



PAFFREL

POLITICAL ANALYSIS FOR SEPTEMBER - 2023 -

Executive Summary

The cancellation of the local government elections which had been postponed repeatedly since March gave a finality to the government decision not to hold those elections. There was speculation that future elections may be subjected to the same fate. However, the government has allocated Rs 11 billion in the provisional budget for next year for the presidential elections due in September. At the same time, the government gave signs that it is determined to control the space for political speech and public protest by bringing forward two highly controversial laws. A wide spectrum of society, both national and international, have taken the position that both the draft Anti-Terrorist Act and Online Safety Bill seriously impinge on the liberty and freedom of the people, will have a serious impact on democracy and the rule of law in the country and called for their withdrawal. With economic growth continuing to be negative, and prices continuing to rise, there is a danger of protests recommencing which the strengthening of security laws would target.

The government's failure to obtain the second tranche of IMF support is a wakeup call regarding the precarious condition of the economy. With economic growth in the last quarter being minus three percent, the IMF has said that Sri Lanka's economic recovery is still not assured. It has also said that the government has not met the economic targets set for it, particularly with regard to reducing the budget deficit due to a potential shortfall in government revenue generation. The failure of the government to fulfil many of the IMF's transparency requirements, such as posting its contracts and procurements on the website, and explain its rationale for tax holidays and those who benefit, have contributed to the loss of confidence in the government's commitment to the economic reform process. However, the anti-corruption legislation will take time to be implemented. The president has said it will require an additional year to realize the anticipated outcomes of the anti-corruption law adoption, making the timeline for achievement approximately two years.

Reflecting the critique of present developments by non-governmental actors, a Civil Society Governance Diagnostic Report produced by a collective of civil society organisations including PAFFREL states that "The current growing sense of economic injustice has been exacerbated by the fact that the architects of the economic crisis do not bear any part of the burden of its proposed reform, which has been, again, firmly thrust, without any public dialogue, on the victims of this very crisis." There is a general consensus that the burden of economic restructuring is falling disproportionately upon the poorer sections of society. Dr

Nishan de Mel of Verite Research, which contributed extensively to the civil society Governance Diagnostic, has also pointed out that the government has been privatising profits while socialising losses because of the lack of accountability.

The vulnerabilities in the rule of law and human rights continued to be manifested in emblematic cases with several rulings made by the judiciary in cases involving ethnic and religious sensitivities appearing to have been ignored by government authorities. Judicial decisions and rulings made with regard to them have been subjected to disparaging and insulting remarks in parliament and outside. Mullaitivu District Judge Saravanarajah, who ruled on the controversial Kurunthormalai (Kurundi Viharaya) case, not only resigned but fled Sri Lanka due to alleged threats and pressure due in part to parliamentarians making use of parliamentary privilege to openly criticize the judiciary, including by naming them individually. The reopening of the Easter bombing of April 2019 by the UK Channel 4 documentary has brought the credibility of the national investigation and truth seeking process to the fore. The government has denied the allegations and the need for international involvement in the truth seeking process. The government's defensive approach to international involvement and its glossing over of the repeated failures of domestic investigations has undermined the credibility of the national reconciliation mechanisms it is proposing but with no takers.

Forthcoming Elections in question

Former central bank governor Indrajit Coomaraswamy was widely reported as having said that if the country allows elections to distract from the path of recovery, stabilization and growth, the country will be hit by a fresh crisis far worse than any before because it has a lower income and resilience at the present time. He pointed out that Sri Lanka's election calendar has historically resulted in the reversal of progress made under the IMF programmes that the country had undertaken. There appear to be feelers put out by government members that safeguarding the IMF programme may require a moratorium on elections. The government has shown itself willing to take this route ostensibly for the sake of the economy. Even before the agreement with the IMF, the government postponed local government elections that had been set for March of this year citing the need to focus on economic recovery rather than hold elections.

