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Commentary

Sri Lanka's Recent Political Challenges & Prospects for the Future

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Introduction

Sri Lanka is at present preparing for Parliamentary Elections due to be held on 25th April 2020. Parliamentary elections will take place five months after President Gotabaya Rajapaksa took office on 18th November 2019, a period in which several trends were discerned with implications for reconciliation, governance, the rule of law and security in Sri Lanka.

The election of President Gotabaya Rajapaksa is a significant departure from previous elections as it was the first time an individual with no previous experience of elected political office was sworn in as President. This was also the first Presidential election where the mandate of the winner of 6,924,255 votes¹ was received predominantly from the predominantly Southern Sinhala-majority electorate.² The margin of over a million votes is an indicator of the massive support for President Rajapaksa who ran on a platform of security, stability and discipline and speaks to the deeply polarised post war context in Sri Lanka. In the days since being elected to the office, President Rajapaksa made key statements, decisions and appointments that provided glimpses into the policy direction of his regime. Noteworthy is the fact that as per the Nineteenth Amendment to the constitution he is also the first Executive President unable to hold any ministries.

¹ Election Commission of Sri Lanka, "2019 Sri Lanka Presidential Election Results", 17th Nov 2019, <https://results.elections.gov.lk/>

² India Today, "Gotabaya Rajapaksa wins Sri Lankan presidential election with 52.25% votes", 17th Nov 2019, <https://www.indiatoday.in/world/story/gotabaya-rajapaksa-sri-lanka-elections-1619763-2019-11-17>; Sunday Observer, "Sri Lanka Presidential Elections: In 2010 and 2015, the minorities voted en bloc in favour of Mahinda Rajapaksa's principal rivals", Nov 17 2019, <https://www.sundayobserver.lk/2019/11/17/opinion/sri-lanka-presidential-elections-2010-and-2015-minorities-voted-en-bloc-favour>

At the completion of 100 days in office, the Government issued its own list of achievements.³ This includes measures taken in public service, economy, education and what has been termed decisions to ‘benefit the public’. The list is largely reflective of the campaign promises, with an attempt to demonstrate to the public a reduction in expenditure, job creation, increasing wages in some fields, a reduction in personal and corporate income tax, VAT and other steps that will have traction in the lead up to General Elections. Of interest and concern are the establishment of several task forces and committees, the apparent provision for the independence of state media organisations and statement to “regulate over a thousand NGOs operating against the country”.

Beyond these official statements are disturbing trends towards authoritarianism, militarization and securitization with a new brand of professionals directly loyal to the President playing an increasingly influential role in the policy direction of the present Government. This is also in a context where an aggressive line is being taken towards reconciliation and rights protection with incidents of cracking down on dissent, reverting back to the patriots vs traitors dichotomy and the initiation of a fresh assault on independent institutions. These are coupled with a bleak economic outlook of low growth, reduced FDIs and increasing debt.

The Centre for Policy Alternatives (CPA) has prepared this short paper to comment on key developments in the first 100 days of the present Government and their implications for governance, the rule of law, reconciliation, human rights and democracy in Sri Lanka. Whilst this paper is not an exhaustive study, it highlights key developments of the last few months and examines likely scenarios into the immediate future with impending Parliamentary Elections and the commencement of the next Parliament. As noted, Sri Lanka continues to be confronted with numerous challenges including the possibility of sweeping constitutional, legislative and policy reforms that will likely define the future trajectory of political developments and political culture in Sri Lanka.

Powerful and Populist Executive Presidency

President Gotabaya Rajapaksa successfully campaigned on the need for security and stability, receiving an unprecedented level of support from the Sinhala vote base. He recognised this with the following words "*The main message of the election is that it was the Sinhala majority vote that allowed me to win the presidency*" at his swearing in ceremony on 18th November in Anuradhapura, the heartland of Sinhala Buddhist nationalism where he reinforced the Sinhala majority vote that propelled him to victory.

Since taking office, he has continued to underline the importance of his core base with only a cursory glance towards minorities. Whilst he urged the Tamils and Muslims to join in building a one Sri Lanka, policies of the new government show scant regard to address the ethnic question or reconciliation. He is also surrounded by those who subscribe to ethnonationalist ideologies, which has informed Government policy and will likely influence future policy and legislative reforms.

³ Progress of first 100 Days- <https://www.presidentsoffice.gov.lk/index.php/2020/02/24/progress-of-first-100-days/?lang=en>

In the first 100 days, several statements indicate a desire to strengthen executive power.⁴ For example, statements have been made on the need to amend the Nineteenth Amendment to the Constitution which introduced some checks on the President's powers. There have also been several instances where the President has reportedly used powers provided to the Minister of Defence, a portfolio he is constitutionally barred from holding.⁵ Questions arise also in a context where there is no apparent cabinet level minister for the Ministry of Defence with only a State Minister appointed to date. Noteworthy is the fact that this is the first Executive President who cannot hold any portfolios as per the Nineteenth Amendment but practice demonstrates a clear disregard for constitutional provisions.

