

READY FOR TAKE-OFF? THE PROMISE AND CHALLENGE OF SRI LANKA'S POLITICAL TRANSITION

EXECUTIVE SUMMARY

Sri Lanka is in the midst of a political transition that presents a unique opportunity to overcome the violence and instability which have for decades prevented the island nation from realising its full potential. In a country with fundamentally sound human development indicators – almost full literacy, comparatively high standards of education and a stable demography – it is the combination of fraught politics and armed conflict that has stood in the way of Sri Lanka emulating the economic success stories of the region.

The defeat of the 'Liberation Tigers of Tamil Eelam' (LTTE) by the Sri Lankan military in 2009, overshadowed by accusations of war crimes, ended the protracted civil war that had inflicted tremendous suffering on the lives of many Sri Lankans. In its aftermath, however, serious doubts remained whether the authoritarian government of President Mahinda Rajapaksa, having won the war, could 'win the peace' by bringing lasting stability to the country. Post-war Sri Lanka saw these doubts become certainties as the Rajapaksa regime sought to consolidate its grip on power.

The alignment of broad reformist forces in both major parties after last year's landmark elections, which, in a surprise turn of events, saw the defeat of Rajapaksa at the polls by Maithripala Sirisena, brought about a democratic opening for Sri Lanka. This opportunity carries with it significant promise to create an inclusive and stable political framework, accommodating the Sinhalese majority as well as the Tamils and the country's various other minorities. The main avenue for establishing this new framework is the constitutional overhaul currently being undertaken by the newly-convened Constitutional Assembly.

Three major challenges could potentially jeopardise this transition by sapping critical public support and undermining the fragile two-thirds majority in parliament that is needed to successfully reform the constitution:

- The structure of the state ('unitary', 'federal' or other forms of de-centralisation) will be the single most difficult issue of the constitutional bargain. The crux of Sri Lanka's politics for decades, the issue of state structure speaks directly to Sinhalese as well as Tamil sensitivities.
- The process of dealing with the past, an essential component of changing Sri Lanka's political and institutional culture, is highly delicate. It is unfolding in parallel with the constitutional reforms and could – if badly managed – widen political divisions.
- Third, the sluggish economy combined with serious state debt, potentially requiring budget cuts, could in turn undermine public support for the process. Sri Lankans are yet to reap the economic dividend of democratisation.

On all three challenges, international partners can provide critical support. For Sri Lanka to successfully take advantage of its democratic opening and overcome the challenges of the past and present, it will need diverse and far-reaching assistance. A political and economic investment in the country at this time is a strategic choice for a stable, prosperous Sri Lanka and for stability in the wider South Asia region.

1. THE 2015 RETURN TO DEMOCRACY

In elections that surprised many, Sri Lankans voted President Mahinda Rajapaksa (Sri Lankan Freedom Party - SLFP) out of office in January 2015. During his ten years as president, Rajapaksa established an authoritarian regime notorious for its high concentration of power in his office and far-reaching patronage network, with a number of Rajapaksa's family members taking up positions in government and parliament. Routinely undermining the separation of powers, the Rajapaksa regime wielded significant influence over key state institutions, notably the judiciary as exemplified by the impeachment of Chief Justice Shirani Bandaranayake in 2013.¹

President Rajapaksa relied heavily on a combination of nationalist politics and bellicose security policies to maintain support within the majority Sinhalese community.² When in 2009 the Sri Lankan Army defeated the LTTE, which had controlled the country's north for decades and achieved notoriety for attacks and assassinations in the rest of the country, Rajapaksa basked in the military's victory. However, while shoring up support with key constituents and securing Rajapaksa a second term in office, the 2009 military victory was marred by widespread allegations of war crimes. In 2012, the UN Human Rights Council requested the UN High Commissioner for Human Rights to "undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka" for the period 2002 – 2011.

Underpinning Maithripala Sirisena's victory in the 2015 elections was his success in rallying cross-party support behind restoring democracy to Sri Lanka. Sirisena, a member of the SLFP and former minister in Rajapaksa's cabinet, garnered support among a reformist faction within the ruling party and joined forces with Sri Lanka's other major party, the United National Party (UNP), as well as other smaller parties such as the Tamil National Alliance (TNA). The formation of this coalition was made possible by shifts within the majority Sinhalese community, as disaffection with the Rajapaksa regime mounted. This combination of factors produced a victory at the polls for Sirisena, who appointed UNP leader Ranil Wickramasingha as Prime Minister.