However, the government has allocated Rs 11 billion in the provisional budget for next year for the presidential elections due in September. This is a positive indication that the government intends to hold those elections. The provisional budget for 2024 is Rs 3860 billion, of which Rs 11 billion would seem to be a small fraction. However, the budget for 2023 was Rs 3657 billion, and the Rs 10 billion that was needed for the local government elections was likewise only a small fraction of that budget. But those elections were not held and the government argued that this money was better spent on development than on elections. In addition, the local government elections have now been cancelled with a Ministerial Advisory Committee on Public Administration, Home Affairs, Provincial Councils and Local Government unanimously deciding to cancel the nominations submitted for the Local Government elections as those who have submitted nominations have faced great difficulties due to the postponement of the elections.

Rohana Hettiarachchi, the executive director of PAFFREL, expressed concern over the government's decision, particularly in light of the country's economic crisis. Hettiarachchi

questioned who would be held accountable for the financial loss incurred as a result of such a decision. He emphasized the importance of holding the local government elections promptly, despite the current circumstances. Moreover, Hettiarachchi highlighted that the Election Commission of Sri Lanka has already invested a substantial amount of money in preparation for the 2023 local government elections. Therefore, the cancellation of nominations not only affects the potential loss of revenue but also wastes the resources already allocated for the election. The decision to cancel nominations submitted for the local government elections may lead to a significant financial loss of over one billion rupees. The decision to cancel the nominations was unanimously agreed upon by The estimated cost for the local government election was previously calculated to be around Rs 9.3 billion.

Undemocratic Laws

Despite protests by political parties, civil society and international human rights groups, the government appears determined to go ahead with its plans to bring in laws that are restrictive of freedom of association and expression. The Bar Association has said that both the draft Anti-Terrorist Act and Online Safety Bill seriously impinge on the liberty and freedom of the people, will have a serious impact on democracy and the rule of law in the country and called for their withdrawal. If these two laws are passed by parliament, they will make it more difficult to challenge the government even when it is going on a wrong path.

The draft Anti-Terrorist Act which seeks to replace the Prevention of Terrorism Act is wider in scope and gives the government the power to arrest persons who are engaging in public protest or trade union action. Those who are charged as “intimidating the public or a section of the public” can be arrested under this law. Terrorism is loosely defined and broadened without boundaries in section 3 of the bill. Section 2 of the PTA, currently in operation, had defined offences, restricted as against the offences in the Penal Code, to causing the death of, attacks on or criminal intimidation of ‘specified persons’ listed in the Act and ‘witnesses’ to offences under the PTA; kidnapping or abduction of witnesses; robbery or mischief of State property, illegal import of arms or ammunition, harbouring PTA offenders, etc. The Anti-Terrorism Bill in section 3(1), creating the offence of terrorism has not limited ‘terrorism’ to any “illegal” act but vaguely extends to “any act” or “illegal omissions”. Furthermore, unlike in the PTA, section 3(1)(a) of the Bill is overbroad in that the phrase “criminal intimidation” of “any specified person or a witness” have been dropped and the phrase “intimidating the public or a section of the public” have been brought in, unduly and vaguely broadening the category. A legitimate protest march by farmers for instance demanding fertiliser could end up with the leaders of the protest march being arrested for ‘intimidating a section of the public’ and “causing hurt” under section 3(2) to an undefined person in the protest march.

Similarly, the Online Safety Bill has clauses that make it detrimental to the freedom of expression. The Sri Lanka Press Institute (SLPI), its constituents and affiliated organisations have expressed their concern over the proposed Online Safety Bill with particular concern at moves to set up a highly powerful Online Safety Commission whose members are appointed directly by the President. The proposed bill consists of an overbroad and vague definition such as “statement of facts” and it is not clear as to who decides its definition. Furthermore, the Online Safety Commission, appointed by the Executive, has the power to issue notices and the ability to stop the spread of ‘false’ statements. This raises concerns on

the potential misuse of the term “false statement” and its interpretation. The bill also criminalises communication of facts that could be considered harassing, potentially impacting media freedom, as reporting news could be seen as “alarming or distressing” to someone.

