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# DEMOCRACY, HUMAN RIGHTS AND GOVERNANCE ASSESSMENT OF SRI LANKA

## UPDATED REPORT

DECEMBER 2015

This publication was produced for the U.S. Government by Gavin Helf, Jason Aplon, Shadrach Ludeman and Mark Silva of USAID; Joseph Schaller of the U.S. Embassy/ Sri Lanka; and Lynn Carter and Neil DeVotta of MSI in March 2015. It was revised subsequent to the parliamentary elections in September 2015 by Lynn Carter and Neil DeVotta.

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## **DISCLAIMER**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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## ACRONYMS

ACMC	All Ceylon Muslim Congress
AG	Attorney General
BBS	Bodu Bala Sena
CAS	Ceylon Administrative Service
CCS	Ceylon Civil Service
CWC	Ceylon Workers Congress
DRG	Democracy, Rights and Governance
EIU	Economist Intelligence Unit
ER	Emergency Regulations
EPDP	Eelam People’s Democratic Party
FDI	Foreign Direct Investment
FPTP	“First Past the Post” (electoral system)
GA	Government Agent, civil servant in charge of a district
GBV	Gender Based Violence
GoSL	Government of Sri Lanka
ITAK	Ilankai Tamil Arasu Katchi (Lanka Tamil Federal Party)
JHU	Jatikha Hela Urumaya (National Sinhalese Heritage Party)
JVP	Janatha Vimukthi Peramuna (People’s Liberation Front)
IDP	Internally Displaced Person
IGP	Inspector General Police
JSC	Judicial Service Commission
LLRC	Lessons Learned and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
NHRC	National Human Rights Commission
NPC	National Police Commission
NPC	Northern Provincial Council
OHCHR	Office of the (U.N.) High Commissioner for Human Rights

PAFFREL	People's Action for Free and Fair Elections
PLOTE	People's Liberation Organization of Tamil Eelam
PR	Proportional Representation
PSC	Public Service Commission
PTA	Prevention of Terrorism Act
PTF	Presidential Task Force
RAW	Research and Analysis Wing
SLFP	Sri Lanka Freedom Party
SLMC	Sri Lanka Muslim Congress
SSAB	State Services Advisory Board
SSDB	State Services Disciplinary Board
STF	Special Task Force
TELO	Tamil Eelam Liberation Organization
TMVP	Tamil Makkal Viduthalai Pulikal
TNA	Tamil National Alliance
TULF	Tamil United Liberation Front
UNFGG	United National Front for Good Governance
UNHRC	U.N. Human Rights Commission
UNP	United National Party
UPFA	United People's Freedom Alliance

## SECTION I. INTRODUCTION

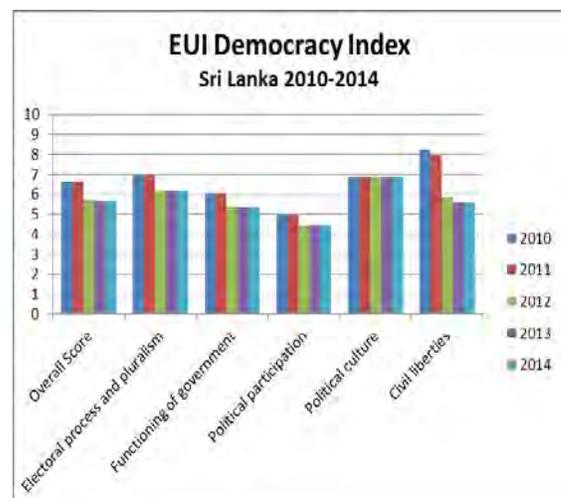
The election of President Maithripala Sirisena on January 8, 2015, provided the U.S. Government and many of its local partners with the first good news out of Sri Lanka in many months, if not years. With the end of the Rajapaksa era and the establishment of a new government, it seemed that the authoritarian drift had stopped and that a democratic transition might well be in the offing. Whether the former President Mahinda Rajapaksa could stage a partial or full come back, including taking over as Prime Minister, depended on the outcome of the parliamentary elections, finally held in mid-August 2015, four months later than the new government had first proposed. While Rajapaksa and some of his supporters won seats in parliament, their bid for a majority of seats was unsuccessful. They will sit in opposition and will be disruptive on certain issues, but many reforms may be able to proceed. Governance and human rights have improved from what had declined to a very low base under Rajapaksa. There is reason for hope that Sri Lanka can reclaim democratic processes and rebuild democratic institutions, particularly addressing core problems with inclusion, consensus on the rules of the game, Corruption, and checks and balances. Still, the dynamics of the new coalition government may well pose challenges in critical areas such as reconciliation, accountability for alleged war crimes, and minority rights.

On most democracy indices, Sri Lanka's ratings showed a marked decline after 2006. In 2006, Freedom House declared the country "free" with scores on the political rights and civil liberties of 3 and 3 respectively, (on a scale of 1-7, with 1 being most free). In 2007, a year after the government returned to a war strategy, concluding (perhaps rightly) that it would never be able negotiate an acceptable peace deal with the authoritarian LTTE, the scores dipped to 4 and 4, with an overall assessment of "partly free." In 2011, political rights declined from a 4 to a 5 score and the "partly free" designation remained. The country's scores for both indices have remained flat since. Figure 1 shows the political decline that Sri Lanka has experienced in recent years on another broadly-used index, that of the Economist Intelligence Unit (EIU); by 2014, Sri Lanka possessed a hybrid, semi-authoritarian regime. Other democracy indices broadly agree with the assessment of the EIU, though some demonstrate even worse scores in areas such as rule of law and human rights.

The U.S. Government disagreed with the positions and policies of the Rajapaksa regime on many issues, and its development assistance portfolio was constructed accordingly. In the aftermath of the presidential election, the new Sirisena government was clear that it wanted a better relationship with the U.S. in particular, and Europe and U.N. more generally. The unexpected prospect of resolving concerns related to restrictions on freedom of expression, religion and association; the treatment of minority communities; rising and unsustainable debt levels; increasing dependence on the Chinese; and the need to respond to demands for wartime accountability led the Department of State and USAID to decide to conduct this interagency democracy, rights and governance (DRG) assessment. Through this assessment, the U.S. government hoped to gain a better understanding of the prospects for a genuine transformation of politics and the emergence of a more inclusive society.

This report summarizes the findings of the assessment. While the assessment was first produced in the aftermath of the presidential election in March, it was subsequently updated in the immediate aftermath of the August

**Figure 1: EIU Erosion in Democracy Scores**



parliamentary elections and release of the Office of the (U.N.) High Commissioner for Human Rights Office (OHCHR) report on Sri Lanka. The narrative explains why Sri Lankan political elites and civil society rejected President Mahinda Rajapaksa's effort to secure a third, constitutionally dubious, presidential term, and one that would have represented the consolidation of a super-presidential authoritarian regime, and how they came together to do so. The fact that the defeat came via discontent within Rajapaksa's Sri Lanka Freedom Party (SLFP), the ballot box, and the healthy reaction of state institutions surprised Sri Lanka watchers and the international community. Despite the significant powers of Sri Lanka's president, the parliamentary elections still mattered; a transition could not be assured if Rajapaksa engineered his way back to power through a majority in parliament.

Sirisena was the SLFP General Secretary and Minister of Health until he became the common opposition candidate and challenged President Rajapaksa. The main opposition United National Party (UNP), former SLFP president Chandrika Kumaratunga, some within the SLFP, and over 40 other parties and civil society associations supported Sirisena's candidacy. Sirisena in turn promised to make the UNP leader Ranil Wickremesinghe prime minister and did so following his victory. This led to an unusual political situation in that the SLFP-led United People's Freedom Alliance (UPFA) enjoyed a clear majority in parliament even though the government was run by UNP parliamentarians who were a minority.

The small parties that constituted the UPFA coalition had ridden Mahinda Rajapaksa's coattails to enter parliament. These parties took the lead in the so-called "Bring Back Mahinda" campaign, which was designed to recapture a majority in parliament and make Rajapaksa the prime minister. A UPFA majority in parliament under Rajapaksa could have enabled the group to stymie President Sirisena's reforms and, more importantly for campaign leaders, slow down or eliminate corruption investigations implicating the Rajapaksa family, many within the UPFA, and their cronies.

While President Sirisena's election made him leader of both the SLFP and UPFA, Rajapaksa's threats to split the SLFP forced the president to accommodate him and his supporters in the UPFA, notwithstanding their attempts at undermining the president's authority throughout the spring and early summer. The Sirisena government stumbled in some areas including corruption prosecutions, though it did well in securing some promised reforms such as the 19<sup>th</sup> amendment. As the August parliamentary elections approached there was much apprehension as to whether the Sirisena government could hold onto its gains. The divisions within the SLFP were especially made clear when two days before the elections, President Sirisena claimed he would not make Mahinda Rajapaksa prime minister, even if the UPFA won a majority.

The results of the August 17 election produced relief if not outright cheers among supporters of reform and moderation. The UPFA, which featured Rajapaksa as its front man, took 95 seats while the UNP-led United National Front for Good Governance (UNFGG) coalition captured 106 seats. This contrasted with the 144 seats the UPFA won in the 2010 parliamentary elections, a year after the LTTE was defeated. Mahinda Rajapaksa and the UPFA also captured fewer votes throughout the island than during the January presidential election.

UNP leader Ranil Wickremesinghe was sworn in again as prime minister (for the fourth time in his political career). Wickremesinghe and President Chandrika Kumaratunga were unable to establish a productive working relationship when he was prime minister between December 2001 and April 2004, but this time around, he and President Sirisena have a common enemy in Rajapaksa, who declared that he would use his time in parliament to "safeguard the nation and the democratic system."<sup>1</sup> Since the parliamentary elections, Rajapaksa and about 56 others belonging to the UPFA have chosen to sit as part of the opposition. This pro-Rajapaksa faction may be in a position to block promised constitutional changes, which require a two-thirds majority in Parliament.

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<sup>1</sup> Mahinda Misfires, *The Economist*, August 22, 2015. <http://www.economist.com/news/asia/21661650-rajapaksa-fails-again>

While the country has reoriented towards democracy in many important respects, important questions remain. Can these gains be institutionalized? Will the democratic advance continue? How committed to fundamental change in the political system is the “new” leadership that came out of the “old” leadership? To what extent do coalition politics and the parties’ respective political bases facilitate the accountability and reconciliation needs of the Tamils, Muslims and other minorities, the treatment of which contributed to democratic breakdown in the first place? How ready are the institutions of the Sri Lankan state and civil society to fulfill robust roles after 30 years of conflict and a decade of authoritarian suppression and atrophy? How long does the perhaps-fragile democratic consensus have to “deliver the goods” before the advocates of a more autocratic governmental system exploit perceived failures? Finally, how can development assistance best support the success and consolidation of a healthy democracy in Sri Lanka?

## SECTION 2. POLITICAL EVENTS AND DYNAMICS FROM 2014

### 2.1 SUMMARY OF THE DRG PROBLEM ON THE EVE OF THE 2015 PRESIDENTIAL ELECTION

Rajapaksa’s claim to legitimacy rested on his role in successfully ending the war with the Liberation Tigers of Tamil Eelam (LTTE) through a crushing military victory that required an extraordinary push on the part of the Sri Lankan military and focused leadership by the Rajapaksa administration. In 2006, Rajapaksa abandoned the policy of negotiation with the LTTE that had characterized his predecessor as president and SLFP leader, Chandrika Kumartunga, and successfully pursued the ultimate military defeat of the LTTE in 2009. To achieve this victory, the Rajapaksa government employed all of the tools at its disposal, including the use of counterintelligence domestically, waging a successful divide-and-conquer counterinsurgency campaign in the East and suppressing opposition, civil society, media and legal challenges while employing a narrative of maximalist Sinhala Buddhist nationalist propaganda. It blurred the lines between enemy and opposition, traitor and patriot, and the checks inherent in democratic systems were vitiated over time.

The Rajapaksa approach was not a mundane slide into autocracy and corruption or part of a “wave” of autocratic consolidation, but an expression of the overarching policy of winning the war rather than negotiating peace. After the defeat of the LTTE, the Rajapaksa government maintained many of the “wartime” characteristics that had served it so well, especially those aimed at control of the media, civil society and political opposition. But without an LTTE to fight, the regime slowly degraded into a more run-of-the-mill venal, authoritarian and family-run regime, which began to spread its arbitrary power into the economy and polity through a combination of corruption, patronage, repression, violence and appeals to Sinhala Buddhist nationalism and xenophobia. The regime was squeezing out independent activity in an increasing number of areas and often setting up parallel government, civil and economic structures that served only its own interests. Its rhetoric aimed to maintain support in the Sinhalese Buddhist South at the expense of the Tamil North and minority populations, especially Muslims.

A 2012 USAID DRG assessment update noted a few cracks in the otherwise seamless Rajapaksa system of control.<sup>2</sup> Many SLFP second-tier players had been sidelined by either the growing appetites of the extended Rajapaksa family (suggesting the government had become more of a Rajapaksa family enterprise than an SLFP venture) or by the need to provide ministerial positions for “crossovers” from the UNP who had joined the Rajapaksa government. But the assessment update posited that the central DRG dilemma was “moving from a post-conflict to a post-democratic Sri Lanka.”

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<sup>2</sup> David Timberman and Neil DeVotta, DRG Assessment Update, MSI, for USAID, 2012, 19.

## 2.2 POLITICAL EVENTS AND DYNAMICS

Worried about losing support in later presidential elections and knowing he could easily defeat the UNP's Ranil Wickremasinghe, President Mahinda Rajapaksa scheduled elections nearly two years early in January 2015, just as he had done in 2010. His opponent, however, turned out to be Maithripala Sirisena, the SLFP's long-standing general secretary and sitting Minister of Health, who ran as the common opposition candidate. A prominent Buddhist monk, Maduluwawe Sobitha Thero, had broached the idea of a common opposition candidate to challenge Mahinda Rajapaksa, and he and Rajapaksa predecessor Chandrika Kumaratunga were considered likely to do so, even as the UNP insisted Wickremasinghe would be its presidential candidate. The election thus turned out to be an SLFP versus SLFP affair, but a politician such as Sirisena was necessary because the UNP's Wickremasinghe stood no chance of defeating Rajapaksa, while Sobitha Thero's status as a monk and Kumaratunga's controversial tenure as president made them each unviable. Sirisena's rural upbringing and his Sinhalese Buddhist credentials also prevented the Rajapaksas from portraying him as a western stooge.

Those who banded together in the New Democratic Front to evict Rajapaksa resented the extent to which the president fostered corruption, nepotism and political violence, which in turn had undermined the rule of law and the island's institutions. While they commended Rajapaksa for defeating the LTTE in 2009, they deplored the kleptocracy he and his family unleashed and the way Sri Lanka's compromised yet appreciable democracy was being catapulted toward authoritarianism. They were also angry at regime abuse of journalists, media outlets and civil society activists and the improper impeachment of Sri Lanka's first female Supreme Court chief justice, with a Rajapaksa minion superimposed in her place as corruption reached new heights throughout the courts system.

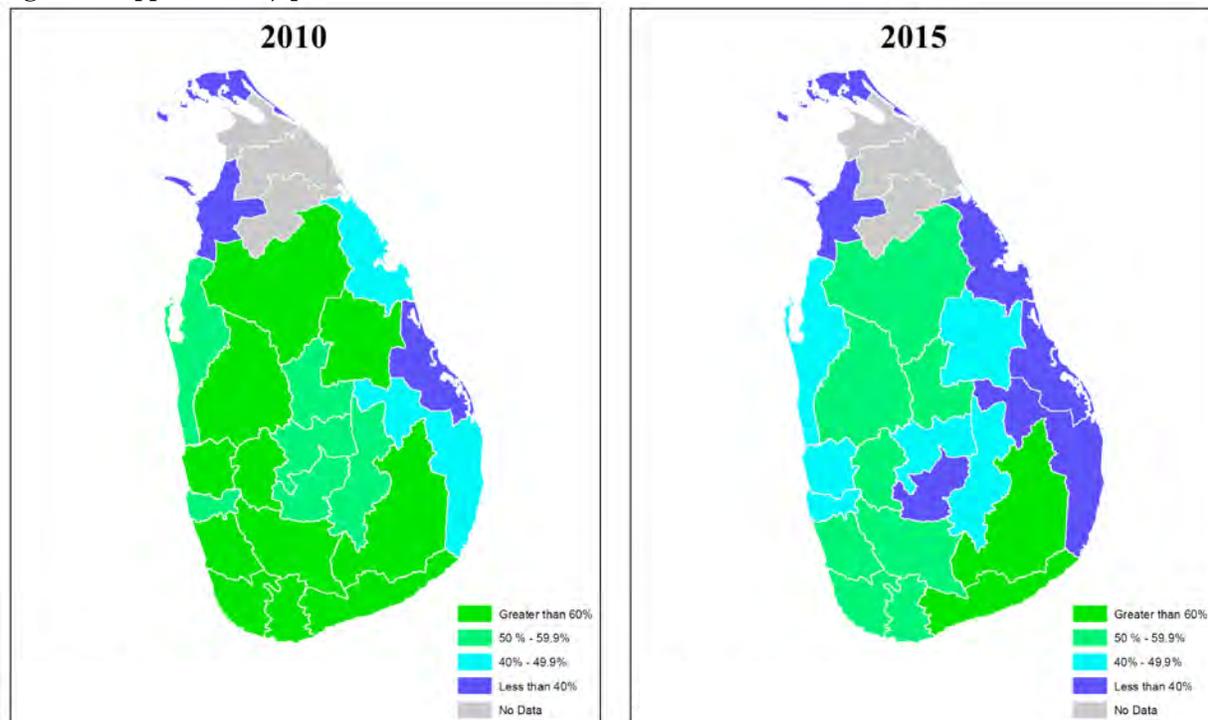
There were personal rivalries at play too. Former President Kumaratunga resented how the Rajapaksas were marginalizing the legacy of her father, S.W.R.D. Bandaranaike, who founded the SLFP, and instead played up the role of their father, D.A. Rajapaksa, who was the first to join Bandaranaike when he left the UNP for the opposition.

The international community also had a stake in the outcome. President Rajapaksa had alienated the West by persecuting civil society, journalists and opponents and moving the island toward authoritarianism; refusing to deal with credible accusations suggesting the country's military perpetrated war crimes toward the latter stages of the war; and promoting a narrative that combined Sinhalese Buddhist nationalism with anti-Western propaganda, claiming a jealous and rapacious West sought to undermine Sri Lanka, Buddhism and his government. He had upset India by repeatedly failing to keep promises to Indian leaders on devolving power and reconciling with Tamils. And he went out of his way to cultivate ties with authoritarian regimes, especially in his relations with China — partly to balance against those he had alienated, but also to attract Chinese investment. The China-Sri Lanka bonhomie Rajapaksa established led to a symbiotic relationship: China's state banks provided relatively high interest, nontransparent loans for often-unsolicited projects that used Chinese materials and contractors (and often Chinese labor), and the Rajapaksa family and cronies used the loans to pocket huge commissions while claiming they were developing Sri Lanka. While India worried about China's expanding influence, it grew especially concerned when a Chinese submarine docked at the Colombo port in September 2014. India was livid when a second submarine showed up in November — because India had expressed strong displeasure over the first one.

Sirisena's camp experienced intimidation and serious pre-election violence, but this presidential race was less violent than past contests. While voter turnout in Sri Lanka's past few presidential elections has been more than 70 percent, 81.52 percent voted in this election. Despite the Rajapaksa camp using state media, vehicles and civil servants to promote its campaign and vilify Sirisena (in violation of election laws), the latter won 12 electoral districts and captured 51.28 percent of the votes, while Rajapaksa won 10 electoral districts with 47.58 percent of the vote. Sirisena beat Rajapaksa by more than 654,500 votes in the Northeast, but his island-wide lead over Rajapaksa was only 449,072 votes. Thus, a majority in the South voted for Rajapaksa, and Sirisena would not have won if Tamils, Muslims and Christians (including both Tamils and Sinhalese) had

not voted for him in large numbers. But with the Sinhalese comprising 75 percent and Buddhists amounting to 70 percent of the population, he needed — and received — sufficient support from the majority community to make Rajapaksa the first incumbent president in Sri Lankan history to be defeated in an election. The accompanying maps (figures 2 and 3) below show vote share.

**Figure 2: Support for Rajapaksa in 2010 and 2015**



Government servants know best how government functions, and it is notable that Rajapaksa garnered a lower percentage of postal votes (used mainly by government employees, including soldiers who are stationed away from their homes) compared to the 2010 election in every Southern district. It is also instructive that nearly 98 percent of Sri Lanka’s military and around 95 percent of the civil service are Sinhalese. Thus, while Sirisena would not have prevailed without strong backing from the minorities, his ultimately was a victory based on multi-ethnic and multi-religious support. On the other hand, the vast majority of SLFP supporters voted for Rajapaksa, while Sirisena (who spent nearly 45 years in the SLFP) won mainly thanks to those who traditionally vote for the UNP presidential candidate. This means that the votes President Rajapaksa captured were rooted in pro-Rajapaksa sentiment, while those Sirisena garnered were rooted in anti-Rajapaksa sentiment.

Rajapaksa claimed that Muslims and eelam (separatist) Tamils were responsible for his defeat, representing a loss for Sinhala Buddhists. Sinhalese Buddhist nationalists claim that Sri Lanka is the designated sanctuary for Buddhism (dhammadipa), the Sinhalese are the chosen people to protect and propagate Buddhism (sinhadipa) and minorities live in the island thanks to Sinhalese Buddhist sufferance. Rajapaksa’s comments reinforced his Sinhalese Buddhist credentials even as he attempted to degrade Sirisena’s victory. Rajapaksa refused to pursue genuine reconciliation with Tamils after defeating the LTTE, and he allowed racist elements like the *Bodu Bala Sena* (Buddhist Power Force, BBS) to vilify and attack Christians and Muslims, which was why all three communities voted against him. Rajapaksa’s continued involvement in politics is bound to be as a Sinhalese Buddhist nationalist icon.

Many believed that the Rajapaksas would not hand over power without a fight, and credible reports claim that Rajapaksa, upon realizing Sirisena would defeat him, sought to proclaim an emergency and annul the election.

The attorney general (AG), however, reportedly refused to sign the emergency proclamation, and the inspector general of police and army commander also reportedly refused to go along. Mahinda Rajapaksa and those with him at the time have denied that they sought to mount a coup. The new government initially said an investigation was underway, but the episode appears to have been put aside.

Figure 3: 2015 Election Results



Sri Lanka saw a turnover of power between the UNP and SLFP in 1956, March and July 1960, 1965, 1970 and 1977. But power between parties and their coalitions has changed hands just twice (in 1994 when the SLFP under Chandrika Kumaratunga came to power and in 2015 when Maithripala Sirisena defeated Mahinda Rajapaksa) since the 1978 constitution and presidential system were introduced. The presidential system is considered a significant reason for Sri Lanka’s democratic regression. A major promise made by those associated with the common opposition candidate Maithripala Sirisena was that he would amend the 1978 constitution to strengthen independent institutions and introduce appropriate checks and balances to governance. The watered down 19th Amendment to the constitution has achieved this to an extent and the government appears serious about instituting further reforms that stand to strengthen the prime minister and parliament.

One major disagreement among parties following the presidential election was whether and when to change the electoral system from the current preference list system to a mixed system, including proportional representation and “first past the post” elements. Sirisena’s manifesto promised to do so within the first 100 days but the UNP, SLFP, and smaller parties were unable to agree on the extent to which the system should be changed and its timing. Consequently, the August parliamentary elections were held under the existing preference list system. The new government has promised, among other things, to devolve power to Tamils within a unitary state, and it is possible this would include electoral reforms as well.

Sirisena’s victory and his appointment of Wickremasinghe as prime minister had led to an odd situation in parliament because UNP parliamentarians, in the main, comprised the cabinet and formed the government despite being in the minority, while most within the UPFA comprised the opposition, despite being in the majority. This was, ultimately, a Rajapaksa parliament because most within the UPFA had ridden the former president’s coattails to win elections in 2010. Many within this group also resented Sirisena for having run against Rajapaksa, thereby enabling the UNP’s return to power. These dynamics in parliament were why the 19<sup>th</sup> Amendment had to be watered down, and Sirisena and Wickremasinghe were unable to institute some of their more ambitious promises.

Rajapaksa’s attempts to make a comeback as prime minister also threatened to undermine Sirisena’s authority, and this was another major issue that preoccupied the country during the period between presidential and parliamentary elections. The smaller parties within the UPFA and a group within the SLFP (branded SLFP rebels) were at the forefront in holding rallies in major cities and promoting Rajapaksa as the future prime minister. Rajapaksa too campaigned vigorously. The fear that they, their families, and cronies could be held accountable for corruption, perpetrated during Rajapaksa’s presidency and, in the case of the former president, the possibility of being implicated in war crimes for the way in which the final weeks of the conflict with the LTTE was handled, helped galvanize the “bring back Rajapaksa” campaign.

The next parliamentary elections were not due to be held until April 2016, and some within the UPFA clamored for a no-confidence motion against Wickremasinghe, thereby allowing the majority UPFA to

control the legislature. It was amidst such politicking that President Sirisena dissolved parliament in June 2015.

By the time parliament was dissolved, the coalition that had formed to elect Sirisena had begun to fray. Rajapaksa's attempts at a comeback, however, caused most to regroup. It led to the Sri Lanka Muslim Congress, All Ceylon Muslim Congress, National Union of Workers, Democratic People's Front, Upcountry People's Front, and the Jatikha Hela Urumaya (National Sinhalese Heritage Party, JHU) forming the United National Front for Good Governance or the UNFGG. The Tamil National Alliance (TNA), which contested as the Ilankai Tamil Arasu Katchi (Lanka Tamil Federal Party, ITAK) and the Janatha Vimukthi Peramuna (People's Liberation Front, JVP) ran on their own despite opposing Rajapaksa and the SLFP-led UPFA.

Sirisena had promised to stay neutral during parliamentary elections. At the same time, he felt pressed to provide nominations to many in the SLFP who were tainted by charges of severe corruption and had worked against his presidential candidacy—lest they formed an alternate party and split the SLFP. This led to Rajapaksa leading the UPFA campaign in an individualistic manner that gave UPFA rallies a more presidential than parliamentary tone. Yet two days before the elections, Sirisena sent Rajapaksa a letter that accused him of undermining the SLFP and declared that he would not make him prime minister even if the UPFA won a majority in parliament.

The parliamentary elections held on August 17<sup>th</sup> were the most peaceful elections in Sri Lanka's history. Voter turnout was 77.6 percent. And while the UPFA captured 95 seats, the number of votes for Rajapaksa and the UPFA dropped across the country when compared to those garnered by the former president in the presidential election. Rajapaksa had hitherto run from the Hambantota District in the island's south, but he chose this time to run from the Kurunegala District as it is the country's third biggest district. Kurunegala also has a large number of military families that he believed would be loyal to him. While he did receive the largest number of preference votes within the UPFA (423,529), this was nearly 133,000 fewer votes than he received in the January presidential election. The UNP's Ranil Wickremasinghe, on the other hand, received the highest number of preference votes (500,566) from the Colombo District.

*"This man [Rajapaksa] is not running [in the parliamentary elections] for love of country. He is running to keep his family out of Welikada [the country's main prison]."*

-Academic at the University of Colombo, July 2015.

The election saw the UNP-led UNFGG alliance finish at the top with 106 seats. The ITAK banked 16 seats while the Eelam People's Democratic Party and the SLMC, which contested some districts outside the UNFGG alliance, took one each. The JVP's failure to capture more than six seats was arguably the biggest surprise of the election. Sirisena and Wickremasinghe had promised a national unity government, and over 50 UPFA parliamentarians joined the UNFGG. While this has led to a parliament with 93 ministers and deputy ministers and unleashed much criticism, it has also established a government with a supermajority (given that the legislature has 225 seats) and makes the passage of constitutional reforms more likely.

The parliamentary election results were also heartening given the poor performance of those who adopted extremist platforms. On the Sinhalese side, the Bodu Jana Peramuna (Buddhist People's Front), which was the party the BBS mounted to contest the election, won only 20,377 (0.18%) votes. The result was quite in contrast to the large crowds the BBS attracted to its mainly anti-Muslim rallies that the Rajapaksas tacitly supported.

