



Sri Lanka's Progress on Reconciliation and Constraints

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On 18th August 2016, the National Unity Government of Sri Lanka completed one year in office. Speaking at the first anniversary celebrations, the President of Sri Lanka Mr. Maithripala Sirisena 'promised to take every possible effort to make the country free from the UN resolution'. He also said the government is "giving the people the freedom, and establishing the democracy in the country, as well as rescuing the country from a huge economic conflict, and winning the international companions, who rejected us such as United Nations".¹ The United Nations Human Rights Commission (UNHRC)'s recommendations in October 2015 were significant in terms of identifying issues the Government of Sri Lanka will have to address to find peaceful solution to ethnic differences. In this context, the issue brief will try to analyze the progress made so far on the UNHRC's recommendations, response to the government's initiatives in this regard, constraints in implementation and future scenario.

Progress so far on UN Recommendations

United Nations High Commissioner on Human Rights, Zeid AL-Hussein's report on Sri Lanka in the 32nd session of the Human Rights Commission (HRC) on 28 June 2016 in Geneva presents a positive picture on the Sri Lankan government's engagement with the UN mechanisms. The High Commissioner stated that 'Sri Lanka's engagement with the UN has increased after the formation of the National Unity Government in 2016 and particularly, after the release of the UNHRC report in 2015'.² For example Sri Lanka issued a standing invitation to UN HRC Special Procedures such as the Working Group on Enforced and Involuntary Disappearances that made a full country visit in November 2015; the Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-recurrence made a visit to Sri Lanka; the Special Rapporteurs on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment visited Sri Lanka and the Special Rapporteur on the Independence of Judges and Lawyers completed a joint official visit in April-May 2016. Sri

Lanka also ratified the International Convention for the Protection of All persons from Enforced Disappearance (CED) on 25 May 2016. The engagement with UN mechanisms is a positive development under the new government. However, challenges remain in terms of implementation of reconciliation measures as proposed in the UN resolution. Some of the challenges are mentioned below:

Setting up of Reconciliation Mechanisms

The most challenging task of the Government of Sri Lanka is to set up reconciliation mechanisms as proposed in the UN recommendations. In this regard, the government appointed a Secretariat for Coordinating Reconciliation Mechanisms (SCRM). The Secretariat, which comes under the Prime Minister's Office, was formed by the Cabinet of Ministers on 18 December 2015. The four reconciliation mechanisms that came under the purview of the secretariat were:

- Office of Missing Persons
- Truth, Justice, Reconciliation and Non-Recurrence Commission
- Judicial Mechanism
- Office of Reparations

A 'Consultation Task Force (CTF) on Reconciliation Mechanisms was appointed by the Prime Minister on 26th January 2016 to consult the public on the above-mentioned reconciliation mechanisms'.³ The public consultations were called in the month of May, June, July, August and September 2016 and the consultation is in the process. The Task Force is an independent body comprising members of the civil society, and the consultations are conducted through written process, face-to-face meetings and through online in all the 25 districts of Sri Lanka. The Task Force will review and analyze the people's input from across the island and it is expected that once the public consultations are done it will present the government with a report on the proposed four mechanisms that will be made public and which will also be used to make the final decision on the shape and form of the reconciliation mechanisms.

Office on Missing Persons (OMP)

The Consultation Task Force on Reconciliation Mechanisms submitted an interim report in August 2016 on Office of Missing Persons (OMP) Bill and the Issues Concerning the Missing, the Disappeared and the Surrendered. The interim report was based on all written submissions received between July 2016 and consultations conducted until 8th August 2016. In line with the government's initiatives on reconciliation process, the Office on Missing Persons (OMP) (Establishment, Administration and Discharge of Functions) Bill was passed by Parliament on 11 August 2016. The OMP Bill 'provides for the establishment of the office; searching and tracing; assistance to relatives of missing persons; setting up of a database and setting out the procedures and guidelines applicable to the powers and functions assigned to the said office'.⁴

