

THE WAY WE WERE

Politics of Sri Lanka – 2011

Part I

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Major political developments in Sri Lanka continued to be shaped by a context in which all the political actors in the country have been preoccupied with issues of transition from the protracted civil war which ended in May 2009. This was also the context in which Sri Lanka's external relations as well as actions of external actors towards Sri Lanka occurred.

There were also other significant political developments that were not directly related to themes of post-civil war transition. Developments within political parties, local government elections, government-opposition relations, human rights and media freedom are key themes among them.

The events in 2011 also demonstrated that Sri Lanka's ethnic conflict was far from over, although the civil war ended in May 2009. The conflict has assumed a new shape and character. It takes place in the domestic political arena as well as internationally.

Regime Consolidation

One of the key priorities of President Rajapaksa in 2010 was the consolidation of his position as the country's president and the stabilization of his coalition regime. The winning of the presidential and parliamentary elections, held in January and April 2010, respectively, enabled him to achieve a considerable measure of regime stability. Although the president had expected a two-thirds majority victory at the parliamentary election, the United People's Freedom Alliance (UPFA) obtained 144 seats in the 225-member Parliament, six seats short of the target. In August 2010 President Rajapaksa succeeded in persuading the Sri Lanka Muslim Congress (SLMC) with eight MPs to join the UPFA coalition government. This assured Rajapakse a two-thirds majority in Parliament. No government in Sri Lanka after 1989 had managed to obtain such overwhelming legislative power.

Government Policy towards the Ethnic Conflict

The Sri Lankan government's policy towards the management of ethnic relations in the post-civil war context has been defined by a specific approach which, although not clearly stated, is discernible from its policies as well as broad ideological perspectives shared by key actors

of the UPFA coalition. The basic postulates of this approach appear to be the following:

(i) Sri Lanka does not have an ethnic conflict as such. What existed during the past three decades has been a terrorist problem. The terrorist challenge to the state, led by the Liberation Tigers of Tamil Eelam (LTTE), has been militarily defeated. In case the terrorist threat re-emerges, the government should maintain its capacity to quash such threats immediately by military means.

(ii) Since there is no ethnic conflict with political dimensions, there is no need for a political solution for devolution or power-sharing. The attention of the government should be focused not on finding a political solution to a non-existing ethnic conflict, but on rehabilitation and resettlement tasks, along with economic development.

(iii) The Tamil people do have grievances. They primarily emanate from two sources. These are: (a) uneven regional development to which the Northern and Eastern provinces have been subjected since independence, and (b) consequences of the war during the past three decades. The priority of the government should be to address economic and infrastructure development.

(iv) The task of national integration and nation-building need to be achieved through economic integration of the North and East with the rest of the country. Economic integration, and not devolution, is the essential precondition for post-civil war national integration in Sri Lanka.

This new approach of the government to the conflict has produced critical responses as well. They have emerged from local and international civil society groups and in a subdued manner from India as well as western countries. The government's assumption that the Sri Lankan conflict has come to an end with the military defeat of the LTTE is not shared by critics. Their assertion is that although the military phase of the conflict is over, the conflict continues to exist and therefore it now requires a political solution. Critics also say that if a political solution is not advanced by the government, the ethnic conflict is very likely to become exacerbated, even in the absence of the LTTE.

Search for a Political Solution

Although the government does not seem to think it necessary to implement a political solution to the ethnic conflict, it has been engaging in discussions with the Tamil National Alliance (TNA) on the theme of a political solution, primarily in response to international pressure. This pressure for government-TNA talks for a negotiated political solution has emanated from the USA, India, the EU countries, Canada and to a limited degree Japan. This process of dialogue began in 2010 and continued through 2011. In 2010 the government appointed a committee to maintain the dialogue process. However, the government-TNA dialogue did not produce any concrete outcome in 2011.