Following the elections and as part of his 100-day governance programme, President Sirisena moved quickly to initiate constitutional reforms to reduce the concentration of power, or so-called 'Executive Presidency', written into the constitution during the Rajapaksa years. The 19th Amendment limited the presidential mandate to two terms, reduced the terms of the parliamentary and presidential mandates to five

years, and re-established the Constitutional Council and its powers of recommendation in the appointment of members of independent commissions. The constitutional reform package also strengthened the right to information held by public institutions, while broadly reinforcing their independence.

In addition, the new government introduced other far-reaching reforms geared towards restoring the democratic nature of the state. These included, for example, the lifting of restrictions on the media and an anti-corruption campaign that led to the indictment of several former government officials. Other promising moves taken by the new government included the release a number of political prisoners, many of them convicted without charge, and the appointment of a civilian as the new Governor to the Northern Provincial Council, replacing the controversial Major General Chandrasiri, the former Commander in the regional capital of Jaffna during the conflict.

The parliamentary elections held on 27 August 2015 reaffirmed Sri Lanka's reform course by returning a two-thirds majority for an alliance of reformist MPs belonging to the SLFP and the UNP, which formed the government. There is currently broad support for the reform process across the governing and opposition parties, although some uncertainty remains over the stability of the coalition that brought President Sirisena to power. In particular, there are factions within the SLFP whose commitment to the reform process cannot be taken for granted.

More immediately, there are concerns over the postponement of local elections, some of which were supposed to have been held as early as May 2015. The postponement is problematic in light of obligations under Article 25 of the International Covenant for Civil and Political Rights (ICCPR), which requires elections to be held periodically. Some critics allege that political motives are at play, with the government unsure of its majorities in certain constituencies. There are, however, technical reasons for the delays: The reform coalition has begun to address issues relevant to democratic elections, establishing a commission on electoral delimitation last year and, subsequently, a committee to investigate the discrepancies within the existing electoral system. New legislation guaranteeing women 25% representation in local government bodies is reportedly also in the offing, although it is yet to be adopted.

2. THE PROMISE OF 2016: LOCKING IN CHANGE

Following the positive developments for democracy in 2015, the promise of 2016 for consolidating Sri Lanka's reform path and locking in change is significant. The centrepiece of the reform agenda for 2016 will be the constitutional overhaul currently taking shape, the importance of which for creating a new and inclusive political framework cannot be overstated. Key aspects of the constitutional overhaul process include:

¹ See International Crisis Group report for more information: [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/243-sri-lanka/sri_lanka___sinhala_nationalism_and_the_elusive_southern_consensus.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/243-sri-lanka/sri_lanka___sinhala_nationalism_and_the_elusive_southern_consensus.pdf)
² For in-depth analysis, see International Crisis Group report: http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/sri_lanka___sinhala_nationalism_and_the_elusive_southern_consensus.pdf

- Establishing a state structure that guarantees effective representation of minorities, in particular the Tamils, including de-centralisation of power. This will be the most difficult aspect of the constitutional negotiations.
- Changing the electoral system to a parallel system of single member constituencies (first-past-the-post) on the one hand and a proportional list-based system on the other. The parties believe these changes will reduce the role of money in elections, intra-party conflicts and strengthen the link between deputies and their voters.
- Drafting an updated and comprehensive bill of rights reflecting Sri Lanka's international commitments.
- A strengthening of democratic and human rights guarantees during states of emergency.
- Establishing a clear separation of powers and the supremacy of the constitution.
- The independence of the judiciary, the establishment of a Constitutional Court and the recourse to judicial review of legislation.

In order to gauge public opinion on constitutional change, parliament has established a Public Representation Committee, tasked with obtaining oral and written proposals from the public for the new constitution. The Committee held meetings in all districts of the country in February and will submit a report based on the public submissions. This report will serve as the basis for establishing thematic sub-committees and propose recommendations to be considered by the Constitutional Assembly. Many of those involved in the process have been positively surprised to see active engagement by citizens, resulting in the committee holding a second round of public sessions in Colombo as well as elsewhere in the country.³

In April 2016, the Sri Lankan Parliament adopted the resolution that established the Constitutional Assembly which, while technically a committee of parliament, consists of all Members of Parliament. The legislature will thus at times convene as Parliament, while meeting at others as the Constitutional Assembly. This move was anticipated as early as January but, rather than tabling the resolution immediately, the government took time to negotiate with the opposition with a view to adopting the resolution by unanimity. The success of parliament in ultimately achieving unanimous backing of the resolution was a laudable achievement, providing the constitutional process with maximum legitimacy at a critical moment in its inception.

