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Sri Lanka's Transition to Nowhere

Time may be running out for meaningful reforms, and transitional justice remains just out of reach.

By **Alan Keenan**

In January 2015, the shock electoral defeat of President Mahinda Rajapaksa by his former ally, Maithripala Sirisena, rescued Sri Lanka from a slide into increasingly harsh nationalist authoritarianism. The victory of a broad coalition representing Sinhalese, Tamils, and Muslims gave hope that the country could begin to address its longstanding political challenges: remedying the 60-year failure to grant Tamils a fair share of power in the

Sinhala majority island and restoring for all the rule of law, damaged by decades of politicization, bitter ethnic bias, and impunity for grave abuses committed during the civil war with the Tamil Tigers.

The momentum of the early months soon slowed, as deep political dysfunctions reasserted themselves in the face of reforms meant to shake up entrenched political practices and policies. Two years on, the bloom is off. Time is running out for any reform at all.

Government leaders should remember how easily they were sidelined when Rajapaksa's triumphalist majoritarian politics held sway. For their own survival and to deliver on at least some of their big promises, they must collectively reject narrow chauvinistic politics and daily bickering and invest their remaining political capital in promoting an inclusive vision to build a more accountable political order and mitigate the risk of future conflict.

Sirisena's first nine months as president saw real progress. With his electoral coalition, anchored around the United National Party (UNP), strengthened by the support of a large section of his – and Rajapaksa's – Sri Lanka Freedom Party (SLFP), he won the needed two-thirds parliamentary approval for a key electoral pledge: a constitutional amendment to reduce the presidency's enormous powers and restore the independence of oversight commissions for the police, judiciary, and human rights. The government ended censorship and intimidation of the media and partially scaled back the heavy military presence in Tamil-majority areas in the north and east of the island. The military was convinced, reluctantly, to return some of the huge swathes of private land it had seized during and after the war.

Sirisena's election was followed in August 2015 by the narrow victory of a UNP-led coalition over a grouping led by former President Rajapaksa and including much of the new president's Sirisena's own SLFP. This allowed Sirisena to reassert enough control over the fractured SLFP to convince the majority of the parliamentary group to form an unprecedented national unity government with its long-time rival UNP, headed by Prime Minister Ranil Wickremesinghe. The grand coalition reaffirmed the parties' ambitious agenda to revive the beleaguered economy, investigate

alleged corruption and political murders under the previous regime, promote reconciliation and, most important, draft a new constitution. Key aims of constitutional change were to check centralization of power in presidential hands, adopt a new electoral system and expand the powers devolved to provinces to address Tamils' long-standing demands for autonomy in the north and east.

In September 2015, the new government co-sponsored a landmark resolution at the UN Human Rights Council (UNHRC) in which it agreed to a package of transitional justice measures to address the legacy of the brutal 30-year war with the separatist Tamil Tigers, including the final horrifically violent months in 2009, when tens of thousands were killed. But momentum sputtered soon after and now seems to have stalled, as divisions inside and outside the unity government prompt focus on daily maneuvering for political survival rather than the hard task of maintaining unity across party and ethnic lines. With key promises on corruption, rule of law, the economy, and ethnic relations largely unmet, the government has lost support from all its key constituencies: Tamils, Muslims, and Sinhalese, with the public dismayed by corruption, abuse of power, and high living costs. The government's loss of focus has also made it vulnerable to the resurgent populist, majoritarian opposition politics led by Mahinda Rajapaksa.

The ex-president remains popular with many Sinhalese and within the SLFP, particularly among local party activists, the majority of whom have never accepted the unity government. Rajapaksa's attempts to regain control of the divided party benefit from the dissatisfaction of many SLFP parliamentarians who did join the unity government but now chafe at what they feel is UNP arrogance and Wickremesinghe's unilateral policymaking. The SLFP is a resentful junior coalition partner, whose ministers see uniting their own party – which requires making peace with Rajapaksa – as the best way to take control of government.

