



SRI LANKA

CAPITAL: Colombo

POPULATION: 20.5 million

GNI PER CAPITA (PPP): \$4,460

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	4.26	3.55
CIVIL LIBERTIES:	4.43	3.83
RULE OF LAW:	4.05	3.01
ANTICORRUPTION AND TRANSPARENCY:	3.79	3.25

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Robert C. Oberst

INTRODUCTION

Over the last four years, the human rights and governance situation in Sri Lanka has deteriorated sharply. Much of the decline can be attributed to the government's extensive use of force against the Liberation Tigers of Tamil Eelam (LTTE) rebel group. Most international observers consider the military campaign to be rife with human rights abuses against both the LTTE and civilians. However, the country has also suffered from the current administration's increasingly hostile attitude toward critical or dissenting views among journalists, politicians, and civil society.

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 They claim to be the original civilized inhabitants of the island and speak the Sinhala language. Although there are some Christians among them, most are Buddhists. The Sri Lanka Tamils, about 12.7 percent of the population, are descendants of early settlers on the island, speak Tamil, and are mostly Hindus. They represent a majority in most of the northern and eastern parts of the island, with other pockets in large cities. 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. The final large ethnic group is the Indian Tamils, who live primarily in the hill country of central Sri Lanka. They speak Tamil and most are Hindus. Comprising 5.5 percent of the population,

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they arrived on the island later than the Sri Lanka Tamils and consider themselves culturally distinct.

When the country secured independence from Britain in 1948, the dominant pre-independence political movement became the United National Party (UNP), which appealed primarily to the Sinhalese. 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 (later the Tamil United Liberation Front). Growing youth unemployment and the government's failure to resolve economic and social problems resulted in the development of active youth movements among both Sinhalese and 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 1988–89.

A series of Tamil grievances ultimately led to the LTTE insurrection. These included allegations of ethnic bias in university admissions, high unemployment among Tamil youth, claims of a pro-Sinhalese bias in the awarding of jobs and government programs, and a series of anti-Tamil riots from 1977 to 1983 that many Tamils believed the government allowed to happen. In 1984, the simmering conflict developed into open warfare between the LTTE and the government. By the early 1980s more than 20 Tamil rebel groups were involved in the fighting; almost all would eventually either disappear or be militarily destroyed by the LTTE, though several gave up armed conflict in the late 1980s and remain a factor in Tamil politics.

Over the subsequent decades of warfare, tens of thousands of civilians, mostly Tamils, died or disappeared. In response to international pressure, both sides reduced their attacks against civilians after the mid-1990s. A cease-fire was achieved through Norwegian mediation in 2002, but it began to break down after an SLFP-led coalition won a narrow victory in the 2004 elections. Mahinda Rajapaksa of the SLFP won the 2005 presidential election, in part because the LTTE ordered all Tamils to abstain from voting. Most had been expected to vote for UNP leader Ranil Wickremasinghe. Rajapaksa immediately consolidated power and made alliances with Sinhalese ultranationalists to increase his support. He initiated a stepped-up military campaign against the LTTE that eventually resulted in the rebel group's defeat and the deaths of almost all of its leaders in May 2009. This appeared to mark the end of the 25-year civil war, but the victory came with an increase in human rights abuses and persistent allegations that Rajapaksa is trying to create a dictatorship while stifling dissent and condoning violent attacks against his opponents.²

ACCOUNTABILITY AND PUBLIC VOICE**3.55**

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.50
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.50
CIVIC ENGAGEMENT AND CIVIC MONITORING	3.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	2.86

Sri Lanka has a long history of relatively free and fair elections. The 225-member unicameral Parliament is elected for a six-year term through a mixed proportional-representation system. The last parliamentary elections in April 2004 were relatively fair, with participation by a total of 6,024 candidates representing 24 political parties and 192 independent groups. Then president Chandrika Kumaratunga's United People's Freedom Alliance (UPFA), a bloc led by the SLFP, won with 46.4 percent of the vote and 105 seats, although it failed to attain a majority and was forced to form a coalition government.³ The UNP, with 82 seats, formed the core of the new opposition, while a collection of Tamil parties won 22 seats. A new party formed by Buddhist clergy, the Jathika Hela Urumaya (National Heritage Party, or JHU) won nine seats and has generally aligned itself with the government. While the campaign period was relatively free from both violence and fraud, there were 250 complaints of intimidation and ballot stuffing on voting day.⁴

In contrast, the presidential election held in November 2005 was plagued with irregularities. The 13 candidates were generally able to campaign freely, except in LTTE-controlled areas. However, there were reports that state resources were abused throughout the campaign period to support the UPFA, and the commissioner of elections received 77 complaints relating to misuse of state funds. While the preelection period was less violent than in past years, 30 complaints of violence and intimidation were ultimately submitted to the commissioner. Rajapaksa, the incumbent UPFA prime minister, narrowly won with 50.29 percent of the vote, defeating former prime minister Wickramasinghe, who garnered 48.43 percent. Rajapaksa had promised to reject federalism and renegotiate the ceasefire with the LTTE, which prompted several smaller parties to endorse him. A boycott by the LTTE and their intimidation of voters resulted in low voter turnout and violence, especially in the northern and eastern regions.⁵ A proposal to rerun the election in these areas was rejected. Allegations later surfaced that Rajapaksa had colluded with the LTTE to stifle Tamil votes. In 2007, Parliament initiated an investigation into these claims that continues as of mid-2009.

