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## **US to table UN human rights resolution criticising Sri Lanka over 'war crimes'**

- ***Allegations centre on crushing of rebellion in 2009***
- ***US official: 'There hasn't been sufficient action by government'***

The Guardian (01.02.2014) - The United States will table a United Nations human rights resolution against Sri Lanka, a State Department official said on Saturday, putting new pressure on Colombo to address war crimes allegations.

The UN has already called on Sri Lanka to punish military personnel responsible for atrocities in the civil war that the government won in 2009, and Washington says the human rights climate on the island is worsening.

"Lack of progress in Sri Lanka has led to a great deal of frustration and scepticism in my government and in the international community," assistant secretary of state Nisha Biswal told reporters in Colombo after a two-day visit.

"There hasn't been sufficient action taken by the government to address the issues of justice and accountability. We heard from many people about people who are still unaccounted for, whose whereabouts and fates are unknown to their family members."

Biswal declined to say what would be in the resolution to be tabled at the March session of the UN Human Rights Council, but US embassy officials have said it may call for an international investigation in Sri Lanka.

"We understand growing concern, frustration, and scepticism among many in my country and many in the international community that has led to increasing calls for international investigation and an international process." Biswal said.

President Mahinda Rajapaksa's government, which finally crushed a 26-year rebellion by the Liberation Tigers of Tamil Eelam (LTTE) in 2009, has rejected calls for an international inquiry and said repeated requests from overseas were to please the large Tamil diaspora in the west.

A top Sri Lankan official said in Washington last week that an international inquiry into war crimes would bring "chaos" and insisted that the government's national reconciliation process must be given several more years to work.

Biswal acknowledged that the reconciliation process needed more time, but said credible steps had to be taken now.

"The culture of deterioration of human rights gives us great concern when churches and mosques are burnt down and people feel that they cannot practise their faiths freely and without fear. Then I believe the urgency that has gripped the international community is justified," she said.

The British prime minister, David Cameron, [has said he will push for an international inquiry into war crimes allegations](#) if Sri Lanka does not conduct its own probe by March. Some Sri Lankans who met Biswal told Reuters they had told her an international process was essential.

"We do not have confidence in a local investigation because that would be done by the military, who are accused of war crimes," one activist from northern Jaffna peninsula told Reuters, on condition of anonymity.

A UN panel has said that about 40,000 mainly Tamil civilians died in the final few months of the war. Both sides committed atrocities, but army shelling killed most victims, it concluded. Separatist Tamil Tiger rebels renowned for the use of child soldiers and suicide bombings battled government forces from 1983.

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## **All eyes on Sri Lanka as Commonwealth summit begins**

### ***Some world leaders boycott summit, citing human rights abuses***

World Watch Monitor (15.11.2013) - Sri Lanka's human rights record has been questioned as a Commonwealth summit takes place in Colombo.

Several Commonwealth leaders have boycotted the event, while British Prime Minister David Cameron has pledged to ask "tough questions" of Sri Lankan President Mahinda Rajapaksa.

One of his lines of questioning may focus on Sri Lanka's relationship with its religious minorities.

In a country dominated by Buddhists, the Christian (approximately 7%) and Muslim (10%) minorities have complained of discrimination and attacks.

Sixty-four acts of violence against Protestant Christians – many linked to extremist Buddhist group Bodu Bala Sena – were recorded between January and September of this year, including arson, church demolitions, mob attacks and assaults, [reports Christian Solidarity Worldwide](#) (CSW).

The National Christian Evangelical Alliance of Sri Lanka (NCEASL) now has the figure at 65.

"Pastors have been threatened, subjected to duress and forced closure of churches, various forms of discriminations... And even some Christian believers have been forced to recant their faith," NCEASL's Yamini Ravindran told the BBC.

Meanwhile, the government has announced plans to introduce regulations against publications that "defame the original teachings and traditions of the major religions". While outwardly a positive move, the legislation has been likened to the controversial "anti-conversion laws" in neighbouring India.

The Centre for Policy Alternatives, a Colombo-based think-tank, said the proposals would "stamp a further official seal of approval on Sri Lanka's slide towards majoritarian religious extremism and sectarian violence".

Of India's "anti-conversion laws", the U.S. Commission on International Religious Freedom, an advisory body to the U.S. Congress, said that "while intended to reduce forced conversions and decrease communal violence, states with these laws have higher incidents of intimidation, harassment, and violence against religious minorities, particularly Christians, than states that do not".

CSW reports that local officials in Sri Lanka have begun asking established churches to prove their legality in order to be allowed to continue operating.

During a visit to Sri Lanka in September, United Nations High Commissioner for Human Rights Navi Pillay said she was "particularly alarmed at the recent surge in incitement of hatred and violence against religious minorities, including attacks on churches and mosques, and the lack of swift action against the perpetrators".

She added that the government "seemed to downplay this issue or even put the blame on minority communities themselves".

Pillay said she heard "disturbing" accounts of state protection of extremist groups and urged the government to send "the strongest possible signal of zero tolerance" for such acts by punishing the perpetrators.

However, ahead of the Commonwealth Summit this weekend, Sri Lanka's Minister of Mass Media and Communications said the country would not be bullied.