Looming large among SLFP ministers aligned with Sirisena are local elections, originally due in 2015 but repeatedly postponed for fear that the Sirisena-led SLFP would come in at a humiliating third, behind not only the UNP, but also the Rajapaksa faction,

which is expected to contest them as a new party. Also scheduled for 2017 are three provincial council elections that carry the same risks for Sirisena and his wing of the SLFP.

Rajapaksa would have to overcome significant hurdles to return to power before 2020, the earliest that parliamentary elections can be called. He, or possibly one of his powerful brothers, would need to be appointed prime minister by Sirisena. This would require Sirisena to abandon the unity government and with it the possibility of constitutional reform, which needs a two-thirds majority. It would also require at least 18 deputies now aligned with the UNP to vote for Rajapaksa as prime minister, to supplement the 95 seats now held by the SLFP and its allies in the 225-seat parliament. That such a once far-fetched prospect is now being taken seriously indicates how tense relations within the ruling coalition are.

Rajapaksa is also reviving his public base, which views talk of reconciliation or transitional justice as capitulation to anti-national and foreign forces. Sirisena and his ministers, firefighting on many fronts, are increasingly falling back on the hardline Sinhala nationalist rhetoric of Rajapaksa, against which they previously campaigned. They have more than once met the Bodu Bala Sena (Buddhist Power Force, BBS), which led a two-year campaign of violence and hate speech against Muslims under Rajapaksa. The apparent acceptance of its leader, Gnanasara, as a legitimate representative of Sinhala Buddhists runs counter to promises to punish those responsible for anti-Muslim violence. Extremist monks continue to agitate against Muslims and Tamils, while militant Buddhists' attacks on evangelical churches occur with impunity. Government ministers have claimed the Rajapaksa family funds some of the radical monks and suggest that a campaign to destabilize and divide the ruling coalition is supported by pro-Rajapaksa elements in the military. Many civil servants are hedging their bets, concerned that the ruling coalition is weak and fearful of retribution should Mahinda or one of his powerful, vindictive brothers return to power.

Concerned about dissent in the military and wary of appearing unpatriotic, the government has yet to make serious efforts to

reform the national security state or reduce the military's considerable autonomy. Following their 2009 victory over the Tamil Tigers, the military remains very popular among Sinhalese, as do Mahinda Rajapaksa and his brother and former defense secretary, Gotabaya, for their leadership of that campaign.

A Deeper Look at Stalled Transitional Justice

Government plans for transitional justice mechanisms – which would inevitably reveal more about atrocities by both the military and the Tamil Tigers – have also, for similar reasons, been slow to materialize. Indications are that the government will attempt to replace or counterbalance the concrete, detailed promises in the UNHRC resolution, including for criminal prosecution, with weak processes or disempowered bodies. It has ignored the work of its own task force, which organized national consultations on transitional justice and whose long-awaited report released in January provided clear recommendations to address the immediate needs of conflict-affected communities in the north and east and to strengthen the rule of law for all Sri Lankans.

The Office on Missing Persons, which parliament approved in August 2016, has yet to be established, and the timetable for establishing the other three promised mechanisms the 2015 UNHRC resolution specified – a reparations office, truth commission, and special court – has repeatedly been pushed back. Officials now promise the cabinet will approve draft legislation for a “truth seeking commission” by March. Without simultaneously establishing the legal basis for the promised special court, however, many fear the truth commission might either weaken, or ultimately be a substitute for, any criminal justice processes thereafter.

Repeated statements by the president and other senior ministers rejecting any role on the special court for foreign judges – a key clause of the UNHRC resolution endorsed by the consultations task force – are only the best known indicators of government disinterest in pursuing meaningful accountability. They come even after the surprise December acquittal of all accused in the 2006 murder of Tamil National Alliance (TNA) parliamentarian N.

Raviraj, which dented already slim hopes that the judiciary might be able to try cases involving military and police personnel.