Local and provincial council elections since the 2005 vote have been even more problematic. The provincial council balloting for Eastern and North Central Provinces in 2008 and the local council elections in Eastern Province in 2007—won by allies of the government, as have all local and provincial

elections since the current coalition came to power in 2004—were marked by serious violations of democratic principles, including widespread voter intimidation and attacks on supporters of all parties.⁶ A monitoring group, the Campaign for Free and Fair Elections, described the 2008 Eastern Province contest as “not at all ‘free and fair,’” citing enforcement failures and violations such as the misuse of state resources, incidents of forgery during the candidate nomination period, as well as ballot stuffing, violent assaults, and obstruction of voting on election day.⁷

Electoral violence and intimidation have made campaigning a dangerous activity. During the 2004 parliamentary campaign, 5 people were killed, 15 were seriously injured, and 350 were mildly injured, although this level of violence represented a decline from previous years.⁸ In the run-up to the 2005 presidential election, three party officials were assassinated.⁹ The Centre for Monitoring Election Violence (CMEV) reported a reduced level of violence in the 2008 provincial elections, but still noted eight attacks on candidates.¹⁰ In the provincial council elections for Central and North Western Provinces in February 2009, the CMEV again reported far lower levels of violence, but election violations that “raised serious concerns” nevertheless occurred. They involved “the threat and intimidation and assault of voters, and threat and assault of police officers and government servants serving as party polling agents.”¹¹ Many candidates limit themselves to activities that will not endanger their lives, establish campaign offices in safe areas that may be far away from voting populations, or assemble armies of thugs to provide protection. This has added to campaign violence, as rival bands of thugs often clash with one another.

Because of widespread fraud in earlier elections, the government passed a law in October 2004 requiring that voters show their national identity card.¹² This has led to a separate problem, as the security forces have used ID cards to control the movement of Tamils. Without the cards, Tamils cannot travel outside their villages, and many Indian Tamils lacked cards because they had only been granted citizenship in recent years. While there is a need for better screening of voters, the ID card requirement has served as a way to disenfranchise citizens. In the 2009 Central Province elections, it was estimated that 75,000 to 100,000 voters, or about 10 percent of the electorate, were unable to vote because they lacked ID cards.¹³

Sri Lanka lacks campaign finance legislation, and while elections have traditionally required relatively small budgets, the costs have been growing and television advertising is now used extensively in national elections. Consequently, access to financial resources is increasingly necessary for a successful campaign. Some observers have raised concerns that major financial disparities between candidates have diluted the quality of Parliament members.

Sri Lanka’s semipresidential system, like the French system on which it is modeled, does not clearly separate powers between the three branches of government, nor between the president and prime minister. Still, President

Rajapaksa has assumed more power than his predecessors, primarily because of his refusal to obey several Supreme Court rulings. One decision ordered the president to observe the constitution's 17th Amendment, which stipulates that the Constitutional Council rather than the executive has the authority to appoint members of independent commissions; another ruling ordered that fuel prices be reduced.¹⁴ The first decision came in response to Rajapaksa's failure to reconstitute the Constitutional Council after the terms of its members expired. Instead he had usurped its powers and directly appointed loyalists to several important posts. As of 2008, he had appointed six Supreme Court judges, eight Court of Appeal judges, and two inspectors general of the police force.¹⁵

The president and three of his brothers, all of whom hold government positions, currently make all critical decisions and control public spending. The president doubles as minister of defense (among other portfolios), and his brother Gotabaya holds the post of secretary to the minister of defense, giving them a remarkable amount of power over the security forces. They have increasingly exercised this power to intimidate the media and opposition figures. In addition, the president has been able to influence the country's anticorruption bodies due to the appointment of his brother Basil to the Committee on Public Enterprises. A third brother, Chamal, serves as minister of ports and aviation and of irrigation and water management.

Along with the decline in the fairness of elections, there has been a decline in government accountability and bureaucratic neutrality. The once-independent civil service has become a partisan battleground. Government politicians interfere with the appointment, transfer, and firing of public servants, and many bureaucrats avoid any action that might anger the governing party or opposition members who may ultimately come to power. Those who anger key politicians are punished with transfers to unfavorable locations. Until recently, this could mean being sent to government offices in the LTTE war zone.

