

# dissenting dialogues

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## **Introducing *dissenting dialogues***

Debates on the causes and consequences of the 30-year war in Sri Lanka, and its end in May 2009, continue to evoke heated exchanges in some quarters and a disempowered silence in others. A year and a half later, it is time to engage in an open discussion that is truly reflective. While there are both continuities and discontinuities from before, during and after the war, there is clearly a renewed need for dissent and dialogue to broaden and transform the debate.

Sri Lanka's postcolonial history has been marred by decades of economic and development policies that have marginalised and exploited sections of the urban and rural population, the inability of successive governments to address the grievances of the Tamil, Muslim and Up-Country Tamil minorities in relation to the state, the continuing oppression of women in society, and the exclusion of oppressed castes. Furthermore, the last years of the war in particular have been worryingly marked by the consolidation of centralised executive power, the rise of authoritarianism, the militarisation of state and society, the renewed force of nationalist mobilisation and the polarisation of communities along ethnic, religious and regional lines. The current moment calls for broad intellectual and political engagement aimed at democratisation and social and economic transformation.

*dissenting dialogues* makes its appearance against this backdrop, initiated by the Sri Lanka Democracy Forum and others, with the aim of expanding the space for dissent and critical dialogue on relevant issues relating to the past, present and future of Sri Lanka. The magazine hopes to highlight views and analyses that all too often become marginalised from mainstream discourse. At a time when both hegemonic international and state-sponsored agendas seek to dominate research, analysis and reportage, the emphasis in these pages is of necessity on critical writing and a commitment to social justice, pluralism and democratisation. Although currently facilitated by SLDF, it is hoped that at a future date, *dissenting dialogues* will evolve into an independent entity.

*dissenting dialogues* welcomes original submissions, including essays, opinion pieces, reportage, and criticism and debate on previously published articles. Articles can be in English, Sinhala or Tamil and should be 1,000 to 3,000 words and not published elsewhere. Articles will be edited by the editorial collective and writers are expected to respond to editorial queries prior to publication. Please e-mail questions and submissions to [dissentingdialogues@gmail.com](mailto:dissentingdialogues@gmail.com)

# LESSONS LEARNT: CONDUCTING OUR OWN EXERCISE

**Rohini Hensman**

Anyone who was expecting that democracy would be restored in Sri Lanka after the end of the war last May, would have been sadly disappointed. Not only were the various curbs on democratic rights and liberties retained, there were further assaults on them.

The internment of about 280,000 internally displaced persons in camps for months on end, violating their right to freedom of movement as well as other fundamental rights, was the first ominous sign. Continued attacks on freedom of expression, which gathered pace in the run-up to the presidential election in January 2010, was another. The way in which the election was conducted, and the arrest of opposition candidate Sarath Fonseka after it ended, marked an erosion of the right to elect one's representatives in free and fair elections. This was further eroded in the April 2010 parliamentary elections and by the convictions of Fonseka in kangaroo courts, as a result of which he was stripped of his rank, honours, pension and parliamentary seat, and sentenced to rigorous imprisonment. The passage of the 18th Amendment, which not only nullifies the democratic safeguards of the 17th Amendment but also abolishes the two-term limit on the executive presidency, marks a new low in Sri Lanka's post-

independence history.

Unless we conduct our own exercise to understand how we ended up in this unenviable position and chalk out what we can do to get out of it, there is every reason to believe that the limited democratic space that still remains will gradually be shut down. Let us start with what we can learn from the passage of the 18th Amendment.

## **Absolute power**

If a referendum were to be conducted asking the people of Sri Lanka whether it is or is not a good idea to give someone absolute power for life to commit any crime whatsoever with impunity, it is fairly certain that the majority would say: "No, it is not a good idea." So how was such an amendment passed in parliament? How did the Supreme Court allow such a momentous bill to be rushed through without adequate discussion or debate?

One can only conclude that those who supported the amendment in parliament do not represent the people, and the Supreme Court judges who allowed the amendment to be rushed through did not carry out their duty of safeguarding the fundamental rights of the people.

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But how did these politicians and judges justify acting in this way? Some, clearly, were sycophants who would do anything to curry favour with the powers-that-be. But there were others who might have been capable of acting in a more principled manner, yet chose to bow down before the regime because they feared adverse consequences if they refused to do so.

These people in positions of relative power who nonetheless failed to take a stand against increasing state authoritarianism are reminiscent of the four judges whose stories are told in Stanley Kramer's 1961 film, *Judgment at Nuremberg*, a fictionalised account of the post-World War II Nuremberg Trials. One character, judge Ernst Janning, was once a champion of justice, yet played a major role in turning the German legal system into an instrument of Nazism. How could these eminent and apparently decent men have been complicit in the ghastly atrocities committed by the Nazi regime? The mystery is solved only when Janning makes a statement, showing how actions, which at first seemed trivial and innocuous – like swearing an oath of allegiance to the Nazis – led to deeper and deeper entanglement with the regime. Even when the full horror of Hitler's agenda became clear to them, they justified staying at their posts with the argument that they were trying to prevent matters from getting even worse.

It appears that some of the opposition politicians who voted for the 18th Amendment, including those of the Socialist Alliance, did so for similar reasons: fearing that if they opposed the regime, their party would split or they would not be able to satisfy the needs of their constituents. It is possible that the Supreme Court judges feared they would be removed from office if they refused to allow the amendment to be rushed through as an urgent bill. Perhaps these judges and politicians felt that by staying at their posts, they could prevent matters from getting even worse. But for the judges in Nazi Germany, that turned out to be a delusion. What would really have prevented matters from getting worse would have been clear opposition to the fascist transformation of the state and society, but that was the course they did not take. Had the Sri Lankan judges insisted on a thorough debate plus passage in provincial councils and a referendum, had all the MPs from opposition parties voted against the amendment, it would have been defeated, and that would have prevented matters from getting even worse in Sri Lanka. But that was the course they did not take.

The United National Party did not vote for the amendment, but it did not vote and argue against it in parliament either. Opposition leader Ranil Wickremesinghe has been criticised for being absent at the debate on the 18th Amendment, but what could he possibly have said that would not have sounded

hypocritical? As a member of J. R. Jayawardene's and Ranasinghe Premadasa's UNP governments, he participated in their assaults on democracy – the 1978 Constitution, which introduced the authoritarian executive presidency, and the rigged 1982 referendum and subsequent rigged elections – and the horrors they perpetrated, including the anti-Tamil pogrom of 1983 and the torture and extrajudicial killings of Sinhalese in the late 1980s. Later, as leader of the opposition, Wickremesinghe sabotaged the constitutional proposal of 2000 (which would have made the 18th Amendment impossible if it had gone through), and played a negative role in the All Party Representative Committee process, which was aimed at democratising the state. Under his leadership, the UNP's failure to stand for anything but a desire for power has meant a steady haemorrhage of defectors to the ruling alliance where the real power lies. The role of the UNP in eroding democracy and then blocking attempts to restore it helped to push the amendment through.

### **Civil society must rebuild democracy**

There is a lesson here for civil society supporters of democracy: we cannot rely on the political leadership or even the judiciary to uphold the rule of law and democratic principles. On this occasion, MPs of the Tamil National Alliance and Democratic National Alliance/Janatha Vimukthi Peramuna voted and spoke against the amendment, and for that we must be grateful to them. But as of now, we cannot count on them to be the standard-bearers of democracy in Sri Lanka. We need not go into the distant past to find occasions on which the JVP and Fonseka articulated Sinhala nationalist positions, nor did we see the TNA criticise the totalitarian politics of the Liberation Tigers of Tamil Eelam – even when it was holding hundreds of thousands of Tamil civilians hostage. Both Sinhala and Tamil nationalism have been responsible for the disastrous erosion of a democratic culture in Sri Lanka, and that process cannot be reversed unless and until there is an explicit critique of both by those who adhered to these ideologies.

So if we cannot rely on political leaders, where does that leave us? Perhaps the answer can be found in another film about Germany, Alexander Kluge's 1979 film, *Die Patriotin* (The Female Patriot). It follows Gabi Teichert, a history teacher, as she explores the reasons why she is so dissatisfied with the German history she has to teach. One of the conclusions she comes to is that it is the history itself that is unsatisfactory, and that everyone, no matter how humble, is involved in making history by his or her acts of commission and omission. While Kramer's film offers an American view of how relatively powerful Germans contributed to Nazism by going along with it, Kluge shows how ordinary people could also have made

a difference by organising against the Nazi regime before it became so powerful that opposition was almost certain to result in death.

There are already people who have been penalised savagely for criticising or opposing the authoritarian policies of President Mahinda Rajapaksa's regime, and some have even been killed. Under these circumstances, it certainly requires courage to take a principled stand and face the consequences. But the danger to each individual is reduced as the number of opponents rises, especially if they are organised. Isolated individuals can be picked off relatively easily, and if this has the desired result of terrorising the rest into passivity or compliance, then the strategy of repression has succeeded. The alternative is for large numbers of people to resist the growing totalitarianism in small ways that add up to make a significant difference. A totalitarian state cannot survive for long if civil society refuses to allow its democratic relationships and organisations to be destroyed. If a partial destruction has already taken place, then rebuilding has to start from below. Identifying ways in which this can be done would be the aim of our Lessons Learnt exercise.

