

# SRI LANKA 2014-2015

## Democratisation: Options and Challenges

A Conference Report  
Berlin, October 2014

International Network of Srilankan Diaspora



විදේශගත ශ්‍රී ලාංකීකයන්ගේ ජාත්‍යන්තර ජාලය  
SLB පුලම්පෙයාර් இலங்கையர் சர்வதேச இணையம்

The International Network of Sri Lankan Diaspora (INSD) is aiming at bringing together Sri Lankans living outside the country who support democratic social change in Sri Lanka to promote sustainable peace, economic and social justice, as well as human and democratic rights for all persons living in Sri Lanka.

# Common Candidate and the Possibility of Constitutional Reform

A minimum requirement for the creation of a democratic space is the abolition of executive presidency. This should be attempted first.

However, the danger of delaying comprehensive constitutional reform, is that unforeseen factors coming in to play.

Despite this danger, replacing executive presidency with a parliamentary form of government needs to be the first reform.

We have had 35 years of the present constitution which has seen an escalation of the ethno-political conflict, the rise and fall of one of the deadliest separatist groups in the world, the evolution of a presidential system and the breakdown of democratic institutions about which the country was once proud of. Strengthening of executive presidency has had very wide ramifications, especially in today's authoritarian environment. Undermining of rule of law, breakdown of law and order, impunity, assaults on the independence of judiciary, interference with institutions such as public service and police, lack of accountability, intolerance of dissent, pressure on the media and religious intolerance are all related to the authoritarian environment.

Corruption, wastage and extravagance have contributed to the depletion of public funds. The money so lost will be recovered from the ordinary citizen, by way of taxes. Rajapakse regime still basks in the glory of military victory. However the issues that led to the armed conflict remain unsolved.

While comprehensive constitution reform is certainly the ideal, the realities on the ground force us to look for an alternative programme. The immediate task therefore is the creation of a democratic space where rational discussion can be held which will lead to further reform. A minimum requirement for the creation of a democratic space is the abolition of executive presidency. This should be attempted first.

However, the danger of delaying comprehensive constitutional reform, is that unforeseen factors coming in to play. We have seen in 1994 how delay contributed to political forces coming in to play and the reform process being derailed.

Despite this danger, replacing executive presidency with a parliamentary form of government needs to be the first reform. The abolished 17th Amendment to the Constitution which restricted powers of the executive presidency should to be brought back.

And there should be national consensus regarding important appointments for example the appointment of judiciary and independent commissions. Another proposal is to have a State Council with the representation of all

political parties, chief ministers and a few eminent persons, jointly nominated by the Government and the opposition.

Ideally, the first stage of reforms should deal with the ethnic issue as well. However, putting all eggs in the same basket is not wise. First a democratic space should be created and then that space should be used for further reform.

Some issues remain to be addressed. UNP has indicated that they would like to have a directly elected prime minister. This position however is likely to change. When the Prime Minister is elected directly, the voters vote for the party, candidates as well as for the Prime Minister. The danger of this system is that the Prime Minister may not have a majority in the parliament which will make it difficult to pass the budget or legislation. Also, the similarities between a directly elected President and a directly elected Prime Minister who is the effective head of the executive will confuse people. Therefore having a directly elected Prime Minister will to be a mistake.

We also have a problem of trust deficit. Number of times the talk about abolition of executive presidency has been heard. It is therefore proposed that a constitutional draft including the abolition of executive presidency, re-enactment of 17th Amendment and establishment of the State Council is presented with the election manifesto. Ideally, a timeline should be included.

It is recommended to have a common candidate because we are up against a formidable president who is difficult to be brought down without a common candidate. Who the common candidate is, needs to be discussed.

Opposition parties are very likely to come together. It is also important that there is an SLFP break-away group. Sri Lanka Muslim Congress is very likely separate themselves from the government.

Hill-country Tamils will support only if it is clear that Mahinda Rajapakse is going to be defeated. Muslim Congress cannot afford to support Mahinda Rajapakse because Muslims will not vote for Mahinda Rajapakse. Ideally JVP should come on board to support the common candidate. But they also have bad experience about alliances. There is also talk that JVP will boycott the election. Bringing JVP on board is the challenge. It is the UNP that has the machinery. But after Uva elections UNP seems to be over-confident. It will be a mistake if they take things for granted. There is the perception that UNP is forcing themselves on others and this is hurting the movement. No party should impose itself on others.