Sri Lanka has never had many civil society groups that contribute to the drafting of legislation in Parliament. Traditionally, Sri Lankan politics have been highly personalized, and those seeking government action contact individual members of Parliament (MPs) with whom they have a connection or relationship. Although there is a committee structure in Parliament, there are few hearings on pending legislation, leaving very little opportunity for outside groups to provide input. Civil society organizations have consequently been unable to exercise effective oversight of government actions. The Centre for Policy Alternatives was created in 1996 to provide such oversight, but despite issuing several important reports on government operations and making an effort to influence policymakers, it has not had a significant impact.

Among the most serious problems facing the country is the government's hostility toward nongovernmental organizations (NGOs) and the media. The government views any independent NGO as a threat and has been developing a set of laws to more closely control such groups. All NGOs are required

to register with the government,¹⁶ and as of July 2009, 969 domestic and 309 international NGOs were registered.¹⁷ Current law allows the government to review the activities of NGOs and requires them to report their expenditures and sources of income. Under the proposed legislation, NGOs would be required to not only submit plans of action for approval, but also to turn over periodic progress reports to prove that they are achieving their goals. Moreover, the government would have the power to revoke the visas of foreign NGO workers and to ban NGOs. The Asian Human Rights Commission has described the law as unnecessary to control NGO corruption and states that “the proposed new law . . . will violate the fundamental human rights of equality before law, the right to hold opinions, freedom of expression and freedom of association.”¹⁸

The government has asked several international NGOs to leave the country over the last three years, and expelled the leaders of several others. Among these was the head of the German-based Berghof Foundation for Conflict Studies, who was expelled after refusing to appear before Parliament’s Select Committee on NGOs.¹⁹ The committee was created to produce a report on NGOs after complaints arose about the supposedly pro-LTTE and pro-Christian behavior of some groups. Its first interim report in 2008 included an attack on Transparency International that questioned the group’s right to investigate police corruption.²⁰ Other expulsions in recent years have included foreign employees of the International Centre for Ethnic Studies (Colombo), Norway’s Campaign for Development and Solidarity (FORUT), CARE, the International Committee of the Red Cross (ICRC), Save the Children, and the Norwegian Relief Council.

Associated with the legal and government pressure on NGOs are widespread violent attacks, including the murder of staff members. The Sri Lankan Law and Society Trust produced a list of 58 aid workers killed from 2005 to 2007.²¹ Three aid workers were killed in 2008, and at least seven more had been killed as of April 2009.²² Some of these attacks were carried out by the LTTE, but it is widely believed that the government or its supporters have been responsible for many others. In 2006, 17 Sri Lankan aid workers for the French group Action Contre La Faim (Action Against Hunger) were killed in the eastern town of Muttur as government forces captured the town from the LTTE. Despite international pressure on the government to find the killers, the case remains unresolved.

Media independence and freedom have been seriously undermined since the 2004 national elections. The International Federation of Journalists has described the media situation in Sri Lanka as a rapidly worsening “war on journalists,” while Reporters Without Borders dropped Sri Lanka to a ranking of 165 out of 173 countries in its 2008 press freedom index.²³ In recent years, journalists who report on sensitive issues like corruption, human rights abuses, and military strategy have been subject to harassment, intimidation, and, increasingly, physical attacks; a total of 34 journalists have been murdered since 2004.²⁴ Among the most high-profile murders was that of Lasantha Wickramatunga,

editor of the *Sunday Leader* and *Morning Leader* newspapers. His death on January 8, 2009, led to the shutdown of the *Morning Leader*. Between mid-2008 and mid-2009 alone, 11 Sri Lankan journalists were forced to flee the country to protect their safety.²⁵ Moreover, the police have failed to make an arrest or identify suspects in most of these cases. In the 2009 Impunity Index compiled by the Committee to Protect Journalists, Sri Lanka ranked fourth out of 14 countries in which journalists are killed regularly, with at least nine journalist murders in the 1999–2008 period currently unsolved.²⁶

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 and have ceased to be a source of objective reporting. The government also has its own radio and television outlets. This government dominance stimulated the development of independent print outlets, including several Sinhala, Tamil, and English dailies. Nevertheless, private news outlets that are seen as critical of the government have faced increased harassment and attacks. For example, Leader Publications, publisher of the *Sunday Leader* and *Morning Leader*, was the target of an arson attack in 2007, and the Sirasa TV studio complex was nearly destroyed by armed men in January 2009. Several private outlets have closed down due to this climate of fear and violence, while others, such as the Standard Newspaper Group, have been driven out of business by government financial pressure.²⁷ As a result, the availability of objective, independent sources of information in the country has drastically diminished, and the government line has dominated reporting since the last phase of the war began in 2006.²⁸

Past governments have used highly restrictive slander and libel laws to prevent media criticism of public officials. Because of the inefficiency of the court system, slander or libel suits are invariably dragged out over several years, increasing the cost to the targeted media organization. The laws, which favor plaintiffs, contribute to media self-censorship, particularly on national security issues, corruption, and human rights abuses.