# THE ANATOMY OF RAJAPAKSA RULE

**Tisarane Gunasekara**

*“Everything that was ever invented by knavery to impose upon imbecility.”*

Voltaire, *A Philosophical Dictionary*

Sri Lanka has come a very long way in a very short time.

Marx said that capitalism would create its own gravediggers. Democracy definitely does, all too often. Many a despot who unleashed an avalanche of tyranny on a hapless democracy came to power democratically, via free and fair elections. An excellent case in point is “Papa Doc” Duvalier, who was elected the President of Haiti in a landslide of popular support and with the full backing of the armed forces. Having gained power democratically, he used that power and his massive popularity to destroy Haitian democracy from within and establish sole rule by himself and his family. The Haitian constitution contained a term-limit provision, which prevented a sitting president from seeking a second term. Soon after being elected, President Duvalier hounded his defeated rival out of politics, used terror to subdue his opponents and changed the constitution to enable him to seek re-election. Gradually, democracy became transformed into

a familial oligarchy; Duvalier became President for Life, to be succeeded in the fullness of time by his son “Baby Doc” Duvalier.

As Sri Lankan President Mahinda Rajapaksa is set to begin his second term on 19 November, a day after his 65th birthday, he has every reason to congratulate himself on a stupendously successful first term. In just five years, ably assisted by his remarkable brothers, Rajapaksa has succeeded in transforming Sri Lanka in ways and to degrees unimaginable a mere five years ago.

Some of the Rajapaksas’ achievements (and I use the term value-neutrally) are glaringly evident. The brothers ended a nearly three-decade war by inflicting a humiliating defeat on the Liberation Tigers of Tamil Eelam. They also removed the sole existing obstacle to their long-term rule by doing away with the presidential term-limit provision, by passing the 18th Amendment. The amendment also made the entire bureaucracy, including the Elections Commissioner and the Inspector General of Police, totally dependent on the president, career-wise. The opposition is devouring itself, with occasional help from the ruling family. The politically motivated military trial and sentencing of

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defeated presidential candidate and former war-winning army commander Sarath Fonseka has further demoralised the opposition. Fonseka's fate is a potent warning to anyone who wants to mount a serious challenge to the Rajapaksa Brothers.

Sri Lanka today is discernibly and qualitatively different from the country the Rajapaksas took over in November 2005. From Point Pedro to Point Dondra, the Rajapaksas rule supreme and there is none to challenge their might, in the South or the North.

### **A different world**

The militarisation of Sri Lanka is continuing, post-war. Defence expenditures dwarf all other items in the 2011 budget. The military controls the civil administration of the North while plans are afoot to garrison even the Sinhala majority districts. In addition, a new intelligence service is to be set up. Meanwhile, the defence establishment is imposing restrictions on the rights and freedoms of citizens, with the most recent case in point being the limiting of the number of SIM cards an individual can own to five (this was done arbitrarily, without even informing the Telecommunication Regulation Authority). The Defence Ministry, controlled by Mahinda Rajapaksa and his brother, Gotabhaya, is making ever deeper inroads into the civil administration: the latest incident being the decision to take over the management of public bill boards in Colombo owned by the Colombo Municipal Council.

### **A Rajapaksa Security State**

The Rajapaksas' Sri Lanka is becoming a National Security State, with a difference. The purpose of Sri Lanka's National Security State is the protection of Rajapaksa Rule. The narrative that justifies creating a National Security State in peacetime depicts Mahinda Rajapaksa as the Leader-Hero-Saviour of the nation and identifies the continuation of Rajapaksa Rule as a necessary condition for the protection of the nation and the nation-state from internal and external threats. This narrative redefines Sri Lanka as a country of One Nation, One People, One Leader. Patriotism can only be expressed as loyalty to the One Leader who embodies the spirit of the One Nation and expresses the will of the One People. It implicitly transfers the sovereignty of the nation and the people onto the leader.

With the Rajapaksas enthroned as the sole representatives and guardians of the nation, the National Security State becomes a Rajapaksa Security State, committed to protecting a system of political patronage and rule – not by an ethnic or religious group, or a class or a caste or even a faction of the bourgeoisie, but by one single family. A democratic façade and patriotic slogans are

used to justify what is in essence an anti-democratic monstrosity, aimed at perpetuating Rajapaksa dynastic succession. The Rajapaksas have succeeded in persuading a majority of the Sinhala majority and, more importantly, the predominantly Sinhala armed forces, of the correctness of this family-centric narrative.

The most portentous of the Rajapaksa achievements is located in the politico-psychological plane. The Rajapaksas have managed, in just five years, to effect fundamental changes in the way we think, the way we see ourselves, the country and the world. They have succeeded in enthroning a new and different commonsense. What was once beyond the pale has become normal: ideas and perceptions normally confined to the margins of polity and society are now centre-stage. We have accepted equating familial interests with national interests, unmoved by the blatant creation of a "familiocracy". We are becoming accustomed to the idea not only of President Rajapaksa ruling for life, but also of a son or a brother succeeding him. We are tolerant of the militarisation of Sri Lanka by a Rajapaksa-ised military; and we are willing to believe apocryphal tales of Tamil Diaspora threats and international conspiracies.

We have accepted the post-war patriotic creed of unquestioning loyalty to the Rajapaksas. We are willing to be deceived by the most blatant of lies perhaps because we know that the truth is too unpleasant and frightening to be handled. We have become a nation in denial.

For a transformative project to succeed, the new commonsense must move in tandem with a new and an apposite policy regimen. In Sri Lanka, the Rajapaksas are implementing such a new policy regimen with the consent of a majority of the majority community and amidst the total powerlessness of the minorities. (Never in the history of independent Ceylon/Sri Lanka has the balance of power between the majority community and the minorities been so grotesquely lopsided. The Rajapaksa regime is not the first Sinhala supremacist administration. But in all other times, the Tamils were not as despairingly powerless as they are now. Even in the dark days of post-1983, the Tamils were neither leaderless nor friendless – and they had the numbers, an unullied dream and an undefeated cause worth fighting for).

When Mahinda Rajapaksa came to power, the existence of an ethnic problem was an accepted fact; five years later its non-existence has become an accepted fact. The ethnic problem not only perished, it freed the Sinhala psyche from memories of past errors and crimes, from the Sinhala Only language act to the Black July massacres. After all, if the only problem was Tiger terrorism, then what we did or did not do would be irrelevant. The

Rajapaksas saved the Sinhalese from the burden of regret and guilt – and not having any responsibility for the plight of the Tamils, rendered pity and sympathy over their condition unnecessary.

This mindset enabled us to look on with indifference not only at the suffering of civilian Tamils during the war but even afterwards, when more than 300,000 Tamils were kept in camps. Our perception and therefore our definition of these camps could have been various and contentious, but that need not have been a bar to sympathy, to a sense of human solidarity. The absence of any empathy was particularly outstanding in the South's reaction to the plight of the Northern displaced. There was a wild rush in the South to visit the North, but not to help the homeless in the North. We worshipped and sea-bathed and engaged in sightseeing but failed to be touched by the human misery around us. The regime's very effective propaganda about happy welfare villages and rich Tamil refugees may have contributed to this near total absence of human solidarity – but that does not explain it. The blasé attitude came primarily from the belief of our own sinlessness, not just in the conduct of the war but also in creating conditions for it. We are the innocent; they are the guilty. And the guilty must bear the pain of retribution unalloyed by the balm of sympathy or pity. That is their karma.

During Rajapaksa's recent visit to New Delhi, Indian authorities reportedly urged him (yet again) to come up with a political solution to the ethnic problem. The answer to the Indian urgings came from External Affairs Minister G.L. Peiris, arguing against setting a time frame for the implementation of a political proposal as both impractical and counterproductive. The inference was obvious: Indian pressure notwithstanding, Tamils will not receive a political deal from the Rajapaksas. For the Tamils, it will be jam tomorrow, always tomorrow. The maximum the Tamils can realistically hope for under the current dispensation would be a modicum of normalcy and a sliver of development, contingent on their "good behaviour". The fact of defeating the Tigers in a Sinhala supremacist war without a political corollary would have hardened the Rajapaksa conviction of the non-existence of an ethnic problem. In addition, the Rajapaksas are viscerally antipathic to the idea of sharing power with anyone outside the family, including the Sinhalese or fellow Sri Lanka Freedom Party-ites.

