



Political Developments in Sri Lanka: Future Challenges

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On 8th January 2017, the government of Maithripala Sirisena completed two years in office in Sri Lanka. During the occasion to mark the second anniversary of his government, the President pointed out that people have elected him “to power to restore democracy, media freedom, bring about ethnic reconciliation, to draft a new Constitution, lift the economy from the depths of indebtedness, and improve relations with the international community by following a non-aligned foreign policy”.¹ However, recent remarks by the former President Mahinda Rajapaksa, that the current government will be toppled in 2017 had brought the issue of political stability, national reconciliation and good governance in Sri Lanka to the forefront. The Sri Lanka Freedom Party (SLFP) and the United National Party (UNP) came together in 2015 Presidential and Parliamentary elections ‘on a common platform on issues such as ‘restoration of democracy, end of the Rajapaksa regime, abolition of executive presidency and national reconciliation’.² Among these one objective has been realised that was the end of Rajapaksa regime. All the objectives mentioned above are interlinked and to realise these objectives there is a need for a broader consensus among all the political parties. This seems to be a difficult exercise at this point, owing to few reasons such as; different perspectives on reconciliation and good governance between majority and minority parties and within minority parties, the former president Rajapaksa’s and Sinhala hard liners consistent opposition to the government reconciliation and economic development measures.

Reconciliation and Good Governance

Since 2015, the National Unity Government had taken a few positive steps with regard to reconciliation and good governance. Repeal of 18th Amendment to the Constitution that guaranteed continuation of Rajapaksa’s rule by increasing the term of the President and introduction of 19th Amendment to the Constitution were the main steps taken initially. The Amendment reintroduced ‘the two-term limit of the Presidency, reduced the term of Presidency

from 6 to 5 years, established Constitutional Council, restored Independent Commissions, recognised the Right to Information as a fundamental right and recognised that the promotion of National Reconciliation and Integration as duties of the President'. Public views were sought on the Constitution drafting through Public Representation Committee on Constitutional Reforms (PRC) and the government appointed a Consultation Tasks Force on Reconciliation Mechanisms (CTF) in January 2016. The PRC submitted its report to the Prime Minister (PM) in May 2016 and the CTF final report was out on 4th January 2017. Apart from these mechanisms, the six Subcommittees on constitutional reforms submitted their reports to the Constituent Assembly (CA) (Parliament) in November 2016. The Sub-committee reports were on fundamental rights; judiciary; finance; national and public security; public order and police & law enforcement, public service reforms and Centre-Periphery relations. A National Human Rights Action Plan for the next five years (2017-2021) was prepared by the government. To mark the second anniversary of the current Sri Lankan government a "National Integration and Reconciliation Week" was observed for the first time from 8th to 14th January 2017. However, there are many bottlenecks to overcome to achieve reconciliation and good governance in the country.

The most sensitive issue with regard to Constitution drafting in Sri Lanka is the Centre-periphery relations. The Sub-committee on Centre-periphery relations in its report mentioned (after taking into account, the submissions which were made to the committee) that there are a few bottle necks to be addressed in the Constitution drafting process. These include, the 13th Amendment, powers of the Governor and fiscal control by the Centre and unitary character of the state. Therefore, the Committee recommended that in the present Constitution the "provisions empowering the Governor to act on his own discretion need to be reformed". It also recommended that the "Governor should be a nominal head, who should be constitutionally required to act on the advice of the Chief Minister and Board of Ministers". On public and police services of the Provinces, the Sub-committee recommended that these should be brought under the Provincial Public Service and Police Service Commission.

