial discipline, expenditure accounting has become less transparent and efficient recently due to executive interference. The government contracting process remains secretive, which makes it very difficult for interested citizens and groups to track the size, bidders, and recipients of government contracts. Foreign assistance disbursements are not usually published. Public procurement is "sometimes not transparent and seldom open to competitive bidding."^[70] State-owned enterprises are not monitored or audited by the auditor general and thus, cannot be reviewed by parliament.^[71] While evidence on the scope of corruption in government expenditures is scarce, there is a general consensus that the Rajapaksa government has made no visible effort to address the problem.

Recommendations

- Repeal or amend the 18th Amendment to restore independence of the Judicial Services Commission, Bribery Commission, Human Rights Commission, Public Service Commission, and the Elections Commission.
- Resolve the land and resettlement issues of people displaced by the civil war.
- Protect the media from violent attacks and cyber warfare.
- Depoliticize the police force by creating an independent National Police Commission and stopping all transfers of officers for political purposes.
- Reform the judicial system by reducing politicization and the backlog in cases.

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Notes

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