The lack of clarity on the government's position on a political solution and the deep mistrust between the UPFA government and the TNA are two factors that have led to the protraction of the dialogue with no concrete outcome. The government from time to time indicated that its framework of a political solution did not include land and police powers to be devolved to provincial councils, whereas the TNA wanted the government "to grant the Northern Province police powers besides the right to manage land and forest reservations" (*Sunday Times*, 27 March 2011). Although police powers have already been devolved to the provinces under the 13th Amendment to the Constitution, no government has implemented that provision. Under the 13th Amendment, provincial councils have limited powers over land and there, too, the constitutional provision has not been put into effect. The government's reluctance to fully implement the provisions relating to land and police powers under the Constitution emanate from the argument that this would encourage secession and thereby constitute a threat to the unity and sovereignty of the state. President Rajapaksa has also described the TNA's insistence on land and police powers as demands which "the LTTE has been asking for" (*Sunday Times*, 27 May 2011). President Rajapaksa has not indicated any enthusiasm about expanding devolution. Informal comments that the newspapers have occasionally reported about President Rajapaksa's negative assessment of devolution suggested that he was more inclined towards centralization rather than power-sharing.

Thus, during 2011 the debate on devolution and a political solution to the ethnic conflict clearly indicated the continuing polarization of positions between the government and the TNA. While the TNA put forward its reform agenda of the 'Thirteenth Amendment Plus,' implying greater regional autonomy going beyond the power of existing provincial

councils, the government's position presupposed a framework of 'Thirteenth Amendment Minus.' The latter suggested devolution without land and police powers to provincial councils. The inability of the government and the TNA to find common ground on post-civil war political reforms to address the core issues of the ethnic conflict suggested that the issue was likely to remain unresolved in 2012 as well.

Why was the UPFA government reluctant to concede the TNA demand for the Thirteenth Amendment Plus and expect the TNA to negotiate for a minimalist political solution? Why did the TNA insist on the Thirteenth Amendment Plus? The UPFA government's vision of a political solution to the ethnic conflict has been shaped by a number of factors. First, the UPFA coalition's core political ideology, as evolved during the war against the LTTE between 2006 and 2009, did not acknowledge the existence of an 'ethnic conflict' warranting a political solution as such. Second, the way in which the civil war ended in May 2009, with unilateral military victory to the state, led to a condition of 'victor's peace.' Third, Sri Lanka's political transformation during the past few decades has been in the direction of centralization of state power, rather than decentralization and sharing of state power.

Meanwhile, the TNA's position on a political solution emanates from its ideological as well as political inheritance. Ideologically as well as politically, the TNA represents the political aspirations of the Tamil 'nation' which, as the TNA believes, deserves regional autonomy within a federal framework. Even during the LTTE's secessionist war, the TNA, and its predecessor the TULF, stood for a federalist alternative to both the unitary Sri Lankan state and a separate Tamil state. Coming down on its regional autonomy demand is not easy for the TNA against the backdrop of a protracted struggle for federalism. More importantly, the TNA is the only ethnic minority party at present to resist the UPFA government's strategy for political cooperation and cooptation.

A key factor that has shaped the UPFA government's reluctance to work on a political solution with greater regional autonomy is the absence of the LTTE. The government's thinking seems to be that devolution and the 13th Amendment were necessitated in the context where the threat of armed insurgency for secession was present. Once that threat is removed, political conditions in the country have also changed; and the need for devolution is not relevant as it used to be during the civil war.

Ethnic Relations

The minimalist policy framework of the UPFA government towards the ethnic conflict, as briefly outlined above, has been in existence since 2009. Indeed, it has had broad implications for the government's relations with all ethnic minorities as well – Tamil, Muslim and Up-Country Tamil. A key implication is the government's policy emphasis on involving minority political parties in the economic and infrastructure development initiatives launched in the Northern and Eastern provinces. This has had a political framework defined by the government for the minority parties. In that framework, the minority political parties should join the government coalition, accept Cabinet positions and offer their support for the stability of the UPFA government. All Tamil and Muslim political parties with the exception of the Tamil National Alliance have accepted this position. The Sri Lanka Muslim Congress, which had earlier aligned itself with the opposition UNP, also joined the UPFA coalition in August 2010, accepting the perspective of de-emphasizing political rights of the minorities.

