

Update Briefing

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Sri Lanka's Presidential Election: Risks and Opportunities

I. Overview

Sri Lanka's presidential election, scheduled for 8 January 2015, looks set to defy the predictions of many and be a true competition. As such, the polls threaten risks and promise opportunities for long-term stability and post-war reconciliation. The sudden emergence of a strong opposition candidate caught many, including President Mahinda Rajapaksa, by surprise. Running on a platform of constitutional reforms to limit executive power and restore independent oversight bodies, the opposition coalition led by former Rajapaksa colleague Maithripala Sirisena seems set to pose the first strong challenge to Rajapaksa in nearly a decade. Amid a restrictive climate for civil society, for Tamils and for religious minorities, the risk of serious election-related violence merits close international attention and active efforts to prevent political instability, including the possibility of extra-constitutional means by Rajapaksa to retain power.

Reacting to disappointing results for his coalition in a series of recent provincial polls, Rajapaksa's 20 November announcement of an early election for a third term was designed in part to strike while the opposition was still divided. To the surprise of many, a coalition of opposition parties announced that its common candidate would be Maithripala Sirisena, the general secretary of Rajapaksa's own Sri Lanka Freedom Party (SLFP). A number of key SLFP members joined Sirisena and more defections have followed, dealing a major blow to the president. While he is still the frontrunner, for the first time since the end of the war in 2009 it can no longer be taken for granted that Rajapaksa – and with him his powerful brothers and other family members – will remain in power indefinitely. Should additional senior members of the SLFP or other constituents of the ruling coalition abandon the government, the pressure will mount. For the first time in years, the opposition, together with critical voices among Sri Lanka's beleaguered civil society, are sensing that political change is a real possibility.

At the same time, the sudden emergence of a viable joint opposition increases the chances of severe election-related violence and other malpractices. The Rajapaksas are almost certain to deploy the full resources of the state – money, vehicles, state-owned radio, TV and newspapers, civil servants and the police – in support of Mahinda's re-

election, and are widely expected to do whatever is needed to try to maintain their power. The tighter the race, the more violent it will be.

Many fear that the radical Buddhist group Bodu Bala Sena (Buddhist Power Force, or BBS) may be used to produce a violent incident designed to distract from other malpractices, or to lower Muslim turnout, or to provoke a Muslim backlash that the government would use to solidify its Sinhala base. Some suspect BBS could also be used to destabilise a new government should Sirisena win.

With the northern and eastern provinces still under tight military control, security forces could, as in last year's provincial election, be used to restrict campaigning by opposition parties and intimidate Tamil and Muslim voters to reduce turnout. Restrictions on travel by foreigners to the northern province, re-imposed in September 2014, will make it harder for media, diplomats and international organisations or aid workers to monitor and report on any violations.

Should Sirisena win the vote, the president and his brothers could find other means to retain power, including resorting to the politically compliant Supreme Court to invalidate the result, or using the military as a last resort. In this volatile pre-election context, foreign governments and international institutions concerned with Sri Lanka's long-term stability – among them, China, India, Japan, U.S., the UN, European Union (EU), World Bank and Asian Development Bank (ADB) – should seek to limit the risks of serious political violence, before, during and after the election; and help create as level an electoral playing field as possible, to increase the chances for real debate and fair competition. To these ends, they should:

- ❑ support a significant election-monitoring presence – from the Commonwealth and the EU – as early as possible, insist it have full freedom of movement and provide funding to local election monitoring groups;
- ❑ deliver pre-election warnings to all political leaders to avoid serious fraud and election-related violence, including support for militant Buddhist attacks on Muslims and Christians.

Amid Sri Lanka's authoritarian drift and institutionalised impunity, that a real political competition is in the offing provides unexpected hope for the future. Within the current opening, however, lies potential for serious conflict given how much is at stake for all involved. The opportunity should be seized to make sure that the next government has the broad national credibility, internationally endorsed, to begin the process of knitting together the Sri Lankan society battered by its recent traumatic history. Whoever wins in January, core questions around national identity – issues of devolution of power, of accountability and reconciliation, and of the equal status of Tamils and Muslims in a Sinhala majority state – will remain contentious. They will require deft handling if greater instability is not to result.