The draft of the Bill and the procedure followed in passing it in parliament came under criticism from the opposition parties, the civil society and the human rights bodies. For example, the Sri Lankan Freedom Party (SLFP's) MPs representing the Joint Opposition (JO) in parliament opposed the Bill on the ground that 'one-and-a-half day was not enough to debate the Bill in the parliament'.⁵ The JO leader and the former President Rajapaksa said that the OMP Bill was designed to "persecute" Sri Lanka's Armed Forces, and added that "MPs who vote for it would be responsible for betraying the country and the Armed Forces".⁶ The JO based their arguments against the Bill on some of the following reasons: 'the OMP will not be a part of Sri Lanka's state law enforcement and justice system, and it will be an independent body incorporated by parliament; its officers can enter without warrant any police station or prison, military installation and seize documents or objects that they require for investigation; it can receive foreign funding and can enter into agreements with foreign persons or organizations for its work; complaints can be received not only from relations and friends of missing persons, but also from any interested party, both local and foreign; government bodies at all levels including the Armed Forces and intelligence services are mandatorily required to render fullest assistance to the OMP, and provisions of the Right to Information Act will not apply to the work of the OMP'.⁷

After the Bill was approved in the Parliament, the Tamil-dominated Northern Province witnessed protests, demanding OMP in the North, since 'most of the missing people were from north, and majority of them were from the districts of Kilinochchi and Mullaitivu'.⁸ The Tamil Civil Society Forum (TCSF) and other Tamil organizations criticized the government for not showing any "genuine willingness to consult the victims".⁹ The Tamil National Alliance (TNA), on the other hand, lauded the government's efforts for setting up of the OMP, and for 'incorporating the suggestions made by the TNA'.¹⁰

Apart from the opposition, the Human Rights Commission of Sri Lanka (HRCSL)'s report of June 2016 pointed out the lack of transparency in dialogue and consultation in preparation of the draft bill on missing persons and transitional justice models such as the Truth and Reconciliation Commission and the Special Court. The report mentioned that national consultations should give space for participation of international actors in transitional justice mechanisms as recommended in the UN report.

The International Committee of the Red Cross (ICRC) 2016 report on missing persons in Sri Lanka titled, "Living with Uncertainty: Needs of the Families of Missing Persons in Sri Lanka", also provides a grim picture on the status of families of missing persons in terms of their economic and social well-being. The report claims that 16,075 persons were registered as missing persons with ICRC and are being looked for by 15,688 families (as of 18 November 2015).¹¹ Therefore, "the report strongly recommended the need to address the issue of missing persons as it can pose a threat to reconciliation process, and can also act as an ongoing reminder of conflict for society as a whole".¹² The report further states that out of the 395 families interviewed by the ICRC, in 93% of the families the missing person was a male. This shows that the majority of households are headed by women. Therefore, the task before the government is to provide

livelihood opportunities to the women apart from providing information about the whereabouts of the missing person.

The stand on the OMP issue taken above indicate that , there is an issue of conflict of interests in expectations between the government and the Tamil parties over whether the OMP will be used for seeking the truth or retribution'.¹³

Setting up of Transitional Justice Mechanisms

Another important aspect in the reconciliation process is the setting up of the transitional justice mechanisms in consultation with all the stakeholders including Sinhala and the Tamil parties. The UNHRC resolution of October 2015 specifies that 'the justice mechanisms will have to ensure the protection of victims, setting up of the truth-seeking and reparation programmes and institutional reforms'.¹⁴ The participation of international judges, prosecutors, investigators and lawyers in judicial mechanism is a contentious issue between the government and the international actors such as the UN, and between the government and the Tamil parties. The statements by the government side and their interpretations are adding to the uncertainty over setting up of accountability mechanisms with international participation.

For instance, while launching the consultations on reconciliation mechanisms in February 2016, Foreign Minister Mangala Samaraweera reiterated his government support to domestic judicial mechanisms. He cited the point 93 of Maithripala Sirisena's 100-day programme, which says, "Since Sri Lanka is not a signatory to the Rome Statute regarding international jurisdiction with regard to war crimes, ensuring justice with regard to such matters will be the business of the national independent judicial mechanisms."¹⁵ On the other hand, the foreign minister's address to the UNHRC session on 29th June 2016 acknowledged the problem pertaining to the setting up of justice mechanisms and the level of international participation. He assured that "the mechanism that is finally being set up will be one which has the confidence of the stakeholders, especially the victims, with fair trial and due process guarantees".¹⁶ The statement above provides a hope to the victims that their views will be taken into consideration and majority of the Tamil community prefer the involvement of international actors in justice mechanisms rather than domestic actors. For instance, the TNA supports the "participation of Commonwealth and other foreign jurists in Sri Lankan judicial mechanism and legal reforms to allow trial and punishment of those allegedly responsible for violations and abuses of human rights".¹⁷

To engage the public in consultations on reconciliation, the "Office of National Unity and Reconciliation", established in 2015, headed by the former President Chandrika Kumaratunga, has been conducting workshops with "multitude of actors, including representatives from government ministries, departments and academics, civil society leaders to reflect on content and process related aspects on the need for a whole-of-government effort on reconciliation".¹⁸ Discussions are taking place to formulate a national policy on reconciliation. It is also involved in district development planning, and in conducting and promoting cultural activities between the communities.

