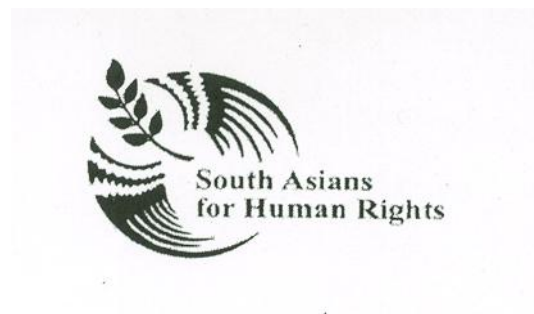


# PARLIAMENT WATCH – SRI LANKA\*

## JULY 2010



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The observance of the rule of law is fundamental to the maintenance of democratic order in a country. The concept embraces the punishing of the guilty to ensuring good governance and fundamental rights that are guaranteed by the constitution promulgated in 1978.

The Police as the enforcement agency of the law at the ground level are sometimes equated to the law itself by ordinary citizens. This belief tends to extend itself to include the judiciary, the adjudicators of justice and the Parliament, as the central legislating body.

The Declaration on the Rule of Law made by the International Commission of Jurists (ICJ) in Athens in 1955<sup>1</sup> states that a State is subject to the law and that judges should be guided by the Rule of Law, ensure its protection and enforcement without fear or favour in addition to resisting any encroachments by Government or political parties in the task of adjudicating justice. Upholding these values is paramount for good governance and fundamental rights of the people of a country.

However recent incidents that involved both the police and judiciary have raised serious concerns about whether the values of the above declaration are upheld in Sri Lanka. This became the subject of discussion in Parliament in July with some alleged instances of politicians disregarding the law or attempts to interpret the law in a self-serving manner in violation of the citizens' collective rights. Highlighting the citizens' concerns over these infringements during regular debates and through a specific adjournment motion was United National Party (UNP) Member of Parliament (MP) Dayasiri Jayasekara.

The opposition legislators critiqued that incidents inspired by government politicians created a backdrop in which the law was rendered irrelevant in the eyes of the public. They claimed of alleged instances where the certain judges were brought under pressure allegedly by ruling party politicians to subvert justice.

To highlight the point, Jayasekera cited the instance where the National Freedom Front (NFF) staged a protest in front of the United Nations (UN) compound to demonstrate opposition to the appointment of a three member UN panel to investigate war crimes during the final phase of the Eelam War IV.

The National Freedom Front (NFF,) a constituent partner of the ruling United Peoples' Freedom Alliance (UPFA) opposed the move by UN General Secretary Ban Ki-Moon by laying siege at Colombo's UN compound in early July by staging a fast unto death.

At the time of Police intervention, initially to clear the entrance to the UN Office, Minister of Construction, Engineering Services, Housing and Common Amenities, Wimal Weerawansa, who led the protestors reportedly telephoned Defense Secretary Gotabaya Rajapaksa that resulted in the withdrawal of the Police from the scene<sup>2</sup>.

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<sup>1</sup> The declaration and other details of the ICJ can be found in : <http://www.icj.org/>

<sup>2</sup> Government behind 'skirmish' at UN office, Lanka Truth, July, 7, 2010. Access the story and voice clip at [http://www.lankatruth.com/index.php?option=com\\_content&view=article&id=6129%3Aun-office-was-surrounded-under-the-governments-plan&catid=34%3Alead-news&Itemid=50](http://www.lankatruth.com/index.php?option=com_content&view=article&id=6129%3Aun-office-was-surrounded-under-the-governments-plan&catid=34%3Alead-news&Itemid=50)

Commenting on the protest before the UN compound on July 8, 2010 was Minister of External Affairs, Prof. G. L Peiris. He said the government would not obstruct any peaceful protest and emphasized that the government acted in compliance with both domestic law and Sri Lanka's obligations to the international legal regime.

