

PEACE MONITOR



Volume 10/ Issue 1

March 2015



THE CHALLENGES OF A NEW POLITICAL CULTURE

CENTRE FOR POLICY ALTERNATIVES



PEACE MONITOR

Volume



CENTRE FOR POLICY ALTERNATIVES

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Peace Monitor is a newsletter of the Centre for Policy Alternatives (CPA).

The CPA was formed in the firm belief that the civil society contribution to the public policy debate is vital and in need of strengthening. In fulfillment of its mandate, CPA focuses on issues of governance and conflict resolution through programmes of research and advocacy.

Published since early 2002 as 'Saama Kathaa', Peace Monitor is one of the many ways by which CPA seeks to foster and monitor dialogue on key current issues in Sri Lanka.

Saama Vimarshi and Samaathana Nokku are parallel Sinhala and Tamil publications. The views expressed here do not necessarily reflect the views of the CPA or its board of directors.

The Editors

Peace Monitor

Centre for Policy Alternatives

**No. 24/2, 28th Lane, off Flower Road,
Colombo 7.**

Tel: 011-2565304 or 011-4714460

**Email: info@cpalanka.org/lionel@cpalanka.org Web:
www.cpalanka.org**

Published: March 2013

Publication: Volume 12/Issue 1

**Cover Photographs: adaderana.lk, dbsjeyaraj.com, newsfirst.lk,
colombotelegraph.com**



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Photos (L-R): adaderana.lk,
dbsjeyaraj.com, newsfirst.lk



HISTORIC VICTORY: HUGE CHALLENGES



Dr.

Paikiasothy Saravanamuttu

historic for a number of reasons. It is the first time in Sri Lanka that an incumbent president has been defeated at the polls and in a record breaking 81% turn out, the first time too that an incumbent sought an unprecedented third term. **The election also saw, arguably, the largest coalition of forces arrayed against the incumbent with majority Sinhala Buddhist nationalists at one end, and Tamil nationalists at the other. Sirisena succeeded with 51.28% of the vote to Rajapaksa's 47.58 – a margin of approximately 450, 000 votes.**

Whilst Maithreepala Sirisena won handsomely in minority concentrations, Mahinda Rajapaksa did well in the Sinhala majority areas, albeit with reduced votes from his all-time high 2010 victory in the wake of the defeat of the LTTE. Of the 22 electoral districts Sirisena won 12 and some 70 polling divisions, whilst Rajapaksa won 10 and some 90% polling divisions out of a 160- polling divisions approximating to constituencies under the first-past – the post electoral system. The profile of the results, allow Rajapaksa and his loyalists to claim that he retains a not inconsiderable allegiance amongst the majority community. This remains to be seen at the next general election, which could take place in the next five

[www.colombotelegraph.com]
The victory of Maithripala Sirisena over incumbent president Mahinda Rajapaksa in the 08th January Presidential Election is



months and by April 2016 the latest. It is clear though, that Sirisenahas won with votes from all communities, that Rajapaksa's vote bank amongst the majority community dropped by 10% from the 2010 election and that the presidency can only be won with minority support, as well.

Worst fears about violence and malpractice on Election Day were not met and eventually, even those about the Rajapaksas being unwilling to relinquish power. There are reports indicating that they intended to stay on by suspending the vote count through a declaration of emergency and troop deployment. This was stymied by the refusal of the Attorney General and force commanders to comply and the intervention of the Leader of the Opposition and now Prime Minister, Mr. Ranil Wickremasinghe. These allegations are under investigation. Rajapaksha remains in the country with rumours about him entering parliament. The immediate focus of his political activity therefore will probably be the identification of a vehicle for whatever political ambitions he retains, now that he has conceded the SLFP leadership to President Sirisena.

Special mention must be made also of the role of the Commissioner of Elections who at crucial moments acted to protect the integrity of the electoral process. In this connection, it is worth noting the irony of an

election in which the issue of governance in terms of institutional and procedural reform predominated, that acts of personal courage and integrity saved the day for governance. This underscores the importance of the institutional and procedural reform.

President Sirisena promised a 100 - day plan of far reaching reform to address the governance deficit, which constituted his primary election platform. In this time frame the powers of the executive president are to be pruned substantially and the balance of executive powers restored in favour of parliament, independent oversight commissions for the arms of the state including the police, public service and elections are to be re-established, right to information legislation is to be introduced and the electoral system reformed to combine first- past – the – post and proportional representation. All of this crucially depends on the current coalition holding together and also on the support of some 30 or more legislators from the Rajapaksa camp – hence Rajapaksa's political machinations. Opposition legislators have so far pledged support for the programme and Parliament is to be dissolved at the end of the 100 days with a general election to follow probably in early June. For the moment it is a historic win for Sirisena with massive challenges to overcome; a necessary condition for the restoration of democratic governance has been met with quite



some unfinished business left to do, though.



[www.ft.lk]

Indeed the key irony of the election is the tacit consensus amongst the partners of the broad coalition that there would be no explicit reference to the major challenge facing the country – the resolution of the ethnic conflict, meaningful reconciliation with accountability in respect of the allegations of war crimes and other human rights abuses. Whilst leaders of the coalition have at various times made statements about a “credible domestic mechanism” regarding the latter and the full implementation of the 13th Amendment regarding the former, it is clear that the collective wisdom and political strategy of the new government is to keep these issues well away from the public discourse till after a general election, lest ventilation of them risks the unity of their broad coalition.

The first test of the new government's commitment to and policy on human rights comes with the March

deadline for the release of the report of the Commission of Investigation under the Office of the UN High Commissioner for Human Rights, mandated by the UN Human Rights Council resolution in March 2014.

The government clearly prefers a deferral of the release of the report to post general election – the September sessions of the Council at the earliest. In the meantime, it will most likely pledge to continue to explore the modalities of the promised domestic mechanism and demonstrate its bona fides regarding reconciliation and accountability. From the perspective of the victims and of civil society in general there must be no compromise on the release of the report and at the same time, the government must engage civil society in the design and purpose of any domestic mechanism. A first



step in this direction would be the identification of a cabinet focal point for human rights issues.

Some positive steps have been initiated – civilians with no military



experience but with solid credentials on reconciliation and devolution have been appointed as governors of the north and east respectively, initial steps have been promised regarding the return of land acquired by the military and some checkpoints removed. At the same time, the list of detainees has not been released or those languishing in prison under the PTA for years and in some cases over a decade, without any shred of evidence against them, prosecutions in the ACF 17 and Trinco 05 cases yet to be made and the national anthem yet to be sung in both Sinhala and Tamil as recommended by the LLRC. The latter are actions that will demonstrate commitment and underpin the fundamental notion of governance that human rights protection, especially the reversal of the culture of impunity is integral to it. The goodwill generated towards the government by the international community – particularly India and the West with a number of high-level visits already – must not obscure this on the grounds of giving the new government a chance and of being mindful to its existing political challenges.

Likewise, from the perspective of the wider polity and given the daily revelations of allegations of Rajapaksa corruption, prosecutions of the guilty, in this regard and without delay, is a major expectation. This is the other dimension of

impunity and the failure to do this could cost the new government dearly at the polls. At the same time, it must be emphasized that there should be due process and that the scale of the corruption is allegedly so vast that unearthing evidence will also take time as well as international assistance, which is now being sought.

[Photo: www.whatsonchengdu.com]
The challenges confronting the new government in sticking to its 100-day programme were brought to the fore on the issue of the Chief Justice – the reinstatement of Chief Justice Shiranee Bandaranayake in this period being a manifesto promise. The modality used was of the President informing Mohan Peiris that he was in effect a “usurper” as there was no vacancy for the position he de facto occupied. This was based on the flawed impeachment process whereby parliament had not voted on an address to impeach the Chief Justice but rather on a resolution to set up a select committee to do so. This had at the time, been pointed out by the opposition, whose objections were in turn overruled by the Speaker.

Critics point out that the technical legal grounds would have been legitimized by a resolution of parliament and the modality employed raises doubts about the government’s commitment, to



governance. They also point to the demonstrations against Peiris by the Bar Association in this connection and to media reports of him bargaining for and being offered diplomatic positions if he resigned. The latter is inexcusable. The government's desire to be rid of him is understandable in light of the risk of him constituting a stumbling block to the reform programme. The modality employed however, could certainly have been above reproach but invariably fell prey to the government's uncertainty and insecurity regarding its parliamentary majority.

A fourth of the 100- day period has passed and with it an extremely election- friendly budget. There is a new Chief Justice, Shiranee Bandaranayake having being reinstated and resigned and a variety of steps are being taken in respect of anti -corruption measures, international goodwill and the trimming of the powers of the executive presidency.

Civil society cannot rest in the belief that its agenda for reform of over two decades is now in large part, the agenda of reform of the government of the day. It has to support critically and were things to go astray, be pro-actively critical to ensure that this opportunity is not lost.



[www.dailymail.co.uk]

***“Some positive steps have been initiated – civilians with no military experience but with solid credentials on reconciliation and devolution have been appointed as governors of the north and east respectively, initial steps have been promised regarding the return of land acquired by the military and some checkpoints removed.*”**



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Transparency or the lack of it in the new Government.’s 100-Day Plan

Editor, Peace Monitor

[Photo: www.colombotelegraph.com]

A subject that has gained a great deal of public attention, the 100-Day Plan initiated by the new Government on January 10, is set for completion by April 23. Whilst many have commended certain aspects of its workings, there is also some incredulity and opposition to yet other aspects of the Plan. Whilst this is understandable in the case of ambitious new programmes of this nature, this is a situation which cannot be overlooked considering that the hopes and dreams of Sri Lankans have clearly been inspired towards the establishment of good governance in the country, to an extent as never seen before.

Apart from complaints regarding appointments to the ‘All Party Cabinet’, there are some other important areas



which need attention. These were some of the points, examined and discussed at a public discussion held at the Organisations of Professional Associations (OPA) auditorium, on January 30. Panellists at the discussion were Attorney-at-Law Elmo Perera, Attorney-at-Law Chandrapala Kumarage, Attorney-at-Law and Ravaya Editor K.W. Janaranjana, Attorney-at-Law and human rights activist S.G. Punchihewa, activist Dr. Raja Wijetunge and Centre for Policy Alternatives Executive Director Dr P. Saravanamuttu. More than 150 participated in the discussion including civil society activists, academics, intellectuals, lawyers, media representatives and members of the public.

Various challenges arising in the establishment of independent commissions, the implementation of the National Medicinal Drugs Policy, the presenting to parliament of the Draft Bill on Right to Information, were among matters discussed, with some prominence being given to the Draft Bill.

The Draft Bill in the Right to Information which had been presented to Parliament when the UNP was in opposition, had at the time being defeated by majority vote. The subsequent attempt by KaruJayasuriya who took the initiative to pass this bill was also rejected by the



then Government. It was highlighted in public discussion that the obstruction of the citizens' right to information would by its nature, support and promote corruption and fraud. The eradication of corruption and fraud was considered high on the agenda of the new Government.

The Draft Bill on Right to Information is expected to be presented in Parliament on February 20. The process behind this presentation remains somewhat mysterious. While it was stated at the onset that the bill would be drafted with the leadership of the Secretary of the Ministry of Media and an advisory board of fifteen members, it is not clear whether this is, in fact, what happened. Attorney-at-Law J.W. Janaranjana mentioned that he too had been initially invited to this panel, but subsequently had not been contacted. Accordingly it is not clear whether this Draft Bill is the work of only one individual.

The Centre for Policy Alternatives, and the Editors' Guild of Sri Lanka together with other media organisations such as the Free Media Movement worked on a draft Right to Information legislation some years ago. It is not clear whether these have been taken into consideration in the present RTI Draft Bill. In bringing about a society which wants to establish good governance, the views of the people have to be considered by policy makers, and policies have to be formulated to meet the requirements of the people.

For example, the passing of Right to Information legislation in India followed on various forceful requests arising from the grassroots level. The processes of drafting the Bill incorporated transparency and took into account the

peoples' input and requirements. In the case of the 100-Day Plan, it appears that, as usual, decisions taken at the higher levels are imposed on the citizens of the country and this includes the drafting of the RTI legislation as well.

It has been announced by the Government that a proposed Act which allows access to information provided it is not against the interests of national security or the territorial integrity of the country will be passed. However its limitations are not clear. If it is to be entirely enforced, there is the possibility of important information being withheld.

Mr Janaranjana also said it was not clear as to how exactly the Act would be implemented. This too has to be taken into consideration. From all these facts, we can conclude that while there is little doubt that the Draft Bill on the Right to Information will be presented in



parliament, there is no transparency as to its composition and process.

[www.srilankabrief.org]

The 100-Day Plan also targets the abolition of the 18th Amendment, and seeks to put in place a speedy mechanism towards the 19th Amendment which will empower the



Independent Judicial Commission, the National Police Commission, the Independent Public Service Commission, the Elections Commission and the Commission to Investigate Allegations of Bribery and Corruption, following due appointments. To be able to meet these promises in the short time span given, a certain amount of haste is justifiable. There is concern as to whether past experience in the process of establishing such commissions has been taken into account. This is because that apart from trusting that the process of establishing the independent commissions is being taken forward, correctly there seems to be little else that citizens discourse can really do. A question therefore arises as to transparency in such a situation.

Dr Saravanamuttu emphasised that factors that need to be functioning for good governance, could not be worked out in an ad hoc manner as in a cricket match.

The establishment of Independent Commissions has to fulfil the public requirement as a priority and not (merely) cater to the needs of the Government. The main drawbacks of the Commission to Investigate Bribery and Corruption were a shortage of manpower and resources. The proposed Independent Commissions should not face a similar fate. Similarly they should take into consideration local and international conditions and incorporate checks and balances in their functioning.

The Government in appointing secretaries to the new ministries has reshuffled an existing list, it was noted. The President had clarified that it was not the fault of the officials, many of

whom acted under strong pressure. However, as many people say there are corrupt officials among them.

If a list of more than a thousand officials in the public administrative service was to be taken, it would be possible to identify the dedicated and honest officials among them. What harm would there be in giving a chance to new officials?

A question arose whether it is merely the age old methods that were being adopted by the Government to appoint people to the Commissions. Mr.Punchihewa spoke on the problem of “Teeth” for the existing Human Rights Commission. The problem here was that the Commission had no power to act on a matter unless an individual or public official had first makes a complaint. Independent Commissions should have the ability to work around such technicalities. A situation should be avoided where the public lives in mistrust of the workings and transparency of the various committees established.