Other significant recommendations of the Sub-committee were, Law and Order should be the matter of the Province; current concurrent list to be done away with and should be added to relevant lists. This recommendation was given on the basis that the Centre had taken undue advantage of the rubric titled "National Policy on All Subjects and Functions" to act over the devolved powers of Provinces. Recognising the ambiguity on power over land as it was mentioned in the Provincial List as well as in the reserved list, the Committee recommended that, "State land within a Province should be a subject matter to be handled by the Legislative and Executive Body of the Province". At the same time, 'the Central government shall have the authority to require a Provincial executive to release any piece of State land for its legitimate use as specified in the reserved list'. The Provincial council should adhere to the guidelines issued by the Land Commission comprising members from all political parties. Notably, the Chief Minister of Northern Province has recommended abolition of the post of Governor altogether and appointment of Governor by the President.

Opposition to Sub-committee Recommendations

After the release of the Sub Committee reports, Rajapaksa spoke against the constitutional reforms by saying that the government was prioritising matters that were ‘only interests to “separatists” and “foreign parties”’.³ He opposed various recommendations made in the six Sub-Committee reports such as;

- proposal to strip Provincial Governor powers
- proposal to abolish concurrent list of powers under 13 A and proposal to give the Provincial Councils (PCs) distinct sphere of authority over subjects such as education, health and land
- Land powers being granted to PCs
- Proposal to create nine Provincial police units
- Proposals to require special parliamentary majority to extend emergency beyond three months
- Proposal to consult Attorney General (AG) and Bar Association on nomination of judges to Supreme Court
- Proposal to set up constitutional court and post enactment review of laws
- Proposal making exception for personnel laws in terms of constitutional supremacy
- Proposal for automatic incorporation of treaties Lanka is a party to, into domestic Law
- Proposal to “recognise” Tamil and Sinhala as official languages (already recognised under 1978 Constitution).⁴

Among the objections mentioned above, Rajapaksa’s opposition to Tamil as an official language is worrisome, as it might take back some of the gains the minority community achieved through consistent struggle after independence. The Sinhala Only policy that was adopted in 1956 was one of the main reasons for alienating the Tamil minority from the Sri Lankan State after independence, other than the Citizenship Act of 1956, University Admission Policy and Land Colonisation Act. If Rajapaksa continues to oppose the current language policy it might open new set of problems between the majority and minority ethnic communities. On the issue of powers to the Governors’ of Provinces, he opined that Sri Lanka is following the model of India and if the powers of Governors’ are taken away both India and Sri Lanka cease to be unified nations”.⁵ It is to be noted that, Rajapaksa appointed the All Party Representative Committee (APRC) in his tenure as President to resolve the national issue of ethnic conflict. The APRC itself recommended devolving considerable powers to Provinces, though it was never implemented.

Apart from the Sub-committee, a Steering Committee consisting 21 members headed by the Prime Minister, is dealing with matters such as, those covered by Chapter 1 and 2 of the present Constitution, Nature of the State, Sovereignty, Religion, Form of Government, Electoral Reforms, Principles of Devolution and Land. The Committee recommendations are yet to be made public.

In this context, President Maithripala Sirisena accused former president and his supporters of sabotaging the constitutional process. He said, “those that are opposing this process to resolve a national issue are those agitating for more bloodletting in this island.”⁶

Meanwhile, the SLFP’s position with regard to constitutional changes indicates that the approval required to pass the new Constitution in Parliament is going to be a cumbersome task for the President. Precisely because, his own party the SLFP is against the public referendum needed to introduce a new Constitution. For example, the SLFP in response to constitution drafting stated that,⁷

- It will ensure that the foremost place is given to Buddhism.
- The unitary status of Sri Lanka will be protected.
- It will not support any constitutional change that requires a referendum.
- There will be no change to the Executive Presidential system.
- There will be no merger of the Northern and Eastern Provinces.
- Devolution of power will only be through the fuller implementation of the 13th Amendment to the Constitution.

The position taken on devolution was not in conformity with the views of Tamil parties. The proposals by the SLFP are similar to the positions taken by the Joint Opposition (JO) supporting Rajapaksa within the SLFP. As far as the UNP and the SLFP consensus on constitutional reforms are concerned, both the parties in the past agreed to convert the Parliament into Constituent Assembly to draft a new Constitution. However, in the present scenario both the parties are still to arrive at consensus on various provisions of Constitution.