### **Rajapaksa economics**

A characteristic of all post-1994 regimes is their inability and unwillingness to implement large-scale development projects, other than infrastructure projects. In the pre-1994 period (and especially during President Ranasinghe Premadasa's reign) programmes such as the

Gam Udawa, Janasaviya, Mahaveli and the 200 Garment Factories brought rich dividends to the economy (high growth rates) and the people (immediate improvements in general living standards). This practice was abandoned by the People's Alliance regime of 1994 and, contrary to popular expectations, was not revived by Ranil Wickremesinghe's 2001 administration (which contributed to its eventual downfall). The Rajapaksas are continuing along the same economic path, albeit behind a populist façade. In the North and in the South, they focus on highways and ports while neglecting houses and job-creation. Trickle-down economics has become the accepted dogma of the supposedly populist and progressive Rajapaksas.

That the Rajapaksas consider China to be a desirable political model is no secret; they are equally enamoured with the Chinese economic model. This model is profoundly anti-democratic and anti-people. It promotes a ruthless growth, which creates an obscenely lopsided society and is sustainable only under conditions of despotism. It denies the workers the right to form free trade unions and makes death from overwork an unremarkable reality of everyday life (in China, an estimated 600,000 workers die of overwork annually; the killer has a name: guolaosi).

In an interview with The Wall Street Journal during his recent sojourn in the United States, President Rajapaksa promoted Sri Lanka as a low-cost alternative to China, which is being compelled by popular discontent to increase its abysmally low wage levels marginally. The strategy seems to be to turn Sri Lanka into a sweatshop hub characterised by near-starvation wages, poor living conditions and the absence of trade union rights. This strategy is compatible with the budgetary priorities of the Rajapaksa regime, which spends only a sliver of what it spends on defence on education and health, even post war. A combination of patriotic slogans, fear mongering and naked terror will be used to gain the consent of the people for this anti-people economic model.

In the immediate aftermath of the second Janatha Vimukthi Peramuna insurgency, at the 1990 Royal College prize-giving, President Premadasa came up with an allegorical tale which has a bearing today: "Far too long the affluent and the elite of Sri Lanka have been like a man standing safely on a bridge. He sees a poor person drowning in turbulent waters below. In answer to screams of help, he shouts back, 'If you had taken good swimming lessons, you would not be drowning.' Eventually with great difficulty the swimmer escapes to the shore. Are you surprised if the first thing he does is to assault the man on the bridge?"

In a genuinely multi-party democracy, the masses who are caught up in the currents of poverty do get an opportunity to make a temporary escape to the shore at least once in five or six years. Retribution is thus unavoidable, so long as relatively free and fair elections happen. A functioning multi-party democracy is thus incompatible not just with the Rajapaksa political project but also with the regime's economic model. Declaring a war for development, equating it with the Eelam War and making the Ministry of Defence increasingly responsible for it may enable the Rajapaksas to overcome this obstacle. Sinhala pride will be used to keep the South quiescent while the military will continue to rule the North. And if the people who are denied the political catharsis of a free election resort to protests and strikes, they can be depicted as anti-patriots siding with the enemy in our war for development – and dealt with accordingly.

The Rajapaksa regime is planning a massive extravaganza to mark the swearing in of Mahinda Rajapaksa as the president for a second term. The weeklong activities intend to include an exhibition titled Nidahasa (Freedom), a cultural zone and a campaign to plant 1.1 million trees. A special ship carrying more than 250 pirith-chanting Buddhist monks will sail from Galle to the new harbour in Hambantota. The main state TV station will do a live broadcast of 300 chefs making 4,000 kilograms of kiribath (milkrice), expected to be submitted to the Guinness World Records as the world's biggest kiribath. The Sunday Times reported: "During the morning of November 19, schools countrywide will hold a special assembly before classes begin. That will include a briefing to the students on the significance of the swearing in." The Rajapaksas obviously believe in catching them young. If the next generation can be indoctrinated into accepting Rajapaksa rule as right and proper, half the battle for the family's dynastic project will be won, peacefully and legally.

# THE LEGACY OF EMERGENCY RULE

**Wasana Punyasena**

Emergency rule has been in force for a large part of the past 27 years in Sri Lanka. With its entrenchment, fundamental rights have been sacrificed, threatening the very democratic system and legitimacy of the state authorities have tried to uphold.

With the end of the war in May 2010, the government lifted more than 70 provisions under the state of emergency, including the power to cordon and search premises, the right to ask for details of householders in any part of the island, curbs on meetings and distribution of certain literature. It also removed media monitors.

Other draconian measures were retained, including the right to detain suspects without trial due to the need to contain Liberation Tigers of Tamil Eelam rebel remnants – but the length of time a suspect can be held in custody was reduced from 18 to three months. Those individuals already detained under the emergency regulations have been kept in custody, including 11,000 rebel suspects still to be charged. In addition, the Prevention of Terrorism Act remains in force.

All of this comes a year after the end of active hostilities with the LTTE. Speaking to parliament in May, External Affairs Minister G.L.

Peiris noted that, “there cannot be a wholesale lifting of the emergency. It will be done part by part.” On 9 November, the United People’s Freedom Alliance party in parliament passed the continuation of the emergency regulations for another month by 125 votes to 11.

With the end of the conflict, the entirety of the emergency regulations, PTA and associated implementing legislation should be lifted. To build reconciliation among groups and a lasting peace, the government must move on this issue.

## Historical entrenchment

Sri Lanka has been under a state of emergency for the majority of its post-independence era, with the first state of emergency declared in 1953 in response to the countrywide Hartal demonstration against the ruling United National Party. In *Rule by Emergency: Sri Lanka’s Postcolonial Constitutional Experience*, Radhika Coomaraswamy and Charmaine de los Reyes identify three factors that led to the creation and continued application of emergency rule in Sri Lanka. First, the strengthening force of trade unions and workers’ strikes in the 1940s, through to the 1960s, motivated the British colonial government and subsequent

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governments to enact the Public Security Act (now the Public Security Ordinance) to protect public services such as food distribution, transportation and communication services. By 1968, many government departments were declared essential services under the PSO, which facilitated action against strikers, although emergency rule in response to trade union activity was not invoked until July 1971.

The second factor was the insurrection by the Janatha Vimukthi Peramuna, a movement of Sinhalese youth. In April 1971, the JVP unleashed its first armed insurrection in southern Sri Lanka, which lasted for four months. The ruling United Front government responded with emergency rule and a bloody crackdown. From 1987 to 1990, the JVP staged a second insurrection amid the conflict between the LTTE and the Sri Lankan government. This time, the UNP government extended emergency rule to the south and crushed the JVP with large-scale arbitrary arrests, detentions and executions.

The third and sustaining reason was the increased outbreaks of violence between the government and LTTE. From 1983 to 2009, the use of emergency rule powers intensified. The current state of emergency was imposed in August 2005, after the assassination of former Foreign Minister Lakshman Kadirgamar by the LTTE.<sup>1</sup> Since then, it has been continuously extended monthly by the government.

### **Enactment of emergency regulations**

Authorities have imposed emergency regulations to maintain a culture of impunity in Sri Lanka. The regulations, buttressed by the PTA, have been systematically put in place to revoke fundamental rights in the name of national security. As a result, Sri Lankans have endured long-term and widespread violations.

The Public Security Ordinance of 1947 not only crippled workers' ability to strike, but it provided the legal basis through which emergency regulations have been enacted.<sup>2</sup> The Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 then supplemented the emergency regulations. In fact, the PTA was originally enacted as a temporary measure giving police expanded powers to arrest and detain people, and seize property, as provided for under the emergency regulations. But it went further, permitting a minister to issue a detention order for up to 18 months if it is reasonably believed that the suspect is connected to unlawful activity (this was recently reduced to three months). In 1982, the PTA was amended to become a permanent measure. In addition, the passage of Article 80 of the 1978 Constitution prevented judicial review of the legislation.

In Sri Lanka, the president may proclaim a state of emergency under Part II of the PSO and issue emergency regulations under section five. Chapter 40, article 2 of the PSO provides the specific circumstances to legitimate such an act: "In view of the existence or imminence of a state of public emergency, the president [must be] of opinion that it is expedient... to do [so] in the interests of public security and the preservation of public order or for the maintenance of supplies and services essential to the life of the community."

Under the Amendment Act No. 8 of 1959 to the PSO, the president can proclaim an emergency for the whole or any part of the country, and a 1987 constitutional amendment granted legal immunity to the president for declarations made in good faith. Emergency regulations are valid for one month, but the president is empowered to renew a proclamation and to modify a regulation that is renewed. If no new proclamation is made, the emergency regulations and correlated orders automatically lapse.

The PSO stipulates that emergency regulations may override any legislation that might prove inconsistent or contrary. In addition, in the 1978 Constitution, certain fundamental rights such as equal treatment before the law, freedom of association, assembly, movement and cultural and religious expression, and procedural requirements in arrest and detention are subject to restriction in the interests of national security.<sup>3</sup>

### **Safeguards?**

In the early years of emergency rule, internal safeguards, such as reports of arrests, issuance of arrest receipts and disclosure of the place of detention, existed but were ignored in practice. In addition, external safeguards were overridden by the emergency regulations. For instance, the usual right of a suspect to be produced before a magistrate within 24 hours of arrest after an offense is committed was eliminated by emergency regulation 19 (1). This regulation was tempered in later cases where the court ruled that emergency regulations must be read with Article 13(2) of the 1978 Constitution which extends the right to an arrested person to be produced before a judge in the nearest competent court.<sup>4</sup> Article 15(7) allows that right to be restricted in the interest of national security, but restrictions must be specified in the regulation.