An important component of the 100-Day Plan is the approval of the National Medicinal Drugs Policy by the cabinet and its submission to parliament. There is a question as to whether the aims of this policy are different to that of Prof.Seneka Bibile’s. If so has it made considerations for the various challenges of the modern day free trade in medicinal drugs? The National Medicinal Drugs, Devices and Cosmetic Regulatory Authority bill submitted by MaithripalaSirisena when he was Minister of Health is possibly still in the Legal Draftsman’s Department, and its status is unknown.



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It is true that with such a hasty process it is impractical to spend too much time at one stage. Nevertheless, when such bills are passed they will become law, and it is important to remember that the people will not be benefited from a legal system with loopholes in it. We believe that a government which aims for good governance and the rule of law should maintain a more transparent policy formulation process.

A mechanism should be created as soon as possible to ensure incorporating the views of the public, in policy making. We hope the Government will use the media and other means towards this end.

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CENTRE FOR POLICY ALTERNATIVES

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மாற்றக் கொள்கைகளுக்கான நிலையம்

"It has been announced by the Government that a proposed Act which allows

Action required for promoting openness in the



100-day reform process and the consolidation of constitutional democracy

The Centre for Policy Alternatives (CPA) welcomes the general direction of the government's 100-day reforms programme that is currently underway. After decades of intolerable battering, Sri Lanka's democratic procedures and institutions are badly in need of reform and rejuvenation. In terms of broad principles, we unhesitatingly support the abolition of the executive presidential system, the re-establishment of the Constitutional Council and the independent commissions, freedom of information legislation, and the reform of the parliamentary committee system. We are also of the view that further reforms must follow in the next Parliament to consolidate democracy and pluralism, including major changes to our framework of devolution and power-sharing, and the protection of fundamental human rights. However, as the new government reaches the completion of its first full month in office, we are increasingly concerned that there is virtually no detailed information available in the public domain with regard to how the reform process is being conducted within the government, or about how substantive proposals are evolving within Cabinet, Parliament, and the National Executive Council. Constitutional reform is not a matter exclusively for government and political parties especially in a long-standing

democracy like Sri Lanka, and it is crucial that the public are kept fully informed about how the form and substance of the reforms are negotiated among parliamentary parties.

While conscious of the pressures of time and resources in rapidly enacting the programme for which President Sirisena obtained a clear mandate, we feel that more can be done to share and disseminate information, to encourage public participation and consultation,



and to ensure the transparency of decision-making in regard to the reform process. We note that the full potential of information and communication technologies in particular, very removed from how they were creatively leveraged to stimulate public debate during the election campaign, are not being exploited as well as they could towards these ends, and more broadly, the nature and form of the current process does not meet even basic standards in respect of transparency and participation established by international constitution-making best practice. [www.colombotelegraph.com] Following best practice ensures the necessary balance between the orderliness of the process and the critical need for democratic participation. At the absolute minimum, we insist the government must publish the final



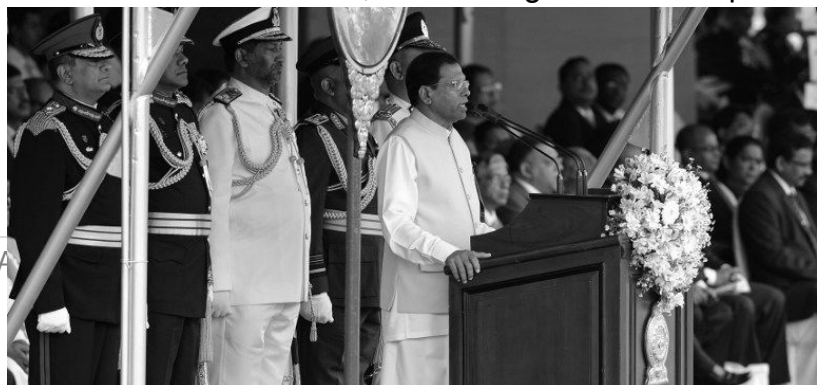
Nineteenth Amendment Bill

and provide at least two weeks for public debate before presentation to Parliament.

The reform proposals would undoubtedly be qualitatively improved by being subjected to open discussion, critique, and review. We also strongly believe that the durability and legitimacy of the reforms would be enhanced if the public are not only consulted on the way their governing arrangements are being changed, but if their views are seen to be actively taken into account. This will moreover lessen the scope for self-interested political opposition to the reforms, and it is in the interests of the people of Sri Lanka that the reform process is not derailed in any way. In this regard, it is important to stress that it is government's primary responsibility to reach out to the substantial part of the electorate that voted for the losing candidate in the presidential election. Without compromising the integrity of President Sirisena's mandate, or diluting the need and desire of the majority of Sri Lankans for good governance reforms, all sections of public opinion must be engaged and included in building the new Sri Lankan political culture and its structures of constitutional democracy. In addition to the mandate for constitutional reform, the last presidential election engendered a rich public discourse about democracy and good governance. This must not only continue, but in the true spirit of the mandate, the government must ensure respect for the views of the public by taking immediate measures to improve the transparency of the process and public participation in it.

Beyond the 100-day process, there have also been a number of other developments that are potentially of cause for concern from the perspective of the fundamental democratic and constitutional principles that the new government was elected to re-establish. While there was no doubt whatsoever about the illegality and the illegitimacy of Mohan Peiris occupying the office of Chief Justice, we are concerned that the manner of his removal has given rise to apprehensions about its consequences for the appropriate relationship between the executive and the judiciary. This precedent may be used for less justifiable ends in the future. But more immediately, there is an air of technical artifice adhering to the course of action adopted by the government and the Bar Association. While no doubt strictly legal, it must be remembered that public perceptions about the legitimacy of decisions and procedures are equally important in a democracy. These doubts could have been avoided had the government at least secured a parliamentary resolution in favour prior to removing Peiris from office, even if a more rigorous procedure was considered impracticable. Securing such consensus within Parliament would have paid rich dividends by conferring an unassailable legitimacy upon the removal beyond technical legal rectitude, and eliminating any ground for doubt to arise about the role of the executive and the Bar Association in the process.

Likewise, the investigation of corruption





and other malpractices as well as the removal of officials appointed by the previous regime – such as the head of the Commission to Investigate Allegations of Bribery and Corruption – must be done in accordance with the law, and not through street agitation and politicians arrogating to themselves functions reserved for the law enforcement and judicial authorities. Strict procedural and substantive legality must be followed in the investigation and prosecution of all these alleged wrongs. We reiterate the general principle that in the constitutional democracy that the people of Sri Lanka voted to establish in the January election, injustices and grievances must invariably be addressed through appropriate institutional channels and not through methods that can be regarded as little better than mob justice.

While welcoming the several symbolic gestures towards reconciliation that the government has made, including in the Independence Day celebrations, CPA is nevertheless concerned that other measures and practices that have become entrenched during the period of conflict are still being continued. In particular, we believe that there is no justification whatsoever to gazette the mobilisation of the armed forces for law and order functions that should be performed exclusively by the police in peacetime. As domestic constitutional and statutory provisions and Sri Lanka's international obligations under the International Covenant on Civil and Political Rights (ICCPR) envisage it, the calling out of the armed forces in aid of the civil power is only legal, necessary, and proportionate when there is a clear and present danger to the life of the community. CPA cannot see any such necessity in Sri Lanka today.

In this connection, we reiterate our long-standing and consistent call for the repeal of



the Prevention of Terrorism Act (PTA), for its replacement where necessary with legislation consistent with applicable international standards, and call upon the government to take the most expeditious steps possible to release the scores of Sri Lankan citizens who have suffered deprivations of liberty for long periods of time, and in most cases torture and ill-treatment, under its unconscionable provisions. CPA also notes that the regulations

promulgated under the PTA in lieu of Emergency Regulations continue in force. These are unconstitutional and *ultra vires* and in violation of our ICCPR commitments. They have to be withdrawn forthwith.

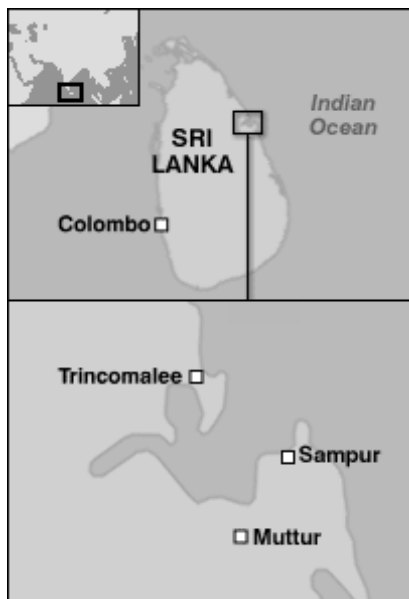
[Photo: www.aljazeera.com]

CPA hopes that the government will consider these constructive critiques in the spirit in which they are made, and will take steps to address them. Responding meaningfully to these concerns will contribute immensely to the prospects and quality of the reform process, and ensure the irreversibility of substantive reforms in the interests of a peaceful, democratic, plural and united Sri Lanka.



“While welcoming the several symbolic gestures towards reconciliation that the government has made, including in the Independence Day celebrations, CPA is nevertheless concerned that other measures and practices that have become entrenched during the period of conflict are still being continued.”

Revisiting Sampur: How Long Will it Take to Return Home?



By Bhavani Fonseka and Mirak Raheem

The election of a new President has unleashed high expectations of change for the better. Although for some the expectations relate to macro issues of constitutional reform and good governance, for others their hopes are more basic: that of survival, of returning to their own homes and rebuilding their lives. A key stumbling block to these expectations being met was the claim by the previous government that Sri Lanka no longer had any internally displaced persons (IDPs). Ground realities though are starkly different with thousands in the North and East of Sri Lanka unable to return home due to land occupation, ad hoc high security areas, special economic zones among other reasons. The people from Sampur are a special caseload in that all of the above quoted reasons have been cited as obstacles to their return.

For the people of Sampur the benefits of peace are yet to be fully realized. Community members speak about living in a no man's land between war and peace, where their lives are governed by 'military rule.' While other parts of the country are able to enjoy peace dividends, including security and opportunities for economic growth, in Sampur there has been little progress over the last few years. This article follows a visit we made to Sampur last weekend and highlights what we term the 'Sampur Model', its implications for communities, post-war reconstruction and reconciliation, and identifies areas requiring urgent attention and action.



The Sampur Model

In essence, the 'Sampur Model' demonstrates how the rights, needs and concerns of local communities have been completely ignored and how laws have been disregarded in the name of national security and development. Situated on the southern tip of the Trincomalee Bay, Sampur is an area hard hit by the civil war. It was also the first area that was captured by the military from the LTTE following the resumption of hostilities in 2006, leaving in its wake displacement and devastation. Nearly nine years later, an estimated 950 families are still unable to return to their lands. During this period, countless promises have been made by political actors to return people to their lands. The last such promise was in the lead up to presidential election, when a person claiming to be a coordinator of Namal Rajapaksa, son of former President Rajapaksa, promised to return them to their lands if they voted for the then incumbent. A similar promise was made in the 2010 presidential election. As to whether there will be a shift in policy in how the State treats the people of Sampur will be a key test for how this current government approaches multiple inter-linked issues relating to peace and governance.

Both security and development have previously been cited as reasons as to why people cannot return and reclaim their land in Sampur. In May 2007 the Government declared the area a High Security Zone (HSZ) under emergency regulations, thereby preventing the return of roughly 12,000 residents to their lands. There were efforts to challenge, including through the filing of fundamental rights petitions in the Supreme Court by four affected persons

and the Centre for Policy Alternatives (CPA). The argument of national security however thwarted any space for discussion and was used as a reason to sidestep the issue of rights and responsibilities. In October 2008 the Government announced a shrinking in the Sampur HSZ from 11 grama niladhari divisions to 4, allowing around 8,000 persons to resettle.

With the lifting of emergency in 2011, officially at least, there is now no HSZ in Sampur or elsewhere in Sri Lanka but the lived experience is contrary.

The military continues to reside in, and restrict and control access to the area. Allegations have been made that some of the land in Sampur may end up being utilised by the military for recreational and business purposes such as a golf course and a hotel, in addition to cantonments, raising doubts as to the real motives behind the officially cited reasons for restrictions.

In May 2012 an area within Sampur was demarcated as a 'Special Zone for Heavy Industries' by the Board of Investment of Sri Lanka (BOI). A portion





of this area was for a 500 MW coal power station, a project undertaken by the National Thermal Power Cooperation which is affiliated to the Indian Government. Seven land owners from this area are presently challenging this new zone in the Supreme Court.

The Rajapaksa Government opted for a specific model of post-war development with a heavy emphasis on macro projects, infrastructure development and tourism, sometimes at a heavy cost to people's homes, lands and rights. The strategic location of Sampur and the powerlessness of its residents, coupled with the overall lack of public debate on policy, made it easy for the Government to go forward with its plans. This, despite there being no legal process for the creation of a 'Special Zone for Heavy Industries', raising questions of the legality of such a zone. Furthermore, questions remain as to whether due process has been followed, including with regard to acquisition and compensation provided under the Land Acquisition Act. It needs to be noted that a majority of Sampur residents claim to have legal ownership of their properties, including deeds.

With return not being provided as an option, the only choices offered by the Government to the Sampur residents was relocation. The suitability of some of these relocation sites was questioned by the Sampur people and some engaged humanitarian organisations. From 2007 the authorities have put pressure on the Sampur people to agree to relocation. While a few families did agree and have been provided housing mainly by the UNDP and the military, the majority of persons have stood

resolute demanding a return of their lands.

Conditions in Displacement

During the last few years there has been only limited progress made in terms of return and in achieving durable solutions, so the majority of Sampur residents remain displaced. The military has allowed some access and released a fraction of the land, including in March 2013 when sections of Navarathanpuram was resettled in the lead up to the session at the United Nations Human Rights Council where the Government's record on human rights was discussed and the Government attempted to demonstrate efforts at assisting affected communities. The access in some instances was conditional. While farmers were provided access to 300 acres within the restricted area to harvest, this was denied soon after a case was filed in the Supreme Court in 2012. Most recently around the time of the presidential election, access improved with 22 families moving into the area in Sampur. We were, however informed that these families had been instructed by the authorities that they need to move out. The people though are resolute in wanting to remain on their land.

While these piecemeal changes make a difference to a few families, much more is needed including a transition in terms of a shift in terms of policy and practice that addresses the fundamental issues of rights and displacement.

Displacement, which has lasted at least nine years, has been a bitter experience for the majority of the displaced from Sampur, many of whom have for the last few years lived in make shift shelters,



which in humanitarian agency language are called transitional shelters, in areas around Sampur such as Kattaparichandan. Some 500 families live in three welfare camps, while other families live in rented properties or with relatives in Trincomalee and other areas. Officially there is no recognition of their status as displaced persons, as rations which are provided for IDPs were terminated by the end of 2011 cutting off a vital source of support.

