

Opinions

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To Sustain the Commonwealth
Commitment to Human Dignity:
Reconsider the Award of the
2013 CHOGM to Sri Lanka

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To Sustain the Commonwealth Commitment to Human Dignity: Reconsider the Award of the 2013 CHOGM to Sri Lanka

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No international institution suffers from unfair misperceptions more than the Commonwealth. Some misunderstandings are so far-fetched that they are comical – as when a touring delegation of Westminster M.P.s who thought that the Commonwealth was a stick with which other countries beat Britain encountered Australian counterparts who saw it as a device to project British influence down under. An otherwise sensible group of Indian intellectuals insisted to this writer that the Commonwealth was attempting to restore the authority of the British monarch over that great republic.

If the misperceptions were merely laughable, they could be dismissed. But the problem is more serious. The British press consistently – and lazily – depicts the Commonwealth as a stodgy old relic, and the international media usually follow suit. They do not know, for example, that a team at the British aid ministry which seeks to strengthen the influence of small, poor developing countries regards the Commonwealth as the only forum where the views of those nations are not disregarded at the outset. For them, it is at the cutting edge.

Nor do the media know that a former Commonwealth Secretary-General played a pivotal role in persuading three African presidents to abandon one-party systems for multi-party democracy. Nor do they understand the Commonwealth's strong commitment to enlightened principles – set out by Commonwealth heads of government in the Harare Declaration in 1991 – fundamental rights, democracy, the rule of law, and just and honest government that enables even minorities and poor people to live in dignity. These principles have been re-emphasised many times since then, and have been admirably supported by action on many occasions.

It is important that the Commonwealth defend itself – and that others defend it – against misunderstandings and unjust criticisms. And of course, the Commonwealth must take great care to avoid giving unfair critics legitimate cause for complaint. It now faces a serious threat to its reputation as a force for decency and human dignity. The Commonwealth Heads of Government Meeting (CHOGM) in 2013 is currently scheduled to take place in Sri Lanka. That is dangerously ill advised.

The government of that country has committed a succession of gross abuses against the humane values which lie at the heart of the Commonwealth's mission.

Many readers will be familiar with a video tape telecast by Channel Four in Britain from the final stages of the long civil war which ended in May 2009. It showed naked and blindfolded men being summarily executed by armed men wearing the battle dress of the Sri Lankan army, and the corpses of women being loaded onto a trailer by soldiers who made lewd remarks. A United Nations investigator authenticated most of the footage, as have other independent analysts. One respected linguist told this writer that the English translations provided on the tape actually understated the offensive nature of the remarks that were made by the gunmen. The U.N. special rapporteur on extrajudicial, summary or arbitrary executions stated that "What is reflected in the extended video are crimes of the highest order – definitive war crimes"¹.

This followed other charges that during the last phase of the war, the Sri Lankan authorities and armed forces – along with their terrorist adversaries in the Liberation Tigers of Tamil Eelam (LTTE) – had "shown a brazen disregard for the safety and well-being of civilians"², and had been responsible for numerous brutalities. A Sri Lankan Member of Parliament publicly stated that the government had issued orders to commanders in the field to shoot on sight people coming towards their positions under white flags. (Criminal charges were then framed against the whistle blower.)³ The army, along with the LTTE, was said to have directed "artillery fire at military targets and civilians without discrimination ...summarily executing persons, and unnecessarily preventing humanitarian aid"⁴. More specifically, the International Committee of the Red Cross stated that government forces had attacked a hospital in the zone controlled by the LTTE, killing and wounding many of the 500 patients there⁵. Other abuses were set out in a 2009 U.S. State Department report to Congress⁶.

The government responded in two ways which have become familiar in recent years. First, denial: it dismissed both the authenticity of the video tape and the other charges noted above, claiming that all atrocities in

those last days of the conflict were the work of the LTTE. Second, blaming foreign agencies:⁷ Sri Lanka's defence minister blamed the U.N. for not preventing the LTTE from using civilians as human shields – a curious assertion since U.N. personnel in the “no fire zone” were under frequent artillery barrages from government forces (see below)⁸. There is no doubt that the LTTE was responsible for many outrages, during that period and over three decades. But there is considerable evidence to show that the tape was genuine and that the other charges against the government and its armed forces have substance too.

In May 2010, the government appointed a Commission on Lessons Learnt and Reconciliation to consider the final stage of the conflict, but it had a vague mandate and was not empowered to investigate violations of international law. It had little credibility. In August of that year, the U.S. State Department submitted a report to Congress criticising the Commission's inadequate terms of reference and questioning the independence and impartiality of its members. As Human Rights Watch said at the time, “Sri Lanka has a long history of establishing ad hoc inquiries to deflect international criticism over its poor human rights record and widespread impunity... none of which have produced any significant results”⁹.