Additional legislative safeguards were introduced in the 1990s, first through the creation of the Human Rights Task Force<sup>5</sup> in 1991, whose mandate was extended and strengthened in 1995. The directives issued could counter the propensity for arbitrary arrest and detention fostered under emergency regulations 17 through 19. The HRTF was dismantled in 1997 in favour of the new Human

Rights Commission.

Presidential directions issued in July 1997 – instructing the heads of the armed forces to assist the HRC in ensuring the humane treatment of those arrested or detained – recognised the need for a monitoring body to ensure the protection of fundamental rights vis-à-vis the expansive powers conferred on the security forces and law enforcement officers. While arresting officers are required to inform the HRC of an arrest within 48 hours and to give HRC members access to any detained person at any time, officers did not consistently comply with the directive nor faced disciplinary action for their negligence. Also, the directives did not mitigate the undue harshness with which a person can be detained or the possibility of the place of detention being kept secret.

In addition, the entrenchment of the emergency rule mentality on law enforcement, even during ceasefire periods when normal criminal procedure laws were restored, continued the extensive powers of search, arrest and detention even when such acts were not legally authorised.<sup>6</sup>

### **Review of emergency proclamations**

The few legislative review mechanisms to which emergency regulations are subject have not been used to restrain excessive presidential powers. In essence, the rule of law in Sri Lanka has evolved into shifts of power towards the executive, through successive constitutional amendments in revised constitutions.<sup>7</sup> The strengthening of executive power has also weakened the independence of the judiciary.

While Article 155 of the 1978 Constitution provides the primary mechanism for parliamentary review of emergency proclamations, parliament has mostly acted as a rubber stamp to presidential powers. Under Article 155, the president's power is subject to parliamentary debate, and if a proclamation is a renewal purporting to extend beyond 14 days, the president must also obtain parliamentary approval. If the president's proclamation is made after parliament is dissolved, Article 155 requires a parliamentary session to debate the issue on the tenth day after the proclamation is made. The 1978 Constitution limits debate to a proclamation's validity and does not enable parliament to debate the actual emergency regulations. While section 5(3) of the PSO allows parliament to potentially revoke, alter, or amend a regulation through a parliamentary resolution, this has not happened in practice.

With regards to executive review, two methods were established in the mid-1990s under the Emergency

(Miscellaneous Provisions and Powers) Regulation (EMPPR) No. 4 of 1994 and the HRC Act. EMPPR created an advisory committee to hear objections from those subjected to detention orders under regulation 17. However, since the provisions establishing the advisory committee are found only under this regulation, those detained under other regulations do not have recourse to this body. In addition, the committee's report of an objection must be submitted to the defense secretary who has discretion to revoke or confirm a detention order.

More comprehensive are the powers of review conferred on the HRC, which is mandated to investigate breaches of fundamental rights either on its own initiative or after complaints were brought to its attention. If the HRC finds that there is a breach of fundamental rights, the HRC Act states that the commission will refer the matter for conciliation or mediation. If mediation fails, the commission may: (a) recommend prosecution of the infringing party, (b) refer the matter to a court having appropriate jurisdiction, or (c) make recommendations to those having authority over the infringing party. However, the first Human Rights Commission, which served from 1997 to 2000, did not initiate any litigation, and hence lost its legitimacy.

The 1972 Constitution abolished judicial review of enacted laws. A constitutional court had the limited power to review laws within 24 hours when a bill was certified as being urgent due to national interest concerns. This allowed emergency legislation to be passed without debate and clashes between the judiciary and the executive were commonplace.

The Supreme Court, which has sole jurisdiction over fundamental rights cases through section 126 of the 1978 Constitution, has ruled on cases that scrutinised executive abuse of emergency legislation.<sup>8</sup> However, the weaknesses in Sri Lankan criminal law and the difficulties in proving offenses in conflict situations has led to a reduced capacity to prosecute violations.<sup>9</sup>

### **Continuing need for reform**

The current undemocratic trends in Sri Lanka have led to a widespread entrenchment of presidential power. The recent passage of the 18<sup>th</sup> Amendment eliminated the two-term limit for the executive presidency and the power under the 17<sup>th</sup> Amendment to establish a Constitutional Council (replaced with a weaker Parliamentary Council). In addition, President Mahinda Rajapaksa now has the power to appoint individuals to a wide range of independent commissions provided under the 17<sup>th</sup> Amendment, which include those overseeing the police, judiciary, public service, finance, human rights

and elections. Deterioration of the criminal justice system, and the weakened checks and balances vitally necessary over the executive, has led to heightened authoritarianism. Add on the continuing legacy of emergency regulations and the Prevention of Terrorism Act, and a grave situation for fundamental human rights unfolds. Widespread reform is necessary to ensure that the protections, so blatantly disregarded in the past, are no longer ignored in our post-war future.

<sup>9</sup> See Pinto-Jayawardena, page 7. Since involuntary or enforced disappearance does not constitute a crime in the Sri Lankan Penal Code, prosecutions have had to rely on criminal offenses such as abduction, abetment and conspiracy to file charges. In addition, the non-incorporation of the command responsibility doctrine has lessened the ability to implicate leaders for specific crimes committed.

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<sup>1</sup> The most recent emergency regulations include the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 which addresses the powers of arrest and detention, powers of search and seizure, trial procedures, admissibility of confessions, bail, and other amendments to normal criminal procedure. The Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006 define and criminalise “terrorism” and “acts of terrorism”. It also identifies new offences, including engaging in transactions with a terrorist or terrorist group regardless of knowledge and intent.

<sup>2</sup> Coomaraswamy and de los Reyes describe three categories of *intra vires* regulations: “First are emergency regulations that legitimately and proportionately respond to the emergency at hand. Second, there are those that seem *prima facie intra vires* but have been invalidated once their effects infringed on constitutionally guaranteed fundamental rights. Third are the emergency regulations that are *prima facie intra vires* but have proved grossly disproportionate to the actual emergency situation. Regulations in the latter two categories present the most significant threats to the protection of human rights, especially those which have conferred expansive powers to the national security forces and law enforcement agencies,” page 273. Radhika Coomaraswamy and Charmaine de los Reyes, *Rule by Emergency: Sri Lanka’s Postcolonial Constitutional Experience*, Oxford University Press and New York University School of Law 2004, Volume 2, Number 2, 2004, pages 272–295.

<sup>3</sup> SRI LANKA CONST. (1978) art. 15, § 1, § 7; Public Security Ordinance No. 25 of 1947, ch. 40, art. 2, § 7.

<sup>4</sup> Amnesty International, *New Emergency Regulations: Erosion of Human Rights Protections*, Index No. ASA/37/019/2000 (June 30, 2000), available at <http://www.amnestyusa.org>.

<sup>5</sup> Pursuant to the Sri Lanka Foundation Law No. 31 of 1973.

<sup>6</sup> Kishali Pinto-Jayawardena, International Commission of Jurists, *Still Seeking Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry since 1977*, January 2010, page 6.

<sup>7</sup> Pinto-Jayawardena, pages 4-5.

<sup>8</sup> See Coomaraswamy and de los Reyes, pages 285–294; and Pinto-Jayawardena, pages 28-58.

# OUR SHARED RESPONSIBILITY TO THE PEOPLES OF SRI LANKA AND THE FIRST NATIONS

**Kevin Shimmin**

After decades of war and misery in Sri Lanka, the overwhelming dilemma remains the same. The land, where societies have lived for thousands of years and languages, traditions and values have grown and flourished, is in jeopardy of being lost forever. Hundreds of thousands of people, Tamils, Muslims and Sinhalese, cannot return to the lands they once called home. Freedom – of movement, of association, to speak openly, to live securely – is no closer to reality today than when the colonial rulers left in 1948.

Although the bombs and bullets have officially stopped flying, the origins of conflict are barely acknowledged. The powers that be, from the president to the arms smuggler to foreign governments, are more concerned about maintaining political positions than addressing longstanding grievances.

Ever since I first started meeting Tamil activists who had fled Sri Lanka nearly 20 years ago, I have felt an immense sadness and longing in their presence. They have survived torture and witnessed the murder of friends who once fought with every last breath to defend common principles of respect and

compassion and to preserve language and culture. These activists continue to experience daily anxiety from not knowing what has happened to loved ones who are among the internally displaced persons. They feel the desperation of trying to carve out a new life in a society that is unwelcoming and antagonistic towards them.