Among Tamils, the All Ceylon Tamil Congress (ACTC), which draws support from pro-LTTE elements within the Tamil Diaspora, also performed poorly, winning just 18,644 votes (0.17%) votes. The pro-LTTE forces within the Diaspora consistently vilify TNA leaders Rajavarotheyam Sampanthan and M. A. Sumanthiran, and the ACTC's leader, Gajendrakumar Ponnambalam, has been at the forefront (assisted to a

degree by the Northern Province Chief Minister C. V. Wigneswaran) in carrying out their campaign in Sri Lanka.

A group of ex-LTTE cadres also contested the election in Jaffna (as part of the Independent Group 04 Jaffna District) but garnered only 1,979 (0.02%) votes. Ultimately, not only did the vast majority of Tamils in the Northern Province disregard calls by extremist and spoiler elements to boycott the presidential election, which would have prevented Sirisena from being victorious, they also overwhelmingly supported the TNA, which under Sampanthan and Sumanthiran has pursued a moderate and practical politics when dealing with the government and Sinhalese counterparts that could lead to Tamils' legitimate grievances being incrementally addressed.

The TNA's ability to work with Sinhalese counterparts was strengthened after Sampanthan was made Opposition Leader and the TNA was recognized as the official opposition party in parliament. There are over 50 pro-Rajapaksa parliamentarians within the SLFP who resist President Sirisena's reforms and their preference was to have one among them made Opposition Leader. But the SLFP is part of the national unity government, and the argument that one of its factions could not also operate as the opposition party prevailed. TNA members were considered LTTE proxies during the war. Their now operating as part of the official opposition could be a sign that the Sirisena government is serious about working with Tamils—even as it is a slap in the face to both Sinhalese and Tamil extremists.

Post-independence Sri Lanka began as a commendable liberal democracy, but ethnocentric policies saw it regress toward an illiberal democracy. The Rajapaksas nearly degraded it into a full-fledged autocracy. Thus, the January 2015 presidential contest was Sri Lanka's most seminal election. While the 1956 election that led to the Sinhala-only language policy and the 1978 election that led to an open-market economy both transformed politics and the nature of the state, neither threatened to drag the island into an authoritarian league as a third term for Rajapaksa threatened to do. The August parliamentary elections consolidated Sirisena's victory by denying Rajapaksa a comeback as prime minister and electing instead a near majority from the UNP-led UNFVG. With Sirisena and Wickremasinghe possibly able to rely on the ITAK to provide the UNFVG a majority in case the entire UPFA drops out of the national unity government, the chances for this parliament to complete a full term are promising. Looking forward, Sri Lanka may not fully regain its once-vaunted liberal democratic credentials for a long while, but as long as political contestation allows for parties and their supporters to campaign freely and alternate in power, and appropriate checks on presidential power are put in place, the country may obliterate the risk of a Rajapaksa-like decline into authoritarian rule.

## SECTION 3. SUMMARY OF THE FIVE DRG VARIABLES

### 3.1 COMPETITION AND POLITICAL ACCOUNTABILITY

**Is there competition in the system? Are free, fair and inclusive elections a regular feature of competition? Do mechanisms besides elections ensure that the government delivers on its promises and fulfills the public trust? Is there a competition of ideas, a free media and a vibrant civil society? Does the state broadly provide for political rights and civil liberties? Are checks and balances present between branches of government and between levels of government?**

In the area of competition and political accountability, Sri Lanka's "Rainbow Revolution" has shown the fundamentally healthy response of the island's political culture despite decades of conflict and authoritarian suppression. The 2015 presidential election was free, in the sense that common opposition candidate Maithripala Sirisena contended in what many thought would be a rigged and stage-managed poll. It was by no means fair, since Rajapaksa dominated the media and was able to use vote-buying and administrative resources to skew the results. But ultimately it was a historically inclusive election that reflected the will of the

people. The turnout was a stunning 81.5 percent and Sirisena won with 51.28 percent of the vote. His share would have been higher without the blatant misuse of government resources and government media by the Rajapaksas, but he could not have won without the overwhelming support of the Tamil and Muslim minorities. The team repeatedly heard comments such as “Elections are sacred in Sri Lanka” and “Elections matter and we take them very seriously.” In a stunning display of support for the rule of law, the army commander, the police commissioner, and attorney general rejected President Rajapaksa’s attempts on election night to declare a state of emergency and nullify the results of the election. President Rajapaksa left the official residence of Temple Trees that evening and President Sirisena was sworn in the next day.

The island’s respect for competition and political accountability was further evidenced by the August parliamentary elections. The atmosphere on the day of the election was so tranquil that most people felt there was nothing special going on—which contrasted with the fear of violence previous recent elections generated. The elections commissioner and civil society both ensured that malpractices were flagged promptly, especially during the parliamentary elections, and this combined with the new government’s determination to adhere to its *yaha palanaya* (good governance) slogan contributed to the successful outcome.

The core aim of the coalition of political forces that supported Sirisena’s “common candidacy” is to create a healthy system of checks and balances that will prevent future authoritarian backsliding. They seek to re-establish the independence of the oversight commissions created by the 17th Amendment to the Sri Lankan Constitution, but then placed under the control of the president by the 18th Amendment. They also seek to reduce the scope of the “executive presidency” and re-establish a more representative Parliament as a counterweight. This has partly been achieved with the passage of the 19th Amendment, which effectively nullifies the 18th Amendment and reintroduces the oversight commissions that the 17th Amendment sought to institute.

One of the most evident changes across the country since the inauguration of President Sirisena is the liberation of the media and civil society, which had been under intense scrutiny and the object of direct suppression. Civil society and the media have been told they are free to criticize and do their work as they see fit, and they have begun to abandon self-censorship.

*“On election night, for the first time in my life, I felt that I was part of the same country as the Tamils and the Muslims as I watched them vote against Rajapaksa and for the candidate I knew meant hope for the future of Sri Lanka.”*

— Sinhalese Journalist in Colombo

Questions of the devolution of powers from the central government to the subnational government are fraught with contentious intercommunal politics. While the 13th Amendment to the Constitution provides for the devolution of powers, it has never been fully implemented. All parties that appeal to Sinhalese votes have foresworn federalism as a way to accommodate Tamils’ grievances, and the government has promised to institute devolution within a unitary set up. This is one of the major issues it will grapple with when seeking to carry out the September 2015 United Nations Human Rights Council (UNHRC) resolution mandating reconciliation.

## 3.2 INCLUSION

**Are there problems of exclusion or discrimination? Are parts of the population formally or informally excluded and disenfranchised from meaningful political, social or economic participation, influence or leadership?**

If political accountability and reconciliation are among the first order of business for the new government, the problems of inclusion will be the thorny patch through which this new system of democratic politics will attempt to move forward in the years to come. The war-fighting regime that Rajapaksa established was based on an irreducible Sinhalese Buddhist definition of Sri Lankan identity and the suppression of all minority (or unsympathetic Sinhalese) voices. This regime won the war and then treated the defeated Tamil North and East as occupied enemy territory, stationing the bulk of its military forces in these regions to ensure control.

It also used anti-minority violence in the South and East to shore up the feeling of Sinhala communal endangerment and help consolidate its hold on power.

Rajapaksa's defeat represents the failure, for a time at least, of an electoral strategy built on an appeal to only the Sinhalese majority. An electoral formula that seeks to win votes from a plurality of the Sinhalese plus the votes of the minorities historically has proven to be more successful. This bodes well for incremental progress and compromise as national leaders seek minority support at the polls. Yet the long-term failure of Sri Lankan democratic politics to deal with problems of inclusion and the definition of community has been its Achilles' heel. Two JVP uprisings around Leftist class struggle and the LTTE separatist war, as well as the suspension of democratic civil rights and backsliding into authoritarianism they created as a reaction, were indicative of democratic failure.

The national unity government claims to promote inclusion and has signaled that it wants to move away from the Sinhalese Buddhist majoritarianism Rajapaksa represented. While the TNA/ITAK is not part of the government, it was recognized as the official parliamentary opposition, with its octogenarian leader, Rajavarotheyam Sampanthan, being made Leader of the Opposition. This was done despite the pro-Rajapaksa UPFA parliamentarians arguing that one of their own ought to be made opposition leader given their superior numbers over the TNA. But the UPFA is part of the national government and the UPFA rebels were told that their choice to sit in opposition hardly qualified the UPFA to also act as the opposition. The TNA was branded the LTTE's proxy during the civil war. Being the opposition forces it to be less strident on Tamil demands and act beyond provincial Tamil concerns, and this can have a healthy impact on national politics. That the JVP, which has historically combined Sinhalese Buddhist nationalism with Leftist politics, supported Sampanthan and the ITAK bodes well for interethnic unity. That the JVP's leader Anura Kumara Dissanayake was at the same time made Chief Opposition Whip also bodes well for inclusive governance given that the party was twice responsible for unleashing bloody insurgencies designed to overturn elected governments.

### 3.3 CONSENSUS ON THE RULES OF THE GAME

**Is there basic consensus on questions of national identity, historical narrative and fundamental rules of the game? Is the political contest played by those rules?**

Consensus around creating rules of the game that preclude the return of authoritarian politics was at the center of the coalition that united behind the common opposition candidacy of Maithripala Sirisena and against Rajapaksa's attempts to become prime minister. A very broad spectrum of political party leaders, from the Buddhist monks of the Sinhala nationalist JHU Party to the mainline parties of the UNP of Prime Minister Ranil Wickremesinghe and a broad faction of the SLFP led by former President Chandrika Kumaratunga and current President Sirisena, the frequent leftist spoiler party of the JVP and even the Tamil TNA agreed to put aside their core differences on devolution of power, reconciliation and transitional justice long enough to enact the 19<sup>th</sup> Amendment and try and introduce changes that reasserts the central role of Parliament, reduces the powers of the executive presidency, reinstates the independence of the judiciary and the oversight commissions and pass a comprehensive Right to Information Act (RTI). The long history of resorting to extra-constitutional authoritarian suppression has been explicitly rejected in favor of a system that will rely on compromise and coalition-building. Historically, however, consensus around rules of the game has proven fragile when government has failed to deliver good governance or inclusion has stalled. As we will argue later in this analysis, the internalization of these rules of the game and the capacity of the core institutions of democracy to provide for balance in the political system and advance a more inclusive agenda is now possible, but by no means guaranteed, in the years ahead. It especially stands to be undermined by Sinhalese Buddhist nationalist forces that will rally against the September 2015 UNHRC resolution Sri Lanka has co-sponsored.

Consensus on national identity and historical narrative has been elusive in Sri Lanka. In its uglier moments, the Sinhala Buddhist narrative has been one of cultural encirclement and instinctive defense of the idea of Sri Lanka as the embattled homeland of Buddhism surrounded by much larger and more powerful Hindu, Muslim and Christian imperialist forces. Under President Rajapaksa's "war-winning" regime, this position hardened into a xenophobic narrative that explicitly rejected Tamil and Muslim inclusion, including encouraging direct assaults on minority communities. Tamil elites have had difficulty coming to terms with the defeat of the LTTE and giving up the equally irreducible idea of a Tamil Eelam, or independent homeland, in the North and East of the island. Questions of federalism or autonomy will inevitably strain the current consensus on the rules of the game in years to come as Sinhalese and Tamils struggle to find a Sri Lankan identity that does not lead to the defection of one side or the other.

*"I remember what a competent and independent judicial system looks like. We had one 50 years ago. I was part of it. We were as good as or better than India. What we have now makes me ashamed."*

— Lawyer in Galle

### 3.4 RULE OF LAW AND HUMAN RIGHTS

**Are political, economic and social life bound by a rule of law? Does the government apply the law equitably to all citizens, including historically marginalized and oppressed groups and individuals? Does it hold itself accountable for adhering to the rule of law? Does the law incorporate fundamental human rights and civil liberties? Does the government enforce, protect and promote those rights?**

Respect for the rule of law and human rights in Sri Lanka are deeply held values of a culture that is proud of its democratic heritage. The formal constitutional and legal provisions are largely those of a well-formed democratic system. The violation of these norms was one of the primary reasons Rajapaksa lost support among his own base. Respect for the rule of law is why key actors refused to overturn the results of the presidential election and forced Rajapaksa to accept the outcome. But these values have been severely battered and tested by decades of conflict and abuse of power. The application of policies designed to win the war at all costs in the North have left a legacy of disappeared persons, secret detention camps, expropriation, abuse, surveillance and oppression usually reserved for occupied and hostile enemy territory.

The impunity and disregard for the rule of law that characterized the Rajapaksa regime even led, as we will see, to the abuse of power and deterioration of the human rights situation in the heartland of the Sinhalese Buddhist South. This had an impact on Sirisena's victory.

The prosecutorial system is weak. Policing is of low quality and beset by political interference and the use of torture. The courts have been adversely affected by political subordination and corruption. Finally, the military's role in policing and enforcing the regime's will has left it saddled with functions inappropriate for a civilian-led force in a democracy.

### 3.5 GOVERNMENT RESPONSIVENESS AND EFFECTIVENESS

**Do public institutions respond to public needs and provide socially acceptable services? Do those services reach all citizens equally, or do certain groups or populations face barriers to accessing services? Do mechanisms exist for all citizens to provide constructive feedback on government performance? Do robust internal mechanisms exist to hold government institutions accountable and guard against poor performance, fraud and waste, as well as violations of human rights?**

Rajapaksa lost support in his Southern base in part because he failed to deliver a "peace dividend" of increased economic opportunity and services in the minds of his people. Sri Lanka, as a middle-income country with robust economic growth figures, has the ability to provide an adequate level of government services. Even as Rajapaksa expanded the scope of the central government, quality declined. It shows in the

education system, which does not produce graduates who fit private-sector requirements. The question of economic governance and public finance, discussed below, is at the forefront of the concerns of the new government. Recapturing control over state finances would go a long way toward redirecting this growth to the public good. For example, in the month after the defeat of President Rajapaksa, the customs service collected as much as they were expecting to collect in the entire year, indicating how much wealth was being siphoned off by corruption. More transparent systems of public financial management and economic governance should have a high payoff for “making democracy deliver” better than the alternative.

While the 19th Amendment passed in April creates a Commission to Investigate Allegations of Bribery and Corruption, Public Service Commission (PSC), Audit Service Commission, Finance Commission, and National Procurement Commission among others, it will take some time for efficient and transparent governance to take root, especially in light of the deliberate deinstitutionalization the Rajapaksas effectuated. Minorities have long complained about second class treatment when dealing with government institutions, and these new commissions need to ensure that they provide services dispassionately across ethno-religious lines.

The 19th Amendment also makes accessing official information a fundamental right, although many in civil society are disappointed that the Sirisena government was not able to pass a RTI Act during its first 100 days. This was partly due to the government privileging the 19th Amendment above all else; and it was also due to the right to information working draft not having been updated since 2003-04, when the Ranil Wickremasinghe government seriously considered passing a RTI bill. The UNP’s Karu Jayasuriya, as Minister of Public Administration, was very much in favor of passing a RTI Act. His being made Speaker of Parliament deprives the bill of a committed supporter since his role requires impartiality. Some suggest that Ranil Wickremasinghe is not as enthusiastic anymore about passing a RTI bill, but many in civil society will push for updating and passing the bill and believe that parliament may be in a position to do so in the next 12-18 months as part of the reforms the new government has promised.

The Sirisena government’s failure, despite launching a number of investigations, to file charges against individuals well known to have profited from corruption has rankled many and caused people to wonder if there are secret deals being struck between current and former government officials to avoid prosecution. Many officials empowered to conduct corruption investigations were said to be dragging their feet either out of loyalty to the Rajapaksas or in fear that Mahinda Rajapaksa would make a political comeback. Sirisena has promised to continue with anti-corruption investigations. With the 19th Amendment passed and parliamentary elections completed, there is reason to hope the government as a whole will follow suit.

## SECTION 4. THE DRG OPPORTUNITY AND CHALLENGE

### 4.1 A RETURN TO NORMAL POLITICS?

Sinhalese and Tamil ethno-nationalism, the establishment of an overly powerful executive presidency in 1978 and the nearly 30-year civil war are three factors that have intersected to severely compromise Sri Lanka’s once commendable post-independence democracy. While inter-ethnic rivalries led to majoritarian politics that empowered Sinhalese Buddhists and marginalized and radicalized Tamils, J.R. Jayewardene and others used the budding Tamil rebellion to justify imposing a strong executive presidency. If the new dispensation vitiated checks and balances and gradually eroded the autonomy previously enjoyed by independent institutions, the LTTE’s terrorism that accompanied the civil war masked the civil and human rights abuses associated with the executive presidency and instead legitimized it — because many Sinhalese Buddhists especially came to believe that a strong presidency within a unitary structure was necessary to defeat Tamil separatism and preserve Sri Lanka as a unified country.

More than anyone before him, President Rajapaksa capitalized on the powers of the executive presidency; while his heavy-handed policies helped defeat the LTTE, they also undermined Sri Lanka's democracy. Sinhalese and Tamil ethno-nationalism, the executive presidency, and the civil war led to Sri Lanka regressing from a liberal democracy to what was at best a majoritarian, illiberal democracy, but the nepotism, culture of impunity, breakdown in the rule of law, deliberate deinstitutionalization and predatory and venal politics espoused by President Rajapaksa, his family and cronies catapulted the island toward authoritarianism.

The massive voter turnout that led to President Rajapaksa's ouster in January and the unusually clean and fair parliamentary election that followed in August, allow Sri Lanka to return to a politics of contestation that could lead to a degree of ethnic accommodation. Achieving accommodation will not be easy, since Sri Lanka's failures at ethnic compromise are long-standing and the source of many of the island's woes. But with the war over and the Rajapaksas' grasp loosened — and the attempt now to institute reforms that will preclude a return to authoritarian politics — the country's major stakeholders can once again dispute their preferences through democratic politics. In that sense, the island returns to the era that preceded Rajapaksa authoritarianism, in which civil society and the international community can nudge policymakers toward a more ethnically inclusive and liberal milieu.

Interethnic intransigence and petty politicking in the past have been behind Sri Lanka failing to take advantage of opportunities that could have led to a more stable and prosperous society. The country now has another opportunity to rectify some serious past mistakes, yet coalition politics post-election may make this no simple matter.

## 4.2 THE DRG OPPORTUNITY AND CHALLENGE

Sri Lanka today has some consensus on political reform and the country is largely conflict-free, a unique combination of factors that suggest an opportunity to create a democratic political system that has some potential to regain and perhaps improve upon the quality of democracy that existed in the pre-Rajapaksa period. The new government has indicated that it wants to change the way politics is done. The conduct of the recent parliamentary election is one sign of that change, a new normal, in which the winning electoral formula routinely includes critical minority votes plus a Sinhalese plurality. This suggests that solutions could involve incremental compromise with minority interests taken into consideration. This is by no means inevitable, but it is now possible, and represents a positive change from the authoritarian and mono-ethnic politics of the Rajapaksa regime. Should this happen and political will be maintained not only to pass reforms but to fully implement them, the key issue will be how well Sri Lanka's core institutions can perform their functions in this new context.

The DRG challenge in Sri Lanka is to help revive the atrophied and battered institutions of Sri Lankan democracy so they can operate more effectively and transparently and better address grievances and provide for the well-being of all segments of the population. The recent changes create an environment conducive to support this process. Sri Lanka's new government has already taken some important steps to ensure the country does not return to Rajapaksa-style authoritarianism. Consolidating these gains by building up and empowering independent institutions, creating checks and balances and stronger accountability, and producing inclusion gains will go a long way towards ensuring that Sri Lankans will negotiate their political disagreements only by resorting to democratic processes.

In the following sections, we examine some of these key institutions and stakeholders and their motivations and abilities to support or block these changes.

## SECTION 5. KEY ACTORS AND INSTITUTIONS

### 5.1 POTENTIAL SPOILERS

Sri Lankans at large remain grateful to Mahinda Rajapaksa for ending the civil war but deplored his misgovernance; the factor that mainly led to his ouster. The delays in carrying out certain promises that the Sirisena campaign made as part of its first 100-day program (see Annex C for a status update as of March) appeared to cause some popular anger and angst, but the discontent was not strong enough to help Rajapaksa make a comeback as prime minister. The substantial goodwill President Sirisena enjoys has continued past the parliamentary elections, but this may change due to slow reforms, a sluggish economy, the large number of ministers (some of whom possess dubious reputations), and the UNHRC resolution that Sri Lanka co-sponsored in September. Many among those hostile to the new government, including Rajapaksa and his allies within the SLFP, are seeking to capitalize on whatever can contribute to the government's unpopularity. The new government must deal with problems that cover the ethno-religious, political, social, and economic gamut. The following section briefly evaluates potential spoilers as they pertain to the Sirisena government's stability and explains their likely valuation.

#### 5.1.1 A MAHINDA RAJAPAKSA COMEBACK

One overarching reason that propels Mahinda Rajapaksa to stay on in politics, notwithstanding the status loss of moving from all-powerful president to a mere parliamentarian is the fear that he, some in his family, and their cronies will be held responsible for corruption and human rights crimes. Their quest for power has been greatly assisted by certain politicians whose fortunes are tied to Rajapaksa's continued political relevance in the country. Prominent among them are non-SLFP politicians who are part of the UPFA coalition. Being a part of the UPFA allowed them to control Cabinet portfolios and punch above their weight; now out of government or being part of the opposition, they and their parties stand little chance of dominating politics unless backed by a strongman like Mahinda Rajapaksa.

Among most Sinhalese Buddhists, gratitude for defeating the LTTE trump the Rajapaksa regime's grotesque corruption. The former president remains popular and, together with his brother Gotabhaya (the former Defense Secretary), is considered a war hero. The large crowds that gathered at Rajapaksa's rallies when he contested for parliament and the fact that he was able to switch his constituency from Hambantota (the family bastion in the Southern Province, ) to Kurunegala (in North Western Province) and win the most number of preference votes among UPFA candidates prove this. Rajapaksa thus continues to influence Sri Lankan politics like no former president before him.

Senior SLFP politicians resented the dispensable and degrading way President Rajapaksa treated them, as he empowered his family members over others in the party. At the same time, many among them also resent Sirisena for how the political dynamics associated with his campaign for the presidency divided the SLFP and empowered the UNP. Yet over 50 SLFP parliamentarians joined Sirisena's national unity government, which together with the 106 UNFGG seats allows for a supermajority within the legislature. With many enjoying ministerial or deputy ministerial portfolios, and elections not due until 2020, they are likely to stay within the pro-Sirisena faction of the SLFP. Rajapaksa's continued determination to set up a political dynasty by promoting his son, Namal, to a leadership position within the party could also influence the more senior among them to be more independent and less loyal to the former president. Thanks to Sirisena's victory, many now are in reach of

*"I don't know about corruption. If somebody did something wrong and it can be proven, they should be punished. But all those big projects — of course we're proud of them for the country — but they didn't really help the people. Development should be more bottom-up"*

— Pro-Rajapaksa Activist, Matara

positions within the party that were closed to them when Rajapaksa was president. They will not campaign against their self-interests.

Rajapaksa, however, could continue to play the Sinhalese Buddhist card to pressure the SLFP and the government. His ability to do so is enhanced by the UNHRC resolution Sri Lanka co-sponsored in Geneva in September 2015. The former president and his supporters began voicing their displeasure about the resolution's contents even before it was adopted. They disapprove of the entire resolution, but appear to object to Sri Lanka's "international" partners being able to provide technical, financial, and material help to carry out the investigations; Commonwealth and "foreign" judges, investigators, lawyers, and prosecutors participating in the accountability process; and the potential removal of military officers suspected of having participated in human rights violations. The resolution will permit Rajapaksa and his allies to argue that the new government has compromised the country's sovereignty by allowing foreign intervention, and they will project themselves as the defenders of the military. The TNA's grudging approval of the resolution also allows the Rajapaksa faction to claim that the international community is carrying out the Tamil Diaspora's bidding and that the Sirisena government has supinely agreed to LTTE demands. Sinhalese Buddhists are highly sensitive to notions of foreign interference. This was made abundantly clear by how many reacted when India superimposed the Indo-Lanka Peace Accords and, as part of it, the Indian Peace Keeping Force in the late 1980s, and how they similarly opposed the Norwegian-sponsored peace process in the early 2000s.

Sinhalese in general and Buddhists in particular view Sri Lanka's military personnel as *rana wirawo* (war heroes). The extent to which the perpetrators of war crimes are punished will impact the backlash the government will inevitably have to face. In this context, creating a narrative that 1) speaks to how the resolution is in Sri Lanka's interest; 2) avoids criticizing the military as an institution and focuses instead on military personnel who have brought dishonor to the military through their actions violating human rights; and 3) privileges compassion over punishment, may go some way in countering the nationalist narrative. Including international experts who are mostly Asian, African, and Middle Eastern may also neutralize the nationalists' attacks.

In the run up to the parliamentary elections, Rajapaksa visited scores of Buddhist temples to mobilize support, while some accounts suggest he partly did so to liaise with monks concerned about the upcoming UNHRC resolution. In short, the UNHRC resolution provides Rajapaksa and nationalists like him ample ammunition to create a disturbance. Consequently, the Sri Lankan government and the international community must be prepared to deal with a Rajapaksa who stands to play a spoiler role going forward.

### 5.1.2 ECONOMIC COLLAPSE

One fear expressed among Sirisena supporters was that the poor state of government finances might lead to economic collapse. While the populist interim budget that the new government passed brought down the price of some common commodities and mollified many, it will take time to resolve the fundamental problems associated with the fiscal deficit, trade deficit, low foreign direct investment (FDI) and income disparity amid stagnant household income. The country's economic challenges were exacerbated by wasteful spending and corruption within the Rajapaksa government; minimizing both while instituting appropriate reforms should help the Sirisena government buy time.

A steady flow of remittances, rising tourism, the potential to restructure relatively high interest loans (Sri Lanka owes the Chinese over \$5 billion) a more appealing investment climate stemming from expectations of improved governance and the goodwill of Western countries that may lead to increased trade, could all contribute toward stabilizing the economy, notwithstanding the many challenges. Consequently, the economy must be considered a low-level threat to the Sirisena government's stability.

### 5.1.3 BODU BALA SENA (BUDDHIST POWER FORCE, OR BBS)

*Violence targeting Muslims and Evangelical Christians reduced significantly during the first two months of 2015 but increased since, although to a much lower level than in previous years. Sporadic incidents continued however, including mob attacks targeting places of worship. Although court cases continue, no one has yet been held to account for past violence including the Aluthgama riots in June last year. A Special Presidential [Task Force on Reconciliation](#), appointed on 5 February, was tasked...with promoting inter-ethnic harmony.*

Foreign and Commonwealth Office, U.K. Sri Lanka – In-Year Update, July 2015

<https://www.gov.uk/government/publications/sri-lanka-in-year-update-july-2015/sri-lanka-in-year-update-july-2015>

All accounts suggest that former Defense Secretary Gotabhaya Rajapaksa, with the connivance of President Rajapaksa, supported the racist, anti-Christian and anti-Muslim BBS. This allowed the group to operate with impunity, and it instigated attacks against mosques, Muslim businesses and Muslim homes, as well as against evangelical Christians. The June 2014, violence the BBS fanned against Muslims in Aluthgama, a town along the southern coast, was the most serious anti-Muslim rioting to take place since 1915, when Sinhalese and Muslims clashed for the first time. Many believe the BBS was planning to commemorate the centenary of this event with a violent campaign against Muslims. Had Rajapaksa won a third term as president, there would have been no reason for him to hold back against the Muslim community, given how many voted against him. The Rajapaksa ouster has halted BBS threats, although its leadership registered as a

political party called the Bodu Jana Peramuna (Buddhist People's Front) and contested the parliamentary elections. The party only garnered a total of 20,377 votes, which contrasts starkly with some of its rallies which attracted thousands.