In December 2008, the government censored the British Broadcasting Corporation (BBC) and the *Sunday Leader*.²⁹ The BBC ultimately stopped providing content to the state radio outlet.³⁰ A month before Wickramatunga's murder, the *Sunday Leader* was forbidden to mention Defense Secretary Gotabaya Rajapaksa by name. Separately, one of Sri Lanka's foremost journalists, D.B.S. Jayaraj, resigned from the staff of the *Nation* in September 2008 to protest the publication's censorship of articles after several of its journalists received death threats.³¹

The government has arrested large numbers of journalists or taken them to police headquarters for questioning. It has also passed rules that tightly restrict journalists' freedom of movement and ability to cover certain areas. Since 2007, all reporting of frontline battles with the LTTE has been banned, and no reporters have been allowed near the battle zones. In May 2008, foreign

journalists were also barred from covering the provincial council elections in Eastern Province.³² In 2009, the government deported or denied visas to several foreign journalists.

The authorities' hostility toward the media also takes the form of public pronouncements condemning criticism of the government. These attacks have included accusations that the *Boston Globe* is a terrorist mouthpiece, and a Ministry of Defence statement accusing the media of treachery against the armed forces.³³ Gotabaya Rajapaksa, after ordering the president and secretary of the Sri Lankan Working Journalists' Association to meet with him, appeared to threaten media workers with violence, warning that "those who love military leaders would take serious action against journalists. Such actions are not wrong, and the Government cannot stop such actions."³⁴

Efforts to control internet news sources have increased. A number of opposition media sources have been targeted in hacking incidents, although it is difficult to identify the culprits. In June 2007, the TamilNet website was blocked by the government.³⁵

CIVIL LIBERTIES

3.83

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.75
GENDER EQUITY	4.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.50
FREEDOM OF CONSCIENCE AND BELIEF	5.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.25

The government's campaign to control LTTE terrorism has led to numerous and serious human rights violations, with extensive evidence pointing to abuses by the security forces. For years, both sides in the civil war have frequently targeted civilians. This problem escalated in late 2008 and early 2009, as government military victories forced the LTTE to retreat into their jungle strongholds. The rebels used civilians as a shield against the advancing government troops, but the government pressed ahead with extensive bombing and shelling, showing little concern for civilian casualties. Human Rights Watch described the conflict as a "war on the displaced" and accused the government of attacking a safe zone created for civilians and hospitals. Civilians also suffered due to a government blockade of the war zone, which prevented relief agencies from entering the affected areas.³⁶ Although there were no outside observers to determine the extent of the casualties, some sources have estimated that as many as 20,000 Tamils were killed by government shelling during the final offensive against the LTTE.³⁷

Although the security forces have a long history of torturing detainees, there has been a sharp increase in state terror since 2004. In 2006, Tamils began disappearing by the hundreds in government-controlled areas. However,

without independent law enforcement officers to investigate the incidents, there is no way to prove allegations that the security forces were involved. The most common claims were against militia groups working with the security forces, including Tamil groups that had split with the LTTE, such as the Tamil Makkal Viduthalai Pulikal (TMVP) and the Eelam People's Democratic Party (EPDP).

The number of reports of torture involving both LTTE and criminal suspects has increased sharply under the Rajapaksa administration. In a 2007 report, the UN Special Rapporteur on Torture, Manfred Nowak, stated that "torture is widely practiced."³⁸ The progovernment militia groups, some of which have been given the power to detain Tamils, often work with the regular security forces to arrest and torture suspects before releasing them, killing them, or turning them over to the police for further action. Police powers in the Eastern Province, for example, have been delegated to the former LTTE fighters of the TMVP, who now arrest people at will, interrogate them, and transfer them to the police.

Torture is often used against suspected terrorists, who are held without court supervision. The 1979 Prevention of Terrorism Act allows unlimited detention of LTTE suspects without legal representation or safeguards. A significant number of detainees, both LTTE suspects and ordinary criminal suspects, have died in custody, including 26 in the first six months of 2009.³⁹ Due to overcrowding and a lack of basic infrastructure, prison conditions fail to meet international standards. According to Nowak's 2007 assessment, prisons with an intended capacity of 8,200 inmates held 28,000.⁴⁰

Throughout the civil conflict, displaced Tamil civilians have been held in government detention centers until it can be proven that they are not members of the LTTE. In the final offensive, nearly 285,000 civilians sought refuge with government forces and were placed in such camps.⁴¹ Estimates of displaced people prior to that reached nearly 500,000.⁴² The government has given the army control over the detention centers and has banned or limited access for both domestic and international NGOs. There have been widespread allegations of progovernment militia groups "disappearing" detainees, and of sexual abuse and poor medical and sanitary conditions. Although the government improved the conditions in detention camps after the Nowak report, most held more than twice the number of people they were built for, leading to shortages of toilets and poor sanitation. For example, with over 220,000 detainees, the Menik Farm camp in Vavuniya has been described as having "woefully inadequate" sanitation and health facilities, cramped living conditions, and outbreaks of chicken pox, hepatitis, and diarrhea.⁴³

Several progovernment groups, particularly the EPDP and the TMVP, have been accused of carrying out murders and kidnappings of Tamils and political opponents at an increasing rate in the last five years. Since 2005, three prominent Tamil MPs have been assassinated: T. Maheshwaran of the UNP in January 2008, N. Raviraj of the Tamil National Alliance (TNA) in May 2007, and

Joseph Pararajasingham, also of the TNA, in 2005. It has been widely reported that the three were murdered by members of the EPDP.