Resettlement and Demilitarization

A National Policy on Durable Solutions for Conflict Affected Displacement has been prepared through wide consultations, and with technical support from the UN. The Sri Lankan cabinet approved the policy on 17th August 2016. The new policy will address the needs of the displaced based on a 'rights-based approach and a solution that goes beyond resettlement, and it includes provision of protection, housing, water, sanitation and healthcare, primary education, a good living standard, and access to livelihood etc. The policy will also address the social discrimination of the displaced based on their gender, ethnicity, age, language, political opinion, religion, caste, living place etc'.¹⁹

According to the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, Government of Sri Lanka, as of 31st July 2016, there are 43,607 persons (13,670 families) to be resettled and the government has already resettled 882,392 persons (253,231 families).²⁰ Apart from the displaced within Sri Lanka, the main challenge would be resettling of nearly 100,000 Sri Lankan Tamil refugees who are in India. Resettlement is also linked to the aspect of demilitarization. Since the considerable amount of land has been occupied by the Sri Lankan military after the war in the north and east, release of land for civilian purpose and identifying the original owners of the land are going to be difficult tasks. The government claimed that it has released around 3,300 acres of land since January 2015.²¹ However, the British Tamil Forum (BTF) claimed that as of March 2016 the Sri Lankan "military is occupying 67,427 acres of land belonging to the Tamil people".²² According to the Centre for Policy Alternatives (CPA) Sri Lanka survey, 'the land occupied by range of actors including the Army, Air Force, Navy and Police in Northern Sri Lanka as of March 2016 was nearly 12,751 acres'.²³ Despite the differences in figures, it is evident that a considerable amount of land is still to be released to the people. Differences on the resettlement issue between the government and the TNA surfaced in April 2016, when the Army accused the leader of the TNA Mr. R. Sampanthan of forcing his entry into military-occupied areas in Killinochi district and 'majority Sinhala nationalists had urged the President Maithripala Sirisena to arrest Mr. Sampanthan'.²⁴

Another issue is police and security sector reforms as mentioned in the UN resolution. The Sri Lankan Government de-proscribed 8 Diaspora organizations and 269 individuals in November 2015. The Tamil parties' demand for repeal of the Prevention of Terrorism Act (PTA) is still to be accepted by the government, and in "2015-16 alone, more than 40 persons were arrested under PTA, including more than 25 in March-April 2016, during a security operation after the discovery of an explosives cache in Jaffna".²⁵ The continuing arrest under PTA raises doubts on government's commitment to repealing this Act with new counter terrorism legislation as claimed by the government'.²⁶

Drafting of the New Constitution

The National Unity government promised a number of measures such as abolition of the executive presidency, restoration of independent commissions and drafting of a new constitution

to pave the way for reconciliation. As promised, the government diluted the powers of the executive presidency and restored independent commissions through the 19th Amendment to the constitution in 2015. For the first time, the Sri Lankan government has also proposed to draft a constitution with public consultation. In this regard, the Public Representation Committee on Constitutional Reforms (PRCCR) came out with a report in May 2016 after a series of deliberations with the public through multiple means. For example, ‘around 2,500 persons/organizations had appeared before the committee, 800 representations were received by email, 150 by way of fax, 60 by telephone and 700 by post or handed over at the office’.²⁷

The Committee made recommendations after evaluating the public response on various important issues such as on the nature of the state, the national anthem, the national flag and citizenship, religion, basic structure of the constitution, devolution of powers, power sharing, the judiciary, fundamental rights, language rights, merger of the Northern and Eastern provinces and land. The recommendations, made for the consideration of the Constituent Assembly by the Committee, clearly point out that it is going to be a tough task for the government to convince all the stakeholders to arrive at a consensus on the issues mentioned above. For instance, on the question of *religion*, the recommendations made are as follows:

Retain the current Article 9 (Chapter II) of the constitution which states that: “The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana”.²⁸ Or Sri Lanka shall be a secular state or revise the heading of the Chapter II of the constitution and which should state as “the Republic of Sri Lanka will give all Religions Equal Status”.²⁹