There has long been an anti-Muslim current within Sinhalese society (and Tamil society as well), so it is not hard to see how a perceived insult or rumor can lead to conflict between communities. But with Muslims having voted for Sirisena in droves, Muslim parties playing a leading role in the UNFGG, and the new government encouraging law and order authorities to treat all individuals dispassionately, there is no reason to expect that the BBS and its anti-Muslim vitriol would destabilize the government in the near term. Many mixed communities have developed interfaith committees capable of resolving small problems before they become big ones, as long as the police and other parties do not intervene to exacerbate or cause violence. What this shows is the importance of leadership. The BBS thrived briefly because the Rajapaksas allowed it to run amuck with impunity. It and its ilk will thrive once more were such conditions to return.

### 5.1.4 INTERNAL DIVISION WITHIN COALITION

All accounts suggest that President Sirisena and Ranil Wickremasinghe enjoy a close relationship, and are expected to work together as part of the new unity government for at least two years, although this arrangement could continue for the duration of this parliament. Both will need to keep their respective party members in line, given that there will be ample reason for the UNP and SLFP to disagree—especially when it comes to changing the electoral system, pushing through reforms, and supporting corruption investigations that stand to disproportionately involve those in the SLFP. The corruption investigations could also trap some in the UNP for violations committed when they were in charge of Parliament between December 2001 and April 2004. Both parties are also divided internally, with some in the SLFP still loyal to Rajapaksa, and some in the UNP dissatisfied with Wickremasinghe, although what was a leadership crisis in the UNP is now solved given Wickremasinghe's and the UNP's performance in the parliamentary elections.

In the near term, the manner in which the government carries out the September UNHRC resolution will determine the compatibility of the coalition. While a party like the JHU and a president with Sirisena's background provide the government some cover against nationalist accusations of selling out to the West, an investigative process smacking of aggressive Western/international intrusion is bound to create tensions within the coalition. In this regard, Ranil Wickremasinghe's propensity to operate in an overconfident manner without adequately consulting his colleagues may also impact the coalition negatively, and it is therefore in the

UNP leader's interest to carry out policy related to reconciliation and accountability with the President's concurrence.

### 5.1.5 U.N. HUMAN RIGHTS COUNCIL (UNHRC) RESOLUTION

There is no will among the majority Sinhalese Buddhists to see prominent politicians prosecuted for war crimes, and demands for this may embolden the community to rally around the accused — especially if they are the likes of Mahinda and Gothabaya Rajapaksa and Sarath Fonseka. The OHCHR report released in September did not mention any individuals, and President Sirisena subsequently claimed this was due to the government's successful lobbying. With the Sri Lankan government against an international investigation and Tamils and the international community having no confidence in the government's ability to conduct an impartial investigation, the OHCHR report called for a hybrid mechanism that includes local and international judges to oversee the accountability process. The resolution that the UNHRC ultimately passed was co-sponsored by Sri Lanka and leaves out the word "hybrid" but allows for Commonwealth and foreign judges, lawyers, prosecutors, and investigators. This is going to be unpopular with most Sinhalese Buddhists, and the government needs to convince them why agreeing to such terms was necessary. It began doing so even before the resolution was adopted, by laying the blame on Rajapaksa's intransigence and claiming the country likely faced sanctions if it did not agree to a credible investigation. The government has also sought to mollify domestic opinion by suggesting it alone would determine the extent of foreign involvement. This, the individuals ultimately targeted, and the manner in which reconciliation is carried out (i.e., devolving power, releasing military occupied land, reducing troop levels in the northeast) will determine how the UNHRC resolution plays out politically in the months ahead. Consequently, when combined with Rajapaksa playing the role of spoiler, the resolution does have potential to destabilize the government.

### 5.1.6. PRIVATE SECTOR

The UNP politicians overseeing the economic portfolio in the Sirisena government keep repeating that they are capitalists who believe in free markets, want to improve household incomes, and are therefore committed to a social-market economy. Sri Lanka experienced its first JVP insurrection during Mrs. Bandaranaike's dirigisme and its second JVP rebellion during J.R. Jayewardene's structural adjustment, enforcing the open-market economy. But even during the Jayewardene years, the country spent vast amounts of money on social programs. In that sense, while the strong UNP emphasis on improving household incomes (especially for rural households) may be new, the promotion of a social-market economy is hardly novel. It is not in the private sector's interest to deal with wide economic disparities when youth unemployment is high in a country that has experienced two insurrections and a civil war in a span of four decades. Historically the private sector has supported the UNP. If it moved closer to the Rajapaksas, it was because that is what businesses had to do to survive in a corruption-riddled soft-authoritarian dispensation. There is no reason for the private sector to oppose a government comprised of many pro-business UNP politicians, notwithstanding the retrospective tax the government seems determined to impose on business. In the long term, the more predictable rules, regulations, and transparency that the UNP is likely to institute as part of an open market will help the private sector, and there is therefore no reason to assume it will try to destabilize the government. The destabilizing factors instead would be if 1) rural incomes do not improve; and 2) there is limited new investment in job-creating sectors.

### 5.1.7 DEVOLUTION

Tamils feel that Sirisena owes his victory to their votes. Delays in devolving power to the Northern Province especially may see protests against the government. Yet any agreed-upon devolution will need to be within the context of a unitary state. That will not satisfy Tamil leaders, including moderates like Northern Provincial Council Chief Minister C. V. Wigneswaran, who are calling for devolution as structured in India (which has a quasi-federal structure). These Tamil leaders (and India and the Western powers to which Tamils look for salvation) must be realistic and prepare Tamils to compromise on the 13th Amendment, since Tamils are unlikely to even win police or land powers. Hiring a larger number of Tamil personnel into the

police and public service and stationing them in predominantly Tamil areas may be one solution to this problem. A government that deals honestly on accountability for human rights abuses and releases expropriated land to its rightful owners may also stand a better chance of obtaining a Tamil compromise on devolution. But Tamils are not in a position to bring down the government, especially if that government projects an image of not selling out the majority community's interests. The lack of devolution by itself is unlikely to destabilize the new government.

## 5.2 KEY POPULATION GROUPS

### 5.2.1 NORTHERN POPULATION

While the civil war affected all of Sri Lanka, Northern Province was the most severely damaged. Caught between the LTTE and the Sri Lankan military, northern Tamils suffered the brunt of the war. This suffering continued even after the war ended because the Rajapaksa government militarized the province in ways that sought to control and humiliate Tamils.

Tamils thought the war's end would lead to military-occupied "high security zones" being returned to their rightful owners; instead, ongoing militarization saw security forces expropriating new civilian and state lands to set up numerous new camps even as refugees languished without basic necessities (e.g., shelter and toilets). With the armed forces initiating businesses as well, Tamil livelihoods were further compromised as the military began operating farms, hotels and restaurants on some of the most fertile lands while disproportionately consuming scarce resources like water. This situation was aggravated by systemic surveillance throughout the province, such that even social functions required the military's imprimatur and no one could engage anyone from outside the town or village without military intelligence finding out. The population was thus controlled, civil society was cowed, and journalists resorted to self-censorship. In addition, any rehabilitated LTTE cadre, Tamil day laborers working on military farms and teachers (hired by the military) were dragooned into spying on their communities. Given all these features, northern Tamils especially felt like they lived in open prisons. Community distrust increased, and there was virtually no freedom of speech while freedom of movement was also constrained.

The civil war saw a disproportionate number of men killed or disappeared, especially in the North; this has led to a large number of female-headed households. Scarce employment opportunities throughout the province has forced many economically and socially marginalized women into "survival sex," as alcoholism, drug addiction and pornography have gained sway among the population at large. Young men in the North who were once widely considered to be hardworking and aspirational are now portrayed as listless, lazy and unambitious (with many among the middle classes said to be merely marking time until they can join families abroad). All of this has led to a culture of dependence, families breaking up, and disoriented and disempowered elders who see a deliberate government conspiracy to destroy the Tamils. This feeling is manifested in claims concerning "structural genocide" and "cultural genocide."

Tamil politics is being played out amid this sense of angst, with certain politicians bent on acquiring wealth and power irrespective of their community's interests while others conspire with intransigent Diaspora elements who continue to entertain notions of separatism. It is in this light that we must view demands to boycott the presidential election; rhetoric insisting on self-determination (which Sinhalese consider code for separatism); talk of rehabilitated LTTE cadre wanting to form a political party; and vociferous opposition to the moderate instincts of the TNA's R. Sampanthan and M.A. Sumanthiran. However, the ongoing intra-Tamil divisions are nothing new. The community has been more divided than united throughout, which was true even during the ethnic conflict.

Unlike in past elections, Tamils did not pursue self-defeating behavior in the presidential election; they voted and they made no public demands on Sirisena in return for their vote. They knew there was no hope of the Rajapaksas even remotely fulfilling their livelihood and devolution aspirations. They also knew that any

demands on Sirisena would allow the Rajapaksas to portray him as a sellout and influence many Sinhalese Buddhists to vote against him. While they have appreciated some of President Sirisena's initial decisions pertaining to the Northern Province — such as replacing the ex-military governor and his secretary and asking the military to return some civilian lands taken over for business purposes — many Tamils expect more. They think that Sinhalese leaders have repeatedly duped them and consequently view even practical delays to their demands with suspicion. Thus, most strongly oppose postponing the release of the OCHRC report, for example.

The Tamils' primary demands are legitimate and include accountability for relatives who were detained, disappeared or killed during the latter stages of the civil war; lands taken over by the military being returned to their rightful owners; the armed forces returning to barracks and ceasing to interfere in the province's civilian affairs; and meaningful devolution being granted. No list of Tamil detainees has been released, perhaps because no comprehensive lists were maintained; no lands expropriated by the military have been immediately returned, perhaps because the government is wary of upsetting the armed forces; military surveillance is continuing (though in a reduced mode), perhaps because the military itself is in a state of flux, given differing agendas among the officer cadre and the sudden change in government); and there has been no movement on the 13th Amendment. Tamils do have reason to feel frustrated.

Tamil politicians come across as having failed to deliver; while this is partly due to incompetent leadership, it is mainly because the Rajapaksa government prevented the Northern Provincial Council (NPC) from carrying out its functions, compounding Tamils' frustrations. Coupled with inherent intra-Tamil contradictions that are played out within the TNA, those frustrations were responsible for the NPC passing the ill-advised genocide resolution in February that called for an international investigation into crimes against Tamils. Passage of the UNHRC resolution, which the TNA and important Tamil Diaspora groups have approved (mainly because it allows for Commonwealth and foreign personnel to be involved), will go some way in mollifying the Tamils as they wait and see how the investigations into alleged war crimes play out. The TNA/ITAK's role as the main opposition in parliament also helps convey the message that the new leadership is not bent on dominating Tamils.

A lasting solution to the so-called "Tamil question" will require movement on their core demands, but some Tamil leaders are oblivious to the constraints facing President Sirisena, who has no choice but take Sinhalese opinion into consideration as well. With former President Rajapaksa continuing his attempts to undermine the government, fully acceding to even legitimate Tamil demands by disregarding the military's security considerations and economic interests and Sinhalese Buddhist nationalist sentiment is bound to backfire on both the president and the Tamils. Those Tamils who vociferously continue to make demands and threaten boycotts are, as one interviewee told the team, engaging in "suicidal politics."

As noted above, there is no will among the Sinhalese Buddhist population to punish those who may be responsible for war crimes, and with this being the case, the government deserves praise for its willingness to co-sponsor the UNHRC resolution. There is the real possibility that after all is said and done, the government will satisfy Tamils and the international community on reparations but not on accountability for war crimes. Wickremasinghe has already played down the number of Tamils detained during the civil war and killed toward its end, thereby contradicting the figures publicized by the U.N. and Tamil leaders. The Tamil Diaspora and elites in general, however, will push for accountability, but it appears that most ordinary Tamils are more interested in learning the truth regarding family who have disappeared, having their suffering acknowledged — preferably with adequate compensation — and being allowed to live with self-respect and dignity. This is hardly optimal given the crimes that appear to have been committed during the latter stages of the civil war, but it may be the best option going forward.

It appears that some in the North planned to mount a civil disobedience protest following the presidential election, with many assuming that President Rajapaksa would win a third term. The military seemed to know of this and was prepared to counter it. Given that the Rajapaksa government opportunistically played up the

LTTE threat in the North, such a protest likely would have been dealt with severely and used as an excuse to further circumscribe Tamils' movement. Given the high Tamil turnout that voted against President Rajapaksa, he surely would have had no reason to treat them gently. That Tamils even contemplated mounting such a protest in this light speaks to their desperation. Sirisena's election and the TNA/ITAK's showing in the parliamentary elections have emboldened Tamils, and there may be spirited Tamil protests pertaining to various issues going forward. While protests demanding justice are justifiable, Tamils should consider how much more severe their plight would have been under a Rajapaksa third term and at least temporarily attenuate demands the Sirisena government cannot at this juncture meet, to provide the new regime and Tamil leaders time to work on the community's most important aspirations.

### 5.2.2 'SOUTHERN' POPULATION

The Sinhalese Buddhist population of the South (and in especially areas comprising the Southern, Uva and Sabaragamuwa provinces) constitute the most important segment of the Rajapaksa political "base." Southern politicians have long bemoaned how British colonialism disempowered the majority Sinhalese Buddhists, and they have partly used this to cultivate an exclusionary vision about Sri Lanka being the designated homeland of Buddhism and the bastion of the Sinhalese people. This narrative portrays outsiders — Hindus, Muslims and Christians — as interlopers; and it is one to which Mahinda Rajapaksa, a consummate Sinhalese Buddhist nationalist, subscribes. Extremist groups like the BBS used the Rajapaksas' tacit support to whip up anti-Muslim sentiment and provoke clashes with Muslim communities in many parts of the country. The June 2013 anti-Muslim violence the BBS helped unleash in Aluthgama led to three Muslims being killed and much destruction of property. Rajapaksa's defeat has, for the most part, silenced the BBS and other Buddhist extremist groups, which most Buddhists consider an embarrassment to their religion, but the sense that Sri Lanka is a sanctuary for Buddhism, which the Sinhalese have been chosen to ennoble and preserve, is widely shared by most Buddhists. Rajapaksa was able to bank on such sentiment especially by crushing the LTTE, and it appears that his Sinhalese Buddhist nationalist credentials help mask his malgovernance among many within the Rajapaksa base, although this is not the case for the South as a whole (which is why Rajapaksa ultimately lost to Sirisena).

Thus, many in the South continue to see Rajapaksa as a Sinhalese Buddhist hero. Unlike the narrative of corruption and predation the assessment team heard in Colombo in February, in the South it heard a great deal of skepticism about accusations against Rajapaksa. Interlocutors were willing to entertain whatever evidence there might be against him, but were not willing to take accusations against him at face value. Rajapaksa's defeat appears to have surprised many in the South, but was not necessarily unwelcome. Even in the South, there was hope for what the Sirisena victory might bring.

Rajapaksa received substantially less support in the South in 2015 than he did in 2010. According to the team's interviews, while he received roughly 70 percent of votes among the Armed Forces in 2010, he won only around 50 percent of their votes in 2015 (based on the results of the postal voting, or absentee ballots). That Rajapaksa and the UPFA, as noted above, also fared worse (in terms of votes captured) in the parliamentary elections suggest that the accusations made against him, his family members, and others in the UPFA resonated to a degree.

First, the team repeatedly heard from both elites and average people that Rajapaksa simply failed to deliver the goods to his "base" as a politician. The peace dividend, that the winning side in the war might have anticipated, failed to materialize. The superhighway projects, megaport facilities in Colombo and Hambantota, the nearly unused Mattala International Airport and other development projects were largely funded and built with Chinese funds and had little impact, or even a negative impact, on the local economy. In Rajapaksa's own hometown, the Chamber of Commerce was at a loss about whom they should contact to discuss the long-term viability of the massive convention center, which is largely unused, and the international airport, which the new government has now decided to shut down. One of the phrases the team heard frequently was that "development should be more bottom-up."

Second, the general impunity and abuse of power that increasingly characterized the Rajapaksa regime has had an impact on the rule of law and human rights in the South. The Human Rights Commission reported that complaints from the North and East had been going down or were relatively stable, but the number of human rights complaints from the South had been steadily rising over the last five years. This reflected an increase in land-grabbing, unlawful arrest and abuse of power by police and local officials. This was confirmed for us in our conversation with the Galle Bar Association. Especially among elites, this was a motivator to actively support Sirisena over Rajapaksa. One conversation with the leadership of the Buddhist nationalist JHU Party, which defected early from Rajapaksa and pushed for a common opposition candidate, revealed that Rajapaksa had lost his moral compass and was encouraging “un-Buddhist” behaviors like gambling, corruption and sexual predation.

Finally, somewhat related to the human rights problem, the team heard repeatedly without prompting that the attacks by the BBS on Muslim communities, with the passive support of the local police and the active support of crowd-control units, were artificially provoked and unacceptable. This sentiment was common among ordinary citizens, civil society activists, journalists and many Buddhist monks. In this light, it is hardly surprising that the BBS political party only captured so few votes in the parliamentary elections; they had gone much too far.

One surprising and encouraging sign the team found was that nongovernmental groups across a range of activities (lawyers, businessmen, moderate Buddhist monks, interfaith groups) had already, on their own, begun to reach out to the North. In Galle, the Bar Association told us that “the problems of lawyers in Galle are 85 percent the same as the problems of lawyers in Jaffna. We need to reach out and build on that.” Under Rajapaksa, moderate monks and interfaith groups had already begun to address the toxic nationalist narrative and ignorance of what was actually happening in the North. Through media programming and study trips there to see conditions firsthand, an effort to change the internal narratives of younger Buddhist monks and religious leaders is underway. The Chamber of Commerce in Hambantota housed the secretariat of the National Association of Chambers of Commerce and was actively reaching out to the North. These groups expressed a clear sense that to move forward, all Sri Lankans should share in the national identity and receive an equal share in economic opportunity. While not a call for retrospective accountability, this was a remarkable call for inclusion and reconciliation.

The Rajapaksa government’s defeat depended on the predominantly Sinhalese Buddhist South mobilizing against it. The country’s minorities could vote, but they were in no position to mobilize overtly and vocally against the Rajapaksa regime, given how besieged they felt. Sirisena won for a number of reasons, but an important factor was the courageous individuals in the South who may have put their lives on the line by taking a stand against Rajapaksa. A senior lawyer with the Galle Bar Association, pointing to a young woman at the table with us, said she would likely not be alive if Rajapaksa had won the election because she campaigned forcefully against him. This is hardly hyperbole, given that President Sirisena himself, at a mass meeting soon after the election and on a number of occasions since then, said he and his family were slated to be arrested, tortured and killed had Rajapaksa won a third term. Chandrika Kumaratunga, on a visit to India following the parliamentary elections, also said that she and many innocent people were bound to be killed had Rajapaksa prevailed in the January election. The comments not only capture the nature of the Rajapaksa government, they salute those who used the franchise to yank Sri Lanka back from the brink of hard authoritarianism.

### 5.2.3 EASTERN POPULATION

While Tamil-Muslim rivalries in the Northern Province are evident, especially in the Mannar District, tensions in the North are mainly between Tamils and the predominantly Sinhalese Buddhist military. The situation is more complex in the Eastern Province, given the large Tamil, Muslim and Sinhalese populations and post-war practices there. During the civil war, Muslims across the island sided with the government against the

LTTE's separatist project. The LTTE's persecution of Muslims in the province (coupled with the LTTE driving more than 60,000 Muslims out of the Northern Province in 1990) exacerbated tensions between the Tamil and Muslim communities. Politicians belonging to both communities have in turn exploited Tamil-Muslim rivalries stemming from land disputes, and this has hardened pre-existing prejudices and increased animus between the groups.

Post-war, the expropriation of private and public lands has increased competition among Tamils, Muslims and Sinhalese, although in some areas such competition has also forced Tamils and Muslims to form common fronts to protect access to scarce resources like water. The expropriation of land has smacked of Sinhala Buddhist colonization, given how the military goes out of its way to favor Sinhalese communities and settlers. The proliferation of Buddhist temples, statues and archeological sites in areas where no Buddhists live has come to represent domination.

Muslims in the province and across the country feel that Tamils have silently rejoiced as extremist Buddhist groups like the BBS targeted their community. Post-independence, Muslim elites had refused to join their Tamil colleagues in protesting the marginalization of the Tamil language, and younger Muslims instead took to learning Sinhala. This and Muslims' willingness to split their vote between the SLFP and UNP, until Muslim parties began forming in the 1980s, led to the community being branded the "good minority." Muslims thus suspect that Tamils, whose defense of language rights morphed into a civil war, take satisfaction seeing the Muslims get their comeuppance. Such beliefs add to Muslim-Tamil tension.

Muslims in the East also fear that Tamils hope to dominate the Eastern Provincial Council and collaborate with the NPC, even trying to remerge the Eastern and Northern provinces. Those provinces were merged as part of the 1987 Indo-Lanka Peace Accord, but a 2006 Supreme Court ruling demerged them. Tamils in general consider the Northeast their historical homeland and believe a unified province will empower them politically, economically and culturally — although the desire for a remerged Northeast masks caste and class divisions between Northern and Eastern Tamils, which was partly the basis for Vinayagamoorthy Muralitharan (Colonel Karuna) splitting from the LTTE. With the three ethnic groups in the Eastern Province being similar in size, Muslims and Sinhalese fear that a unified province or collaboration between the two along ethnic lines will relatively disempower them. They will therefore strongly oppose attempts that strengthen Tamil ties across the two provinces. So will Sinhalese Buddhist nationalists, who think Tamils continue to be imbued with an Eelam mindset.

This Muslim and Sinhalese concern about a potential LTTE revival is understandable given that hardcore Tamil nationalists, whose interprovincial ties were severed following the Prabhakaran-Karuna split in April 2004, now appear to have strengthened links. It is important, however, to note that these hardcore elements operate on the fringe of Tamil society because the moderation espoused by the likes of R. Sampanthan and M.A. Sumanthiran has, for now at least, gained sway.

Ethnic politics combine with opportunism to complicate governance within the Eastern Provincial Council. While the UPFA and Sri Lanka Muslim Congress (SLMC) — following the controversial September 2012 provincial council elections (where the TNA may have been prevented from winning the most seats) — combined to form the provincial government, the breakup of the UPFA in the lead-up to the 2015 presidential election saw the SLMC and All Ceylon Muslim Congress leave the UPFA and rupture this provincial alliance. Thereafter the SLMC invited the TNA and the UNP to join with it and form an administration, although reports also claim that the remaining members of the UPFA (nearly all Sinhalese) appear to be intent on merging with the TNA to form the provincial government, which will deprive the Muslim members of influence within the council.

While free expression also was stifled in the Eastern Province, people now are more willing to voice their opinions and resort to protests. The Mothers of the Disappeared have come out in two protests since the election of Sirisena, something they were unwilling to do previously. While military checkpoints, surveillance

and paramilitary forces loyal to Colonel Karuna and former Chief Minister Sivanesanathurai Chandrakanthan (Pillayan) have continued to operate, people in general appear to have decided that the change in government makes it acceptable to voice their opinions. This is also the case with civil society organizations, which, like their counterparts elsewhere in the island, share a sense of optimism regarding the future. This optimism can be maintained only if politicians across the province's ethnic divide cooperate and the central government reverses some of the previous regime's policies related especially to land expropriation and militarization.

### 5.3 EXECUTIVE PRESIDENCY

Many associate Sri Lanka's authoritarian tilt with the executive presidency J.R. Jayewardene instituted in 1978. While the need to efficiently carry out open-market reforms and strengthen the center in the face of a burgeoning Tamil rebellion motivated Jayewardene to craft a constitution with an overpowering executive, he also wanted a system that allowed the UNP to stay dominant over the long term. The UNP did rule under the executive presidency for 16 years, until Chandrika Kumaratunga became president in 1994. An SLFP president has ruled since then, a trend that will continue at least until President Sirisena completes his term.

The manner in which the powers of the executive presidency undermined checks and balances were long recognized and this was why constitutional scholars and many in civil society clamored for its end. Chandrika Kumaratunga and Mahinda Rajapaksa both promised to get rid of the executive presidency after getting elected; both reneged on their promise. In the case of Rajapaksa, he used the victory against the LTTE to further strengthen his authority as president and his overreach and abuse of the presidency are most responsible for the attempts now to reform it.

Those who promoted Maithripala Sirisena's common candidacy made abolishing the executive presidency the foremost issue because they believed it would make it easy for the candidate to stay on message and attract the most number of people. The irony is that the executive presidency is now associated with a strong unitary state, with many holding that its powers were necessary to fight the LTTE and will be useful if the country's unity or sovereignty is challenged again. Thus nationalists and parties like the JHU are averse to seeing the executive presidency terminated, though some are willing to see its powers diminished.

Consequently, the new 19<sup>th</sup> Amendment to the Constitution only weakened the executive presidency (after many clauses designed to further empower the prime minister were eliminated). The 19<sup>th</sup> Amendment reduced the presidential term from six years to five and incumbents are now limited to two terms; while the president is expected to seek the advice of the prime minister and Cabinet, he remains the head of state, Cabinet and government. The amendment creates a Constitutional Council that in turn will set up independent entities overseeing appointments and governance in their respective areas. The 10 member council comprises of seven parliamentarians and three from civil society, whose appointments were confirmed following the parliamentary elections.

President Sirisena has been criticized following the parliamentary elections for accommodating as ministers and deputy ministers numerous individuals who have been accused of corruption and for enabling a Cabinet that is second in size to the ones Rajapaksa created. The government appears to want to create a new constitution or at the least severely alter the current one. The changes it envisions will impact devolution, the electoral system, and the overall reconciliation and accountability process. It will also most likely try to curtail presidential powers further, which was what Sirisena's manifesto proposed to do. Carrying out such reforms will require two-thirds support in parliament and some argue Sirisena's actions, which contradict his promise of good governance, is geared to command the requisite parliamentary supermajority while also keeping Mahinda Rajapaksa at bay. There is hence reason to believe that the executive presidency stands to be further altered.

*"We were on the brink of being totally destroyed last year. The country was headed toward a one-party state."*

— Senior UNP official commenting on the status of the party in late 2014

## 5.4 POLITICAL PARTIES

Sri Lanka's two main parties, the UNP and SLFP, have dominated politics since independence and will continue to do so. For the very first time the UNP and SLFP have formed a national government following the parliamentary elections, and while their leaders hope it will last for at least two years there is the possibility that this coalition will continue until 2020, when the next parliamentary elections are due.

Sri Lanka had more than 60 political parties at the time of the January 2015 presidential election; including unregistered parties, the number is around 80. Those discussed in the subsections that follow will determine the island's political trajectory.

### 5.4.1 UNP

The conservative **United National Party** (UNP) was created in 1946, less than two years before Sri Lanka gained independence. The UNP has been labeled the “Uncle-Nephew Party,” given that four of the party's six leaders have been related to its founder (and Sri Lanka's first prime minister), D.S. Senanayake. The UNP draws strong support among minorities during presidential elections (with minorities usually voting for ethnic parties during parliamentary, provincial and local elections). The party, however, fared poorly under current Prime Minister Ranil Wickremasinghe, who despite losing a string of elections and serious infighting, held onto the leadership position. Crossovers and fissures within the party damaged it; this clearly made it easier for President Rajapaksa to keep the political opposition weak.

Wickremasinghe would have won the 2005 presidential election if the LTTE had not prevented people under its control from voting. UNP rhetoric that trivialized the military gains against the LTTE in the last phase of the war allowed the Rajapaksas to effectively discredit the party. Wickremasinghe's inability to win a majority of the presidential vote is the reason the UNP supported candidates from other parties to contest the 2010 and 2015 presidential elections. Wickremasinghe is often portrayed as not sufficiently consulting fellow stakeholders; the UNP as a party is similarly cast as elitist. Yet Wickremasinghe is also regarded as dependable by those in the opposition, and it was this reputation that allowed him and Maithripala Sirisena to reach agreement on post-Rajapaksa reforms. As determined in their pre-election pact, Ranil Wickremasinghe became prime minister in the aftermath of Sirisena's swearing-in.

The disgruntlement among certain high-ranking UNP leaders has diminished given that the party played a leading role in ousting Rajapaksa and subsequently did well by leading the UNFGG coalition in the parliamentary elections. The populist interim budget it passed was, in the main, well accepted by Sri Lankans upset at the high cost of living. The party has since promised to further reduce essential commodities by using the savings from low global oil and gas prices.

