

SRI LANKA: Have no illusions – the Supreme Court of Sri Lanka is a part of the human rights violation mechanism

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A Statement by the Asian Human Rights Commission

SRI LANKA: Have no illusions – the Supreme Court of Sri Lanka is a part of the human rights violation mechanism

We reproduced below a judgement made by a bench of five judges, presided over by the Chief Justice, Sarath N. Silva, of Sri Lanka, which leaves no doubt that the court wishes to nullify the impact of Sri Lanka being a party to the International Covenant on Civil and Political Rights (ICCPR) as well as the Optional Protocol to the ICCPR.

This judgement has come after six decisions of the UN Human Rights Committee in favour of a number of Sri Lankans who went before them to complain of human rights violations, including violations by the Supreme Court itself. In the case of Tony Fernando who was sentenced by the Chief Justice for one year of rigorous imprisonment for allegedly talking loudly in court, the Human Rights Committee held that the Supreme Court judgement violated the provisions of the ICCPR. In another case (the case of Victor Ivan) acts committed by the present Chief Justice in his capacity as the Attorney General were also held by the Committee to have violated the ICCPR. All other cases also involved violations of rights by the courts in Sri Lanka by way of undue delays and other similar factors.

An increasing number of persons are also going before the UN Human Rights Committee regarding violations of human rights. The effect of the judgement of the Supreme Court on Friday the 15th September (reproduced below) is that there is no legal validity of such decisions by the Human Rights Committee. The message clearly is: "you cannot challenge the Supreme Court by having recourse to the Human Rights Committee." This judgement is clearly an attempt to cover up the serious human rights violations by the Supreme Court of Sri Lanka as well as by other state agencies.

As observed by many, including the Asian Human Rights Commission frequently, under the leadership of the Chief Justice, S.N. Silva, the Supreme Court of Sri Lanka has degenerated to the point where it is an instrument of repression, either on behalf of the Executive or on its own behalf, as in this case. The Supreme Court of Sri Lanka in recent years has acted to limit, if not altogether eradicate, all avenues of the protection of human rights made available by Sri Lanka's obligations under international law, under the Constitution and other laws. The fundamental rights jurisdiction has been tampered with by the arbitrary refusal of the granting of leave to make applications, extreme delays in the hearing of applications, risible awards of compensation and the extreme hardships imposed on the lawyers who bring the cases on behalf of the petitioners.

Often while officiating in the court the Chief Justice S.N. Silva has been noted for making extremely harsh comments on lawyers and even threatening to take action to debar them from legal practice. An atmosphere of intimidation is caused on the litigant and the lawyer that makes fair representation almost impossible. Many lawyers refuse to accept briefs on public law matters before the Supreme Court.

Unlike the Indian Supreme Court which has declared that it is the guardian of human rights and will even act of its own initiative (suo moto) when protecting human rights, the Sri Lankan Supreme Court acts on its own initiative only to restrict the application of human rights. The present judgement itself is one such case in point. When the petitioner sought to revise an earlier judgement of the Supreme Court on the basis of the UN Human Rights Committee's decision no one objected to this application. However, the court on its own initiative deemed that Sri Lanka's accession to the ICCPR has no internal effect and that Sri Lanka being a signatory to the Optional Protocol is contrary to the Constitution of the country. These matters were not even argued in court.

The Asian Human Rights Commission brings to the attention of everyone in Sri Lanka and the international community that, without dealing with the Supreme Court's role as part of the mechanism of the violation of human rights, very little progress can be achieved in their protection and promotion