On the *nature of the state*, the Committee suggests that Sri Lanka shall be a free, independent, sovereign republic consisting of government organs as provided in the constitution, or Sri Lanka shall be an independent, free, sovereign, unitary state consisting of government organs. Organs here, for instance, refer to the Parliament, the Executive, the Judiciary at the centre, the Provincial Executive and the Council at the provincial level, and at the local level, it refers to the Local Councils. Another option given was “the Republic of Sri Lanka is a Unitary State”.³⁰

On the *Unit of Devolution*, particularly on the merger of the Northern and Eastern provinces, which is the most controversial issue in Sri Lanka, the Committee report suggests that Muslim and Sinhala communities in the north and east have expressed strong apprehensions regarding the issue. The ‘merger, according to the Muslim community, will make them a minority in the province. According to the Sinhalese community, the merger will provide an opportunity for dominant Tamil minority in the province to form a separate state’.³¹

On the question of use of *state land*, the Committee recommended the setting up of the National Land Commission (NLC). And any dispute between the Centre and the State shall be decided by the NLC. Importantly, the Committee recommended that the “*Bill of Rights*” be introduced. The rights cover the rights to life, equality, dignity, women’s rights, rights to return,

freedom of religion, right to education and health, right to land, trade-union rights, right to non-disappearance, right of access to information and consumer rights, to name a few.

On the *language issue*, one of the recommendations of the Committee was to declare Sinhala and Tamil as the official, national and administrative languages, and English as a link language. The repeal of PTA and the establishment of the Commission on Discrimination were also recommended.

The main challenge for the government is to propose a constitution through a proper procedure acceptable to all. For example, the recommendations made by the Committee will have to be debated and adopted by a two-thirds majority in the parliament. And then the Provincial Councils can make recommendations, and will have to accept the draft. The final draft will have to be accepted through a national referendum. Since the recommendations on contentious issues, as mentioned above, show that nothing much has changed after the war in 2009, how the government is going to convince all the stakeholders in the future remains to be seen.

Constraints in Reconciliation Process

Firstly, even though the Tamil parties had supported the formation of the National Unity Government, differences exist on a number of issues due to lack of trust. For example, regarding the status of Liberation Tigers of Tamil Eelam (LTTE) cadres at Rehabilitation Centers, the Tamil National Alliance (TNA) alleged in August 2016 that '104 LTTE cadres were injected with poison leading to their deaths and some had fallen sick due to injections'.³² According to reports, Northern Province Chief Minister C.V. Wigneswaran 'had requested the US Ambassador to Sri Lanka, Atul Keshap, to get the US Air Force (USAF) medical team camping in Jaffna during that time to examine the LTTE cadres. However, it did not take place as the USAF team was not equipped to conduct the required investigations'.³³ The Government of Sri Lanka rejected the claims by the Northern Province Chief Minister as baseless.

The trust-deficit between the government and the Tamil parties also reflects in the positions taken on the involvement of the international actors in accountability mechanisms. In the past, the Presidential Commission Investigating Cases of Missing Persons (PCICMP) also called as the Maxwell Paranagama Commission was appointed by the former President Rajapaksa on 15th August 2013 to investigate complaints regarding the missing persons from 1983 to 2009. The Paranagama Commission 'received more than 21,000 complaints relating to disappearances'.³⁴ The Commission in 2014 was given a mandate to investigate allegations of war crimes. The Commission report was released in August 2015 and was tabled in the parliament in October 2015. The Commission's report mentions that the 'allegations of war crimes are not systemic crimes', which the UN HRC refuted.

Before the Paranagama Commission report, the findings of the Darusman Report (Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka) that was released on 31st March 2011, concluded that 40,000 civilian deaths occurred in the final phase of the war,

and ‘both the LTTE and the Sri Lankan Army (SLA) were involved in violations of international humanitarian law and human rights’.³⁵ The Paranagama Commission did not agree with number of civilians’ deaths and Darusman report’s emphasis on prosecution as an essential aspect of any transitional justice process.

The differences in views on the number of civilians killed in the final phase of the war between the UN and the government-constituted reports are an indication that the setting up of transitional justice mechanisms acceptable to the international actors is not an easy task. Because the Paranagama Commission report observed that “the civilians killed by the LTTE, whether deliberately or recklessly, including those civilians who were killed attempting to escape the conflict zone, should not figure in the estimate of collateral damage attributable to the SLA”.³⁶ These observations point out that those responsible for committing the human rights violations, particularly persons belonging to the SLA, backed by the state, may try to hamper the setting up of accountability mechanisms that would include the element of prosecution.

