

New Dilemmas for Sri Lanka: Federalism and Post-war Reconciliation

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Summary

Following his election as president of Sri Lanka in 2019, Gotabaya Rajapaksa has taken a strong stand against federalism and devolution of powers to protect the unitary structure of the state. In February 2020, the Gotabaya-led government also withdrew from the United Nations (UN) resolution number 30/1 on accountability and reconciliation. This paper examines the reasons for maintaining the unitary state structure and withdrawing from the UN-led resolution. It argues that as the long time demands of Sri Lankan Tamils for federalism and reconciliation are relegated to the background, their political and social position is unlikely to change.

Introduction

After Gotabaya Rajapaksa from the Sri Lanka Podujana Party (SLPP)¹ was sworn in as the president of Sri Lanka in November 2019, he took a strong position against federalism and devolution of powers to protect the unitary structure of the state, much to the dismay of the Tamil leaders. In fact, his victory at the presidential election last year made a large number of Sri Lankan Tamils and human rights advocates around the world worry about the position of minorities in the country. Gotabaya's role as defence secretary during the last Eelam war (2006-2009) between the Sri Lankan state and the militant group, Liberation of Tamil Tigers Eelam (LTTE) made him a favourite among the Sinhalese-Buddhist community while giving reasons to many Tamils to worry about their vested interests. The elections and the poll results demonstrated a polarisation along ethno-linguistic and communal lines.² While a majority of voters in Sinhala-dominated areas casted their votes in favour of Gotabaya, the minority areas in the North and East overwhelmingly voted for Sajith Premadasa who contested from the United National Party (UNP).³

One of the main political groups, the Tamil National Alliance (TNA), a coalition of four Tamil parties in Sri Lanka, has overtly expressed its disappointment with the SLPP's policies. In late 2019, the TNA held meetings with the SLPP and UNP respectively before extending its support to the latter party. While Premadasa did not take a firm stand on the devolution of powers issue, Gotabaya outrightly rejected these demands except for the 13th amendment.⁴

¹ The SLPP was formed by former President Mahinda Rajapaksa and other opposition parliamentarians in 2016. The party first contested during the 2018 local government elections and won a landslide victory with 44.65 percent of the votes.

² Chulanee Attanayake, Roshni Kapur, 'Commentary: After a five-year hiatus, why the Rajapaksas are back in power in Sri Lanka', Channel NewsAsia, (18 November 2019), <https://www.channelnewsasia.com/news/commentary/rajapaksa-wins-sri-lanka-presidential-election-12104592>. Accessed on 28 March 2020.

³ The UNP is a major party of the centre-right that has a pro-West and capitalistic leaning.

⁴ 'Gotabhaya Rajapaksa and SLPP rejects demands submitted by five major Tamil political parties to presidential candidates', *Sri Lanka Brief* (15 October 2019), <https://srilankabrief.org/2019/10/gotabhaya->

The TNA felt that aligning with the UNP would be a more practical choice despite not being fully assured that it would enforce the 13-point plan laid out by the TNA.⁵ Gotabaya has argued that the country's unitary status needs to be kept intact because a majority of the population did not support a power-sharing arrangement. He contended that the demands made by the minorities would be met through development and economic equality, a continuation of the development-oriented policies of his brother and former president of Sri Lanka, Mahinda Rajapaksa.⁶ However, the TNA wanted the Tamil community to have the authority in running its own affairs, including control over the local police and lands. The TNA has demanded a political solution based on a power-sharing arrangement for decades and contended that the Tamil ethnic problem can only be resolved through devolution of powers to the provinces. It has equated democracy with federalism and devolution of powers and maintains that the lack of a political solution to their demands could lead to implications for the country including minorities feeling subordinate citizens.⁷

The first section of this paper explores the United Nations (UN) Human Rights Commission's (UNHRC) co-sponsored 30/1 resolution adopted by the *Yahapalana* (good governance) government under the leadership of former president Maithripala Sirisena. The second section examines the new administration's reasons for maintaining the unitary state structure and withdrawing from the UN-led resolution.

The UNHRC Resolution on Sri Lanka

In 2015, the unity government (2015-2020) under Sirisena that was elected on its promises of reconciliation, transitional justice, peace, democracy, good governance and anti-corruption adopted the UNHRC's co-sponsored 30/1 resolution. The main sponsors of the resolution were Macedonia, the United Kingdom, Montenegro, Northern Ireland and the United States (US). Although transitional justice has been placed on the state agenda by previous governments, this was the first time the government accepted that human rights violations were committed by the security forces during the civil war. The state agreed to set up a new transitional justice model comprising four pillars, including a truth and reconciliation commission, office of missing persons, reparations office and a special court to prosecute the alleged perpetrators within an 18-month deadline.⁸ However, the process of gazetting the laws, operationalising the offices, releasing the reports and implementing the recommendations was delayed. The coalition government also retracted some of its promises, including establishing a hybrid court with the involvement of foreign judges.⁹ The

[rajapaksa-and-slpp-rejects-demands-submitted-by-five-major-tamil-political-parties-to-presidential-candidates/](#). Accessed on 12 March 2020.