Following the parliamentary elections, Wickremasinghe was sworn in as prime minister. The emboldened UNP now stands to play a major role in Sri Lanka's politics provided it can keep the UNFGG together. This is because even if the UPFA quits the national unity government, the UNFGG can count on the TNA/ITAK's support on major legislation notwithstanding that party group forming the main opposition. As noted above, Wickremasinghe has a tendency to overreach and does not always consult adequately with colleagues. He will need to avoid overreaching if the party is to operate successfully as part of the national unity government.

### 5.4.2 SLFP

The **Sri Lanka Freedom Party** (SLFP) was created in 1951 by S.W.R.D. Bandaranaike and has consistently appealed to Sinhalese Buddhists and drawn support mainly from rural areas. The party long operated as a dynasty, with three family members — Mr. and Mrs. Bandaranaike and their daughter, Chandrika Kumaratunga — serving as the country's leaders for more than 26 years. Many believed that Mahinda

Rajapaksa's rise ended the Bandaranaike political dominance. But Rajapaksa's quest to use the party to create a Rajapaksa political dynasty and his attempts to de-emphasize S.W.R.D. Bandaranaike's legacy, instead playing up the role of his father (the first to follow Bandaranaike into opposition), partly led to Chandrika Kumaratunga taking the lead to set up a common opposition candidate. Chandrika has since been trying to promote her son's entry into politics, although he does not appear interested. The SLFP old guard is unlikely to be impressed by her attempts, as they thought dynastic politics in their party ended when Chandrika departed the presidency (only to be faced with Rajapaksa's effort to establish a political dynasty).

President Rajapaksa empowered family members even as he marginalized long-term SLFP politicians. This ultimately led to the SLFP's long-standing general secretary, Maithripala Sirisena, challenging Rajapaksa as the common opposition candidate. Sirisena's victory led to an ironic situation for the SLFP: the all-powerful president was its party leader and the party dominated Parliament with a clear majority, but it sat in opposition while the Cabinet mainly consisted of UNP politicians, with Prime Minister Wickremasinghe playing a decisive role. This was all the more reason parliamentary elections had to be held early, which led to the SLFP-led UPFA coalition winning 95 seats.

As noted above, Rajapaksa's attempts to enter parliament as prime minister were stymied by the UNP-led UNFGG coalition winning 106 seats and over 50 UPFA members (generally referred to as pro-Sirisena UPFA members) joining the national unity government. President Sirisena has told the SLFP members who are part of the UPFA rebel group (those who now sit in opposition) that he will not tolerate their undermining the government while officially belonging to the SLFP. He has also told them not to expect new elections until 2020.

President Sirisena has promised to serve only one term, but he could change his mind. His ability to do so will depend on how well the national unity government performs and how he and the government deal with the challenges associated with the UNHRC resolution. He is likely to yank the SLFP out of the UPFA, which will hurt the chances of certain small parties that have hitherto used the SLFP machinery under Rajapaksa to enter parliament and become Cabinet ministers.

### 5.4.3 JVP

The **Janatha Vimukthi Peramuna** (People's Liberation Front, JVP) is another party that has played an important role in Sri Lanka's politics. Originally comprised of disgruntled Sinhalese Marxist students, the group was formed in the mid-1960s and mounted an insurrection in 1971 that nearly toppled the Sirimavo Bandaranaike government. The insurrection was violently suppressed, and thousands of JVP cadres were killed and imprisoned. The group entered mainstream politics in the late 1970s after the UNP, headed by J.R. Jayewardene, released the imprisoned cadres. The UNP believed the JVP, given its Sinhalese Buddhist composition and appeal in rural areas, would undercut the SLFP when campaigning for votes. The JVP, however, was unfairly banned following the July 1983 anti-Tamil pogrom when the same UNP government, trying to shield its own party members, implicated the JVP in the rioting. The group went underground and unleashed a second insurrection from 1987 to 1989, by which time it had morphed into a rabid nationalist party that opposed the Indo-Lanka Peace Accords. It killed thousands in an attempt to undermine the government. When the new UNP government headed by Ranasinghe Premadasa retaliated, it too murdered thousands of JVP cadres and sympathizers. Those killed included all in the JVP's politburo except one, who fled to London but eventually returned to head the party.

The JVP re-entered the political mainstream in 1994 and allied with the SLFP-led governing coalition for a time. It demanded a military (as opposed to political) solution to the ethnic conflict and insisted on the island maintaining its unitary political structure. It supported Rajapaksa becoming president after he promised not to consider federalism as an alternative. The JVP, however, split in April 2008. The new faction, called the

Jathika Nidahas Peramuna (National Freedom Front), soon joined the Rajapaksa government and its leader, Wimal Weerawansa, was among those who led the clamor for Rajapaksa's return to politics as prime minister.

The party split, plus President Rajapaksa positioning himself as the defender of Sinhalese Buddhists, weakened the JVP's appeal. Yet, the party's leaders were among the few who challenged President Rajapaksa at the height of his power. In the January 2015 presidential election, the JVP supported the common opposition candidate and its grassroots organizers played a role in Rajapaksa's ouster.

The JVP has gone from being a Maoist/nationalist party to one that mainly clamors against corruption. This hammering against corruption appears to have widened the JVP's appeal among lower- and middle-class urban voters, although the party failed to do as well as expected in the August parliamentary elections winning just six seats. That notwithstanding, its leader, Anura Kumara Dissanayaka, is easily one of the most articulate and effective politicians in Sri Lanka and was appointed the Chief Opposition Whip following the parliamentary elections.

Ranil Wickremasinghe was part of the UNP government that sanctioned the bloody JVP crackdown during the late 1980s. This has affected the JVP's interactions with him, although those in the JVP also respect Wickremasinghe for his knowledge of parliamentary affairs. The JVP is bound to keep demanding that those who engaged in corruption during the Rajapaksa years be brought to justice. Doing so will continue to be popular, although it may complicate the next government's agenda at a time when minorities and the international community are more focused on accountability and reconciliation related to the civil war.

#### 5.4.4 JHU

The **Jathika Hela Urumaya** (National Sinhalese Heritage Party, JHU), a party led mainly by Buddhist monks, stunned everyone when it won nine seats in the 2004 parliamentary elections. The party, another influential player given its ability to frame politics among Sinhalese Buddhists, won only three seats in the 2010 parliamentary elections and was part of the SLP-led UPFA coalition when it switched to supporting Sirisena, claiming that the Rajapaksa government was responsible for corruption, nepotism, breakdown in the rule of law, impunity and practices undermining morality (e.g., the setting up of additional casinos).

The JHU was a rabidly Buddhist nationalist party that campaigned vociferously in 2004 against any peace deal with the LTTE, instead demanding that the group be defeated militarily. It also strongly opposed devolution for Tamils. With the BBS having been created by two monks who broke away from the JHU, the party also took a strident attitude towards Muslims—most likely to prevent the BBS outbidding it among Sinhalese Buddhist nationalists. The party's support of Sirisena thus neutralized Rajapaksa's ability to portray his opponent as less committed to protecting Sinhalese Buddhist interests.

Champika Ranawaka, one of the party's lay leaders, is a politician with an austere reputation. His attacks against Rajapaksa misgovernance were more effective than those mounted by the UNP and others. Since Sirisena's victory, he and the party have also been demanding that those responsible for corruption under the Rajapaksa regime be brought to justice. They have moderated their position regarding devolution, claiming that they are willing to see the 13th Amendment implemented sans police and land powers. The JHU's new position on devolution is significant, as it provides moderates among the Sinhalese and Tamils more space to compromise.

Despite disagreements with those in the UNP-led minority government, the JHU contested parliamentary elections as part of the UNP-led UNFGG. Ranawaka and a leading monk in the party are now members of parliament and Ranawaka was put in charge of the new Ministry of Megapolis and Western development. While the party clearly prefers a domestic mechanism for dealing with accountability issues related to the civil war, it appears to grudgingly support the UNHRC resolution Sri Lanka co-sponsored. This can only help President Sirisena and the UNP among those Sinhalese who are suspicious of Western intentions.

## 5.4.5 TAMIL PARTIES

Currently the **Tamil National Alliance (TNA)**, comprised of five Tamil parties and considered an LTTE proxy during the civil war, is the largest Tamil political organization. The TNA enjoys fairly strong support among Tamils abroad, and the Rajapaksa government claimed the TNA operates as a proxy for this Tamil Diaspora that continues to aspire to a separate Tamil state in Sri Lanka. The TNA's moderate leaders Sampanthan and Sumanthiran also generate strong opposition among extremist Tamil Diaspora elements, whose politics are shared by some within the TNA. The organization consequently can come across as both compromising and intransigent, depending on the politician speaking. The attendant contradictions end up confusing average Tamils even as this provides ammunition for Sinhalese extremists.

Notwithstanding the attempts by the Rajapaksa government and other Tamil parties to discredit the TNA for its links with the LTTE during the civil war, Tamils in the North especially have continued to vote for the party. The first-ever NPC elections in October 2013 saw the TNA win more than 78 percent of votes and capture 30 of 38 seats. The UPFA won just seven seats and suffered its first-ever provincial council election defeat under President Rajapaksa. The Rajapaksas, however, did not allow the TNA to govern, per the wishes of the predominantly Tamil population in the Northern Province. The recent replacement of the governor and secretary may permit the NPC to begin to deliver services to the Northern population.

Many Tamils in the North criticize the TNA as ineffective, and the complaints range from the mundane to complicated issues like regaining confiscated lands and halting Indian trawlers poaching in Sri Lankan waters. One big reason for the TNA's impotence was the Rajapaksa government's refusal to let it carry out its mandate. The challenge now for the TNA is to manage the expectations of Tamils who want quick solutions to their problems, even as it tries to muzzle elements within it that act as spoilers. The attempts by elements in the Tamil Diaspora and the TNA to marginalize Sampanthan and Sumanthiran have not succeeded; but the government's failure to quickly release Tamil political prisoners, account for those who have disappeared, and return most lands the military has taken over, could lead these spoilers to gain sway.

The Sirisena government has asked the military to vacate camps not necessary to maintaining security and return occupied lands to their rightful owners. It is also trying to meet legitimate Tamil demands through its declaration of support for the 13th Amendment, which would satisfy many Tamils and the international community. The new government apparently wants to compromise with the TNA and Tamils — a welcome change. The Sirisena government seems intent on engaging the Tamil Diaspora, a positive development because many in the Diaspora want to invest in Sri Lanka and are willing to work with the government to improve the Tamils' plight. However, hardcore LTTE elements will oppose Sirisena's overtures for ideological and monetary reasons; their acolytes in Sri Lanka are bound to do likewise. Unfortunately, extremist Tamil media and Sinhalese Buddhist nationalists will amplify their voices, and the government and Tamil moderates need to be prepared to counter this.

The TNA ran under the Ilankai Tamil Arasu Katchi (Lanka Tamil Federal Party, ITAK) label for the August parliamentary elections. It did well, winning 16 seats and being made the opposition party in parliament. It has approved the UNHRC resolution Sri Lanka co-sponsored and its willingness to work with the government and international community while eschewing radical demands will go a long way in helping the country move away from the traumas of the civil war.

Indian Tamils have long been represented mainly by the Ceylon Workers Congress (CWC), and their leaders have usually allied with the ruling party. During the 2015 presidential election, the CWC leadership supported Rajapaksa, even though the vast majority of Indian Tamils voted for Sirisena. The CWC campaigned in coalition with the UPFA and garnered 17,101 votes. Hill country Tamils are fed up with the CWC and its poor representation of its interests, and the CWC's performance evidences this discontent.

## 5.4.6 MUSLIM PARTIES

While Sri Lanka's Muslims used to vote for the UNP and SLFP, many have switched to supporting Muslim political parties, among which the **Sri Lanka Muslim Congress (SLMC)** is the most prominent. The SLMC originated in the Eastern Province in 1989 but gradually spread its influence to the South. With the UNP and SLFP often depending on coalitions to govern, the SLMC has played an important role in government, despite the party having split in 2008, when the **All Ceylon Muslim Congress (ACMC)** was formed.

The party operated as part of the UPFA coalition until just before the 2015 presidential election, when it joined the common opposition against President Rajapaksa. The SLMC and ACMC politicians in general stood discredited among Muslims because they were perceived to put self-interest over their community's needs. This was especially the case when they continued as part of the UPFA coalition despite the rabid rhetoric and violence perpetrated by the BBS, seen as a Rajapaksa creature.

While rural Muslims, especially in the Eastern Province, have different preferences from those in urban areas like Colombo, most Muslims — like most minorities — usually vote for the UNP candidate during presidential elections. In 2015, they voted en masse for Maithripala Sirisena, given President Rajapaksa's tacit support for the BBS. The common perception among Muslims is that their politicians have failed to lead them during recent anti-Muslim agitation.

The SLMC and ACMC were part of the UNFVG coalition during the parliamentary elections and the parties' leaders are now leading players within the Sirisena government.

## 5.5 ELECTIONS

Rajapaksa's regime was characterized as a soft-authoritarian state because it combined elections with aspects of authoritarianism. While not averse to stealing elections, such states typically pursue tactics that ensure a weak opposition, a muzzled media and civil society, cowed and compromised bureaucrats, corrupt courts, full control and abuse of state resources and an intimidated public to keep winning elections. President Rajapaksa resorted to all this, which is why many felt he was bound to stay on in power. Yet, he lost.

Sri Lanka, while still a British colony, was the first in Asia to acquire universal franchise in 1931. This was only three years after the United Kingdom itself granted a universal franchise. The island thus has a long history of voting and people take the franchise seriously, evident in the relatively high numbers that turn out to vote. But voting has to be overseen by competent authorities who can ensure the will of the majority. In that sense, the neutral and dispassionate role the elections commissioner played in the run-up to the recent election was one major reason for Rajapaksa's defeat. Fraudulent elections in the past have rarely been overturned, and there was reason to believe that the Rajapaksas would rig this election. There may have been attempts to do so, but the elections commissioner's determination to ensure a free and fair poll, the backup system created to tally votes and the cast of civil society actors he collaborated with all contributed to a poll that exceeded many people's expectations in being free and fair.

The army commander and AG also opposed the imposition of emergency rule when President Rajapaksa and some supporters considered this option to stay in power. The army commander is alleged to have told Rajapaksa that while he would necessarily follow his commander-in-chief's order, he could not guarantee that anyone below the rank of colonel would obey such an order. The AG, apparently under the guise of seeking advice, kept the solicitor general abreast of what was being discussed within the president's inner circle, and the solicitor general in turn kept others aware of a potential move in the direction of a coup.

Previous governments compromised state institutions; but the Rajapaksa regime appeared to deliberately undermine them. Under the Rajapaksas, deinstitutionalization seemed to be a deliberate strategy so all power could be concentrated in what came to be called the (Rajapaksa) First Family. Regardless, many officials

President Rajapaksa appointed to high offices, including those in the Election Commission, took brave and principled decisions to prevent an election being stolen.

The Elections Commission did an even better job during the parliamentary elections, mainly because it was allowed a free hand to carry out its duties. As noted above, many observers, including from the international community, said that the August elections were the freest elections held in post-independence Sri Lanka. This bodes well as Sri Lanka works towards being a more transparent and accountable democracy as part of President Sirisena's *yaha palanaya* (good governance) program.

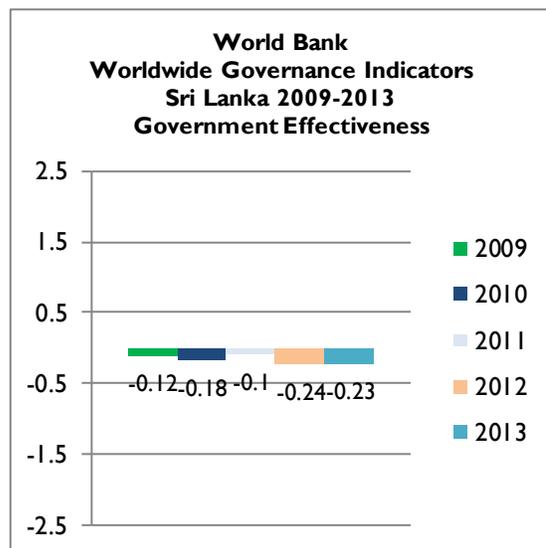
## 5.6 PUBLIC SERVICE

The declining reputation of Sri Lanka's public service, reflected in the World Bank's negative and declining scores on government effectiveness shown in Figure 4, has paralleled the island's ethnocentric trajectory. Tamils were overrepresented in post-independence Sri Lanka's public service partly because the limited opportunities in the North drove them to seek government jobs; the British authorities then were willing to accommodate minorities as part of their divide-and-rule practice. Tamil overrepresentation in the public service needed to be reversed, but this was done in ways that compromised the integrity and professionalism of the public service and its civil servants and helped tip the country into conflict.

In 1963, the first Sirimavo Bandaranaike government disbanded the elite Ceylon Civil Service (CCS) and replaced it with the Ceylon Administrative Service (CAS) because the multiethnic and intellectual CCS personnel were considered overly independent and averse to being influenced by politicians. The forced retirements that followed enabled the appointment of more pliant and mainly Sinhalese Buddhist civil servants. Thereafter, the 1972 constitution that the second Sirimavo Bandaranaike government introduced replaced the impartial Public Service Commission with the State Services Advisory Board (SSAB) and the State Services Disciplinary Board (SSDB), both instituted under the Cabinet of Ministers who dictated how and where civil servants operated and whose decisions were beyond the purview of courts (as the judges too were considered overly independent). J.R. Jayewardene's 1978 constitution eliminated the SSAB and SSDB, but allowed ministers to continue dictating to public servants at the expense of standards and professional norms. By the time Rajapaksa became president, the public sector was nearly 95 percent Sinhalese and inefficient, wasteful and corrupt. Yet Rajapaksa went out of his way to deinstitutionalize the public service further as he personalized governance and expanded the writ of the central government. This was most evident in the gutting of the independent commissions that were set up through the 17th Amendment.

The Rajapaksas not only overruled ministers, often causing them to abdicate their responsibilities, but they corralled the most important portfolios to make many Cabinet colleagues ministers in name only. The large Cabinet, with more than 100 ministers, deputy ministers, non-Cabinet ministers and project ministers, combined with ministers at the provincial council level, also saw responsibilities overlap in ways that made it easier for the Rajapaksas to dominate the public service. Furthermore, the family used the public service as a patronage network, and in many instances a letter from Namal or Basil Rajapaksa was required for a person to obtain a job that was often redundant. This led to the government workforce going from about 600,000 to more than 1 million by the time Rajapaksa left office. Many poorly qualified arts graduates were among those appointed to the public sector during this time; in some government departments, these new recruits lacked desks and real work. Finally, much of the corruption that took place under the Rajapaksas was carried out

**Figure 5: Government Effectiveness**



using public sector institutions. Already compromised institutions were thus made all the more corrupt. It will take time and serious effort to rebuild an honest and effective public service.

The Sirisena government claims to want the public service to operate independently. The 19th Amendment should go some way toward trying to professionalize the public service, but how to deal with the bloat is a major issue. The fact is that there is no political will within any of the parties to trim the public service. On the contrary, the Sirisena government, soon after the president took over, gave public-sector employees a healthy raise; while justified given the high cost of living, this was mainly done to secure political support. Eventually, the government will need to find a way to cut jobs as the cost of the public service is unaffordable; salaries and benefit costs will leave little for services and investment.

## 5.7 SECURITY FORCES

Sri Lanka's security forces have gone from occasionally quelling ethnic riots to being a military that defeated two JVP insurrections and a separatist terrorist force that many said could not be militarily defeated. It lost thousands of personnel in achieving the latter, but the controversial way that it pursued victory is the main reason for the island's current human rights predicament.

In waging war with the LTTE, the army especially turned out to be a fit and deadly fighting force, and some of its units may be better than equivalent units in the Indian and Pakistani militaries. The military's discipline was one reason Gotabhaya Rajapaksa used it for various development projects. This aside, the government was unwilling to decommission so many young men who were not going to find meaningful employment after being let go from the military. Furthermore, many soldiers were from rural areas that voted for the SLFP, and it was not considered politically smart to deprive them of a pay check.

But this meant using soldiers to build and refurbish roads, bridges, temples and classrooms; run boat services and whale-watching tours; farm vegetables and sell packets of lunch on street corners; spruce up parks; operate hotels, restaurants and roadside cafes; hang lanterns during Buddhist celebrations; and clean drains during floods and when dengue fever was rife. While soldiers may not have resented engaging in the latter, as it was considered an emergency service, they appear to have disapproved of being used for most other activities. Military officers who considered the armed forces to be professional also appear to have resented their troops being demeaned. This was no doubt one big reason military personnel split their vote (going by the postal vote) during the presidential election, despite President Rajapaksa and his brother, Defense Secretary Gotabhaya Rajapaksa, being considered pro-military.

Sri Lanka's military thus remains bloated at roughly 400,000 personnel. The challenge facing politicians and military leaders is how to move to a structure suitable for peace and how to demobilize excess troops. While some can be used in U.N. peacekeeping missions, this will only absorb a small number and hardly solve the problem. Currently, the new government cannot move on this issue without running serious risks, either in terms of support from the military or vis-à-vis opening space for Sinhala extremists. When the defense secretary visited Asgiriya Temple in early February, for example, a senior monk asked him not to reduce the scale of military camps in the North and East, as forces abroad are still trying to undermine the country. The defense secretary responded that the government had no plans to reduce security.

The issue of paramilitaries associated with Douglas Devananda's EPDP in the North and Colonel Karuna and Pillayan in the East also remains. The government indicated it would stop the subsidies the Rajapaksa government had paid to EPDP's 600 paramilitaries; Devananda cannot sustain the payments himself. Some kind of plan for demobilization and reintegration is needed, lest these individuals simply become criminal gangs; they already are essentially political thugs used by the prior regime. Pillayan's group caused quite a bit of trouble in Batticaloa during the presidential elections.

Another challenge is the extent to which and how quickly military-occupied lands are turned over to their rightful owners, especially in the Northern and Eastern Province. Recovering confiscated lands ranks high among Tamil demands and achieving this is bound to help the ethnic reconciliation process. But many military officials have benefitted from these expropriated lands (i.e., from the hotels, farms and golf courses built on them) and they may be leery of parting with certain properties.

The Sirisena government must feel some obligation to the military, given the latter’s unwillingness to help the Rajapaksas extend their rule illegally. No doubt, some within the military were eager to help the Rajapaksas; but as an institution, the military tarnished its image by refusing to undermine the political process that was played out through the presidential election. Changes taking place within the military hierarchy will ensure that those who are loyal to the Rajapaksas are neutralized; it is a matter of time before most military reserves are deactivated. But the military as an institution will need to be treated gingerly, which means that demobilization, divesting expropriated lands and extricating the armed forces from the business sphere are likely to take place slowly. Security considerations will prevent all lands being turned over to their rightful owners, an issue the government and Tamil parties like the TNA would need to deal with.

The Rajapaksas apparently hoped that feeding the military would ensure their security and political longevity. Had President Rajapaksa won a third term, the military would have expanded its influence in the economy to such an extent that Sri Lanka could have ended up like Pakistan and Egypt, where the military’s business interests are so extensive that the armed forces become part and parcel of politics. Rajapaksa’s defeat has averted this possibility and allows Sri Lanka’s military the ability to maintain its professionalism as a security force under civilian authority.

Going forward, the military will need to maintain sufficient infantry to combat a possible LTTE resurgence, ensure intelligence units stay equipped to clamp down on radical elements, and maintain overall readiness to protect the island’s territorial integrity. In the latter case, the military will need to engage with the navy, especially as that force deals with human trafficking and poaching in Sri Lankan waters, and it may need assistance reorienting itself.

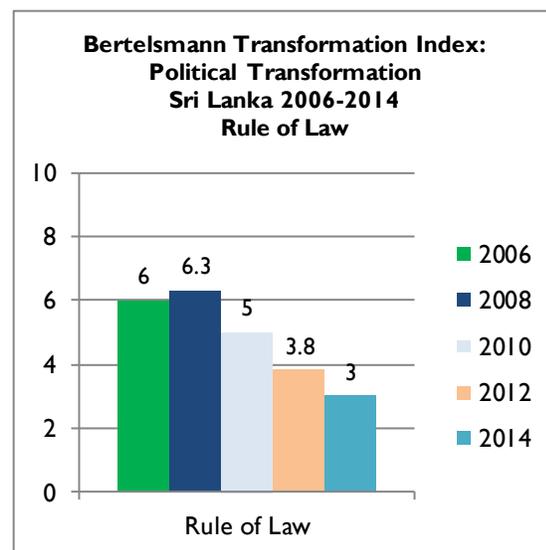
The trials bound to take place as a result of the UNHRC resolution will implicate certain military personnel. This will be risky for the Sirisena government. The government has suggested that only some individuals are responsible for human rights violations and the military as an institution is not to blame. This is a line that will need to be reiterated so that the military does not become an adversary.

## 5.8 RULE OF LAW AND HUMAN RIGHTS

### 5.8.1 THE OVERALL STATE OF RULE OF LAW AND HUMAN RIGHTS

There is agreement that the respect for rule of law and human rights deteriorated sharply under the Rajapaksas. In Figure 5, the Bertelsmann Political Transformation: Rule of Law scores show a decline from a rating of “defective democracy” in 2008 to one of “hardline autocracy” in 2014. While abductions, arbitrary detention, torture and rape have declined over the past couple of years and the “white van” abduction phenomenon is no longer prevalent, thanks largely to sustained international pressure, these violations have not entirely disappeared. The country as a whole has witnessed over the course of the Rajapaksa era heightened lawlessness; use of violence, intimidation and hate speech as tools for political gain; and a marked increase in impunity for those in positions of power. The response of

**Figure 5: Erosion in the Rule of Law**



the judiciary has been feeble at best. Even in the South, people complained that they no longer felt safe from abuse by politicians, regime cronies, and the police. Rising impunity and diminished law and order in the South (and not just in minority-dominated areas) were a good part of the reason President Sirisena won as many votes as he did among the Sinhalese. All rule of law institutions have been debased, and it will take time to rebuild them. Human rights CSOs have also faced serious constraints and pressures; surveillance rose in 2014 due to regime concerns about the OHCHR investigation and attempts by victims of rights abuses to provide testimony via such CSOs.

The new government is committed to strengthening the rule of law and judicial independence. The passage of the 19th Amendment in April was a critical initial step in reform. The Amendment allowed for the Constitutional Council to set up several independent commissions (some already existed, while others such as the National Procurement Commission were newly proposed). The Constitutional Council was appointed in September and is comprised of a Speaker, Prime Minister, Opposition Leader, four parliamentarians and three non-parliamentarians including a social worker and a former AG. The government has called for nominations of independent commissioners to chair the commissions, and hopes to finalize appointments by late October. This will be an important step towards restoring good governance.

### 5.8.2 THE JUDICIAL SYSTEM

The higher judiciary lost its independence and became a tool of the executive over the course of the Rajapaksa years. Not surprisingly, it also lost much of its legitimacy in the eyes of the Sri Lankans. Capacity is low in the higher courts; seats were filled with compliant judges who would do executive bidding, seniority was ignored in appointments, and judgments that went against executive wishes were few in number and potentially hazardous. Some judges were cowed, while others became willing accomplices. The quality of Supreme Court (and appellate court) judgments on cases relevant to democracy and human rights declined steadily from the Sarath Silva Court to the Shiranee Bandaranaike Court to the Mohan Peiris Court. Government agents were hardly ever held to account for their actions, and deference was generally accorded to public authorities. There was a serious culture of impunity evident in the police, the military, and among party politicians in alliance with the UFPA and public agencies.

When a bench that included Chief Justice Shiranee Bandaranaike found that elements of the proposed Divi Neguma Bill violated the constitution,<sup>3</sup> President Rajapaksa had a compliant parliament improperly impeach her in January 2013. A three-judge bench hearing the appeal against her impeachment declared the impeachment invalid. The government ignored the ruling, threatened the Chief Justice until she stepped down, and denied her a pension. This was the first time since the country's independence that the government had failed to implement a Supreme Court decision.