These developments reflect the new ways along which ethnic relations in Sri Lankan politics have been changing since the end of the war between the state and the LTTE. Earlier, the war and the presence of the LTTE as a threat to the state constituted two important factors in Sri Lanka's political balance of forces between the state and ethnic minorities. It had also characterized the bargaining power which the ethnic minority parties exercised vis-à-vis the government as well as the UNP and the PA, the two main political parties. The ending of the war has altered this specific equilibrium in favour of the government. Leaders of most minority parties appear to be conscious of the new situation in which their bargaining power is weak. In their new politics of pragmatism, priority is given to what they see as 'developmental rights' over political rights. According to the new politics of pragmatism adopted by the minority parties, the best way to work towards fulfilling development rights of their communities is to collaborate with the ruling coalition. These parties also need access to public office and resources to maintain their clientelist politics. This to a great degree explains why the SLMC left its alliance with the opposition UNP and joined the UPFA government. It also explains why the minority parties, except the TNA, are not keenly interested in their demands for more devolution. Instead of renewing the demand for a political solution and enhanced devolution, all ethnic minority parties, except the TNA, have come to accept the UPFA government's agenda of the priority of economic development over devolution.

The TNA, which has not accepted, and is even resisting, the UPFA government's post-civil war agenda of development over devolution, also appears to be quite aware of the weakened bargaining position of minority parties. The TNA addresses this challenge in its engagement with the UPFA government by means of mobilizing international support for its own agenda. It also mobilizes international pressure on the government to initiate action for reconciliation and for a political solution based on devolution. Accountability concerning alleged violations of human rights and humanitarian law during the last stages of the war is also an issue with which the TNA has been concerned. This has prompted some critics to say that the TNA's agenda has been influenced by western governments and the pro-LTTE diaspora, and not by the actual needs of the Tamil people on the ground.

As became clear in 2011 as well, the TNA's political agenda seems to rest on two main strategic components. They are: (a) continuation of the project of regional autonomy for Tamils despite the demise of the LTTE, and (b) sustaining the argument for the priority of a devolution-based political solution while countering the government's strategy of coopting minority parties and political leaders to the regime agenda.

There has also developed a significant confidence gap between the UPFA government and the TNA, despite a number of meetings the two sides had in 2011. The government's basic attitude to the TNA appears to be one of mistrust. This mistrust emanates from the government's view that the TNA was sticking to an extreme position on devolution with which the UPFA had repeatedly disagreed. The government also appears to think that by advancing an extreme position on devolution, the TNA acts as a proxy of India and the West. Meanwhile, the TNA seems to believe that the UPFA government has not been particularly serious about either reconciliation or devolution and therefore is merely engaged in an exercise of prevarication.

Resettlement and Normalization in the North

The acceleration of resettlement of those displaced due to war has been a major policy challenge to the government throughout 2011. Initially, donors and civil society organizations expressed concern that the overall normalization process had been slow. However, with the assistance of UN agencies and with international support, the government took measures to expedite the resettlement of Tamil civilians, particularly those living in camps. According to UN sources,

the resettlement programme initiated by the government has accommodated the return of 421,056 civilians (126,524 families) to their homes and communities by the end of 2011 (UNOCHA: Nov-Dec, 2011). The government claims that 95% of the IDPs displaced from the Vanni during the last two years of the war have been resettled. (Fonseka and Raheem: 2011, 64). The UN and donors welcomed this initiative of the government. However, there are still issues remaining with regard to the resettlement of IDPs.

Returning itself, is a challenge for the IDPs, as they have to rebuild their lives, in most instances from scratch. Members of the Muslim community who have returned to their old villagers after nearly two decades are specifically facing this challenge. In many other instances, IDPs are not permitted to return to their own homes and land, even though they are allowed back to the old village or the divisional secretariat (DS) division. Thus, relocation has created new challenges of normalization to those returned IDPs. Those people who do not have IDP status as a result of deregistration still remain practically displaced. As of 31 October 2011, there were at least 1,114 IDPs (311 families) living in transit situations and 34,671 (12,138 families) with host families (UNOCHA Report 37, 2011). At the end of November 2011, 6,732 IDPs (2,044 families) remained in camps awaiting return to their areas of origin (UNOCHA, November-December 2011). The ones who have returned are also facing issues concerning the lack of basic facilities such as housing, sanitation, education and health care. Kokkilai in the Mullaitivu District, and Krishnapuram and Vinayakapuram in the Killinochchi District, are examples (Sumanthiran: 2011).

Other than the IDPs, there is also a community of refugees living abroad. According to UNHCR statistics, there are at least 141,074 officially registered refugees from Sri Lanka who are living abroad. Despite the availability of programmes to accommodate the return of refugees, the number of returnees has been low in 2011, only 1,680. The main challenge in this regard remains the lack of confidence among the refugees to return to Sri Lanka, due to feelings of political uncertainty, potential economic hardship and insecurity (Fonseka and Raheem: 2011).