II. Campaign Challenges for the Opposition

Sirisena has the backing of the main opposition, the United National Party (UNP), with its long-time leader, Ranil Wickremesinghe, announced in advance as Sirisena's choice for prime minister should he win.¹ Sirisena's candidacy will also have the support of a range of smaller parties, including the Sinhala nationalist Jathika Hela Urumaya (JHU), which broke from the ruling United People's Freedom Alliance (UPFA) coalition. The leftist-nationalist People's Liberation Front (JVP) and the Tamil National Alliance (TNA) are also expected to back Sirisena, though without a formal endorsement. Still uncertain is the position of the main Muslim party, the Sri Lanka Muslim Congress (SLMC), and the Ceylon Workers Congress (CWC), which represents Upcountry Tamils.

A. *A Fertile Ground for the Opposition*

The opposition seems poised to give Rajapaksa a run for his money. The government was clearly caught off guard by Sirisena's challenge and has since been consumed with attempts to block other major defections from the SLFP.² The opposition intends to appeal to the growing sense among voters that Rajapaksa runs a "corrupt regime" that empowers his family and a small band of supporters while ignoring the needs of the population as a whole.³ Rajapaksa has never faced serious sustained criticism from a well-organised opposition. Its criticisms could resonate with a wide section of voters. Popular discontent centres on the following key issues:

- ❑ **No meaningful economic peace dividend:** complaints about the high cost of living are widespread, with many families finding it increasingly hard to make ends meet.⁴ Economic development has focused on expensive infrastructure projects that have produced few jobs, while public services – schools, universities, the health system – have been underfunded and allowed to deteriorate. Popular

¹ For analysis of Sri Lanka's post-war political developments, see Crisis Group Asia Reports N°253, *Sri Lanka's Potemkin Peace: Democracy under Fire*, 13 November 2013 and N°243, *Sri Lanka's Authoritarian Turn: The Need for International Action*, 20 February 2013. See also Crisis Group Briefing Note, "Reconciliation and accountability in Sri Lanka: UNHRC action remains crucial", 28 February 2014.

² On 23 November, Rajapaksa announced that he had files with information on all those who left his government, but that he was not the sort of person to use them. His statement was criticised by opposition leaders as further evidence of the government's abusive nature. "I have 'files' on all those who defected: Mahinda", *Colombo Telegraph*, 24 November 2014.

³ "Sri Lanka opposition parties launch bid to topple Rajapakse", *Agence France-Presse*, 30 November 2014.

⁴ Sri Lanka's economic growth rate continues to be strong, at 7.7 per cent over the first half of 2014. While macroeconomic statistics are good, economic discontent is widespread and appears to be increasing, including among Sinhalese, Rajapaksa's core constituency. According to an October 2014 public opinion survey, over 50 per cent of Sri Lankans felt the economic situation was either bad or very bad, with 54 per cent of Sinhalese reporting their household financial situation had become a little or a lot worse over the past two years. 67.4 per cent of Sinhalese thought that the government should prioritise cost of living, with 43.1 per cent of Sinhalese saying they have cut back on the amount or quality of food they have purchased. "Democracy in post-war Sri Lanka: Top line report", Social Indicator-Centre for Policy Alternatives, 28 October 2014. For an earlier analysis of economic discontent, see Crisis Group Report, *Sri Lanka's Potemkin Peace*, op. cit., pp. 21-23.

economic discontent is magnified by the widely circulated allegations of large-scale government corruption.⁵

- **Dismantled democracy:** Power has been concentrated in the president and a small number of officials, with numerous Rajapaksa family members in key state positions.⁶ Senior SLFP and coalition partners have grown increasingly angry at the lack of meaningful authority granted even to senior ministers.⁷ In the wake of the eighteenth amendment in September 2010, public bodies, including the police, have been fully politicised. The independence of the judiciary was crippled by the January 2013 impeachment of the chief justice.⁸ Impunity for crime by the politically connected remains endemic.⁹
- **Attacks on minorities and lack of reconciliation:** Muslims and Tamils have become increasingly alienated as a result of discriminatory policies. Muslims, as well as evangelical Christians, have been the target of an ongoing campaign of intimidation, hate speech and violence, tolerated by the highest levels of government. Tamils have faced continued rights violations, highly militarised northern and eastern provinces, and no effective devolution of power, even after the September 2013 election of a TNA-controlled northern provincial council. Those among the more liberal members of the ruling coalition have grown convinced that Rajapaksa will never offer the constitutional and governance reforms needed to address Sri Lanka's decades-long ethnic conflict.¹⁰