For a community that was more or less self sufficient in their original places of residence through livelihoods based on agriculture and fishing, the displacement



has had a dramatic impact on living conditions. The conditions within the welfare centres steadily deteriorated with no NGOs being allowed to work in the camps and limited opportunities of livelihood. The pressure on female-headed households, some who have missing male family members, is particularly acute and a reminder of the multiple forms of suffering and vulnerabilities this community faces. It also highlights the need for a variety of approaches to address and redress these problems. Since 2007 we have

regularly visited these communities and witnessed the intimidation of the community and the fear it has instilled. During our most recent visit, which was two weeks after the election, however, we witnessed a new sense of freedom, including the fact that they could openly speak to us and voice their concerns, especially their desire to return.

Restrictions Imposed Post-War

In Trincomalee there are other contested and restricted sites, including Karamalaiootru, a Muslim coastal village on Dead Man's Cove which over the last few years has been under military occupation. The village has an old

mosque, which adjoins a spring from which the location takes its name – black mountain spring, is set on a small hill by the beach and beyond it is a ziyaram or shrine for a saint called Karamalaiootru Apa. Due to the tsunami in 2004, residents were relocated further inland but were able to access the beach to carry out fishing and also the mosque. From November 2009, access to the coast

was cut off by the military claiming security. Given that access to the mosque continued through the war years and was restricted only after the end of the war, the community is, unsurprisingly suspicious that national security is the real reason and are suspicious that there were other plans at play for the use of the land. Despite repeated high profile interventions including by cabinet ministers from various political parties in the previous government, access was denied.



PEACE MONITOR

Volume 12 / Issue 1

In August 2014, fishermen out at sea noticed the ancient mosque being torn down by the security forces. This demolition took place in a national context where anti-Muslim hate had reached a crescendo and accusations of apathy and even complicity were leveled against government and state actors.

Ten days before the presidential election community members were invited to visit the site where they discovered a temporary structure built where once the mosque stood. The ziyaram continues to be off limits. We saw the temporary mosque when we visited the site and heard from the locals of the unfairness of the situation of the inability to access and live on lands they consider their own. This is despite the community having official documents to prove its history and the ownership of the land.

Although restrictions on access to certain areas are lifted, we were informed and witnessed ourselves of the Air Force occupying a section of the beach. Similar restrictions on access and occupation of land are to be found in other areas including in Marble Bay where an Air Force run hotel operates on a land reportedly belonging to the Church. We were informed no legal acquisition has

occurred and some landowners around the area are presently challenging the illegal occupation in court. As in the case of Sampur, local residents and land owners expect a shift in policy including how they have been treated over the last few years.

Transitioning from War to Peace

This current moment offers a critical opportunity to address a multiplicity of issues and could prove crucial in longer-term processes of state reform, equitable and sustainable development and peace in Sri Lanka. Both the Sampur and Karamalaiootru cases are locked into debates of national security and development but it is important to unpick these issues and not sideline other aspects to these cases including those relating to rights, justice, public consultation and participation. Affected communities in the area raise the valid question as to why security restrictions crop up after the end of the war preventing them from accessing lands that happen to be stunningly beautiful.

It is timely to address issues of national security, development, tourism and its benefits for the people. As a part of the re-orienting from war-time security to peace-time, shifting away from large

scale military occupation is important. This would require reviewing the existing situation and approaches to ensure the maintenance of law and order and strategic interests but balancing this with community rights, needs and sensitivities. Principally not viewing the local population merely as a





threat to national security or development is imperative.

Acknowledging the views and concerns of various actors within the security forces will be an integral part of this process. In terms of macro economic projects, be it power projects or tourism, the challenge is somewhat similar of trying to reconcile the rights and needs of seemingly competing interests.

For a start it is imperative that the Government conduct a survey of areas and individual sites occupied by the military. Similar efforts should be on lands required for macro economic projects. Discussions encompassing civil and military officials in terms of lands required for public purposes should be done immediately with legal processes followed in terms of any acquisitions. Reparations also must be considered including restitution and compensation for damaged property. In specific cases where land needs to be

acquired due process needs to be followed but there must be an effort to ensuring adequate compensation is provided to those affected and viable alternatives are provided.

Nine years into their displacement, residents of Sampur continue to search for a solution to their most fundamental problem of returning home. Some others such as IDPs from Jaffna have searched for a solution for several decades, while for communities such as Karamalaiootru the end of war has set new challenges. Post-war reconstruction and assistance to displaced should not be exclusive to specific communities but address the needs and grievances of all those affected. Now is the time to take corrective action and fulfill promises of change.

[Photo:www.thehindu.com]

“While these piecemeal changes make a difference to a few families, much more is needed including a transition in terms of a shift in terms of policy and practice that addresses the fundamental issues of



rights and displacement. Displacement, which has lasted at least nine years, has been a bitter experience for the majority of the



displaced from Sampur, many of whom have for the last few years lived in make shift shelters.”

[All other photos are authors' own]

Pre-condition For Good Governance

Internal democracy in political parties and civil society

Lionel Guruge

Establishing good governance in the country appears to dominate political discourse at the present. Ideals of good governance do not perceive government in a vacuum; they anticipate the convergence of a number of factors. The first of these that catches our attention is democracy. Bringing about good governance without establishing democracy, amounts to wishful thinking.

Internal Democracy in Society

In establishing democracy, we must primarily consider citizens who respect democracy and incorporate it into their own lives. Yet, it is also important to take that democratic system, and establish it as a common system within an organized structure. This can be

called establishing internal democracy. A number of examples can be given of how internal democracy is exercised both at the level of a citizen and as an organized structure in the society.

In cases of various committees established with citizens' involvement the concept of internal democracy has been taken hold of to a considerable standard. The best example of this can be funeral assistance societies.

Funeral aid societies have a constitution. Presentation of membership fees, accumulated funds, appropriation of funds for a members' funeral assistance, presentation of an annual budget, requirements for membership, revoking of membership are all matters carried out with due transparency. The investigation and taking of disciplinary action against officers who step outside these procedures and, if necessary, stripping them of their offices and/or membership are all carried out with due process. We pay attention here to the members' knowledge of the receipts and



payments from the society's accumulated fund.

Is it not a good example of the power of established social conventions on transparency that, for example, the public display of incomes and expenditures in a village society is ensured, even when it comes to the organizing of a New Year event? Moreover, does not the exercise of internal democracy witnessed by children in their school sports committees or History Society committees, for examples, set the precedent for them to incorporate the same internal democracy in their adult lives, too?

The concept of internal democracy is therefore strong in traditional society where members of any committees who are found guilty of corruption are treated with derision, condemnation, and are expelled with comments such as "that's the one who was found to be a crook". In Sri Lankan village society, the habit of internal democracy is also traditionally found in the family unit. The members of a family have an idea of the income and expenditure of the head of the family, to the extent that a family, where the wife does not know of the husband's income, will face many problems in terms of wellbeing. This, therefore, is a natural exercise in internal democracy within the family.

Internal democracy in Sri Lankan political parties

In spite of the above, there is hardly evidence left to believe the existence of

internal democracy in the political parties of Sri Lanka. This is common to parties of all political ideologies, whether they are rightwing or leftist. The main responsibility of a political party is to contribute to the continued existence of democracy in a country. They are in fact collections of active citizens.

Their duty of establishing democracy cannot possibly be achieved if they themselves do not adhere to democracy within their parties: as the adage in folklore goes, it is absurd of an adult crab to advise its offspring to walk straight when the adult itself is walking in a slant. Thus, despite the very vocal chants from the political parties in our country about democracy, the fact that there is none who observe the same among themselves and the fact that there is a careful avoidance of discourse on this topic has to be noted.

Sri Lankan citizens regard political parties with a sense of wonder during election periods. The question naturally arises, in amazement, about where the massive sums spent were obtained from. During elections it is usually the tradition that the party organiser will find funds for the leader to spend quite lavishly. There are a number of ways in which internal democracy can be maintained and strengthened in a political party; and in this regard there are a number of responsibilities of such parties.

1. Political parties must continually inform their members: there should be a clear and open channel of discourse

from the top down and from the bottom up, within parties. Decisions made must continually be notified to members and they should (be able

to) question these decisions freely.



acquired by the party and the ways in which they are being spent. These matters have become top secret. Not only is it a right of the members to know this information, it is the political parties themselves who have the duty to notify members of this right. Financial aid is received from local and international sources for

information such as the Government budget when it is presented, various economic reforms, draft bills being presented in Parliament, etc. should be given to the members promptly. A discourse should be brought about, channelling opinion from the higher levels to the lower levels and vice versa, regarding the various political factors



2. There should be transparency in the financial dealings of parties: members should be informed about all receipts – from membership fees to any other incomes the party receives. It is important to study the extent to which Sri Lankan political parties cater to this moral right held by the members. The members do not know anything about the funds

political parties. Yet, there is no annual account or audit of this expenditure. Therefore the party members do not know anything about their party's funds.

3. A continual discussion should be held among members on the political, economic and cultural problems and possible solutions for them. Relevant

in the country. The ideas and attitudes of members should reach the top

[Photo:
www.panoramio.com]



4.

Recognizing strengths and leadership qualities of party members and guiding and developing those qualities. Parties develop based on the people who possess varied strengths. The quality of a political party is the ability to recognise leadership by assigning various leadership training and responsibilities. Political parties should have in place a strong mechanism to promote such leadership.

5. Obtaining the active involvement of party members. There are decision-making groups in political names variously called such names as “central committee”, “executive council”, “leadership council”, “supreme council”, etc. Party members have always had to bow down and accept decisions taken by these groups, even when they are completely unaware of these decisions at times. For example, the selection of contesting candidates nominated for the local authorities and for provincial councils, as well as for parliament, is carried out by one of the groups mentioned above, or the party leadership itself. This is completely against principles of democracy.

6. Party organisers and candidates for local authorities, provincial councils, and parliament should be chosen according to the preferences of the majority party members. In reality, these selections are unilaterally made by the party leadership. Even though the selection of the party leadership itself is through a General Convention, it is doubtful whether the selection reflects the preference of the majority of party members. There is also the phenomenon of party organisers being “parachuted” from Colombo to Maiyanganaya/Hambantota to





Gampaha/Polonnaruwa to Kandy etc, in an authoritarian act by some party leaders, without the consensus of the party members.

According to the prevailing election systems and the nature of the political culture in the country, candidates who acquire power through social recognition and financial success, come forward



[Photo: www.wikimedia.org]

7. The party convention should be called at the correct time. Party organisers should be decided by party members during the district conference. The party leadership should be decided only in accordance with the choice of the delegates elected based on majority votes.

8. Giving equal and just opportunities to the people of the country through the party, even after the party comes to power. Party appointments/postings should be arranged through appropriate and justifiable methods in a transparent manner within the existing legal framework according to the required qualifications of the given position.

through majority votes. Candidates who are less powerful in this sense find it difficult to obtain a majority vote regardless of how suitable he or she is for political life. This is a deathblow to democracy. Due to this situation, black-marketers and corrupt individuals, who nevertheless possess large amounts of money, have a better chance to gain the blessings of

the people and become their representatives. Active, genuine, compassionate leaders who



genuinely
want to establish good
governance and
democracy do not get
the chance to be elected
as representatives of the
people.

The composition of a
legislature, where the
intelligentis in the
minority, and where the
majority has earned their
place through sheer
financial power with no
other useful merit, has
become the Achilles
heel of good
governance and
democracy in our
country.

[Photo:
www.parliament.lk]

9. The powers of the independent Election Commission should be broadened.

It is extremely important
to consider these factors
when establishing an

independent election
commission. During an
election, there should be
a limit to the amount of
money that is spent by
each candidate.
Furthermore the
Election Commission
should require
transparency regarding
the maintenance of
various funds by political
parties. The maximum
amount of money each
candidate is allowed to
spend during the various
elections has to be fixed
by the Commissioner of
Elections.

A way to establish the internal democracy of political parties is to strengthen the
Election Commission and to give it powers to control activities against democratic
principles that take place within political parties.

However, democracy in a society cannot be ensured by establishing an Election
Commission alone. That commission should also have the necessary legal mechanisms
to ascertain whether political parties adhere to internal democracy.

Can political parties who act without considering these requirements understand the
needs of a citizen in this country? That would be an unfortunate situation. The political
parties in developed countries act in a manner respecting internal party democracy. In a
recent incident, when the Australian Prime Minister was in power, he assessed as to
whether he was suitable for party leadership and was selected; if this had not happened
he would have had to resign. Similarly President Obama was selected by his party
above Hilary Clinton through an internal vote. Even in India when Sonia Gandhi was
selected the party secretary had requested any other names to be put forward.

It is the character of a backward political party that carries out underhand activities to
undermine political parties with opposing views. It is also a character of backward
political parties to offer financial and other bribes to the ministers of the opposition



parties and to intimidate them. This goes against democracy. In the political culture of our country the sad fact is such practices are a continued threat to democracy.

The politicians of Sri Lanka have not incorporated the concept of democracy into their political lives. This is because they have received their right of representation through their party's leadership, as opposed to earning that right democratically: they only require the support of the party members at the time of an election. This culture is against democracy.

At this stage when a new government is sowing the seed of new policies, it is important to build a discussion regarding the establishment of internal democracy in political parties, as a necessary prelude to good governance.

[Photo: Filipe Brandiao Flickr]



Arguments for and against the Executive Presidency

Interview with Rohan Edirisinha

Q. Minority Groups may have the understanding that in a multi ethnic country with ethnic conflicts, a

strong Executive is needed. What do you think of this argument?



When JR

[Photo: M.H.M.N. Bandara on Flickr]
Flickya wardena introduced the Executive Presidential System in the 1978 Constitution, he had two arguments in favour, one that it would promote stability and the second that it would work to the advantage of ethnic minorities, and at that time many of the Tamil political parties supported the presidential system for those reasons. But I think if you look at the Sri Lankan experience, the weakness of that argument that the presidential system favors the minorities, has become very clear. So much so that the Tamil parties which supported the presidential system in the 70s, are now totally opposed to it. The main reason as to why the presidential system does not work in favor of the minorities, that the minorities have some kind of influence and say only at the time of the election, once the president is elected then the minorities have no power, no influence and no ability to influence the conduct and the policies of the president and that is what we saw in Sri Lanka. If you have a parliamentary executives system and you have the prime minister as the main political actor, the prime minister has to constantly and continuously depend on the support of the House, in a system with proportional representation where the Tamil and Muslim and minority

parties might have a significant number of seats, they will be able to influence the prime Minister, put pressure on the PM and try to ensure that he is responsive to their needs and aspirations, right through his parliamentary term and so that kind of pressure, that kind of political power is far more effective than only having it once in six years at the time of the Election. This is why I think that it is really a myth that the presidential system favours minorities.