In keeping with his campaign promises, the President has reaffirmed the need for economic prosperity and efficiency.⁶ In the 100 days, President Rajapaksa has also demonstrated his preference towards an efficient government. He has made several unannounced trips to Government offices on inspection visits, cleverly communicating to the public his keen interest to get things working. These visits have received wide publicity in mainstream and social media with applause from many in the public who perceive Government offices as inefficient and lethargic.

Much effort has been taken to project an image of a President who is averse to pomp and prefers efficiency and discipline. As opposed to other leaders, President Rajapaksa has remained in his private residence, and refused to take large delegations when travelling overseas. Whilst these are early days and it is to be seen whether there will be a shift, the apparent lack of pomp and reduced expenses is welcomed by the disgruntled public who in the past have witnessed large delegations travelling on state visits at significant costs. His quick action in the face of crisis such as steps taken in response to the Corona virus conveys an image of a strong President committed to efficiency and cutting bureaucracy. Further, his statements regarding opting for one term has also been embraced by many as a leader focused on delivering on promises than perpetuating his own rule.⁷

The presidential campaign witnessed the former President and now Prime Minister Mahinda Rajapaksa playing a key role in promoting candidate Gotabaya Rajapaksa. The emergence of the Sri Lanka Podujana Peramuna (SLPP) as a critical political force was evident in 2018 with its electoral victory at the local

⁴ "Two-thirds essential to remove Constitutional barriers" Daily News 6th Mar 2020 <http://www.dailynews.lk/2020/03/06/local/213596/two-thirds-essential-remove-constitutional-barriers>

⁵ Some instances that raises questions include- For instance, questions arise as to how three members were appointed to the Telecommunications Regulatory Commission of Sri Lanka when Section 3(1)(c) of The Sri Lanka Telecommunications Act provides that the Minister will make such appointments. The Telecommunications Regulatory Commission is presently under the purview of the Ministry of Defence. Further, On 3rd February 2020 Gazette 2161/18 was issued under the hand of President Gotabaya Rajapaksa citing the Firearms Ordinance. Incidentally, Section 30(1) of the Ordinance specifies that only the Minister is able to issue gazettes. Questions have also been raised in court as to how President Rajapaksa has signed a Detention Order when the Prevention of Terrorism Act provides that such orders can only be issued by the Minister of Defence. "President and Defence Minister are one, revealed in courts" Sri Lankan Mirror 16th Feb 2020 <https://www.srilankamirror.com/news/17116-president-and-defence-minister-are-one-revealed-in-courts>

⁶ His manifesto titled "Vistas for Prosperity and Splendour", speech on 18th November 2019 when sworn in as the Executive President of Sri Lanka, inaugural policy statement to Parliament on 3rd January 2020 are some instances

⁷ "Two-thirds essential to remove Constitutional barriers" Daily News 6th March 2020 <http://www.dailynews.lk/2020/03/06/local/213596/two-thirds-essential-remove-constitutional-barriers>

government elections which is largely attributed to the charisma and popularity of the former President and the organising skills of Basil Rajapaksa. President Gotabaya Rajapaksa was able to use both in his 2019 victory, propelling him forward as a President who now has to carve out his own base. In this regard, movements such as Viyathmaga and Eliya will continue to be used to project the image of a popular president focused on addressing the grievances of the public and providing for efficient and accessible governance and service delivery.

Future Parliament & Political Parties

President Gotabaya Rajapaksa dissolved Parliament on 2nd March 2020.⁸ At the time of publication, General Elections are to be held on 25th April with the new Parliament likely to commence sittings on 14th May 2020.⁹

With the emergence of the popular President coupled with several factors that have weakened the opposition¹⁰, it is most likely that President Gotabaya Rajapaksa and his party will obtain a comfortable majority in the next Parliament and introduce sweeping legislative and policy reforms. These include a possible repeal or rollback of the Thirteenth and Nineteenth Amendments to the Constitution and electoral reform aimed at wiping away minor political parties and disproportionately benefitting the larger political parties. These, if implemented, will likely have serious implications for the present framework of devolution and Provincial Councils and the likelihood of introducing a structure that will further centralise power. There is also the possibility of removing provisions that at present act as a check on the President's ability to control Parliament, the judiciary and other independent institutions.¹¹ With the possible removal of key checks on the President, concerns are raised as to whether Parliament will become a mere rubber stamp and see Sri Lanka tilt towards authoritarian rule.

A test for the President in the immediate future is whether and how he consolidates his base and delivers on campaign promises. This is also in a context where former President Mahinda Rajapaksa is Prime Minister and wields considerable power as per the Nineteenth Amendment. With these two power centres, held by two brothers, developments in the next Parliament will require close attention on whether constitutional reforms will pave the way for consolidation of power with the Executive Presidency, or whether a compromise is reached to keep some provisions of the present framework intact. Notable is the role of Basil Rajapaksa. As the chief mastermind of the emergence of the SLPP as a political force and the 2018 and 2019 election victories, Basil Rajapaksa is a force to be reckoned with and will likely play a pivotal role in decision making in Sri Lanka.