Tamil Parties

The opposition Tamil parties particularly the Tamil National Alliance (TNA) had clearly stated that Sub-committee report recommendations are “fairly positive” and the solution to the ethnic question has to be found within united and undivided Sri Lanka and hope ‘that the new Constitution would find a solution to the national question’.⁸ It made it clear that, ‘if more devolution is not granted it will not be a part of Constitution making processes’.⁹

JVP and JHU

The Janatha Vimukthi Peramuna (JVP) and Jathika Hela Urumaya (JHU) are consistently opposing government initiatives at reconciliation. For example, release of 12,600 former Liberation Tigers of Tamil Eelam (LTTE) cadets after rehabilitation was questioned by the JHU. And it also linked the rise of criminal activities in the region to the former LTTE cadres. The recent plot to assassinate Mr. M. A. Sumanthiran a TNA parliamentarian supposedly by former LTTE cadres had also fuelled the speculation in the South of the country that LTTE is regrouping in the North. The JHU accused that the “assassination plot was backed by the international Diaspora including Norway based Perinbanayagam Sivaparan alias Nediyan, France based Winayagam, who was a LTTE intelligence leader, US based Rudrakumar, who was the LTTE's legal advisor. Those mentioned here were reported to be involved in many wrongdoings such as

collecting funds internationally to help the LTTE to re-group”.¹⁰ Rajapaksa also blamed the government of its inaction in handling the situation in the North and East. He demanded that the government should not reduce the military camps and level of intelligence operations in the North.

Conflict of views on what constitutes reconciliation still persists among the majority and minority population. United Nations Special Rapporteur on minority issues, Rita Izsák-Ndiaye visited Sri Lanka from 10-20 October 2016. In her statements after the visit she stated that ‘ethnic and religious identity tended to define power and social relations leading to tensions and social divisions both between the majority and minority communities as well as between minorities’.¹¹ The statement reflects the present day situation in Sri Lanka even after the formation of National Unity Government in 2015 with the support of minority parties as well as the Sinhala majority parties.

Transitional Justice

Another issue that will hamper the Constitution drafting process is lack of consensus on mechanisms to deliver justice to the victims of war i.e transitional justice. The Prime Minister appointed the eleven member committee called the Consultation Task Force (CTF) on Reconciliation. The members are mainly drawn from the civil society to seek the public views on transitional justice and reconciliation, as per the October 2015 United Nations Human Rights Council resolution (UNHRC) on Sri Lanka. A few of the observations by the Committee are important to understand the nature of public opinion on government reconciliation efforts. Based on the submissions some of the observations and recommendations by the CTF are mentioned below.

Observations

- Confidence building measures will have to be created, which include, cessation of military involvement in civilian affairs, in the economy and civil administration in particular, expedited return of civilian lands acquired by the forces, demobilisation and demilitarisation.
- Political and constitutional settlement of the conflict.
- The criminalisation and incorporation into Sri Lankan law of international crimes such as war crimes and crimes against humanity as well as the crimes of disappearances, in line with the definition of the crime under the international Convention for the Protection of All Persons from Enforced Disappearances.
- In the North and East of the country, who suffered maximum during and after the war, there is a reluctance and fear of reparations, on grounds that reparations primarily in the form of compensation would thwart justice and accountability process.
- On the proposed Truth, Justice, Reconciliation and Non-recurrence Commission (TJRNC), a majority of submissions suggested that the TJRNC must establish truth, determine the root cause of conflict, hold perpetrators of violations to account, achieve equal rights, build multiple narratives of history and make recommendations for non-recurrence and enable victims to seek redress for violations and abuses.