Q2 In terms of national security, and preventing terrorism and having a leader who can take responsibility, and solve critical issues, it has been suggested that an Executive president would be more suitable. Your views on this.

Even if we concede that the Executive President may have the ability to react swiftly on matters of National Security and Defense the question has to be asked about whether that advantage outweighs some of the disadvantages that attach to a Presidential system. There is a price that you have to pay for that and we have seen in Sri Lanka too where sometimes decisions can be made wars can be prosecuted, policies can be made which actually in the long term are not in the interests of national unity, national harmony, equality and dignity. The second point is that in times of war when there is a real national crisis, parliamentary executive systems also allow for the Prime Minister to act strongly: we have had in the United Kingdom, war cabinets where special measures are adopted so that the Prime Minister has additional power. The third point is however that in Sri Lanka today, do we need a president today who acts with that kind of national security



mindset or do we need a different type of system where reconciliation can take place, power-sharing can take place, the ethnic minorities can also have a share in the Executive. This is also another weakness of the presidential system: it becomes very difficult to share power, because the president has so much more power than the prime minister and other ministers. The prime minister and other ministers can lose office at any time, the president is secure in power, we saw this when Chandrika Kumaratunga was the President and Ranil Wickremesinghe was the Prime Minister, it was very difficult to have genuine power sharing. And so I would argue that Sri Lanka today does not need a strong individual, executive president. We need something different, we need a shared Executive, Power Sharing, where the government and the Executive can be inclusive, can be multi-party, where we can have a kind of coalition government, because Sri Lanka needs to move forward and inclusive and power sharing manner.

Q3. How do you view the arguments (for example by Dayan Jayatilleka) that Executive presidency is the tool that can effectively run a pro-people and progressive regime, (frequently with reference to progressive regimes in the Latin American region) and the assertion that this system cannot be done away with?



I don't agree with Dayan Jayatilleke's argument. I think the Latin American political

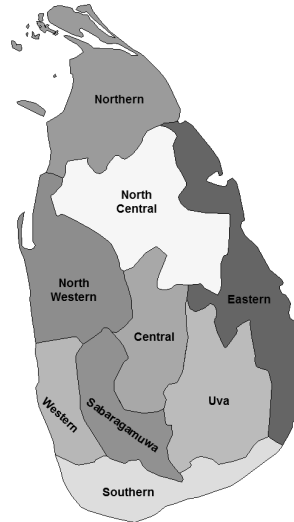
context is very different. Political scientists like Juan Linz who had written extensively about presidential systems in Latin America, they actually point to the fact that one of the reasons for authoritarianism and dictatorship in Latin America is because there were Presidential systems. I think the argument has been put forward, however, that sometimes in order to introduce progressive reform and change, you need a strong presidential system and I think some of these commentators refer to countries like Bolivia as example. But the first point to remember is that the crisis for democracy and constitutionalism in Latin America was created because you had presidential systems where the presidents were invariably military dictators. Sri Lanka's context is very different. We have moved from a situation in the 1970's where Sri Lanka was relatively stable -and this is where I do not accept the JR Jayawardene /AJ Wilson argument that Sri Lanka prior to 1977, was unstable. I do not think that changing governments every five or six years at free and fair elections is a sign of instability. It might be instability for the regime but in terms of instability for the country and for democracy and for constitutionalism, it was not instability. And so I'm challenging that fundamental premise and I think we need to have a far more sophisticated understanding of what is meant by stability. We need to draw a distinction between regime stability, and national stability. Stability does not mean that you should have a strong government in power for many, many years. I think that would be a symptom of instability. Having healthy change where power is transferred, where people spend time in the government and then spend time in



opposition, where the people are entitled to change their governments, is actually a sign of stability. And so I would argue that Sri Lanka prior to 1977 was probably more stable than Sri Lanka was post-1977. Back to the subject of Latin America, that context was very different: in Bolivia you had a strong president who was able to stand up to the power of the military, to the power of the conservative elite, where there was a need to break the stranglehold that the elite had. I don't think we have such a situation in Sri Lanka, or even in South Asia. It's very interesting that there is a very similar debate taking place about the pros and cons of the presidential system in Nepal. The Maoists wanted a strong presidential system but now the mood has swung, I think people in Nepal are very conscious about the dangers of a strong presidential system. They have also seen what has happened in Sri Lanka. Now it seems very likely that Nepal will opt for a reformed Parliamentary Executive model where there are some features to prevent instability, such as not allowing parliaments to be dissolved too frequently. To have an active vote of confidence, meaning that before you can where before you can get rid of a prime minister the successor has to be identified and named in that motion of no confidence, by ensuring that the election system - there is a cut off point to ensure that there isn't too much fragmentation. There are other ways where you can ensure that the parliamentary executive model has a certain degree of stability. One has to strike a balance between stability on one hand and public responsiveness and accountability on the other, and so I believe very strongly that the

presidential system has been a disaster for Sri Lanka in terms of constitutionalism, democracy and pluralism.

Q4 The contention that the Executive presidency is necessary in the matter of



appointing government agents and maintaining unity of provincial councils?

Again think there are other ways in which this can be achieved. Sri Lanka is very unique in trying to have a system of devolution of power without ensuring that the provinces have some kind of voice and representation at the centre. To me, if you have an effective council of provinces like in South Africa, where the provinces are given autonomy to look after their own affairs, but they also send representatives to Colombo to participate in the shaping of national policy, that is a far more effective way of promoting national unity, or promoting unity in diversity, than having a presidential system. You can see how the presidential system has undermined the 13th Amendment in Sri Lanka: where the president has actually used the governors to actually undermine the elected representatives of the provincial



councils. So I don't accept that when you have devolution of power you need to have institutions to promote unity as well. But my argument would be that there are other institutions and other mechanism that you can use to promote unity. It's a question of appreciating that, with the presidential system you may have one or two advantages but my argument is that the disadvantages far outweigh the advantages.

Q5 Your thoughts on the argument that powerful Executive President is useful in taking speedy and accurate decisions in cases of international and regional agreements etc

Different countries have different systems, you have countries which have purely ceremonial heads of state, like constitutional monarchies, you have countries where there is a kind of sharing of power between the head of state and the head of government. You have to distinguish between different systems. It is also important to remember that Sri Lanka has a mixed presidential parliamentary system a so called hybrid system. I would argue that the hybrid system is probably the worst of all worlds. I'm very conscious of the fact that many people argue that for Sri Lanka it would be better to have a pure Presidential system like in the United States where you have a strict separation of powers between the legislature and the executive so that the president appoints cabinet ministers from outside the legislature, where there is an adversarial relationship between the legislature and the executive, so that even in USA democratic congressmen will be very upset if Obama undermined or ignored the powers of the congress.

That adversarial relationship sometimes even transcends party loyalty and party affiliation. That system might be better than the system that we have in Sri Lanka. Because the danger of this mixed system is that checks and balances of the presidential *and also the* parliamentary executive can be done away with, so you end up with the worst of both worlds. In Sri Lanka this mix has been a disaster. I think many countries have begun to be aware of this: that you have a presidential like in the US with its logic with its checks and balances you have the British system with its logic and with its checks and balances. In Sri Lanka JR Jayawardene tried to have a constitution designed with the convenience of the executive in mind. I'll give you a couple of examples: in the presidential system you have fixed terms but with the 3rd Amendment to the constitution, J R Jayawardene wanted to have the privilege or the power that Prime Ministers have: to call elections for a time that is suitable for the incumbent, so we have this mix where there is no consistency, no principal and that has been a disaster in Sri Lanka. So I do not buy that argument and, I remind you it is that balancing that the international trend is in favour of in presidential models.

Even if that is the case, you are designing for South Asia, where the South Asian political culture has to be taken into account, the culture of hierarchy, the culture of patronage politics, weak democratic institutions; in such a context I would argue that having power concentrated in one individual is extremely dangerous from the point of view of constitutions.



Q6 Your views on the argument that Executive presidency is required to maintain a strong national Economy.



[www.dailynews.lk]

The Sri Lankan experience has been that a strong presidential system has undermined the national economy, because we have had this extremely bad practice, since DB Wijetunge became president, of the President holding the finance portfolio. I think that has actually been bad for the national economy because having parliament engaging in scrutiny of public finance is good for the economy. Every President, D.B. Wijetunge, Chandrika Kumaranatunge, Mahinda Rajapakse has violated the constitution by holding the finance portfolio. I think what is good for the national economy is to have a competent finance Minister, independent institutions, sound economic policy which can be debated and discussed, which is not imposed by an individual, and for that to happen the most effective way is to have a parliamentary executive, a good Minister of Finance, public scrutiny of matters of public Finance, strong independent institutions. That is far more important than having a presidential system for economic development in the country.

Q7 There is an argument that the Westminster System is the most suitable for a country like Sri Lanka. That is where the Executive presidency is completely abolished and a system where we can take our constitution forward is suggested as acceptable. Is there some truth in this?

I think a modified Westminster system, where we do not repeat the mistakes of the 1972 constitution, where there was that fundamental defect that all power was concentrated in the National State Assembly, which is equally bad. Concentrating power in the parliament



or concentrating power in the office of the president is equally bad. But a reformed parliamentary executive where the prime minister is the main political actor, where the Prime minister is physically present in parliament, where the prime minister has continually be responsible to the parliament and the people, and with some modifications to prevent hung parliaments instability and with an electoral system also which encourages that and with all the other independent institutions judicial review of legislation, the supremacy of the Constitution, this is the way forward. I hope that after parliament is reconvened after the forthcoming election that Sri Lanka will embark on a project of drafting and adopting a third republican



constitution which learns
from the mistakes of both the first and
the second republican constitutions.

[www.english.readsrilanka.ocm]

Securing the Freedom of Expression in the new Sri Lanka: Essential Institutional Reforms

Asanga Welikala



[Photo: www.constitutionaltransitions.org]

Chapter 11 of the common opposition candidate's presidential election manifesto is devoted to media freedom. Among other things, it includes simple commitments such as lifting the bans on news websites run from abroad. Such infantile measures were typical of the tin-pot – and ultimately self-defeating – despotism that emanated from the erstwhile Ministry of Defence. The emphasis on media freedom in a separate chapter of the manifesto was quite rightly placed, in view of the stupendous suppression to which the free media and

independent journalists had been subjected under the Rajapaksa regime, and the disgusting depths to which the state media had sunk in service of it. If we are to rebuild not only a democratic society but also a decent society, then the institutional framework for the freedom of expression – the central and most crucial safeguard of the democratic way of life – must be reformed and strengthened as a matter of the highest urgency. There have been a number of ideas in this regard that had

been promoted by civil society and journalists' organisations in the past, and which merit consideration by the new government. During the decade of the Rajapaksa regime when Sri Lanka was regressing in the quality and manner of enjoyment of the constitutional and human right to freedom of expression, the rest of the world had been making great strides forward, especially through developments in information and communications technology. Those more proficient in the



been developed and

technical dimensions of



these developments would no doubt be able to add to and enhance the proposals for institutional reforms I make here. [www,groundviews.org]

The obvious starting point in considering the reinforcement of the freedom of expression in our country is to examine how the domestic constitutional provision for that fundamental right measures up to our international obligations in respect of it. Our international obligations in this regard are contained primarily in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR relates to the freedom of expression and opinion, and is formulated in wider terms than the corresponding right to speech in Article 14 (1) (a) of the Sri Lankan constitution, to include the right to hold opinions without interference, to receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of a person's choice. Article

14 (1) (a) of the Sri Lankan constitution by contrast only establishes the freedom of speech and expression including publication, although the case law of the Supreme Court has taken a liberal approach to what constitutes 'expression'.

Accordingly, the right to vote (e.g., the *Chief Minister's Case*) and non-speech forms of political protest have been held to be within the ambit of freedom of expression (the *Jana Ghosha Case*), as well as the right to dissent (the *Yukthiya Case*). The court has also held on occasion that freedom of expression includes the freedom to receive and disseminate some forms of information (e.g., *Wimal Fernando's Case*), although a specific right to information is absent as a fundamental right in the Sri Lankan constitution – more on this later.

These pronouncements of the court, however, do not ameliorate the absence or vitiate the need for a more robust textual formulation of the freedom of expression in line with international standards, including the ICCPR. It must also be

remembered, moreover, that the Supreme Court has not a uniformly liberal record in this respect. In many instances, its judgments have been regressive and out of step with international standards, including in a recent case in which it imposed its own views on culture and morality in a challenge involving the banning of a film meant for adult audiences (the *Aksharaya Case*). Similarly, the wholly arbitrary and retrograde use of the powers under the law of contempt of court has had a directly adverse impact on the freedom of expression and the media. Parliament has also used its power to punish for contempt oppressively against newspapers and journalists in the past, although not recently. One of the major weaknesses in the way our constitution articulates the freedom of expression is that the requirement of 'necessity' in ICCPR Article 19 (3) for the restriction of this right is absent in the Sri Lankan framework for restrictions. Likewise, the provision in Article 15 (7) of the constitution



of 'meeting the just requirements of the general welfare of a democratic society' is not allowed as a distinct ground of restriction in the ICCPR, although other grounds of restriction enumerated in this provision are allowed by the ICCPR. Article 15 (1) of the constitution imposes specific grounds of restriction on the freedom of expression such as the interests of racial and religious harmony, or in relation to parliamentary privilege, contempt of court, defamation, or incitement to an offence. Excepting defamation and incitement to an offence, covered by ICCPR Articles 19 (3) (a) and Article 20, respectively, none of these other grounds for restriction are recognised by the ICCPR. This underscores another issue that has recently had a chilling effect on freedom of expression: the statutorily unregulated nature of the law relating to contempt of court in Sri Lanka, which has occasioned the use of these powers in a manner inimical to the freedom of expression

as envisaged by the ICCPR. The most prominent recent abuser of the common law contempt of court has been the former Chief Justice Sarath N. Silva, who summarily imprisoned Tony Fernando and S.B. Dissanayake for relatively minor transgressions. A Contempt of Court Act consistent with international standards of freedom of expression is also therefore a pressing necessity, and proposals in this regard have already been developed by lawyers and journalists' groups.