As a sign of his dissatisfaction with that enquiry, U.N. Secretary-General Ban Ki-moon appointed a panel of experts (from Indonesia, South Africa and the U.S.) to advise him on the occurrence of war crimes in the final phase of the conflict. The European Union withdrew 100 million euros worth of trade concessions in 2010 owing to concerns about human rights abuses, and the British and American governments indicated that they would support follow up action on the experts' findings. President Mahinda Rajapaksa of Sri Lanka called the U.N. panel a violation of Sri Lanka's sovereignty, his foreign minister described it as “illegal”, and his government prevented panel members from visiting the island – as it had done when the British, French and Swedish foreign ministers had planned to visit in 2009. The government tried and failed to persuade the Non-Aligned Movement to send the U.N. Secretary-General a demand that the panel be disbanded. A government minister staged a disruptive protest in front of the U.N. offices in Colombo which persuaded Ban Ki-moon to withdraw the resident coordinator from Sri Lanka temporarily, and to close one U.N. office there.

The U.N. panel's report was damning – one senior U.N. official has described the findings as “appalling”¹⁰ – as the following excerpts indicate.

The Panel's determination of credible allegations reveals a very different version of the final stages of the war than that maintained to this day by the government of Sri Lanka. The government says that it pursued a “humanitarian rescue operation” with a policy of “zero civilian casualties”. In stark contrast the Panel found credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed both by the government of Sri Lanka and the LTTE, some of which would amount to war crimes and crimes against humanity. Indeed, the conduct of the war represented a grave assault on the entire regime of international law.

The government sought to intimidate and silence the media and other critics of the war through a variety of threats and actions, including the use of white vans to abduct and make people disappear.

The government shelled on a large scale in three consecutive No Fire Zones, where it had encouraged the civilian population to congregate, even after indicating that it would cease the use of heavy weapons. It shelled the United Nations hub, food distribution lines and near the International Committee of the Red Cross (ICRC) ships that were coming to pick up the wounded and their families from the beaches. Most civilian casualties in the final phases of the war were caused by government shelling.

The government systematically shelled hospitals on the front line. All hospitals in the Vanni (the conflict zone) were hit by mortars and artillery, and some of them were hit repeatedly, despite the fact that their locations were well known to the government. The government also systematically deprived people in the conflict zone of humanitarian aid.¹¹

As the U.N. panel was compiling its report, the U.S. Senate passed a unanimous resolution calling for an independent international mechanism to address issues of concern in Sri Lanka. Motions along similar lines were carried in the Australian and British Parliaments¹².

The actions of the government after the end of the war in 2009 have continued to cause acute unease in the international arena. In Britain in 2011, the Parliamentary Secretary of the Leader of the House of Commons wrote that “the (U.K.) Government continue to have grave concerns about human rights in Sri Lanka, including in respect of disappearances, extra-judicial killings, arbitrary arrests and restrictions of free expression”. The U.S. Assistant Secretary of State, Robert O. Blake went further. In testimony to Congress, he spoke of Sri Lanka’s “worrisome record on human rights, weakening of democratic institutions and practices, and the way in which it conducted the final months of the conflict” and “a failure to take meaningful steps toward accountability”. More recently, he said that the decision of the International Criminal Court to issue warrants against Muammar Gaddafi and his son Saif al-Islam for flouting international humanitarian law was a signal which Sri Lanka should note.

Let us consider the concerns about the Sri Lankan government’s actions during the post-conflict phase which were raised by these two men. The anxieties over the “weakening of democratic institutions” arise as a result of the conduct of the presidential election on the island in 2010 at which President Rajapaksa secured re-election, and of the 18th amendment to the constitution which was introduced thereafter – which ended term limits on the presidency and enabled the President to exercise immense power over theoretically autonomous institutions. This takes a little explaining.

In 2010, the Commonwealth’s team of election observers reported that media outlets suffered “threatening behaviour” and the chief editor of a privately owned newspaper had been arrested. They added that: “these practices, coupled with the concerns expressed regarding the pre-election environment, serve to undermine the integrity of the democratic process in the eyes of the population. Polling stations were not laid out in ways that ensured the secrecy of the ballot”.

They stated further that the “Exclusion of national observers” from observing the counting of votes “is against international stands and decreases transparency”¹³.