- The importance of justice was reiterated in submissions. For example, submissions from the security forces and the police pointed out that “the reconciliation process proposed by the UN is counterproductive, compromise national security, deepen wounds and open new ones as well as exacerbate inter-ethnic and religious divisions”.¹² Therefore, the submissions by the security forces and the police supported the restorative approach to the reconciliation as opposed to retributive approach to reconciliation. On the other hand, submissions from the Tamil dominated North and East asked for international involvement in justice mechanisms. Even within the government there are divergent views on participation of foreign judges in justice mechanisms. And the majority of Sinhala parliamentarians are in support of independent domestic mechanisms as opposed to international participation.
- Establishment of a secular state and repeal of PTA have come up during the submissions.

Some of the Recommendations are

- The current justice system fails to take into account the rights and particular needs of affected persons, therefore, there is a need to develop a national policy on victim centeredness. Establish a Special Victim and Witness Protection Unit which will include police personnel, representation from the Human Rights Commission, civil society actors, international technical expertise etc..
- Development programmes will have to be implemented to reduce the regional disparities. The government will also have to ensure that it does not settle persons from other parts of the country prior to settling land issues in the North and East and in border areas.
- There is a need for participation of both international and national personnel on the four mechanisms such as, the Office of Missing Persons (OMP), Office of Reparations, the TJRNRC and a judicial mechanism comprising of a Special Court and Office of a Special Counsel.
- Establish a Minority Rights Commission and a National Commission on Women.

The CTF observations and recommendations are significant as there are in line with the UN October 2015 resolution titled, “ Promoting Reconciliation, Accountability and Human Rights in Sri Lanka”, which the Sri Lankan government co-sponsored. However, in light of active opposition to any form of concession to Tamil community as victims of war and opposition to international involvement by Rajapaksa led opposition as well as Sinhala hard line groups, the implementation of recommendations through legal and constitutional means is a difficult exercise. The JVP accused that the report recommendations only strengthens the ‘LTTE and does not make any reference to the plight of the Sinhala majority and the issues faced by the Muslim minority’.¹³ The JHU also labelled the report as a fulfilment of needs of the LTTE loyalists. The TNA and the Global Tamil Forum (GTF) has called for the full implementation of recommendations. Among the Tamil community, there is dissatisfaction about the role played by the TNA during the drafting of the OMP bill. Most of the families of missing persons refused to accept the government sponsored certificates of absence. The Human Rights Watch (HRW) has asked the government to ‘promptly implement the recommendations as the CTF report represents the first broad survey of Sri Lankan citizens of their aspirations for truth and justice’.¹⁴

The Sri Lankan government is still to repeal the controversial Prevention of Terrorism Act (PTA) much to the disappointment of Tamil political parties. The drafting of a new Counter Terrorism Legislation is in the process which the government claims will take some more time.

Above reactions to the CTF recommendations are a reminder that, conflict of views on reconciliation has not changed and there are two aspects to the implementation of the report's recommendations. One aspect is how the government is going to convince the SLFP and the UNP MPs, of the need for implementation of the report's recommendations. The second aspect is whether the President and the Prime Minister themselves are willing to implement the recommendations or will endorse the recommendations to the fullest. Both these aspects will determine the implementation in the future.

On Corruption

The main election promise of SLFP led by Maithripala Sirisena and the UNP led by Ranil Wickramasinghe in 2015 was to wipe-out corruption that was committed during the rule of former president Rajapaksa. According to the government Rajapaksa had stored in secret offshore accounts US \$ 18 billion. Accordingly, 'the government appointed an Anti Corruption Secretariat (ACS) to investigate into large scale corruption and fraudulent activities during the previous government and to initiate legal action against those responsible for the same and to recommend measures to be adopted to prevent such occurrences in future'. The ACS functioned under the preview of the Prime Minister Ranil Wickramasinghe. Soon, differences emerged over the role of ACS. The head of the ACS resigned in October 2016 after President Sirisena criticised the ACS of working in accordance with a political agenda. Reports suggest that, the President criticised the ACS after it took the former defence Minister Gotabaya Rajapaksa to court on corruption charges.