"We are a sovereign nation. You think someone can just make a demand from Sri Lanka?" said Keheliya Rambukwella.

The heads of state of India, Canada and Mauritius have declined the opportunity to attend the summit of 50 countries, which runs from November 15 to 17 and was opened by Prince Charles.

Canada recently appointed Andrew Bennett its first Ambassador for Religious Freedom. Canada's Prime Minister Stephen Harper said: "It is clear the Sri Lankan government has failed to uphold the Commonwealth's core values."

In a recent interview with the BBC, a Sri Lankan pastor spoke of a recent attack on his church.

The pastor, who wished to remain anonymous, told the BBC that two Buddhist monks had attacked the church, shouting: "This is a Buddhist nation, a Buddhist village."

The pastor said the monks threatened to kill the Christians and added that they would burn down the pastor's house when they returned.

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## **Shadows over Commonwealth summit in Sri Lanka**

BBC News (14.11.2013) - The streets of Colombo are glistening for the Commonwealth Heads of Government Meeting (Chogm). But controversy still rages over war crimes allegations, press freedom, judicial independence and the safety of minorities. The BBC's Charles Haviland reports on the rights issues that refuse to go away.

New fountains are flowing, there are new pavements and new street lamps have been constructed. A motorway has just opened linking the airport to Colombo for the first time.

Colombo's violence-scarred past is becoming a mere memory. Many Sri Lankans are proud to be welcoming the Commonwealth leaders and see the summit as a tribute to a president many revere for his victory after 26 years of conflict with separatist Tamil Tigers.

But for all the burnished infrastructure, there is disquiet under the surface.

The summit's attendance list has narrowed, with Canada's Prime Minister Stephen Harper boycotting the event over rights abuses. Indian Prime Minister Manmohan Singh has also said he will not attend.

### ***Army demolition spree***

Visiting the Northern Province during its recent election, the BBC met 37-year-old Sujitharan in a refugee camp outside Jaffna.

The children played in the dirt. The place felt temporary, prefabricated. Yet Sujitharan has been here since 1990 when his family fled their home because of fighting between the government and the Tamil Tigers (LTTE).

The military keeps hold of their land, like other large tracts deemed high security zones.

"We're living as second-class citizens with no facilities, no bathrooms. It's a very sad life. Our children need to live on their own land," he says.

Sujitharan had decided to vote for President Rajapaksa in the hope of getting his land back.

But in recent days - after the Tamil opposition's election victory in the North - the Sri Lankan Army has gone on a demolition spree, flattening the houses of people displaced long ago to consolidate these zones - which it says it needs "for security reasons".

When journalists try to film or photograph it, their memory cards are seized and deleted and they are chased away. The demolitions continue.

Then there are the unanswered question about possible war crimes and allegations of the indiscriminate bombardment of Tamil civilians as the war ended; of the summary killing of the captive LTTE members who surrendered.

Grave war crimes accusations are also levelled at the LTTE, but as most of them did not survive, and as the Sri Lankan government has continued to justify its conduct, the spotlight is focused on the current leaders.

Journalists and human rights workers continue to report intimidation. A BBC correspondent based in northern Sri Lanka was recently questioned for hours by the anti-terrorism police.

A senior Colombo-based journalist fled the island after two raids on her home: During one, she and her family were threatened at knifepoint.

Disappearances remain unsolved and allegations of torture in state custody - often backed by forensic evidence - continue to emerge.

And members of religious minorities are being attacked in a trend boosted by the war victory.

The spate of assaults on Muslims and demonstrations against them by Sinhalese Buddhist hardliners have been well reported.

But now Christians are coming forward to report attacks which have long been happening, but local media barely mention them.

In Colombo I meet a pastor from a small church. He does not want his name used and is here because he is afraid to receive me in his village.

"Two Buddhist monks rushed into the church," he says in Sinhala, recounting a recent incident during a service.

"Twenty-five or 30 villagers followed. They yelled insults at us, calling us traitors for preaching the word of God. They shouted 'this is a Buddhist nation, a Buddhist village'.

"They threatened to kill us, they said they would burn my house down when they came back."

He says the monks started physically assaulting him. He knelt down facing the wall and prayed.

The clergyman is from Sri Lanka's Sinhalese majority - Christians straddle the ethnic divide.

The pastor says he has since seen the monk who led the attack on television with President Rajapaksa. He was able to identify the attackers but says the police told him that if any of the attackers were arrested that would create religious controversy and an ugly scenario.

Yamini Ravindran of the National Christian Evangelical Alliance of Sri Lanka (NCEASL) has documented 65 attacks on Christians so far this year.

"Pastors have been threatened, subjected to duress and forced closure of churches, various forms of discriminations... And even some Christian believers have been forced to recant their faith."

Minorities feel uneasy because the government rarely condemns such assaults or apprehends the culprits. Hindus, who are Tamil, are in a similar situation.

The government recently demolished a small Hindu temple in the town of Dambulla, in an area the authorities have declared sacred to Buddhists.

A Tamil politician, N Kumaraguruparan, says the Hindus appealed to President Rajapaksa against the demolition, then asked for time to perform final religious rites. Both appeals went unheeded.

In a recent visit to Sri Lanka, the UN's human rights chief, Navi Pillay, criticised what she called the "surge in incitement of hatred and violence against religious minorities... and the lack of swift action against the perpetrators".