AG Mohan Peiris, an individual personally close to the President, was named Chief Justice. In appointing Peiris, the President ensured an entirely compliant Supreme Court. Peiris was with President Rajapaksa on election night, a clear breach of the norms of judicial conduct but a symbol of this Chief Justice's view of his role – when asked what he was doing at Temple Trees, he said he was advising the President. Peiris tarnished the office of Chief Justice further; it had always been the case that the President might call the Chief Justice on a case that was important to the government, but suddenly calls were coming from much lower levels in the government system, including from provincial land officers.<sup>4</sup>

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<sup>3</sup> Provisions of this bill were a characteristic example of Executive overreach and usurped certain powers of the Provincial Councils, developed grassroots structures tied directly to the Ministry of Economic Development, and vested great power in Minister Basil Rajapaksa, the president's brother. The bill tried indirectly to usurp space for independent civil society and contributed to the ongoing centralization of power.

<sup>4</sup> Reported by land officers in the south to an assessment team informant, February 2015.

Within a few weeks of Sirisena's election, Peiris was forced to resign as Chief Justice. The President appointed former Chief Justice Bandaranaike, partly at the insistence of the Bar Association which wanted her tenure validated, and partly because there was an argument that having been illegally impeached, she was still technically Chief Justice. She resigned in a day, whereupon the most senior Supreme Court Justice, K. Sripavan, was named Chief Justice. He is the first Tamil to hold the position in more than 20 years. Despite the acceptability and even symbolic value of his appointment, it is remarkable that the country had three Chief Justices in three days. The legal fraternity was conflicted over the appointment process; most were happy to be rid of Peiris, but many felt the process that removed him was not entirely legal. Complaints were muted however because the change provided an important start to recovering judicial independence.

In contrast to the badly compromised higher courts, most legal scholars and senior members of the Bar believe that lower court judges (magistrate and district levels), though constrained by political realities and subject to administrative penalties such as arbitrary transfers, were "decent" and showed a greater degree of independence than their seniors. There are however many younger judges, especially in the east and north, and their legal knowledge and the English language in which the courts generally operate is precarious. The training system is inadequate. While the focus in training is on lower court judges, judges at all levels need from training. Given the reforms the new government is contemplating, such as the right to information and the new Victim/Witness Protection Law, there will be a need to train judges in these new laws.

The courts suffer from an array of problems thoroughly documented in USAID's 2010 Rule of Law assessment: a mixed common-civil law system with multiple sources of law and some confusion between those sources, overly complex civil and procedural codes that date back to colonial times and need updating, inefficiency and lack of attention to standards of performance in case disposal, limited use of technology to improve court administration, poor case management and inadequate data on caseloads, a case backlog of roughly one million, inadequate provision of translation for Tamil speakers, limited access to legal aid, corruption, and limited use of bail leading to long periods of pre-trial detention among them. There is a need for sentencing guidelines. Convictions in criminal cases are low, and cases drag on. Members of the National Police Commission noted as an example the case of the rape of a 14-year old girl, which continued in court for eight years. One problem has been resolved (assuming the new law is implemented) and that is the ease with which victims and witnesses could be intimidated by criminal or political elements.

If an independent Judicial Service Commission (JSC) is allowed to function, it should be possible to begin to repair the damage done to the judiciary. The 19<sup>th</sup> Amendment states that while the JSC would still be formed by the Chief Justice (Chair of the Commission) and the two senior most judges on the Supreme Court Appeals and Supreme Court judges will be named by the President in consultation with the Constitutional Council, a group whose breadth of membership might reduce the past politicization of those appointments. The procedures and functions of the JSC relative to hiring, promotions and transfers need to be reviewed and possibly reformed. For example, at present, a transparent process for the recruitment of minor judiciary judges does not exist. These judges are initially appointed on the basis of an examination and interview process, but the processes and results are not made public. It is believed that biases exist. In addition, a code of conduct for judges does not exist. Both the Bar Association and legal scholars believe that it is important to conduct consistent monitoring of court processes and judgments in the coming years.

### **5.8.3 THE BAR, LEGAL AID AND LEGAL EDUCATION**

The Bar Association of Sri Lanka has roughly 9,000 members and over 70 branches around the country. Initially fairly quiescent over the erosion of democratic norms in the country, it has become more activist in the last couple of years. It opposed to the appointment of Mohan Peiris as Chief Justice and has been more outspoken in trying to defend the independence of the courts and stand up for fundamental rights.

Lawyers defending victims of rights abuses and filing public interest litigation against the government have been subject to threats, detention, and worse. Intimidation and surveillance of Tamil human rights defenders

in the North and East is still apparent, though appears less intense than during the Rajapaksa era. Human Rights CSOs have played an essential role in defending detainees and in bringing habeas corpus and fundamental rights cases before the courts. They have also assisted families of disappeared, detainees and newly released detainees with travel money, care packages and livelihood support. They have been critical in helping those who wished to testify before various international bodies to do so. While the government funds a Legal Aid Commission, the Commission has been unwilling to take serious human rights cases for fear of antagonizing the government and putting its lawyers at risk.

Under Rajapaksa, academic institutions lost their independence and political correctness mattered. Both the Law College and the Colombo University Faculty of Law declined in quality. The Law College is trying to reestablish standards for admissions and performance and is reviewing its curricula. Both institutions are lecture-oriented and students emerge with little in the way of applied skills. The Bar Association is in the process of providing training to new apprentices and law college students on professional ethics.

#### 5.8.4 THE POLICE

The President appoints the head of Police, the Inspector General of Police (IGP) but in 2004, the police were formally placed under the Ministry of Defense. The National Police Commission (NPC) established under the 17th Amendment had the powers of appointment, transfer, dismissal, and promotion for police officers, as well as the authority to investigate complaints from the public on police conduct. After 2010, the 18th Amendment reduced the functions of the NPC. Powers of appointment, etc. for senior police personnel were handed to the PSC (appointed by the President) while for lower level police, authority was given to the IGP, though it was really exercised by the Ministry of Defense and subsequently the Ministry of Law and Order. There was no coordination between the PSC and the NPC. The NPC continued to investigate public complaints but had no authority to enter police stations, interview police or demand records; cooperation by the police was entirely voluntary and essentially non-existent. The NPC has no disciplinary powers, it can only make recommendations to the IGP. The passage of a 19th Amendment gives the NPC more authority, helping create a check on police behavior. The amendment restores the powers of appointment, promotion, transfer, disciplinary control and investigation to the NPC.

The police have been highly politicized. They stood by or assisted BBS mobs attacking Muslims, they turned a blind eye to election violations, and they ignored violence against opposition party candidates and workers. The politicization of the police and their institutional link with the army have led to resentment on the part of the police and a lack of public confidence in investigations and prosecution.

Sri Lanka has a long standing problem with police brutality. Torture in custody appears common, and deaths under suspicious circumstances are not all that rare. At least two persons were reported to have died in police custody since President Sirisena took office.<sup>5</sup> Police lack the skills to gather evidence, record statements, handle witnesses, preserve a crime scene, and use forensics. There has been little to no investment in their infrastructure and technology. This capacity constraint has led the police to seek confessions from suspects, often by physical abuse. There is no incentive for the police to end torture as long as coerced confessions are accepted in court, and there is little attempt to prosecute or discipline police who abuse or kill prisoners.

Due to international pressure and in accordance with a Lessons Learned and Reconciliation Commission (LLRC) recommendation, the police and the elite Special Task Force were moved out from under the Ministry of Defense in August 2013 and placed under a new Ministry of Law and Order. President Rajapaksa maintained control of the Ministry and named a retired Major General as Secretary to the Ministry. The change was more cosmetic than real, but under the Sirisena government, the police and the Ministry of Defense should become functionally separate. While overt political use of the police should diminish under the Sirisena government, particularly if the NPC is restored with full powers, the problem of police brutality is

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<sup>5</sup> One of the two was reported to have jumped out of a police jeep and drowned in a lake, which seems unlikely.

much harder to resolve. The British are trying to improve professionalism, providing support for improving the curriculum at the police training college and working with the police on community policing.

The government has recently set up a special police unit to help in prosecuting corruption cases. The police lack specialized skills in investigating complex financial transactions, money laundering and the like. Thus far, based on reports in the press, it appears that more “small fish” than “big fish” are being caught. More serious corruption cases are certainly more complicated to investigate than smaller cases (e.g., the illegal possession of a diplomatic passport by the wife of a politician close to Rajapaksa), but there is also a concern that in this uncertain interim period, when some may worry about a Rajapaksa comeback, the police could drag their feet on cases for which they might risk retribution later.

The military continued to hold police powers and has the authority to secure public order anywhere in the country through February, when Sirisena allowed this power to lapse. The military are not trained in policing. Their overreaction to citizen protests over water contaminated by a factory at Weliveriya led to one death and 20 injuries in 2013 and damaged the army’s standing.

## 5.8.5 PROSECUTION

The attorney general’s department is another institution that has lost independence and been politicized. Under the 17<sup>th</sup> Amendment, the attorney general (AG) was appointed by the Constitutional Council, a guarantee of some independence. After passage of the 18<sup>th</sup> Amendment, the AG was appointed by and served at the pleasure of the President. This should again change with the 19<sup>th</sup> amendment. The AG is the chief legal advisor to the government on all criminal and civil matters that concern the government. With respect to criminal matters, he carries responsibility for and oversees all prosecution cases at both the magistrate and high court levels. Drafting of indictments is done by the AG’s Department and through state counsel of other government departments for the High Court. In cases tried in the Magistrates’ court, the charges are laid by the police who also conduct the prosecutions under AG oversight. Limited police capability helps explain the low conviction rate in criminal cases. The AG has the power to intervene in a case. Prosecutions under the Prevention of Terrorism Act (PTA) are generally conducted by the AG who has the power to refuse bail to an accused.

The AG’s department has a significant workload, and it is one that will only increase with the government’s pursuit of corruption cases linked to the prior regime. It is short of staff and has problems with recruitment and retention. There is no structured program of staff development; for example, the civil division is in need of training on commercial and contracting law. The department lacks technology to link provincial offices and ways to network effectively with remote staff. The most pressing problem is improving the case management system, which is antiquated. The department also needs to upgrade its legal library.

## 5.8.6 HUMAN RIGHTS, HUMAN RIGHTS INSTITUTIONS AND ACCOUNTABILITY

### 5.8.6.1 Disappearances, Abductions and Extra-Judicial Killings

The CIRI Index below for 2011, the last year for which data are available, suggests the magnitude of the island’s human rights problem prior to 2015. Sri Lanka has a long history of setting up presidential commissions of inquiry to investigate serious human rights abuses, such as the 2009 Commission investigating 16 serious cases of violations, including the 2006 murder of 17 staff of the French INGO *Action contra Le Faim* in Trincomalee. The security forces were suspected in this case (there were witnesses) but were exonerated by the Commission, which made it difficult for witnesses to testify and did nothing to correct the botched police investigation. The full report has never been released. This example is consistent with the general pattern.

**Table 1 Cingranelli-Richards (CIRI) Human Rights Index, Sri Lanka**

Variable	2011
<b>Physical Integrity Rights Index:</b> Physical integrity rights are noted as torture, extrajudicial killing, political imprisonment, disappearance	No government respect for these rights
<b>Disappearances</b>	Occurred frequently
<b>Extrajudicial Killings</b>	Practiced frequently
<b>Political Imprisonment</b>	Many people imprisoned for religious, political, or other beliefs
<b>Torture</b>	Practiced frequently
<b>Independence of the Judiciary</b>	Not independent

Commissions are established generally in response to international and domestic pressure and are meant to signal seriousness of intent. There is however no real commitment to a serious investigation. Their reports often are not published and are seldom acted upon. The latter finding is also substantially true of the LLRC recommendations; this commission’s report is exceptional in having been published. Most commissions have not been free of executive interference, compromising their legitimacy and creating risks for those who choose to testify before them.

The Presidential Commission of Inquiry to Investigate Complaints Regarding Missing Persons in Northern and Eastern Provinces (the Missing Persons Commission) is the latest example of such a commission. It was constituted in August 2013, according to a recommendation made to President Rajapaksa by LLRC Commission, and has been holding hearings. Its mandate was expanded in July 2014 to investigate a broader array of complaints (beyond enforced disappearances) over a longer timeframe (originally 1990-2009 and now 1983-2009), a tactic largely designed to bog down its work and ensure nothing useful was produced.

The Missing Persons Commission’s second mandate began in August 2015. The Commission shared its Second Mandated Interim Report with President Sirisena in August, but the report has not been made public. Citizens are petitioning for the release of the report, and it is expected to be made public in October 2015, after a Parliamentary hearing. No deadline has been set for the Commission to complete its investigations. Even without the expansion in scope, the Commission noted recently that it had received over 20,000 complaints about missing persons; at the rate it hears cases, it will take more than 13 years just to attend to these 20,000, never mind that complaints continue to arrive.<sup>6</sup> Hearings are currently being held in Trincomalee. Relatives of the Disappeared in the district sent a letter declining to appear before the Commission because the Commission’s previous line of questioning suggested that it was more interested in asking about socio-economic support for the families of the disappeared than it was in tracing what happened to those who disappeared and holding anyone accountable.

*Authorities continued to threaten, harass and arrest human rights defenders, including lawyers, family members of the disappeared and other activists. None of the incidents known to Amnesty International were effectively investigated, and no prosecutions were initiated. People calling for accountability for past and current human rights violations, including human rights defenders attempting to communicate concerns to the UN, were harassed and threatened. In some instances, individuals suspected of “internationalizing” these issues through association with foreign colleagues were detained. Women activists in northern Sri Lanka were questioned and arrested.*

— Amnesty International  
2014/15 Annual Report

Disappearances, abductions and extra-judicial killings have primarily affected the minority population, democracy/rights activists, and journalists criticizing the government. The trend has been in decline the past

<sup>6</sup> Analysis by the Centre for Policy Alternatives, <http://groundviews.org/2014/09/11/infographic-presidential-commission-on-missing-persons/>

couple of years. Most cases since the return to war fell into the 2006-11 period, yet more than 20 disappearances were reported in 2012. The Report of the UN Working Group on Enforced and Involuntary Disappearances for the period from November 2012 to May 2014 noted that 63 cases were brought to its attention in this 18-month period, with six cases clarified by the government, leaving a total of 5731 unresolved disappearances that have been brought to the Working Group's attention.

The new government has in recent months reactivated some investigations such as the disappearance of the journalist Prageeth Eknelygoda. In August five officers and one civilian were arrested for the crime. In late March, the CID arrested three former navy personnel in connection with the assassination of TNA MP Raviraj in 2006.

### 5.8.6.2 Detention without Charge

While the 1983 Emergency Regulations (ER) which gave the military sweeping powers of arrest and prolonged detention without charge were lifted in 2011, the 1971 PTA and other laws remained in place and continued to permit detention without charge for up to 18 months. The PTA gives police broad powers over suspects in custody and is the law most commonly invoked by officials to justify prolonged detention without trial of security suspects. It is still in regular use. The number of those currently detained under the PTA is unknown. The government claims it has made available comprehensive lists of the names of those detained under the law as well as their places of detention, but family members continue to report difficulty accessing this information. Recently the government reported that it has 187 individuals (of whom four are female) under PTA detention but some human rights groups think the number is higher. One CSO reports that it currently is handling 158 PTA cases, involving 120 individuals of whom six are female.<sup>7</sup> This CSO further reports that it is receiving roughly 10 requests for representation in detention cases per month. One report suggested that between January and April of 2014, 80 persons were detained and held without charged by the Terrorism Investigation Department.<sup>8</sup> Between January and September 2015, at least 21 people have been arrested and detained.<sup>9</sup>

It is not only those suspected of links to the LTTE who are detained; human rights activists such as Ruki Fernando and Father Praveen Mahesan, detained in 2014 and released subsequent to considerable domestic and international pressure, have also been victimized by the PTA. Their detention followed by a few days the arrest of Balendran Jeyakumari, a Tamil woman who had been a vocal advocate on disappearances and who was trying to trace the whereabouts of her son.<sup>10</sup> She was released on bail by the new government in March 2015; the charges against her seem trumped up, her real crime was being outspoken. A few others were released at the same time, including one pregnant Tamil woman.

Both the PTA and the ER contributed to the problem of disappearances and extra-judicial killings. There has long been suspicion that Tamils were being held in secret camps outside the purview of the judicial authorities, but Prime Minister Wickramasinghe denied the existence of secret camps in a statement on March 4, and said that the government is preparing a list of all those held in detention and reviewing their cases. The release of a list as well as serious progress in dealing with these cases would respond to a key Tamil grievance.

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<sup>7</sup> Email correspondence between Lynn Carter and a human rights lawyer, 6 March 2015. Often multiple cases may be filed in multiple courts against the same individual.

<sup>8</sup> <https://freejeyakumary.wordpress.com/freejeyakumary/>

<sup>9</sup> WATCHDOG, PTA detainees – Ignored under “Yahapalanaya?” - <http://groundviews.org/2015/09/05/pta-detainees-ignored-under-yahapalanaya/>

<sup>10</sup> In 2008 at the age of 15 he was press-ganged by the LTTE. He was known to have surrendered to government forces in May 2009, and he was subsequently seen in a photograph of activities at a state-run detention center for former child soldiers. Despite the photographic evidence, his mother has been unable to secure information about him.

In addition to releasing or charging those detained, the government needs to assess the need for the PTA. Politically, however, it was difficult for the government to make this change in the run up to the general elections, lest it be assailed by the ultra-nationalist Sinhala right for being soft on security. Calls for the repeal of the PTA have increased since the completion of those parliamentary elections.

### 5.8.6.3 Torture and Rape

The Center for Justice and Accountability, Human Rights Watch, Amnesty International and others have documented a pattern of torture and rape of Tamil men and women, who in some cases were perceived to have had ties with the LTTE in the North.<sup>11</sup> The September 2015 OHCHR report also noted the systematic rape and torture that continued to take place even after the civil war ended. The Criminal Investigation Department and the police are often involved, and often the victims are forced to sign a confession in Sinhala, a language they are unlikely to know. Allegations point to rape and sexual violence as a consistent part of torture techniques after a person has been unlawfully arrested and detained incommunicado. The International Truth and Justice Project has reported 11 cases of brutal torture by security forces from January to September 2015.<sup>12</sup>

Gender-based violence (GBV) including rape, sexual harassment, and domestic violence is a problem country-wide and will be discussed further in the gender section.

### 5.8.6.4 The National Human Rights Commission (NHRC)

The National Human Rights Commission (NHCR) was established in 2000. The Commissioners have been named by the President. The NHRC could be an important institutional safeguard, but it has been subverted by President Rajapaksa. It suffers from structural weaknesses as well as politicization. The act establishing the Commission defines its jurisdiction so broadly that there is a case backlog, many of which involve complaints about public sector employment. The Commission does not give priority to serious rights violations. It has also shown a reluctance to take high-profile cases such as the one involving the disappearance of the journalist Prageeth Eknaligoda in 2010.<sup>13</sup>

Its performance was so lackluster that in 2009, that the Commission was downgraded to a “B” by the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights. It has not managed to recover its “A” grade and blames its demotion on poor relations with CSOs, which it claims have since improved. It has however been unwilling to work with or share information with human rights CSOs since late 2006. The Human Rights Unit of the Commonwealth Secretariat has been providing assistance but reportedly the assistance has been more nominal than real since there was no prospect for genuine reform. This should change under the new government.

Minorities in the north and east do not trust the Commission and take their human rights complaints to NGOs and in the past to ICRC and UNHCR; this shows up as declining trend in violations in the north in the NHRC’s records. Those in the south, increasingly experiencing rights violations under the Rajapaksas, do bring their complaints to the Commission. The Commission noted a rising trend of complaints coming from the south and southwest.

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<sup>11</sup> See paragraphs 97-128 for specific cases. Center for Justice and Accountability, Crimes against Humanity in Sri Lanka’s Northern Province, May 4, 2014.

[http://cja.org/downloads/Crimes%20Against%20Humanity%20in%20Sri%20Lanka\\_s%20Northern%20Province.pdf](http://cja.org/downloads/Crimes%20Against%20Humanity%20in%20Sri%20Lanka_s%20Northern%20Province.pdf)

<sup>12</sup> Colombo Mirror, ITJP releases fresh evidences of ongoing torture, rape in Sri Lanka (video) - <http://www.colombomirror.com/?p=3989#.Vf6Pr9-qqkq>

<sup>13</sup> While it ultimately took the case, its behavior could hardly be regarded as proactive.

[http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion\\_The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf](http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion_The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf)

While the NHRC registered no complaints about institutional constraints in its interview with the team, it has long been seriously under-funded and under-staffed (both in number and in professional qualifications and training). With the 19th Amendment and the appointment of serious and active Commissioners, it should be possible to reform the NHRC but it will take time and effort to rebuild its capacity and change the organizational culture.

#### 5.8.6.5 Transitional Justice: Accountability for Alleged Violations of International Human Rights and Humanitarian Law

The LLRC was created in 2010 under President Rajapaksa as a way of responding to increasing international calls for an international independent investigation into possible violations during the last years of the civil war. The Commission was staffed by eight Sri Lankans and no international experts. Its mandate was to inquire into and report conflict-related events that may have taken place between February 21, 2002 and May 19, 2009. From its inception, the international community had reservations about the credibility and accountability of LLRC, with Amnesty International stating in 2011, “officials described [the LLRC] as a credible accountability mechanisms, able to deliver justice and promote reconciliation. In reality it’s flawed at every level: in mandate, composition, and practice.”<sup>[1]</sup>

The LLRC’s report was made public in December 2011. It contained observations on the drivers of the conflict and reconciliation efforts and also contained recommendations. However, the report largely ignored issues of accountability for international humanitarian law and international human rights law violations by government security forces and LTTE actors. This lack of information on the legal aspects of human rights called the validity of the report and the LLRC itself into question. Again, the international community pushed for international observers in order to ensure neutral parties were evaluating the events of the civil war in accordance with international humanitarian and human rights laws.

The UNHRC adopted resolution 19/2 in March 2012, calling on Sri Lanka to implement the LLRC’s human rights recommendations and address accountability for alleged violations of international law. The government’s Plan of Action on the LLRC recommendations, unveiled in July 2012, failed to commit to new or independent investigations and relied on the military and police, implicated in serious violations of human rights and humanitarian law, to police themselves. The recommendations included to investigate the alleged incidents of the 2006 murder of five Tamil youths in Trincomalee and the 2006 murders of 17 aid workers. Special army courts of inquiry established in 2012 exonerated the army of any laws of war violations. While the government eventually charged 12 members of the police Special Task Force in the 2006 murder of five Tamil youths in Trincomalee in one of its few instances of trying to demonstrate good faith, it failed to arrest those senior police officials implicated.

Sri Lanka’s human rights record was further assessed under the U.N. Universal Periodic Review in November 2012. Sri Lanka maintained that it did not need independent investigations into alleged human rights violations and past crimes under international law despite concerns raised by Council members. The resolution also called on U.N. High Commissioner for Human Rights Navi Pillay to give an oral update on the human rights situation in Sri Lanka during the UNHRC’s September 2013 session, and to present a written report at the March 2014 session. Pillay traveled to Sri Lanka in August 2013; her September oral report was a sharp critique of the government’s failure to make a serious attempt to investigate allegations of war crimes and to implement many of the LLRC resolutions. Pillay’s written report, issued in February 2014, found that the GoSL had taken no significant steps to implement the LLRC’s recommendations on accountability. She found that the GoSL’s failure to undertake a credible national process to address serious violations of international human rights and humanitarian law “can no longer be explained as a function of

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[1] <http://www.bbc.com/news/world-south-asia-14803210>

time or technical capacity, but that it is fundamentally a question of political will.” As a result the “international community has a duty to take further steps... to achieve justice, accountability and redress.”<sup>14</sup>

The High Commissioner’s report identified a long list of past and ongoing violations of human rights. Abuses that were regularly reported during the war, including extrajudicial killings and pressure on freedom of expression and association, continued. Preventive detention laws, which were used during the conflict, remained in place. While the government had created initiatives and mechanisms on enforced disappearances, “none of these have the independence to be effective or to inspire confidence among victims and witnesses,” wrote Pillay. She also expressed concern that CSOs were still required to register and report to the Defense Ministry, and that women remained vulnerable to sexual harassment and violence in areas where there was a heavy military presence. Her report also pointed out that some senior members of the LTTE, such as Karuna and Kumaran Pathmanathan (known as KP), had yet to be brought to justice for war crimes.<sup>15</sup>

The UNHRC adopted another resolution in March 2014, this time requesting the OHCHR to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties (LTTE and government) in Sri Lanka during the period covered by the LLRC, and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability. The Council reiterated its call upon the GoSL to implement LLRC recommendations and to release publicly the results of its investigations into alleged violations by security forces, including the attack on unarmed Sinhalese protesters in Weliveriya in 2013.

It is this OHCHR report that was due in March 2015. The new government requested a delay to give it time to adopt a credible domestic accountability process. Recognizing that the release of the report on time would likely damage and distract the new government for the promised reforms, and have an impact on the upcoming general elections, the new High Commissioner for Human Rights Zeid al-Husseini granted a one-time delay until September, noting that the report would be stronger if the investigation team had another six months to work on it. The U.S. government and other countries supported the delay, lest the report’s release weaken the Sirisena government and create a platform for a partial Rajapaksa return to power via parliament.

As noted above, the report released in September did not mention any individuals, something which would have fanned nationalist passions immediately. Its most controversial proposal was a call for hybrid courts comprising both local and international judges, lawyers, investigator, and prosecutors. The resolution that was ultimately adopted in the UNHRC at the end of September was co-sponsored by Sri Lanka and leaves out the word “hybrid”. In it, however, the GoSL affirms the importance of having Commonwealth and foreign experts so as to ensure a credible accountability process. The GoSL will set up a domestic judicial mechanism through parliament to carry out the accountability process and undergirding this will be a Commission for Truth, Justice, Reconciliation, and Non Recurrence (with South Africa slated to play a leading role in this regard); an Office of Missing Persons (to deal with those who have disappeared); an Office of Reparations; and a Special Counsel’s office. The government has expressed its willingness to seek financial, material, and technical assistance from the international community for these entities to carry out their functions. Additionally, the government has, through the resolution, agreed “to review the Public Security Ordinance Act and review and repeal the Prevention of Terrorism Act,” which continues to allow security forces to arrest, imprison, and leave incommunicado without trial individuals suspected of promoting terrorism.

In Sinhalese eyes, the country did what it needed to do to win a 26-year long vicious war. They want recognition that their cause was just, and they are aggrieved by the West’s lack of sympathy. Depending on who is accused and the foreign individuals chosen to help with the judiciary mechanism, it is entirely possible

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<sup>14</sup> <http://www.hrw.org/news/2014/02/26/sri-lanka-un-rights-chief-backs-international-inquiry>

<sup>15</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14447&LangID=E#sthash.R1fnTszidpuf>

for protests to erupt as the accountability process moves forward. Meanwhile, some in the Tamil political class and the Diaspora are vocal in their opposition, demanding an entirely international process. In this context, it helps that the TNA has come out in favor of the resolution adopted in September, although elements among the Tamils, including Northern Province Chief Minister Wigneswaran, have taken a harder line (that appears to have to do as much with intro-TNA politicking as it does with Tamil nationalist sentiment).

The OHCHR has been asked to provide an oral update during the UNHRC's June 2016 session and a comprehensive report during the March 2017 session on the progress Sri Lanka has made on implementing the September 2015 resolution. The government's stated determination to try and wrap up the accountability process within 18 months is determined by this timeline.

## 5.9 DEVOLUTION AND LOCAL GOVERNMENT

The 1978 Constitution created a system of municipal and urban councils, but provided little meaningful political and administrative power and few resources to those bodies. In 1987, following the Indo-Lanka Accord, the 13th Amendment, passed at the insistence of the Indians as a solution to the ethnic conflict, along with the ancillary Provincial Councils Act, created a system of provincial councils.

