

# Sri Lanka: Constitutionally entrenched impunity

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## **A Statement by the Asian Human Rights Commission on the occasion of the Human Rights Day**

### SRI LANKA: Constitutionally entrenched impunity

(AHRC STATEMENT) In Sri Lanka, the possibility of realizing human rights continues to become bleaker as the power and authority of the courts are continuously reduced due to the expansion of the power of the executive president. The country's constitution itself has entrenched impunity by way of virtually displacing the separation of powers principle with the absolute power principle in favor of the executive. The actual possibilities of judicial protection of the individual against the state has been reduced to an extent that today, the power of the judiciary is marginal. Judges who dare to act with independence to uphold the writ jurisdiction for the purpose of safeguarding individual citizens seriously risk their own judicial careers.

The ever diminishing authority of the courts has made its adverse influence felt in all public institutions. The policing system in Sri Lanka has lost its capacity to uphold the rule of law. Lawlessness has spread into all areas of life as the police remain incapable of dealing with crime and upholding law and order. The Inspector General of Police and the high-ranking police officers no longer have the capacity to ensure discipline within the police as the policing system is controlled from the outside by the executive president and the politicians of the ruling regime. This process is known as the politicization of the police force. The Sri Lankan police has a reputation of the widespread use of torture at all police stations. Hundreds of cases have been recorded in 2010 relating to use of torture and extrajudicial killings that have taken place throughout the country. However, there is no machinery to investigate such allegations. A few years ago, Special Inquiry Units of the CID were assigned to investigate allegations of torture and extrajudicial killings. In many of the investigations, SIU teams found that the allegations were credible and many indictments were filed against the police for violating the country's law against torture, Act no.22 of 1994. However, this practice of assigning SIUs to investigate such allegations has been abandoned. So-called internal inquiries, conducted by high-ranking police officers themselves, have no credibility at all. When allegations of abuse of police authority are made to the Inspector General of Police, he promptly sends a reply promising investigations. However, nothing credible ever happens. As a result, the practice of torture and extrajudicial killings continues at police stations. In most instances, the victims are innocent and belong to the poorer sections of society. The intended purpose of torture is often to find a substitute 'criminal' to be made the accused in crimes that the police have failed to resolve. Such widespread torture by the police is quite well-known. However, the government is unwilling and incapable of dealing with this issue.

The country's court system is beset with extraordinary delays and inefficiencies to the extent that it is incapable of ensuring fair trial. Very often, a trial in a criminal case goes on for several years. Often, four or five judges preside over a trial due to transfers that take place during the period of the trial. As a result of this process, the judges do not have the opportunity to see and hear all witnesses. In many cases, decisions are made on evidence recorded by their predecessors. This

situation leads to great abuses. Often, defense counsels make false representations of what has taken place previously at the trial and there are instances where judgments have been made on the basis of such falsified submissions which contradict the evidence on record. Fair trial also suffers due to absence of a witness protection law and program. There have been instances when the witnesses have been killed in order to prevent them from giving evidence in court. Due to threats or incentives, many witnesses also go back on their evidence. The conviction rates are very low due to such changes of position by the witnesses.

At the heart of the failure of justice in Sri Lanka are several factors: Inadequate budgeting for justice allows for extraordinary delays and inefficiencies within the system. Besides this, the overall politicization of the public intuitions has also penetrated into the area of administration of justice. The public trust in the process has been seriously eroded over a long period of time. The single, most important, factor that undermines judicial incapability in Sri Lanka is the expansion of the power of the Executive President and his ability to stand above the law. Until this constitutional position is changed it is not possible to change this situation for the better.

The chapter on Sri Lanka in the annual report for the Asian Human Rights Commission for 2010 examines at length the political system that has undermined the legal system and threatens the rule of law in Sri Lanka.

As a consequence of this situation, the entirety of the population is affected and, naturally, the minorities are affected the worst. The report states that people in the north and east remain outside the protection of the law. There does not appear to be any serious attempt to improve the legal protection for people who have been affected by the prolonged conflict in the north and the east. The lack of credible opportunities for people with grievances to communicate them to public authorities, the possibility of dealing with past violations and violence, has been obstructed. A process of truth-telling is essential for dealing with human rights abuse and violence in any society. This has been denied in Sri Lanka. The government holds the view that a serious truth telling exercise would damage fragile relationships. In fact, the government seems to fear that truth telling may lead to the discovery of evidence which may in turn lead to support for the call for inquiries into war crimes. The government appointed Lessons learned and Reconciliation Commission (LLRC) lacks the mandate and the capacity to deal with the allegations of war crimes and serious abuses of human rights.

The result is the continuous occurrence of serious abuses such as forced disappearances. The cases of Prageeth Ekanaliyagoda and Dhirimadura Upali Mendis, who was a businessman in Galle, points to the fact that disappearances are now being used to silence political opponents and also for gaining advantage over rivals in business. It is common to hear threats of disappearances. The possibility of such occurrences has created a climate of fear in every part of the country.

This climate of intimidation has virtually paralysed the country's freedom of expression and publication. The quality of the media has degenerate greatly due to a self-censorship arising out of fear of consequences of daring to reveal truth. Many journalists have left the country and many of the crimes reported relating to journalists previously have never been resolved. Virtually there is not even an expectation that there will be any serious investigation into any allegations of abuse towards journalists.

Political opponents are being serious harassed and subjected to fabricated cases, as demonstrated in many cases filed against the former opposition candidate in the presidential election, Sarath Fonseka. The only way out of fabricated charges for such political opponents is the find a way to compromise and to abandon their political opposition. The serious pursuit of destroying the multi-party democracy has been a pursuit of all political regimes since 1978. The present regime has

mastered this art and thus multi-party democracy in Sri Lanka is under serious threat.

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