

Sri Lankan Supreme Court overrules appeals to international human rights body

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In a major attack on democratic rights, the Sri Lankan Supreme Court ruled last month that citizens have no right to lodge complaints with the Geneva-based United Nations Human Rights Committee (UNHRC). The court declared that the country's accession to the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) was "unconstitutional and illegal".

A five-judge bench headed by Chief Justice Sarath N. Silva issued the ruling on September 15 amid an escalating civil war and well-founded allegations of abductions, extra-judicial killings and "disappearances" carried out by the military and its paramilitary allies. The cold-blooded killing of 17 local workers attached to the French aid agency Action Contre la Faim (ACF) in Muttur in early August is just one high profile case in which the military are directly implicated.

No serious, independent investigation has taken place into the many allegations against the security forces this year. Because no military personnel have been prosecuted, international human rights organisations have concluded there is a culture of impunity in the country. The Supreme Court ruling has now effectively blocked any formal international intervention into cases of gross abuses of democratic rights.

The Supreme Court based its decision on the assertion of Sri Lankan sovereignty. As the accession to the ICCPR's Optional Protocol was signed by the previous president Chandrika Kumaratunga in 1997 and not adopted by parliament, it was "not valid in the law of the country," the judgment stated. At the time, however, the media hailed Kumaratunga's decision as a great step by the government to commit itself to international human right norms.

The court's defence of "national sovereignty" is in line with the denunciations by Sinhala extremists of even the mildest international criticisms of the renewed war and

the military's abuses. The Janatha Vimukthi Peramuna (JVP) and Jathika Hela Urumaya (JHU), which back the government, have repeatedly demanded the removal of Norway as the formal facilitator of the international peace process for its alleged pro-LTTE bias and breaches of Sri Lankan sovereignty.

The Supreme Court was ruling on an application by Nallaratnam Sinharasa to secure the "domestic implementation" of the UNHRC's findings on his plight. Sinharasa was arrested in July 1993 under Sri Lanka's notorious Prevention of Terrorism Act (PTA) and emergency regulations, which have been in force for most of past 40 years.

Sinharasa was severely tortured, resulting in permanent blindness. After nearly five months in detention, he allegedly signed a confession in December 1993 written in Sinhala, a language he could not read. In September 1995, he was convicted of five counts of conspiring to overthrow the government, by participating in attacks on army camps. He was sentenced to a total of 50 years in jail, later reduced on appeal to 35 years.

The sole basis for Sinharasa's conviction was his "confession". The prosecution provided not a single piece of corroborative evidence. According to Sinharasa, when he refused to sign the confession, a police officer forced him to put his thumbprint on the document. This scrap of paper was accepted by the court as evidence. Under the PTA, the burden of proof rests with the accused to prove that the confession was made under duress or torture.

Sinharasa appealed to the UNHRC, declaring that it was impossible for him to satisfy the burden of proof under section 16(2) of the PTA. He had been compelled to sign the confession in the presence of the very police officers who had earlier tortured him.

His treatment was a blatant violation of article 14, paragraph 3(g) of the UN Covenant, which states that "no one shall be compelled to testify against himself or

confess guilt". The UNHRC said the Sri Lankan PTA breached the provision and declared that the burden should be on the prosecution to prove that any confession was made without duress.

The UNHRC also found that Sinharasa's rights had been breached by the lengthy delay in the hearing of his appeal in the Supreme Court. It took more than four years—from September 1995 to January 2000—for the legal process.

Last month's Supreme Court ruling sets a precedent for overturning other international treaties and declarations that Sri Lanka has previously adopted. The decision opens the door for the security forces to violate the basic protections contained in the ICCPR without fear of legal consequences. It will also encourage further abductions and killings designed to intimidate and terrorise the Tamil minority and anyone opposed to the war.

Significantly, the Supreme Court ruling had nothing to say about how the PTA and other Sri Lankan law breach democratic rights, nor called for any changes. Its narrow argument that Sri Lankan law is constitutionally sacrosanct, in effect defends the existing anti-democratic legal provisions and thus the gross abuses of democratic rights by the security forces.

The same argument was advanced by the government in response to the UNHRC findings on Sinharasa's case. The Supreme Court decision approvingly quoted that response, which declared that the government does not have the constitutional right "to release the convict or grant a retrial" and "cannot be expected to act in any manner which is contrary to the Constitution of Sri Lanka".

In the ruling's concluding paragraph, the Supreme Court declared its sympathy for the "plea of helplessness on the part of the government in response to the Human Rights Committee... which does not reflect well on the Republic of Sri Lanka." So to save the government and the country from any future embarrassment, it ruled the 1997 accession to the Optional Protocol invalid and summarily dismissed Sinharasa's application.

It is no accident that the Sri Lankan Supreme Court made such a ruling as the US Congress was putting together legislation to sidestep the Geneva Conventions and legitimise the arbitrary detention and torture of so-called unlawful combatants by the CIA and US military. Under the banner of its bogus "war on terror," the Bush administration has created a reactionary climate in which governments around the world feel they can thumb their noses at previously established norms of international

law.

There has been a marked absence of any protest or debate in the political and media establishment in Colombo on the Supreme Court ruling. In a rare comment, Kishali Jayawardene in her *Sunday Times* column on October 1 lamented the lack of discussion among "public, civic society organisations, those belonging to the legal and judicial services and most importantly legal academics".

She continued: "The deliverance of the SC [Supreme Court] judgment has direct effect on all areas of law and not only international human rights law... However, the continuing absence of any substantial debate on these issues is further solid evidence of the abandoning of any claim that we live in a society which has vigorously democratic thought and movement."

The lack of any discussion is one more symptom of the closing of ranks in Sri Lankan ruling circles as the government and the military have escalated the offensive against the Liberation Tigers of Tamil Eelam (LTTE). Just as there has been no criticism of the abuse of basic rights by the security forces, so there has been no criticism of the military's flagrant breaches of the 2002 ceasefire agreement.

Last Friday, the European Union attempted to introduce a timid resolution into a session of the UNHRC, which is currently meeting in Geneva, critical of Sri Lanka's poor human rights record and citing cases of the abduction and killing of civilians. Human Rights Minister Mahinda Samarasingha responded yesterday, berating the EU for failing to consult and declaring the move "unwarranted" as the government was acting on allegations of human rights abuses.

Far from taking action to rein in the military, the government, in line with the Supreme Court decision, is once again seeking to avoid any international scrutiny of the mounting crimes of the security forces as fighting with the LTTE intensifies.



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