The land policy undertaken by the government has become central to most problems related to the return of civilians and their resettlement. Access to land is crucial to secured livelihood. The issuing of the Land Commission Department's circular no. 2011/04 on 22 July 2011 aggravated the land problem of the returnees. This circular temporarily suspended the distribution of land in the North and the East, except for

national security and special development projects. The ad hoc High Security Zones in Thirumurigandi, Shanthapuram and Indupuram, covering the districts of Mullaitivu and Killinochchi, have also contributed to this problem. The people originally from these areas continue to live in camps as they cannot return (Sumanthiran: 2011).

With regard to normalization, militarization is a key obstacle in the North and East. While militarization has increased with regard to security, it has also been incorporated into civilian life. Due to the increasing presence of the armed forces in the North, the civilian-military ratio has been dramatically increased in favour of the military. The armed forces continue to occupy land belonging to the Tamil people. It is estimated that there is one member of the armed forces for approximately one civilian in the North (Sumanthiran: 2011). The military has also begun to get increasingly involved in economic activities in the North by running shops – for example, barbershops, grocery shops, restaurants, hotels and vegetable shops. The government appears to think that the military's involvement in civilian life is an essential part of its campaign for winning the hearts and minds of the Tamil people in the North. From the point of view of demilitarization and normalization, it has negative consequences. The government's preoccupation with security considerations in the North has also led to some actions which people in the North see as an undue intrusion of the military into their private lives. For example, there have been many instances when people had to obtain the permission of the military to receive guests and to have family functions. The blurring of the lines between civilian and military functions of the administration in the North and East is a continuing challenge for normalization which requires gradual demilitarization. Still, governors of these two provinces are ex-military officials. The government's lack of understanding of the importance of demilitarization to normalization continues to deepen the Tamil people's sense of alienation from the Sri Lankan state.

External Relations and Controversies

The year 2011 demonstrated once again the continuation of the shift in foreign relations that the UPFA government under President Mahinda Rajapaksa inaugurated during the last phase of the war against the LTTE. In 2009 and 2010, there were clear signs of Sri Lanka's foreign policy taking a new turn towards closer relationships with China and Russia in a context of growing tension in the relationships with the US, EU, other western countries and the UN. The main reason for tension with the West and the UN was the Sri Lankan government's unwillingness to respond to their insistence that the government should begin a post-war

reconciliation process as understood and outlined by them. The Sri Lankan government was particularly unhappy with two points that were emphasized by the UN secretary general and western governments. They were: (a) setting up a credible domestic mechanism to investigate the allegations of 'war crimes' during the last phase of the war as a step towards reconciliation, and (b) taking political measures to resolve the ethnic conflict politically through devolution and power-sharing.

Regarding a third point on which the West and UN insisted, the government seemed to be in agreement. This concerned the immediate resettlement of displaced Tamil civilians and their rehabilitation, along with a programme of economic and infrastructural development in the North and East. The government in fact worked in close cooperation with UN agencies and western governments on rehabilitation and resettlement programmes.

The UN Panel Report

A major political issue that remained intensely controversial throughout 2011 was the report by the UN panel submitted on 12 April and released a few days later. The UN panel was appointed by Secretary General Ban-ki Moon to examine "modalities, applicable international standards and comparative experience with regard to accountability processes." The three-member panel was also asked to consider "the nature and scope of any alleged violations of international humanitarian and human rights law during the final stages of the conflict in Sri Lanka." The secretary-general claimed that the appointment of the panel followed the joint statement made by him and President Rajapaksa after the secretary-general visited Sri Lanka shortly after the end of the war in May 2009.

The panel reported that there were a number of allegations of serious violations of international humanitarian and human rights law committed by both the LTTE and the government of Sri Lanka, some of which could amount to war crimes and crimes against humanity. The panel also recommended that the government of Sri Lanka should respond to the serious allegations by initiating an effective accountability process beginning with genuine investigations.

The response of the Sri Lankan government was total rejection of the panel report. The government asserted that the report was fundamentally flawed and based on biased material without any verification. The government also took the position that the report's recommendations amounted to undue interference with the sovereignty of Sri Lanka by the UN.