Should Sirisena and his opposition colleagues succeed in articulating popular discontent and providing voters with a sense that an alternative is possible, political dynamics could shift dramatically: money and positive media could flow to the opposition and even sections of the state, including the police and military, may grow willing to question or resist political orders.¹¹ In this scenario, the advantages of in-

⁵ A minister who resigned to support Sirisena alleged major corruption in the government electricity board and in major Chinese-funded development projects. "Navin resigns, joins opposition", Lankasri News (lankasrinews.com), 30 November 2014. In an innovative argument, another minister who remains in government argued that it was better to vote for Rajapaksa as his officials had already stolen what they needed, whereas a new set of ministers would want to start afresh. "We have plundered enough: Amaraweera", *Daily Mirror*, 26 November 2014. The parliamentary Committee on Public Enterprises (COPE) and Public Accounts Committee (PAC) have produced hard-hitting reports noting numerous financial irregularities and large-scale losses in government programs and state enterprises. For a discussion of some of recent cases of alleged corruption, see Crisis Group Reports, *Sri Lanka's Authoritarian Turn*, op. cit., note 120, p. 29, and *Sri Lanka's Potemkin Peace*, op. cit., note 99, p. 23.

⁶ On the extent of Rajapaksa family members in government, see "Five infographics about Sri Lanka", Sri Lanka Campaign for Peace and Justice, 20 March 2013.

⁷ Crisis Group interviews, senior SLFP members, November 2014. Since Sirisena announced his candidacy, a number of ministers have publicly expressed their frustrations at being in government, even while professing their loyalty to the government. See, for example, "Minister Tennakoon lambastes SLFP colleagues, indicates readiness to quit...", *Island*, 22 November 2014.

⁸ See Crisis Group Report, *Sri Lanka's Authoritarian Turn*, op. cit., pp. 5-7 and "Impeachment of the Sri Lankan Chief Justice", Crisis Group Blog (blog.crisisgroup.org), 17 January 2013.

⁹ For recent examples of the problem, see Crisis Group Report, *Sri Lanka's Potemkin Peace*, op. cit., pp. 24-26.

¹⁰ Crisis Group interviews, politicians, diplomats, October-November 2014.

¹¹ Some opposition activists hope that former army commander Sarath Fonseka, who has endorsed Sirisena, will play a major role in the campaign, in part to encourage the portion of the army that

cumbency for Rajapaksa would be much reduced. Even in its best-case scenario, however, the opposition will face major obstacles.

B. Violence and Election Malpractice

Sri Lanka has a long history of violent elections.¹² Previous polls under the Rajapaksa administration have seen widespread abuse of state resources – media outlets, vehicles, workers – and harassment of opposition campaigners. The January 2010 presidential challenge by former army commander Sarath Fonseka, also backed by a grand coalition of parties, was hobbled by regular attacks on its workers and active efforts to suppress campaigning at the local level.¹³ Just days after his defeat, Fonseka was jailed and eventually convicted on charges of corruption and violating emergency laws.¹⁴

With the police and judiciary more fully politicised since then, the chances of a free and fair election are remote. The independent election commission was abolished in 2010, and the election commissioner's many past calls to respect election law have had little effect. September's provincial council elections in Uva province featured high levels of violence against the opposition.¹⁵ The stakes for the Rajapaksas are even higher than in 2010, given their many new domestic enemies and the growing international pressure over their failure to investigate alleged war crimes and serious human rights violations during the war.

The first weeks of the current campaign have seen violence against opposition supporters, allegations of large-scale transfers of senior police officers, thousands of illegal posters of the president appearing across the country, evidence of state resources and workers being used for campaigning, and the sudden blackout of TV channels broadcasting a panel of opposition leaders, including Sirisena.¹⁶ Muslim

supports him to remain neutral in the event of a contested result. Crisis Group interviews, November 2014.

¹² For an analysis of the 2013 northern provincial election, see Crisis Group Report, *Sri Lanka's Postemkin Peace*, op. cit. Commonwealth observers noted "persistent reports of overt military support for particular candidates and military involvement in the intimidation of the opposition candidates, party supporters and the electorate". "Report of the Commonwealth Observer Mission, Sri Lanka's Northern Provincial Council Elections, 21 September 2013".

¹³ See "Final report on election related violence and malpractices: Presidential election 2010", Centre for Monitoring Election Violence, 2010; "Report of the Commonwealth Expert Team: Sri Lanka Presidential Election, 26 January 2010", Commonwealth Secretariat, 2010.