In another instance, Rajapaksa questioned the summoning of Buddhist monks by Financial Crimes Investigation Division (FCID). The FCID was established by the Sirisena government in 2015 to investigate into large scale financial transactions including money laundering activities. According to Rajapaksa 'there are 48 Buddhist monks who were sentenced to prison and these moves could be a part of a conspiracy carrying out against a religion'.¹⁵ The joint opposition also filed a complaint at the Bribery Commission against Prime Minister Ranil Wickremesinghe and former Central Bank Governor Arjuna Mahendran over the Central Bank bond scam. The Special Presidential Commission was appointed by the president to investigate the Bond Scam. There is also a Commission to Investigate Allegations of Bribery and Corruption which was set up in 1994, which many argue has failed to take legal action on those responsible for corruption. The Anti Corruption Front (AFC) of Sri Lanka identified around 38 cases of corruption involving Rajapaksa and ministers in his government. Slow progress in initiating legal proceedings against the culprits identified by various anti-corruption agencies is putting a question mark on achieving good governance in the country. And any action initiated against former establishment is questioned on the basis of religion and political vendetta rather than on actual facts.

Opposition to the government development and economic policies

Development in the North

Opposition to government development and economic policies is brewing up currently in Sri Lanka pertaining to development of various regions, availability of funds and its implementation. In the North the Tamil parties are raising questions on government's inability to settle the war displaced and rehabilitation of LTTE cadres. Other issues are, "non-return of lands seized during the war; the building of Buddha Viharas with the help of the armed forces in places where there are no Buddhists; illegal fishing by persons from outside the province with the help of the armed forces; and the Central government's practice of doing things in the province without consulting the Northern Provincial Council".¹⁶ The Northern Province Chief Minister (CM) Mr. Wigneswaran had asked the government to stop the settlement of Sinhalese in the East, which was opposed by the JVP¹⁷. The above developments indicate that the issue of land colonisation in the Tamil dominated North and East pursued by the successive governments' in Sri Lanka after independence is still pursued may be on a smaller scale. Amidst this background, on 24th September, the Tamil People's Council (TPC) under the leadership of the CM of Northern Province organised a mass protest named "Rise up Tamils". The protest 'demanded the withdrawal of Sinhala settlers from the North, demilitarisation, international investigation into the atrocities committed against the Tamils by the government of Sri Lanka, prevention of PTA and demanded a federal solution'.¹⁸

The rally attracted much criticism from the SLFP, the government and the Sinhala hard line organisation the Bodu Bala Sena (BBS). They condemned the CM for his actions in organising the rally and accused him of inciting ethnic disturbances in the country rather than helping in reconciliation efforts of the government. Sinhala hardliners demanded that 'action should be taken by the TNA against the CM for organising the rally and for his remarks that Sinhalese should not be settled in the Northern Province and Buddhist temples should not be built in Tamil dominated areas'.¹⁹ Some described the developments as power struggle within the TNA for leadership.

For the development of the region, the Chief Minister of the Northern Province proposed to setup a Chief Minister's fund for development projects in Sri Lanka. This proposal had not got the positive response from the Governor of the Province. This propelled the Chief Minister to suggest that the Constitution should do away with the Governor's post all together, as the Governor is appointed by the Centre. According to the Sri Lankan government, "SLR 435.58 million rupees out of a total of SLR 574 million rupees have been released as allocations for high impact projects in the Jaffna district for 2016. And a further allocation of SLR 8,292 million was given to construct 10,365 houses in the Northern Province, and in several other war affected districts such as Batticaloa, Puttalam, Trincomalee, Polonnaruwa and Anuradhapura."²⁰