⁵ Samatha Mallempati, 'Sri Lanka presidential election: With reconciliation to background, pre-poll rhetoric takes country back to turbulent past', *Firstpost* (14 November 2019), <https://www.firstpost.com/world/sri-lanka-presidential-election-with-reconciliation-relegated-to-background-pre-poll-rhetoric-takes-country-back-to-turbulent-past-7649131.html>. Accessed on 28 March 2020.

⁶ N. Lohathayalan, 'Tamil concerns, President's dither: Sumanthiran', *DailyFT* (18 December 2019), <http://www.ft.lk/news/Tamil-concerns-President-s-dither-Sumanthiran/56-691860>. Accessed on 24 March 2020.

⁷ 'Press Release', *TNA* (18 February 2020), <http://tnapolitics.org/?p=4757>. Accessed on 26 March 2020.

⁸ 'Sri Lanka U-turns on war crimes probe', *Straits Times* (6 March 2019), <https://www.straitstimes.com/asia/south-asia/sri-lanka-u-turns-on-war-crimes-probe>. Accessed on 21 March 2020.

⁹ Mario Gomez, 'The Politics of Dealing with the Past in Deeply Divided Sri Lanka', Preliminary draft, *Harvard Human Rights Journal*, 2020.

high level of enthusiasm and eagerness displayed in the early days of the government's tenure slowly waned away.

The new government under Gotabaya has taken a different stance on reconciliation and accountability by withdrawing from co-sponsoring UNHRC resolution 30/1 in February 2020. The decision was met with a mixed response. While certain sections of the Sinhala-Buddhist constituency welcomed the move, the international community, Tamil diaspora and civil society expressed their disappointment. The TNA has been in favour of implementing the UNHRC resolution, given that it is related to the national question of a power sharing arrangement. While the TNA realised that a full implementation of the UNHRC resolution would not have been probable under the UNP's leadership, there was some hope that Premadasa, unlike Gotabaya, would work with the UN on reconciliation.

The government's decision was taken shortly after the US imposed a travel ban on Sri Lankan army commander Shavendra Silva and his family. The US Secretary of State, Mike Pompeo, said that its action was in response to credible evidence of Silva's involvement in mass human rights violations, including extrajudicial killings during the final stages of the civil war. Silva was in charge of the 58th Division which was alleged for carrying out human rights violations.¹⁰ The UN High Commissioner for Human Rights, Michelle Bachelet, said that Silva's appointment as the new army chief in August 2019 undermines the country's efforts towards reconciliation, transitional justice and security sector reforms.¹¹

Reasons for Withdrawal

There are a number of reasons for the Sri Lankan government's withdrawal from the UNHRC resolution. The government may not want to antagonise its relations with the conservative Sinhala-Buddhist constituency that it has relied on for political vote. This group has resisted the formation of any international accountability mechanism of war crimes for a variety of reasons. First, it felt that this would be tantamount to an attack on the country's 'war heroes'. Hence, the Gotabaya government may want to protect the military from any investigations of alleged war crimes. Second, many alleged perpetrators were holding positions of power and any inquiry against them would jeopardise their careers. Third, international commissions of inquiries tend to be viewed as intrusive in nature that undermine state sovereignty and territorial integrity. As a result, some hardline Sinhala-Buddhist groups have tried to de-legitimise the efforts of these commissions of inquiries. There were occasions when they disrupted workshops that sought to implement the findings of the Lessons Learnt and Reconciliation Commission (LLRC).¹²

Second, the Sri Lankan state had reconceptualised the language of reconciliation for its own political mileage.¹³ During his tenure as president, Mahinda offered his version of reconciliation through development and reconstruction projects in the North-East.

¹⁰ 'Appointment of alleged war criminal to head of Sri Lanka army 'deeply troubling', says UN human rights chief', UN News (19 August 2019), <https://news.un.org/en/story/2019/08/1044501>. Accessed on 20 March 2020.

¹¹ *Ibid.*

¹² The LLRC was a domestic commission of inquiry created by Mahinda in 2011 to address the issue of war accountability.

¹³ Rachel Seoighe, *War, Denial and Nation-Building in Sri Lanka* (London: Palgrave Macmillan), p. 279.

Academic Jonathan Goodhand has termed this the 'victor's peace' that manifested through selective development projects, normalisation of militarisation in the North-East and continuation of the Sinhala-Buddhist spatial-territorial project in the North-East.¹⁴ The government had portrayed connectivity projects, including the rebuilding of roads and bridges, as the most significant aspects of post-war reconstruction and development. This bodes well with the liberal Western aid narrative of opening access to markets that were previously closed off.¹⁵