They also noted that the government had failed to appoint an independent Election Commission, as

required by the 17th Amendment to the Constitution. Instead, it kept in post a Commissioner of Elections who expressed deep frustration that many of his instructions to the police, government ministries and the state-owned media – issued in pursuit of fairness – were being ignored. He added that he intended to resign the day after the election. All of this was in marked contrast to the urgings in 2005 of Commonwealth Secretary General Don Mackinnon that an Election Commission should be established “with the strength to make a difference...backed up by real power”¹⁴.

The Commonwealth observers expressed dismay that within days of the election result, the party offices of the main opposition candidate, General Sarath Fonseka (who had played a leading role in the civil war, and received 40.15% of the votes, as against 57.88% for President Rajapaksa), were raided by police. Soon thereafter, Fonseka was arrested, tried, convicted of an array of offences, and sentenced to 30 months rigorous imprisonment.

In September 2010, the President asked Parliament to pass an 18th Amendment to the Constitution which ended the two-term limit on anyone holding the presidency, eliminated the supervisory Constitutional Council (mandated by the 17th Amendment), and gave the President the authority to appoint directly members of key government bodies such as the supposedly independent Election Commission, Human Rights Commission and Police Commission – relieving him of the need to secure the consent of members of the Constitutional Council, which was apparently the reason for his unconstitutional refusal to name an Election Commissioner prior to the 2010 election. The text of the amendment was not made public before reaching the floor of the House, so that the media, civil society, and even Members of Parliament – who did not know when they entered the chamber what the day’s business would be – had no opportunity to discuss it before it was passed. The International Crisis Group described this as “a de facto constitutional coup”¹⁵.

This leaves immense powers in the hands of the President and three of his brothers who serve as Speaker, and as Ministers of Economic Development and of Defence – controlling between them 65% of the national budget.

Some hoped that the end of the war in 2009 and President Rajapaksa's re-election in 2010 would persuade the authorities to moderate their harsh actions against the media, civil society organisations and critics of the government¹⁶. (The Sunday Leader reported that the government's own Chief Whip, Dinesh Gunewardena, had told Parliament in 2009 that "nine journalists have been killed since 2006, some 27 attacked while five were reported abducted¹⁷. The widow of one murdered journalist who was a UNESCO World Press Freedom Laureate stated in 2009 that "dozens" of journalists had fled the island¹⁸.) But there is abundant evidence that abuses have actually intensified. As the executive director of Freedom House wrote in 2010: "Attacks on fundamental freedoms have reached a new and deeply disturbing level in Sri Lanka this year. Anyone who dares to disagree with the government's policies is likely to find himself behind bars or on the receiving end of a death threat. This shameful disdain for free expression is incompatible with the hallmarks of a democratic state".

The Commonwealth Journalists Association, the Asia Director of Human Rights Watch, and Reporters Without Borders all stated in 2010 that after the President's re-election victory, the campaign against the media had become more aggressive: a "litany of press freedom abuses" had occurred¹⁹. The Asia Director of Human Rights Watch linked this to "a settling of scores of critics of the government".

In 2009, the CJA had protested against a sentence of 20 years of hard labour on Tamil journalist J.S. Tissainayagam for "inciting racial hatred". Reporters without Borders added that "With the help of confessions extracted by force and information that was false or distorted, the court has used the anti-terrorism law that was intended for terrorists, not journalists and human rights activists". After being jailed, Tissainayagam was awarded the Peter Mackler Award for journalistic courage and integrity, and after the European Union mounted heavy pressure, he was released in mid-2010 and given a presidential pardon. In 2009, N. Vithyatharan, the editor of the only Tamil daily newspaper in Jaffna and another in Colombo, was seized by uniformed police while attending a funeral in Colombo. No warrant was presented. Family members say he was severely beaten in custody. Police originally

claimed that he had been abducted by an unidentified group, but then stated that he had been taken by their own officers.

In July and October of 2009, Article 19 expressed concern over "the deterioration of press freedom despite the military victory" and death threats against two editors of The Sunday Leader whose previous editor was murdered in January of that year. No culprit has even been arrested – and Reporters Without Borders says that after the murder, the President's brother and Defence Minister, Gotabhaya Rajapaksa, made disparaging comments about the murdered man. Article 19 also protested an anonymous death threat sent by post on 20 August 2009 to a human rights activist who headed the Centre for Policy Alternatives²⁰.

Actions by shadowy squads of armed men against such groups have continued. In January 2010, Sinhalese journalist Prageeth Eknaligoda, disappeared. Defence Minister Gotabhaya Rajapaksa brushed this aside, saying "Eknaligoda had himself disappeared"²¹. In June 2010, the CJA condemned the disappearance of a journalist "for the 'sin' of criticizing the ruling party". It noted that the following month, men with iron bars attacked three journalists covering the homecoming from abroad of a man who had been critical of the government; and the studios of Siyathi TV were destroyed by men armed with rifles and petrol bombs. That station had mainly broadcast entertainment, but its owners had supported Sarath Fonseka during the presidential campaign of 2010. On 9 September, Mervyn Silva, a minister who had once physically attacked journalists including a BBC correspondent, said at a public function that "Journalists should not write in ways which would ultimately force them to be hanged"²².

