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Sri Lanka's Ongoing Struggle for Democracy

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When Sri Lanka's military forces finally defeated the Tamil Tigers in May 2009 ending thirty years of civil war, the outcome was greeted in many parts of the country with joy by a people who had endured years of terrorism and violence. However, with the defeat of the Tamil Tigers, the country now faces another struggle of developing a truly democratic society underpinned by the rule of law, judicial independence and a vibrant civil society.

Sri Lanka is one of Asia's oldest democracies with domestic political autonomy granted to the people of Ceylon in 1931 by the British. As such, Sri Lanka's political model was styled upon the British parliamentary system, with an executive prime minister and cabinet responsible to parliament. And from that moment onwards, including through independence in 1948 and the country becoming a republic in 1972, civil society institutions have remained strong, vibrant and independent. All this notwithstanding periodic civil turmoil including ethnic riots in 1958, the assassination of Prime Minister Solomon Bandaranaike in 1959, an attempted military coup in 1962 and a student insurrection in 1971. It was not until the 1970s that rollbacks to Sri Lanka's democratic institutions began to occur. The first move was by Prime Minister Sirimavo Bandaranaike—widow of Solomon Bandaranaike—when she used emergency laws in 1973 and 1974 to curb the country's free press.

However, the real start of the country's democratic crisis started in 1977 when the United National Party (UNP) swept into power and the new Prime Minister J.R. Jayewardene set his sights on becoming the country's first executive president. Within months, Jayewardene had assumed office as the first executive president of Sri Lanka wielding unprecedented and unchecked political power—well beyond the constitutional powers of presidents in the United States or France. Jayewardene empowered his party to expel members of parliament at will and attempted to control the judiciary—including the Supreme Court—which in terms of the constitution was subordinate to parliament. The new constitution granted the president legal immunity and presidential impeachment was designed in such a manner that it would collapse at one stage or the other. The authority to appoint top government officials, judges and the Commissioner of Elections were all at the discretion of Jayewardene.

On paper the new constitution guaranteed fundamental civil rights including the freedom of expression and freedom of the press. However, the president was empowered to declare a state of emergency, which was at times used against those in opposition to Jayewardene. In 1980 the government stripped former Prime Minister Bandaranaike of her civil rights including the right to vote and hold elected office, thus effectively destroying the main opposition and in 1982 Jayewardene was reelected for a second term of office. Over the next few years Sri Lanka faced many upheavals centered upon the 1983 ethnic pogrom against the Tamil people resulting in the emergence of the Tamil Tigers and a fresh insurrection in the south.

Saliya Pieris, 2012 Eisenhower Fellow and Attorney-at-Law who represents cases in Sri Lanka's Supreme Court, discusses how "Civil society in Sri Lanka needs to take a more proactive role in challenging the barriers confronting democracy and to bring pressure to bear for change."



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Chandrika Kumaratunga—daughter of Solomon and Sirimavo Bandaranaike—became president in 1994 and in 2001 introduced a constitutional amendment establishing a Constitutional Council to limit presidential power concerning judicial and key public officer appointments. She also created a host of independent commissions to regulate the civil service, police and elections.

Sri Lanka’s current president, Mahindra Rajapakse, succeeded Mrs. Kumaratunga as president in 2005 and is a charismatic and populist politician who has continued to chip away at the democratic institutions of Sri Lanka, much in the manner of his predecessors, though at a much faster rate. In the aftermath of the defeat of the Tamil Tigers and after winning a second term in office in September 2010, Rajapakse has moved to remove all limits hitherto in place on his powers. Retired Army Commander General Sarath Fonseka who had defeated the Tamil Tigers, challenged Rajapakse in the 2010 presidential election but soon after his defeat was arrested and jailed until May 2012. The Constitutional Council and independent commissions established by Mrs. Kumaratunga were overturned or had their powers truncated, and the limit on two presidential terms was abolished.

Since 2005 there have been several disturbing attacks against independent journalists critical of the government including the murder of Lasantha Wickramatunga, editor of the anti-government newspaper the *Sunday Leader*. Last July, police carried out raids against several anti-government web sites and arrested employees for allegedly bringing the president’s dignity into contempt. There continue to be state-sanctioned abductions of political activists and several people have died while in police custody. Rajapakse appointed an independent commission, the Lessons Learnt and Reconciliation Commission (LLRC) in 2010 to investigate these activities. After lengthy deliberations, earlier this year the LLRC released a report calling for an independent judiciary, a transparent legal process and strict adherence to the rule of law. In addition, it called for investigations into abductions and for measures to prevent harassment and attacks against media personnel and civil society institutions. Also this year, the United Nations Human Rights Council passed a resolution, sponsored by the United States, calling upon the Sri Lankan government to expeditiously provide a comprehensive action plan to implement the LLRC recommendations and to address alleged violations of international law in the campaign against the Tamil Tigers.

However, significant problems still remain in Sri Lanka, especially regarding judicial independence. Indeed, the judiciary has suffered a spate of attacks in the past three months. In July, supporters of a government minister attacked a court house in the north of the country. More recently, assailants attacked the Secretary to the Judicial Service Commission after the commission issued a statement alleging unprecedented governmental interference in its operations. Furthermore, official state media has conducted a smear campaign against Chief Justice Dr. Shirani Bandaranayake who is perceived to be asserting her judicial independence since being appointed by Rajapakse last year.

In Sri Lanka itself, not everyone has taken cognizance of the systematic erosion of democratic institutions. The middle and upper classes, including the business community, have mostly shown apathy in confronting these issues, as has the popular media. While many in private will agree that they are concerned about the threats to rule of law and democracy, they dare not voice these opinions in public.

Civil society in Sri Lanka needs to take a more proactive role in challenging the barriers confronting democracy and to bring pressure to bear for change. Encouraging and empowering the people of Sri Lanka and proactively engaging the Sri Lankan government by the international community are important components if this democratic deficit is to be overcome. Unless and until this is done, Sri Lanka and her people will not be able to fully enjoy the peace and prosperity which they fully deserve.