Non-implementation leads to IMF delay

Sri Lanka’s second tranche of a \$3 billion loan from the International Monetary Fund was delayed as the country has failed to meet the program objective according to the IMF which also said there is no fixed timeline on the disbursement of second tranche. The government’s failure to obtain the second tranche of IMF support is a wakeup call regarding the precarious condition of the economy. The IMF has said that Sri Lanka’s economic recovery is still not assured. It has also said that the government has not met the economic targets set for it, particularly with regard to reducing the budget deficit due to a potential shortfall in government revenue generation. The failure of the government to fulfil many of the IMF’s transparency requirements, such as posting its contracts and procurements on the website, and explain its rationale for tax holidays and those who benefit, have contributed to the loss of confidence in the government’s commitment to the economic reform process.

President Ranil Wickremesinghe who met USAID Administrator Samantha Power on the sidelines of the United Nations General Assembly (UNGA) sessions in New York confirmed that tackling corruption would take time. President Wickremesinghe noted that the Anti-Corruption Commission is currently grappling with the task of recruiting staff with formal training. Given this circumstance, it is anticipated that it will require an additional year to realize the anticipated outcomes of the anti-corruption law adoption, making the timeline for achievement approximately two years. However, the President stated that the entire Government machinery of his Government has been fully adapted to the implementation of the anti-corruption policy, and requested for the necessary support to be provided for the completion of these activities as soon as possible.

Opposition Leader Sajith Premadasa called on private lenders and the super-rich to bear their fair share of the burden in Sri Lanka’s domestic debt optimization (DDO) process. He criticized the government’s approach, which he described as disastrous for sparing these affluent groups from the debt restructuring burden, leaving it solely on the shoulders of the working class. He emphasized the need for all stakeholders in the nation to contribute both economically and in addressing financial challenges. He noted that the business sector had benefited from tax cuts introduced by the SLPP government. Mr. Premadasa pointed out that such cuts had caused a significant revenue loss of 8 to 10 per cent for the government. Mr. Premadasa expressed reservations about blindly following the recommendations of the International Monetary Fund (IMF), stating that the IMF package should have been more favourable and that he would renegotiate the agreement on coming to power.

A public opinion survey conducted by Verite Research has shown that about 45 percent of Sri Lankans believe the IMF will make things worse for the economy in the future. Only 28 percent of the population believes Sri Lanka’s ongoing programme with the IMF will make things better for Sri Lanka’s economy in the future. The mounting difficulties faced by people in coping with their economic circumstances can lead to protests and agitation campaigns. The logic of competitive electoral politics can also come into play with different political parties making their own promises to alleviate the economic hardships on the

people even at the cost of the economic reform programme agreed with the IMF.

Civil Society Governance Diagnostic

The assessment of civil society corresponds to the bleak expectation, not only with regard to corruption but also with regard to the inequity inherent in the economic restructuring process being undertaken by the government. A Civil Society Governance Diagnostic Report on the Anti-Corruption Landscape of Sri Lanka was produced by a collective of civil society organisations including PAFFREL and authored by Prof Arjuna Parakrama which states that “The current growing sense of economic injustice has been exacerbated by the fact that the architects of the economic crisis do not bear any part of the burden of its proposed reform, which has been, again, firmly thrust, without any public dialogue, on the victims of this very crisis.” The Diagnostic Report introduced a comprehensive set of governance reform recommendations designed to address the root causes to the current crisis in the nation.

The report benefited from input provided by over 250 participants representing diverse sectors, geographical locations, ethnic, religious, and cultural groups. Prof. Arjuna Parakrama conducted the research for the Civil Society Initiative. The report revealed that among the high-probability and high-risk tactics used in Sri Lanka are the structural weakening of the country’s accountability framework, influence and interference with public officials, abuse of state-owned enterprises, manipulation of public procurement procedures, suppression of civil society, and the use of illicit financial transactions.