Rates of criminal violence have also risen. Organized crime bosses often have relationships with powerful politicians, who protect them in return for services including violent attacks on opponents. Few of these attacks result in arrests. In another area of concern, there have been numerous reports on the LTTE's recruitment of underage soldiers. However, the TMVP has also been accused of recruiting child soldiers, including more than 400 in 2007.⁴⁴

There have been a small number of arrests of individuals within the security forces for abuses like those described above. In one prominent case that provided conclusive proof of security force involvement in rights abuses, an air force squadron leader was arrested in 2008 for overseeing more than 100 kidnappings and murders in the Colombo area. He worked with other security force officers and members of the TMVP's Karuna faction in carrying out the actions.⁴⁵ However, in a large number of cases, prosecution has been hampered by several factors. First, the executive branch has displayed a lack of political will to investigate or punish the abuses, dismissing calls for independent probes into alleged violations of international humanitarian law. Second, while the Sri Lankan courts have upheld civil liberties, they often move too slowly to provide effective relief. Third, in many cases the courts are unable to force the cooperation of the security forces. For example, the Supreme Court has issued rulings ordering the security forces to release all detainees held longer than 90 days, but this has been largely ignored.⁴⁶ Even when a court awards damages to petitioners, there is no way for them to collect or for the court to enforce payment. The courts in the Jaffna municipality of Chavakacheri ruled in February 2006 that there was adequate evidence to continue with cases involving the disappearance of 35 youths detained by the army. However, the army would not turn over the suspects for prosecution. Among the officers involved was Janaka Perera, who had since become a UNP politician and served as high commissioner to Australia before being killed by a suicide bomber in 2008. In 1997, he had been the commander of Sri Lankan forces implicated in the disappearance of over 700 youths on the Jaffna peninsula.⁴⁷ Finally, prosecutions have been undermined by extensive threats against witnesses. Sri Lanka does not have any witness protection laws, and murders and intimidation of both witnesses and victims are common.⁴⁸ The murder of UNP lawmaker T. Maheshwaran, noted above, was carried out before a crowd of worshippers in a church. One of his bodyguards shot and wounded the attacker. However, the witnesses were reportedly intimidated before a police line-up to identify a suspect that had been apprehended.

The unsolved status of most political murders and disappearances led the president in September 2006 to appoint a commission of inquiry to investigate 14 murder cases. In February 2007, an International Independent Group of Eminent Persons (IIGEP) was invited to observe and assist the commission, known as the Presidential Commission of Inquiry to Investigate and

Inquire into Alleged Serious Violations of Human Rights. In November 2007, the IIGEP ended its mission prematurely, stating that the Sri Lankan panel was not transparent and did not conduct its business according to basic international norms. They argued that the attorney general intervened on behalf of the government, that witnesses were threatened and not protected, and that officers in the armed services refused to cooperate with the investigation.⁴⁹ After the government's military victory over the LTTE in May 2009, the president declined to continue the mandate of the commission of inquiry and allowed it to be disbanded.

Human rights have also been undermined by the weakening of the National Human Rights Commission over the last four years.⁵⁰ In May 2006, President Rajapaksa appointed five members to the commission in violation of the constitution, which requires the nonpartisan Constitutional Council to make the appointments. The next month, the commission announced that it would discontinue investigating more than 2,000 cases of disappearances. As a result of these changes, the body has effectively ceased to be a force promoting human rights in Sri Lanka.

Gender rights are considered strong relative to neighboring countries, and the government provides legal equality to women, though in some cases it has failed to uphold the principle in practice. Women remain underrepresented in political positions and within the civil service. Their share of Parliament after the last legislative elections in 2004 was about 6 percent.⁵¹ The main gender issues still facing the country are sexual harassment, discrimination in salary and promotion opportunities, and domestic violence. Weak laws prohibiting these abuses have not been enforced, nor has there been any effort to pass new legislation. Matters related to the family—including marriage, divorce, child custody, and inheritance—are adjudicated under the customary law of each ethnic or religious group, which sometimes results in discrimination against women. Furthermore, the intensification of the civil conflict has been accompanied by an increase in the level of violence against women, including rape, and a disproportionately high number of the displaced population is female. Human rights groups have alleged that security forces and militias have abused women in former LTTE-controlled areas. The government denies the claims, and there are no independent observers to verify them because of the government's restrictions on journalists in the north and east.