⁸ Gazette No 2165/8, 2 March 2020

⁹ Some media reports indicate to the Election Commission considering a possible postponement of the election in the event the Corona virus develops into a national emergency

¹⁰ These include disillusionment of the lack of delivery of reforms by the Yahapalanaya Government, anger at security lapses that resulted in the Easter Sunday attacks, continued disarray in the UNP including the very public leadership battle.

¹¹ A Brief Guide to the Nineteenth Amendment to the Constitution, PA, 29 May 2015

Rumours point to alleged tensions within the Rajapaksa camp, but it is unlikely divisions will be publicly seen prior to elections and a strong united front will be projected to ensure a massive victory at the polls for the SLPP.¹² With nominations due on 19th March, attention will be on who is given nominations and who is included in the National List. This will be the first election conducted after President Gotabaya Rajapaksa took office and will be a test on whether he is able to expand his popularity and carve out his own base, ensuring professionals and former military loyal to him enter the next Parliament and thus facilitate broad sweeping reforms.¹³ Amidst likely significant gains by the SLPP, the future of the Sri Lanka Freedom Party (SLFP) as a political force is in doubt.

The opposition parties too have faced multiple challenges in recent years and these have only exacerbated since the Presidential polls. The United National Party (UNP) has continued to witness internal party battles including those with regard to choosing the Opposition Leader and Party Leader, plans for contesting the Parliamentary Election, the alliance and symbol. The very public infighting within the UNP has demonstrated the deep fissures within the oldest political party in Sri Lanka, the leadership vacuum, the lack of vision and energy. Amidst the internal battles is the emergence of the *Samagi Jana Balavegaya* (SJB), an alliance lead by Sajith Premadasa to contest the forthcoming Parliamentary elections, and likely to further impact the UNP's base. Whilst the intraparty battles are not new, sustained infighting has impacted the performance of the party whilst in government and opposition and has over the years eroded its base. Both the Local Government Elections of 2018 and Presidential Election in 2019 highlighted the inability of the UNP to perform well in areas previously held by the party, raising questions of its ability to organise, communicate and enthuse its base.

Further, a policy shift within the UNP was reflected in the 2019 election with positions espoused by its Presidential candidate Sajith Premadasa being more aligned with aspects of Sinhala nationalist ideology and increased social welfare. This shift distances the UNP from its traditional voter base who previously supported the party in successive elections and it is to be seen whether the SJB will persist with such a line, especially in the context of its alliance which includes several minority parties. This will also result in the SJB attempting to compete with the SLPP's vote base. Thus, the impending elections will be a test to see whether the UNP and SJB contest separately or manages a last minute agreement to come together and how many seats they will be able to muster. The UNP has faced numerous political battles over the decades but the present crisis is one that will likely push it to its limits with the election results defining whether the UNP is to be a credible political entity in the next Parliament and beyond.

The Janatha Vimukthi Peramuna (JVP) also faced a setback in terms of the votes received in November 2019, demonstrating their shrinking relevance in a post Easter Sunday context where security and fear influenced many voters. As a party, they have struggled to be an effective force in the face of a populist president and the narrative of national security and it is to be seen whether they will be able to organise and project themselves as a potential counter to a likely powerful SLPP. With an effective communication

¹² Though there are increasing incidents of intra-SLPP election related violence

¹³ "G.L., Cabraal, Sabry to enter Parliament on SLPP national list" Daily Mirror 5th Mar 2020 http://www.dailymirror.lk/top_story/G-L-Cabraal-Sabry-to-enter-Parliament-on-SLPP-national-list/155-184369

strategy and projecting themselves as a necessary counter to authoritarian rule, the JVP has the potential to transform their recent lacklustre performance but it is yet to be seen whether this will transpire in the next few weeks or they return to the next Parliament in diminished numbers.

The Parliamentary Election will also be a test for other parties and alliances representing minorities including the Tamil National Alliance (TNA), Sri Lanka Muslim Congress (SLMC), All Ceylon Makkal Congress (ACMC), Tamil Progressive Alliance (TPA) and others representing minorities. Parties who supported the candidacy of Premadasa in the 2019 Presidential Election are confronted with a political reality where the President was elected solely on the votes of the majority Sinhala community. As of late February, the SLMC, TPA and a few other parties have agreed to support Premadasa's SJB¹⁴ for the forthcoming elections; though it is unlikely such a formation will resolve deeper issues and address the direction smaller parties will take in the next Parliament and beyond. This also comes at a time when a Private Members Bill was introduced to introduce electoral reforms that can, if enacted, seriously impact smaller political parties.¹⁵

The Expanding and Normalizing of Securitization and Militarization

Despite a decade having passed since the end of the war, militarization is evident across Sri Lanka with the role of the military expanding into new areas in post war Sri Lanka. Since the Easter Sunday attacks, the primacy afforded to security, stability and a strong ruler witnessed the military and intelligence receiving prominence and the legislative and policy agenda being informed and influenced by national security considerations. Candidate Gotabaya Rajapaksa and his campaign were able to use this momentum and address the fears of the public, receiving a resounding mandate with his promise to provide stability and security.