¹⁴ "Former Sri Lankan army chief convicted for war crimes claim", *The Guardian*, 18 November 2011.

¹⁵ According to reliable reports, this included a detachment from the presidential security division. Crisis Group interviews, election observers, November 2014. For useful reports on the Uva election, see Centre for Monitoring Election Violence, at cmev.wordpress.com, especially "Uva provincial council elections 2014: Communiqué on post-election violence", 25 September 2014.

¹⁶ Since Sirisena's announcement, there has been at least a dozen violent attacks on opposition supporters. See www.caffesrilanka.org. Transferring senior police officers whom the government suspects may be too independent has been standard practice during Sri Lankan elections, but it is not permitted once an election has been called. It is also illegal to put up any posters without approval by and payment of fees to municipal authorities; municipal leaders and election monitors assert neither has happened in the case of the many large posters of Rajapaksa recently placed around the island. Maheen Senanayake, "Mayor takes a tough line on propaganda displays in city", *Island*, 7 December 2014; "RDA staff used for election propaganda work", *Island*, 6 December 2014; "Video: Watch the blocked 'Satana' – Maithripala to form a national government", *Colombo Telegraph*, 22 November 2014.

and Tamil voters in the military dominated northern and eastern provinces will be especially vulnerable to violence and intimidation.

The election commissioner has announced that monitors from the Commonwealth and the EU will be invited.¹⁷ Together with local monitors, they could help curb some of the expected violence and fraud, if given resources – and permission – to be deployed early and widely.

Even with monitors in place, opposition campaigners expect the full power of the state will be deployed against it over the next month, especially with the police and military under the direct control of the president and his brother, Defence Secretary Gotabaya Rajapaksa. Risks of serious violence will increase the stronger Sirisena's challenge appears. The potential of extra-constitutional moves, possibly with the support of the military, will be particularly high immediately after the 8 January vote. "There is too much at stake for [the Rajapaksas] to leave office without a fight", said an observer, echoing a widely held belief.¹⁸ As a diplomat put it, "I am concerned about the [Rajapaksa] family. If cornered they could do anything".¹⁹

C. *Common – but not Coherent – Opposition*

There are real questions about the coherence of the grand coalition being put together to challenge Rajapaksa. The parties involved historically lack any common ideology and are often divided within themselves. What unites them is essentially the desire to remove Rajapaksa and restore checks and balances to the democratic system.

The UNP is the SLFP's traditional rival, but under Rajapaksa's presidency it has been dramatically weakened and drained by years of infighting. While the long-standing battle between party leader Ranil Wickremesinghe and his rival, Sajith Premadasa, appears to be on hold, it remains to be seen how hard Premadasa and those loyal to him at the district level will work for Sirisena and the common opposition platform.

The UNP is traditionally the pro-business and more Western-oriented of Sri Lanka's two major parties. The government has used Wickremesinghe's 2002 cease-fire agreement with the Tamil Tigers and leadership of the peace process while prime minister (2001-2004) to regularly charge him with being pro-Tiger and the agent of foreign conspiracies.²⁰ Most expected this to be one of the government's central campaign messages had Wickremesinghe been the opposition candidate. These charges will stick less easily now, given Sirisena's strong Sinhala-Buddhist credentials, but will likely remain one of the government's main weapons, especially if former President Chandrika Kumaratunga, long a champion of devolution and minority rights, plays a central role in the campaign.

The emergence of a potentially sizeable wing of SLFP dissenters has been a major blow to Rajapaksa, who now has to face the populist, everyday appeal of Sirisena,

¹⁷ "Elections Department to deploy foreign observers for Presidential Poll", *Daily News*, 27 November 2014. With the election commissioner's powers weakened by the eighteenth amendment, it remains unclear whether he will be able to follow through on his invitation for EU monitors should the government try to block it, as many expect. Crisis Group interview, former government official, December 2014.

¹⁸ Crisis Group interview, November 2014.

¹⁹ Crisis Group interview, November 2014.

²⁰ See for example, "Sri Lankan President links EU decisions to opposition 'conspiracies'", Colombo Page (www.colombopage.com), 20 October 2014.

son of a farmer from the North Central province. When Sirisena first announced his candidacy, supporters promised more cabinet members and other senior SLFP members would soon join him. Thanks in part to swift action by Rajapaksa, the initial numbers crossing over to the opposition have been fewer, and less senior, than predicted.²¹ It is not yet clear whether there will be enough SLFP defectors to weaken the UPFA's district-level campaign for Rajapaksa. Behind-the-scenes efforts by SLFP stalwart Kumaratunga were crucial in organising Sirisena's candidacy and her support to the opposition could potentially bring Sirisena additional SLFP voters. At the same time, Kumaratunga's mixed record as president, including her own failure to abolish the executive presidency, could alienate some voters.