This collaborative effort, reflecting the crucial socio-political moment of reform in Sri Lanka, was led by Transparency International Sri Lanka (TISL) in partnership with a core group consisting of Verité Research, the Centre for Policy Alternatives (CPA), Sarvodaya, People’s Action for Free and Fair Elections (PAFFREL) and the National Peace Council (NPC). Together, they formed the “Civil Society Initiative on Anti-Corruption Reform for Economic Recovery”, with the shared understanding that the country is in a governance crisis embedded in deep rooted corruption, which must be addressed, if we are to strive towards actual, sustainable and equitable economic recovery. The High-Level Launch of the ‘Civil Society Governance Diagnostic Report on Sri Lanka’ took place on Wednesday, 13th September at the BMICH in Colombo. The event saw the participation of policymakers, representatives from the International Monetary Fund (IMF), diplomatic missions, international funding institutions, civil society organizations, academics, and distinguished guests from various other sectors.

Easter bombing revisited

The release of the Channel 4 documentary that claims to give the story behind the Easter bombing has restarted the debate within the country about who was behind the crime and why. President Ranil Wickremesinghe appointed a committee of investigation headed by a retired supreme court judge and has stated his intention to appoint a parliamentary select committee to investigate the allegation by the former Attorney General that there was a mastermind behind the attacks. The president has also said that upon completion of these two investigations the reports will be presented to parliament for a final decision regarding how to proceed from there on.

The Catholic Church rejected the special investigative committee proposed by President Ranil Wickremesinghe to probe the allegations raised by Channel 4 pertaining to the Easter Sunday carnage. Church Spokesman Rev. Fr. Cyril Gamini said that the Church did not believe that such committees would be able to deliver the truth and said that it would be an exercise that would waste time and public money. Addressing the media in Colombo, Rev. Fr. Gamini said that the Church had made a four point proposal in the wake of the recent Channel 4 programme. He said, "First, we demand that an impartial, independent and transparent investigation commence based on facts revealed by Channel 4 as well as findings of investigations into the Easter Sunday terror attacks immediately. Second, such investigations need to be conducted under the supervision and observations of an independent international panel of experts. Third, a national team of experts should also be appointed for the purpose of conducting the probe ensuring transparency. Fourth, the services of all intelligence and senior police officers should immediately be suspended until the investigations are over."

President Wickremesinghe's recent proposals appear to be similar to those already implemented without success. It is the failure to identify those who were behind the attack, take them before the law and hold them accountable through the previous national inquiries that has given rise to the continuing demands, mainly by the Catholic Church led by Cardinal Malcolm Ranjith and also by the families of victims, for an international inquiry to obtain truth and justice. Following the Channel 4 disclosures Opposition Leader Sajith Premadasa has also called for investigations with international support. He has said that a credible investigation is required to clear the doubts so that we will know if the Easter bombings were indeed terrorist attacks or a diabolical move to get people into power.

Disrespecting judiciary

The sudden resignation of Mullaitivu District Judge and Magistrate, T. Saravananarajah, who presided over the controversial Kurundimale Viharaya case has elicited widespread protest from the legal community. The judge cited receiving death threats as the reason for his resignation. The President's decision to order an investigation stemmed from the fact that the Judge resigned without formally informing the police or the Judicial Service Commission about the alleged death threats against him. In a letter dated September 23, 2023, addressed to the Judicial Services Commission, Saravananarajah conveyed his decision to step down from various judicial roles, including District Judge, Magistrate, Family Court Judge, Primary Court Judge, Small Claims Court Judge, and Juvenile Court Judge. Reports circulating on social media and online platforms suggested that he had left the country for India. In these reports, he allegedly informed web journalists that he had received death threats in connection with the Kurundimale Viharaya case.

Unfortunately, the willingness of government members to challenge judicial decisions with regard to the electoral process is having its repercussions elsewhere. Parliamentarians have made use of parliamentary privilege to openly criticize the judiciary, including by naming them individually. The purpose of parliamentary privilege is to enable the elected representatives of the people to disclose the truth in the national interest. But this is a power that needs to be used with care and caution, especially if it is used to malign or insult individuals. Those who have the protection of parliamentary privilege need to understand it is very powerful, and they should exercise the protection with restraint. It is the abuse of

privilege that brings it into disrepute and undermines the wider perception of the central role that privilege plays.