Opposition to Investments and Agreements

Another issues raised by Rajapaksa was the foreign investments and agreements the Sri Lankan government is planning to conclude particularly with China and India. China's involvement in Sri

Lankan economy was an issue during the elections in 2015 and the present government had accused the Rajapaksa regime of tilting towards China and also allowing China's involvement in projects in sensitive sectors. However, after the initial reservations regarding China's involvement in development projects, in October 2016, the Sri Lankan government 'agreed to enter into an agreement with China Merchants Holdings (International) Company Ltd to develop the Hambantota Port on basis of a Private-Public Partnership (PPP) with 80 per cent of the shares transferred to the company. The port project is being developed at an estimated cost of US\$1,394 million, with the government expected to convert US\$1,080 million as equity under this agreement with the Chinese company'.²¹ Rajapaksa, commented that, 'people's land has been given to a foreign party and he is not opposed to investments but to privatisation of land'. Ranil Wickramasinghe on several occasions denied China's military presence in Habantota port and insisted that "the port will be used for only commercial purposes not for strategic and military purposes".²² As far as Sri Lanka's relations with India is concerned, Rajapaksa and hard line Sinhala elements are critical of proposed Economic and Technical cooperation Agreement (ETCA) with India, which the Sri Lankan Government hopes to conclude this year. They are opposing the agreement on grounds that opening of service sector will lead to rise in unemployment levels in Sri Lanka. Sri Lanka's relations with India and China were issues of electoral consolidation of various interest groups in the past. In the present scenario, hard line political parties are willing to raise their stake against the government by mobilising public opinion on the same issue. It remains to be seen how the government is going to handle the pressure on its foreign relations.

Conclusion

The former President Rajapaksa expressed confidence that the government will be toppled in 2017. This may not be possible given the fact that currently Rajapaksa has the support of only 50 parliamentarians who belong to the SLFP. The remaining MPs around 155 are with the National Unity Government and the rest belong to parties such as TNA, JVP and Sri Lanka Muslim Congress (SLMC). However, the above developments pertaining to reconciliation and development shows that, Rajapaksa will try to exploit to the maximum, the differences among the political parties.

In the last two years, positive steps taken by the government of Sri Lanka on reconciliation is influenced by following factors. One is a realisation that the Sri Lankan Tamils were instrumental in changing the government in 2015, secondly revival of economy and thirdly restoring Sri Lanka's credibility among international community which suffered due to war. Accordingly, the government is trying to pursue the recommendations of UNHRC by appointing various committees and through constitution drafting. To fulfil its promise of good governance, the government formulated an oversight committee to look into the implementation of policies by the parliament. The committee consist of all the political parties' members. Another issue is economic revival. According to the government, 'Sri Lanka is compelled to make the repayment on foreign loans and the total amount paid in 2016 was USD 1,826 million. The amount to repay in 2020 on foreign loans, the last year of Sirisena government, would be USD 3,463 million. The government blamed the previous government for borrowing indiscriminately from foreign sources for infrastructure projects, leaving the people in a debt trap'.²³

Therefore, for the government it is imperative that it has to show progress on reconciliation to get maximum economic advantage through bilateral and multilateral relations. For example, the EU and the US has linked the economic and development assistance to progress on reconciliation. The EU is considering restoration of the Generalised Scheme of Preferences (GSP+) status to Sri Lanka in 2017 only if the Sri Lankan government adheres to international standards in democracy promotion, human rights and reconciliation. Therefore, the issue of economic development and progress on reconciliation is very much linked in Sri Lankan context. In this scenario, how the government is going to balance the interests of political parties on reconciliation with the overall economic development policies it is willing pursue is an issue which needs a careful balancing. As far as Rajapaksa is concerned, the question is whether he can afford to go out of the SLFP to topple the government. It may not be possible as he cannot afford to lose the support base of the party.

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Disclaimer: Views expressed are of authors and do not reflect the views of the Council.

ENDNOTES

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