Channel 4 Video Documentary

The controversy on the alleged war crimes took a particularly intense turn when a British TV channel, Channel 4, released on 14 June 2011 a video documentary entitled "The Killing Fields." The Channel 4 documentary emerged against a backdrop of an intense controversy caused by a report submitted to the UN secretary-general in 2010 by an advisory panel.

While releasing the film, Channel 4 claimed that the film featured "devastating new evidence of alleged war crimes in Sri Lanka." The film was screened in several world capitals and at the UN Human Rights Council in Geneva when the UNHRC session was underway. The film soon became a medium through which western governments and human rights organizations put pressure on the Sri Lankan government to prove their point that there had been credible and serious allegations of war crimes that warranted a domestic or international inquiry. The UN Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, was reported to have said, after viewing "The Killing Fields" that the documentary contained footage that was evidence of "definitive war crimes" (*Sunday Times*, 19 June 2011).

The government's response was that the film was totally biased against the Sri Lankan government, and based on dubious material that could not be verified. Technical experts consulted by the government even determined that some of the footage of the documentary was not genuine. Channel 4 stood by its claim to authenticity of the footage. The government in turn produced its own video film entitled "Lies Agreed Upon?" and screened it in foreign capitals.

Regarding the agenda for reconciliation and a political solution, the government's position has been that: (a) there were no war crimes committed by the Sri Lankan military during the war, and (b) the political solution was not actually necessary while the government's commitment was to a 'home grown' solution, as opposed to an externally inspired solution. The Sri Lankan government appeared to be particularly unhappy with the insistence by western governments that there should be a credible domestic inquiry into allegations of war crimes, as proposed in the UN panel report. Occasionally, the government also hinted at the possibility of a western plan for direct intervention in Sri Lanka for a regime change on the pretext of 'war crimes' investigations. Consolidating economic and political relations with China and Russia, two members states of the UN Security Council, became a foreign policy priority for the government in 2011.

Thus, 2011 is the year in which the issue of 'war crimes investigations' dominated Sri Lanka's domestic political debate as well as the Rajapaksa administration's foreign relations. While aggressively and assertively campaigning against western and UN insistence on investigations on alleged 'war crimes,' and steering the country's foreign policy along a new Beijing-Moscow axis, the government also made use of the 'threat' of war crimes investigations in its propaganda to bolster public support. During the local government elections campaign in June 2011, President Rajapaksa repeatedly brought up this issue, to portray himself, his government and the armed forces as targets and victims of western and colonial hostility.

Relations with India and China

Managing relations with India has been a particularly complex task for the Rajapaksa administration in 2011 as well. The complexity arose from two sources. The first is the Indian government's insistence that the Sri Lankan government should implement, without delay, a political solution to the ethnic conflict through a dialogue with the TNA. The second was the growing closeness of Sri Lanka with China, particularly in the aftermath of the war. With regard to the Indian government's emphasis on a political solution, the Rajapaksa government's wavering commitment to a political solution based on devolution had led to some concerns in Tamil Nadu as well as New Delhi. As a sponsor of the 13th Amendment to the 1978 Constitution in 1987, the Indian government continued to hold the view that devolution as laid down in the 13th Amendment should constitute the base for a post-conflict settlement process. The Indian government's enthusiasm for a devolution-based political solution was not totally shared by the government of President Rajapaksa. President Rajapaksa appears to view the 13th Amendment as being an externally imposed and, therefore, unacceptable solution to Sri Lanka's homemade conflict. He has also indicated that the 13th Amendment offers too much power to provincial councils.

The China factor in Indo-Lanka relations has geopolitical implications. Apart from India-China rivalry that goes back to the 1960s, China's aggressive pursuit of its presence in the South Asian region has posed new challenges to India, which has viewed South Asia as well as the Indian Ocean as its legitimate sphere of presence and influence. China has also been backing Pakistan, India's rival in South Asia. Closer cooperation with Nepal and Bangladesh has also enabled China to emerge as an influential extraregional actor in South Asia. The concern in India is built around the apprehension that China's economic and political presence in South Asia

would lead to India's losing its own sphere of influence. China provided more military assistance to Sri Lanka than India during the war against the LTTE. China has also emerged as the major source of economic backing to the Sri Lankan government, investing particularly in port and infrastructure development, and cooperating in defence matters.