The 18 November decision by leaders of the strongly Sinhala nationalist JHU to leave the government was the first big blow to UPFA unity and the first clear sign that Rajapaksa might be in trouble. JHU parliamentarian Ven. Athuraliye Rathana Thera took the lead in challenging Rajapaksa's announcement of an early election and in demanding constitutional changes before the vote. Sirisena's endorsement by the JHU – known for its aggressive support of the war against the Tamil Tigers and strong resistance to power sharing with Tamils – will make it harder for Rajapaksa to claim the opposition is pro-Tiger and separatist.²² At the same time, the JHU's deeply Sinhala and Buddhist nationalist positions – including its endorsement of the anti-Muslim campaign of the BBS²³ – could dampen Tamil and Muslim enthusiasm for Sirisena and will make it harder for the TNA to formally join the common opposition.

The TNA leadership is for now withholding a formal endorsement but is expected to call on Tamils to vote for Sirisena. TNA leaders have consistently called for the governance reforms that are at the heart of the joint opposition platform, asserting that Tamils have suffered disproportionately from ethnically and politically biased policing and judicial decisions.²⁴ Nonetheless, with issues of power sharing and Tamil rights absent from the joint opposition's platform and no commitment from the opposition to pursue accountability for crimes committed at the end of the conflict with the Tamil Tigers, it remains uncertain how motivated Tamils will be to vote for an avowedly Sinhala-Buddhist candidate.

The position of the main Muslim party, the SLMC, is undecided. It is likely that the large majority of Muslim votes will go to Sirisena, but until the party leadership is confident Sirisena will win, they are unlikely to leave the government. SLMC leaders realise their continued presence in the government has lost them much of their

²¹ Dissident SLFP members were reportedly dissuaded from a mass cross-over by Rajapaksa's threat to dissolve parliament, which would see them lose their seats. "Mahinda's Parliament dissolution threat stops exodus of MPs!", *Colombo Mirror*, 25 November 2014. Opposition leaders argue that instead of a one-time large scale cross-over, there will be a series of regular defections, which will have the advantage of keeping Rajapaksa guessing. On 30 November, Minister Navin Dissanayake became the eleventh parliamentarian to leave the ruling coalition and endorse Sirisena. "Navin resigns, ...", op. cit.

²² The JHU formally endorsed Sirisena on 1 December after the two signed an agreement on a reform package for Sirisena's first 100 days in office. Among other things, the agreement pledges to reduce the powers of the executive president, rather than abolish the position, and promises to protect the president and military leaders from any international war crimes prosecutions and to preserve the special status of Buddhism in the constitution. Dharisha Bastians, "JHU says Jayawewa Maithri!", *Daily FT*, 3 December 2014.

²³ Sandun Jayawardana, "Looking for the truth from under the rubble", *The Nation*, 29 June 2014.

²⁴ See Niran Ankatell, "The Tamil Elephant in the Green (Blue?) Room", Groundviews (groundviews.org), 24 November 2014.

political support, but leaving the government could cost the party, and the community, dearly in the event Rajapaksa wins.²⁵

Another constituent of the UPFA whose support for Rajapaksa could be in doubt, is the CWC, the largest party representing Tamils from the central hills. Part of every ruling coalition since 1978, the CWC has historically been careful to align itself with the party in power. Nonetheless, September's election in Uva province saw large numbers of Upcountry Tamils supporting the UNP, and a late CWC defection to the joint opposition remains possible. In the words of a former government official, "SLMC and the CWC, they will be the last to cross, but only if they are certain They will be the weathervanes telling us how strong the opposition is".²⁶

Last but not least is the role of the leftist-nationalist JVP. While thought to have the support of only about 5 per cent of voters, the JVP is known for the strength of its local-level organisers. It has announced it will run a parallel campaign calling for a Rajapaksa defeat, while not formally endorsing Sirisena or joining the opposition coalition.²⁷ Assuming the rank-and-file members can overcome their deep distrust of the UNP, the JVP could play a crucial role in the anti-Rajapaksa campaign. Even before Rajapaksa formally announced the early election, the JVP was actively campaigning against any attempt by the president to win a third term, calling it illegal.²⁸

D. *Procedure vs. Substance?*

The joint opposition promises to abolish the executive presidency and restore independent commissions on the police, judiciary and other public institutions, along with other constitutional reforms.²⁹ While abolishing the executive presidency is a central concern for much of the Colombo-based political class, it remains to be seen how many Sinhala and Buddhist voters will be inspired by a campaign that has this as its central goal.