It is also to be noted that the rights under Article 14 (1) (a) are only available to Sri Lankan *citizens*, and not all *persons* within the territory and subject to the jurisdiction of the Sri Lankan state as required by Article 2 (1) of the ICCPR. The freedom of expression has been particularly vulnerable under circumstances of emergency, with prior censorship being imposed during times of acute crisis through emergency regulations. The Supreme Court has

generally displayed a tendency to favour the state in fundamental rights challenges in this respect (e.g., *Sunila Abeysekera's Case*). Likewise, the deleterious nature of the Prevention of Terrorism Act (PTA) in respect of freedom of expression was vividly demonstrated in the unconscionable detention, prosecution, conviction, and imprisonment of J.S. Tissainayagam. The disproportionality of his punishment was nicely captured by Amal de Chickera elsewhere in these pages: "85 words, 20 years, three months per word." It is very clear therefore that we can vastly improve the way we constitutionally protect and enforce the freedom of expression as a fundamental right in Sri Lanka. Since the common opposition manifesto limits itself to constitutional reforms that do *not* require a referendum, it is worthwhile noting that Article 14 (1) (a) is not an entrenched provision in the constitution, and therefore the changes to it demanded by the problems and in the ways identified above can in fact be part of the



100-day programme. This would seem to me to be a higher priority than, for example, the reform of the parliamentary committee system, which is included in the 100-day programme. From foundations, then, to structures. The reform of the state-owned or controlled media institutions had been on the agenda for years, before the Rajapaksa regime not merely stalled reform, but recreated these institutions in ways that would put Stalin's agitprop commissars to shame. The thoroughgoing abuse of these publicly-owned and tax-funded institutions, and the abysmal behaviour of the party hacks appointed to run them under the shield of impunity, have compounded the urgent necessity for introducing reforms in this sector. In approaching the reform of the state media, however, we must be clear about the principles by which we are guided.

One of the key principles in this respect is that reforming state media does not imply

simply privatising them. Rather, the aim must be to remove political control over these institutions and to reconstruct them as genuinely *public service* media. This entails bringing Sri Lanka in line with best practices in modern democracies whereby public service media constitute a fundamental instrument for the realisation of the civil and political rights of citizenship. Put another way, while the privately-owned media must have the full freedom to compete as commercial entities in a capitalist market, the publicly-owned public service media institutions serve to fill the gaps that the market does not address. It educates and informs the public, it ensures a pluralism of views, it promotes the values of citizenship, it encourages the cultural expression of communal diversity that constitute the Sri Lankan society, and it supports the cultural and intellectual production of ideas that commercial media entities are usually not interested in. These are the Reithian values upon which public broadcasting had

originally been founded in Sri Lanka, but which have got lost along the way.

The second major principle concerns the design of institutions: they must be efficient at the same time as they are transparent and accountable.

Accountability follows public ownership, and transparency is essential to avoiding the abuse of these institutions we have seen since the 1970s. But we must also ensure that they are efficient, or in other words, cost effective and provide services that reflect best value for the tax-payer's money.

The need therefore is to find an appropriate institutional form that gives expression to these principles, which in turn represents a move away from the anachronistic assumptions that govern the state media structures in Sri Lanka today. Civil society and journalists' organisations have often suggested the following measures as being imperative if we are to move in a new direction in respect of state-owned media.



An independent Media Commission was part of the original proposals of what was eventually enacted as the Seventeenth Amendment to the Constitution. The need for such a Media Commission has only increased, and with the promise of the re-enactment of the Seventeenth Amendment or similar framework under the 100-day programme, we must ensure that an independent Media Commission is set up with the same constitutional standing as the other independent bodies that were listed in the Schedule to Article 41B of the constitution. The independent Media Commission should be appointed on the recommendation of the Constitutional Council and must feature the representation of, *inter alios*, working journalists, academics in relevant fields, proprietors, and now, also 'new media' practitioners. The Commission once constituted would have overall oversight of public service media and would be

answerable to Parliament. Its primary role would be to oversee the public service media institutions, but may include other powers and functions, including the regulation of the (new and traditional) media marketplace, and to promote the freedom of expression in all its forms including through new technology. Overseen by the constitutionally established and mandated Media Commission, the state broadcast and print media require further reforms, albeit in separate ways. The Independent Television Network (ITN) may be privatised, as originally envisaged. Political control over the Sri Lanka Broadcasting Corporation (SLBC), and the Sri Lanka Rupavahini Corporation (SLRC), which would remain under state – or rather public – ownership, must be immediately relinquished in favour of a new legal regime for public service broadcasting under the control and direction of an Independent Broadcasting Authority that is appointed by the Media Commission.

Detailed proposals in this regard have been developed as early as 1996 by the Centre for Policy Alternatives (CPA) and the Free Media Movement (FMM), and during the last UNF administration, were even put into Bill form.

In addition to this, the



recommendations of the Sidath Sri Nandalochana Committee on the 'broad-basing' of the ownership of the Associated Newspapers of Ceylon Ltd (ANCL) could be implemented, if there is no consensus on privatisation. The 'broad-basing' rather than outright sale was an elaborate sop to the Lake House unions in the 1990s, and I am not at all sure how this can be defended in principle or practice today. There is no functioning contemporary democracy in which



there is any justification for collectivised newspaper companies. The privatisation of ANCL, however, must be done in a legal and transparent manner, together with accompanying framework rules – again perhaps a role for the Media Commission – that ensure proper pluralism and competition in the media marketplace. It does not, emphatically, mean an adoption of the Rajapaksa, or their predecessors', method of hiving off undervalued public goods to favoured cronies, who then destroy editorial and journalistic independence. Although the analogy is not exact, the tragedy that has befallen

The – once great – Sunday Leader should guide us here (but at least on 8th January, dear old

[Photo:
www.sampsoniaway.org
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Lasantha had the last laugh from beyond the grave!)

Beyond all this, the common opposition manifesto contains a

specific commitment to the enactment of a right to information law. Various proposals in this regard have been circulating in the recent past. Although well-intentioned, some of these drafts have been of very poor quality, often representing cut-and-paste jobs from model laws like that of Article XIX (the London-based INGO working on freedom of expression), which bear little or no relation to the actual practical and policy challenges that such a law must deal with in Sri Lanka. By contrast, there was a Freedom of Information Bill (officially called the 'Access to Official Information' Bill) that was painstakingly negotiated and carefully drafted through a highly consultative and deliberative process involving the then UNF government (represented by the then Attorney-General, the then Secretary to the Ministry of Justice, and the then Assistant Legal Draughtsman), the Editors' Guild, the FMM, and the CPA during 2003. International experts invited to comment on the draft observed that it not only met the highest

international standards but in some respects exceeded them (e.g., the narrow scope of exceptions; the use of the public interest test; the facilities for access, including *sua sponte* clauses and cost-free access; the short time limits of archival protection; the severability of records for purposes of disclosure; the availability of even protected information provided the request was not for publication; the elaborate reporting obligations of officials from Information Officers up to the Minister; and the enforcement machinery, including a constitutionally established Information Commission under the Seventeenth Amendment framework). Put into Bill form by the Legal Draughtsman's Department, it was given the approval of the Wickremesinghe Cabinet as well as President Kumaratunga in February 2004, but was unfortunately not passed following the dissolution of Parliament soon thereafter. This is the draft Bill that should constitute the basis for the legislation



contemplated by the new government, and my view is that with very minor alterations (e.g., that information relating to the peace process was protected at the time, and has no relevance now), it would prove to be a very suitable freedom of information law for our country as it embarks upon a new democratic path.

In addition to a good Freedom of Information Act, there is another very significant way in which this right can be reinforced, and that is to embed the Act in a *constitutional* foundation. As I noted before, our bill of rights only reflects a right to speech, expression, and publication, and although the Supreme Court has recognised a limited right to receive certain kinds of information, this is very far from a constitutional right to information (in the way for e.g., South Africa has such a right). Again as I noted before, Article 14 is not

entrenched and therefore may be amended without a referendum, and so I would strongly argue that if freedom of information is to be best protected, it must be given a constitutional underpinning by expressly including the right to information within the scope of the freedom of expression, or as a stand-alone right in the chapter on fundamental rights.

What I have proposed above constitute only some of the most basic institutional reforms that I believe are essential if the new administration is serious about addressing this most bruised and battered of rights under the previous dispensation.

There is more that can, and should, be done to re-establish and reinforce the freedom of expression in Sri Lanka, so that our great tradition of open engagement with the world can recommence. But let us make a start with these, so that the democratic renewal for

which Sri Lankans voted last week is made irreversible, and free expression in all its forms and manifestations can begin to thrive. Never must we allow the fear, the ignorance, the xenophobia, and indeed the superstition, that ruled our public life and discourse for so long be allowed to mar our spirit and promise again.

Source:

www.groundviews.org

Ideas for a Road Map for Truth and Justice in Sri Lanka

Bhavani Fonseka



The new year has brought significant changes in Sri Lanka. President Maithripala Sirisena and his Government face many challenges and opportunities. Reform has been promised and expectations are high. In the wake of the elections, Pope Francis'



visit to Sri Lanka to canonize the country's first saint was a highlight. Those involved in setting out the reform agenda should use his arrival speech as a guide, with specific attention to the following words: *"The process of healing also needs to include the pursuit of truth, not for the sake of opening old wounds, but rather as a necessary means of promoting justice, healing and unity."* Such sentiments are missing in the Sirisena Government's official documents and statements. This article briefly sets out why addressing truth and justice are critical if we as Sri Lankans are to have a chance at genuine and long-term reconciliation.

[Photo: CPA Flickr]

Attempts at Addressing the Culture of Impunity

The lack of a political will to pursue independent investigations and prosecute perpetrators is a key factor contributing to the culture of impunity in Sri Lanka. Another is the legacy of a flawed legal framework and the lack of capacity with the existing actors to deal with mass scale violations. For example, the Commission of Inquiry Act, which provides for the appointment of Presidential Commissions, provides broad powers to the Executive to appoint investigations and decide on its outcomes. The absence of a comprehensive victim and witness protection mechanism has also impeded investigations, with reports highlighting the intimidation, threats and attacks against people who come

forward to give evidence. These are some of the areas the new government must address when introducing reform in the coming weeks. The silence, inaction and empty promises regarding these pertinent issues shaped the legacy of the Rajapaksa Government and alienated it from a significant population in Sri Lanka. It is time to learn from such mistakes and heed calls for truth, justice and accountability. It is time to address the culture of impunity.

Calls for truth and justice, be they related to the war, the southern insurrection or in the post-war context, have been numerous and varied. Families of the disappeared have for years gone before numerous police stations, military camps, committees and commissions of inquiries (COIs) in search of their missing loved ones.

Many have protested and held silent vigils across Sri Lanka. Despite these efforts, most have yet to obtain official acknowledgement from the State that their loved ones are missing. The present Presidential Commission to Investigate into Complaints Regarding Missing Persons (Commission), appointed by then-President Rajapaksa in 2013, has received over 20,000 complaints. Civil society and media have critiqued this Commission for the delays in processing complaints, lack of victim and witness protection and for shifting its primary focus of missing persons to a others including international humanitarian law (IHL)



violations.

Despite the commission's flaws, the thousands who have complained is a testament to the gravity of disappearances and their ongoing effect on the communities that continue to search for missing persons.

[Photo: Author's Twitter account]

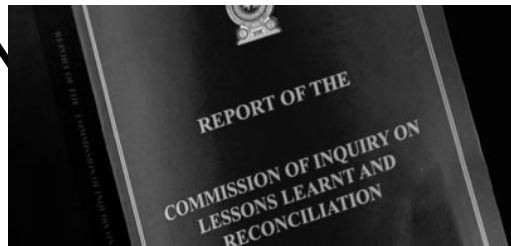
Similarly, many other incidents of violence and violations where the State has promised investigations are yet to lead to perpetrators being held to account. If one looks at the Commission of Inquiry that was appointed to investigate and inquire into 16 cases of past violations (also known as the Udalagama Commission), no public information is available on the status of the cases despite the commissioners handing over the findings of the investigations to the Executive in 2009.

[Photo:

www.onlanka.com]

The Lessons Learnt and Reconciliation

Commission (LLRC), another entity appointed by then-President Rajapaksa, referenced two cases that were before the Udalagama



Commission, the killing of the five youth in Trincomalee and the ACF killings both dating to 2006, as requiring further investigation. Nine years into the killings, and after many promises and pledges from the then-Government, the survivors and families are yet to obtain any information whether any credible investigations have taken place. In terms of previous initiatives for truth and justice, it is worth noting that domestic investigations have in most instances been in response to public outrage and national and international pressures. Both the LLRC and the Udalagama Commission were established by then-President Rajapaksa as a direct result of international pressure to address violations and the culture of impunity. The promises to investigate killing of protestors in the Free Trade Zone and Chilaw resulted from public condemnation of the abuse of power, but

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have yet to result in credible processes where perpetrators have been held to account. Killings and abductions of media actors have also had similar results. The few cases in which perpetrators have been convicted, such as the case of the killing of British national Khuram Shaikh, are largely due to intense pressure from national and international actors. But such cases of successful convictions are rare. In most instances survivors and families languish for years searching for justice.

Reform Agenda to Meet the Needs of the People

Just over a week into the Sirisena Government, the establishment of the National Executive Council and the appointment of a respected former civil servant as the Governor of the Northern Province are welcome. Reform, though, must be at a deeper level. The Sirisena Government must demonstrate a shift in policy in terms of recognizing the past and addressing ongoing



violations.

The Rajapaksa Government attempted to demonstrate that economic development was a panacea, with little attention given to other grievances of communities across Sri Lanka. The Sirisena Government should note the flaws of such a line and acknowledge the legitimate grievances of communities in the North, East and South of Sri Lanka. The large turnout in the North on election day, despite intimidation and attempts to confuse voters, is a testament to the rejection of the previous Government's policies and the desire for change. "We voted to get back our dignity back", a quote from a person in the North reported in the media goes to the heart of the problem. The development, urbanization, and beautification initiatives of the past few years do not make up for concurrent violations of people's rights, including evicting them from their own homes or preventing return to their own lands. Respecting people's rights and dignity is of paramount importance to changing

the country's political culture. The present Government should take note of these basic issues when pushing forward with their 100-day plan and longer-term initiatives.

One can read the Rajapaksa Government's human rights and reconciliation policies in the National Human Rights Action Plan and the National Action Plan for the LLRC, both with identified action points, actors and time frames for implementation. Despite this, many questions remain regarding progress and impact. Such initiatives, while good on paper, made little impact with the people. In moving forward, the new Government should articulate its positions in terms of rights protection, truth, justice, accountability and reconciliation. Although the 100-day plan is ambitious and identifies areas for reform, a missing piece is truth and justice. It is timely for the Government to examine, acknowledge and understand the past to avoid a recurrence of violence and to help introduce initiatives and processes to heal the

wounds and divisions within society. In this regard, attention should be on a road map with benchmarks and timeframes to address truth and justice, with the target of long-term and sustainable reconciliation. The process should be inclusive and transparent, involving all relevant stakeholders. Also important is to ensure that initiatives and processes include gender-sensitive perspectives, including problems faced by single-headed households and women who faced and continue to face security threats.