The government denies committing war crimes or trampling on human rights.

### ***Peaceful co-existence***

Udaya Gammanpila, a provincial minister from a Buddhist nationalist party in the government coalition, says Canada's leaders should come to Chogm, like their counterparts.

"The reality is that Sri Lankans, as one family, we are trying to live together after a long civil war... If they just come to Colombo and go around they will find the co-existence of Sinhalese, Tamils and Muslims."

The Sri Lankan state often stresses the co-operation between the island's four major religions. In the cities, churches, mosques and Buddhist and Hindu temples sit side by side, with many devotees never facing problems.

And it is certainly true that in Colombo you do find communities mixing quite happily - but critics say this should not mask deeper divisions and concerns.

So what about the pastor's account of the church attack?

"Frankly we are not aware of such incident," said Mr Gammanpila, adding that the victim could have complained to the Supreme Court if he felt the forces of the law were not doing their job.

Mr Gammanpila also seemed unaware of the 65 attacks documented by the NCEASL, saying the accounts might be "made up" by the Christians.

I asked him about Navi Pillay's assertion that Sri Lanka was drifting towards authoritarianism with the sacking of the former Chief Justice Shirani Bandaranayake and allegations of widespread impunity.

Mr Gammanpila said this was "expected" as Ms Pillay was "from a Tamil ethnic origin. She was biased towards her community in the first place."

While in Sri Lanka Navi Pillay, who is South African, deemed such remarks incorrect and offensive. Nor is the sacked chief justice from the Tamil community. But Mr Gammanpila insisted the UN rapporteur had no right to look at the Sinhalese-Tamil conflict.

The Sri Lankan government does get solid support from many other Commonwealth states, especially in Asia and Africa, who do not want the organisation to intervene in human rights.

But as the summit gets under way - minus several key leaders - it seems to be less about the actual Chogm agenda than about the host country and whether it lives up to the Commonwealth Charter.

### ***Timeline of Sri Lanka since independence***

- 1948 - As Ceylon, the island gains independence from Britain.
- 1972 - The government changes its name to Sri Lanka and gives Buddhism primary place as country's religion, antagonising largely Hindu Tamil minority.
- 1983 - As ethnic tensions grow, the Liberation Tigers of Tamil Eelam (LTTE) launches a violent uprising, seeking autonomy for the Tamil-dominated north and east.
- 2005 - After years of war, and failed peace talks, Mahinda Rajapaksa is elected president.
- May 2009 - Tamil Tigers defeated after army over-runs last patch of rebel-held territory in the north-east. LTTE leader Velupillai Prabhakaran killed.
- Apr 2011 - UN says both sides committed atrocities against civilians and calls for an international investigation into possible war crimes. Sri Lanka says the report is biased.
- Nov 2012 - Another UN report says 70,000 civilians were "unaccounted for" at the end of the war.
- Nov 2013 - Colombo prepares to host Chogm

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## **Commonwealth Heads of Government must press Sri Lanka on religious freedom**

CSW (08.11.2013) - One week before the Commonwealth Heads of Government Meeting (CHOGM) in Colombo, Sri Lanka, CSW is urging Commonwealth leaders to use this opportunity to raise pressing human rights concerns with Sri Lanka, including the deteriorating situation for religious minorities.

The past 18 months have seen a huge rise in violence against Muslim and Christian targets, much of it linked with the Bodu Bala Sena (BBS), or Buddhist Force, an extremist group established in July 2012. In a recent high-profile incident on 11 August, a mosque in the Grandpass area of Colombo was attacked by a Buddhist mob. Attacks against Protestant Christians have increased significantly, with 64 recorded acts of violence from January to September 2013, including arson attacks, church demolitions, mob attacks, and physical assaults. This trend has been accompanied by tightening administrative regulation, especially in the south, including demands from local officials for long-established churches to prove their legality in order to be allowed to continue operating.

In September, following a week-long visit to Sri Lanka, United Nations (UN) High Commissioner for Human Rights Navi Pillay told the UN Human Rights Council that she was "particularly alarmed at the recent surge in incitement of hatred and violence against religious minorities, including attacks on churches and mosques, and the lack of swift action against the perpetrators". She noted that the government "seemed to downplay this issue or even put the blame on minority communities themselves" and that she "heard disturbing accounts of state patronage or protection given to extremist groups". She urged the government "to send the strongest possible signal of zero tolerance for such acts by ensuring that those responsible, who are in many cases easily identifiable, are punished."

The government has also announced plans to introduce legislation against publications which “defame the original teachings and traditions of the major religions”. It will reportedly begin by establishing a Buddhist Publications Regulatory Board, with a mandate to regulate any publications allegedly in violation of Buddhism. There are serious concerns about these proposals, which appear conceptually similar to anti-blasphemy laws by protecting state-sanctioned versions of religious doctrine. Colombo-based think-tank, the Centre for Policy Alternatives, noted in a [statement](#) that if enacted, the proposals would “stamp a further official seal of approval on Sri Lanka’s slide towards majoritarian religious extremism and sectarian violence”.