After working as a peace activist in Canada for two decades, I have observed that most Canadians have not attempted to truly understand the nature of suffering which the peoples of Sri Lanka have endured. Closer to home, many more are unaware of the displacement they themselves have a great deal of culpability in. Similar to the experience of Sri Lanka, the continuing impact of colonialism in Canada has meant that land, and the connection of ancient societies to the land, continues to be at the root of an oppression that is commonly ignored.

In essence, those who have been displaced from the land in Sri Lanka share many similarities with First Nations peoples living here. This could explain why most Canadians, including activists with the very

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best of intentions, have largely failed to create effective means of working in solidarity with those who struggle for justice in Sri Lanka. There has been an overwhelming unwillingness, by *all* oppressive forces in Sri Lanka and Canada, to listen to the voices of those who have been marginalised. This unwillingness has led to a general apprehension to supporting and defending those voices who speak the difficult truth. To truly understand the struggles that people continue to face, whether they are Tamils living in Jaffna or Mohawks living in Akwesasne, requires a departure from western assumptions and beliefs.

### **Protecting human dignity in the midst of war**

There is a striking resemblance among the personal histories of many activists I know from Sri Lanka. They have consistently resisted oppression both from within and outside their communities. In their youth, they often belonged to militant movements fighting for liberation from the yokes of colonialism and racism, and the chains of class, caste and gender discrimination. And when the ruthlessness of fascism began to envelope their own communities, they stood up against this form of internal oppression as well.

But the seeds of war were first planted in Sri Lanka by the divide and rule policies of the British. Land, language, religion and ethnicity soon became the basis for the spilling of so many tears and blood. Following independence, Sri Lanka was declared a unitary Buddhist state controlled by the Sinhalese majority. The inalienable social, economic and cultural rights of the Tamil-speaking minority were revoked. Numerous murderous pogroms against Tamil communities ensued. Civil disobedience and political protest were suppressed by an increasingly militarised state. A diverse array of militant movements was eventually crushed by the Liberation Tigers of Tamil Eelam, which began to proclaim “sole representative” status of the Tamil people by 1986.

Furthermore, during the next three decades, hundreds of thousands of Tamils, Muslims and Sinhalese were displaced from their land. The bombs, bullets and torture of both the Sri Lankan security forces and the LTTE forced Tamils out. Muslim communities were also slaughtered or evicted by both parties to the conflict. Sinhalese villagers were uprooted and told to fend for themselves. War determined that the land and its people were no longer considered sacred.

At the same time, Sri Lanka has remained a place where courageous individuals and collectives have struggled to uphold the sacredness of human dignity in the midst of so much death and destruction. And it has often been women

who have shown the most remarkable degrees of bravery and compassion. In Jaffna and Batticaloa, for example, safe houses for women who had been raped by soldiers remained open throughout the war in spite of threats and intimidation by the Sri Lankan army, the LTTE and the interventionist forces of the Indian army. In this regard, the activists who maintained these open spaces demonstrated that the work of our hearts and minds and hands together can be more powerful than the combined forces of the gun.

### **Alternative means to preserving sacred traditions**

On the lands known today as Canada, indigenous activists, who struggle to protect Mother Earth and the traditional teachings and ceremonies of its peoples, carry this same sacred duty. They refuse to succumb to fear and are unwilling to let their societies be snuffed out by war, starvation, assimilation or capitalism. They know that empowerment cannot be created by replicating the methods used by those who hold the guns, money and political power.

Activists from the First Nations and Sri Lanka are united by a common vision to protect human life and empower their communities through alternative methods of struggle, while recognising that healing is crucial to the survival of their people. Protection of human life and our societies. Empowerment through alternative methods of struggle. Recognition that healing is crucial to our survival. I think these are three affirmative ways in which these peoples are interconnected. Inversely, this also represents three reasons why people living *outside* of these communities have been so unresponsive, and often downright patronizing, towards the desperate need for solidarity with these struggles. The inability and unwillingness to make a meaningful contribution to ending the suffering in these nations is something that has plagued the efforts of westerners in particular. Instead of seeking out the people who have risked their lives to create alternative solutions to war and oppression, we have continuously tried to impose our limited frames of reference on the conflicts.

### **Looking beyond our inherited assumptions**

With the largest Tamil Diaspora in the world, Canada is a place where we should have been able to generate effective bonds of solidarity with the peoples of Sri Lanka. Instead, we have reverted to two solitudes – an elected government that unquestionably supports oppression by the Sri Lankan state and a liberal-Left convergence that more than often supports oppression by the LTTE. Tamils who have spoken out against the fascism of both the Sri Lankan state and the LTTE have

been marginalised in Canada. Questions of class, caste and gender have been sidelined in favour of analyses based exclusively on ethnicity. There has been little to no attempt to learn from activists who actually live in Sri Lanka.

Similarly, our relationship with First Nations peoples has consistently operated between opportunism at best and genocide at its worst. The ongoing legacy of the twentieth century demonstrates that Canada's record should be regarded as nothing less than shameful and illegal on the international stage. From the forced assimilation of thousands of indigenous children by the state to the destruction of First Nations lands in the interests of resource development, Canada continues to carry out a plan of extermination of an entire race of people. And our social movements have usually enlisted the support of First Nations peoples in the struggles *we* are facing rather than the other way around. Instead of beginning with a clear acknowledgment that our political parties, trade unions, and human rights organisations have largely approached First Nations peoples with a patronizing attitude for decades, we continue to place the need to protect indigenous peoples and Mother Earth somewhere near the bottom on our list of priorities.

I am simply asking that we consider where we have gone wrong, where we have failed. Critical analysis demands that we look outside of the narrow lenses we have been taught. There is so much courage and beauty that lies beyond the politics of guns, power and self-interest. There is so much we can learn from our sisters and brothers from Sri Lanka and the First Nations.

Indeed, the future of our communities and the survival of the lands we share depends on us learning, thinking and acting in a new way. The oppression of First Nations communities in Canada and the peoples of Sri Lanka will continue unless we join forces with those who have resisted the politics of hatred and are motivated by love and respect, rather than anger and resentment. Together we can make a new beginning by honouring their positive contributions.

# TAMIL-MUSLIM RELATIONS: REMEMBERING THE EVICTION OF NORTHERN MUSLIMS

## SLDF London Chapter

The Sri Lanka Democracy Forum and Sri Lanka Islamic Forum-UK held a meeting on 30 October 2010 at the Berkeley Business Centre in Stratford, London, in remembrance of the expulsion of the northern Muslims in October 1990. The eviction, return and resettlement of the northern Muslim population was discussed in the context of rebuilding good relations between Muslims and Tamils, which had been badly damaged during the war years.

Ustaz Rashid Hajjul Akbar, the leader of the Sri Lankan Jaamaat E Islami, who was visiting London, was the guest speaker at the gathering. Najah Mohamed of SLIF-UK chaired the meeting. Chinniah Rajeshkumar (SLDF), Riza Yehiya, (researcher, Serendib Institute of Research and Development, Colombo) and N.R. Ramamoorthy, (former Sri Lankan MP) were the speakers on the panel.

Rajeshkumar, who had recently visited Jaffna, described the complex nature of resettlement for Muslim families. Riza Yehiya emphasised that through civil action, joint socio-economic projects for both communities must be developed, identifying the specific needs of the communities. Ramamoorthy stated that Tamils have to re-examine their nationalist

stance and attitudes towards the Muslim community.

Ustaz Rashid Hajjul Akbar said that the urgent need is to focus on the return of the internally displaced persons and their resettlement, including the northern Muslims, so that IDPs can achieve their basis for survival. He added that focusing exclusively on a campaign for a political solution at this juncture is not sufficient, especially in the current political climate. He also stated that it is up to the grassroots and civil society organisations, locally, to work towards the resettlement of the IDPs and community cohesion.

All speakers, including the chair, emphasised the fact that political parties and successive governments had failed to adequately address the resettlement issue of the northern Muslims and other IDPs, and have instead benefited from ethnic polarisation. Therefore, instead of waiting, civil action is now needed.

Members representing different organisations were present at the meeting and a robust discussion lasted an hour and a half. The importance of rebuilding good relations with ordinary Sinhalese and the progressive sections of the Sinhala community was also emphasised.

**SLDF** is a global network of human rights and democracy activists committed to promoting democratisation and inter-ethnic coexistence in Sri Lanka.

## The discussion

It was felt that as a first step, a public call by the political and civil society leadership of the Tamil community, welcoming the northern Muslims back to the north right now, is crucial. There were strong expressions of how both communities must work together on the return of the northern Muslims and Tamil IDPs.

It was felt that among multiple post-war challenges, rebuilding community relations had to be given priority, particularly in the conflict-affected north-east where communities are divided and polarized. The serious levels of devastation brought about by the conflict have pushed communities apart – instead of uniting them for the common purpose of return and rehabilitation. The communities themselves were coerced into the conflict, and during the war there were no opportunities for re-establishing normal community relations. Communities have a lot to share about the suffering they endured and meaningful dialogues and interactions must occur to challenge the prevailing perceptions about the “other”.