A Road Map & Next Steps

It is important to be able to articulate the Government's positions and priorities. A road map should answer this question, and also build confidence in the public of a larger willingness to acknowledge the past and of a government that will ensure credible domestic processes are able to address the grievances of the people.

At the outset there must be a reframing and rethinking of positions in terms of truth, justice,



accountability and reconciliation. The complete denial of serious human rights violations and aggression towards anyone calling for accountability for past violations must change. Already there is a shift in this policy to one where the Government has indicated an interest to engage with actors involved in justice and accountability, including the investigation by the United Nations Office of the High Commissioner for Human Rights. This is welcome, but more is needed in terms of substantive changes. A road map can help in this regard. The Joinet/Oretlicher Principles to combat impunity and the four pillars it advances are useful in this regard: the right to truth, right to justice, the right to reparations and the guarantee of non-recurrence. The four main areas discussed below are not exhaustive, but highlights areas important in the Sri Lankan context and sets the stage for further initiatives.

Importance of Truth-Telling

The search for the truth continues for many conflict-affected Sri Lankans, but present processes have failed to provide answers. This area urgently requires reform. The new Government should review the Commission of Inquiry Act to see whether amendments can ensure future COIs work independently and make their findings public. In terms of legislative reform, they should also revisit the possibility of enacting victim and witness protection legislation that provides for an effective protection mechanism.

The reform agenda should also examine new modalities to address truth and justice, including new entities such as something on the lines of a truth commission. Truth-telling processes are important as they provide a space for victims, survivors and affected communities to be heard and to have public acknowledgement of what happened in the past. Truth commissions can also make recommendations for next steps, including

reparations, trials and initiating state reforms that include the introduction of guarantees of non-recurrence of human rights violations and respect for the rights of all citizens.

Regarding a possible process for truth-telling, the South African-style Truth and Reconciliation Commission (SATRC) has been mooted previously. Although the SATRC is well known, when designing a process suitable for Sri Lanka, policymakers should also look at other initiatives, including those in Argentina, Chile and Sierra Leone and the most recently concluded Brazilian National Truth Commission. The Argentinian National Commission on the Disappearance of Persons (CONADEP) provided a comprehensive report titled 'Nunca Mas' (Never Again), which was followed by the then Argentinian Government lifting amnesties provided to the military junta and initiating domestic trials that lead to the convictions of perpetrators. The Brazilian Commission



also raises amnesties and recommends they be lifted to try perpetrators of serious human rights violations. There is no one formula as to what is best for Sri Lanka. The Government must examine different modalities and design an initiative that is best suited for the Sri Lankan context. This must include benchmarks for independence, impartiality, transparency and protection for victims and witnesses.

Those discussing modalities for truth-telling processes should examine reports of past commissions and identify action points for the short, medium and long term. Although many reports are not in the public domain, the few that are available such as the LLRC provide constructive action points and can be useful guides in the reform debates. It is also important to make the reports of past COIs public.

Steps to End the Culture of Impunity

Reform should not only be limited to finding the

truth, but must also address justice and accountability. Reform is critical in light of the slow progress in indicting and prosecuting perpetrators of serious human rights violations. The Attorney General's Department's capacity to handle more cases of past violations is questionable. A special office to examine specific cases, with a fixed term limit in its operations, would do much to alleviate this burden. Such an office should have the mandate to investigate, indict and prosecute cases of serious human rights violations. The establishment of a special office to investigate serious human rights violations and commence proceedings can also send a message that addressing accountability is priority. This, though, is a mechanism that will be dependent on staffing and resources. Additionally, prosecutions will not happen in a vacuum; efforts at introducing reform must factor in constitutional reform to provide for an independent judiciary, and also technical

support to build the capacity of judges and court staff.

Legislative reform must also strengthen a citizen's ability to initiate proceedings in terms of serious human rights violations in situations in which the State has failed to take action. At present the fundamental rights chapter in the Constitution provides for a petition to be filed in the Supreme Court when there is a violation or an imminent infringement of the fundamental rights provided. Legislators should review other countries to find examples of processes that provide their citizens with better access to justice. For example, in Argentina, private prosecutions can hold perpetrators of serious human rights violations to account without relying solely on State machinery. The ability of a citizen to take action has contributed to greater accountability and addressing the culture of impunity in Argentina. The Government should consider such a process in light of the present set up, which has failed victims. However, only



legislative reform and appropriate technical support will make this a feasible option.

To end impunity, it is also important for the Government to take a position in terms of amnesties for serious human rights violations. Although the SATRC offered amnesties when specific conditions were met, recent practices in other contexts—Argentina, Chile, and Uruguay—have seen the overturning of amnesty laws in the face of grave violations of war crimes, crimes against humanity and genocide. A clear message should be sent that perpetrators of serious human rights violations, regardless of rank and position, will be held to account.

Preventing the recurrence of violence is closely connected to ending a culture of impunity. In this regard institutional and structural reform must also include the judiciary, the security sector and those institutions which were complicit in the violations. Finally, both the State and civil society should invest in systematic archiving of

documents and other resources, which can facilitate in raising awareness of the past and be an informative tool for future generations as they also strive to remember the past and prevent the recurrence of rights violations.

[Photo.
www.guardian.com]

Memorialisation

Memorials can play an important part in remembering and recognizing the past and also in providing a space for victims, survivors and affected communities to mourn the dead.



Memorials built during the post-war context in Sri Lanka have only facilitated one narrative, that of the triumphalist victor, with no space for the multiple narratives of the victims and survivors. It is essential that space be provided across Sri Lanka for memorialization at the different levels that reflect the grievances of

the people. It is important that the Government initiates a consultation in this regard with relevant stakeholders, involving survivors, families, affected communities, civil society, artists and academia, to identify areas to consider in creating, identifying and maintaining memory spaces.

Memorial spaces in other countries that faced violence have been provided by the State, private institutions and the public. There is no one formula but it is important that it is an inclusive process. The Constitutional Court in South Africa based in the Old Fort Prison premises is now transformed to capture past events and be a memorial. In Argentina, the former secret detention center named ESMA is now a memory space with a state-sponsored archival center and the Haroldo Conti Cultural Center named after a journalist who was abducted and killed by the military junta. Those considering Sri Lanka's needs should look at these and other examples across the globe.



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The new Government must also provide space to mourn the dead. Previous years saw crackdowns on those who attempted to mourn deaths from the final stage of the war. These crackdowns halted religious ceremonies and disrupted community meetings. Such arbitrary restrictions must immediately stop and the government must create and support spaces for communities to mourn their dead with dignity.

Reparations

Providing reparations is an important component

for reconciliation and is a recognition and protection of individual rights. The State has to provide redress for past abuse; this can include compensation, rehabilitation and restitution. Reparations can be both financial and non-financial. For example, for land and property loss/damages, initiatives may provide for people to return to their land and compensate them for damages. Authorities can take steps to provide death certificates for those disappeared after conducting independent investigations. The

Government should appoint officials to examine problems related to land occupation, property damage, livelihoods, disappearances and detentions. In terms of land occupation, the Ministry of Land and Ministry of Defence should immediately assess the extent of land occupied by the military and other state entities and return lands to their legal owners. Land required for public purposes should be acquired in terms of the legal provisions provided in the Land Acquisition Act.

The above are some ideas to start prioritizing truth and justice in the reform debates in Sri Lanka. The work of the next few weeks and months will define the legacy of President Sirisena and his Government. It is therefore fundamental that the Government considers and take action to address the legitimate grievances of all citizens and end the silence in Sri Lanka.

[Source: www.groundviews.org]

Expectations and Disappointments of the New Government

D.N.R Samaranayake





The new coalition government formed on January 9, 2015 has just completed its first month, and this leaves only a little more than two months before the parliament is dissolved. During the election campaign, a number of issues were highlighted against Mr Rajapaksa, and they were extensively used as key weapons to challenge the former regime. The propaganda against the former president helped Mr Sirisena to obtain a majority of 2,043,977 in 2015 compared with the vote received by Mr Sarath Fonseka in 2010. This majority reflects the reality that the vote for Mr Sirisena is essentially a vote against Mr Rajapaksa.

Since the formation of the new government, a number of positive developments have taken place and the interim budget has provided some degree of relief to the people. However, a lot more will have to be done to ensure that its commitment to the people is not undermined. If the new

government fails to deliver the promises that its leaders made during the election, the confidence in the new government will be affected, and its popularity too will experience a significant fall. The Rajapaksa administration was thrown out of office because of corruption, nepotism, and authoritarian rule, but the leaders in that administration are not responsible for the failure of the new government as they are no longer in power. The new government promised the people that it would eradicate political corruption, address the ethnic problem with a view to achieve a lasting solution, and practice good governance. The following is a brief review of the performance so far.

The 100-Day Program

A document consisting of a list of priorities of the coalition was released two weeks after the nomination, and this document is referred to as the 100-day program. It

consisted of two unrelated parts. The first part included the priorities of the new government that will be implemented during the first 100 days, and the second included another 100 tasks without any explanations of their relevance to the 100-day program or to any other activity. Most of the tasks in the 100-day program are about establishing various commissions or passing bills. These tasks will not have any direct relevance to the people unless they can see some positive changes from them.

(i) Establishment of an Ethical Code of Conduct

An Ethical Code of conduct for parliamentarians, one of the tasks of the 100-day program, should have been introduced on January 22. But, it has not been released so far. Usually, a code of conduct in other democracies is what lawmakers practice as servants of the people. If any parliamentarian or minister found to be involved in an unethical practice, he or she is



immediately dismissed or forced to resign. In these democracies, with fully independent judiciary and police, the rule of law is applied to every one irrespective of the person's social standing or his or her political connections.. Apparently, the coalition's intention is to apply the norms that are practiced in other democracies. However, the question is how the government is to enforce such values on parliamentarians who do not respect even the basic human rights. For example, a former minister of Rajapaksa administration tied a Samurdhi employee to a tree, but no action was taken against him. He is presently aligning himself with the new government.

(ii) Re-establishment of democracy and good governance

Another task listed in the 100-day program refers to the re-establishment of Democracy and Good Governance. According to the program, this task too should have been implemented on

February 3. Even before the coalition was formed, the opposition parties were highly critical about the the lack of independence in the application of law and order under Rajapaksa administration. The sacking of former CJ, Ms Shirani Bandaranayke, further aggravated the problem as it attracted international condemnation and criticisms. With the departure of the Rajapaksa regime, the impartiality of the police has been largely re-established. However, the speedy removal of the incumbent CJ Mr Mohan Peris by the new administration on the basis of his appointment was "null and void" has created some doubts about the Sirisena government's sincerity and commitment to practice what it preaches. Unfortunately, every government that comes to power usually believes what it does is within the prevailing law in the country and that any unlawful act can be justified by simply giving few reasons. This is far from excepted norms of good governance.

Concessions offered in the budget

The interim budget released on January 29, has offered various concessions to the public in keeping with the promises made by the coalition before the election. Public sector employees have been offered Rs 5,000 salary increase during the interim period.

Employees in the public sector, especially those in lower grades, certainly need a raise due to rising prices associated with rising inflation. Although the official inflation is low, the rate of inflation perceived by the people is quite high. However, targeting only a particular group of employees to receive immediate benefits clearly shows the lack of far-sightedness; it implies only the public sector employee's need financial support from the government. Unfortunately, the government has ignored the first time voters comprising 919,841 young men and women, farmers, village folks, small business operators, fishermen, traders, and various other similar groups.



The budget has not provided any direct benefits to the estate sector employees, who are the lowest paid in the private sector. Although the government has suggested a salary increase of Rs 2,500 to private sector employees, it is unlikely that employers will agree to this increase because they will have to either absorb the cost or pass it on to the consumer. Either way they will lose. If they absorb the additional cost, the cost of production will go up; if it is passed on to the consumer, the price of products will go up.

The salary increase has also created an issue that will affect the salary structure of the public sector. Since the increase is part of the salary, the overall salary structure has been thrown into disarray causing the need to revise the entire salary structure. Normally an increase to public sector is given as an allowance, which does not affect other allowances associated with the salary or the public sector pension scheme.

A reduction in price of around 20% of all types of fuel was announced on January 22, and this is another promise made by the Sirisena government. Unfortunately, the beneficial impact of the price fall is much greater on upper income groups than the impact on low-income groups. For example, if a person regularly drives a vehicle 30 kilometres per day or 1,200 kilometres per month, he has the potential to save Rs 4,500 per month or Rs 54,000 per year because of the reduction of the price of petrol by Rs 30 per litre. This figure is derived by assuming that the petrol consumption of the vehicle is around 8 kilometres per litre. If a person drives 1,500 kilometres per month, his benefit goes up further to Rs 5,625 per month or Rs 67,500 per year. This reduction may bring down the monthly petrol bill by 20% or more in the 20% to 30% of households who are in the upper income group and about 0% to 5% in the bottom 30% of the households. Clearly, the benefits of the price reduction is disproportionately

distributed with much larger benefits accrued



to upper income groups while the benefits are very limited or insignificant in the case of lower income groups. Some income groups may not receive any benefit because they do not own vehicles or even motor cycles. The impact on lower middle class is also very limited because their consumption is also far less than the consumption in higher income groups.

[www.sundayobserver.lk]
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The price of kerosene has also been reduced by Rs 6 per litre. The reduction in kerosene prices is targeted towards the lowest income group in the country who use kerosene mainly for lighting, but some households also use it for cooking. This price



reduction is extremely beneficial to the least income groups, who are numbering about 20% of households in the country. These households do not spend a lot of money on lighting. Most households manage with a single lamp used only for few hours. However, the benefit that results from this price reduction is likely to be minimal and could be less than Rs 100 per month per household using kerosene. In addition to these two policies, the interim government has introduced tax reductions in a number of other items, including several commodities. The price reduction in pulses and condiments are unlikely to make any significant impact on the monthly household expenditure due to the consumption of relatively smaller quantities.

The savings on household expenditure arising from price reductions on various commodities could be around Rs 400 per family of five and about Rs 700 per family when the price reduction of Rs

300 on gas is taken into account. These benefits are available to all income groups irrespective of whether a person is rich or poor. However, as explained earlier, the benefit of the price reduction on petrol is essentially limited to upper and upper middle-income groups. Unfortunately, the distribution of benefits offered in the budget appears not progressive, but rather regressive.