The structure of the Constitutional Assembly is currently taking shape, with a Steering Committee of 21 members overseeing the process chaired by Prime Minister

Wickremasinghe⁴. A staunch reformer, Wickremasinghe is widely considered a driving force behind the constitutional overhaul. Soon sub-committees will be formed to address specific subject areas, which are to be defined on the basis of the report submitted by the Public Consultations Committee. Constitutional amendments proposed by the Assembly will need to be adopted by a two-thirds majority in Parliament and subsequently approved in a nationwide referendum in order to take effect (Article 83 Constitution).⁵

Concerning the length of the constitutional process, there are two schools of thought among reformers: those wanting the process to be conducted swiftly, in a matter of just a few months, fearing the current momentum for reform may soon slow; and those concerned that too rapid a process could be perceived as contrived and decried as an elite deal, lacking genuine public consultation and input. In view of some of the highly sensitive reform issues, in particular the question of the state's structure, it is positive to see parties are already talking to each other and exploring possible compromise solutions. An element of "pre-cooking" is inevitable and could prove beneficial to the overall process, so long as outcomes are clearly communicated and debated.

3. THE CHALLENGES TO DEMOCRATISATION

There are three key challenges to the democratisation process that could prove to be divisive and undermine the current momentum for reforms and, in particular, the two-thirds majority in parliament to adopt the envisaged constitutional reforms.

Negotiating the State Structure

The constitutional negotiation on how to re-structure the state is fraught with difficulties that have bedevilled Sri Lanka for decades. The issue of de-centralisation was a root cause of the island nation's long-running armed conflict and the crux of the ceasefire agreements brokered between the government and LTTE, although no lasting solution was found. Today, the issue of state structure touches upon the key sensitivities of all Sri Lankans and is intimately bound up with questions of religious, linguistic and cultural rights.

For Tamil representatives, an ideal outcome would be a federal state in which the two Northern provinces would merge into one federal unit. Such a proposal is anathema

³ Public Representation Committee on Constitutional Reform, Media release 14 February 2016: [http://www.yourconstitution.lk/MEDIA%20RELEASE%20\[ENGLISH\].pdf](http://www.yourconstitution.lk/MEDIA%20RELEASE%20[ENGLISH].pdf)

⁴ For the full list of names, see: <http://www.parliament.lk/en/news-en/view/1173?category=6>

⁵ For details on the process in the Constitutional Assembly, see Parliament's resolution to appoint the Assembly: http://www.parliament.lk/files/documents_news/ca-motion/motion-en.pdf

to many in the majority Sinhalese community, especially those who view de-centralisation as a prelude to secession. They attach high importance to the current constitutional language of Sri Lanka as a 'unitary' state.

At the present moment, there appears to be much good will to find an agreeable solution. However, the issue of state structure will be the principle rallying point for opposition to the overall process. Sinhalese nationalists will argue that any concession on the state structure is tantamount to giving away at the negotiation table what the army achieved on the battlefield. For many Tamils, nothing short of ironclad guarantees of autonomy will be acceptable. It is somewhere between these two poles that a creative solution must be found.

Dealing with the Past: Transitional Justice

Sri Lanka's decades of armed conflict brought terrible suffering to many Sri Lankans as well as significant damage to property and the economy. At the end of the war in 2009, some 500,000 people were estimated to be displaced in addition to an estimated one million who had emigrated over time. The UN's Human Rights Commissioner Zeid Ra'ad Al Hussein noted: "Our investigation has laid bare the horrific level of violations and abuses that occurred in Sri Lanka, including indiscriminate shelling, extrajudicial killings, enforced disappearances, harrowing accounts of torture and sexual violence, recruitment of children and other grave crimes."⁶

The current opening presents a unique opportunity to come to terms with this violent past. The process of transitional justice is unfolding on the basis of a UN Human Rights Council resolution of 29 September 2015, which was co-sponsored by the government of Sri Lanka.⁷ The resolution covers four aspects:

- Seeking the truth about what happened;
- Justice (victims should have remedies and the State should investigate and prosecute)
- Reparation for victims;
- Non-recurrence, ensuring abuses do not happen in the future.

The resolution makes clear that this process should investigate the conduct of the government of Sri Lanka and the defeated LTTE with equal depth and rigour. All aspects covered by the resolution are politically sensitive, in particular the potential prosecution of army personnel for war crimes and return of land confiscated by the military. The release of further political prisoners, a significant number of them convicted under the Prevention

of Terrorism Act, is also likely to prove controversial. For many belonging to the Sinhalese nationalist spectrum it is unthinkable that individuals they revere as war heroes could end up before a court, while those they consider 'terrorists' walk free. However, for many other Sri Lankans, including within the majority Sinhalese community, it is seen as important that possible war crimes be investigated.

Transitional justice is essential for Sri Lanka's democratisation process. If successfully managed, it would provide the foundation for a democratic and inclusive political culture necessary for a sustainable transition process. At the same time, the process of transitional justice poses risks for the transition process and reconstitution of the Sri Lankan state. Many of its issues could spark public controversies and undermine the momentum for reform.