Constitutional guarantees of equal rights for ethnic and religious minorities have not been adequately enforced. The current government is a broad coalition that includes extreme nationalist parties that view Sri Lanka as the rightful domain of the Sinhalese Buddhists and are very intolerant of religious and ethnic minorities. Such extremist groups are believed to be behind the numerous attacks against Christian churches and worshippers over the last four years, very few of which have been punished, and they are supportive of government efforts to restrict foreign NGOs and assert the preeminence of Buddhism

among the country's religions. They have reportedly intimidated minorities and sought to require all shops (even those owned by Muslims and Hindus) to fly the Buddhist flag on Buddhist holidays. The president stated in his victory speech to Parliament after the LTTE defeat that there would no longer be minorities in Sri Lanka, only patriots and non-patriots, and nationalists subsequently proposed new laws banning all political parties whose names mention an ethnic or religious group. If enacted, such a rule would eliminate all of the current Muslim and Tamil political parties.

The political importance of Buddhism has led the Buddhist clergy to play a major role in government and society, as reflected by the success of the JHU in the 2004 elections. The party promotes the election of Buddhist clergy to Parliament, and since 2007 it has supported the Rajapaksa government, holding one cabinet seat. The JHU has been at the forefront of an effort to control Christian proselytizing.

Proposed "unethical conversion" legislation illustrates the concerns many Buddhists have about Christianity. The Prohibition of Forcible Conversions Bill has been under consideration by Parliament since 2005, but it was essentially dormant for four years thanks in part to widespread international criticism. The government revived it in 2009 on the recommendation of a January report by the government-sponsored Commission on Unethical Conversions, 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.⁵² Under the anticonversion bill as reintroduced by the government, those who tried to convert a Sri Lankan citizen from one faith to another using "force, fraud, or allurement" would face fines of up to 500,000 rupees (US\$4,400) and up to seven years in prison. The U.S. Commission on International Religious Freedom criticized the bill for vague language that threatened to criminalize even peaceful religious practice and conversations about religion.⁵³ Fifteen members of the U.S. Congress, in a letter to the Sri Lankan ambassador in Washington, stated that the legislation would "quite simply extinguish freedom of religion, expression and association for all Sri Lankans."⁵⁴

Beyond the proposed restrictions aimed at Christians, the government has usually avoided interfering in the affairs of the major religions of the country (Buddhism, Hinduism, Islam, and Christianity). Members of all religions have traditionally been allowed to worship as they wish.

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 security forces routinely target Tamils for extra scrutiny and restrictions on movement. Tamils are required to register with the police whenever they move to another city, either temporarily or permanently; no such requirement exists for Sinhalese. Tamils must also obtain permission from the government and security forces before traveling from the north and east to other parts of the country. Such restrictions are exacerbated by security forces' common practice of confiscating Tamils' national identification cards, preventing those affected from traveling beyond their villages; there is no legal recourse for them to regain the cards.

During the ceasefire before the Rajapaksa government came to power, restrictions on Tamils were relaxed, but they have been tightly enforced in the last three years. Since the LTTE defeat, the government has been very slow to remove the restrictions. Under the Prevention of Terrorism Act and emergency regulations enacted in recent years, Tamils may be held by the security forces without access to counsel, charges, or trial. Although the emergency provisions apply to all Sri Lankans, the overwhelming majority of detentions involve Tamils. And as described above, displaced Tamils crossing over from LTTE-controlled areas or caught traveling to or from India are placed in camps to be held indefinitely with no access to the courts.

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, are 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. In addition, emergency regulations imposed in 2005 grant the government the authority to restrict assemblies and rallies, although it rarely denies permission to demonstrate. 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. Human rights NGOs and groups that advocate peace talks have been particularly subject to harassment. Surprisingly, the increased security provisions associated with the ethnic conflict have not led to a reduction in the number of demonstrations.

RULE OF LAW**3.01**

INDEPENDENT JUDICIARY	3.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.50
PROTECTION OF PROPERTY RIGHTS	3.33

The judiciary has traditionally been an independent and fair institution, and there are constitutional procedures to protect judges from political pressure. Nevertheless, the courts have experienced pressure in recent years, and the gradual politicization of the judicial process has become a serious impediment to justice. In some cases, the pressure has come from senior judges themselves. According to the International Crisis Group, “the recently retired chief justice, Sarath Silva, is widely regarded as having played a central role in the judiciary’s current politicization,”⁵⁵ in part by appointing his supporters to judgeships in the lower courts.

However, much of the heightened political pressure on judges and magistrates has come from the executive branch, which has arrogated authority over the judiciary in defiance of the constitution. As noted above, the charter’s 17th Amendment in 2001 created an apolitical Constitutional Council to make independent appointments to key state bodies, including the Judicial Services Commission (JSC), which was previously appointed and largely controlled by the chief justice of the Supreme Court. The JSC is in charge of the transfer, dismissal, and discipline of lower court judges, among other functions. After the terms of the initial Constitutional Council members lapsed in 2005, Rajapaksa refused to reconstitute the body and has since made direct appointments to the JSC, the Supreme Court, and the post of attorney general. In late 2008, following a series of unfavorable Supreme Court decisions, including one that ordered him to implement the 17th Amendment, Rajapaksa made statements threatening the court by reminding the judges of a time when their homes were stoned and they were impeached.⁵⁶