"The Government's approach is based on a balance between two obligations. The Government of Sri Lanka has obligations to its own people. That is a domestic matter. The Government of Sri Lanka also has obligations under the international law. As far as our own people are concerned, the Government has a duty to protect peaceful demonstrations. The other side of the coin is our inalienable obligations under the international legal regime. We have the duty to protect the sanctity and the integrity of diplomatic precincts" he noted.<sup>3</sup>

In response to Prof. Peiris' claim that the government sought to uphold the peoples' rights, UNP MP Kabir Hashim linked the loss of world support to the government's policy of suppressing basic rights and the blatant application of double standards by the government. His contention was that while the police showed a tendency to use excessive force on opposition-led parties and students it has to indulge and accommodate actions, which are sometimes violent and unlawful, by the government constituent parties.

"You are talking about peaceful demonstrations being allowed in the country. If you are allowing it, then you should use the same yardstick on everyone else; for the opposition, for the university students and for the activists".<sup>4</sup>

Just days before the discussion in parliament in an interview to The Island news paper Prof. Peiris's stated that the Minister of Defense needs complete control over the police force, without which effective governance will not be possible.<sup>5</sup> The one-time law professor inferred that Sri Lanka has effective governance since our police force remained under the Ministry of Defense. But the events which occurred only a few days earlier, where senior police officers were humiliated, abused and threatened with transfer in front of the media while attempting to control an unruly mob and the Defense Secretary' admission that he ordered the police to disburse point towards the contrary.<sup>6</sup>

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<sup>3</sup> Hansard, Volume 191 - No. 4, July, 8, 2010, pages 915-916. Access the story at <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2700>

<sup>4</sup> Hansard, Volume 191 - No.5, July, 9, 2010, pages 1249-50 Access the story at <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2703>

<sup>5</sup> Responsibility sans Authority; Lessons from the Maldives, by Professor G.L.Pieris, The Island, July 13, 2010. Access the story at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=2029](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=2029)

<sup>6</sup> Gotabhaya admits ordering Police to leave during siege on UN compound, By Shamindra Ferdinando, Tranacurrents, July, 10, 2010. Access the story at [http://transcurrents.com/tc/2010/07/gotabhaya\\_admits\\_ordering\\_poli\\_1.html](http://transcurrents.com/tc/2010/07/gotabhaya_admits_ordering_poli_1.html)

As the debate intensified over the possible introduction of an 18<sup>th</sup> Amendment to the Constitution virtually rendering the 17<sup>th</sup> Amendment redundant, the House also raised serious issues concerning the non- implementation of the 17<sup>th</sup> Amendment which aids the politicization of the public sector.

Under the 17<sup>th</sup> Amendment, seven independent commissions were established with the intention of de-politicizing the public service and to enhance governance. This move also led to the substantial depoliticization of the public service that had been crippled by the continued political interference over the past several decades. The non functioning National Police Commission (NPC) one of the vital independent commissions has rendered the police service subservient to the political hierarchy diminishing public trust in the law enforcement service.

Therefore the re- appointment of the NPC, a mechanism capable of investigating into public complaints against the police force or an individual police officer, is of great importance not only to restore the dignity of the police service itself but also the people's faith in the police force.

The politicization of the police force was a key topic of discussion in parliament in July. However, in his adjournment motion on July 1, 2010, UNP MP Dayasiri Jayasekara raised concerns also with regard to the independence of the judiciary and the necessity to ensure the relevance of law and respect for the judiciary in the country.

“Judges presiding over lower courts are directly influenced by the government. The government tried to transfer the Chief Magistrate of Colombo, Champa Janaki Wijeratne, because of the impartial manner in which she handled the Sarath Fonseka case,” he alleged. Jayasekara also pointed out that steps should be taken to prevent judges from being manipulated by politicians through the offering of incentives. “Many have compromised their independence and integrity in the most shocking manner. Some judges' husbands have been given high positions in the State sector.”<sup>7</sup>

His fellow MP, Mangala Samaraweera carried forward Jayasekara's criticism and proposed that the opposition should work towards impeaching judges who have prima facie compromised their independence. “I urge, especially my colleagues in the opposition, to seriously consider moving an impeachment motion against some of these errant judges, so that members could be in a position to place before this House, the exact details of certain judges who have compromised their independence.”<sup>8</sup>