CSW’s Chief Executive Mervyn Thomas said, “We urge Commonwealth leaders at CHOGM to use this opportunity to raise serious concerns with Sri Lanka’s government, including the deteriorating religious freedom situation. If Sri Lanka is to make meaningful progress on reconciliation and developing a culture of pluralism, it must do much more to address the violence and discrimination suffered by its religious minorities, especially Christians and Muslims. With President Rajapaksa due to become the first new Commonwealth Chairperson-in-Office since the adoption of the 2013 [Commonwealth Charter](#), the credibility of this Charter is linked with how far it is respected by Sri Lanka. Commonwealth leaders must urge the President to adhere to the principles of the Charter, including human rights (article 2), the need to protect religious freedom (article 4), and the rule of law (article 7). They should also strongly encourage the government of Sri Lanka to implement the recommendations made by the UN High Commissioner for Human Rights in her recent report”.

For further information or to arrange interviews please contact Kiri Kankhwende, Press Officer at Christian Solidarity Worldwide on +44 (0)20 8329 0045 / +44 (0) 78 2332 9663, email [kiri@csw.org.uk](mailto:kiri@csw.org.uk) or visit [www.csw.org.uk](http://www.csw.org.uk).

Christian Solidarity Worldwide (CSW) is a Christian organisation working for religious freedom through advocacy and human rights, in the pursuit of justice.

Notes to editors:

1. The main Commonwealth Heads of Government Meeting takes place on 15-17 November, with a series of related meetings taking place during the preceding three days. Further information can be found on the official [CHOGM 2013 website](#).
2. In October, Canadian Prime Minister Stephen Harper issued a statement confirming that he would not attend CHOGM due to human rights concerns. He stated that, “It is clear that the Sri Lankan government has failed to uphold the Commonwealth’s core values, which are cherished by Canadians.”
3. The guiding principles of the Commonwealth are enshrined in the 2013 [Commonwealth Charter](#). The Charter builds on previous declarations, including particularly the 1991 [Harare Commonwealth Declaration](#), and the 1971 [Singapore Declaration of Commonwealth Principles](#).

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**Rizana Nafeek executed - President Mr. Rajapaksha bears full responsibility for this death**

Asian Human Rights Commission (09.01.2013) - According to reports received, the Government of Saudi Arabia has executed Ms. Rizana Nafeek (1988 - 9 January 2013) today. The embassy of Sri Lanka in Riyadh has confirmed this report.

Asian Human Rights Commission (AHRC) wishes to categorically state, that the singular responsibility for this innocent young Sri Lankan woman's death is upon the President of Sri Lanka, Mr. Mahinda Rajapaksha. His office and the government led by him shamelessly neglected the life of this innocent Sri Lankan woman, who remained incarcerated aboard since May 2005. At the time when she was charged with the alleged crime, Rizana was only 17 years of age, and was soon sentenced to death by a Saudi court, in proceedings that the court held of which Rizana had no informed consent. The Government of Sri Lanka or the office of the President did nothing to save Rizana's life, despite calls for assistance from Rizana's family and from the global civil society. Passing off as concerns, the Government of Sri Lanka did nothing, except issuing valueless statements relating to this case.

All Sri Lankans should regard today as a day of shame.

Due to efforts by the AHRC, an appeal was filed and Rizana's execution stayed this far. Despite calls for help President Rajapaksha's government refused to pay at least the lawyers' fee for filing the appeal.

The law relating to forced confession in Saudi Arabia is criminally wrong. The AHRC had alerted the United Nations High Commissioner for Human Rights about this matter repeatedly. However even the High Commissioner failed to make an effective intervention to save the life of this innocent woman.

There is no doubt that the charge of murder against Rizana is wrong. The laws in Saudi Arabia falls short of universally accepted norms concerning investigation of crimes, most importantly in this case the failure to conduct of an autopsy upon the body of the deceased person, alleged to have been murdered by Rizana. None of the fair trial guarantees were observed when Rizana was tried in the Saudi court.

All Sri Lankans and virtually thousands of people across the globe who intervened trying to save Rizana must have received the news of her execution with shock. An estimated 1.8 million Sri Lankans currently work aboard, of which 45 per cent are women.

The AHRC expresses its deepest condolences to Rizana's family at this time of grief and shock. Despite the family doing their best to save Rizana's life, they received no support from their government to save Rizana.

So long as there is a government that does not show any care for the rights of its people, similar tragedies will be repeated in Sri Lanka.

A dossier on Rizana prepared by the AHRC could be viewed at:  
[www.humanrights.asia/countries/sri-lanka/save-rizana-nafeek](http://www.humanrights.asia/countries/sri-lanka/save-rizana-nafeek)

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## **Rizana Nafeek - chronology of events leading to - imminent execution? or uncertain release?**

Asian Human Rights Commission (08.01.2013) - Sri Lankan teenager Rizana Nafeek arrived in Saudi Arabia to work as a house maid when she was 17 years of age. 'Our family was having hardships and so our eldest daughter volunteered to go and work

abroad to send money home,' the father Mohammed Sultan Nafeek, a wood cutter from Muthur, Trincomalee, said in an interview with 'Asian Tribune'.

Rizana Nafeek, holder of Sri Lanka Passport No. N. 0331835 arrived in Riyadh, Kingdom of Saudi Arabia on 01 April 2005, to work as a housemaid in the household, of her sponsor, Naif Jiziyan Khalaf Al Otaibi, whose wife had a new-born baby boy.