Overall, the transitional justice process is likely to be an enduring feature of Sri Lanka's transition and require a longer-term view than the immediate challenges of constitutional reform. It is a necessary aspect of Sri Lanka's transition process to foster a democratic, rule of law-based culture. The process of coming to terms with the past will need to be handled with a great deal of care to be fair, effective and to avoid harming the reform process as a whole.

The Economic Situation

Sri Lanka is in a comparatively strong economic position, registering significant growth since 2000 and reducing its poverty rate over the same period. The country strives to transition from a low middle-income country to a high-middle income country. While its fundamental data are promising, in particular its literacy rate and comparatively high education standards, which exceed both regional and global averages, there are a number of short-term challenges.

In April 2016, the World Bank noted: "Sri Lanka's economic growth is expected to grow at 5.3 percent in 2016 and 2017 driven by increased public investment and postponed investments in 2015. The challenging global environment has taken a toll on the economy with reduced exports and remittances; and significant capital outflows, leaving Sri Lanka with higher public debt, lower reserves and rising inflation."⁸

These challenges coincide with the crucial period of Sri Lanka's political transition. The government may be forced to take unpopular measures in view of increasing public debt and a bloated, inefficient public sector carried over from the Rajapaksa years. According to the International

⁶ See press release of September 2015: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16432&LangID=E>

⁷ The full text of the resolution can be found here: http://www.ptsrilanka.org/images/documents/background/unhrc_resolution_2015.pdf

⁸ "South Asia Remains World's Fastest Growing Region, but Should Be Vigilant to Fading Tailwinds", World Bank Press Release, 10 April 2016

Monetary Fund, Sri Lanka's public debt had risen to over 74% of GDP by the end of 2015.⁹ This economic situation could turn up significant challenges for the current coalition as it risks undermining critical public support for the reform process, which explains in part why some reformers are keen to make rapid progress with the constitutional overhaul. In a country whose population is yet to benefit from the economic dividend of democratisation, the risks of economic challenges stalling or potentially derailing the transition process are high.

Overall, the relationship between political and economic challenges in Sri Lanka cannot be overstated: Throughout its recent history the country has paid a steep economic price for the instability which accompanied unresolved political issues and conflict. Only if the current reforms succeed and the new constitution is accepted by a significant majority of Sri Lankans can the country achieve the political stability that is necessary for sustainable economic development. Political reforms will, therefore, help the economy; however, the current state of the economy will not help the reform process.

In this context the government and business community are pinning their hopes, among others things, to a quick readmission to the European Union's General Scheme of Preferences Plus (GSP+), which the EU withdrew in 2010 on the grounds of Sri Lanka's human rights situation. While there is significant goodwill on both sides to see Sri Lanka readmitted to GSP+, the EU expects tangible progress on issues like the release of political prisoners and the return of land confiscated by the military.

The economic impact of readmission to GSP+ is likely to prove significant, with the EU being Sri Lanka's biggest export market. In 2014 the EU accounted for 31% of Sri Lankan exports, two-thirds of which were textiles. If readmitted to GSP+ the textile industry would see a significant reduction in EU tariffs, dropping from between 10% and 6% to zero, and benefit from a considerable increase in competitiveness.¹⁰ Importantly, the textile sector, a key employer of women from poorer socio-economic backgrounds, has a particularly important role to play in overcoming poverty and gender inequality, provided labour standards are respected. GSP+ requires that the government honours 27 specific international conventions that Sri Lanka has ratified, including 10 conventions related to labour standards.¹¹

4. OUTLOOK

The next 18 months of Sri Lanka's transition will be crucial. Against the backdrop of a sluggish economy, the governing coalition will have to negotiate complex constitutional reforms requiring approval by referendum. While there is broad support for the reform process, the momentum may peter out before a constitutional bargain can be struck. In parallel, the process of transitional justice, which raises a number of potentially divisive issues of its own, must continue to address the past and to develop a new political culture for the country's future.

The success of this transition process could propel Sri Lanka to a new level of political stability and economic prosperity, but the risks of a backlash and political turmoil are significant. International partners are well positioned to provide critical support to Sri Lanka at this time and play an important role in consolidating its democratic opening by locking in sustainable, long-term change. Ultimately, this is a strategic investment in Sri Lanka's political and economic development, in conflict-prevention and in the broader stability of the region.

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

<http://www.democracy-reporting.org/sri-lanka>



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⁹ <https://www.imf.org/external/np/sec/pr/2016/pr1644.htm>

¹⁰ Data provided by Dr. Saman Kelegama of the Institute of Policy Studies of Sri Lanka.

¹¹ The full list can be consulted here:

http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_152024.pdf