Overall, the system of elected local government is weak, limited in authority, and inadequately staffed and funded. Capacity is low in technical areas such as health and in functional ones like procurement. Local governments rely for revenue primarily on central government transfers which often arrive late and not in the promised amount. The revenue-raising authorities of provincial councils are generally out of sync with their expenditure responsibilities and provide the center with a strong lever of control. The Chief Minister of the Southern Provincial Council noted that it is common to receive only 60 to 70 percent of the promised funding, with the total amount arriving toward the end of the fiscal year, giving the Council limited time for procurement and leading at times to the cancellation or scaling back of programs and investments.

Devolution has long been a controversial issue in Sri Lanka and while it is the continued subject of heated debate there has been some softening of opposition to it in the last year or so. It is an issue that has been "ethnicized," with the Tamils and the TNA in favor of as much decentralization as possible (e.g., federalism, 13th Amendment plus, and at minimum full execution of the 13th Amendment). By contrast, the Sinhalese (especially ultra-nationalists) wants a unitary state with limited devolution lest any amount of devolved power provide the thin end of the wedge for division of the country. Muslims are also uneasy about devolution given their broad population distribution and local rivalries. It appears that the Indian Government is pushing for full implementation of the 13th Amendment. Prime Minister Wickramasinghe committed in January to implementing the 13th amendment, but within the context of a unitary state. This statement leaves a lot of room for interpretation, but the Prime Minister also made clear that the government would not transfer police powers to the provinces, lest some provincial councils create their own armies. Land powers are also unlikely to be devolved. The JVP and others are opposed to devolution, seeing it as risking a return to separatism. The JHU has changed its position, moving from total opposition to acceptance of the 13th Amendment as long as police and land powers are not devolved.

More recently, the new government has said that it is committed to devolution within a unitary context. It has spoken of implementing the 13th Amendment (still presumably without land and police powers but by empowering Tamils in those areas) because it is a constitutional requirement. The September UNHRC resolution encourages the government to implement devolution through the 13th Amendment by making Provincial Councils more effective. The government has also talked about changing the constitution; Sirisena addressed this at the U.N. General Assembly in September. Their intent is evident in Sirisena's manifesto, which emphasizes eliminating the executive presidency, which can probably only realistically be done by changing the constitution.

Local government elections are due in 2016. The Prime Minister has promised to hold them as scheduled. He has talked about the importance of new blood at the local level. Currently there are many Rajapaksa supporters at the local level and the upcoming local elections may help clear some of them out.

Representatives are elected to provincial councils, municipal and urban councils, and councils representing rural clusters of villages called *pradeshiya sabbas*. The provincial councils have more powers than local authorities, but these powers are often shared with the central government or subject to central government supervision. According to the 13th Amendment, the functions of the elected Chief Minister and Board of Ministers of the Provincial Council are to “aid and advise” the Provincial Governor, which suggests their subordinate position. At the point that provincial councils were set up, the government did not realign its own administrative structure to accommodate this new tier of government, resulting in parallel structures and an overlap in functions.<sup>16</sup> By the terms of the 13th Amendment, the Governor possesses full power over the provincial public service. S/he is vested with significant power, but the Constitution does not detail which authorities should be exercised on the advice of the Council’s Board of Ministers and which at her/his own discretion.<sup>17</sup>

**The North:** Due to the war, Northern Province was ruled for approximately 23 years from Colombo. The Northern Provincial Council (NPC) election was then held in September 2013, and the TNA won a clear majority, much to the discomfort of the UPFA. Since then, the functioning of the NPC has been consistently blocked by the then Governor and the Chief Secretary. The NPC had asked the President to replace both individuals, but the President declined to do so. The Governor was badly compromised in Tamil eyes; he had served as Chief Commanding Officer in Jaffna from 2006-9 and was then the person responsible for IDPs and the infamous Menik Farms camp in the war’s aftermath. Replacing him was a key element in the TNA’s campaign and a promise they were keen to keep. The problem was as much structural as personal in that the constitution nearly ensures that the Governor’s first loyalty is to the President. He can choose not to approve statutes issued by the Provincial Council.<sup>18</sup> The Council was nearly immobilized; the PTF ensured that development was driven from Colombo and civil servants were under the firm control of the Governor. The Board of Ministers was simply ignored. The Governor, Douglas Devananda and the President repeatedly undermined the NPC’s credibility, suggesting that it had failed to spend the very large sum of money allocated to it. In fact the funds granted to the Council to spend were only one-third of the total claimed, which was the government’s entire allocation for the north. Even though the Council received less money than announced publicly, it still had difficulty spending those funds due to interference from the center. The Council has not been able to show much progress in meeting Tamil basic needs in the North.

One early action of President Sirisena was to appoint a respected retired diplomat and senior civil servant as Governor and to replace the former Secretary. Both appointees will be more willing to work with the Provincial Council than their predecessors. The difficulty now will be that the NPC has limited capacity and experience, and yet it will no longer have a valid excuse for its inadequacies; there are heavy demands being placed upon it by a desperate population. The Council has received limited assistance from UNDP, the Swiss and others; that assistance will be badly needed in the coming years.

Local government elections were held in the north in 2011, including for five local governments that had not seen elections for years due to LTTE control. Elections for two local authorities in Mullaitivu district (the Puthukudiyiruppu and Maritimepattu *Pradeshiya Sabbas*) have been postponed repeatedly since then, and were just postponed again due to a court case that alleged that resettlement was not yet complete. Local Authorities in the North have been particularly marginalized and have little awareness of their role.

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<sup>16</sup> See the interesting policy brief on devolution issued by the Centre for Policy Alternatives, “Devolution in Northern Province: September 2013-February 2015.” <http://www.cpalanka.org/devolution-in-the-northern-province-september-2013-february-2015/>

<sup>17</sup> Ibid, 25.

<sup>18</sup> Ibid, 6.

**The East:** The first provincial council elections in the East were held in 2008 after a lapse of 18 years. The UPFA coalition won a majority of seats, and a former LTTE defector and child soldier S. Chandrakanthan (alias Pillyan), a member of the Tamil Makkal Viduthalai Pulikal (TMVP) party, became Chief Minister. The Eastern Provincial Council had no more space to operate than the NPC, despite its alliance with the government at the center. The Governor consistently blocked Council attempts to exercise power. For example, when the Indian Government wanted to give the Provincial Council buses a few years ago, the Chief Minister was not permitted by the Governor to hire drivers. The Governor and most of the GAs are former military and have been heavy handed; this is particularly true of the GA of Trincomalee.

The second Eastern Provincial Council was elected in September 2012. The UPFA coalition took 14 seats, the TNA 11, the SLMC seven, the UNP four and the National Freedom Front one seat. The TNA tried to form a coalition with the SLMC, but the latter opted to form a partnership with the UPFA. This left the Tamils with no representation on the Board of Ministers despite constituting one-third of the population in the province. The UPFA and SLMC negotiated an agreement in which the UPFA would provide the Chief Minister for the first 2.5 years and the SLMC thereafter. Accordingly, SLMC council member Ahamed Nazeer Zainulabdeen was sworn in as Chief Minister in February 2015. At the urging of President Sirisena and perhaps due to the split in the UPFA, the TNA was brought into the coalition and offered two ministerships as well as the deputy chairmanship of the Council.

**Local Authorities:** Local authorities (Municipal Councils, Urban Councils and *Pradeshija Sabhas*) have limited responsibilities and while some of these authorities are significant (water supply and feeder roads), many are minor (libraries, pre-schools and playgrounds). They have almost no role in promoting local economic development. While local elective bodies have some authority to raise taxes, most resources come from the center. The Asia Foundation has been working with local authorities to raise own-source revenues but finds that only the urban and municipal councils have a real prospect of doing so. Finance Commission transfers also often earmark funds for particular sectors and activities, reducing the ability of the local authority to respond to citizen demands or their own sense of local needs.

Local authorities have little experience in consulting with citizens.

A new electoral system mixing first past the post and proportional representation has been put in place for local, municipal and urban council elections. A delimitation commission met under the previous government but its decisions were politicized and seem unacceptable to the new government. The delimitation process is currently under review and may be redone. Local elections are due to be held at varying points in 2015 but are likely to be delayed given the challenge of holding three sets of local government elections along with the parliamentary election. The local government elections may be postponed until January of 2016.

## 5.10 CIVIL SOCIETY AND MEDIA

The election of President Sirisena and the formation of a new government have freed civil society and the media of the terrible weight of fear, self-censorship, intimidation and violence, near constant surveillance, steady interference and constraints on activities (particularly for those working in the North and East or among ethnic and religious minority populations), and loss of staff. The sense of relief was palpable. Freedom of speech was largely restored, particularly for media, and citizens and CSOs operating in the north and east felt much freer to voice their opinions. Freedom of association has also been largely restored with civic groups and CSOs able to undertake activities without receiving permission for those activities in advance.

### 5.10.1 CIVIL SOCIETY

As figure 7 suggests, civil liberties were in steady decline and moved from the classification of “democracy in consolidation” to “moderate autocracy.” Throughout 2014, CSOs continued to face arbitrary restrictions and intimidation, especially (but increasingly not exclusively) those working in the north and east. Southern CSOs

started to witness a narrowing of space in 2013-4 as well. The increasing pressure was due to concerns about CSO assistance to those wanting to testify for the OCHRC report, as well as concern about a declining vote trend for the UPFA in provincial elections. The regime remained deeply suspicious of CSOs and wanted them to serve as an implementing arm of government policies and programs and to do only what they were told to do.

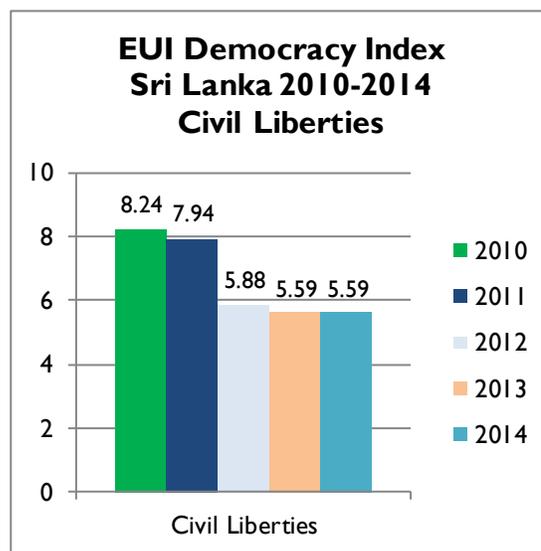
2014 was a particularly difficult year for those working in the North and East. CSOs faced a confusing and inconsistent welter of arrangements for obtaining approval for activities. Some activities were not permitted, others were discouraged, and some could be carried out only under cover of activities considered benign by the government. EPDP sometimes tried to skew beneficiary lists and sometimes government officials dictated that a CSO sign subcontracts with particular companies or government departments.

The level of monitoring and surveillance (despite the end of the PTF) was heavy-handed. CSO work plans had to be precise and executed to the day. Compliance with government requirements was a heavy burden for CSOs, even more so in the north where administrative costs were arbitrarily limited to 10 percent of grant funding. One group visited the GA in Jaffna 14 times to obtain approval for an event. The end of the PTF created additional confusion because suddenly no one was certain who had approval rights for activities. Many CSOs working in these provinces cut back on their activities in 2014 and some lost staff given the risks and stress. Self-censorship was common; if the Criminal or Terrorism Investigation Department or the military turned up at a meeting, the topic might change from solving the community's problems to the utility of latrines. It was difficult to build trust with communities, particularly given the problem with informants, and it became harder to network across groups.

Community activism, engagement and collective action across the country foundered in the nine years of Rajapaksa rule. While CSO continued to support efforts to mobilize communities for good governance, peace-building and problem-solving it was difficult to find the space to work. With the election of President Sirisena, and the freeing of civil society, CSOs supporting grassroots citizens' groups note an awakening of energy and interest. There is now space to engage with politicians and public officials and less interference from both in civil society and community affairs. The North will continue to present challenges – consultative processes and mechanisms were destroyed during the war and were not permitted in the post-war period, communities are fearful of neighbors and outsiders, surveillance continues although to a more limited extent than before, but there is new freedom to work and to take on an array of activities that were precluded before the election. In addition, there will be a need for civil society to move from a heavily service-oriented role toward one that contemplates more advocacy, demands for accountability and collective action.

The limited space and the difficulty engaging communities and government, negative public opinion toward CSOs particularly among the Sinhalese (Tamils are more grateful for the support), the withdrawal of most donor funding as donors gave up on Sri Lanka or were cowed into supporting interventions the government wanted, the constant pressure and risk, and the departure of staff for safer, less controversial jobs led to an erosion in CSO technical and management capacity. Both forms of capacity need to be rebuilt, and support is important at all levels from grassroots community organizing, to membership groups such as cooperatives and farmers' associations, to district and national level CSOs and forums. Civil society is said to be particularly decimated at the district level.

Figure 6: EIU Civil Liberties Score



Civil society is not only important in its ability to inform and mobilize the population in favor of reforms but it is also critical to improving the contents of those reforms, changing damaging narratives to create a nation of citizens as opposed to one of “hosts” and “guests”, and holding political institutions and the public sector to account. The transition in January does in fact owe something to the role that civil society played in recent years. Civil society provided a channel for rising popular discontent and fed the international community credible information that enabled steady pressure on the regime. It was the sole remaining internal check on regime power. That pressure at times stayed the hand of the government or brought about a useful change.

National-level CSOs complained in the months running up to the parliamentary elections that the new government was not engaging sufficiently on the contents of the important political reforms being put forward. One activist discounted the complaints, noting that many of the proposed reforms have been pending for years (e.g., the Right to Life bill which was originally drafted in 2003), and that civil society had played a role in shaping those reforms. There have also been some government-civil society forums to discuss particular reforms in recent weeks, though the criticism is that those are too few and too late in the process. The 100-day reform period posed some natural constraints on the time for consultation, and it might be hoped going forward that better mechanisms can be found for engagement with civil society via parliament and possibly the new Constitutional Council that includes non-parliamentarians to reflect “the pluralistic character of Sri Lankan society.”<sup>19</sup>

The formal structures by which civil society can influence government have improved greatly in recent months. The 19<sup>th</sup> amendment re-established the Constitutional Council, which will make appointments to all the independent commission. The Council includes three spaces for civil society representatives who were recently appointed. The president has also encouraged nominations from civil society for these independent commissions. After the general election, the NGO Secretariat has been moved to the Ministry of National Dialogue which is responsible for engagement with civil society and to promote reconciliation among all communities. Mano Ganesan - perhaps the most civil society friendly Member of Parliament – has been appointed as Minister, which should improve dynamics. As a confidence building measure, the Prime Minister appointed an advisory committee consisting of key civil society leaders to the NGO Secretariat. This has resulted in greater civil society activism on critical governance, rule of law and human rights issues on the ground. The space is being used by organizations in the North to assert their voices directly instead of depending on their partners in Colombo to advocate on their behalf. While most assume that the government has genuine motives for these efforts, practically speaking, the government will have to rely on key civil society voices to promote the accountability message in the South in response to the OHCHR report which should be a strong incentive for them to keep this relationship on solid footing.

Civil society has had notable impacts since the Presidential elections in January. The March 12<sup>th</sup> Movement, promoted by a coalition of key civil society groups led by PAFFREL, succeeded in getting all major political parties to sign a pledge to nominate “clean” candidates based on a set of criteria. It was a highly visible campaign that was promoted through traditional as well as social media and received national support. This campaign as well as broad civil society support for free and fair elections lead to one of the most peaceful and productive elections in recent memory. Civil society also played a key role in the passage the 19<sup>th</sup> amendment to the constitution, which significantly scaled back the powers of the executive presidency. They did this through public campaigns using traditional and social media as well as direct lobbying of the government. Electoral reforms were another key area that received strong support from citizens and the government due to civil society’s efforts. There was simply not enough time to pass legislation because of the pressing need to have elections before the UN released its human rights report in September.

Although the space for dissent and association has increased significantly (especially in the South) since

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<sup>19</sup> 19<sup>th</sup> Amendment to the Constitution published as a supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of May 15, 2015, [http://slembassyusa.org/downloads/19th\\_Amendment\\_E.pdf](http://slembassyusa.org/downloads/19th_Amendment_E.pdf)

January 8<sup>th</sup>, a high level of surveillance by the CID is still prevalent, particularly in the North. Human rights groups, particularly in the North and East, are still visited by military intelligence even subsequent to the parliamentary elections. Less regularly, they are asked to show them their recent program reports. There have also been instances of intelligence officials walking into CSO training programs and asking for information. The sophisticated system of information gathering that the military had set up by recruiting former combatants and community members is still in place and is used. Even in the South, some well-known human rights activists are followed by intelligence personnel following a protest or public campaign. There's also very obvious presence of intelligence personnel, dressed in civil clothes, at protests held around the country, particularly on issues pertaining to the North and East and attacks on journalists. While there is increasing space for protests and expression of dissent - like the public signature campaign in north east calling for international tribunal on war crimes recently - the practice of intelligence officers openly taking photographs and footage of protestors and victim families continues. Families of the disappeared and activists working on the issue continue to complain of ongoing harassment by security forces.

Civil society is of course not an entirely benign and positive phenomenon. The BBS is perhaps the most potent example of strident Sinhala Buddhist nationalist hate speech and propaganda linked to violence, mainly against Evangelicals and Muslims but also against Buddhists who advocate tolerance. While the BBS may have been a creature of the Rajapaksa regime, it continues to have life and became active on line in the run up to the parliamentary elections. There is some roughly equivalent hardline nationalist rhetoric among Tamils, partly driven by the Diaspora and partly by the damaging treatment accorded by the government, advocating for unrealistic objectives in the mistaken belief that the international community will save them. This rhetoric opens space for the BBS and similar groups; it is heard more in the North but is picking up in the East now.

There is a need for constructive civic education on the transition, on the new reforms and rights, on tolerance and inclusion, and a host of themes ignored or undermined over the last nine years. One group that needs to be targeted is youth (of all communities). They have grown up under a different governance regime and may have attitudes, fear and expectations that need to be altered.

## 5.10.2 MEDIA AND FREEDOM OF SPEECH

The media remained under tight restrictions and indulged in extensive self-censorship until the election of President Sirisena. Sri Lanka ranked 165<sup>th</sup> (above Uzbekistan and below Saudi Arabia) out of 180 countries on the Reporters without Borders Press Freedom index in 2014, with a ranking that began to decline in 2002. By 2005, Sri Lanka had become one of the most dangerous countries for journalists. Five media workers were murdered in 2005, and from 2006 to 2009 at least 14 journalists were killed, while many more were threatened.<sup>20</sup> This pattern continued, with attacks on media offices becoming all too common. From 2005 through 2014, the country lost a number of talented journalists and media owners, due to forced abductions, arrests and credible threats that forced some to flee abroad for asylum. This represents a major loss of journalist capacity. Complete impunity has prevailed, with no credible investigations into or arrests made in conjunction with these killings.

In June 2014, the government proposed an ambiguous media code that would have prohibited 13 types of speech, including content that “offends against expectations of the public, morality of the country, or tends to lower the standards of public taste and morality.” Also prohibited would have been any content that “contains material against the integrity of the Executive, Judiciary, and Legislative,” language which could have been interpreted as barring criticism of the government. The proposed code was withdrawn in the face of a storm of negative media coverage and complaints by civil society.

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<sup>20</sup> Some of the early killings can be blamed on the LTTE, others are believed to have been committed by government forces or government-allied paramilitaries. Data from Amnesty International.

The government continued to block public access to certain news websites critical of the government. Government controlled media (TV, radio and press) was used to advance UPFA and particularly Rajapaksa family interests, especially in the run up to the various provincial and the presidential elections. Individuals in the south, especially in rural areas which are reached by government media, heard a steady diet of what the government wanted them to hear.

In the aftermath of the elections, there was a marked difference in the media. Websites that had been blocked were unblocked. A film that had been banned was released. State TV stations started to invite those who they branded as “traitors” to participate in talk shows. State newspapers asked “traitor”-activists for comments. Ministers publicly asked exiled journalists to return.<sup>21</sup> The government reopened investigations into the appalling 2009 murder of *Sunday Leader* Editor Wickramatunga and other media personnel and media institutions who have been killed, disappeared, assaulted and subjected to arson attacks. Foreign journalists began finding it easier to obtain visas and to report independently. Restrictions on the travel of foreign nationals to the North were lifted. All editors, journalist and media owners interviewed for this report noted the lifting of an enormous burden of fear and constraint. However in March and April there were complaints by journalists in the North that they still were facing intimidation. The International federation of Journalists claimed in a May report that while no journalists had been murdered in the prior year, those in the east and north still faced harassment and intimidation.<sup>22</sup>

The most visible media changes have happened in the state controlled electronic and print media which have moved from propaganda to a more balanced and independent approach in their coverage. Given that these have the widest reach among the rural population, their potential for changing perceptions is high. While the news coverage in many papers is improving, media analysts point to continuing self-censorship, probably due to habit more so than external pressure, though in the run up to the parliamentary elections there was likely some concern among journalists and media houses of a Rajapaksa return. The government has agreed to move on the RTI bill with the heads of the media houses and both the President and Prime Minister have been accessible to the media and have responded to the media on critical issues. This is a level of transparency not known under the previous administration.

The government has also moved on investigating the disappearance of journalist Prageeth Eknaligoda, five years after he went missing. The trail has led to clandestine operations by the military intelligence, which in turn has instigated a stand-off between the police and the military.

State media capacity has been eroded in the last nine years. The management of many media entities has been poor and upgrades in facilities, equipment and journalist capacity are needed. State journalists are accustomed to recording near verbatim the statements of senior government officials, Rajapaksa family members, and favored UPFA politicians; they are not used to asking probing questions. Investigative skills and technical knowledge of some critical topics (e.g., investigating corruption) are lacking. This is true across the media landscape and not only for government-owned media. There is a need to reduce the scope of government media and/or to move it to more of a public broadcasting model as in the U.S. or Britain. This is not currently under discussion by the government, which already has a long list of reforms it has prioritized. It should be considered post-elections.

Media ownership remains an issue as many media organizations were taken over by individuals friendly to the Rajapaksas. Whether this affiliation was a marriage of convenience or one of like-mindedness and sycophancy

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<sup>21</sup> Several journalists in exile have expressed concern that mere calls for return are not enough, and that conditions favorable for return have to be created, including assurances of safety from political persecution. Some have cited potential arrest warrants and court cases against them that may still be pending.

<sup>22</sup> <http://www.satp.org/satporgtp/countries/shrilanka/timeline/index.html>

remains to be seen. It seems that the *Sunday Leader*, the last outspoken newspaper critic of the regime at the time it was sold in 2012 to a Rajapaksa ally, might be repurchased by Lal Wikramatunge, the original publisher. There was substantial corruption in licensing and the sale of radio and TV frequencies. One media owner was asked for a Rs. 100 million bribe in order to buy a television frequency.

The most potent forms of media are television and social media. In a survey conducted by the Sri Lanka Press Institute in the aftermath of the presidential election, 66 percent of respondents indicated that they received information influencing their vote from television, while one-third said they received it from social media. Only 1 percent received influential information via radio, but this speaks to the predominance of entertainment on radio. The press by and largely is read by intellectual elites. Social media is becoming an increasingly influential form of communication, particularly for those in the 18-30 year old age group. Most individuals access social media platforms from their cell phones, with cell phone and smart phone sales ramping up sharply year-on-year. The most influential social media content is heavily visual and light on narrative.

Recent civil society reform advocacy initiatives have sometimes included robust use of traditional and new media, primarily Facebook and Twitter. According to Twitter metrics, some of the most popular people followed in Sri Lanka are respected political reporters and people associated with leading civil society groups such as the Center for Policy Alternatives. The presidential and parliamentary elections saw social media playing a strong role especially in denouncing corruption and promoting “clean” candidates. Social media space has become even more active in recent months. One example is the number of critical comments that people have been willing to make under their own name in response to a Facebook post by Daham Sirisena, the son of President Sirisena, justifying his attendance at the UN General Assembly session with his father. His accompaniment drew broad criticism in the press, one sign of diminishing self-censorship, though it is interesting that the formal media picked up this criticism only after a robust discussion appeared on social media.

There is a particular need to reach more isolated Sinhalese rural populations, women and Tamils, particularly those in the north. Because Tamil education quality and enrollment have declined, Tamils are unlikely to know English or Sinhala. This keeps them locked in a world of Tamil discourse, with online content driven heavily by the Diaspora and more hardline nationalist voices. There is a substantial need in both the Sinhalese and Tamil communities for more moderate and inclusive messaging and discourse.

The growing importance of online communication has been a boon for women. It is aiding women’s groups and women activists in communicating more effectively across the country; it had helped some circumvent strong cultural and economic barriers that make it difficult for them to travel to face-to-face meetings. While nascent now, this phenomenon will over time strengthen their advocacy for equality and for addressing particular issues such as GBV.

## 5.1 | PRIVATE SECTOR/THE ECONOMY

Historically it was the UNP that promoted open markets and free trade while the SLFP championed a state controlled economy. That changed after Chandrika Kumaratunga became the first SLFP president, and since then both parties have pursued relatively open market policies. The Rajapaksa government changed course somewhat as it used a market economy while privileging a state-centric development model that promoted large projects of dubious value. Thus the Mattala International Airport named for President Rajapaksa in his Hambantota hometown cost \$210 million, but the facility is now virtually unused and may be shut due to lack of traffic. Similarly, a nearby overly large conference center named for Rajapaksa remains mostly unused. The roads constructed under the Rajapaksa regime are among the most expensive built anywhere in the world thanks to corruption. The most controversial project at this point is the massive Chinese-funded \$1.3 billion

Colombo Port City project that, if completed, stands to provide China with a vital commercial and strategic presence on the island and possibly wreaks havoc with the environment up and down the coast .

These mega, unproductive and often unsolicited projects built using relatively high interest Chinese loans have generated major corruption, with Chinese banks, contractors, and laborers and the Rajapaksas having primarily benefitted, while the country at large has been saddled with huge debts. Some in the Sirisena government think the Rajapaksas and their cronies may have pocketed as much as \$5 billion, and Indian, American and World Bank authorities are said to be helping locate stolen funds. The extent of corruption under the Rajapaksas has led to demands to punish the wrongdoers, even as the delay in prosecuting individuals has led to growing frustration among the public. The government claims it needs time to build cases against suspects, but some reports claim the delay is due to Rajapaksa sympathizers obstructing investigations and certain individuals being bribed to disregard investigations. There may also be concerns among police officers about pursuing some of the previously powerful in case they cycle back into power at some point in the future. The reports are troubling, but perhaps unsurprising especially given that there are many in the coalition government who are also tainted by corruption.

Foreign debt under the Rajapaksas amounted to over \$45 billion, which is approximately 60 percent of GDP.<sup>23</sup> The Rajapaksa government resorted to a debt rollover strategy by borrowing to pay off outstanding loans. Besides borrowing directly, the Rajapaksa government also used private commercial banks to borrow on its behalf. Thus the approximately \$8.2 billion reserves the Rajapaksa government maintained were nearly all borrowed reserves (or revenue accrued via debts).<sup>24</sup>

Many private sector companies benefitted by colluding with the Rajapaksa regime in unsavory ways and this was the reason the new government imposed retrospective taxes and taxes on companies that made mega profits. The new taxes, however, appear to have been based on the assumption that all companies that did well in the recent past benefited from crooked deals with the previous government. It is possible the lack of proof or an unwillingness to single out specific companies were what led to the blanket taxes that have affected nearly 40 listed companies. But the tax imposition scheme does not appear to have been well thought out and could affect foreign investment in the near term.

The expensive projects the Rajapaksa government pursued may have contributed to overall GDP growth but they hardly contributed to improving livelihoods because few Sri Lankans benefitted from their construction. Thus during the government's second term household income growth was 0.5 percent even as GDP growth was around 7.5 percent. With the Central Bank under President Rajapaksa churning out dubious numbers, economists question if even this GDP growth rate of 7.5 percent is accurate.