Cultivating closer economic and political ties with China and Russia is crucial for the Rajapaksa administration's domestic and foreign policy agendas. The government needs their backing at the UN, particularly in the Security Council, in case the West initiates a process of war crimes investigation. Closer economic ties with the two countries have assumed a new significance in the context of the government's tense relations with the US and EU countries. Earlier, Sri Lanka lost concessionary access to the EU market when the GSP Plus facility was suspended in July 2010. The government has also been unhappy with the political conditionalities attached to western economic assistance. The EU conditions on the improvement of Sri Lanka's domestic human rights and labour standards were clearly seen by the government as an arbitrary, political interference. China, Russia and even Japan follow a policy of closer economic relations with Sri Lanka, with no overtly political conditions imposed.

Reconciliation

The issue of post-war reconciliation has repeatedly surfaced in 2011 in Sri Lanka's domestic politics as well as in foreign relations. The UPFA government's strategy has been to shield itself from western pressure for war crimes inquiries by insisting that the government prefers a home-grown process of reconciliation. While launching a domestic and international campaign to question, critique and delegitimize the UN panel report, which had suggested an international process of inquiry, the government insisted that it had already initiated a domestic process for investigation and reconciliation through the Lessons Learnt and Reconciliation Commission (LLRC). The LLRC was appointed by President Rajapaksa on 19 May 2010 with a broad mandate to inquire into the following matters that may have taken place during the period between 21 February 2002 and 19 May 2009:

- The facts and circumstances that led to the failure of the ceasefire agreement operationalized on 21 February 2002 and the sequence of events that followed thereafter up to 19 May 2009;
- Whether any person, group or institution directly or indirectly bears responsibility in this regard;

- The lessons to be learned from those events and their attendant concerns, in order to ensure that there will be no recurrence;
- The methodology whereby restitution to any person affected by those events or their dependants or their heirs can be effected;
- The institutional administrative and legislative measures that need to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and the reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of the warrant.

The government also argued that since the LLRC was the beginning of a domestic process, the international actors should allow this process to function before calling for any international inquiry. However, critics of the government's approach have found the LLRC process both inadequate and faulty. For example, the New York-based Human Rights Watch, which has been monitoring Sri Lanka's political and human rights issues, commented in its report on Sri Lanka in 2010 that the LLRC's mandate did "not explicitly require it to investigate alleged war crimes during the conflict, nor has the LLRC shown any apparent interest in investigating such allegations in its hearings to date" (Human Rights Watch:2011)

LLRC Interim Report

The LLRC, having heard public evidence, submitted an interim report in August 2010 making recommendations to the government in five areas, namely, (i) detention, (ii) land issues, (iii) law and order, (iv) administration and language issues, and (v) socio-economic and livelihood issues. With regard to detention, the interim report proposed the creation of a "special mechanism" to examine the cases of Tamils held as LTTE suspects and recommend an appropriate course of action on each case. The report also proposed to set up a special unit at the Ministry of Justice to publish the list of names of persons in detention and to prevent the arbitrary arrest of those released. On land issues, the commission wanted the government to issue a clear policy statement that private land would not be taken over by the state for resettlement purposes. On the question of law and order in the North and East, arising out of the presence of armed groups engaged in extortion, abduction and other criminal activities, the recommendation was to initiate measures necessary to disarm such armed groups. On administration and language issues, the interim report recommended taking steps to provide interpreters to facilitate communication

between Tamil citizens and administrative agencies. On socio-economic and livelihood issues, the recommendation was to encourage the free movement of persons on the A9 road and greater coordination between military and civilian officials for normalization of civil administration.

The government appointed the Inter-Agency Advisory Committee to implement the recommendations. However, even in 2011, the progress of the implementation of the recommendation has been slow.

This provided a backdrop for a new debate in 2011 about the role of the LLRC in the reconciliation process. Western governments and international human rights organizations began to suggest that the final report of the LLRC should address the allegation of war crimes. Some critics expressed serious doubt about the role of the LLRC, even though the government described the LLRC as a credible, domestic accountability mechanism, capable of delivering justice and promoting reconciliation. For example, Amnesty International in a statement issued on 7 September 2011 stated that the LLRC, in reality, was "flawed at every level: in mandate, composition and practice" and called for an "international, independent investigation" into allegations of war crimes. The government, while dismissing these criticisms as premature and unwarranted, proposed to its critics to wait for the LLRC's final report. In fact, when the LLRC's final report was submitted to the president on 15 November 2011, there were also domestic and international expectations that it would prove its critics wrong.

