



Colombo's Rough Justice for Tamils

by Angilee Shah

PEOPLE MILL ABOUT an office complex in Colombo, waiting for appointments with lawyers who are crammed into small cubicles. In one corner office, mothers and grandparents, wives and siblings, stream in one by one. Sometimes they have long, convoluted stories; sometimes their stories are very simple. One woman says her son was detained in a police search and cordon operation. Another traveled from London in search of her brother whom she believes is in police custody. One man says his cousin was arrested while buying a SIM card for his cell phone. There is, however, a common thread: They are all Tamils with family members who have been detained without charge.

In May, Sri Lankan government forces defeated the Liberation Tigers of Tamil Eelam, or LTTE, ending a violent 26-year civil war that left deep rifts between the majority Sinhalese and minority Tamil people of Sri Lanka. In this postwar context, those detained under the auspices of national security are unlikely to have their day in court.

On one hand, Sri Lanka's constitution guarantees due process and personal rights. On the other, it gives the government broad powers to maintain security as it sees fit. Many countries with serious security concerns curb personal freedoms, but in Sri Lanka the effects are staggering.

Amnesty International said in its 2009 annual report that last year more than 1,000 Tamils were held without charges, some for several years at a time. Now that the war has officially ended, that number has increased dramatically. The government has not released the population of detention centers, and attempts to contact officials were unsuccessful, but it's estimated that more than 10,000 people considered ex-LTTE cadres are being rehabilitated. According to statistics released in July, more than 250,000 internally displaced people are being processed in closed camps. While not technically prisoners or detainees, the IDPs do not have freedom of movement or ready access to legal counsel.

Just before his retirement in June, Sri

Ms. Shah is a free-lance journalist based in Los Angeles.

Lanka's former Chief Justice Sarath N. Silva made unambiguous remarks about the state of the judiciary in Sri Lanka. At an event marking the opening of a new courthouse, he said that the IDPs are being held in deplorable conditions and predicted their claims would not be heard in Sri Lankan courts. "They cannot expect justice from the law of the country," Mr. Silva said.

The new Supreme Court Chief Justice Asoka de Silva, then, has a weighty task on his shoulders. He is taking the helm of an institution marked by the public's waning confidence in the rule of law in relation to human rights. "Where the bench is concerned, it is my view that it forms the backbone of any civilized society," he said. "If at any time, the bench is compromised, society begins to deteriorate from within and will end in anarchy."

Those looking for justice in the courts are hoping that Supreme Court Chief Justice de Silva and the country's leaders will be dedicated to that cause. In the absence of such reform, the legacy of Sri Lanka's long war will be difficult to overcome.

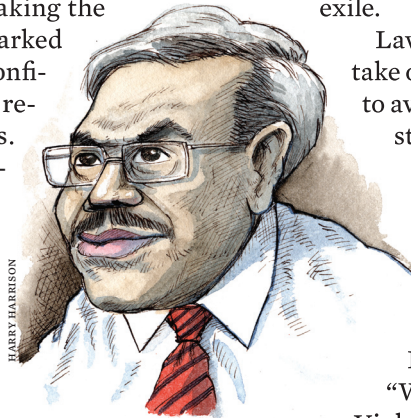
IF THE PEOPLE waiting patiently in Colombo lawyers' offices are to have any chance at proper representation, they have to act quickly. In June, a report by the International Crisis Group noted that the kinds of claims they have, namely fundamental rights cases which challenge the country's executive, must be filed to the Supreme Court in Colombo within one month of the date of the violation. But even if someone has the means and freedom to get to Colombo, finding a lawyer is difficult. Members of the legal profession in Sri Lanka have been threat-

ened because of their attempts to address grievances related to the government's security measures. In September, attackers threw grenades into the home of J.C. Weliamuna, a prominent attorney and executive director of Transparency International Sri Lanka. Though no one was injured—one of the grenades failed to explode—the attack helped send many lawyers, particularly those addressing human-rights issues, underground or into exile.

Lawyers who do continue to take on sensitive cases often try to avoid threats and attacks by staying under the radar, but the Ministry of Defense Web site has "outed" several lawyers for their human-rights related work and defense of terrorism suspects. In a December article titled, "Who are the Human Rights Violators?" the Ministry outlined eight cases against LTTE sus-

pects, naming their attorneys in each instance. Defense Secretary Gotabaya Rajapaksa, the brother of President Mahinda Rajapaksa, is charging editors of the newspaper, *The Sunday Leader*, with contempt of court. An unsigned article which appeared on the Defense Ministry's Web site in July named five attorneys representing the newspaper, and showed photographs of three of them. The article, called "Traitors in Black Coats Flocked Together?" said that "this team of lawyers share [*sic*] a common antipatriotic sentiment," and that observers in court called them "traitors of the nation."

Attorneys in Colombo worry that this kind of propaganda drums up a violent form of patriotism that silences political debate in the country. They also worry about their safety; the *Leader's* former editor, investigative journalist Lasantha Wickrematunge,



Gotabaya Rajapaksa

was murdered by gunmen on his way to work in January. His killers, as well as those who have threatened or attacked lawyers, have yet to be found.