The controversy over the JSC has limited its activities and reform projects, including efforts to create a code of conduct for judges. Moreover, the arbitrary, politicized transfer of lower-court judges is now common and occurs even in high-profile cases. The magistrate overseeing the 2006 investigation into the murder of 17 aid workers in Muttur, who was a Tamil from the region where the crime was committed, was transferred by the justice minister to another district, and no legal justification was provided. The case was then handed to a Sinhalese magistrate in a different location, moving it away from the families and potential witnesses and compromising the fairness of the trial. In November 2007, the case was transferred back to Muttur, but under a different magistrate.⁵⁷

In addition to political interference, the judicial system suffers from a rising number of threats against attorneys. This problem has been extensive on the

Tamil-populated Jaffna peninsula.⁵⁸ Also of concern has been the training of judges. While the criteria for appointment call for judges to be knowledgeable of the law, the country has lagged behind in providing law reports on court decisions. Because most magistrates do not have easy access to these records, it is often difficult for them to base their decisions on precedents 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 held in camps. Furthermore, a backlog of cases results in long delays, sometimes lasting more than 10 years. The Court of Appeal processes about 600 cases a year; as of June 2007, it faced a backlog of 11,000 cases and was receiving about 1,700 cases a year.⁵⁹ The ease with which a party in a case can delay the proceedings has made it difficult for petitioners of modest means to pursue court action. Although independent counsel is available, it is usually too expensive for the average Sri Lankan, especially if the case is delayed. The underfunded Legal Aid Commission, which provides legal assistance to needy litigants, cannot meet the needs of most clients. Mediation boards that were formed in the 1990s continue to function, diverting cases from the court system to a low-cost mediation process that hears about 250,000 civil and criminal cases a year. Mediators are required to undergo a training program conducted by the Ministry of Justice that teaches them a uniform mediation model employed throughout the country.

Prosecutors are theoretically independent of political pressure, but in reality the prosecution process is highly politicized and the criminal justice system has been used increasingly to punish politicians when they are out of power. S.B. Dissanayake, one of the leaders of the opposition UNP and the heir apparent to current party leader Ranil Wickremasinghe, was sentenced in 2004 to two years in prison for a speech in which he criticized the judiciary, and in July 2008 the UN Human Rights Committee deemed his sentence arbitrary and disproportionate.⁶⁰ While cases against political opponents take several years to prosecute, they tend to move through the judicial system faster than other types of cases, in part because of an awareness that the matter could be dropped if power changes hands in the next election.

The security forces have traditionally been uninhibited by civilian interference, except for budgetary and judicial oversight. Under Rajapaksa, the government has exercised more control over all branches of the security forces. This has included the selection of commanders based on political factors. In July 2009, Gotabaya Rajapaksa transferred General Sarath Fonseka, whose status as hero of the anti-LTTE campaign made him a potential political rival, to a less prominent role. There has also been direct political control over the leadership of the police, thanks in part to the absence of a Constitutional Council, which was supposed to appoint independent police officials. Although the security forces have in some cases acted in defiance of political orders, these instances have been relatively rare.

The security forces are actively involved in political affairs, and the problem has been extremely serious during local and provincial government elections, with officers who fail to obey ruling party politicians facing transfer or dismissal. Moreover, security personnel are often told to leave shortly before incidents of ballot-box stuffing or electoral fraud occur.

The security forces have also been implicated in political actions against members of the opposition and other critics of the government. While it is difficult to determine who was responsible for the many unsolved attacks, security force involvement has been proven in some cases. These include an attack by a dozen out-of-uniform policemen on the television station Max TV in February 2009.⁶¹ Most other attacks, such as the assault on Sirasa TV in January 2009, have gone unsolved.⁶²

Private property rights are guaranteed under the constitution, and the government has generally upheld them in practice. However, the long delays in civil cases make court enforcement of property rights ineffective. This is compounded by the weight the legal system gives to possession, which often makes it difficult to evict squatters and allows them to occupy disputed land for decades as court cases progress.

Another problem is the seizure, on security grounds, of private land held by Tamils. A great deal of land in the north and east has been included in declared “high security zones” and confiscated by the security forces. In some cases, the armed forces have held the land for more than 20 years. Parcels of land surrounding military camps are usually turned over to Sinhalese civilians, who use them for commercial purposes or build permanent homes. The military defeat of the LTTE has provided an opportunity for the security forces to seize more land, and the occupation of private property is expected to continue despite the end of hostilities.

ANTICORRUPTION AND TRANSPARENCY 3.25

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.25
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	3.00
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.25
GOVERNMENTAL TRANSPARENCY	3.50

Three significant types of corruption prevail in the Sri Lankan political system: bribes paid in an effort to circumvent bureaucratic red tape, 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 92 out of 180 countries surveyed in Transparency International’s 2008 Corruption Perceptions Index.⁶³

Until the 1970s, Sri Lanka had a strong system of bureaucratic regulations that made conducting business very difficult and time consuming. Beginning

in 1977, those regulations were relaxed and economic activity became much freer. In the last four years, the Rajapaksa government has reinstated some regulations, but it has made no effort to carry out a widespread reregulation of the economy.