After the war, the absence of positive and constructive community-rebuilding initiatives has led to the emergence of new issues of disputes and misunderstanding between communities. War, in a way, kept community interactions to a minimal level and minimized face-to-face confrontations over many disputes of the day. The end of the war, at the same time, broke the barrier on mobility and facilitated the flow of people. These movements and interactions are now happening while there is an absence of post-war recovery mechanisms either by the state or by civil society organisations. The disputes that were kept dormant during the war are now being unearthed. For example, there is much contestation on the issue of land and property that have changed hands during the last three decades of war and conflict; limited resources allocated for recovery activities have become the issue of new discrimination and marginalisation.

The post-war period can become a new phase of conflict with a new set of issues settling down on top of older ones. Vested interest groups are ready to exploit this unstable situation for their survival. The prevailing mutual mistrust of communities will make existing community relationships more complex than they were before the conflict, working against positive integration and reconciliation.

The current situation in the former conflict areas of Sri Lanka necessitates urgent interventions and actions to create an environment conducive for the interactions and integration of people. Otherwise, newly emerging issues

will further deteriorate the existing tense situation, as people return to their homes in large numbers in search of their roots and rights. This might create new tensions and disputes between individuals and communities. Civil society intervention is critical to initiate multiple approaches to rebuilding community relations in affected areas.

The solid foundation of healthy community relationships that have been forged over centuries still continue to exist in the country. Elements of this base of relationships need to be reactivated and built upon. The meeting adjourned requesting that the two organisations continue the discussion by liaising with like-minded civil society organisations in Sri Lanka which are working on the return of IDPs, and in particular the northern Muslims.

# DALIT POLITICS AND THE URGENT NEED FOR A SOCIAL MOVEMENT

**Ragavan**

*The tradition of all dead generations weighs like a nightmare on the brains of the living.*

Karl Marx

The current discourse dominating post-war politics is economic development. Meanwhile, contesting discourses are about social mobilisation, construction of a renewed civil society and democratisation. But one major issue that is conspicuously absent is caste oppression in northern Sri Lanka.

## **Tamil nationalism and untouchability**

Historically, the dominant Tamil nationalist discourse was situated in a monolithic framework where Tamils were seen as a single entity. The nationalist motto was that there were no caste, class or gender differences and the one and only identity was “Tamilness”. Untouchability was merely seen as a social evil that needed to be eradicated in order to build unity among Tamils. It was based on the notion of pure and impure, which is one aspect of caste structure. But untouchability may not be observed in certain circumstances. It is revealed through caste structure, which is governed by a complex web of social practices and sanctions. And caste is determined by birth and not by occupation. The

nationalists ignored the ideological, religious, cultural and social bases of caste division and merely touched on untouchability in order to build their unifying project.

The Federal Party talked about a casteless society, but the party neither had a concrete socio-political agenda to eradicate caste nor did they actively campaign against caste discrimination, except perhaps in the late 1950s. Here, it may be argued, the joint campaign for “Tea Shop Entry” – launched by the Federal Party and the Minority Tamil Mahasabha in 1958 – for Dalits to be able to enter any tea kiosk in Jaffna, as well as the campaign’s support for the Prevention of Social Disabilities Act 1957, were progressive steps. The Act as amended in 1971 states: “Any person who imposes any social disability on any other person by reason of such other person’s caste shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding three years with or without a fine not exceeding three thousand rupees.”

However, my contention is that even such progressive steps ought to be viewed within the nationalist discourse because, in reality, their project was to create a unifying “Tamilness” and in this, the Dalits

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would be subsumed. In fact, the “Teashop Entry Movement” or the Prevention of Social Disabilities Act changed little in the Jaffna Vellala-dominated social structure. The teashop owners were mainly from the upper castes and, in the villages in particular, separate cups were allocated to Dalits. The Act also did not have much effect as those who controlled the judiciary and the police continued to be from the upper castes.

### **The Communist Party, class and caste**

In the 1960s, temple entry campaigns were spearheaded by the Communist Party (Peking Wing) in northern Sri Lanka. Although the Communist Party (Peking Wing) took an active role, they did not envisage caste as a unique social reality in the ideological-cultural sphere. Instead, they positioned themselves within an orthodox Marxist view in that Dalits were simply viewed as an oppressed class. They suffered from a form of economic determinism as they claimed that a revolution in the future would eradicate caste difference; in other words, caste ideology was located within the superstructure, which was a mere reflection of the economic base. My argument is that while caste does have class characteristics, it cannot be reduced to class.

A recent Tamil publication, *Casteism and the struggle against caste* by N. Ravindran and S. Sivasekaram, chronicles the main events of the caste struggle. However, it suffers from the analytical flaw that caste and class are inseparable, and that reformist movements were wrong as Dalit politics would enforce casteism.

The Communist Party (Peking Wing) took up the caste issue and took a lead role in the anti-caste struggles of the 1960s. However, they were not the only ones, as the struggle against caste oppression in the Jaffna peninsula began in the 1920s by the Forum of Depressed Class Tamil Labourers and then in 1943 by the Mahasabha. The Communist Party (Peking Wing) was unable to continue to lead the struggle for several reasons. On the one hand, their official position that caste and class were inseparable inhibited their political work. The economic determinist position was not exclusive to the Communist Party (Peking Wing); the Communist Party (Moscow Wing) also had the same position. Furthermore, their ideological position was not independent but determined by the Communist Party in China or the Soviet Union, respectively.

Next, Tamil nationalist ideology took the upper hand, especially after the Tamil militant movements began to dominate the political scene. As the political base of the Communist parties became nonexistent, some of them climbed onto the nationalist bandwagon and others had

no choice but to remain silent. Some of those who participated and supported the Communist Party (Peking Wing) struggles of the 1960s still live in the past and hold the position that their struggle against caste was somehow superior to others' initiatives. They have not re-evaluated their economic deterministic analysis of caste, even with the advantage of hindsight, in light of the developments over the last 30 years.

### **The Liberation Tigers of Tamil Eelam and the war years**

After the LTTE became the dominant force in the Tamil political arena in the 1980s, their policy on caste was an extension of the Federal Party's political project. In addition, the LTTE depoliticised its cadres and supporters in order to build up its military machine. Indeed, the military machine gobbled up everyone without distinction.

To the LTTE's credit, they explicitly banned caste discrimination, which particularly impacted untouchability. It should be noted that the LTTE did not have any concrete socio-political or cultural programme on caste; nevertheless, its enforcement against caste discrimination cannot be totally ignored given its impact on untouchability. However, because the LTTE did not allow any other political parties or social movements to function in the north and east, Dalit politics also suffered from the absence of space for resistance.

One of the by-products of the war was that the rigid social matrix in Jaffna was broken to a certain extent. Constant displacement of Tamils and the appropriation of lands by the military created a mixed society. Thus the practice of untouchability was not observed, at least in those social circumstances where there was considerable social deterioration due to the war.

The nationalist and orthodox Marxist discourses stem from the same premise. The nationalists say that caste will disappear when they regain their Tamil homeland in the future, whereas orthodox Marxists say that the class struggle and the changes to the economic base will create a casteless society in the future. The orthodox Marxists try to conceal caste inside class, whereas the nationalists hide it inside “Tamilness”. Both fail to account for the totality of the social structure where upper caste ideology and structural inequality are intertwined.

### **The post-war predicament**

The practice of untouchability being reduced in the public sphere is erroneously and sometimes deliberately interpreted as the eradication of caste in Jaffna society. In

this context, the main Tamil political parties continue to maintain silence or ignore the fact that caste oppression still prevails. In fact, even untouchability is still an issue in villages where Dalits are still prevented from temple entry and the fetching of water from the wells owned by the upper castes. In any event, non-observance of untouchability cannot be equated with the elimination of caste, as caste oppression is rooted in economic and cultural practices and the ideological justification of such practices. Historically, caste has been embedded in the economic system by imposing occupations on communities and ordering these communities in a hierarchy, which is legitimated through religious practices and symbolism.

The post-war situation is alarming as the upper castes continue their domination in social, economic, judicial, cultural and ideological fields. In the economic arena, the key land owners are Vellalas and Karaiyars, and after the war, they have gained the political space to reclaim their lands. Those who fled to western countries were mostly from the upper castes and they are now returning to reclaim their lands and houses in order to sell or to secure them. During the war, Dalits, who constituted the bulk of the landless and displaced, had occupied the lands of the absentee landlords. Now, such Dalits face eviction. Land prices have skyrocketed in the Jaffna peninsula and Dalits find themselves completely outpriced. Even if a Dalit person has the means to buy the land, it is extremely difficult to buy land in a Vellala neighbourhood. Next, evidence shows that most of the internally displaced persons living in the camps are Dalits, as most of them do not own land. Furthermore, much of the Dalit population continues to work as wage labourers. Therefore, social stratification in terms of landownership and occupation has not changed much during the war.