Much to the disappointment of victims and grassroots activists, the president and prime minister have failed to acknowledge the report the civil society task force in charge of national consultations on transitional justice released on January 3. That report, the product of months of nationwide consultations and thousands of submissions, skillfully articulates the painful stories of victims from all communities and builds on them to develop practical recommendations for how all four transitional justice mechanisms could best support reconciliation and stronger democracy. It also reminds the government of the many steps needed prior to establishment of the four mechanisms to address the immediate needs of conflict-affected communities, especially in the north and east, and to strengthen the rule of law. They require, among other things, removing senior officials involved in developing and publicly defending the repressive practices of the Rajapaksa government, who remain in key positions in cabinet and the Attorney General's department and have reportedly blocked numerous reforms.

Progress made by the police in investigating a series of Rajapaksa-era murder and abduction cases – including the 2009 assassination of editor Lasantha Wickramatunga – has stalled, in part because of the military's refusal to cooperate. The government is also dragging its feet on reforms to tackle Sri Lanka's long-standing crisis of impunity for human rights abuses. As the UN Committee Against Torture recently determined, torture of detainees remains routine across Sri Lanka, and no effective witness protection system has been established. Nor has the government, despite promises to the UN and its own citizens, replaced the draconian Prevention of Terrorism Act (PTA) with legislation in line with international human rights standards. A proposed replacement Counter Terrorism Act, finalized in October 2016 by a committee dominated by military and police officials, contained many of the same – and additional – clauses encouraging abuses by the state. Eager to win back the European Union's human rights contingent GSP+ tariff reductions, the government has since removed some of the draft's

most troubling clauses, but its definition of terrorism-related offenses remains dangerously broad, criminalizing, for example, “words ... that threaten the unity of Sri Lanka.”

Lost Momentum and Reform Failures

The government's failure to significantly reduce the military's footprint in the north and east is strengthening the nationalist sentiments of many Tamils and increasing tensions between Tamils, Muslims, and Sinhalese. The military continues to run shops and hotels in these areas, and Buddha statues continue to be constructed with its assistance in Tamil and Muslim villages. The slow but steady return of military-occupied land to Tamil owners that took place during Sirisena's first year has slowed to a trickle, even as additional land has been taken for new camps. The sense of grievance generated by the continued heavy military presence threatens the dominant position of the moderate Tamil National Alliance (TNA) and could weaken its ability to win Tamil support for the compromises required for any potential deal with the government on constitutional reform.

Until late 2016, the drafting of a new constitution had appeared to be proceeding quietly, with representatives of the president, prime minister, and TNA making significant progress toward a compromise to substantially strengthen provincial devolution, even if this was considerably less than the TNA's longstanding goal of federalism. That process has now stalled and appears at risk of collapse. Scheduled debate by parliament, acting as a constitutional assembly, on an initial outline of the new constitution has twice been postponed. In early January, SLFP ministers announced their objection to key elements, including abolition of the executive presidency, a central promise when Sirisena ran against Rajapaksa, and changing the state's unitary character, thus severely restricting any additional devolution. Their opposition to any constitutional changes requiring approval in a referendum would, if adopted by the full SLFP, limit constitutional changes to relatively minor amendments, rather than a new document.

Proponents of strengthened devolution are at a considerable disadvantage, as the government has taken no steps to explain its

importance and its benefits for all Sri Lankans. The administration instead hoped that a parliamentary consensus could be reached quietly. In the absence of any coherent messaging about constitutional reform and devolution from the president, prime minister, or senior ministers, public debate has been dominated by nationalists on both sides, but particularly Rajapaksa-aligned Sinhala politicians. Failing to propose any alternative to the exclusionary Sinhala nationalist vision of the state articulated so persuasively by Mahinda Rajapaksa, the government has been on the defensive, denying opposition charges that it plans to weaken Buddhism and supports separatism. This has done little to reassure Sinhala Buddhists worried their religion and ethnicity are under threat.

The government has further lost legitimacy by failing to follow through on election promises to address the economic pressures many are under. Hopes for tangible gains in living standards have not been met, as the unity government struggles with large budget deficits and dangerously high debt levels inherited from Rajapaksa.