The key recommendations of the LLRC, made in its final report, can be summarized under four thematic headings, as follows:

- i. **Investigations:** (a) The report recommended further investigation of some incidents that caused death or injury to civilians to determine the possible involvement of security forces, (b) investigations into specific allegations of disappearance after surrender or arrest, (c) appointment of a special commissioner to inquire into allegations of disappearance, (d) inquiry into alleged incidents of serious violations of human rights, including the killing of 4 students in Trincomalee in 2006 and of 17 aid workers in Muthur, and (e) an independent investigation into the Channel 4 video.
- ii. **Improving the Human Rights Situation:** Other than the above proposed investigations, the LLRC recommended the appointment of an independent advisory committee to monitor and examine detention and arrest of persons under

any regulations made under the Public Security Ordinance or the Prevention of Terrorism Act (PTA). The LLRC did not recommend the repeal of either the emergency laws or the PTA. Other recommendations to improve the human rights situation were: (a) framing domestic legislation to specifically criminalize enforced or involuntary disappearances, (b) preparing a centralized and comprehensive database containing a list of detainees and make the list available to their next of kin, and (c) disarming of all illegal armed groups.

iii. Resettlement and Normalization of Civilian Life: (a) granting legal ownership of land to those who have been resettled, (b) creation of increased employment opportunities to those in the former conflict-affected areas, (c) non-use of the land policy of the governments as an instrument to effect changes in the demographic pattern of a given province, (d) setting up a National Land Commission (NLC) in order to propose appropriate future national land policy guidelines, (e) providing compensatory relief for persons affected by the conflict (including ex-LTTE combatants and next of kin), and (f) phasing out the involvement of security forces in civilian activities in the Northern and Eastern provinces.

iv. Reconciliation and Peace-building: (a) making an effort in good faith to develop a consensus on devolution of power and building on what exists for maximum possible devolution to the periphery as well as for power-sharing at the centre, (b) enabling school children to learn each others' language and making the three-language policy compulsory in school curriculum, (c) stationing in all government offices of Tamil-speaking officers at all times and bilingual officers in police stations on a 24-hour basis, (d) designing a proactive policy to encourage mixed schools to serve children from different ethnic and religious backgrounds, (e) engagement with 'hostile diaspora groups' constructively and address their concerns, (f) singing of the national anthem both in Sinhalese and Tamil languages, to the same tune, (g) strict enforcement of the law prohibiting hate speech which would contribute to communal disharmony, and (h) declaration of a separate event and date to express solidarity and empathy with all victims of the conflict.

The reactions to the LLRC report have been mixed. Indeed, opinion became sharply polarized between the government and its supporters on the one hand, and critics of the government and the LLRC on the other. While the government and its spokesmen saw the report as showing the way forward, external critics were quick to highlight its inadequacies and shortcomings. The strongest reaction came from the TNA, the main Tamil parliamentary party. R.

Sambanthan, the TNA leader, described the LLRC report as having "categorically fail[ed] to effectively and meaningfully deal with issues of accountability" (The Hindu, 19 Dec, 2007) (The Hindu, 19, December, 2011) The TNA's response was specifically critical of the report's finding that the government security forces had given the highest priority to the protection of civilians in their offensive against the LTTE. The report also concluded that the security forces had not deliberately targeted civilians in the No-Fire Zones during the last phase of the war. This finding went against the assertions made in the UN panel report as well as the position taken by the TNA and international human rights organizations. The TNA renewed its call for a full investigation of "the allegations of war crimes and crimes against humanity committed by both the Tamil Tigers and the government forces."

The initial reactions from western countries were somewhat cautious, but skeptical. Lady Catherine Ashton, the EU's High Representative for Foreign Affairs, in a statement issued on 16 December 2011, expressed the hope that the report would "contribute to the process of reconciliation" in Sri Lanka. She also encouraged the Sri Lankan government to "engage with the UN Secretary General and the relevant UN bodies" on the issue of accountability.¹ India too expressed a somewhat similar hope, but stressed issues of reconciliation and devolution. A spokesman of the External Affairs Ministry expressed the hope that the Sri Lankan government would "act decisively and with vision" on devolution of powers and national reconciliation. India also stressed the importance of putting in place "an independent and credible mechanism" to investigate allegations of human rights violations, as brought out by the LLRC. (*Sunday Times*, 26 Dec, 2011).