In the ideological and cultural field, the upper castes continue to marry within their own caste. Although there are some individuals who have opted for mixed marriages, these are exceptions to the rule as endogamous practices prevail. The Hindu ideology is strongly rooted in the upper caste's collective consciousness, and upper caste Christians are also not free from casteism. Christianity as practised in Sri Lanka has syncretised and absorbed caste structure. This ideology is not a mere reflection of the economic base but has materialized through cultural practices such as marriage and religious festivals.

Although Dalits make up more than 40% of the Jaffna population, they are seriously underrepresented in the political leadership. In addition, there is no affirmative action taken to increase the representation of Dalits in areas of employment, education and business, from which

they have been historically excluded.

There is also a baseless argument that the word "Dalit" is not appropriate to Sri Lanka as it is an Indian word and Indian caste structure is different from the one in Sri Lanka. We have borrowed so much from India, so why not the word "Dalit"? India does not have a single caste system; it differs from region to region. The important point, however, is the domination of caste in the ideological terrain. In India, the term Dalit was chosen as an overarching political term to express the solidarity and resistance of oppressed castes.

Another flawed argument is that creating Dalit organisations would reinforce caste structure. Here, caste structure and ideology are deeply rooted in the upper caste consciousness and caste-based cultural practices continue. The Tamil papers carry marriage advertisements based on caste. Therefore, unless the upper castes commit caste suicide, which is highly unlikely, the Dalits have no choice but to create their own organisations and struggle for emancipation.

In this post-war context, rebuilding of civil society without taking into account Dalit issues could reinforce upper-caste domination in the political, social, cultural and economic fields. Untouchability, which was disrupted due to the social disintegration during the war, could re-emerge in different forms. Therefore a social movement taking up Dalit politics is an urgent challenge for the north.

# REGIME CONSOLIDATION AND THE PROMISE OF SOVEREIGNTY AND DEVELOPMENT

**Ahilan Kadirgamar**

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In Lanka's post-war moment, the tragic history of war, destruction and poverty have brought to the fore two central issues that have troubled the country since independence in 1948. The first is the irresolution of the "national question", or what I would like to call the problem of minorities and a majoritarian state, which has haunted this postcolonial state and society. On this matter, as evident from the Rajapaksa regime's moves, it is clear they intend to do nothing. The burial of the All Party Representative Committee process for power sharing, devolution of power and constitutional settlement, the centre stage given to the Sinhala nationalists during the war and its aftermath, and the singular goal of the consolidation of the Rajapaksa regime are all troubling signs for the political future of the country. Inter-ethnic relations are likely to fester as the hopes for post-war reconciliation and the formation of an inclusive polity are sacrificed for the narrow interests of regime consolidation.

The second issue, which also goes back to the moment of independence, the promise of sovereignty and economic

development, has been reasserted in the current post-war moment. Historically, Third World sovereignty was seen as the culmination of anti-colonial struggle and freedom for the formerly colonised peoples; and after such centuries of oppression, social and economic prosperity were to be gained through the promise of development. At the current moment, the Rajapaksa regime, its supporters and even some independent liberals have extended that historical notion to assert that ensuring sovereignty and the process of economic development will also negate the "national question". They claim that this time around, the promise of sovereignty and economic development – which for decades eluded the postcolonial state – will now finally be fulfilled. In this essay, I explore the politics of the current and historical disposition of sovereignty and development.

## **The paradox of sovereignty**

The Rajapaksa regime maintains that Sri Lanka's sovereignty, including its territorial integrity and national security, are under external

threat. They claim these threats are the continuation of the separatist and militarised politics of the Liberation Tigers of Tamil Eelam, and have now also taken the form of external pressures and sanctions by powerful western actors. The debate around the US\$2.6 billion International Monetary Fund standby facility towards the end of the war, and into the months following the war until its approval in July 2009<sup>1</sup>, characterised for the Rajapaksa regime, not only the pressures exerted on its sovereignty, but also an attempt to undermine development of the economy more broadly. A year and a half after the war, the situation seems to have changed considerably with the Central Bank boasting more than US\$7 billion in official external reserves.<sup>2</sup> There has also been the Central Bank's exuberant recent announcement of over-subscription on its 10-year sovereign bond issue of US\$1 billion.<sup>3</sup> This sovereign bond issue was the third following two US\$500 million issues, each with five-year terms floated in 2007 and 2009. The IMF standby facility following the balance of payments pressures early last year and the confidence it gives to global investors are intrinsically tied to the sovereign bond issues in 2009 and 2010.

There is a paradox that I wish to highlight here: that is the relationship of the IMF standby facility and sovereign bonds to the very idea of sovereignty as asserted by the Rajapaksa regime. What does it mean to engage the IMF in a standby agreement with a number of conditions, or for that matter to sell dollar-denominated sovereign bonds? In a certain sense, does it not mean the selling of Sri Lanka's sovereignty itself? Would the pawning of Sri Lanka's sovereignty through such measures, either to a multilateral institution such as the IMF or the global capital markets as in the case of the sovereign bonds, assist the process of development or will it come back to haunt Lanka in the future? While long-term development loans from multilateral institutions like the World Bank or Asian Development Bank come at relatively low rates, the 10-year sovereign bond has a high yield of 6.25%.

And how does the Rajapaksa regime understand the double standards of the global capital markets with respect to its sovereignty when it compares the high yield on its sovereign bond versus the 10-year US treasury bonds yielding 2.48% on the same day as the offering in Sri Lanka?<sup>4</sup> Is Sri Lanka's sovereignty on sale for the short-term consolidation of the Rajapaksa regime or are these the realities of global political economy that we must accept for the capital necessary for economic development? Given this discussion above of the Central Bank, the pressures on sovereignty and the possibilities of accelerated economic development at the current moment, it might be appropriate to return to the historical moment when Lanka gained its sovereignty with the

promise of development and the formation of the Central Bank.

### **The Central Bank and development in retrospect**

With independence, Sri Lanka rapidly produced various institutions through a process of state building. While Sri Lanka had the support of the British in this process of developing state institutions, the finance minister at the time, J. R. Jayawardene, in taking steps to create the Central Bank, did not seek the help of the Bank of England. Rather, he requested support from the Federal Reserve in Washington. Being the shrewd politician that he was, Jayawardene – who would in the late 1970s transform Sri Lanka's Constitution, bring about the presidential system with its vast powers and drastically liberalise the economy – perhaps already saw the importance of aligning with the United States. John Exter, whom the Federal Reserve sent to create the Central Bank, and who subsequently became the first governor of the Central Bank, had the following to say in the *Report on the Establishment of a Central Bank for Ceylon* in November 1949:

The decision of the Government of Ceylon to establish a central bank was a decision with far reaching implications for the people of Ceylon. One implication already stands out very clearly: in taking steps to establish an independent monetary system to be administered by a central bank the Government has demonstrated unmistakably its intention to achieve genuine economic freedom as a corollary of the political freedom achieved a year and a half ago. It has been the endeavour of this report to propose a type of central bank which, with proper skill and understanding in its management, will establish monetary conditions in Ceylon that may make possible, as never before, the fuller use of the nation's human and material resources and a rising standard of comfort for all.<sup>5</sup>

Thus economic freedom becomes a corollary of political freedom and social and economic progress gets subsumed under a "rising standard of comfort for all". Exter knew how to ideologically manoeuvre the project of refashioning Sri Lanka's monetary authority and control of banking away from the stronger links they had with both India and Britain: "In fact, whenever a country voluntarily links its currency to another, it establishes a satellite-planet relationship which in effect proclaims that the satellite will always move with the planet. This is tantamount to a renunciation of a basic element of monetary sovereignty."<sup>6</sup> Thus the concept of sovereignty was evoked in relation to banking and opening of the external sector in Sri Lanka.

As early as a year after independence the external sector and international institutions were beginning to shape the political economy of the country. Exter would articulate his arguments not only in terms of domestic needs but also of global changes and the global capital and goods markets:

Like a number of other underdeveloped economies, the Ceylon economy is ordinarily dependent for its prosperity upon the ability to sell a few primary commodities in foreign markets at satisfactory prices. It is therefore peculiarly dependent upon economic conditions abroad, and is especially sensitive to the world business cycle. It would be a mistake to anticipate that the Central Bank will immediately be able to insulate the Ceylon economy against short-run fluctuations in the receipts of the major export industries on which the level of consumption in Ceylon primarily depends. The most that the Bank can do is to help alleviate some of the more serious effects of such fluctuations. In the long run, however the Bank may be able to do a great deal toward strengthening the economy. By helping to direct the savings and credit resources of the nation, as well as foreign capital, into new agricultural development and new industries it can stimulate a diversification of the economy which will make it more resilient and adaptable to changing economic conditions abroad.<sup>7</sup>

The ideological, political and economic dimensions of John Exter's efforts were signs of the shift of power from London to Washington. The 1950s would see various international initiatives that also illustrated this shift.