**It is the UNP that has the machinery. But after Uva elections UNP seems to be over-confident. It will be a mistake if they take things for granted. There is the perception that UNP is forcing themselves on others and this is hurting the movement. No party should impose itself on others.**

**A common platform is necessary. A platform that gives the perception that Mahinda Rajapakse can be defeated. We will all have to compromise to achieve this end.**

**Who the common candidate is, needs to be discussed.**

Election of Uva Province shows potential for change. But the Sinhala Buddhist majority still supports Mahinda Rajapakse. However a majority of the Sinhala Buddhist vote is not essential for change. It is reasonably expected that numerically smaller communities; Tamils, Muslims and Hill-country Tamils, will vote against Mahinda Rajapakse in large numbers. If that happens, Rajapakse can be defeated even if a majority of Sinhala Buddhists support him.

There was violence and use of state resources at the Uva election. Money was spent. But the money spent will be nothing compared to the money that will be spent at the next election. This is another enormous challenge.

A common platform is necessary. A platform that gives the perception that Mahinda Rajapakse can be defeated. We will all have to compromise to achieve this end.



## Is a Common Candidate sufficient?

Who the common candidate is, is to be decided by the political parties.

However we, the civil society must make sure that our concerns are highlighted in the process.

We need to have an open mind. We all need to make sacrifices. We need to come forward for a front that accepts the democratic demands of all people.

At least 1/4<sup>th</sup> of the population don't feel that they belong to the country. This is an issue that needs to be addressed patiently and creatively. There is distrust among communities. We are divided. It is necessary to find out how we can come together. Than focusing so much about the common candidate, it is important to think about a programme we all agree upon.

How can the future government address reconciliation? This is the discussion we do not have in Sri Lanka. The present dialog is on the common candidate. It is the democratic issue that needs to be addressed first.

The present regime runs along the ideology of Sinhala nationalism. They have an enormous power. It is thought that Mahinda Rajapakse cannot be defeated without a common candidate. That's logical. We have to come together. But what do we come together for?

It is important look at how the current president came in to power? He came to power with a majority of 180 000 thanks to a boycott in North and East. When he became president he had only 56 members in his party. That is 1/4<sup>th</sup> of the Parliament. There was an LTTE leader who controlled two provinces, international supervision and an uncontrollable chief justice. There was also the 17<sup>th</sup> Amendment. He was also a common candidate. He was supported by JVP, left and Nationalists. He was supported because he was a candidate who supported human rights, labor movement and media. He was also leftist. He could easily be controlled by other parties. He was the perfect common candidate. He was controlled constitutionally, internationally and politically.

How did he grow in to such proportions? Everybody allowed him to grow: Allowed him to suspend the constitution: Supreme Court allowed the crossing over. We need to examine this situation before we support the next common candidate.

We need to put forward a democratic agenda including rights of minorities, women and other marginalized groups. We have to address issues of minorities. It cannot be done only constitutionally. It has to be done politically as well.

Who the common candidate is, is to be decided by the political parties. However we, the civil society must make sure that our concerns are highlighted in the process. We need to have an open mind. We all need to make sacrifices. We need to come forward for a front that accepts the democratic demands of all people.

# Abolish the Executive Presidency, Repeal the PTA and Return to Normalcy

Firstly, It is necessary to repeal the Prevention of Terrorism Act (PTA). PTA affects democracy in broader sense. Interestingly in the present political discourse, TNA has taken the position that they demand the repeal of PTA. We all talk about creation of a democratic space but as long as PTA remains as a statute, there is no space for democratic discussion.

Democracy is called a mob lose. In democracy 51 rule a 100. Why should the 49 be agreed to be ruled by 100? Because the next time, 49 might become the 51. In a democratic set up, it must be ensured that there is a possibility that 49 become 51. Contribution of PTA to prevent the 49 becoming 51 needs to be examined. It should be noted that the PTA is used to silence voices against the regime and repress political uprisings.