This has witnessed the expansion of a powerful Ministry of Defence with an unprecedented number of former military officials receiving promotions and appointments to key positions in government, despite some facing allegations of past abuses.¹⁶ As discussed previously, the Ministry of Defence for the first time in recent years has no Cabinet Minister but only a State Minister. Despite the absence of a cabinet level minister, the Ministry of Defence has an expansive mandate with numerous key institutions and

¹⁴ "Sajith-led Samagi Jana Balawegaya to launch on 2 March" Daily FT 26th Feb 2020 <http://www.ft.lk/news/Sajith-led-Samagi-Jana-Balawegaya-to-launch-on-2-March/56-696417>

¹⁵ "Proposed constitutional amendments stirs up the political arena" NewsFirst 2nd Jan 2020 <https://www.newsfirst.lk/2020/01/02/21st-and-22nd-constitutional-amendments-stir-up-political-arena/>

¹⁶ Kamal Gunaratne was appointed Secretary to the Ministry of Defence in November 2019. In addition key positions have been filled by several others- "Daya Ratnayake appointed SLPA Chairman" Daily FT 13th Dec 2019, <http://www.ft.lk/front-page/Daya-Ratnayake-appointed-SLPA-Chairman/44-691557>; "Chandrasiri appointed Civil Aviation Authority Chairman" Daily FT 18th Dec 2019, <http://www.ft.lk/business/Chandrasiri-appointed-Civil-Aviation-Authority-Chairman/34-691866>. Further, those facing allegations of past abuses were promoted- How fear set in overnight in Sri Lanka <https://www.bbc.com/news/world-asia-51555853>

authorities coming within its purview¹⁷ and provided new roles in times of a crisis¹⁸. As discussed previously, notwithstanding the constitutional check preventing him from holding any ministries, the President is reportedly exercising some functions provided to the Minister of Defence.

The intention to strengthen the defence and intelligence arm is also evident with proposals of future legislation including in the area of intelligence and counter-terror.¹⁹ These would require careful scrutiny when made public to ensure there is oversight and safeguards.

In the last few months, militarization has amplified to new and different levels. In addition to the high number of former military personnel appointed to key positions in government, there has been an increase in check points especially in the North and East and more recently with military police brought into reduce traffic congestion²⁰. There is also the rising prominence of those who have been personally loyal to President Rajapaksa, for instance the promotion of Lt. General Shavendra Silva to Acting Chief of Defence and the vociferous defence of him when he was designated by the United States of America²¹.

More than a decade after the end of the war, Sri Lanka is yet again revisiting debates of national security and militarization with the mandate given to President Rajapaksa in November being used to legitimise and normalise the need for an expanded role for the defence establishment. In the absence of a counter narrative, this is likely to receive support in the short term but it is to be seen whether there is appetite for the complete capitulation of democratic rule and civil space.

Reconciliation and Human Rights

One of the key themes of the SLPP election campaign was an opposition to the political processes associated with human rights and reconciliation in Sri Lanka and this has been reflected during their time in government.

The official withdrawal from cosponsoring the United Nations Human Rights Council (UNHRC) Resolution, the Government's declaration that legislation providing for the Office of Missing Persons (OMP) will be

¹⁷ "31 institutions including Police, SIS, TRC brought under Defence Ministry purview" Daily FT 12th Dec 2019
<http://www.ft.lk/front-page/31-institutions-including-Police-SIS-TRC-brought-under-Defence-Ministry-purview/44-691465#.XfHfMjKk7Cx.twitter>

¹⁸ "Security Forces-East with Medical Experts, Now Ready for Quarantine of Expatriates & Foreigners" - Commander 9th March 2020
<https://www.army.lk/news/security-forces-east-medical-experts-now-ready-quarantine-expatriates-foreigners-commander>

¹⁹ "Cabinet approves drafting 'National Intelligence Act' Bill" Daily News 15th Jan 2020, <https://www.dailynews.lk/2020/01/15/local/208493/cabinet-approves-drafting-national-intelligence-act%E2%80%9999-bill>; Sri Lanka: MoD announces that Cyber Security Bill is being finalised, OneTrust Data Guidance 30th Jan 2020 <https://platform.dataguidance.com/news/sri-lanka-mod-announces-cyber-security-bill-being-finalised>

²⁰ "Military police deployed to control Colombo traffic" Daily News 24th Feb 2020, <http://www.dailynews.lk/2020/02/24/local/212432/military-police-deployed-control-colombo-traffic>

²¹ Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act 14th Feb 2020
<https://translations.state.gov/2020/02/14/public-designation-due-to-gross-violations-of-human-rights-of-shavendra-silva-of-sri-lanka-under-section-7031c-of-the-department-of-state-foreign-operations-and-related-programs-appropriations-a/>

reviewed, and the President's statement declaring that all wartime missing persons are dead, all point to a lack of regard for Sri Lanka's ethnic question and legacy of past abuses.²²

Indeed, there seems to be no indication that any political concessions will be made with regard to the political concerns of minority groups, with the Government refusing to make even symbolic gestures of inclusion (scrapping the singing of the national anthem in Tamil at the Independence Day event for instance)²³. Insofar as minorities have been acknowledged, rhetorical focus is shifted to the creation of a civic nationalism which includes those groups, whilst dismissing those particular concerns which have emerged out of their specific experiences as minorities. The Government reassures members of minority groups that it will serve the 'whole country' but has been largely dismissive of specific 'divisive' political demands, which are often framed as being the result of manipulation by Tamil politicians and Western aligned interests.