A few days after her arrival in Riyadh, roughly by 15th May 2005, Rizana Nafeek had been transferred by her sponsor to work in his family household in Dawadami, about 390 km west of Riyadh.

While she was bottle-feeding the infant around 12.30 p.m. (on 25th May, 2005), the baby-boy started choking, but according to Rizana Nafeek statement: "When I was feeding the infant, I noticed that the milk was oozing through the mouth and nose of the infant. I stroke the throat of the infant gently. As the infant was seen having its eyelids closed, I thought that he was snoozing.

According to her version, when she was bottle feeding, "I noticed that the milk was oozing through the mouth and nose of the infant," - it clearly reveals that the question of choking while feeding does not arise.

Anyhow, the 4 month old baby of Naif Jiziyan Khalaf Al-Otaibi died. Cause of death was not known as the Saudi Police failed to conduct the postmortem on the deceased infant baby.

Rizana Nafeek had been arrested by the Dawadami Police on the same day (25 May 2005), and it was reported that she had allegedly confessed to killing the child.

Rizana had repeated her confession in the open court. However, at the court hearing on 3rd February, 2007, Rizana retracted her confession and informed the court that her original confession admitting to the killing the child had been obtained by the Police under duress.

In her statement to the court, Rizana Nafeek had claimed that at the time of her arrival in Saudi Arabia, she was only 17 years old and a recruitment agent had falsified her documents, seizing her passport by over-stating her true age by 6 years.

Initially a three-member panel of judges from the Dawadami High Court headed by Chief Justice Abdullah Al-Rosaimi found Rizana Nafeek guilty of murdering the four-month-old son of Naif Jiziyan Khalaf Al-Otaibi and sentenced her to death on June 16, 2007.

The court informed Rizana Nafeek that she could file an appeal against her death sentence, which she did.

An appeal against the beheading of the accused was filed on behalf of Rizana by Khateb Al-Shammary, a Riyadh-based law firm, on July 15, 2007.

In its submissions during the appeal, Khateb Al-Shammary cited several reasons why the maid should not be punished for her alleged actions. Lawyer Khateb Al-Shammary claimed that the maid was underage at the time of the incident and pointed out that Rizana was brought into the Kingdom as a housemaid, not as a nanny. Furthermore, the petition said that there was no reason for Rizana to harbor any vengeance against the parents of the child since she had been working for the household for only for a few days.

Sri Lankan side tried a few times to meet Naif Jiziyan Khalaf Al-Otaibi the father of the

four month old baby alleged to have died due to milk choking, but he refused to meet any Sri Lankan personalities even up to now.

The Dawdami High Court sentence was subsequently upheld by the Court of Cassation and sent for ratification by the Supreme Judicial Council. However, the Council sent it back to the lower court for further clarification. The case then went back and forth between the courts until on or around 25 September 2010, when the Supreme Court in Riyadh upheld the death sentence.

Unfortunately, the lawyer who appeared for Rizana Nafeek came to know of the confirmation of the death sentence only on 19 October 2010 and he informed this to the Sri Lankan Embassy on the following day.

On 25th October 2010, Sri Lanka's Ministry of External Affairs handed over the original letter by President Mahinda Rajapaksa to the Saudi Ambassador in Sri Lanka seeking clemency to Rizana Nafeek.

Subsequently, the Royal Court forwarded the case of Rizana Nafeek to be amicably resolved with the Saudi parents of the child she was convicted of killing. Rizana Nafeek's case was adopted by the Reconciliation Committee (RC) of the Riyadh Governorate, whose members have been negotiating with the parents of the deceased child.

So far- for a long time, Sri Lanka Government has not heard any official response from the Royal Kingdom of Saudi Arabia regarding the clemency appeal by Sri Lanka President, but it was unofficially told that the execution has been suspended, but so far the suspension was never confirmed.

The Colombo High Court on 16 January 2012 sentenced the two foreign employment sub agents who are alleged to have sent Rizana Nafeek to Saudi Arabia for employment and they were sentenced to two years rigorous imprisonment and ordered to pay Rs.60,000 each as compensation to her parents.

Recently, a few days after the dawn of the New Year 2013, the Supreme Court of Saudi Arabia informed Riyadh Governorate about the death sentence on Rizana Nafeek and thus her execution became imminent.

Immediately on 5th January 2013, President Mahinda Rajapaksa sent the second appeal to the King of Saudi Arabia seeking the release the Lankan maid Rizana Nafeek who faces death sentence in Saudi jail on charges of murdering an infant boy while bottle-feeding, states a release from the Department of Information of the Ministry of Mass Media and Information.

In his letter, President Mahinda Rajapaksa, while recalling his previous communication addressed to the King, said that the maid was only 17 years old at the time of the incident. "I understand that the maid is soon to be executed since the aggrieved parents are not in favor of a pardon," the President said, appealing to the King to use his good offices to defer the execution until an amicable settlement is reached between the aggrieved parents and the reconciliation committee.

The President has further said that Rizana Nafeek's execution could raise an outcry among the members of the local and international communities and aggravate the situation. Therefore, Mahinda Rajapaksa said that he would like to seek the king's personal intervention.