Today there is no uprising in the country but the government still argues that PTA has to be retained. It has been stated that though war is no longer, the separatist sentiment has not completely died down, and therefore PTA should remain and military should be present and actively involves in civilian activities.

In the North and East, there are no civilian rights. In school functions in the North, the presence of military is necessary. If there is any social event, military should be present. If a public officer applies for a transfer, sometimes sanction of the military is sought. Divisional secretaries, for transfers and appointments, seek sanction of the military. It is in this context that we demand the creation of a democratic space. Returning to the normalcy of civilian life should be given the priority.

In the South the executive presidency created a moral decay. In the North and East, violence, the war, created a similar moral decay. People can be dictated and silenced. People are apathetic. Bribery and corruption are accepted. This has to be addressed secondly.

However that executive presidency should be abolished first for several reasons. Executive president is the head of the state, the cabinet and the government, the commander in chief, leads a political party and he is also the minister of defence. Further, Article 35 of the Constitution grants immunity so broad that any law can be violated. Executive president can expel the members from the political party and dissolve the parliament without giving reasons. All parties at this point are getting together and

It should be noted that the PTA is used to silence voices against the regime and repress political uprisings

In the North and East, there are no civilian rights.

If there is any social event, military should be present.

It is in this context that we demand the creation of a democratic space. Returning to the normalcy of civilian life should be given the priority.

there is a realization that executive presidency should be abolished. It has been proved to be myth that this system facilitates minority rights and minority control.

Another issue is the judiciary. Constitution is interpreted by the Supreme Court. President can appoint anyone to the Supreme Court. This discretion renders challenging a bill useless.

It is time for us to consider and reconsider the situation and join hands with different sections and ensure that the system is abolished. Discussions with various political parties are important. We should demand from the presidential candidate to abolish the PTA. Further, no one is willing to bet on a losing horse. Therefore the issue of who the common candidate is needs to be dealt with carefully. It needs to be someone who can firstly win and secondly, deliver.

---

## Aspirations of Tamil people

Four points need to be made:

Firstly, it is true that under the PTA, the country cannot be ruled.

Secondly, we, the Tamils, have not been playing a major role in Constitutional making since 1972. When the 1978 Constitution came, we were not really interested. Though we were affected and governed by this Constitution we were detached from the constitutional making process. Constitutional making went on in the South.

Thirdly, proposals in 1994, 2000 and 2006 failed. What is the guarantee that we won't be deceived once again by the rulers?

Lastly, we have to publicly agree upon the Common Candidate. No secret agreements. And the common candidate should be presented with the burning issues.

# Regime Change Needs Tamil – Muslim Unity

The first thing that needs to be done is for the Tamils and Muslims to unite; not in the form of a political coalition, but as people.

It is time to unite and regain democracy and freedom. However changes must take place among Sinhalese first. Majority needs to take the road.

Aspiration of Muslims is a regime change.

Anti-democratic fascism is the basic element of the present regime. Minorities are marginalized. They have been excluded from governing and power. National question is considered to be no more. Mahinda Rajapakse has stated that we are one country, one people. Government has deliberately destroyed the demands of the Tamil people and now they are doing the same to demands of Muslim people. Government is not only against the minority but also human rights. The Government is against the whole nation. This is a new phenomenon in the political history of Sri Lanka which makes it necessary for all of us to unite.

It is obvious that the Government is feeding and supporting the BBS. The agenda of Sri Lankan regime is being implemented by BBS. There are 18 Muslim parliamentarians and 16 of them are with the Government. They enjoy privileges and protect the government. But today they are in a difficult position. It is becoming increasingly difficult for them not to agree with Muslim people.

Situation is so that the Muslim political parties are with the government but Muslim people are against it. Aspiration of Muslims is a regime change.

The first thing that needs to be done is for the Tamils and Muslims to unite; not in the form of a political coalition, but as people.

Mahinda Rajapakse is no more dependent on minority votes. BBS pose a greater challenge: they can completely destroy diversity in Sri Lanka.

It is time to unite and regain democracy and freedom. However changes must take place among Sinhalese first. Majority needs to take the road.