The disrespectful conduct of some parliamentarians has now reached a point where a judge who was deciding on controversial cases involving ethnic and religious conflict has chosen to resign and even leave the country. Successive rulings made by the judiciary in those cases appear to have been ignored by government authorities. The judicial decisions and rulings made have been subjected to disparaging and insulting remarks in parliament and outside. Mullaitivu District Judge Saravanarajah, who ruled on the controversial Kurunthumalai (Kurundi Viharaya) case, not only resigned but fled Sri Lanka due to alleged threats and pressure. In a letter shared on social media, the judge told the Judicial Services Commission that he was facing threats to his life. Such pressures placed on the judiciary are clearly unacceptable in a democratic country especially in situations where the judiciary is being called on to defend the rights of the people who are being threatened by government overreach. In a statement the Bar Association of Sri Lanka (BASL) has condemned any type of threats and violence to members of the judiciary. The BASL warned that the resignation of the Mullaitivu Magistrate may raise serious questions about the safety of judicial officers in Sri Lanka. Therefore, the BASL urges the government to initiate a thorough impartial investigation into the incident.

Reconciliation mechanisms evoke controversy

A new state entity called the Reconciliation Office is to be set up and will be armed with a wide range of powers, including immunity from prosecution and the ability to raise funds locally and abroad as gifts. The office will come into existence if the proposed Office for National Unity and Reconciliation Bill is passed in the House. It is mandated to make necessary recommendations to the government and relevant authorities towards achieving national unity, reconciliation, and durable peace in the country and formulate a national policy and national action plan on reconciliation and coexistence. Any individual who wrongfully resists or obstructs any person attached to the office from carrying out duties or willfully provides false information to the office will be considered to be committing an offence of contempt against the authority of the office, according to the bill. The eleven-member office will consist of one ex-officio member not below the rank of an Additional Secretary to a Ministry and ten others based on the recommendations of the Ministers. All members are to be appointed by the President, with one of them being named chairperson following the recommendation of the subject minister. The members can serve for two consecutive terms or otherwise, with each term limited to three years.

However, nine international human rights organisations including Amnesty International and Human Rights Watch (HRW) were critical of the proposed formation of a proposed National Unity and Reconciliation Commission, which will be a separate mechanism focusing on war-related violations. Issuing a joint statement, "Sri Lanka's Flawed Plans for a 'Truth Commission'", they pointed out that their concerns echo many of those already raised by victims of conflict-related abuses and their families. "There have not been any genuine confidence-building measures or steps to ensure a safe and conducive environment for such a commission to function effectively. There has been no meaningful consultation, including with affected communities", it said. The joint statement, which underscores multiple legacy of failed commissions, also noted that there is no indication in the government's current proposals for a National Unity and Reconciliation Commission, or in

the manner and circumstances in which it is being established, to suggest that it will be willing or able to provide truth, justice or reparation where previous commissions have failed.

Excerpts from Relevant News reports

FUNDS SET ASIDE FOR PRESIDENTIAL ELECTIONS IN 2024

With presidential elections expected next year, the Election Commission has been allocated Rs. 11 billion through the 2024 Appropriation Bill that is due to be presented to Parliament this month.

<https://www.sundaytimes.lk/231001/news/rs-11-billion-for-ec-to-conduct-presidential-poll-next-year-534344.html>

EMPOWERED RECONCILIATION OFFICE TO BE SET UP

A new state entity called the Reconciliation Office is to be set up and will be armed with a wide range of powers, including immunity from prosecution and the ability to raise funds locally and abroad as gifts.

<https://www.sundaytimes.lk/231001/news/wide-range-of-powers-for-new-reconciliation-office-to-bring-about-national-unity-534327.html>

CONCERNS THAT ELECTIONS MAY BE POSTPONED

Civil society activist Sirithunga Jayasuriya said that those genuinely concerned about political strategies of the Wickremesinghe-Rajapaksa government should be wary of possible moves to put off the presidential election scheduled for next year.

<https://island.lk/warning-issued-over-possible-bid-to-postpone-presidential-election/>

PROPOSED PARLIAMENTARY BUDGET OFFICE OPPOSED

The Parliament recently endorsed the setting up of the Budget Office meant to clear programmes or action plans submitted by political parties ahead of elections. According to Prof. Herath, the Budget Office was meant to control political parties that didn't fall in line with their thinking.