The price of petrol after the price reduction came down to Rs 128 per litre in current market price. It is now less than the price paid by consumers in 2007, which was Rs 130 per litre in current market price. In real terms, after adjusting for inflation, what consumers pay now is about Rs 84 per litre, which is Rs 36 lower than the price in 2007. Furthermore, petrol consumption in the upper income groups is likely to increase by the same amount of the price reduction or more, leading to higher imports and other issues related to increased use of vehicles.

Mismanagement of public resources
[www.demotix.com]

Perhaps the most widely criticised issue during the election campaign was the massive scale



corruption that had taken place under Mr Rajapaksa. They referred to projects such as Colombo Port City project, Hambantota harbour, Mattala airport, Hambantota sports stadium, Mihin Lanka airline and few others as examples of failed projects undertaken by the Rajapaksa government since 2010. The coalition claimed that these were undertaken to derive direct financial benefits by Rajapaksa family and others who were close to Mr Rajapaksa.

Political corruption is not a new thing in Sri Lanka, but its characteristics changed from small-scale bribery taking by politicians before the J.R. Jayewardene period to large-scale corruption under him.



The implementation of the Accelerated Mahaweli Development project was the first project that created opportunities to take commission when hiring brokers or giving contracts. This project was under Mr Gamini Dissanayaka and there was a saying those days that Mahaweli flows through the residence of Mr Gamini Dissanayaka. Late Mr Lakshaman Jayakody, a member of parliament at that time, raised this matter in parliament. The same thing happened under the late president Mr Premadasa. He used public funds freely to commemorate his birthday by organizing large-scale celebrations under the Gamudava program. He also wasted millions during his regime just to promote his ego.

Large-scale commercial projects are based on the user pay system. If there are fewer users, the project cannot recover its cost and it becomes a burden on the society. Funding on large scale projects come in the form of loans at commercial rates, and commission taking from these

projects is quite common. Since the amount is added to the cost, it is not a matter of concern to the lender. Using public funds to pay back loans on a failed project, therefore, deprives the society of using such funds in a productive manner. According to government sources, the accumulated debt from financing of wasteful projects at present is estimated to be around US\$30 to \$40 billion. The opportunity cost of this wasteful expenditure is equal to the loss of economic, financial, and social benefits that would have been derived by investing in projects that bring benefits at least equal to the total investment. The country could have used this money to build hospitals, schools with modern facilities, rural roads, or various other infrastructure projects that contribute to economic and social development.

Information on political corruption is flooding in, but there is no proper mechanism to deal with it at present. There is increasing concern as to whether anything will

come out from the ongoing investigations by the bribery commission. Unless it is handed over to a special investigation with powers to acquire all illegally acquired assets and legally charged all those who were involved in massive scale corruption, this government, like all others in the past, will continue to investigate these forever. In the absence of qualified personnel, funds, and facilities, the Bribery commission is not the proper authority to handle these investigations. Moreover, the impartiality of the Bribery Commission is also subject to question because of the claim that it failed to act against certain people on corruption charges during the Rajapaksa regime. Although there were allegations against a large number of politicians in the previous administration, no one was brought to justice so far.

At this stage, it is very doubtful whether any positive action will be initiated on any politician suspected of involvement in



corruption. It appears that this time too, the same thing is likely to happen. This is clear from the investigation of the coup that reportedly took place on the night of the election. Although hundreds of news items have been published on this matter, the people are still waiting to find out whether this allegation was true or not. If there is sufficient evidence, it must be investigated and necessary actions must be taken against those involved. If not the government must inform the public accordingly.

Overall performance

Analysing the performance since the formation of the coalition government demonstrates a mixed bag. Since the change of administration, some positive developments have taken place, and, as explained earlier, most of these were largely a result of the removal of the former administration. Even the improvement that has occurred in international relations is simply because of the change in administration. The Tamil parties have cautiously welcomed the

new regime as they feel the possibility of a positive response to their demands within a unitary state. Although the benefits are limited to the middle and lower income groups, the budget has also introduced a variety of benefits to help the people to mitigate the effects on price rises over the last few years. Unfortunately, most of the policies that are now implementing do not reflect a well-coordinated development policy framework. This situation has arisen because the coalition consisted of a diverse group who came together with the objective of removing Mr

Rajapaksa and achieving their own interests. Each member in the coalition had a reason to defeat Mr Rajapaksa, and his mistakes became their political platform. Anyone reading the 100-day program will realize that it is a hurriedly prepared document just

to get the votes for Mr Sirisena. Before the nomination, there was no reference to the existence of such a document. The interim budget is also a collection of concessions, which were offered by simply adjusting the budget for 2015, without any analysis of their impact on different income groups.

Unpreparedness of the government in formulating the interim budget is also evident from the mistakes in proposing a salary increase instead of an increase in allowance and the withdrawal of



the Manson tax.

Although, the coalition criticized the Colombo Port City project as a waste of a colossal sum and promised to terminate it once elected, it now appears that the government is retracting from its earlier commitment. A major



promise

made prior to its election was the removal of the executive presidency.

The Sirisena government is now having second thoughts.

www.demotix.com

Those who voted for this administration are watching with a keen interest and will no doubt pass judgement on its performance or lack at the soon to be held general election.

‘We will ensure a level playing field’ - Ranil

Two weeks after an electoral upset that ousted Sri Lanka’s long-reigning strongman, the country’s new leaders are racing to investigate allegations of corruption under the previous regime and are rushing to enact legal and constitutional changes they say are aimed at reestablishing rule of law.



“This is going to be a huge, huge challenge,” said Ranil Wickremesinghe, who became prime minister after the defeat of former President Mahinda Rajapaksa. Mr. Wickremesinghe and the new president, Maithripala Sirisena, have promised to complete a far-reaching revamp of the government within 100 days.

In an interview with The Wall Street Journal, Mr. Wickremesinghe said one of his most urgent priorities was to depoliticize the police and “dismantle the apparatus that was built up” under Mr. Rajapaksa to stifle dissent. His government has called on journalists and intellectuals who have fled the country to return.

A 65-year-old veteran politician who has served as premier twice before, Mr. Wickremesinghe also said he is determined to work toward a lasting political settlement with the country’s ethnic Tamil minority. Mr. Rajapaksa’s government crushed a decades-long Tamil separatist insurgency in 2009. January’s election was “a vote for change—change that includes reconciliation,” he said. The prime minister said the government would push to increasingly empower the provincial government in the north, where Tamils outnumber the island nation’s majority Sinhalese.

In tackling corruption allegations, Mr. Wickremesinghe, who works in a small and sparsely furnished office on the ground floor of Temple Trees, Mr. Rajapaksa’s former residence, said he and other cabinet ministers are still struggling to find out the exact terms of



deals struck by the previous government with Chinese lenders and contractors.

Agreements for some mega-projects initiated under Mr. Rajapaksa were never made public and often there was no competitive bidding process, ministers said. Some contracts appear to have been revised after they were signed and allegations of bribery and kickbacks abound, ministers said.

Dinesh Gunawardena, a member of parliament and an ally of Mr. Rajapaksa, said parties in the former governing alliance were open to a “transparent investigation” but said the new government has yet to produce any clear evidence of corruption. “They must have concrete facts and stop mudslinging.”

Ganesh Dharmawardena, director general of Sri Lanka’s Commission to Investigate Allegations of Bribery or Corruption, said 40 to 50 complaints of “serious political corruption” have been received since the elections. “There’s been a huge increase.” So much so, he said, that he needs to hire more investigators.

Mr. Dharmawardena attributed the uptick to a climate where people felt safe enough to make allegations as well as political score-settling.

Among those under investigation is the former governor of the central bank. The ex-governor, Ajith Nivard Cabraal, said Friday those making the allegations wanted “to vilify and discredit” him and would be “unsuccessful.”

In the case of a massive Chinese-funded real-estate development that would create hundreds of acres of landfill in the waters off Colombo,

officials have yet to determine if any environmental-impact study had been completed, Mr. Wickremesinghe said. “We will take whatever necessary action,” he said, if it is determined “the project is not in conformity with the law.” [www.onlanka.com]

The prime minister said the government is also scrutinizing a Chinese-funded airport and port built in Mr. Rajapaksa’s home district “both for the high cost as well as for the fact it has not brought benefits to Sri Lanka.” He said the government was looking for ways to make the projects sustainable. Mr. Gunawardena, the backer of Mr. Rajapaksa, said the projects were “good for the country.”

Other infrastructure deals are also being reviewed. “There is a big cry of corruption regarding many of the road projects that have been funded by China,” Mr. Wickremesinghe said. “There was a heavy markup and that money had gone to members of the previous administration.”

Mr. Rajapaksa’s brother, Basil, who served as minister of economic development, has said neither the family nor other politicians had benefitted from infrastructure projects.

Despite the new government’s investigation of past deals, the new premier said: “We’d like to continue that close relationship with China.” He also said the government would work hard to make Sri Lanka more attractive to foreign investors. “We will ensure there is a level playing field,” he said.

On Friday, China’s ambassador to Sri Lanka, Wu Jinaghao, said China would “support the new government to develop their policies” and looked forward to continuing cooperation.



Eran Wickramaratne, the deputy minister for highways and investment promotion, said that “clearly, contracts that have been made will be honored,” but he said that if there is leeway for terms to be adjusted “to get something more reasonable, we will try to discuss it.”

Over the next several months, Messrs. Sirisena and Wickremesinghe have pledged to amend Sri Lanka’s constitution to strip the presidency of many of its executive powers and move toward a parliamentary system with a prime minister as the head of government.

Afterward, they have promised to call for new parliamentary elections, raising the question of whether the broad opposition coalition that came together to topple Mr. Rajapaksa in January will

be able to win again and continue governing.

The opposition beat the former president by attacking what they called his slide toward authoritarianism and the concentration of power in the hands of his family. In addition to the brother who served as economic-development minister, another brother was secretary of defense. A third was speaker of Parliament.

During his time in office, Mr. Rajapaksa greatly expanded the Temple Trees compound that served as his residence. One new, multistory building included an enormous wood-paneled presidential office, hung with paintings depicting scenes including a Sinhalese king leading his troops. Mr. Wickremesinghe said he is confident Sri Lankans are ready for a different kind of politics. During the election campaign, Mr. Rajapaksa’s camp argued that weakening the power of the presidency would “mean chaos.” But, he said: “When people see us implementing our program, that myth will be shattered.”
Source: The Wall Street Journal



Current political trend signals harmony among communities - M.A.Sumanthiran MP

P.Krishnaswamy

Tamil National Alliance (TNA) frontliner M.A.Sumanthiran MP in an exclusive interview with the Sunday Observer spelt out the TNA’s needs - their stance with regard to a lasting solution to the Tamil problem, the immediate measures that they have insisted over the livelihood and rehabilitation of the conflict-affected Tamils, the current controversy over the post of Chief

Minister (CM) of the Eastern Provincial Council (PC) and the Government’s measures to implement the 13th Amendment to the Constitution in full.

He said that the Maithripala administration which the Tamils exuberantly supported has already initiated measures to resolve their outstanding issues and expressed optimism



that the current political trend signals harmony and mutual understanding among the different communities in the country.

Excerpts of the interview:

Q: Do you believe that the overwhelming support that the Tamils of the North and East, represented by the TNA, and also the Muslims gave to elect the new government to power signals harmony and mutual understanding among the different communities of the country?

A: Yes, the signal is good because the election was won by Maithripala Sirisena from the votes given by all communities. He is widely accepted by the people.

This is a significant achievement. Whereas the former president obtained votes, even according to his own confessions, from only one community.

The signal is also good for all outstanding political issues to be resolved because all communities have come together now.

Q: What specific issues has the TNA already taken up with the Government?

A: For the moment we have taken up the issue of resettlement of our people. They are unable to resettle in their own lands because the lands that have been taken away from them have not been released to them. The new government has undertaken to release all lands that do not hinder national security. Most of the lands that have been taken over particularly in the North and in some parts of the East have nothing to do with national security.

They have been taken over for the military to build hotels, to farm and for entertainment, for golf courses and other such purposes.

This is a very serious issue because these people have been living on those lands for generations. These lands must be given back to them.

But the Government can retain camps and other military installations that are necessary on account of national security. All other lands must be returned. That is the understanding between the TNA and the Government.

We also requested the Government to release political prisoners, persons who have been in detention over a long period of time. While those who fought in the last stages of the war, who took to arms and fought in the war fronts have been released.

They have been rehabilitated and released in two years. Whereas those who were arrested long before that, not for fighting in the war front but for helping, for giving food parcels to the LTTE because they had no other choice, were arrested and detained.

They are languishing in prisons for so long.

The Government has given us an undertaking that their release will be expedited.

The other issue is, of course, the Provincial Council set up and the administrative arrangement in relation to it.

We want the PC to function properly in terms of the law. Such a function was blocked in the past. We took up that issue and the Government has already taken some steps to redress the state, including the appointment of the new Governor and appointment of a new Secretary.

Some changes in administrative arrangements have also been taken and these are welcome signs.



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The fourth issue is the long-term political solution which is not an immediate concern. But we have asked the Government that it should take some initial steps on that issue within these 100 days so that when the new Parliament convenes, substantial work would have been done to be followed up with the formal consultative process. We have agreed with President Maithripala Sirisena that the long-term solution to the Tamil problem cannot be taken up for discussion now, within the 100 days. All preliminary work must be done now. I am sure that the Government is keen on doing that.

Q: You want to go for a negotiated settlement?

A: Negotiated process in the sense, there exist several proposals made by successive governments and the different Presidents. We need not go over them once again. We have an agreement with President Rajapaksa that the five identified documents would be the basis of any future bilateral talks.

He agreed to it but after agreeing he went back on that and called off the bilateral talks. Without starting from scratch, we can use those proposals which emerged in the country - proposals that came from the government from time to time between 1993 and 2006. We can use those processes and documents and arrive at a solution, within the framework of what has been suggested in those proposals.

Q: Do those documents include proposals on federalism?

A: When we talked to the Rajapaksa government we did not use any contentious words. We would like a Constitution that does not label itself either as a unitary Constitution or as a federal Constitution. The important thing is not the label but what is in it.

There must be a substantial power sharing arrangement - not a fake one, not something that is useless, not workable. But a genuine, workable power sharing arrangement and that is what we have asked for. It does not have to be called

'federal', unitary or anything of that kind.

Q: Will you get the support of all parties represented in Parliament?