Human rights in general have come under increased scrutiny and threat. Recent months have witnessed an increase in surveillance of civil society with regular visits to offices and requests for information including in some instances personal information of activists.²⁴ Signs of restricting activities linked with human rights and reconciliation were evident when the Additional District Secretary of Mullaitivu District issued a letter on 26th February 2020 requesting that local and international organisations minimise 'soft skilled programmes', a reminder of pre 2015 attempts by the then Government to restrict the work on issues deemed sensitive. Protection concerns have also been raised including the alleged abduction of the employee of the Embassy of Switzerland and the subsequent attacks she faced in the media.²⁵ Some journalists and media organisations have also come under scrutiny with journalists questioned and threatened²⁶ and media houses searched²⁷. Restrictions on freedom of assembly were also seen with the Government designating an area for protests in the heart of Colombo.²⁸ With the NGO Secretariat coming under the purview of the Ministry of Defence and the prospect of future legislation and regulations to restrict civil society and media, credible fears remain as regards the civic space in Sri Lanka. New threats to freedom of religion have also arisen following Prime Minister Mahinda Rajapaksa's statements regarding a possible revival of the anti-conversion bill.²⁹ These developments are reminiscent of Sri Lanka's past and now initiated by a popular President in the guise of national security and discipline. In

²² "OMP Act to be Reviewed" Daily Mirror 7th Jan 2020 http://www.dailymirror.lk/breaking_news/OMP-Act-to-be-reviewed/108-180821 "President Rajapaksa says Sri Lanka to treat war missing as dead" Al Jazeera 21st Jan 2020 <https://www.aljazeera.com/news/2020/01/president-rajapaksa-sri-lanka-treat-war-missing-dead-200121134624785.html>

²³ "Sri Lanka scraps Tamil National Anthem at Independence Day" Al Jazeera 4th Feb 2020 <https://www.aljazeera.com/news/2020/02/sri-lanka-scraps-tamil-national-anthem-independence-day-200204103334093.html>

²⁴ Sri Lanka: Security Agencies Shutting Down Civic Space, HRW, 3rd March 2020

²⁵ Aftermath and reportage of incident involving alleged abduction of Swiss Embassy employee, CPA, 11th Dec 2019

²⁶ Sri Lanka: Harassment of journalists surges in first days of Rajapaksa presidency, RSF, 3rd Dec 2019

²⁷ Sri Lanka: Attacks on human rights organizations, media organizations and journalists in Sri Lanka, Amnesty International, 16th January 2020

²⁸ "Dedicated Protest Zones" Daily News 11th Feb 2020 <http://www.dailynews.lk/2020/02/11/editorial/211038/dedicated-protest-zones>

²⁹ "Mahinda Raises Controversial Anti-Conversion Bill Issue" EconomyNext 3rd March 2020 <https://economynext.com/mahinda-raises-controversial-anti-conversion-bill-issue-55196/>

the past, local activists and groups have been able to counter attempts by successive governments to restrict civic space and this will likely continue although in a more challenging environment and with increasing self-censorship from within civil society, media and others. Further, it is to be seen whether the international community is willing and able to take a united and principled stand against the erosion of the civic space or whether engagement with the Rajapaksa Government will be defined by geopolitics and other interests.

Recent months continued to witness fake news and hate speech on mainstream and social media. Whilst such trends were linked in the past to ethnoreligious violence including incidents post Easter Sunday attacks in 2019, such trends continued after the Presidential elections. The response by the Government is the promise of increased regulations³⁰, with it raising fears of restrictions and surveillance that may impede human rights and civil liberties.

Sri Lanka's co-sponsorship of the UNHRC Resolution 30/1 also received much attention in the last few months with the Government formally announcing withdrawing from its cosponsoring role at the 43rd Session of the UNHRC.³¹ Despite this public pronouncement, there is no mechanism which will allow the Government to withdraw from the resolution in any formal sense till March 2021. In practical policy terms, at least in the short run, this is unlikely to make a difference with regard to reconciliation in Sri Lanka. The Government has already taken a public stance against the commitments to reconciliation and transitional justice, with this statement representing an official affirmation of these pre-existing stances. The decision to withdraw was taken in large part for a domestic audience, in line with promises made during their election campaign³². Its implications may have more impact in terms of the emboldening of nationalist elements that may accompany this official repudiation of the reconciliation process.