The reconciliation committee members usually approach the plaintiff to negotiate a pardon for the accused. Such negotiations are either settled with the payment of blood money or a graceful pardon from the aggrieved parties.

What Next awaits?

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## **The last five days of Sri Lanka's democracy**

### ***AHRC declares a week of concern for threats against the independence of the judiciary in Sri Lanka***

AHRC (06.01.2013) - The Asian Human Rights Commission alerts all concerned persons in and outside of Sri Lanka to the possibility that a five days from now there may not be a judiciary that can exercise judicial power with independence in Sri Lanka. In all likelihood, the judiciary will be brought under the direct control of the Executive President, in the same way that other institutions in Sri Lanka, including the Attorney General's Department, have been brought under the direct control of the Executive President. This is no false alarm.

According to state media, the government will defy the interpretation of law given by the Supreme Court of Sri Lanka last week (1st January 2013) which declares that:

"It is mandatory under Article 107(3) of the Constitution for the Parliament to provide by the matters relating to the forum before which the allegations are to be proved, the mode of proof, burden of proof and the standard of proof of any alleged misbehaviour or incapacity and the Judge's right to appear and to be heard in person or by representative in addition to matters relating to the investigation of the alleged misbehaviour or incapacity."

The Supreme Court also declared that,

"In a State ruled by a Constitution based on the rule of Law, no court, tribunal or other body (by whatever name it is called) has authority to make a finding or a decision affecting the rights of a person unless such court, tribunal or body has the power conferred on it by law to make such finding or decision. Such legal power can be conferred on such court, tribunal or body only by an Act of Parliament with is "Law" and not by Standing Orders which are not law but are rules made for the regulation of the orderly conduct and the affairs of the Parliament. The Standing Orders are not law within the meaning of Article 170 of the Constitution which defines what is meant by "law"."

However, the government, according to the state media, will ignore this interpretation of the law by the Supreme Court and will proceed to impeach the Chief Justice on the basis of the report filed by the Parliamentary Select Committee. Thereafter, the incumbent Chief Justice will be forcibly removed from the position and a new Chief Justice, who is chosen by the government, will be appointed.

The government has now guaranteed impunity to the state media from contempt of court and a massive media campaign is being carried out, not only against the incumbent Chief Justice, but also against the very notion of the independence of the judiciary.

With the removal of the incumbent Chief Justice and the appointment of the new Chief Justice, the two-hundred-year-old tradition of the independence of the judiciary in Sri

Lanka will come to an end. The courts will be directly brought under the control of the executive and any judge who acts independently will face the same consequences (removal) as the incumbent Chief Justice.

The Sri Lankan court system will be reduced to a mere administrative mechanism, deprived of the power to take any measure that is contrary to the wishes of the government. Thus, the capacity of the Supreme Court and the other courts to safeguard the dignity and the rights of the individual against the assaults by the state on individuals will come to an end. Deprived of the power to protect individuals from the assaults of the government, the fundamental rights provisions of the constitution and other legal provisions, such as the writ jurisdiction of the court, will lose all significance.

Once the judicial system lacks independence, the rule of law system cannot function anymore. Thus, Sri Lanka will walk out of the rule of law orbit. The people will be victims of whatever directives the executive prefers to make, irrespective of its impact on the basic human rights of the people.

This is even more dangerous in Sri Lanka as the Ministry of Defense has developed into a 'shadow state' and acts through paramilitary forces and the intelligence services to suppress the rights of citizens. Forced disappearances, illegal arrests, illegal detentions, the practice of torture and ill treatment, denial of fair trial, suppression freedom of expression and publication, suppression of the freedom of assembly and the denial of the right to free and fair elections are now very much part of the Sri Lankan experience. With the total eclipse of the independence of the judiciary, the people will be totally trapped within the schemes of the Ministry of Defense.

Thus, the coming five days are historically crucial for Sri Lanka. If the government's declared intention to abide by the PSC report succeeds, Sri Lankan democracy will sink. The people will lose the protection of the rule of law and will be under a virtual dictatorship.

How long that will last will depend on when and how people learn to resist a dictatorship.

We therefore wish to bring to everyone's notice the crucial importance of the coming five days and request them to open their eyes and to see the changes that are taking place, to use their judgment and act in every possible way to protect their democracy, the system of rule of law, separation of powers and the independence of judiciary, and their civil liberties.

There are countries where courts are mere administrative bodies and are obligated to facilitate the government's schemes however contrary this may be to the rule of law and the rights of the individuals. In Asia, Myanmar, since the military coup of General Ne Win, and Cambodia, despite constitutional recognition of independence of judiciary since 1993, are two glaring examples.

Related documents;

1. The relevant judgment of the Supreme Court  
<<http://www.colombotelegraph.com/wp-content/uploads/2013/01/S.C-Referance-No.-358-2012.pdf>>
2. The speech to the Judicial Service Association by Justice C V Wignashwaran  
<<http://www.colombotelegraph.com/index.php/you-must-continue-this-historic-struggle-for-extrinsic-independence-not-just-for-the-judiciary-but-for-democracy/>>
3. The statement of the AHRC

## **Rizana Nafeek awaiting beheading is forgotten by the government**

Asian Human Rights Commission (11.07.2012) - Rizana Nafeek, arrested in 2005 and sentenced to death by beheading in 2007 is still languishing in the Dawadami Prison in Saudi Arabia as the government of Sri Lanka has failed to take the necessary diplomatic steps to obtain her release despite of their promises to do so.