The push for constitutional reforms could well remain abstract to the many voters more pre-occupied with bread and butter issues, especially the high-cost of liv-

²⁵ Crisis Group interviews, Muslim politicians, diplomats, November 2014. The other Muslim party in government, the All Ceylon Muslim Congress (ACMC), also remains undecided.

²⁶ Crisis Group interview, November 2014.

²⁷ "We have no issues with Ranil becoming the PM", *Daily Mirror*, 1 December 2014.

²⁸ "Protest march and rally in Colombo against Sri Lankan President contesting for a third term", Colombo Page, 18 November 2014. The legality of Rajapaksa's contesting for a third term was widely questioned. While the eighteenth amendment, which he pushed through parliament in September 2010, removed the two-term limit, many Sri Lankan constitutional scholars believe it applies only prospectively, to those elected after Rajapaksa. Requested by the president to rule on the issue, the Supreme Court reportedly determined he was allowed to contest again, though it did not make public its opinion. A copy of what is said to be the text of the judgment was published online. See "Exclusive: Full text of the Rajapaksa's secretive third term Supreme Court opinion", *Colombo Telegraph*, 22 November 2014.

²⁹ On 1 December 2014, Sirisena, the UNP and other opposition leaders – but not the JHU – signed "A Common People's Agenda for Just, Democratic and People-friendly Governance". The agenda states: "The present executive presidential system will be abolished within a hundred days and replaced by a Parliamentary form accountable to the people. Under the Parliamentary system, the President will symbolize national unity and have duties and powers appropriate to the position". Among other goals, the opposition agreement also calls for the abolition of the eighteenth amendment and the replacement of the current preferential voting system with a mix of the first-past-the-post and proportional representation. The full text can be found at "Opposition sign MoU", *The Colombo Post*, 1 December 2014.

ing. To make a dent in Rajapaksa's rural Sinhala constituency, the opposition will need to offer policies that appeal to these concerns. Anti-corruption rhetoric will resonate with average rural voters only if it is connected to concrete proposals for improving their economic situation. It remains to be seen whether the parties in the opposition coalition agree enough on economic policies to present a credible alternative to Rajapaksa.³⁰

The procedural nature of Sirisena's candidacy could also raise questions in some voters' minds about whom and what they are being asked to vote for. The goal of abolishing the executive presidency means that Sirisena is campaigning to eliminate the very position he is seeking to win. Especially given his promise to appoint Ranil Wickremesinghe as prime minister, Sirisena will be unable to present himself as the traditional challenger fighting to replace Rajapaksa. This could weaken his appeal.

Additional doubts will be raised by the fact that numerous previous candidates for the presidency – including Rajapaksa and his predecessor, Chandrika Kumaratunga – have promised but failed to abolish the position once in office. An attempt to succeed in the current context will also face serious constitutional obstacles.

III. Post-election Dynamics

A. A Sirisena Victory

Should Sirisena be elected with the support of the joint opposition, they will face significant challenges. The legal and political obstacles to abolishing the executive powers of the president, returning to a fully parliamentary system and restoring the independent commissions nullified by the eighteenth amendment are formidable. The biggest challenge is the need for a two-thirds majority in parliament to amend the constitution.³¹ Sirisena's coalition would either need the support of large numbers of those parliamentarians who stick with Mahinda, or it would have to gain the two-thirds majority through a new parliamentary election.³²

According to the opposition's plan, the constitutional changes would be undertaken in the first 100 days of a "national" or "all-party" government that would be in place for at least two years.³³ It is by no means guaranteed, however, that an agreement can be reached to abolish, rather than limit the powers of, the executive presidency. One potential obstacle is the JHU, which has endorsed Sirisena but whose separate agreement with him appears to call only for the reduction in the powers of the presidency, not its abolition.³⁴

Should a two-thirds majority not be found even after a new general election, a more controversial option considered in the past and reportedly under discussion within

³⁰ The joint opposition agreement provides sweeping assurances to reduce "the oppressive burden of the cost of living" and "develop an effective social safety net", but offers few details. *Ibid.*

³¹ Government officials have pointed to this fact to call into question the opposition's reform plans. "Only Parliament can abolish Executive Presidency – G.L.", *Daily News*, 29 November 2014.