Erosion of the Rule of Law

The 100+ days of this Government raises concerns with some key reforms introduced since 2015 to provide for the rule of law and human rights protection. With the possibility of amending the Nineteenth Amendment to the Constitution, fears are of the return to politicised and weak institutions and processes. These will directly impact key institutions such as the judiciary, independent commissions and others who have played a critical role in being an effective check on the Executive.³³ In such a context, cases already before court will continue to face numerous delays whilst other cases might fall by the wayside whilst justice remains elusive.

Since taking office, there has been an increase in the rhetorical attacks on independent institutions and individuals who took the lead and were involved in investigations into financial crimes and human rights

³⁰ Govt. to bring new laws to combat emerging cybercrimes, http://www.defence.lk/Article/defence_article/837

³¹ Dinesh Gunawardena statement on UNHRC resolution 30/1 20th February 2020 <https://www.mfa.gov.lk/tam/statement-by-foreign-minister-dinesh-gunawardena-in-parliament-on-unhrc-resolution-301-on-20-february-2020/>

³² Further, Minister Dinesh Gunawardena in his speech at the UNHRC blamed Resolution 30/1 for compromising national intelligence systems which resulted in the Easter Sunday attacks, further reinforcing the Government's narrative of opposing any efforts at reconciliation by employing the domestic discourse on security. Ibid.

³³ HRCSL Statement to United Nations Human Rights Council on the High Commissioner's Report, 27th February 2020

violations.³⁴ Public criticism on investigators linked to key cases commenced soon after the Presidential elections, with some senior officials facing demotions, transfers and attacks in the media. Such trends do not bode well for other officials including those prosecuting and, in the judiciary, and it is likely the vilification will continue and possibly increasing in the lead up to Parliamentary Elections and beyond.

The undermining of institutions and individuals were also exacerbated by the release of the recordings made by MP Ranjan Ramanayake which allegedly implicate several judges, investigators, politicians, media personalities and others. Whilst the recordings highlight deep structural problems and attempts by a few individuals to pursue justice despite such obstacles, the tapes resulted in a fracas and were used by some politicians and media platforms to target individuals and institutions and undermine genuine processes investigating financial crimes and human rights abuses.

Despite the attacks on the judiciary, several judicial offices have questioned delays, lack of action in pursuing cases by some officials and other reasons.³⁵ Whilst the principled stand taken by some judicial and other officials are welcome, the space for such action will be limited or non-existent after the further consolidation of power by the Government post the impending elections. This is also in a likely future context where the judiciary, and other key State institutions, will be expected to align with the policy direction of the Government or face possible reprisals. Incidentally, President Rajapaksa has on several occasions reiterated the need for an independent judiciary with the possible implication of the Executive not being satisfied with the present status quo.³⁶ This raises alarm bells in the context of public pronouncements referencing proposals to remove safeguards in the appointment of judges to the highest courts in Sri Lanka, with the prospect of politicization and interference of the judiciary looming. This must be contrasted with developments during 2015-2019 when Gotabaya Rajapaksa and his legal team were able to successfully petition courts to ensure he was provided due process and prevent arrest on several occasions.³⁷

Further, worrying signs of interference and undermining of the judiciary were evident in the first few months of Government. In January the President appointed a Commission of Inquiry (COI) into 'political victimization' in terms of past investigations and inquiries and later expanded its mandate. Soon after the COI issued instructions to the Attorney General to stop proceedings with the Attorney General refusing

³⁴ Sri Lankan Critics Fear a Crackdown is Underway and Some Flee, New York Times, 27th November 2019

³⁵ "Airbus bribe: Judge asks CID why they delayed action against Kapila and wife" Sunday Times 8th March 2020 <http://www.sundaytimes.lk/200308/news/airbus-bribe-judge-asks-cid-why-they-delayed-action-against-kapila-and-wife-395767.html>

³⁶ "President Gotabaya Rajapaksa takes aim at poverty and corruption in independence address" NewsFirst 4th Feb 2020, <https://www.newsfirst.lk/2020/02/04/president-gotabaya-rajapaksa-takes-aim-at-poverty-and-corruption-in-independence-address/>

³⁷ "Gotabaya vs FCID : The case of four recusals" Sunday Observer 10th June 2018 <http://www.sundayobserver.lk/2018/06/10/news-features/gotabaya-vs-fcid-case-four-recusals>; "Gota files another appeal to stop D.A. Rajapaksa trial" Sunday Observer 9th June 2019 <http://www.sundayobserver.lk/2019/06/09/news/gota-files-another-appeal-stop-da-rajapaksa-trial>; "After four years in foxholes: Gota's first trial-at-bar" Sunday observer 17th Feb 2019 <http://www.sundayobserver.lk/2019/02/17/news-features/after-four-years-foxholes-gota%E2%80%99s-first-trial-bar>

to abide by such instructions.³⁸ This matter is now before the Supreme Court³⁹ and will likely indicate whether the courts and officials are able to withstand pressure and take a position that is in direct opposition to the Executive. Similarly, we are seeing a return to the practice of appointing COIs and committees in response to negating any prospect of accountability⁴⁰, adding yet another COI to the long list in Sri Lanka's recent history with no prospect of follow up action and justice.⁴¹