The state still owns a significant number of businesses, and Rajapaksa's economic plan rejects the privatization of state enterprises, including "strategic" enterprises such as banks and airports.⁶⁴ State-owned enterprises are often used by friends of the government as a means of accumulating wealth. The Committee on Public Enterprises (COPE) is charged with ensuring that financial discipline is upheld within public corporations and other government business organizations. Its reports to Parliament have revealed the presence of extensive corruption and mismanagement of government funds,⁶⁵ and several recent court cases have highlighted this trend. A 2008 Supreme Court decision found that Lanka Marine Services, a profitable state-owned enterprise, was sold with "dishonest intent" and ordered the buyer to return the company to the government. In another case that is still pending before the Supreme Court, COPE reported in 2008 that the sale of the Sri Lanka Insurance Company was "seriously flawed." Also in 2008, the Supreme Court fined former president Chandrika Kumaratunga for granting state-owned land near Parliament to a private owner.⁶⁶

Despite the widespread phenomenon of illegal gain by public officials, Sri Lanka has still 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 less than 5 percent of MPs had complied with the rule as of 2003. Although failure to make the asset declaration is considered a criminal offense, violations are rarely punished.⁶⁷ Furthermore, a 2007 law states that public officials who have dual citizenship and property overseas are not required to declare their assets.

The Sri Lanka Bribery Commission was created in 1994 as the only agency dealing solely with corruption prevention. The transfer of the commission's director general by President Rajapaksa in February 2008, along with similar transfers of police investigators assigned to the panel, raised doubts about its independence. While the president has the authority to appoint members of the commission, he does not have the right to remove them. At the time of the director general's transfer, the commission was investigating allegations of bribery linked to the purchase of obsolete MiG-27 jets.⁶⁸ While the Bribery Commission receives over 4,000 cases a year, there have been only one or two bribery convictions annually. The general failure of the body has drawn severe criticism from many anticorruption groups.⁶⁹ Although the Supreme Court has ruled against the government in the few high-profile privatization cases noted above, official corruption generally goes unpunished.

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 government interference. Furthermore, the impartiality of the COPE has been under scrutiny since the appointment of Basil Rajapaksa, the president's brother, as a member in 2007, and the appointment of a cabinet minister as COPE chairman in 2008.⁷⁰

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. The auditor general's reports have revealed that the entire tax collection system is corrupt. In 2004, the auditor general found that 441 billion rupees (US\$3.89 billion) in taxes, more than the total tax revenue collected in a year, was lost to fraud committed either "willfully or negligently" by the Sri Lanka Inland Revenue Department between 2002 and 2004.⁷¹ More recently, the 2007 PAC report on government tax revenue revealed value-added tax fraud.⁷² There appears to be very little interest in addressing these problems, either in the government or in civil society, which has organized intermittent campaigns but failed to force government action.

The weak performance of the Bribery Commission has contributed to the growing importance of the press in reporting on and investigating allegations of corruption among government officials. Journalists have been active in reporting illegal acts, but the intimidation and attacks against the media described above have inhibited their ability to pursue corruption stories since the election of President Rajapaksa. Moreover, there is no protection for whistleblowers, and reporting graft in an environment where it is endemic endangers job security, meaning few workers are willing to come forward.

Bribery in the public sector has spread to the school system. While very little systematic evidence is available, bribery by parents to obtain admission for their children to the country's better elementary and secondary schools appears to have increased in recent years.⁷³

Sri Lanka does not have a freedom of information law; a bill was approved by the cabinet in 2003, 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 requiring that they be channeled through a central government publications office. This makes it difficult to find material or even to know what is available.

Parliamentary proceedings are still published and widely available, including the extensive debate in November over each year's budget proposal, which is also made available to the public. In the Open Budget Initiative's 2008 Open Budget Index, Sri Lanka receives a score of 64 percent, meaning it provides "significant information to the public."⁷⁴ 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 of late due to executive interference.⁷⁵ The government contracting process remains fairly 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. 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 tackle the problem.

RECOMMENDATIONS

- Implement the 17th amendment to the constitution by reestablishing the Constitutional Council in order to reduce politicization of the police and judiciary.
- Create mechanisms to hire and train more judges and implement information technology upgrades in order to speed up court cases and clear the large case backlog.
- Abandon the pending legislation further restricting NGO activity as well as the Prohibition of Forcible Conversions Bill.
- Provide official protection for threatened journalists and cease verbal attacks on the media by powerful government and security force members.
- Allow international supervision of Tamil refugee centers and implement, with international assistance if necessary, a comprehensive plan to release refugees and assist their return to and recuperation of their communities.
- Reestablish an independent Human Rights Commission and specifically create, either as a subcommission within the Human Rights Commission or another body independent of it, a group empowered to monitor security force actions.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

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