As pointed out by the Asian Human Rights Commission the allegations against Rizana, who was 17 at the time of the alleged incident was baseless. She was charged with the murder of an infant under her care while by all circumstances it is clear that she had no involvement of any sort regarding this death and that in all probability the child died of natural causes. No foul play of any sort by her was alleged, even at the courts and there was no post mortem report giving the cause of death. Purely on the basis of a confession obtained under severe duress by police officers who spoke only in Arabic, a language she had no understanding of and without the benefit of a translator.

The sole basis for her conviction and the later affirmation of the conviction during appeal was that under Saudi Arabian laws a confession has finality and there is no room to challenge such confession during the trial.

There was an international outcry against the sentence and concern for her has been expressed by way of massive interventions on her behalf requesting her pardon from His Royal Highness, the King of Saudi Arabia.

His Excellency the President of Sri Lanka, Mahinda Rajapaksa also wrote a letter to His Royal Highness requesting a pardon. In Sri Lanka the government spokesmen have repeatedly claimed that missions have been sent and negotiations conducted with the family of the deceased child to obtain a pardon. However, in close examination of reports available in the media it becomes clear that the Sri Lankan government has failed to establish contact with the family and therefore there are no effective negotiations going on at all.

This means that the order for her execution could be carried out at any time.

Among those who have expressed concern for this case is the European Parliament where the EU High Representative and Vice President, Catherine Ashton has said that, "The EU will continue to follow it (Rizana's case) very attentively in close coordination with the authorities in her home country, Sri Lanka (May 10, 2012)."

The Asian Human Rights Commission is today issuing a dossier on all documents relating to the case of Rizana Nafeek and call upon everyone to make a renewed attempt to get her release by intervening with His Royal Highness the King of Saudi Arabia and also pressuring the Sri Lankan government to undertake effective diplomatic efforts to obtain her release.

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## **Key witness of a fundamental rights violation case is killed by the Wadduwa police**

AHRC (18.04.2012) - According to the information that the Asian Human Rights Commission (AHRC) has received Mr. Chandrasiri Dasanayaka of Thalpitiya, Wadduwa in the Kalutara District was illegally arrested by the police officers attached to the Wadduwa Police Station and later extrajudicially killed inside the station on 15 April 2012. Chandrasiri was a key witness in a case filed against the Officer-in-Charge (OIC) of the Wadduwa Police Station where the petitioner, the owner of a hotel in the same area, states that his fundamental rights were violated by the OIC and other police officers.

According to Thushara Sampath (20), the eldest son of the deceased, Mr. Chandrasiri, a father of 3 children left home at 4.45 a.m. on that day to proceed to his place of business Thalpitiya in Wadduwa. Chandrasiri was a fish trader by profession.

Later Sampath learned from his friend that his father had been arrested by a team of police officers at around 5 a.m. at the Thalpitiya Junction and brought to the Wadduwa Police Station. Immediately upon hearing the news Sampath went to the police station where he found his father lying on the floor of a cell.

When he approached the bars of the cell, his father was able to recognise him and Sampath could see that he was in great pain. He further observed that his father was bleeding from the injuries on his face and pleaded with the police officers on duty to provide some water for his father. However, the officers ignored his request. Sampath then rushed to home and informed his mother and took her to the police station. On their arrival, a police officer told them that Mr. Chandrasiri had been admitted to the Panadura Base Hospital.

They went to the base hospital and learned from the hospital staff that the officers had handed over the body to the mortuary indicating that he was pronounced dead on arrival. Sampath saw that there were even ants were on the injuries of the body at that time. The presence of the ants indicates that Mr. Chandrasiri had been dead for some time before the officers took his body to the hospital. It is not possible that any form of medical attention had been provided to the victim before he died of the brutal torture.

Sampath states that his father was illegally arrested and brutally assaulted and that the police officers callously and cruelly let him die alone in the cell without any medical treatments.

The police spokesman, Superintendent of Police, Ajith Rohana stated, "He had fainted in the Wadduwa police cell and was thereafter admitted to the Panadura hospital and died upon admission," It was also announced in the media that the deceased was arrested on suspicion that he was in possession of two cannabis cigars, brought to the police station and detained in the police cell where he was later found dead. This is obviously a contradiction to SP Rohana's earlier statement.

Sampath states that his father left home at 4.45 a.m. to start his professional business at his work place as usual and never possessed or used cannabis or any other illegal substance. He states that the police officers illegally arrested him at 5 am and severely tortured him and that he later succumbed to his injuries without ever receiving any medical treatment. He further states that the OIC and other police officers were angry with his father as he was the key witness of a court case filed by a hotel owner in the same area, on the basis that his fundamental rights had been violated by the OIC of Wadduwa Police Station. Sampath states that killing of his father was an act of revenge by the very same responsible police officers.

Later the Panadura Acting Magistrate visited the Wadduwa Police, inspected the police cell and held the Magisterial Inquiry. She recorded the evidence of the victim's eldest son Sampath.