Development and Economic Policy

Development has been one of the key areas highlighted by the Rajapaksa Government whose stated aim has been to improve the efficiency of the public service and improve business confidence in the pursuit of this goal. The Government finds itself in a difficult situation in that this goal must be pursued whilst also servicing the national debt now estimated to be at 55.5 billion US dollars, with at least 5 billion US dollars due to be paid this year.⁴²

Widespread cuts of both direct and indirect taxes have been implemented with an eye on the upcoming parliamentary elections, raising concerns given Sri Lanka's current economic situation. The loss of revenue from these cuts estimated to be around 3 million US dollars resulting in a downgrading of Sri Lanka's sovereign credit rating from stable to negative by the Fitch Agency.⁴³

VAT has been reduced from 15 percent to 8 percent, however, the extent to which working class citizens have benefited from this is unclear, with inflation rising to 7.6% at the time of writing and food prices increasing sharply.⁴⁴ Large tax concessions have also been provided to both local businesses and particularly to foreign investors in an effort to attract FDI.

The Government's ability to deal with the economic fallout of Covid-19 will also be crucial. The virus will impact the country economically via a number of mechanisms. There will be a substantial toll on the tourism industry in addition to the hit to manufacturing as a result of disruptions to global supply chains.⁴⁵ Further, remittance inflows may fall as a result of the spread of the virus to countries with high populations of Sri Lankan workers.

³⁸ "AG, Col on political victimisation set for showdown over youth abduction case" Daily FT 29th Jan 2020 , <http://www.ft.lk/front-page/AG-Col-on-political-victimisation-set-for-showdown-over-youth-abduction-case/44-694624>

³⁹ "FR petition challenging powers of Col on political victimisation to be heard on 25 March" Daily FT 25th Feb 2020, <http://www.ft.lk/news/FR-petition-challenging-powers-of-Col-on-political-victimisation-to-be-heard-on-25-March/56-696334>

⁴⁰ "Lanka to set up new Commission of Inquiry into rights violations" NewsInAsia, 27th Feb 2020 <https://newsin.asia/lanka-to-set-up-new-commission-of-inquiry-into-rights-violations/>

⁴¹ A list of Commissions and Committees appointed by GoSL (2006- 2013), <https://www.cpalanka.org/a-list-of-commissions-and-committees-appointed-by-gosl-2006-2013/>

⁴² Central Bank Statistics

⁴³ The Government has responded to this as being 'hasty and inconsiderate of facts on the ground' "Finance Ministry Strongly Disputes Fitch Revision" Daily FT 20th Dec 2019 <http://www.ft.lk/top-story/Finance-Ministry-strongly-disputes-Fitch-revision/26-691992>

⁴⁴ Figures from Department of Census and Statistics

⁴⁵ "Apparel Kicks off COVID-19 Impact Evaluation Process" 10th Mar 2020 Daily FT <http://www.ft.lk/top-story/Apparel-kicks-off-COVID-19-impact-evaluation-process/26-697199>

Whilst promises to improve living standards and bring about economic development were amongst the key selling points of the Rajapakse Government, we are yet to see significant movement in this area thus far. The Government's future electoral success will be largely a function of the extent to which they are able to bring this about; moving from a rhetorical focus on development to bringing about tangible and substantive changes.

Development and Reconciliation

The focus on development, in addition to being one of the Government's main perceived strengths, has been effectively used as a bludgeon against their political enemies. A consistent theme in the President's rhetoric when asked about questions of human rights and reconciliation is to present economic development as the solution to the problems faced by minorities, in contrast to purportedly illegitimate political demands associated with reconciliation.⁴⁶ In a number of interviews the President frames the focus on human rights violations as backwards-looking, unpatriotic and inherently in conflict with a future-oriented development project which in itself will provide solutions to issues of transitional justice. On this account, such demands do not reflect the genuine desires of 'the people', but rather something that has been concocted by Tamil politicians and the international community. Mirroring the discourse on security, reconciliation is presented as an impediment to development. Thus, the Government weaponizes its capacity to bring about development and security in its political battle against those who call for transitional justice by presenting these goals as antithetical to one another.

Foreign Policy

In his public statements, the President has maintained that the Government will maintain a 'neutral' foreign policy, staying out of any conflicts between world powers.⁴⁷ The President has met with envoys and top officials from the USA, China, India, Russia and Japan post-election.⁴⁸

The Government has however, been keen to show that it is responding to concerns within its support base about influence of the USA; particularly with regard to key bilateral agreements that were argued to represent a dilution of Sri Lankan sovereignty. The setting up of a committee to inquire into the Millennium Challenge Corporation (MCC) grant⁴⁹ and the subsequent decision not to sign, reflect the Government's desire to appease this constituency.