# UN Involvement in Human Rights in Sri Lanka

It is important to identify two parts of the UN and have different strategies to deal with them. One is the political part. Human Right Council and Security Council are political bodies. They take decisions primarily based on political consideration, as they consist of governments. Second part of the UN is the technical part. Treaty bodies who are groups of experts and Office of the High Commissioner of Human Rights belong to the technical part.

For the past few years we have paid far too much attention to political side and less attention to technical side. Technical side is an important tool to push the political side. Sri Lanka has been lucky in the last few years because political superpower has championed our cause.

Currently there is an investigation going on about Sri Lanka; OISL. This investigation is expected to focus on truth, justice and reparation. It is likely that truth will come out of this report, perhaps an acknowledgement of tragic things done by both parties to the conflict. In terms of justice, we will hardly get anything. The most unlikely thing is that there will be a UN tribunal. Secondly it is extremely unlikely yet technically possible that there will be a referral to the ICC. It is also possible that this investigation recommends the Security Council to refer Sri Lanka to ICC. However this is also unlikely. It is possible that a national level war crimes investigation is initiated. We will hardly get any reparation. Reparation must logically come from Sri Lankan government. However, it is possible for us to push for a voluntary trust fund under the UN administration, for victims.

With regard to this investigation, there is the question of continuity. Continuity will depend on the democratic reforms in Sri Lanka.

It is possible that this investigation will bring forth a roadmap with specific and detailed recommendation. It is also possible that the investigation recommends having an Officer of the High Commissioner for Human Rights in Sri Lanka with a strong monitoring and protection mandate. The other possibility is appointing a special rapporteur for Sri Lanka.

At the moment within Sri Lanka, only TNA supports a serious war crimes investigation. Other political parties, human rights defenders and civil society show little support.

Sri Lankan human rights defenders and civil society has not been sufficiently engaging with technical bodies of UN. For example from March to May 2014 there were only 5 complaints sent from Sri Lanka to UN Special Procedure.

**For the past few years we have paid far too much attention to political side and less attention to technical side. Technical side is an important tool to push the political side**

**With regard to OISL investigation, there is the question of continuity. Continuity will depend on the democratic reforms in Sri Lanka.**

**It is possible that this investigation will bring forth a roadmap with specific and detailed recommendation.**

There is a lack of interest. If we want to get more out of UN paying attention to technical part is important.

## Rethinking Geneva Strategy is Necessary

Sri Lanka is at cross roads.

The upcoming Presidential election could go either way. There is a great opportunity to dislodge Rajapaksa regime but main opposition UNP seems to be unprepared to build a broad front of what is necessary. UNP has derailed the common candidate discourse in the hope that all other anti-Rajapaksa forces will follow its line. The UNP is drifting towards Sinhala Buddhist electoral politics instead of an inclusive strategy. So far it has not shown a probability of becoming an agent for a paradigm shift towards a far reaching democratic transformation.

We are in a developing situation and nothing can be predicted for sure.

Possibility of Rajapaksa regime initiating Constitutional changes towards democratic governance including the abolition of executive presidency is very remote.

Whatever happens, there will be a role for UN mechanisms in promotion and protection of human rights in Sri Lanka.

Presidential election will see unprecedented levels of violence and abuse of power. If Rajapaksa is re-elected for another term, human rights situation in the country will take a noose drive. The ominous signs are already visible. The public space for human rights activism will be curtailed drastically. NGOs and civil society will face increased intimidations and threats. Opposition political parties will face an uphill task to keep any political momentum. The third term for Rajapaksa will assume a long term semi autocratic family rule in Sri Lanka.

In such a scenario the main theatre of human rights campaign may well shift to outside the country. Geneva will acquire more importance. The struggle for democratic governance and human rights will have to have a long term perspective.

On the other hand, if Rajapaksa regime is defeated by a common candidate in the presidential election, democratic space in the country will expand considerably, at least in the short term. Political activism and people's desire for political participation will increase providing opportunity for popularising democratic ideals.

Still UNHRC and other UN mechanisms will have to play an important role pushing the HR agenda in to the centre in the short term and keeping the HR issues in focus in the long term.

It is important that we keep both the options open.