In January 1950 the foreign ministers of the United Kingdom and of many other Commonwealth countries would arrive in Colombo to initiate what was called the Colombo Plan, resulting in a report later in the year titled "Colombo Plan for Cooperative Economic Development in South and South-East Asia". Indeed, this initiative would continue to build on the emerging international discourse of development. A year later, in the context of the Korean War, the United States would also decide to participate in the Colombo Plan, merging support for international development with geopolitical security concerns. In a further shift towards the concentration of power in Washington, in late 1951, the World Bank sent a large mission to Sri Lanka. The extensive report, running close to 800 pages, titled *The Economic Development of Ceylon*, would make a number of recommendations. Among the recommendations, the issue of food subsidies was prominent:

Ceylon's problem of food subsidies is of greatest importance not only because of its adverse effect on the budget, but also from the general economic point of view. In its annual report for the year 1950, the Central Bank commented on the problem at length, concluding that "a widespread system of subsidies has a tendency to hide real costs, to distort the country's economy, and sometimes to act as a serious barrier to efficiency."... Food subsidies are no more than a palliative, concealing the necessity of adjustment by keeping food prices at an artificially low level.... Therefore the Mission concurs in the view of the Central Bank, that food subsidies should now be reduced.<sup>8</sup>

The World Bank report had considerable influence with the ruling United National Party in Sri Lanka. Note how the Central Bank itself was created with the assistance of the Washington-based Federal Reserve and then how the Washington-based World Bank quotes the Central Bank in their report to call for cuts in subsidies.

Starting in 1952 and through the first half of 1953, a fall in the price of exports such as rubber and a rise in the price of rice imports led to the depletion of Sri Lanka's foreign reserves. Under considerable financial pressure, the government decided to cut subsidies to address the balance of payments crisis. This was the context for the rise in the price of rice from 12.5 cents to 35 cents a pound – triggering the great Hartal of August 1953, which brought the country to a standstill.<sup>9</sup> The prime minister then resigned and the dissident forces in the parliamentary realm gained strength leading to the eventual defeat of the UNP in 1956 by the opposition Sri Lanka Freedom Party.

Market-oriented development policies were resisted, promoted and reshaped by changing ruling regimes from both ends of the political spectrum from the late 1950s up to 1977. The United Front government, a coalition of the SLFP and Left parties, of 1970 to 1977, passed a nationalist republican constitution. The 1972 Constitution removed the protections for minorities in section 29.2 of the previous Constitution, gave Buddhism a privileged place in the country and entrenched the unitary structure of the state. Some Left leaders in the coalition claimed these compromises undermining minority rights were necessary to gain popular support, and centralised state power to forge ahead with economic development of the country. However, the failure of the economic experiment with nationalisation and a closed economy in no small measure under attack by the global economic downturn of the 1970s led to a decisive defeat of the SLFP and the Left in 1977 elections by the re-emergent UNP under the

leadership of J. R. Jayawardene – the very finance minister who had overseen the formation of the Central Bank and had been discredited by the economic crisis of 1953.

The Jayawardene regime of 1977 would crush labour and instill a liberalisation and development agenda, which successive governments would follow. However, the authoritarianism that characterised the liberalisation push and the brutal repression of the minorities' problem would have its own risks and costs. Economic development as the World Bank envisioned would be undermined by a long and costly war in the North and East and a brutal insurgency and repressive counter-insurgency in the South; the social costs of both are now part of Sri Lanka's tragic history.

### **Our current predicament**

The moment of independence in 1948 and the subsequent decades of changes discussed above are historically situated in a shift in the world order from the British Empire to US hegemony. Furthermore, Sri Lanka's presence in that new order entailed heightened engagement with the international development regime and powerful ideologies of modernisation and development. These market-oriented policies were masked by experts with depoliticised theories, shaped by institutions such as the World Bank and reified by economic policies both global and national in scope. In other words, economic development is constituted by the international order as much as it is a consequence of state policies.

It is in this context that I want to question the singular emphasis of those who place their faith in development as the solution to the larger problems facing Sri Lanka. Historically the promise of sovereignty and development has been undermined by capitalist crises and the shifting international order. Perhaps there is also a lesson to be learned from the Sri Lankan regime's shift towards the US from the British after independence and the current shift from the US to China. Alignment with a global or regional hegemonic power does not necessarily ensure success with the project of development; in fact, those very powers themselves are also prone to capitalist crises.

Next, we should also be aware of the greater internationalisation of Sri Lanka's political economy in recent times with increasing external debt. While the IMF standby facility and the recently launched sovereign bonds reflect some measure of confidence in Sri Lanka's economy by the global capital markets, the last few decades of repeated financial crisis, structural adjustment and the continuing global economic crisis should caution

us about the fickleness of such market confidence and the unpredictability of global capital markets. In a few years time, it is not just the high interest rates of the bonds that will pose a problem; another round of capital flight leading to the depreciation of the rupee may make the dollar-denominated sovereign bonds that much harder to pay back. That would be a case where Sri Lankan sovereign bonds will become the cause of a crisis for Sri Lanka's sovereignty, including the possibilities of determining our economic future.

The process of centralised and accelerated development policies, as we saw from the 1950s, tends to further marginalise the working classes and the subaltern classes. And at the current moment, the concerns of the marginalised are not being considered in the vision of the massive infrastructure projects and the tourist enclaves that dispossess them of their lands and livelihoods. Furthermore, the recent rises in cost of living, the lack of budgeted funds for the resettlement of the war affected and the meagre allocation for education and health in the recent budgets are also symptomatic of such a narrow development vision. And in the future, it is these exploited classes who will have to bear the brunt of budget cuts, whether it is food subsidies, education or health, in order for the state to forge ahead with the investment supported by the multilateral institutions and to ensure the confidence of international capital markets. Finally, it is these exploited classes, whose daily wage determines their daily life, that have to face the consequences of the failure of the development initiatives and capitalist economic crises, as the experience of the food crisis from the early 1950s suggests, and all the more so after the dismantling of social welfare policies with liberalisation in 1977.

I began this essay with two major problems that have persisted due to the lack of political vision of Sri Lanka's post-independence ruling regimes: the "national question" and the failed promise of sovereignty and development. The Rajapaksa regime has set a risky and unethical wager for the country, claiming that the success of economic development will neutralise or negate the "national question". Furthermore, for this singular push of development and the consolidation of the regime, sovereignty has been deployed as the weapon against any form of criticism. If we are to learn from the experiences of our own history and other Third World countries, accelerated development policies which disregard broader political economy concerns come with real risks – not only to the marginalised sections but also to the country's overall social well being and future economic possibilities. A bout of economic crisis in the future will not only lead to another failure at development, it will inevitably bring back the political problems and the

“national question” that have been suppressed despite the great post-war opportunity. The task of dissent should be to prepare for such a political moment while exposing the dangers inherent in the political and economic manoeuvres of the Rajapaksa regime.

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<sup>1</sup> See CBSL, Press Release 27-7-2009, IMF Approves USD 2.6 billion Stand-By Arrangement Facility for Sri Lanka, [http://www.cbsl.gov.lk/pics\\_n\\_docs/02\\_prs/\\_docs/press/press\\_20090727e.doc](http://www.cbsl.gov.lk/pics_n_docs/02_prs/_docs/press/press_20090727e.doc)

<sup>2</sup> See CBSL, Press Release 7-10-2010, Sri Lanka's Gross Official Reserves Exceed US dollars 7 billion, [http://www.cbsl.gov.lk/pics\\_n\\_docs/02\\_prs/\\_docs/press/press\\_20101007e.doc](http://www.cbsl.gov.lk/pics_n_docs/02_prs/_docs/press/press_20101007e.doc)

<sup>3</sup> See CBSL, Press Release 28-9-2010, Global Investors' Demand Exceeds over USD 6 billion in 14 Hours For Sri Lankan Sovereign Bond Issue of USD 1 billion, [http://www.cbsl.gov.lk/pics\\_n\\_docs/02\\_prs/\\_docs/press/press\\_20100928e.doc](http://www.cbsl.gov.lk/pics_n_docs/02_prs/_docs/press/press_20100928e.doc)

<sup>4</sup> See Daily Treasury Yield Curve Rates, [http://www.ustreas.gov/offices/domestic-finance/debt-management/interest-rate/yield\\_historical.shtml](http://www.ustreas.gov/offices/domestic-finance/debt-management/interest-rate/yield_historical.shtml)

<sup>5</sup> John Exter, 'Report on the Establishment of a Central Bank for Ceylon', Central Bank of Sri Lanka, November 1949, page 1.

<sup>6</sup> *Id.* page 4.

<sup>7</sup> *Id.* pages 9-10.

<sup>8</sup> International Bank for Reconstruction and Development, *The Economic Development of Ceylon: Report of a Mission Organized by the International Bank for Reconstruction and Development at the request of the Government of Ceylon*, The Johns Hopkins Press, Baltimore, 1953, pages 184-186.

<sup>9</sup> Amarasinghe, Ranjith Y., *Revolutionary Idealism and Parliamentary Politics: A Study of Trotskyism in Sri Lanka*, Social Scientists Association, Colombo, 1998, page 98.