The Defense Ministry took down the article about the Sunday Leader attorneys in response to complaints from the Bar Association of Sri Lanka. Gotabaya Rajapaksa then published a letter, saying that lawyers do have the right to represent anyone and that the media, including his ministry's Web site, has the right to comment. "The public will decide on the appropriate classification of patriotism or terrorism or otherwise, if that is material or relevant," he wrote.

The Bar Association's secretary, Udaya Rohan de Silva, says that the Defense Ministry has resolved this issue. But he is still concerned that lawyers are not able to do their jobs, particularly in giving legal aid to IDPs. The Bar Association along with the United Nations Development Programme offered to send lawyers into the camps to help them protect property and rights, but the government has denied this request, promising that lawyers will be given access to displaced people after processing.

But legal aid cannot come soon enough, especially as the monsoon approaches. Several zones of the camps at Manik Farm flooded in mid-August, causing concern over how the facilities will hold up when the rainy season begins in October. Aid agencies have called on the Sri Lankan government to expedite the release of those being held in the crowded camps, but the government has committed to completing resettlement by the end of the year. So far, they say that more than 4,000 people have been sent to their home towns in the east and north.

In postwar Sri Lanka, the chances are extremely slim that an ethnic Tamil will get his day in court.

Even if a detainee or an IDP is heard in court, Basil Fernando, executive director of the Hong Kong-based Asian Human Rights Commission, said fundamental rights petitions are rarely successful for the thousands being held for questioning about connections to the LTTE. The Supreme Court heard two fundamental rights applications in August concerning IDPs seeking family reunification and release. The Court ruled on Aug. 8 that a family of five had the right to be in the same camp but delayed the hearing on their right to be released until November. A second case,

filed in June by the Colombo-based Centre for Policy Alternatives, argued on behalf of all IDPs that they have the right to freedom from arbitrary arrest and detention, freedom of movement and equal protection under the

law. The attorney general filed objections to the legal basis of the complaint, and the hearing was scheduled for Aug. 6 and then further postponed.

In addition to long delays, those cases often go up against broad emergency regulations that give the government immense powers to detain terrorism suspects. At the end of August, the Supreme Court addressed the fundamental rights application of a young Tamil man from the north who has been detained without charge for 17 months. The three-person bench, including Chief Justice de Silva, gave the attorney general and defense secretary four weeks to review their detention policy. Mr. Fernando says that this will not help detainees, however. The Supreme Court could have ruled on the validity of present laws, but instead passed its powers to members of the executive branch.

However, Attorney B.N. Thamboo, who is representing the detainee in this case

and has filed more than 50 such cases, believes that the request is a positive sign. While it is too early to declare any kind of victory, the court asked for a review of the policy concerning all prisoners held without charge, even those unable to file individual fundamental rights cases, he says.

The country has been under emergency rule for the length of the war, with only one five-month gap. Emergency regulations outlined in the 1947 Public Security Ordinance allow the defense secretary to detain suspects for up to one year in the name of national security. In August 2008, the regulations were expanded to allow for an extra six months of detention, without requiring that suspects be produced in court. The Parliament extends emergency rule every month.

Rules that criminalize certain kinds of speech under the Prevention of Terrorism Act, enacted in 1979, were used to sentence journalist J.S. Tissainayagam to 20 years in prison for “causing communal disharmony” and “supporting terrorism.” On World Press Freedom Day in May, U.S. President Barack Obama mentioned Mr. Tissainayagam as one of many journalists around the globe “guilty of nothing more than a passion for truth and a tenacious belief that a free society depends on an informed citizenry.”

FOR THE MANY detainees who cannot file a fundamental rights petition, the Human Rights Commission has a mandate to investigate grievances against abuse by the state. But Ruki Fernando, a program coordinator at Colombo-based advocacy group Law and Society Trust, says that the HRC is ineffective because its independence has been compromised. It has denounced the LTTE’s abuses and investigated police abuse of Sinhalese Buddhists in the past, but has not made public statements about “blatant abuse” against Tamils. To his knowledge,

there have been no major investigations or public reports about violations of the rights Tamil people by the state.

The 17th Amendment of Sri Lanka’s constitution is meant to shield institutions such as the Police Commission and Human Rights Commission from politics. The law calls on the President to make appointments to a Constitutional Council based on nominations by both the ruling and opposition parties. In addition, the law calls on the president to make appointments to a Constitutional Council based on nominations by both the ruling and opposition parties. Like his predecessor, president Rajapaksa did not make new appointments to the Council even as old appointments ended. He instead left commissions empty or made direct appointments.

President Rajapaksa is shielded in part by the exuberant popular support he has enjoyed since claiming military victory. In addition, there is no legal way to force Mr. Rajapaksa, an attorney himself, to follow the 17th Amendment or end the state of emergency. Under Sri Lankan law, the president has absolute immunity from lawsuits while in office.

“With the end of this conflict, it is the first time the country is without civil war,” said Mr. Fernando of the Asian Human Rights Commission. But without reform of the legal system, “there is an impasse—you cannot proceed. I think it’s a matter of time until there is demand for serious change.”

Until then, many Tamils, like an elderly couple seeking legal advice one day in the cramped Colombo offices, will wait for justice. This couple traveled from Jaffna, on the northern tip of the island, looking for their grandson. They said they have not filed a fundamental rights case on his behalf because they worry that he will be abused in the detention center where he is being held. They do not cry, but they also do not hope. “It’s up to God,” the grandmother said. “We’re old and patient.” ■