The Paranagama report also recommended “the domestic judicial mechanisms’ and “accountable amnesty” to those who pleaded guilty and expressed remorse’.³⁷ Whether the government of Sri Lanka will implement the recommendations remains to be seen. Even though the government of Sri Lanka co-sponsored the UN resolution that proposed the involvement of international judges and prosecutors in judicial mechanism, the President Maithripala Sirisena spoke against the involvement of international judges in judicial mechanisms on number of occasions. For instance, in July 2016, addressing an event in Panadura, he said, “as long as I am the President of this country, I will not allow for any international courts, international judges and international organizations to interfere with the internal affairs of Sri Lanka and the judiciary.”³⁸

The statement indirectly endorsed the Paranagama Commission report recommendations as mentioned above.

Secondly, the lack of unity within the SLFP is going to be a major hurdle for the Sirisena–Wickramasinghe government. The SLFP is divided on the reconciliation methods that the government is planning to undertake. The opposition to the OMP bill presented in parliament by the Sirisena government, by Rajapaksa led JO is one such example. Maithripala Sirisena is trying to control the party by removing the loyalists of Rajapaksa. For instance, in August 2016, ‘Sirisena appointed 40 new District and Electoral Organizers of the party. With the reshuffle, the President has removed 13 loyalists of former President Mahinda Rajapaksa from the SLFP organizer posts’.³⁹ In protest, all ‘JO parliamentarians of the SLFP have decided to resign from their district and electoral organizer posts’. On the other hand, Maithripala Sirisena’s decision to attend the 69th anniversary of the UNP on 4th September 2016, which remained a political adversary of the SLFP since independence, has proven a point that the bipartisan government at the Centre is going to stay for some time despite the differences within the SLFP.

Thirdly, lack of unity among the Tamil leadership is going to hamper the reconciliation process. Differences within Tamil political parties on what constitute a Tamil state, and how to

pursue the demands for equal rights to Tamils from the state still exists even after the defeat of the LTTE in 2009. The differences are evident in the positions taken by some of the Tamil parties on constitution drafting. For instance, the Tamil People's Council (TPC) was formed by the Chief Minister of Northern Province, C.V. Wigneswaran on 19th December 2016, due to differences with Tamil National Alliance (TNA) leadership. The TPC took a position that the government should enter into an agreement with the Tamils on the "basic vision of the state" and Sri Lanka must be a Federal State and should be called the "Federal Republic of Sri Lanka."⁴⁰

The Democratic Tamil National Front (DTNF) was formed in May 2016 and it consists of Tamil parties such as Democratic People's Congress (DPC), Eelam People's Democratic Party (EPDP), Tamil Eelam Liberation Organization (TELO) and Tamil United Liberation Front (TULF), among others. The new coalition resolved to campaign for the adoption of the "Indian model of federalism", which could be accomplished by enlarging the scope of the 13th Constitutional Amendment, which created provincial councils'.⁴¹ The devolution of powers under a unitary state, as it stands today, may not be changed as demanded by the Tamil leadership such as the TNA, given the majority community's apprehension to adopt a federal structure of governance. The government's emphasis on full implementation of the 13th Amendment to the constitution that was introduced through the Indo-Sri Lanka Agreement in 1987 is also not acceptable to Tamil leadership, as the amendment provided more powers to the Centre and its appointed Governor to recall some of the Provincial powers, if need be.

Conclusion

The above developments indicate that reconciliation process in Sri Lanka is going to take much longer time than expected. This is mainly due to the lack of consensus on contentious issues, which were responsible for the emergence of ethnic conflict in Sri Lanka in 1980s, such as on the nature of the state (unitary or federal), land rights etc. The formation of bipartisan government at the Centre presents a positive picture, however, the success of reconciliation efforts will depend upon the change in perceptions between the majority and the minority regarding the basic vision of the state. The UN Secretary-General Ban-Ki-Moon visited Sri Lanka in September 2016. While congratulating the government on progress made in reconciliation, the UN Secretary-General stressed that the government needs to speed up the process of demilitarization, and to 'recover from the past Sri Lankans will need all four elements of post-conflict resolution, i.e., truth-telling, accountability, reparations and institutional reforms. There is no fast route to achieving this. It will take many years of political courage and determination". The statement underscored the need to pursue reconciliation in Sri Lanka with political will and patience.

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

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