Yesterday, (17 April) police headquarters announced the immediate transfers of the OIC of the Wadduwa Police to the Mount Lavinia Police Station along with a sergeant and two police constables. Upon learning of the transfers, Sampath stated vehemently that transfers are not suitable punishment for the heinous crime of torture and extrajudicial killing.

Sampath, and the other children and relatives of the deceased demand an impartial inquiry into the death of their father, Mr. Chandrasiri. The perpetrators must be brought before the law, charged and prosecuted for the illegal arrest, brutal torture and extrajudicial killing of an innocent man.

### **Comments**

The Asian Human Rights Commission has reported innumerable cases of arbitrary arrest, detention, torture and extra judicial killings cases of citizens at the hands of the police which is illegal under international and local law and which have taken place at different police stations in the country over the past few years. The Asian Human Rights Commission has observed that the Sri Lankan police have used torture as an instrument to terrorize innocent persons and harass the public. Further, the country's police are implementing a policy of eliminating criminals by killing them after arresting them without producing them to the court of law.

The Constitution of Sri Lanka has guaranteed the right freedom from torture. According to Article 11 of the Constitution 'No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Further, Article 13(4) "No person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment." Further article 13 (5) guarantees the right of presumption of innocence until being proven guilty.

Furthermore, Sri Lanka has signed and ratified the International Covenant on Civil and Political Rights (ICCPR). Nevertheless the lack of protection offered to those who are willing to take cases against abusive police officers and the state authorities, means that the law is under-used continues to be employed as a tool by the police to harass people. This not only takes a long-term toll on the victim and his or her family, but on society as a whole, by the undermining of civilian respect for the law and encouraging impunity. Furthermore, the Asian Human Rights Commission has continuously exposed the way the witness and the victims are getting harassed and on some occasions even killed to suppress the justice. Furthermore we have urged the State of Sri Lanka to adopt a law for the protection of witness protection.

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## **Persecuting of NGOs under the pretext of prosecutions**

Asian Human Rights Commission (31.03.2011) / HRWF (04.04.2011) - <http://www.hrwf.net> - These days there is considerable discussion about investigations into some NGOs in Sri Lanka. The president himself is talking in public about this issue and already implying that there is some kind of wrong doing on the part of some NGOs. This has also been followed by several media channels. Therefore some simple reflections on the issue are in order.

- There is a vast difference between prosecution and persecution. This difference may not be quite so clear in Sri Lanka anymore. There is a great deal of persecution going on under the name of prosecution and the public may be very much confused about what is a legitimate prosecution and what is, in fact, a terrible persecution.
- Leaving aside this contextual situation in Sri Lanka for a moment let us go into a basic reflection on what, under a rule of law system, is a legitimate prosecution and what is, in fact, a persecution. A legitimate prosecution begins with an existing law in the country. The law clearly lays down some act which may be considered a crime. A complaint about the commission of a crime by someone is the beginning of a path that may lead to a prosecution before a court of law.
- The subject matter of the present controversy on NGOs is the allegation that they may be illegally benefiting from funds received from donors for public purposes. Basically the allegation is that there is some form of corruption going on. Such perceptions exist in the country not only regarding NGOs but also many other persons. Throughout the country one of the main complaints is about corruption and the Illicit Enrichment of persons who misuse funds which belong to the public.
- A clear basis for dealing with such situations is to have a law that clearly defines Illicit Enrichment and other laws that have been adopted in other countries for the purpose. Like the public servants who use public funds others who also use funds from donors could easily be brought within the category of persons who come under the purview of such a law. In Bhutan for example, the Illicit Enrichment law applies to all public servants and others who use public funds including NGOS. In India also there is room for persons other than public servants to be included under similar legal provisions.
- The importance is that whenever investigations begin they should begin within the framework of a clearly defined crime and that the persons being investigated must be clearly told of the crime for which they are being investigated. The Sri Lankan Constitution clearly provides the right of any person who is being investigated to be told the reason for such investigation on the basis of whatever crime he is alleged to have committed. Arbitrary investigations without clear accusations about what the suspicions are and the wrong that has been committed is a clear infringement of the rights of persons, whether the persons are public servants or citizens, including those persons belonging to NGOs.
- Besides, all investigations need to be conducted under the provisions of criminal law. All citizens are equal before the law. (Unfortunately, even this basic legal premise is not valid in Sri Lanka as the executive president is placed above the law by Article 35 of the constitution). Investigations outside the provisions of the Criminal Procedure Code amount to an arbitrary action.
- To talk sanctimoniously about the prevention of corruption without taking action to enact proper laws to enable prosecution of all violations is pure hypocrisy.
- Prosecutions require an impartial prosecution agency. How far Sri Lanka can claim to have such an agency now is very doubtful.
- Under these circumstances what appears to be taking place under the guise of an investigation into some NGOS appears more like a persecution rather than a legitimate action.

The Asian Human Rights Commission has been calling for a long time now for the reform of the country's corruption laws and the development of an effective corruption control agency similar to that of Hong Kong's Independent Commission against Corruption (ICAC). While reaffirming our position on this matter we also call for the reform of the country's prosecutor's office which the Attorney General's Department. These measures are necessary for many reasons including the prevention of persecution under the guise of prosecution.

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