

Sri Lanka: An Absence of Credible and Independent Institutions

Sri Lanka has witnessed a progressive decline in the independence and effectiveness of most of its democratic institutions. These include the police, the public service, the Parliamentary Oversight Committees, the Attorney General's Department, the judiciary, the Public Service Commission, the Human Rights Commission, the Police Commission and the Commission to Investigate All Forms of Bribery or Corruption.

This decline in the independence and effectiveness of the democratic institutions has accelerated over the past four years. The downgrading of the Human Rights Commission by the International Coordinating Committee in 2007 is a recent illustration of this process.

At the moment there is no national institution, including the courts, that commands the credibility and respect of all sections of Sri Lankan society and of all its communities. In some part of the country, as a result of the conflict, there is a complete absence of institutions or they function in a limited way in extremely trying circumstances.

The Human Rights Commission Act of 1996 contemplates an institution that will perform a broad range of functions from investigating human rights violations to advising government on appropriate legislative and administrative procedures. Although the current moment demands that the HRC exercise the full extent of its mandate and responsibilities, it has chosen instead to be a silent spectator. This silence and inaction of the HRC at a moment of severe human rights crisis violates one of its key responsibilities as laid down in the Paris Principles and in the Human Rights Commission Act. The HRC lacks independence, credibility and has been ineffective in responding to the victims of human rights abuse in this country at a moment of severe human rights crisis.

In 2005, in a bizarre judgement, the Supreme Court of Sri Lanka held that the ratification of the First Optional Protocol to the ICCPR by the Executive was unconstitutional. It held that this unconstitutionality could only be cured by a Special Majority in Parliament supported by the verdict of the People at a Referendum.

There has been multiplicity of ad hoc institutions set up recently in Sri Lanka, including several Commissions of Inquiry. Most of them have been irrelevant. The most recent of these Ad Hoc mechanisms was the Commission of Inquiry established to investigate and report into 16 specific human rights violations committed over the past two years.

The Commission of Inquiry was set up in November 2006. Since then it has only been able to commence inquiry into two incidents, both of which are ongoing. Much of its work has lacked transparency and its methods of work have been criticized by the International Independent Group of Eminent Persons (IIGEP) as failing to conform to international standards for inquiries of this nature.

Almost 10 years ago the state published draft legislation to establish an autonomous and independent Commission on Women. Although the originally draft has undergone many changes, and women's groups have contributed to these changes, the draft law has yet to be passed by Parliament.

Some years ago Parliament adopted the 17th Amendment to the Constitution which established a multi-partisan Constitutional Council (CC) and removed the President's unbridled power to make key appointments to independent institutions. As a result of bickering between two minority political parties in Parliament the CC has been dysfunctional for over two years and the President has made appointments to the independent institutions including the Human Rights Commission and the Police Commission, in blatant disregard of the express constitutional provisions.

It is a matter of utmost urgency to create a national institution that will be independent and objective in its composition, in its mandate and in its practice. As members of civil society, we believe that as a short term measure a field office of the High Commissioner for Human Rights should be set up with independent and credible monitors stationed in different parts of the country. Such a field presence should have the capacity to investigate all violations of human rights and humanitarian law, the ability to access all areas of the country, the mandate to engage with a broad range of actors and groups, and the power to publicly report on its findings.

In the medium to long term an effort should be made to depoliticize the existing Sri Lankan institutions and to transform them into independent and effective mechanisms for protecting human rights and advancing democracy.

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