³² Only two Sri Lankan governments have achieved a two-thirds parliamentary majority – the UNP in 1977, under a first-past-the-post system, and Rajapaksa's UPFA in 2010, after a series of opposition cross-overs that began in 2007.

³³ "Opposition sign MoU", *op. cit.*

³⁴ "JHU says Jayawewa Maithri!", *op. cit.* An unofficial English translation of the agreement can be found at "UPFA, NDF all set for do-or-die battle on Jan. 8", *The Sunday Times*, 7 December 2014.

the opposition would be to transform the parliament into a constituent assembly to draft a new constitution, followed by a nationwide referendum to affirm the changes.³⁵ Constitutional scholars disagree over the legality of this approach.³⁶

In the event the Sirisena-led coalition in parliament succeeds in abolishing the executive presidency and restoring independent commissions, the newly empowered parliament would be faced with a series of divisive and complex issues once again on the agenda after years of Rajapaksa resistance. The opposition and any future parliament will be deeply split over the central issues of post-war Sri Lankan politics. These include:

- ❑ determining the extent of provincial powers and pursuing negotiations toward meaningful devolution of power to Tamil-majority areas;
- ❑ protecting the rights of religious and ethnic minorities, in particular Muslims and evangelical Christians, who for the previous three years have been under assault by government-tolerated militant Buddhist groups;
- ❑ addressing the legacy of wartime human rights violations and possible crimes against humanity, whether through prosecutions, a truth commission or other means; and
- ❑ reducing the military's size and role in civilian affairs, both of which had expanded considerably under the Rajapaksas. Any process of demobilisation and demilitarisation will be politically fraught and will need to be done with great care.

The presence of the JHU within the joint opposition will make it harder to find consensus on all these difficult issues. The JHU has long opposed even the limited devolution established by the thirteenth amendment, and any investigation into alleged war crimes by government forces. It has also been an active supporter of the BBS-led campaign against "Muslim extremism", despite the rivalry between the two Sinhala Buddhist nationalist groups.

The TNA – or any moderate Tamil grouping – will find it difficult to negotiate with any government that includes, or is seen to be beholden to, the JHU. Even without the JHU involved, the TNA will likely struggle to gain support within parliament for increased powers to the north and east. Tamils are likely to be deeply disappointed if the constitution is changed to remove the executive presidency and restore democratic checks and balances without any moves to address their decades-long grievances.

Tamil and right activists are also likely to be disappointed by how any initial post-Rajapaksa government addresses the divisive legacy of the civil war. Sirisena and other opposition leaders have publicly declared that they will protect President Rajapaksa, his family and any military leaders or soldiers from being tried by any international bodies.³⁷ Likewise, many expect the common opposition to offer military leaders private guarantees that they will be treated gently should it come to power.³⁸

³⁵ Crisis Group interviews, opposition activists, November 2014.

³⁶ For a legal argument in favour of the constituent assembly strategy, see Shivaji Felix, "Of Kelsen, the Grundnorm and constitutional change, Parts I and II", *Daily News*, 4 and 5 June 2004; for a critique, see Dayan Jayatilleka, "Constitutional crisis: A claymore for Sirisena to avoid", *Daily FT*, 26 November 2014.

³⁷ "Sri Lanka opposition presidential candidate vows to protect President and security forces from war crime charges", Colombo Page, 28 November 2014.

³⁸ Crisis Group interviews, opposition activists, diplomats, November 2014.

Nonetheless, if the opposition is serious about restoring the rule of law it will need to address Sri Lanka's longstanding problem of impunity for human rights violations. Impunity has worsened but by no means began under the Rajapaksa administration. Ending it will require changes to state institutions – including the military, police and intelligence agencies – that go beyond merely reestablishing independent commissions on police and human rights.