Third, the government may not want to be seen as pandering to Tamil nationalists by fully committing to transitional justice and reconciliation processes. Although Tamil nationalists lost their long-standing connection with a consolidated and dominant group when the war came to an end, their ideology has continued to survive through a network of organisations rather than a centralised decision-making body. The Sri Lankan Tamil diaspora has emerged as a strong contender in international politics whose demands are compatible with globalised justice efforts. This type of Tamil nationalism has become engrained in the forms of liberal peace engagement in Sri Lanka.¹⁶ The Tamil community has resorted to non-institutional platforms to preserve its identity, notions of nationhood and narratives of persecution and struggle. The Tamil's claim on the Northeast province is based on the notion that they are the traditional landowners of those places when Tamil kingdoms existed in the pre-colonial era. On the other hand, the Sinhalese trace their righteous ownership to the ancient chronicles Mahavamsa and Dipavamsa, resulting in two diametrically opposed historical accounts purported by the Sinhalese and Tamils. While the Sinhalese nationalists' position is based on the dominant colonial discourse of the unitary state structure,¹⁷ Tamil nationalists have rejected the naturalisation of this political system arguing that their right to a separate nation is premised on the idea of a pre-colonial autonomy and ethnic nationhood that they once enjoyed.¹⁸

The Tamil nationalist identity has manifested through commemorations, social media and even through acts of violence. The annual *Maaveerar Naal* (Great Heroes Day) that pays homage to those who died during the war glorifies the LTTE by hoisting its flag and displaying pictures of its former leaders. Since 19 May 2009, the last day of the civil war has also been designated by Sri Lankan Tamils as a day to remember those who died in the final phases of the conflict. Although the Sri Lankan government in the post-conflict period has outlawed some elements of these events, the local Tamil community and diaspora has demanded the right to express their sentiments within these memory spaces.¹⁹

The new government has claimed that it would address accountability and reconciliation issues by establishing a new domestic commission of inquiry. Homegrown mechanisms have

¹⁴ Guruparan, Kumaravadeivel, 'The Politics of the Discourse on Post-War Reconciliation in Sri Lanka' in Amarnath Amarasingam and Daniel Bass in *Sri Lanka: The Struggle for Peace in the Aftermath of War*, (London: C. Hurst & Co, 2016), pp. 22-23.

¹⁵ Ibid, p. 23.

¹⁶ Madura Rasaratnam, *Tamils and the Nation: India and Sri Lanka Compared* (London: C Hurst & Co Publishers Ltd), 2016, pp. 1-4.

¹⁷ Rachel Seoighe, 'Inscribing the victor's land: nationalistic authorship in Sri Lanka's post-war Northeast' *Conflict, Security & Development*, Volume 16 (October 2016), Issue 5, p. 445.

¹⁸ Ibid.

¹⁹ Ibid, p. 196.

been previously set up to investigate disappearances and human rights abuses both during and after the civil war. They were tasked with probing cases that had not been examined by the police or prosecuted by the Attorney General's Department.²⁰ For instance, the LLRC report published in November 2011 made some recommendations on issues of displaced persons, agricultural issues, resettlement and return of land.²¹ Any new domestic mechanism would need to address the issue of disappearances, truth telling, reparations, closure and healing, security sector reform and conflict transformation.

Conclusion

The government's withdrawal from the co-sponsored UN resolution could mount further pressure from the Tamil leaders, Tamil diaspora, civil society and international community to build a political consensus pertaining to the post-war reconciliation and devolution of powers issues. Interestingly, Gotabaya's presidential style is starkly different from that of Mahinda, despite appointing him as the prime minister. Following the first street protest by university students after Gotabaya assumed presidency, he invited the protesters to his office to discuss their issues in a constructive manner. He also accepted a persisting demand by tea plantation workers for a minimum daily salary of 1,000 Sri Lankan rupees (S\$7.60).²² He has plans to recruit around 3,000 individuals from the Northern areas into the country's police force at the constable and sub-inspector levels. Some have argued that Gotabaya's critics are gradually approving of his policies that stride on meritocracy rather than sectarianism.²³ It will be intriguing to observe how Gotabaya engages the TNA in the long-term and work closely with them to voluntarily repatriate around 3,000 Sri Lankan refugees staying in India.²⁴ Despite the more inclusive and democratic approach to his governance, Gotabaya is likely to maintain the country's unitary state structure and oppose any demands to federalism and devolution of powers. The SLPP is hoping to secure a majority at the General Elections that were scheduled for April 2020 has been postponed for the time being. Gotabaya has also ruled out decreasing the president's powers. However, he faces another challenge of maintaining relations with Sinhalese-Buddhist nationalists who want preferential treatment for their community.

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²⁰ Chandra Lekha Sriram, 'Atrocities, Accountability and the Decline of Rule of Law' in Renee Jeffery and Kim Hun Joon, *Transitional Justice in the Asia-Pacific* (New York: Cambridge University Press, 2013), pp. 447-448.

²¹ 'Report of the Commission of Inquiry on Lessons Learnt and Reconciliation,' November 2011, pp. 230-232, <http://slembassyusa.org/downloads/LLRC-REPORT.pdf>. Accessed on 22 March 2020.

²² Frances Bulathsinghala, 'Course correction, *The Week* (1 February 2020), <https://www.theweek.in/theweek/more/2020/01/31/course-correction.html>. Accessed on 29 March 2020.

²³ Ibid.

²⁴ Ibid.