(To be Continued, Vol. 6 No. 5)

Endnotes

¹ Statement by the spokesperson for EU High Representative Catherine Ashton on the publication of the report of Sri Lanka's Lesson Learnt and Reconciliation Commission. Available on http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/127030.pdf.

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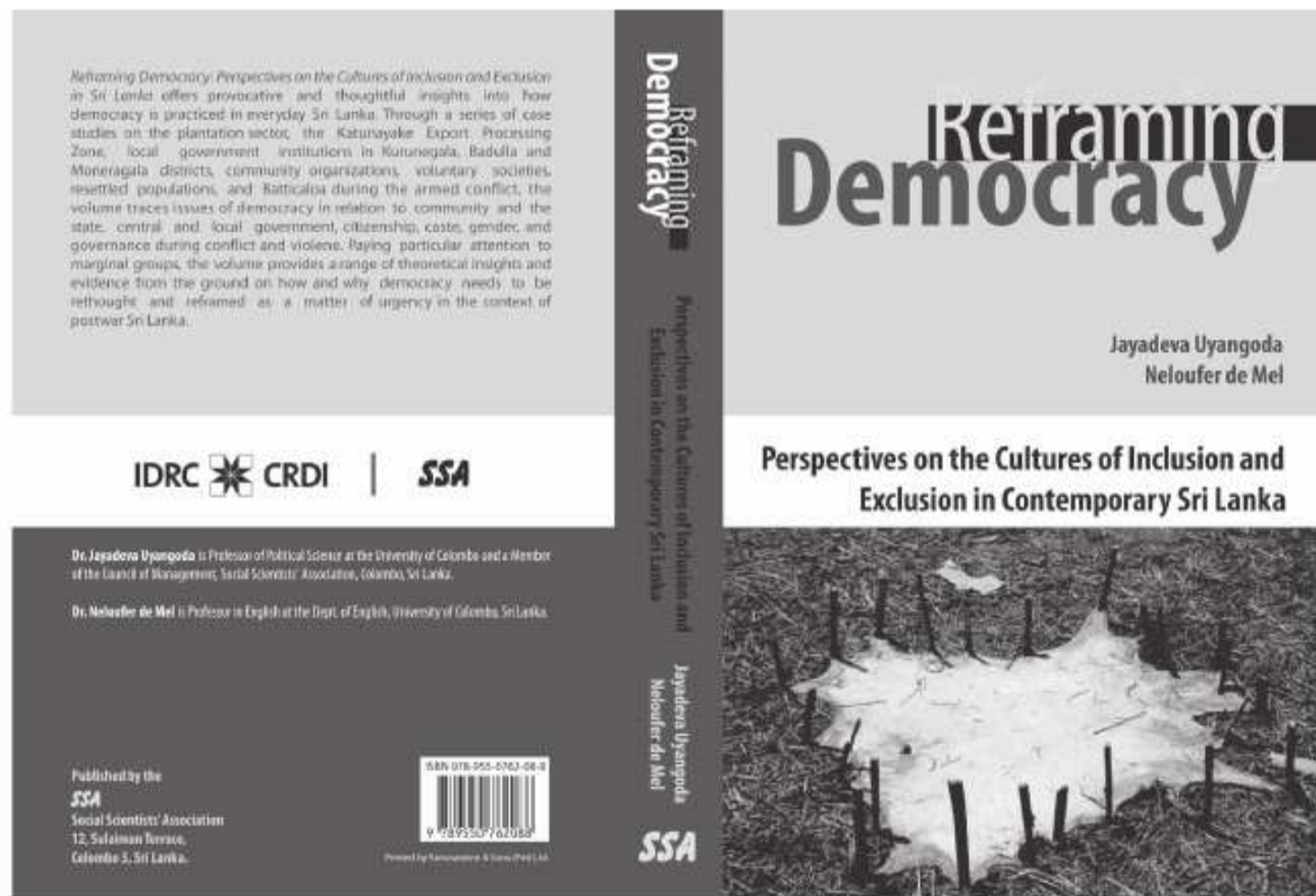
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