B. *A Rajapaksa Victory*

Since the announcement of Sirisena's candidacy and the enthusiastic response it has generated, Sri Lankans are beginning, for the first time since the end of the war, to imagine a post-Rajapaksa political future. Nonetheless, while the bloom may be off, the president is a formidable politician and retains the considerable advantages of Sri Lankan incumbency, not least having direct control over the military and police.³⁹

Should Mahinda Rajapaksa win, many fear the government may be tempted to launch a crackdown on the opposition and civil society, much of which supports Sirisena.⁴⁰ Defence Secretary Gotabaya Rajapaksa is widely believed to be the top candidate to be made prime minister. Activists worry that long-promised legislation restricting the work of NGOs and civil society organisations may finally be enacted, while Muslim community leaders fear the BBS, with which Gotabaya Rajapaksa is widely believed to maintain close links, could be unleashed again to continue its anti-Muslim campaign.⁴¹ The militarisation and Sinhalisation of the north and east would likely deepen.

Most political observers have assumed that parliamentary elections would be called within a few months of Rajapaksa's winning a third term. If Sirisena and the joint opposition prove strong enough to come close to defeating Rajapaksa, however, a new general election would likely see the UPFA's large majority significantly reduced, or, potentially, a joint opposition winning a majority. For this reason, in the event Mahinda is re-elected, some suspect he may try to extend the life of the parliament through a constitutional amendment backed by a popular referendum.⁴² This was the strategy President J. R. Jayawardene used to preserve his two-thirds parliamentary majority in 1982, but with disastrous consequences for democracy.⁴³

³⁹ The president is also the defence minister and the law and order minister, who oversees the police.

⁴⁰ Crisis Group interviews, civil society activists, November 2014.

⁴¹ Crisis Group interviews, civil society activists, Muslim leaders, November 2014. Opposition leaders have repeatedly alleged Gotabaya and senior military and police officials provide support and protection to BBS. See, for instance, "We have no issues with Ranil becoming the PM", *Daily Mirror*, 1 December 2014. Many civil society activists point to the repeated failure of police, widely understood to be under Gotabaya's de facto control, to prevent or prosecute repeated violations of the law by BBS leaders and supporters. Gotabaya denies supporting or providing assistance to BBS. Ha-feel Farisz, "If proven I will resign: Gota", *Daily Mirror*, 1 July 2014.

⁴² Crisis Group interviews, diplomats, opposition activists, November 2014. For an analysis of this possibility and its dangers, see Dayan Jayatilaka, "Referendum red alert: Blood tsunami, broken country", *Colombo Telegraph*, 26 October 2014.

⁴³ The six-year extension of Jayawardene's and the UNP's two-thirds majority closed down the possibility of democratic dissent. It fed Tamil discontent and the Liberation Tigers of Tamil Eelam's (LTTE) militancy and contributed directly to the JVP's insurrection in the late 1980s and the state's brutal response.

IV. Conclusion

Sri Lanka will face grave political challenges in the coming months. That a credible electoral competition now seems possible is remarkable. Yet, the opposition's attempt to reopen democratic space also brings with it risks of violence and instability. Navigating this terrain without provoking chaos will require political skills and statesmanship by the opposition and the government. These will be more likely to materialise if there is close international attention and clear messages are sent to both sides.

To increase the chances of a free and fair election and a stable post-election outcome, Sri Lanka's international partners should support and insist on effective election monitoring by domestic and international observers. They should remind the Rajapaksa government of its international obligations and make clear that any attempts to use violence or fraud to retain the presidency will have diplomatic consequences, including at the UN Human Rights Council (UNHRC) in March 2015.⁴⁴ Attempts to cling to power through force or a post-election violent crackdown against the opposition will do long-term damage and sow the seeds of future instability.

Regardless of the outcome, careful attention will have to be paid to the immediate post-election period, traditionally a time of violent retribution. Opposition parties should be encouraged to maintain their stated commitment to a non-violent campaign after the balloting, too.

Even in the event of a credibly free and fair election whose results are respected by all parties, political challenges – especially with regard to devolution of power, protection of religious minorities and accountability – will remain acute. Rebuilding a stable and inclusive polity from Sri Lanka's current fractured state will be a daunting task, regardless of which candidate wins. Getting even to that point, however, will require the determination of millions of Sri Lankan voters, the vigilance of the country's international partners and a dose of good luck.

Colombo/Brussels, 9 December 2014

⁴⁴ The report of the council-mandated Office of the High Commissioner for Human Rights (OHCHR) war crimes investigation is expected in late January or February. Regardless of the make-up of the Sri Lankan government, effective international follow-up action to the OHCHR report will be needed to ensure that accountability remains on the political agenda.

Appendix A: Map of Sri Lanka