In January 2011, the offices of 'lankaenews' which had been critical of both the government and the opposition were entered at 2 am by men who poured petrol through the rooms and set the place afire. In late July, a Tamil editor of an opposition newspaper in Jaffna was beaten severely by several unidentified men with iron bars. He was taken unconscious to hospital and placed in the intensive care unit. A few weeks earlier, in late May a reporter from the same paper had been attacked by armed men.

In August, President Rajapaksa personally telephoned the chairman of the Sunday Leader, an independently owned newspaper, to threaten him after the paper had printed a story saying that the Chinese had given the President \$9 million and his son (a Member of Parliament) \$500,000 – to be used at their discretion²³. Reporters Without Borders stated that this was not the first time that journalists had been threatened by members of the Rajapaksa family. Dozens of employees in state-owned media outlets have been sacked since the end of the war for protesting against the control on their editorial policies.

Minorities have also continued to suffer in the post-war period when the government claims to be pursuing reconciliation. Minority Rights Group International issued a report in January 2011 stating that “Nearly two years after the end of the war, minorities face daily repression and marginalisation in politics and development policies.” The report “documents cases of land in traditional Tamil and Muslim areas being seized by military and civilian authorities and being used for everything from military encampments and a power plant to hotels and leisure facilities”.

All of this adds up to an extremely troubling picture. As the deputy director of Human Rights Watch for Asia put it recently: “there is no reason to believe that Sri Lanka will return to a rights-respecting government any time in the near future. Until wartime abuses are prosecuted, minority grievances are addressed, and repression against the press and civil society ends, only the president and his family members in power have reason to feel secure in Sri Lanka.”²⁴

BBC World Service reporters refer, as a matter of routine, to things like (to take one recent example) the “severe dearth of the rule of law” in Sri Lanka²⁵.

The President of the Commonwealth Journalists Association added: “The Sri Lanka government appears to have only a slim grasp on the concept of democracy. Any government that subjects its independent news media to such violent and arbitrary actions has no right to call itself democratic. Sri Lanka doesn't even come close to adhering to the most basic principles of the Commonwealth. If Sri Lanka's efforts to ingratiate itself with the Commonwealth are to be taken remotely seriously, then Commonwealth leaders need to speak

as one in condemning this appalling state of affairs.”

Is it possible that a huge array of institutions are lying and conspiring against the island's government: the International Committee of the Red Cross; the United Nations; the U.S. State Department; the U.S. Senate and the British and Australian parliaments; the European Union; Human Rights Watch; Amnesty International; Article 19; the Minority Rights Group International; Freedom House; the International Crisis Group; Reporters Without Borders; the BBC World Service; the Commonwealth Journalists Association; and the election observers sent by the Commonwealth to report on the 2010 presidential election? This seems improbable. The reality is that Sri Lanka's government has repeatedly shown brutish contempt for the humane principles which the Commonwealth so admirably champions.

If the Commonwealth proceeds with the CHOGM in Sri Lanka in 2013, it will be seen as an endorsement of that government. It will do immense damage to the well founded reputation of the Commonwealth as a force for decency and human dignity. We have already seen signs of the severe embarrassments that the Commonwealth will face. Consider two:

First, in September, the Canadian Prime Minister, Stephen Harper, stated that at the 2011 CHOGM in Australia, he would tell fellow heads of government that if they did not see progress on human rights and other serious concerns: “I will not as Prime Minister be attending that Commonwealth summit (in Sri Lanka in 2013). And I hope that others will take a similar position.”²⁶. The abundant evidence presented above suggests that the Sri Lankan government will brazen things out, and that a boycott of the 2013 CHOGM by key Commonwealth member states is a real, excruciating possibility. Does the Commonwealth really want to face that?

Second, a decision to proceed with the CHOGM in Sri Lanka would alienate some of the Commonwealth's most committed and important supporters. One extremely eminent, long standing friend of the Commonwealth has privately expressed the belief that in very recent years, the Commonwealth has retreated from its commitment to human rights²⁷. Does the Commonwealth really want such ideas to take hold?

We can expect similar sentiments – and worse – from critics in the international media who have so unjustly criticised the Commonwealth. But for once, they will be given credible, damning evidence to use against it. All of this adds up to a nightmare in the making. The Commonwealth must act soon, to ensure that the 2013 CHOGM is held elsewhere.

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