A: Definitely. We will get the support of everybody because our proposal is not an unjust or unreasonable one. It is a very reasonable proposal. It will be based on the documents that I referred to which had emerged from the government side.

So I do not see any reasons why anybody should have any problems relating to them. We are willing to settle it on the basis of the documents submitted by the government.

Q: What specifically do you want in relation to the Northern PC?

A: The present arrangement in relation to the Northern PC shows that the law has not been implemented in full. The 13th Amendment has not been implemented in full. That perhaps should have been the first step. Former President Mahinda Rajapaksa gave the assurances that he would not only fully implement it but also go beyond that to make devolution meaningful.



www.globaltamilnews.net



PEACE MONITOR

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The first step is you must implement what is on paper. At the same time we can discuss and look at what is on paper and make it a meaningful power sharing arrangement. For instance, the Governor is a chief executive officer possessing executive powers.

This means that there is no power devolution. The governor is appointed by the president and holds powers during the tenure of the president. The President in the centre nominates him and gives powers and says I have devolved powers. That is no devolution. Practically it is the President who is exercising power through the governor. We want that radically changed so that power is actually given to a body or people who have been elected by the people. That is the arrangement that we will seek to go beyond the 13th Amendment and make it meaningful.

Q: Your comments on media reports that there are contentions over the Chief Minister's post in the Eastern PC?

A: In 2012 when they held the eastern PC election, we contested against the UPFA government. The UNP contested against the UPFA government. The SLMC which had joined the UPFA government in the centre also got out and campaigned separately and attacked the UPFA.

They were more vociferous attackers even than the UNP and the TNA. When the results came the TNA had won 11 seats. With a small margin the UPFA government had got more votes, they got 12 seats. They also got two bonus seats. Wimal Weerawansa's National Freedom Front (NFA) had one seat. Altogether that made 15 seats for the government. We had 11 seats and the UNP which had four seats also

gave their support to us. We had 15 seats. So on one side was the UPFA that had 15 seats and on the other side was the TNA that also had 15 seats. In this situation, the SLMC had seven seats which they got by campaigning against the government. So, naturally, they were anti-government seats.

We suggested that the SLMC, UNP and the TNA together form the administration and, even without being asked, we offered the SLMC the CM's post. But for some reason they did not accept that but instead they went and met the President.

They made some deals and they supported the UPFA government in the province. Consequently a Muslim was made the CM and the SLMC shared the portfolios etc.



At that stage, no Tamil was accommodated either in the cabinet or as a chairman or vice chairman of the council. All seven places were given to the SLMC and to the central government nominees.

Nobody thought that the Tamils who are largest majority in the East will be sitting in the opposition.





The situation now is entirely different. The UPFA lost its majority there because Rishad Bathuideen's All Ceylon Muslim Congress (ACMC) walked out. Another councillor, Pathirana, also left. Again the SLMC got out of the UPFA and supported Maitripala Sirisena. In this scenario, we calculated the number of seats each party has as of now. We have eleven.

The UPFA has 10. The SLMC has eight and UNP has four seats. So since we are having the largest number of seats at present and since we were not accommodated in the Board of Ministers, we negotiated with the SLMC.

But they insist on the CM's post for reasons known only to them. All these days they supported a Muslim CM. Now too they are asking the CM's post.

We said no because it is unfair by our people and we are entitled to that post. The SLMC is not reacting positively to that. They have taken cabinet posts in the central government as well. The whole devolution arrangement came about because of the Tamils' agitations and not due to anybody else's. Yet they are still unable to be part of the administration.

The SLMC even prefers joining the previous UPFA and forming the administration to leave us completely out. We think it is very unfortunate and very unfair.

Q: Some other Muslim leaders wanted to join the TNA in the East?

A: We can talk to Rishad and others. But since the SLMC has the largest mandate we thought it is proper to talk to them first and we did it.

Q: Is there any divide within the TNA over the 100 day program of the Government?

A: So far nobody has told us anything to that effect. We have discussed it in our leadership group and in our parliamentary group. Nobody told us that they have any reservations over the 100 day program of the government. They are fully backing it.

Q: There was some controversy over PM Ranil Wickramasinghe's statement to the NDTV channel over power devolution. Can you please clarify?

A: The PM said that devolution will now be available under the 13th Amendment which the previous government was blocking. But we have told everybody very clearly that the full implementation of the 13th Amendment is no lasting solution. By and large the PM's message is that he will allow the PCs to work independently, taking over the provincial administration powers.

We also requested the Government to release all political prisoners, persons who have been in detention for a long, long time. While those who fought in the last stages of the war, who actually took to arms and fought in the war fronts have already been released. They have been rehabilitated and released in two years.

Whereas those who were arrested much prior to that not for fighting in the war front but for helping, for giving food parcels to the LTTE because they had no other choice, were arrested and detained. They are languishing in prisons for so long. The government has given us an undertaking that their release will be expedited.

The other issue is, of course, the PC set up and the administrative arrangement in relation to it. We want the PC to function properly in terms of the law. Such a function was blocked in the past. We took up that issue and the government has already taken some steps towards redressing the state, including the appointment of the new Governor, appointment of a new Secretary etc. Some changes towards the administrative arrangements have also been taken and these are welcome signs. The fourth issue is the long-term political solution.



That does not come within the immediate concern. But we have asked the Government to take initial steps on that issue within these 100 days so that thereafter when the new Parliament convenes substantial work would have been done to be followed up with the formal consultative process.

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Former President Mahinda Rajapaksa gave the assurances that he would not only fully implement it but also go beyond that to make devolution meaningful. The first step is you must implement what is on paper. At the same time we can discuss and look at what is on paper and make it a meaningful power sharing arrangement.

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power devolution. The governor is appointed by the President and holds powers during his tenure.

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The devolution arrangement came about because of the Tamils' agitations and not due to anybody else's. Yet they are still unable to be part of the administration. The SLMC even prefers joining the previous UPFA and forming the administration to leave us completely out. We think it is unfortunate and unfair.

Q: Will the TNA support the 17th Amendment and the 19th Amendment to the constitution?

A: We support the 17th Amendment and the 19th Amendment is still in the draft. When it does come, we will support it.

Q: According to reports, some Northern PC Ministers are formulating extensive plans to provide employment opportunities and livelihood assistance to deserving families. Will there be funding from the diaspora community for such programs?

A: I do not think funding will be a problem from the Government and other sources, if proper work is done to help the deserving families. There is enough funding provided that we do the work properly.

Q: Your comments on the appointment of Mr. Palihakkara as the Governor of the Northern province replacing the military governor?

A: It is a welcome change. The present government is keeping its promise and has taken away the military governor. Secondly, Mr. Palihakkara is well known as an upright man. We believe that the CM will be able to work cordially with him and the Governor will not block anything the CM wants instead will facilitate such initiatives.

Q: The government, according to media reports, has requested the TNA to submit a list of persons in detention to initiate their release. Is such a list available with you?

A: We have the old list but it has to be updated now. We are doing it now.

Source: The Sunday Observer

“He said that the Maithripala administration which the Tamils exuberantly supported has already initiated measures to resolve their outstanding issues and expressed optimism that the current political trend signals harmony and mutual understanding among the different communities in the country.”



Priorities for the 100 day programme

Vidya Abhayagunawardene

Photo: The Sunday Observer



The 6th
President
of Sri
Lanka

Maithripala Sirisena (MS) gives a fresh start to politics in Sri Lanka. He is the very first President to win the hearts and minds of all Sri Lankans, irrespective of any differences and divisions in post-war Sri Lanka. This is a remarkable achievement for democracy loving people, not only in Sri Lanka but also in the world as well. The people of Sri Lanka have voted for President Sirisena under the New Democratic Front (NDF) without looking at any of his past experience in overall achievements, success and failures in his political carrier which was linked to Sri Lanka's socioeconomic and political processes.

Overall, President MS had only a small percentage of work carried out as a Cabinet Minister compared to his opponent Mahinda Rajapaksa who had ten years as an Executive President, five years as Prime Minister, Opposition Leader and Cabinet Minister. A Common People's President President Sirisena has no bourgeoisie family background compared to former ruling class leaders like D. S. Senanayake, S.W.R.D. Bandaranaike, Sirimavo Bandaranaike and J.R. Jayawardene. Mahinda Rajapaksa had only a political genealogy but was not of bourgeois origin. After executive Presidents R. Premadasa and D. B. Wijetunga, President Sirisena is the 3rd common person's President for Sri Lanka coming from a non-elite background, a rural

agricultural base and Buddhist family. If he has the courage and strength to carry out certain things, he can become the best states person of post-war Sri Lanka. He has that golden opportunity in front him. Cohabit with Ranil The most important factor is the cohabitation with Prime Minister Ranil Wickeremesinghe who will be the key figure bridging the gaps in Sri Lanka and the world. This is the best scenario which each of them having with key skills to address local and international issues. Before the new government gets into mega development projects with international input, it should address certain burning issues without delaying, as discussed in this article. But this needs careful attention and thorough research before finalizing and implementing them. But under the current circumstances it can be done without any delay. Local expertise should be used. Sri Lanka has a wealth of resource people who were completely left out in the previous regime since most of the offices were held by uneducated political appointees without a knowledge of the subject matter. The Government should not spend money and other resources to get international expertise in this regard since the country is rich in intellectuals, researchers, policy makers and professionals. But Sri Lanka could study the international success stories in this regard. Quick relief on Cost of Living, Health, Education and Reconciliation People are eagerly waiting to see the 100 days programme. Quick price reduction in essential items such as food, medicine and energy will bring short relief to communities in Sri Lanka.



Immediate burning issues in the Health and the Education system need to be



addressed in this period. There are several people still in IDP camps in the North and East since the war ended in 2009. The LLRC and its recommendations and beyond need to be prioritized and put into a work programme is a must. Sri Lanka has a high ageing population in the Asian region. There should be an immediate plan for social security for elders and their survival. Sri Lanka has still not given a rights based approach for differently abled people or person with disabilities. It is unfortunate that Sri Lanka is the only country in the South Asian region which has not ratified the Convention on the Rights of Persons with Disability (CRPD). Independent Commissions & Right for Information (RTI) Act As it is mentioned in the Maithri Manifesto, establishing the Independent Commissions to secure the impartiality of judicial, police, elections, auditing institutions and the office of the Attorney-General is crucial and this will pave the way to make a foundation for good governance structure for Sri Lanka (p.16). This will further be strengthened by passing the Right to Information Act (RTI) which again Sri Lanka is the only country without such an important Act in the South Asian Region. In 2012, under the UNP Government a Bill of 'Right to Information Act' was presented to Parliament. Later the Speaker informed the UNP in writing that since this draft bill had been rejected in Parliament on

an earlier occasion, it was not possible to present the same bill again. The previous government deliberately and shamelessly attempted to show that there is no need in Sri Lanka for a Right to Information Act. President Sirisena has mentioned that, 'Action will be taken to reinforce corruption prevention structures in accordance with the Anti-Corruption Charter of the United Nations to which Sri Lanka is a signatory' (p.16). This will help Sri Lanka to become a less corrupt state. Currently it is ranked 85th in the Corruption Perception Index of 2014. Engage with the World Swiftly and Promptly The Maithri Manifesto had state that "The whole world knows that our foreign policy is in disarray after the military victory of 2009" (p.43). Sri Lanka lost almost all the friendly Western and other nations in the last five years with an unethical foreign diplomacy. In the last five years, Sri Lanka has the worst diplomacy relationships in the history of the Foreign Service of Sri Lanka. Post-war Sri Lanka needs to link with the world by peaceful means not neglecting them. Anti- personnel Mine Ban Convention (APMBC), Convention on Cluster Munition (CCM), Arms Trade Treaty (ATT), the Comprehensive Nuclear Test Ban Treaty (CTBT), Convention on Convention Weapons (CCW) Protocol V, are still to be signed and ratified by Sri Lanka. In the last ten years the Foreign Ministry has lost its



interest in the service and some of them have not had the necessary skills in the subject matter to deal with disarmament conventions and treaties. The writer himself had undergone many hardships just to convince to the previous government of Sri Lanka attend certain disarmament and others conventions at least as an observer state. But that also failed to even a junior Foreign Service officer with a sufficient knowledge in the subject matter not attend at an important meeting at the UN.

Finally this author sent a letter to the President (letter copied for five cabinet ministers, secretaries, heads of military and others concern) on July 9, 2014 asking to review Sri Lanka's policy positions on such conventions and treaties and HRH Prince Mired of Jordan's visit to Sri Lanka on APMBC, but none of them replied. Sad state of affairs! Immediate attention on the environment and wildlife The MS Manifesto says that the President would "Re-assess all mega projects undertaken recently. I will punish those responsible for technical offenses in such projects irrespective of the status of the offenders" (p.20). This will be sufficient, there are some development projects recently started that need to be re-evaluated before they begin. Failure to carry out Environment Impact Assessments Surveys (EIAS) and impact on wildlife should be key considerations in any of this mega development projects. Otherwise Sri Lanka will lose its rich biodiversity as a hot spot in the global bio-diversity map. Wildlife enthusiasts should be proud MS manifestos has mentioned that the 'Flora and Fauna Act will be strictly implemented without fear of favour' (p.32). There are some urgent areas to

be amended in the current 2009 Act of Flora and Fauna. Otherwise Sri Lanka need a new Flora and Fauna Conservation Act. The Department of Wildlife Conservation has drafted and proposed four Wildlife Sanctuaries and five National Parks for the Northern Region soon after the war ended in 2009, but the previous government was not interested to declare them due to economic reasons as proposed areas were to be used as development projects such as hotels. This needs to be addressed immediately before any illegal constructions appear in the pipeline made by the previous government on proposed wildlife sanctuaries by the DWC.

New media Culture It is of utmost importance to state that State Media should have a code of ethics. It was a shame that the previous regime was using state media in an irresponsible manner. It is better to have public hearings over the state media that to show how they were abused, using university lecturers and others to mislead the general public with unethical mudslinging campaigns against opponents. With the new government the media should behave responsibly and must present Opposition views in the same time-frame allocated for the government. State media should not be biased to any person, any political party or promote some one's political agenda. Private media needs to be responsible and transparent when they enjoy freedom of expression. Media freedom is a must in Sri Lanka and should be protected through laws and media Ombudsperson. The 100 day programme can make Sri Lanka history. Previous Presidents were unable to deliver such necessary reforms and fundamental and structural changes,



paradigm shifts even though some of them have completed a second term as the Executive President. Will President MS make it a reality? Otherwise “A Compassionate Maithri Governance a Stable Country” will be another promise like previous regimes’ failed “Mahinda Chinthana”s dream of “Wonder of Asia.”

Source: The Daily Mirror

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