The new government, comprising of mainly UNP parliamentarians, insists it is capitalist yet one that favors a social market economy and therefore associates development with improving the standard of living for ordinary people. The populist interim budget that eliminated numerous regressive and indirect taxes on commodities must be viewed in this context. In light of the above noted 0.5 percent household income

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<sup>23</sup>Nimal Sanderatne, "Challenging Opportunity for Sustainable Economic Development," *Sunday Times*, February 1, 2015, p. 22. Elsewhere Sanderatne claimed foreign debt is around \$70 billion, while the new government put the figure at \$55 billion soon after it took power. The differing figures may partly have to do with the depreciation of the rupee and the lack of transparency during the Rajapaksa years (leading to new revelations). See Sanderatne, "Implications of Massive Foreign Debt for Management of External Finances," *Sunday Times*, March 22, 2015; Asantha Sirimanne and Anusha Ondaatjie, "Sri Lanka Looks to IMF for Help as Debt Burden Climbs," *Bloomberg Business*, January 20, 2015, at <http://www.bloomberg.com/news/articles/2015-01-20/sri-lanka-looks-to-imf-for-help-as-debt-burden-climbs>. Also see *Daily FT*, "Government Spells out Interim Budget for Biz," February 5, 2015, pp. 12-3.

<sup>24</sup> As per an economist the team spoke to. Also see *The Island*, "Forex Reserves Fall," January 24, 2015, at [http://island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=118310](http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=118310).

growth and government figures showing the lowest 30 percent of the population accounting for only 8 percent of national income (while the top 20 percent account for 55 percent), many find the interim budget justifiable. That noted, the forthcoming parliamentary elections were also very much on the UNP's mind when it passed the budget.

How to increase revenue and reduce the fiscal deficit are two challenges facing the new government. Remittances from those working in especially the Middle East currently amount to nearly \$7 billion and contribute 10 percent of GDP. Most of Sri Lanka's expatriates are women working as housemaids and when coupled with women working on tea plantations and garment factories, a major portion of Sri Lanka's foreign earnings are generated on their backs. This is a fact that goes unrecognized.

While the country has targeted \$2 billion in FDI, it has never attracted more than \$1 billion mainly due to corruption, a sometimes difficult private sector enabling environment, and poor governance. One option is to privatize some state entities that suffer perennial losses. The worst performers among such state companies are Sri Lankan Airlines, Mihin Lanka, Ceylon Petroleum Corporation, and Ceylon Electricity Board. While Mihin Lanka will likely get merged with Sri Lankan Airlines, there may be little political will to privatize the other three white elephants. The government could also save money by cancelling various mega projects President Rajapaksa had planned, although some of these are in midstream and will be hard to terminate; the likeliest scenario might be to renegotiate the terms to lower costs and perhaps scale..

Most economists feel the fiscal deficit should be reduced to 5 percent and to do so the Sirisena government will need to partly increase revenue collection from the current 11 percent of GDP to at least 20 percent of GDP. The surprising increase in customs revenue in the period after Sirisena took office shows that controlling corruption can increase the government's tax revenue. Defense currently takes up around 36 percent of government expenditure and reducing spending on defense and the public service would go some way in getting to a 5 percent fiscal deficit. But with demobilization and reduction of the public work force hardly in the offing, this is easier said than done. With Sri Lanka's military having engaged in entrepreneurial activities, there are now many soldiers who have the skills to join the private sector. Encouraging businesses to hire military personnel may be one way to help reduce the bloated armed forces. Sending forces on UN Peace Keeping Operations another though the wartime accountability issue may need to be addressed first.

The Sirisena government enjoys enormous goodwill among leading countries in the world and global institutions. It may, however, have to make some unpopular decisions following the parliamentary elections if it wants to put Sri Lanka on a stable fiscal footing.

## 5.12 GENDER

Sri Lanka ranks in 161st place on the Gender (political and economic) Empowerment Measure with a score of 292, where 0 is perfect inequality between women and men and 1000 is perfect equality.<sup>25</sup> This is not a good score for a middle income country whose women are well educated. In 2013, Sri Lanka ranked 75th out of 145 countries on UNDP's Gender Inequality Index, a composite of measures related to reproductive health, political empowerment (women's share of seats in parliament and attainment in secondary and higher education), and economic activity (labor market participation). Like most macro-indices, these are simplistic measures, yet they do help illustrate some gaps between the sexes. Women in Sri Lanka have a higher life expectancy and more mean years of schooling than men but they hold few seats in parliament (5.8 percent of seats compared to Pakistan's nearly 20 percent) and show low labor force participation at 35 percent.<sup>26</sup> Table

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<sup>25</sup> This measure is an indicator of opportunities for women. It takes into account the female share of parliamentary representation; proportions of legislators, senior officials, managers, professional and technical employees who are women; and the ratio of female to male earnings. [http://www.worldmapper.org/posters/worldmapper\\_map181\\_ver5.pdf](http://www.worldmapper.org/posters/worldmapper_map181_ver5.pdf)

<sup>26</sup> [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/LKA.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/LKA.pdf)

6 below illustrates women’s economic and political rights as significantly constrained in Sri Lanka in 2011, the most recent year for which these ratings are available.

**Table 2: CIRI Gender Rights for 2011**

Cingranelli-Richards Human Rights Index Sri Lanka 2011	
Variable	2011
Women's Economic Rights	Guaranteed in law but severely restricted in practice
Women's Political Rights	Guaranteed in law, but moderately restricted in practice

Whatever the caution required in using aggregate measures, Sri Lanka’s women activists would not find these ratings surprising. Cultural mores constrain the ability of women to work, earn equal wages, run for and win public office, occupy senior levels in political parties, and advocate for their interests. GBV, a problem across the country, remains a major concern for women, and not just in the north and east. Domestic violence is the biggest cause of violence but is not the only concern. A 2010 survey of nearly 700 women in five districts and Colombo suggested that 45 percent had been victims of spousal physical violence. Another study in 2006-7 of ever-married women in Western province suggested that 34 percent had experienced physical abuse, 30 percent controlling behavior by their spouse, and 19 percent emotion abuse; most of the physical abuse experienced was recorded as severe.<sup>27</sup> A similar study in Central Province found similar results.

Incest is also a significant problem with studies showing boys more affected than girls, though the female children of women working abroad are particularly vulnerable. There is a significant statistical correlation between alcohol consumption and domestic violence but it is not the only factor; other factors include patriarchal norms, social and economic disruption, and family breakdown (from for example repeated displacements and the effects of the conflict). One factor in the north is related to the loosening of social mores in the wake of the LTTE’s disappearance. The LTTE maintained strict morality. In the absence of their control, and with expanded access to on-line pornography and alcohol, men have become more abusive.

While a Prevention of Domestic Violence Act (PDVA) was passed in 2005, most politicians and the government have remained unenthusiastic about implementing it. A Plan of Action in support of the PDVA was drafted in 2005 but was never accepted by the Cabinet and so never implemented. While there is a network of women’s groups that attempt to provide support to GBV victims, the quality of the counseling can be questionable. Most counselors are loath to file cases with the police or advise anything that could lead to divorce or separation. This seems to be driven partly by cultural beliefs and partly by a pragmatic recognition that women have few avenues for earning an income and raising their children. Few cases come to the courts. Impunity in rape, child molestation and domestic violence cases is the norm.

*“We have introduced laws to bring relief to women. Sometimes I wonder whether these laws are excessive. Some laws from the west have been introduced in Sri Lanka. At first glance they seem very attractive. But Sri Lankan women occupy a high status based on our culture which is 2500 years old ... and under current legal regulations, our cultural values are being weakened ...”*

— President Mahinda Rajapaksa, Women’s Day celebration in Hambantota, 2010

There are a high number of vulnerable and desperately poor female-headed households in the north. Some have been forced into prostitution, and some have been victims of rape. The large number of male soldiers in the north unaccompanied by family presents a social problem. There has been impunity. Some think the military is under tighter control now and that army deserters are more likely perpetrators in rape cases. There are no data. Both shame and fear of the security forces inhibit reporting, along with a recognition that nothing will be done. As noted earlier, rape has been a feature in the torture of male and female detainees.

<sup>27</sup> <http://whosrilanka.healthrepository.org/bitstream/123456789/434/1/GBV.pdf>

The judicial system appeared biased and slow. In all of 2011, there were only three convictions for rape or incest. In 2013, of the 2000 cases filed involving rape, only seven convictions have resulted thus far. Sexual abuse cases can take up to 15 years for a decision. UNICEF suggested last year that child abuse cases take six years to wind their way through the court system and that the delays further traumatize children who have been abused. There are procedural gaps that need to be addressed, and greater priority needs to be given to these kinds of cases. The victim/witness protection law that was sorely needed has now been passed by the new government and remains to be implemented.

Conservative Muslim women face a different set of problems. They have been heckled and assaulted in the streets for wearing the hijab and have at times been denied access to school or jobs when wearing a hijab.

Women generally face significant sexual harassment on the streets and in the workplace. Sexual violence may have grown worse under the Rajapaksa government due to persistent rhetoric demeaning of women as well as near total impunity for the well connected. The Rajapaksa government was retrograde on the issue of GBV. Politicians consistently described the PDVA as encouraging divorce and contributing to the breakup of the family. Politicians trivialized or justified domestic violence. In a 2010 speech on Prisoners Welfare Day, the President suggested that certain laws (i.e., the PDVA) were preventing reconciliation between husband and wife and contributing to an increase in the number of divorce cases, **exceeding even the number of criminal cases filed** in some areas. As noted, few cases are filed under the PDVA, so there was no such increase.

Rajapaksa's male Minister of Women's Affairs, taking his position seriously, made derogatory comments about women's capabilities. The *Sunday Leader* reported last April that he had proposed to deal with the large number of pending rape cases by having the victim marry the rapist (but only if she agrees). This sort of suggestion is not common in Sri Lanka, but the government did not deny the allegation. The Ministry of Women's Affairs developed an Action Plan for Women, 2014-8, with one of ten topics for action devoted to GBV. In general, though the plan placed much more emphasis on the welfare of women as mothers than on women's rights or equality. Women's interests and well-being were never a priority.

There are few women prominent in political life. The Sri Lanka Women's Charter approved by the Government in 1993 requires that the State ensure equitable representation of women in the nomination process for elected office, yet it has never done so. Women's groups have advocated for quotas since the 1990s; both the SLFP and UNP have made commitments to establishing a quota but in practice have failed to follow through. Upon election in 2005, Rajapaksa promised to improve women's representation, but made no effort to do so. He named no female cabinet members (in true Cabinet positions) despite the huge size of his cabinet. Sri Lanka is the only country in South Asia that has not established a quota for women in local government elections; those quotas range from 20 percent in Nepal to 33 percent in India and Pakistan. Women currently hold roughly 2 percent of local authority seats and receive roughly 6 percent of the nominations from political parties in local authority elections. The lack of women on local councils has in all likelihood results in little attention to development objectives that would be prioritized by women such as potable water, nutrition and better health services.

Nominations by political parties of women for elected councils at all levels of government have never topped 8 percent of the total.<sup>28</sup> As of 2012, women held 4 percent of seats in the provincial councils. Women hold less than 6% of seats in parliament, giving Sri Lanka a ranking of 140 out of 153 countries in terms of female representation in parliament, one of the lowest in South Asia and the world. A major issue with parliamentary representation is that due to the preference list system of voting, which operates at the district level, candidates need a great deal of money to campaign because they must do so throughout the entire district. This makes it more difficult for women to contest. Often the first question a party considering a candidate asks is how much money the candidate has to invest in the election. Politics can also be a blood sport in Sri Lanka, with a level of violence, abuse and corruption that many female candidates would find difficult to confront.

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<sup>28</sup> <http://www.ft.lk/2015/03/07/un-resident-coordinator-calls-for-more-female-representation-in-elected-bodies/>

Women's groups were sufficiently unhappy with the Rajapaksa regime that they united behind the common candidate. Several ran a campaign during the presidential elections: if you want to stop violence against women, vote for Maitri. Women's groups in many parts of the country supported Sirisena and held rallies for him. They made few demands on the common candidate, fearing that if they did so, they would adversely affect his vote share. At the same time, many rural Sinhalese women voted for Rajapaksa.

Activists feel that the new government is more committed to women's issues. They believe that they have access to and acceptance by senior politicians. The Prime Minister had showed an interest earlier when he formed a commission in 2013 to make recommendations for addressing GBV; that commission has produced a draft that is now under review. Two women hold cabinet positions in the new government, one runs the Ministry of Women's Affairs and the other the Foreign Employment Bureau. The new government made a commitment that 25 percent of party nominations for parliamentary seats would go to women, but it was not able to deliver on this. Even though the main parties adopted a gender policy in their manifestos, including the promotion of women's development and social welfare, only 9 percent of the candidates were female (556 out of 6,151 candidates).

Prior to the August parliamentary elections, 13 out of 225 parliamentarians were women (5.8 percent), Eleven women were elected to parliament in August, and an additional two women were named national list appointees. This is the lowest rate of representation for women in parliament in south Asia. Sri Lanka ranks 140 out of 153 countries in female representation in Parliament.<sup>29</sup>

Speaking to *The Sunday Leader*, Shreen Saroor, founder of the Mannar Women's Development Federation and Mannar Women for Human Rights and Democracy, expressed her disappointment of lack of priority given in the national list of the main political parties to increasing women's representation in parliament. "We had 14 women in the last parliament and it has now come down to 13 and two of them are national list appointees. That means only 11 women managed to get elected to the new parliament. It itself shows that the parties did not put enough women in their nomination lists and in their national list," she noted. Saroor questioned if the parties pro-actively searched for women who would be able to earn sufficient votes and if the parties adequately equipped them to campaign.<sup>30</sup>

Following this disappointing result Sri Lanka's Prime Minister said that reforms would be instituted to require 25 percent females into local government bodies before the next local elections in 2016.

While activists chose not to push the new government too hard for reforms in advance of the parliamentary elections, they do have an agenda they will pursue after the general election. Activists were saying last winter that each of the new commissions established in the hoped-for 19th amendment should have female members and they lobbied to that end. The 19<sup>th</sup> amendment does not however speak to the composition of the Commissions.

Women activists are now more active on social media, discussing reforms, good governance and what women need in way of changes that would improve their lives. There is more space now for dialogue and building consensus. As noted earlier, increasing on-line activism allows women who are conservative or face time constraints to take part.

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<sup>29</sup> <http://www.lankabusinessonline.com/sri-lanka-to-include-25-pct-women-in-local-government-elections/>

<sup>30</sup> <http://www.thesundayleader.lk/2015/09/06/change-in-political-regime-a-pleasant-surprise/>

## SECTION 6. PROGRAM RECOMMENDATIONS

Because the outcome of the August parliamentary elections did not substantially alter the newly emerged political alignment and its reform interests, this section of the report has not been altered since it was originally written in March 2015.

### 6.1 INTRODUCTION

The program recommendations made in this section of the report derive from the team’s conclusions about both the greatest threats to consolidation as well as the most salient opportunities to rebuild democratic institutions and processes. The team was not given a budget envelope but was requested to present programs addressing the most compelling needs and to cost these programs according to historical patterns and in terms of threshold levels needed to accomplish meaningful results.

### 6.2 OTHER DEVELOPMENT ASSISTANCE DONOR PROGRAMS

Constrained space for development assistance programming under the Rajapaksa regime led to attrition in both donors and funding. DRG programs were scant, given regime preference for infrastructure and livelihood assistance, and it may take time (and alignment with funding cycles) for donors to bring new programs on line. At this writing, most donors seem to expect at best small plus-ups in existing funding.

Most non USAID DRG related funding appears to be devoted to working with local authorities and language rights. USAID currently runs what is perhaps the most assertive DRG-oriented civil society program, which is scheduled to close in December. USAID also works with the Bar Association and the Legal Aid Commission on access to justice and legal reform issues, while the British High Commission works on community policing and police training. The European Union also has an annual call for proposals from CSOs. The Swiss support human rights groups. The table below reflects recent, current and requested DRG-related programs.

**Table 3: DRG-Related Donor Assistance as of Early 2015**

Donor Assistance		
Donor	Program	Comments
British High Commission	Community policing, reforming the police training curriculum	Funded at Pounds Sterling 2.2 million
	Assistance to the Northern Provincial Council	Limited support, requested additional funds for assistance on development planning but do not expect to obtain. Note that the British government does not provide development assistance in mid-level developing countries
	Limited GBV	
	Limited interfaith dialogue	
DFAT	Assistance to 15 Local Authorities in the North & East on own-source revenue generation via TAF	Currently Austral \$6 over five years; expect to renew the program on similar terms. May provide additional support to the Northern Provincial Council
	Might consider work with Human Rights and Bribery Commissions, if/when independent	No clear plans for this as yet
DFAT & World Bank	North East Local Services Improvement Project (NELSIP) with 101 Local Authorities (including border districts)	An additional \$20 million was approved for this on-ging program in April.
UNDP	Limited technical assistance on some of the main governance reforms proposed by the	Includes right to information, 19 <sup>th</sup> amendment,

Donor Assistance		
Donor	Program	Comments
	new government.	
	Limited support to the Northern Provincial Council	
Canadian High Commission	Have worked on language rights (services in one's language of choice) for the last ten years at both the policy and grassroots level; also worked on developing translation programs at university.	Currently spend roughly \$1.2 mil. on this topic.
European Union	Funding district level plans at Euro 60 million (2014-17 program) in the North and East (Vavuniya, Ampara, Batticaloa, & Mannar) and a few border districts.	Would like to do more on devolution.
	Support to FLICT on the trilingual policy through the Ministry of National Languages and Social Integration.	Action Plan for Trilingual Policy was about to be launched on the eve of the Presidential election, now not clear of status since Ministry dissolved.
	Annual competitive process for CSOs; some grants involve work with local authorities.	Current theme on reconciliation, also includes work with media institutions and journalists
GiZ	Support for FLICT: 1) work with Ministry for National Languages and Social Cohesion on social cohesion policy; and 2) interreligious dialogues in 5 pilot districts	Helped formulate 2012 National Policy for Social Integration
	Coexistence education, multilingual education, psychosocial support in 200 pilot schools in 5 primarily conflict-affected provinces	
Swiss Aid	Human rights, inclusion in policy dialogue, civic engagement, reconciliation, particular focus on the North. Some support for the NPC and local government.	
Indian Government	GoSL has requested help to set up a Financial Intelligence Unit	India has such a unit which tracks stolen government assets
Commonwealth Secretariat	Limited help to the Human Rights Commission to help it recover its "A" grade status	Little progress was made under the former regime
Norwegians	Small grants for inter-ethnic and inter-religious dialogue and understanding	

## 6.3 PRIORITY OBJECTIVES

To help consolidate a democratic transition, there is benefit in strengthening the current government and supporting some of its reform commitments. In addition, it could be particularly useful to focus on reforms that would be valued in the south along with efforts that would mitigate the space for hardline nationalist rhetoric among both Tamils and Sinhalese. The U.S. Government may wish in the initial stages of new programming to place a focus on issues and concerns held in common and thus help link the island's diverse communities while playing down a dominant role in sensitive areas that could weaken the reformers. In this interim period, there is a need to retain programming flexibility because while the direction is positive, it is difficult to know how it will evolve in the future. The assessment team recommends two DRG-linked objectives:

- **Objective 1:** Strengthen the independence and functioning of core democratic institutions tied to the reforms envisioned by the current coalition government, not only to prevent political backsliding but also to solve the country’s deeper problems of competition and inclusion; and
- **Objective 2:** Provide tangible benefits aligned to the grievances of key groups **and** address toxic ethno-nationalist narratives in order to buy time for democratic institutions to take hold and to lay the foundations for genuine reconciliation.

While the bulk of the programs recommended are purely DRG programs, the team has also included some recommendations related to economic growth programming that can support the process of political reform.

The team recommends a **four-year strategy** based on 1) need and the DRG opportunities and challenges laid out earlier in this report; 2) GoSL commitments; 3) other donor engagement; and 4) U.S. government comparative advantage. Not all suggested programs are scheduled to run for the full four years; a few are suggested for a two-year period only. The recommended programs are not allocated across U.S. government agencies, though some agencies are more relevant for some forms of assistance than others. Given the uncertainty about U.S. development assistance funding levels, the team prioritized recommended programs into three tiers, with those in Tier 1 being the highest priority. An overview of recommended programs by objective and by priority is presented in Table 8 below:

**Table 4: Overview of Program Recommendations**

Overview of Recommended Programs			
Objective	Tier 1 Priority	Tier 2 Priority	Tier 3 Priority
1: Core Democratic Institutions	1. Improve GoSL transparency & accountability 2. Strengthen parliament	Strengthen Elections Commission & implementation of electoral reforms Strengthen ROL/human rights Strengthen civil society & media (cross-cutting, relates to all priority programs)	Improve economic policy making
2: Buying Time	1. Improve GoSL strategic communications on reforms 2. Increase inter-ethnic and inter-religious understanding & tolerance	1. Help the GoSL develop systems for processing land claims	1. Enhance livelihoods for key vulnerable groups

## 6.4 PROGRAM COMPONENTS

### 6.4.1 OBJECTIVE I PROGRAM RECOMMENDATIONS

#### 6.4.1.1 Tier I Priorities

There are two Objective 1, Tier 1 priorities: Increasing the GoSL’s transparency and accountability and strengthening the functioning of parliament.

#### Increasing Transparency and Accountability

The grotesque levels of corruption, nepotism and cronyism reached under the Rajapaksa presidency were the product of and fuel for the increasingly authoritarian rule and the impunity that accompanied that rule. The regime’s opacity and disinformation helped sustain the president’s popularity in the south. The restoration of democracy requires the re-creation and upgrading of government laws, policies, procedures and institutions ensuring transparency and accountability and preventing the possibility of state capture. The assessment team

recommends a robust program of assistance, with an estimated cost of \$7.5 – 10 million over three years to support transparency and accountability improvements. It is assumed that some support for implementing these reforms will also come eventually from other donors.

Interventions could include support for:

- The Commission to Investigate Complaints of Bribery or Corruption

Under the prior government, the Commission was neither independent nor effective. It was politicized and dysfunctional. Assuming passage of the 19th amendment and the appointment of respected and independent Commissioners, the Commission will need substantial support to upgrade its systems, procedures and skills and to become an effective institution. It will be an important check on the behavior of government agencies and politicians. The burden on it will be heavy given the array of corruption allegations emerging now that the former regime is out of power. Support would most likely include long- and short-term technical assistance and training but could include support for Commission interventions such as public education on its work and on complaint mechanisms as well as installing an on-line process that complainants can access from a smart phone. Facilities and equipment (e.g., case management) may require upgrading.

- The new Anti-Corruption Secretariat serving the Cabinet's Anti-Corruption Sub-Committee

The anti-corruption sub-committee operates as a subdivision of the Coalition's all-party Executive Committee, so it includes both the TNA and the JVP which currently sit in opposition. The Secretariat will presumably serve as its operating arm and will oversee the work of both the Bribery Commission as well as a new police unit set up to investigate corruption. It may need limited long- and short-term technical assistance, training and/or operational support.

- The Attorney General's office

This is discussed under the rule of law section. The AG's office will have a role in prosecuting corruption cases. Staff need forensic accounting and investigation skills, and the office needs better case management systems and IT/communications systems to link staff in different locations.

- Implementing the Right to Information Act, which should be passed by parliament in March

Support will depend on the contents of the Act, but would include training government officers (including those responsible for responding to the public's requests), judges, lawyers, the media, civil society and the broader public; developing procedures for requesting information and systems for responding (including an on line process accessible from smart phones); and oversight and monitoring to ensure compliance.

- Formulating and implementing an ethics code for public servants

This reform is included in the 100-day plan of the President. Support could include working with the Public Services Commission and relevant ministry on formulating a code, training public servants on it, educating the public on the code, and developing oversight and complaint mechanisms.

- Investigative and forensic accounting skills for tracking corruption charges for relevant government agencies and the media

This is a significant gap. The current case load is considerable and dealing with the backlog of complaints about the behavior of politicians and public servants attached to or used by the regime will take significant time. In addition, the skills are needed going forward. Training (at different levels) and technical assistance could be provided to selected journalists, think tanks, prosecutors, police, judges, and lawyers.

- Civic and public official education on new laws, policies and procedures related to transparency and accountability; civil society and media monitoring of the implementation of these laws and procedures as well as government performance.

Officials and the public will need to be educated on the new laws and rules and will need to know how to make and follow up on complaints and request information. Civil society and journalists will need to understand the laws and rules as well and will need to monitor their implementation. Civil society might also play a role in implementation – for example, providing assistance to members of the public to request information or follow up when information is not received.

- While the assessment team considered the prospect of working with the Auditor General’s office and implementation of a planned National Audit Act, we omitted this from the list for three reasons: 1) the Auditor General’s office believes it is well equipped to handle its responsibilities though it does have difficulty with staff retention given opportunities in the private sector and other government departments; 2) there is a need to try to put systems in place to prevent corruption and take remedial action in time and not just discover it long after it has happened; and 3) other donors such as the World Bank might be able to play a more effective role in this area.

### Improve the Functioning of Parliament

If the powers of the executive president diminish, as the new government has promised, parliament becomes a significantly more important political actor, both in terms of making policy and holding the executive branch to account. The institution has degraded, given its insignificance during the Rajapaksa years. It is important to increase its capacity from both a technical and organizational standpoint and at the same time to shore up its will to follow through on needed reforms and to respect the democratic rules of the game. It needs to become more open to citizen input, more transparent in its deliberations, and, if electoral reforms introduce a mixed system that includes some MPs elected via a First Past the Post process, processes for MP outreach to constituents. The assessment team recommends a four-year program of assistance (to run co-terminus with the next parliament) estimated at \$10 million. Several elements would be important to include in a legislative strengthening program including:

- Support for revising the Standing Orders.
- Strengthening key regular committees, select committees and caucuses, including the oversight committees. Possibilities include the Committee on Public Enterprises, the Committee on Public Accounts, the Caucus on Coexistence formed by younger MPs, the Women Parliamentarian Caucus, and the Select Committee on Constitutional Reform. These committees need adequately trained staff, research support, improved communications, technical training for MPs, and an ability to hold hearings and for the Coexistence Caucus, assistance in communicating with the Diaspora.
- Training and technical assistance in legislative drafting.
- Improvements in policy research; upgrading of the skills and knowledge of the 15 extant researchers
- Developing a code of ethics for MPs and training MPs on it; ensuring the public, media and civil society understand the basics of the code. The JVP has proposed such a code.
- Improved communications as an institutions and improved mechanisms for receiving citizen input.
- Improved mechanisms for MP constituent outreach.
- Possibly support for more effective party caucuses.
- Improved capacity in the prime minister’s office, assume that the prime minister gains substantial power in the planned political reforms.
- Support to civil society and the media to engage with parliament in an informed manner (e.g., knowledgeable about the legislative process) and to monitor parliament deliberations and decisions.

Assuming the acceptance of this recommendation and the availability of funding, USAID’s DCHA/DRG Center plans to send its parliamentary strengthening expert to Sri Lanka in March for a fuller assessment and more detailed program development. It is possible that program elements would need to be revisited after the parliamentary elections are held.

#### **6.4.1.2 Tier 2 Priorities**

There are three Tier 2 priorities: improving the electoral system and elections; strengthening respect for the rule of law and human rights, and rebuilding a vibrant civils society and media.

### Improved Conduct of Elections and Support for Electoral Reform

That a transition took place owes much to the irreproachable behavior of the Elections Commission in the conduct of the presidential election. The Commission showed itself to be effective and impartial, despite the pressures on it and the rampant abuse of state assets to promote the election of Rajapaksa. The Elections Commissioner is seeking discreet assistance to upgrade the Commission's operations in key areas, including:

- Establishing a Commission training unit, with curricula and materials. The Commission works with public servants to administer elections so it needs to be able to train these individuals whenever an election is held.
- Assist the Commission in development a five-year strategic plan.
- Update and upgrade the electronic voter registry.
- Assist civil society and the media to engage around the electoral reforms and around the delimitation of First Past the Post and PR constituencies. Delimitation is extremely important because minorities could easily be further marginalized in the delimitation process.
- Assist women's groups to engage on the electoral reforms and on recommendation to increase their representation in parliament and at lower levels of representative government.
- Prepare for and conduct voter education if/when the electoral system changes.