Despite the prime minister's repeated attempts to articulate a coherent export- and foreign investment-oriented economic strategy, key officials continue to issue multiple and often conflicting policy statements. Disagreements between the UNP and SLFP about the costs of economic restructuring, driven by public anxiety at the absence of visible development projects and amplified by Rajapaksa's rhetoric, have led Sirisena to reverse or modify numerous UNP tax and liberalization proposals.

Should broad reforms be set in motion, they will bear fruit only over a number of years. Their costs will be felt now, in the form of higher taxes, lower subsidies, budget cuts, and trade and investment policies that give politically controversial privileges to foreign companies and governments. Facing a balance-of-payments crisis and with few other sources of hard currency, the government has been forced to do a U-turn on its campaign pledges to cancel what it claimed were wasteful and exploitative Chinese-funded infrastructure projects begun by the Rajapaksas. A government plan to lease a large amount of land for a Chinese-controlled industrial zone in Rajapaksa's home Hambantota district was met

with violent protests in January, organized by Rajapaksa supporters. The long-term lease will pay off \$1.1 billion of the \$8 billion owed to the Chinese.

The government and global financial institutions and development agencies must explore ways to support the economy without excessive disruption that could trigger social conflict. Without this, the government risks a repeat of 2002-2004, when the social costs of abrupt economic liberalization undermined popular support for the then-UNP government and contributed to the collapse of the peace process with the Tamil Tigers, paving the way for Mahinda Rajapaksa's 2005 election as president.

Public discontent over the economy is compounded by the government's failure to follow through on promises to investigate and prosecute large-scale corruption under Rajapaksa. Worse, it appears that such corruption may be continuing. Many old cases are extremely complex, but Colombo political circles also believe the prime minister is protecting the Rajapaksa family in order to keep the SLFP divided and Sirisena weak. The prime minister denies interfering, and UNP supporters say it is Sirisena's push for SLFP unity that has slowed progress. The president himself criticizes investigators for focusing on minor infractions allegedly implicating SLFP ministers who also served under Rajapaksa, while neglecting larger cases that could implicate the family itself or the UNP. These concerns have crystallized around UNP reluctance to act on a parliamentary report concerning alleged insider trading that implicates the former Central Bank governor, appointed by a friend of Prime Minister Wickremesinghe.

The Way Forward

If the government is serious about fulfilling any significant part of its reform agenda and not losing an unprecedented chance to address the key sources of conflict and instability, it needs to return boldly to its original good governance and reconciliation agenda. At a minimum, this requires the president and prime minister to agree on the following:

They must speak forcefully and consistently in support of meaningful devolution as an essential aspect of a new, more

democratic and pluralist Sri Lanka and commit to winning over the two-thirds majority needed for parliamentary support. They will need the support of civil society groups to bring the message of reconciliation to Sinhalese communities and bring out the shared interest of all communities in ending impunity for human rights violations and other abuses of power.

Without needing to endorse all its recommendations, both should welcome the transitional justice consultation task force report and provide resources for public dissemination and debate of its findings and recommendations.

The government must end all high-level meetings with leaders of militant Buddhist organizations such as Bodu Bala Sena and make serious efforts to end hate speech by all groups, prevent any further attacks on religious minorities, and investigate past crimes. Both leaders must renew their commitment to investigating key corruption and political crimes under the Rajapaksas – with willingness to arrest those who gave the orders, not just those who pulled the triggers – and to preventing and punishing any ongoing corruption by insiders in either party.

They must also commit to establishing an SLFP-UNP consensus policy on economic reforms and how to share more equitably the short-term hardship these will cause. Ordinary Sinhalese are unlikely to see the benefits of any reform that threatens their traditional place in society, if they do not also see a concerted attempt to address their economic concerns, both short- and long-term.

The next few months will be a crucial test of whether Sirisena and Wickremesinghe are serious about their reform and reconciliation promises. If so, they will need to put party interests at least partly to the side and take the political risks needed to persuade their parliamentarians and the Sinhala public to make the changes that can finally put Sri Lanka on the path to a just and lasting peace.

The Author

Alan Keenan is a senior analyst and Sri Lanka project director with the International Crisis Group.