During the past decade, the judiciary has been on a decline with the legal systems being systematically undermined by the political leadership and sometimes by the adjudicators themselves. One of the devastating blows to the independence of the judiciary had been the stoic silence of the legal professionals, legal academics and the civil society actors. Apart from a

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<sup>7</sup> Hansard, Volume 190 - No. 3, July, 1, 2010 pages 589-600, Dayasiri Jayasekara, adjournment motion 'Influence on judiciary.' Access the story at <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2650>

<sup>8</sup> Hansard, Volume 190- No 4, July, 2, 2010, pages 647-52. Access the document at <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2660>

few media institutions, others do their best to ignore the deterioration at Hulftsdorf even when members of the judiciary are being accused of alleged bribery, corruption and sometimes charges of sexual abuse. In certain instances, such judicial officers have been allowed to exert influence over police investigations that are currently in progress.<sup>9</sup>

An adjudicator of justice is required to demonstrate high professional and ethical standards in his professional conduct to reinforce public confidence in the judiciary which in turn will promote the Rule of Law and good governance. Without a proactive public who would demand accountability, independence and transparency in the legal structures, there is little hope of warding off political influence from the court precincts, be they minor courts or the highest in the land.

In the meantime, de-politicization of the public service, once the backbone of the country's very administration, dominated the discussion agenda between the UPFA and UNP on constitutional reforms in July.

On July 2, 2010, Speaker of Parliament Chamal Rajapaksa permitted UNP MP Ravi Karunanayake to move a motion seeking to prevent the President and the Prime Minister from holding Cabinet portfolios. The Speaker's decision to entertain the said motion was commended by both MP Karunanayake and Opposition Leader Ranil Wickremesinghe as a laudable act.<sup>10</sup>

In his 2010 election manifesto, *Mahinda Chinthana Idiri Dekma*, President Mahinda Rajapaksa promised a more people - friendly constitution which constituted a key reason for the resounding majority conferred on him. But the statements made by senior ranking cabinet ministers which indicate that the proposed constitutional amendments will confer powers on the Executive to appoint members to the independent commissions, a power previously held by the Constitutional Council.

Commenting on this proposal by the ministers, United National Front (UNF) MP Mangala Samaraweera told Parliament on July 2, 2010, "The police, the judiciary and the Elections Commission will become mere extensions of the Executive dropping any pretence to impartiality they may still have."<sup>11</sup>

The Sri Lankan government frequently stresses on the fact that Sri Lanka's detractors including powerful pro -LTTE lobbies overseas often seek opportunities to tarnish the country's image before the international community. The appointment of the panel of experts by the UN

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<sup>9</sup> Police reluctant to record a statement from the Judge involved in the molestation charge, Lanka-e-News, July 26, 2010. Access the story at <http://www.lankaenews.com/English/news.php?id=9808>

<sup>10</sup> Hansard, Volume 190 - No. 4, July, 2, 2010, 603-604. Access the document at <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2660>

<sup>11</sup> Hansard, Volume 190- No 4, July, 2, 2010, pages 647-52. Access the document at <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2660>

Secretary General Ban Ki-Moon's as well as the withdrawal of the GSP+ trade concessions by the European Union (EU) are considered as the result of such anti - Sri Lanka lobbying.

Nevertheless the passive acceptance of political interference by the police force can only be countered by the strengthening of the public institutions through the reactivation of the 17<sup>th</sup> Amendment only.

The power concentration that is currently taking place, including the much publicized encroachment of the independence of the judiciary and the actions of the Rajapaksa administration, will gladden the hearts of Sri Lanka's detractors if the country is not urgently put on a democratic agenda. These will also aid them to prove their argument that the Colombo based Sinhalese governments are disinterested in the adherence of basic norms of democracy, and it is naive to expect such administrations to protect the rights of ethnic minorities or to create a plural society that celebrates diversity.