In addition, civil society and the media could be supported to disseminate information on a new electoral system, when/if one is legislated. Elections monitoring groups could also be supported to monitor the local government elections, which will be postponed until early 2016 owing to both the parliamentary elections and the need to re-do a politicized delimitation process. The local government elections are the only ones that will take place in the two-year period of support recommended by the team. We estimate a cost of \$4 million over two years.

### Strengthened Rule of Law and Respect for Human Rights

Prior to the improper impeachment of Chief Justice Shiranee Bandaranaike, USAID had initiated a rule of law program oriented toward strengthening the judicial training institute and improving access to legal aid. This program was cancelled and a replacement one designed with the Bar Association of Sri Lanka and the Legal Aid Commission. With a new Chief Justice and commitment to an independent judiciary, it would be appropriate to revamp the earlier project's design and put in place a new rule of law program. Improving the knowledge and skills of judges, particularly at the magistrate and district level and particularly for the new reforms being passed, is important to helping the judiciary address the erosion in capacity given the years of politicization. Work in this domain is also tied to government accountability and pursuing corruption charges.

In addition, until there is a political settlement and law enforcement and security agencies are brought into a different relationship with minority populations, interventions in the human rights domain remain vital. The assessment team recommends a two-year program with an estimated cost of \$7 million. The Bar Association program continues for another year and will provide training for lawyers as well as advocacy on key justice system and legal reforms. USAID also supports human rights CSOs and advocacy around rights issues via the SPICE project which ends in December 2015. The assessment team recommends the following activities:

- Support for the AG's office, which is critical in ensuring public sector accountability.
  - The team proposes one long-term adviser and some short term technical assistance for two years, in addition to improvements in technology and case management. The staff need training in specialized topics, a new library, better ways to network with provincial officers, a business process analysis and strategic plan for improvement.
- Improved training for judges via the Judicial Services Institute with support for the development of new curriculum and improved teaching methodologies.

- Rebuilding the capacity of the National Human Rights Commission, assuming the Commissioners are respected and impartial individuals and that it is given a reasonable budget with which to work. The Commission has degraded substantially and there is little confidence in it. It will need to prioritize serious abuses, upgrade its systems, improve staff skills, and generally show a new level of seriousness in pursuing rights violations committed by state actors. It will also need to demonstrate to the public and particularly to minorities that it is an institution that can be trusted. If UNDP and the Commonwealth Secretariat expand their support, USAID could look for more of a niche role in supporting the Commission or could direct its resources elsewhere.
- Continue to fund human rights CSOs to advocate for rights and to provide assistance to victims; also to lead dialogue around respect for human rights. The south has long seen “human rights” as a solely minority issue and a reason used by the international community to compromise the country’s sovereignty. With rights abuses and impunity increasing in the south in the last year or so, the southern population has begun to understand the need for stronger systems of protection, so there is new room for dialogue around human rights.
- Continue to support increased societal acceptance of women’s right to be free of violence and abuse and support services to victims.
- When there is progress on missing persons and disappearances, support might be given to the issuance of death certificates, which are critical to resolving inheritance and child custody.
- Fund civil society groups to monitor judicial processes and decisions, related to the political reforms and to human rights issues.
- Provide training to journalists so that they can better cover the judiciary and law enforcement

**Strengthen Civil Society and the Media to Engage on Reforms, Monitor Governance, and Contribute to Social Cohesion and the Development of a New Political Culture**

Civil society and the media are critical channels to achieve results in all the program areas recommended in this report, but they are also as an important end in themselves. For each recommended program, we have identified roles for civil society and the media. We have however costed all media and civil society efforts as part of one package, which is not meant to suggest that the U.S. government needs to handle implementation as one project unit. The work could be divided across other thematic areas or kept in one package. We estimate the cost at \$16 million over four years given the breadth of the proposed engagement as well as the need to strengthen the capacity of civil society and media to engage with different levels of government from the grassroots to the national level. It is important to keep in mind that the substantial pressures on both civil society and media, and the constraints they operated under, have eroded their capabilities. Civil society is particularly decimated at the district level, and is very weak in the east and close to non-existent in the north. The team recommends the following interventions, some of which are more thoroughly detailed in the descriptions of other recommended programs:

- Support CSOs and the media to engage constructively on the proposed contents of key political and economic reforms; ensure their understanding of proposed and new legislation; fund outreach and coverage so that the public is better informed and can participate.
- Support CSO and media monitoring and reporting on the implementation of key reforms and also to monitor government performance.
- Rebuild civil society capacity to engage with communities and different tiers of government especially at local and district levels, where it has been most decimated. This is particularly critical in the north and east. Pay particular attention to some of the most vulnerable communities such as those with a significant share of female-headed households.
- Support women’s groups to increase women’s decision-making role and society acceptance of an enlarged role at all levels from community to the national level.

- Support for media reforms to protect independence; particularly consider the possibility of supporting the reform of state owned media to more of a public broadcasting service model as in the U.S. and Britain.
- Support improved and engaging content on pluralism, reconciliation, tolerance, good governance, human rights and similar themes on social media and TV. The cost of supporting content is one reason that this program is budgeted at \$16 million.

### 6.4.1.3 Tier 3 Priorities

There is one Tier 3 Priority, improving economic policies for equitable growth.

#### Improve Economic Policy Making and Economic Governance

The government's new economic policy team is capable. The coalition is committed to developing a new social democratic economic growth model that stresses not only growth but also equity and social safety nets. The details of this new approach need to be worked out. Under the Rajapaksa regime, the emphasis was on infrastructure, housing and tourism; the focus now needs to be placed on attracting FDI in job-creating sectors and developing new capacities in the economy (e.g., for ICT). There are areas in which the new government has either expressed a wish for U.S. assistance or might benefit from such assistance. The team has priced this program at \$3-4 million over two years. Elements might include:

- Constituting and advising a national competitiveness council and possibly regional competitiveness councils in key regions. The new government has requested support in this area.
- Technical support for the new cabinet Sub-committee on Economic Affairs, Monetary and Fiscal Policy
- Technical Support for policy reforms related to increasing FDI in job-creating sectors

## 6.4.2 OBJECTIVE 2 PROGRAM RECOMMENDATIONS

### 6.4.2.1 Tier 1 Priorities

There are two Tier 1 priorities under objective 2: enhancing the government's communication with the public and strengthening understanding between the country's different religious and ethnic communities.

#### Strengthen the New Government's Strategic Communications on Key Reforms

By all accounts (key informant interviews, newspaper articles, complaints of various political parties), the new government is doing a poor job of communicating progress on its 100-day program and key reforms. Statements made by one government leader are frequently contradicted by another such that there appears to be considerable confusion about what is happening and what is being achieved. High expectations have been generated by government promises as well as the enthusiasm over the transition, and it would be difficult for even a government operating with less degraded systems to meet these expectations. There is a growing feeling that little is being accomplished in the way of pursuing corruption cases and that there is progress only on "small fry" cases.

The new government is pursuing many reforms simultaneously and is of course a coalition whose members do not always agree and are constantly negotiating. This poses difficulties for message control. The extent to which the new government communicates effectively with the public will have an impact on the general elections as well as on the opportunity for a Rajapaksa faction to claim parliamentary seats. Consistently messaging on reform progress is critical.

Accordingly the assessment team recommends a six-month contract with a local advertising firm to support the government in communicating clearly about progress on key reforms. Activities would include training on

strategic communications, development of a communications plan, development of clear communications protocols (who communicates on which topics and with what approach), and development of messages. The emphasis should be on television and social media which reach more people, but radio ads and consistent messages in government-controlled press will be useful as well.

There is a risk that such support could be seen as supporting particular parties in the run up to the general elections. The risk is mitigated because this is a coalition government with broad support. If the emphasis is laid on the reforms then the risk is further reduced. There is precedent for supporting transition governments with communications; recently USAID/OTI did this in Ukraine. The team estimates a cost of \$500,000 for six months. There should be an option to renew if useful.

### Increase Understanding and Respect between Ethnic and Religious Communities

There are groups currently supporting inter-regional (e.g., north-south), inter-religious, and inter-ethnic exchanges, dialogues, and visits. The several monks interviewed in the south all indicated an interest in getting to know people and the situation in the north better, and some were already taking monks on visits to the north. Some of USAID's current grantees already support inter-religious dialogue at the local level as a way to increase tolerance and mitigate tensions as they arise. Several multi-ethnic and multi-religious communities have such mechanisms in place. There is a need to scale up this work to enhance its impact. Nationalist narratives in both the Tamil community (and especially in the north) and the south must be challenged and changed, or genuine reconciliation and inclusion cannot take hold. The U.S. government can play a useful role in expanding such efforts, including exchanges among religious leaders, women's groups, teachers, lawyers, cooperatives (fishermen and farmers), judges, the private sector and chambers of commerce, youth groups, journalists and local and provincial governments. In many instances, these exchanges can be organized around common issues and concerns, demonstrating that the needs of Sri Lanka's separate communities are not as far apart as hard line ideologists suggest.

These efforts can be further amplified with stronger media coverage of such efforts as well as using media to support dialogues on line and in mass media.

In addition to cross-ethnic and cross-religious exchanges there also needs to be support for intra-community dialogues to try to dampen nationalist discourse. This is true particularly for the Tamil community in the north (but also increasingly in the east because northern hardliners are linking up with eastern counterparts and this rhetoric can be expected to expand in the east) and the Sinhalese community in the south.

The team has costed this effort at \$2 million over four years, though this is an expandable envelope and more funds could be devoted to this if desired.

### **6.4.2.2 Tier 2 Priorities**

There is one Tier 2 Priority: helping the government address land claims in a fair and expeditious manner.

#### Establishing Effective Mechanisms for Processing Land Claims

The return of land is a major grievance of Tamils particularly in the north but also in Sampur in Trincomallee district in the east. The government has made little progress to date, though commitments have been made to return land in Jaffna the north and to return the navy base and attached golf course in Sampur. In May, the Supreme Court lifted a stay on the transfer of 818 acres in Sampur to the displaced Tamil owners in May. This issue contributed substantially to the marked increase in hardline rhetoric coming from Tamil politicians and activists in the north as well as the Diaspora. Progress in this area is imperative. There is an assumption that the military is willing to divest itself of the considerable land it has amassed, not just for high security zones

but also for its economic activities. The assessment team proposes a two-year pilot effort costed at \$4-5 million to test the government's political will to return land to those who lost it.

Dealing with land claims in the north will be enormously complicated because often land has had multiple holders and often documentation has been lost in repeated displacements over time. One government official estimated a few years ago that there could be as many as 450,000 claims in the north and east. An effective and efficient mechanism needs to be set up for private land claims as well as for those who had farming rights on government land. If all these cases go to the courts, the courts will be bogged down. Already such cases can take 20 years and the backlog in the courts is considerable.

USAID had initiated a land project to focus on these issues but it was cancelled in 2011 when the Rajapaksa regime decided that such help was not warranted. This project could easily be updated and reinitiated. Support would include the following kinds of interventions:

- Assist in developing and implementing policies, procedures and mechanisms for dealing with the return of land and competing claims. The focus should be on the north and east.
- Support civil society and media monitoring of progress and fairness in resolving claims. Support civic education on the process (e.g., how to file a land claim, steps in the process, rights, appeals).

In addition, for balance and equity, the team recommends assisting with plot demarcation and documentation for one land scheme in the south. While some individuals were settled on land schemes in the South decades ago, many have not received documentation of their right to farm that plot of land nor have plots been properly demarcated. So farmers on some of these schemes suffer from insecurity of tenure.

If the pilot program is successful and good progress is being made, an extension in support should be considered, if needed.

Special attention should be given to widows and female-headed households. For those widowed in the war, the issuance of death certificates will be critical to resolving inheritance entitlements so that they might assert land claims.

### 6.4.2.3 Tier 3 Priorities

There is one Tier 3 priority, linked to improving livelihood for some of the country's poorest and most marginalized citizens.

#### Improving Livelihoods of Vulnerable Populations

Few ordinary citizens, especially those in war-affected and/or rural areas of the country, feel that they benefited from development during the Rajapaksa years. The cost of living has risen, people in the north in particular are appallingly poor, and many in parts of the country have seen their livelihoods diminish due to competition from military-owned and soldier-run enterprises. The new government made many promises, and to buy the time to deliver on political and democratic reforms, it must be able to demonstrate in tangible ways its commitment to improving the lives of average citizens. While it is difficult to take such a program to scale, other donors and INGOs do invest in livelihoods as does the government itself. USAID can make a contribution here and demonstrate balance in its program portfolio by contributing to immediate livelihood gains in poor rural communities. We recommend a program costed at a minimum of \$6-10 million over three years for observable impact. USAID currently supports a two-year program (2014-6) called SOLID that works only in the east and north. Interventions could include:

- Livelihood support in target districts in the north and east. Attention should be given to helping those retrieving land to resettle, to female-headed householders and youth, and to the most marginalized districts such as Mullaitivu. Attention could also be given to former detainees and ex-cadres because they are most socially isolated (and those recruited as child soldiers have scant skills) but not to the exclusion of those around them.
- Livelihood support for one – two of the poorest districts in a poor province such as Uva in the south. Attention could be given to areas in which demobilized reservists are returning and to helping former soldiers gain suitable livelihood.
- Livelihood should be accompanied by civic and human rights education and community organizing. Cooperatives, which used to be strong in the north and are being reorganizing (though in a nascent stage) would be one mechanisms through which assistance could be rendered.

### 6.4.3 TOTAL ESTIMATED COSTS FOR A FOUR-YEAR PROGRAM

The team estimates the total cost of supporting Sri Lanka’s democratic transition over a four-year period at \$60-69 million. Costs are highest in the first two years because this is such a critical period. If funding at this level is not available, then possibly other donor support could be acquired for one of the recommended programs. Perhaps the small livelihoods program would need to be eliminated. Some trimming could be done in some programs but in several instances the threshold figure given is the minimum needed to run a program, and eliminating a specific activity in that program might not represent a considerable savings. The table below shows the costs per program.

**Table 5: Estimated Program Costs**

Estimated Program Cost in USD millions					
Program	Year 1	Year 2	Year 3	Year 4	Total
Transparency/Accountability	3 – 3.5	3 - 4	1.5 - 3	-	7.5 - 10
Parliament	2.5	2.5	2.5	2.5	10
Elections	2	2	-	-	4
Rule of Law/Human Rights	3.5	3.5	-	-	7
Civil society/media	4	4	4	4	16
Economic policy making	1.5 - 2	1.5 - 2	-	-	3-4
Strategic communications	0.5	-	-	-	0.5
Exchanges/dialogues	0.5	0.5	0.5	0.5	2
Land Pilot	2 – 2.5	2 – 2.5			4 - 5
Livelihoods	2 – 3.5	2 – 3.5	2 – 3	-	6 - 10
<b>Grand total</b>	<b>21.5 – 24. 5</b>	<b>21 – 24.5</b>	<b>10.5 - 13</b>	<b>7</b>	<b>60 - 69</b>

## ANNEX A. METHODOLOGY

The DRG assessment used a framework employed by USAID for more than 15 years. The assessment methodology proceeds through four steps. The first identifies key problems of democracy, human rights and governance in the country; the second conducts an analysis of the actors and institutions that are likely to support or obstruct the deepening of democratic reforms; the third considers the U.S. Government and USAID's interests and resources. The final step offers strategic and programmatic recommendations, given the problems, actors and institutional constraints identified.

Working together, the U.S. Embassy, USAID and the State Department assembled an assessment team consisting of Gavin Helf, senior democracy and governance adviser for Central and South Asia in USAID's Asia Bureau, and Lynn Carter, senior vice president at Management Systems International, as team co-leaders. Additional team members included Jason Aplon, senior regional adviser at the Asia Pacific and Yemen Office of Transition Initiatives USAID/Bangkok; Shadrach Ludeman, acting team leader for the Yemen, Eurasia and Asia Office of Transition Initiatives at USAID/Washington; Joseph Schaller, political officer at the U.S. Embassy in Sri Lanka; Mark Silva, special adviser to the Mission director of USAID/Sri Lanka; and Neil DeVotta, senior associate at Management Systems International.

On arrival in Colombo in early February 2015, the team tailored a set of questions to fit both the conditions in Sri Lanka and the requirements of the DRG assessment framework. They developed a data recording format and notes from all interviews were recorded on the data sheets and shared via DropBox. Interviewing followed a semi-structured format, with questions tailored to the individuals/groups being interviewed; later interviews built on information gleaned in earlier ones. The assessment team conducted approximately 87 interviews of more than 140 people. Most interviews involved one or two individuals, but some were group interviews, including with senior Foreign Service nationals in USAID/Sri Lanka, civil society activists and religious authorities. The team conducted interviews in 1) Colombo; 2) the South in Aluthgama, Beruwala, Galle, Hanbantota, Matara and Tangalle; and 3) the North in Jaffna, Mannar, Moondal, Mullaitivu and Vavuniya. Time did not permit travel to the Central or Eastern districts. The team devoted three days to team analysis and the development of findings, conclusions and program recommendations.

The updating and revising of this report subsequent to the parliamentary elections was undertaken by Lynn Carter and Neil DeVotta of MSI. The latter was able to draw on interview material from a private visit to Sri Lanka in July, while resources on political events and the parliamentary election that were available on line were also consulted.

The team wishes to express its gratitude to U.S. Embassy and USAID staff for sharing knowledge and contacts so generously, with particular thanks to USAID's Angelina Hermon, who arranged team logistics and travel and translated when needed. The team's ability to conduct so many interviews was due largely to her organizational skills and persistence.

## ANNEX B. INTERVIEWS

LOCATION	NAME/POSITION/ORGANIZATION
<b>Colombo</b>	
	Hilmy Ahmad, Executive Director, YA TV
	Geoffrey Alagaratnam, Incoming head of the Bar Association of Sri Lanka and President's Counsel (also former Chairman of the Hanbantota Chamber of Commerce)
	Dr Vinya Aryathna, General Secretary SARVODAYA Andrew Mann, Charge d'Affaires, U.S. Embassy
	Nissanka Bandula, Economist, USAID/Sri Lanka
	Sunil Bastian, Consultant
	Tom Bayer, USAID/Sri Lanka, Acting Mission Direction
	Rozanna Flamer Caldera, Executive Director, Equal Ground
	Bishop Duleep De Chikera, Retired Bishop of Colombo, Anglican Church of Sri Lanka
	Inderjit Coomeraswamy , Economist
	Country Representative, Asian Development Bank
	Mr. Dhammika Dasanayake, Secretary General of the Parliament
	Gomin Dayasiri, Lawyer and Political Commentator
	Hon. Mahinda Deshapriya, Commissioner of Elections, and the Deputy Commissioner for Colombo
	Donor Round table meeting (EU, British High Commission, Australian High Commission, Canadian High Commission)
	Britto Fernando, Executive Director, Right to Life
	Bhavani Fonseka, Lawyer and Researchers, Centre for Policy Alternatives
	Dr. Mario Gomez, Executive Director, International Centre for Ethnic Studies
	Prof Savithri Goonesekara, Former dean of the Faculty of Law, University of Colombo
	Sudarshana Gunawardana, Executive Director, Rights Now
	Balachandran Gowthaman, Chief of Party, USAID-funded SPICE project (2 interviews)
	Lakshman Guneseekara, Editor in Chief, Sunday Observer
	Rauff Hakeem, Minister of Urban Development, Water Supply and Drainage, head of the Sri Lanka Muslim Congress political party
	Mr. Hameed, General Secretary of the Party, All Ceylon Muslim Congress
	Dr. Farah Hanniffa, Secretariat for Muslims
	Kabir Hashim, General Secretary of the UNP Party; Minister of Highways, Higher Education & Export Promotion; MP from Kegalle district
	Sanjana Hattotuwa, Groundviews and Centre for Policy Alternatives
	Mr. Tadateru Hayashi, Senior Country Economist
	Hon. Justice Satya Hettige, Commissioner, Public Service Commission
	INGO round table meeting (GIZ, Oxfam GB, Oxfam Australia, IOM, International Labor Organization, Save the Children, UNICEF, World Vision, Plan International, UNDP, CARE international, Asia Foundation, ZOA)
	Upul Jayasuriya, Head of the Bar Association of Sri Lanka, Chairman of the Board of Investment
	Mr. Tissa Jayatilaka, Fullbright Commission, Sri Lanka
	Dr. Allan Keenan , International Crisis Group
	Dr. Saman Kelagama, Political Economist and Executive Director, Institute of Policy studies of Sri Lanka
	Kumar Lopez , Sri Lanka Press Institute
	Nishan De Mel, Verite Research
	Kumar Nadesan , Chairman of the Express Newspapers/ publishers of the Virakesari
	Harsha Navarathna, Executive Director, Sevalanka Foundation
	A.M.D. Nayanakantha, Deputy Auditor General, Government of Sri Lanka
	Jehan Perera (two interviews), Executive Director National Peace Council
	Justice Priyantha Perera, Chairman of the Human Rights Commission of Sri Lanka

Kishali Pinto, Lawyer and Legal Commentator, Sunday Times	
Mirak Raheem, consultant, Board member, Secretariat for Muslims	
Mr. Rannuge, Executive Director, Transparency International in Sri Lanka	
Mr. M. C. Rashmin, Sri Lanka Development Journalist's Forum	
M. C. Rasim, Executive Director, Sri Lanka Development Journalists' Association	
Robert Ross, Defense Attache, US Embassy, Sri Lanka	
Ms. Shanthi Sachithanandam, Executive Director, Viluthu	
Dr. Paikiasothy Saravanamuttu, Executive Director, Centre for Policy Alternatives	
Chandrani Senerathna, Secretary, Public Service Commission	
Harsha De Silva, Deputy Minister of Policy Planning and Economic Development, Government of Sri Lanka	
Sam De Silva, Project Director Sri Lanka, Partnerships and Innovation Advisor, Asia, Internews	
S.S. Sirimanna, Deputy Auditor General, Government of Sri Lanka	
Keerthi Tennakoon, Executive Director, Campaign for Free and Fair Elections (CaFFE) and the Centre for Human Rights and Research	
Azmi Thassim, Businessmen; UNP member; Chairman, past president forum, Hanbantota Chamber of Commerce	
Ven. Omalpe Sobitha Thero, Leader of the JHU Party	
Ven. Ratana Thero, MP, JHU Party	
Udeni Thewarapperamu, Senior Gender Adviser, SPICE Project	
USAID Senior Staff	
USAID Senior FSN Staff (group interview of 10)	
Professor Jayadeva Uyangoda, Professor of Political Science, Colombo University	
S.C.B. Walgampaya, Chairman; N. Ariyadasa Cooray, Director, Public Complaints Division, National Police Commission	
Dr. Jayampathy Wickramaratne, Attorney-at-Law, President's Counsel Senior Advisor to the President (Constitutional Affairs)	
Lal Wickrematunga, former owner and editor, Sunday Leader	
Sri Widowati, Country Director, ADB	
Hon. Y.J.W. Wijayatilake, Attorney General of Sri Lanka	
Name not disclosed, Finance Director, major multinational company	
Name not disclosed, Sri Lankan business family	
<b>Northern Province</b>	
Moondal	Mr. M.A.M.C Meera Lebbe Dawdeen, CHANGE Humanitarian Organization
Vavuniya	Fr. Elil, Jesuit Refugee Services
	Fr. Jayabalancroos, Mannar Citizen's Committee
	Bishop Rajappu Joseph
	Balachandran Nirooparaj, Ministry of Fisheries/ Jaffna University student union, Civil society/human right activist
	Mr. Senthilkumaran, Executive Director, Federation of Social Development Organization
	Singham, Civil society activist and Joint Secretary of the Tamil civil society forum
Mannar	SPICE Team
Mullaitivu	Jensila Mohammed Majeed, Head of Mullaitivu Women's Development and Rehabilitation Federation
	Thurairasa Ravikaran, Provincial Council Member in Kalappady North and member of Mullaitivu Citizen's Committee
	Mr. Vedanayakan, Government Agent
Jaffna	Shantha Abimanasinghe, President of the Jaffna BASL
	Ahilan Kadirgamar, Political Scientist
	Mr. Pathinathan, Chief Secretary Northern Province
	Mr. Poornachandran, Out-going President of Chamber of Commerce
	Premanath, Uthayan Newspaper
	Mr. Sukirtharaj, Jaffna Social Action Centre
Mr. Vignesh, President of Chamber of Commerce	

Southern Province	
Aluthgama	Ahamed, A journalist who reported the Aluthgama incident to international media M. T.M. Zakir, A lawyer and group of civil society/religious group members
Beddegama Temple	Baddegama Samitha Thero, Religious leader, Academic and Politician
Beruwala	Maulavi SHM Faleel, Naleemiah Islamic University
Galle	Civil Society activists (8 people), Kumari Rathnayaka, Helpway Organization
	Mohomed Isbahan, Journalist
	Ven. Kegalle Pagnnarama Thero, Buddhist monk
Hambantota	Civil Society activists and religious leaders organized by SARVODAYA
	Mr. Azmi Thaseem, Chamber of Commerce
Matara	Professor Atapattu and Team, Department of Economics, University of Ruhuna
	Ven. Kalpahana, Buddhist monk
	Wasantha Kariyawasam and team of religious and civil society activists, Catholic Church in Matara
	Shan Wijayalal De Silva, Chief Minister, Southern Province, SLFP party
	Mr. Thayaparan, Peace and Community Action
Tangalle	Nawajeewana CSO working on disabilities and community mobilization

## ANNEX C. 100-DAY PROGRAM AS OF MARCH 2015

100-Day Program – Status of Election Commitments	Status
<b>January 2015</b>	
10 - The new President Maithripala Sirisena, will take oath.	Completed
11 - A cabinet of not more than 25 members to be appointed, comprising of all political parties in Parliament, with Ranil Wickramasinghe — the opposition leader of parliament appointed as the PM	Completed
12 - A National Advisory Council to be established inclusive of political party representatives as well as Civil Society organizations to strengthen democracy in the country.	Completed
19 – Parliament to be convened.	Completed
20 - Parliamentary Standing Orders to be amended.	In Progress
21 - Steps to be taken to abolish the Executive Presidential system as promised and replace it with an Executive connected to parliament via the Cabinet.	In Progress
22 - Code of Conduct to be introduced	Incomplete
28 - All Party Committee to be established to forward proposals to replace the current preferential voting system with one that guarantees a MP for each Parliamentary Constituency through a mixed electoral system.	In Progress
29 - A Vote on Account to be presented in Parliament to implement special measures to provide relief to the people by reducing the rising cost of living.	Completed
30 – Salaries to be increased and direct/indirect taxes of many essential items to be reduced	Completed
<b>February 2015</b>	
02 - A legally binding code of conduct to be implemented to be followed by all people’s representatives	Incomplete
04 - Independence Day to be celebrated in the spirit of the re-establishment of democracy, good governance and sovereignty	Completed
05 - Special tribunal to be appointed to investigate into the allegations of rampant corruption committed during the past few years	Completed
06 - National Drug Policy to be approved by the Cabinet and the draft bill to be presented to Parliament.	Completed
18 - Independent Commissions to be established and necessary appointments to be made.	In Progress
19 - National Audit Bill to be presented and passed within three weeks	In Progress
20 - Right to Information bill to be presented before parliament and to be passed within three weeks	In Progress
<b>March 2015</b>	
02 - New election laws to be made in consideration of the proposals put forward by the All party Committee	In Progress
17 - Amendments to change the electoral system to be presented before the parliament and passed as soon as possible.	In Progress
18 – National Drug Policy to be adopted	Completed
19 – National Audit Bill to be passed	In Progress
20 - Right to Information Act to be passed in Parliament.	Pending
23 - The Constitutional Council is to be established along with the process of establishing and making appointments to the independent commissions	Pending
<b>April 2015</b>	
20 – A parliamentary system to be introduced in place of the Executive Presidential system that is due to be abolished	Pending
23 – Parliament to be dissolved and general elections to be announced.	Pending
The party that gets the highest number of seats will obtain the Prime Ministerial position and the next largest party in Parliament will be given the post of Deputy Prime Minister.	Pending
An All Party Government will be established with MPs from all parties being members of the Cabinet. The new All Party Government will create a new National Policy Framework that is able to tackle the main challenges of the country. A political culture will be created to act in accordance with the framework.	Pending