⁴⁶ Gotabaya Rajapakse Interview with Nitin A. Gokhale for Bharat Shakti 24th Nov 2019 https://www.youtube.com/watch?v=P9aymd_6V2k

⁴⁷ "President Outlines Vision for Sri Lanka" Daily FT 4th Jan 2020 <http://www.ft.lk/opinion/President-outlines-vision-for-Sri-Lanka-in-Parliament/14-692980>

⁴⁸ VIPs such as Subrahmanyam Jaishankar, Alice Wells, Wang Yi and Sergey Lavrov each made visits to the country and held talks with the new government. "Top Officials from China, Russia and US in SL this Week" Daily FT 19th Jan 2020 <http://www.ft.lk/news/Top-officials-from-China-Russia-and-US-in-SL-this-week/56-693427>

⁴⁹ "Government will not sign MCC Compact but open to negotiation" Daily FT 29th Feb 2020 <http://www.ft.lk/top-story/Govt-will-not-sign-MCC-compact-but-open-to-renegotiation/26-696643>

Similar dynamics are at play with regard to the Status of Forces Agreement (SOFA) and the already signed Acquisition and Cross Forces Agreement (ACSA) with the appointment of another committee to scrutinise the former.⁵⁰ Though ACSA has already been signed, there is the possibility that this will also be reassessed by a committee. In spite of their desire to demonstrate toughness towards the west for a domestic audience, the Government will be keen to maintain a cordial relationship with the USA who remain an important trading partner, and are likely to proceed with caution. Indeed, though the Government will use each of these agreements as bargaining chips in negotiations, bluster around the issues and the setting up of COIs and committees are more a matter of political optics in the service of performance in the general elections, than they are of substantive positions vis a vis the USA.

Sri Lanka's diplomatic ties with India have also been of great significance historically, particularly with regard to its implications for issues of Tamil rights in Sri Lanka. Narendra Modi and Gotabaya Rajapaksa currently share a close political relationship, however, despite public statements by Modi, we may not see as much influence from India in terms of Tamil issues as in the past. This comes as a result of the decreased reliance on support from the Southern states by the Bharatiya Janata Party (BJP) Government in New Delhi. As such, there is the likelihood of a reduction in the pressure applied by India on this issue, freeing up the political space for the new Government to roll back a number of measures implemented to address Tamil concerns, including the removal or roll back of the Thirteenth Amendment to the Constitution.

Though the dynamics highlighted above are worthy of consideration in themselves, overall, there is no evidence to suggest that there are likely to be any significant shifts in foreign policy, at least as far as bilateral relationships are concerned.

Prospects for the Future

As the paper has highlighted, the future of Sri Lanka is likely to be centred around a populist presidency with diminished checks and balances and an influential group of professionals, former and present military personal directly loyal to the President playing key roles in the formulation of policy. The 100+ days of the Government indicate a radical shift in substance and symbolism, cultivating an image of a President who is devoid of pomp and the trappings of the office and cementing his campaign promise of security, stability, efficiency and discipline. With the SLPP likely to be the most successful at the Parliamentary Election and thus dominating the agenda of the next Parliament, there is a near certainty of speedy constitutional and legislative rolling back on key constitutional amendments and legal safeguards, thus paving the way for an authoritarian presidency and centralised government with limited checks and balances. Further, there are no outward political and personal divisions within the Rajapaksa family, with a united front likely to persist till the Parliamentary Elections.

⁵⁰ "No decision to sign MCC, SOFA, ACSA agreements" Daily News 14th Dec 2019 <https://www.dailynews.lk/2019/12/14/law-order/205669/no-decision-sign-mcc-sofa-acsa-agreements> This has been in response to concern amongst the government's support base about the use of Sri Lanka, if not as a military base, at least as a location for US military facilities, given uncertainties about the Diego Garcia base

The legislative and policy agenda post Parliamentary Elections will also likely see further measures to normalise and legitimise militarization and securitization with serious implications for governance, reconciliation and rights with a chilling effect on civil liberties, media freedom and dissent. All this will likely be done with efficient speed with little to no opposition in Parliament. Considering the divisions within the UNP, it is unlikely they will be able to mount any form of robust opposition in the face of a powerful, popular President and party group with a comfortable majority. Considering the ongoing intraparty battles, questions also remain as to the relevance and future of some parties and alliances.

In the face of Sinhala Buddhist nationalism, fears revolve around the safety of Sri Lanka's ethnic and religious minorities and space for a multi-religious and multi-ethnic society. Due to the trivialization and dismissal of minority claims and attempts to push through economic development without any meaningful consultation, ethno-nationalism will likely thrive under a powerful Rajapaksa regime with fears of new fault lines and bleak prospects for any form of genuine reconciliation. This is likely to exacerbate political and economic uncertainty. Considering the trends of the recent past, the present political and military leadership will counter any signs of unrest and instability with brute force, further consolidating power in the guise of stability and security.

The prospects for democracy and reconciliation in the immediate future are bleak but the multiple challenges may also galvanise democratic forces to come together to counter and challenge. Post-independence Sri Lanka has witnessed the resilience of civil society, judiciary, media and others, sometimes under extremely trying circumstances. It is to be seen whether Sri Lanka will yet again witness such resilience and resistance in the face of unprecedented challenges to its fragile democracy.