<https://island.lk/warning-issued-over-possible-bid-to-postpone-presidential-election/>
Opposition leader accuses army intelligence

Opposition and SJB leader Sajith Premadasa has said that irrefutable evidence had emerged, linking the Zahran group, which carried out the Easter Sunday terror attacks to the Army intelligence.

<https://island.lk/sajith-tells-parliament-about-undeniable-evidence-linking-zahran-group-to-army-intelligence/>

Government alleges plot to undermine military

State Minister of Defence Pramitha Bandara Tennakoon said that Archbishop Malcolm Cardinal Ranjith and the Catholic Church had been misled by certain groups about the Easter Sunday attacks, and there was a sustained effort to discredit the security forces.

<https://island.lk/easter-attacks-state-minister-alleges-sinister-attempt-to-discredit-slf-forces/>

IMF IS ACTING AGAINST DEMOCRACY AND ACCOUNTABILITY

Executive Director of Verité Research Nishan de Mel has said “The IMF has said that it is only accountable to the government. It says it has analysed data but only the government can publish them. No one has seen this analysis--not even Parliament. Again, this is a problem of accountability. So, there is a problem of democracy in the way the IMF works.”

<https://island.lk/verite-research-head-lambasts-govt-and-imf-for-privatising-profits-and-socialising-losses/>

US AMBASSADOR ISSUES CAUTION

U. S. Ambassador Julie Chung said stability should not come at the sacrifice of the values of freedom of expression, whether through peaceful protest, expression through the arts, or through social media.

<https://www.dailymirror.lk/breaking-news/Stability-should-not-come-at-the-sacrifice-of-values-of-freedom-of-expression-U-S-Ambassador/108-267816>

CONCERNS ABOUT POSTPONEMENT OF ELECTIONS

MP Prof. G. L. Peiris said that the UNP Chairman most probably announced a decision taken by the leadership. Having put off Local Government polls, regardless of the landmark Supreme Court order issued in early March this year, the government seemed determined to avert presidential election too.

<https://island.lk/gl-ranil-cant-extend-grs-five-year-term/>

ECONOMY ON RECOVERING PATH WITH REDUCED NEGATIVE GROWTH

The country's economy has contracted at the rate of 3.1% in the second quarter of 2023, according to recent data by the Census and Statistics Department, an improvement from the alarming 11.5% contraction experienced in the first three months of 2023, indicating a gradual recovery.

<https://island.lk/economy-shows-signs-of-recovery-cbsl-optimistic/>

ANOTHER MASS GRAVE EMERGES

The state has spent Rs 5.7 million on excavating a mass grave site in Mullaitivu for nine days, according to official sources. So far, skeletal remains of 18 persons have been found.

<https://island.lk/excavations-at-mullaitivu-mass-grave-report-to-be-presented-to-magistrate/>

SRI LANKA WILL NOT COOPERATE WITH INTERNATIONAL ACCOUNTABILITY DEMANDS

Sri Lanka appears to be turning down calls for an an internationally monitored investigation into Easter Sunday bombings and criticised the Office of High Commissioner for Human Rights (OHCHR)

<https://www.dailymirror.lk/breaking-news/Sri-Lanka-turns-deaf-to-call-for-international-probe-into-Easter-attack/108-267261>

LOW LEVEL IMPLEMENTATION OF UNHRC RESOLUTION

Sri Lanka has completed 19.4% of the measures it committed to implement under the United Nations Human Rights Council (UNHRC) resolution 30/1 as of end-August 2023

<https://www.dailymirror.lk/breaking-news/SL-has-completed-19-4-of-2015-UNHRC-resolution-commitments-Verit%C3%A9-Research/108-267152>

DEFENSE MINISTRY WARNS CHANNEL 4

The Ministry of Defence in a statement has asserted that Channel 4 will be held unequivocally accountable for any unforeseen actions or repercussions stemming from their unfounded, malevolent and poorly substantiated claims made in the documentary.

<https://www.dailymirror.lk/breaking-news/Ministry-of-Defence-rebuts-Channel-4s-Easter-Sunday-attack-allegations/108-266954>



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