

PARLIAMENT WATCH – SRI LANKA*

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Overview

November saw the submission of the controversial Revival of Underperforming Enterprises and Underutilized Enterprises Act, as an urgent bill by the government. The Act enabled the government to acquire shares of 37 companies, listed in its Schedules, deemed to be underperforming or underutilized.¹

Certain media reports alleged that the government intended on using the Act to acquire more businesses and property, which the Presidential Secretariat denied.² It has been cleared that the Act was a one-off law, which applied only to the scheduled companies. Questions were also raised as to why there was such haste to deal with these properties using the Urgent Bill provision, which was originally meant to deal with emergency situations such as national disasters and national security requirements.

The Bar Association of Sri Lanka (BASL) also raised a number of concerns over the submission of the bill to the Supreme Court by the Government to declare it as an urgent bill.³ Despite the controversies surrounding the bill, it was passed with a two-thirds majority thus enabling the government to immediately utilize the new law for purposes of the acquisition of listed properties, with limited and ineffective resistance by the Opposition MPs. It is significant to note that some of the properties acquired were owned by identified political actors associated with the main opposition United National Party (UNP).⁴

Besides the controversial acquisition of underperforming assets, a key development that took place in November was the deliberations on the third and fourth reports submitted by the Sri Lankan Government to the Committee Against Torture (CAT), the UN body charged with monitoring the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Sri Lankan delegation was put under heavy scrutiny by the Co-Rapporteurs of the Committee on Sri Lanka over allegations, *inter alia*, of torture, forced disappearances and raised a number of questions, regarding the intimidation of lawyers; on the work of the Lessons Learnt and Reconciliation Commission (LLRC); on the independence and work of the Human Rights Commission (HRC) and on the rehabilitation programs conducted by the Sri Lankan Government for ex-combatants.⁵ However, none of these matters deliberated upon in Geneva were discussed during the parliamentary debates in November.

In addition, November saw President Mahinda Rajapaksa, also the Finance Minister, presenting the 2012 budget to the Parliament. The budget speech was delivered

¹ <http://www.tiruchelvam.com/wp-content/uploads/2011/12/REandUA-FAQ.pdf>

² <http://asianmirror.lk/english/index.php/news/4538--no-further-acquisitions-under-underutilized-assets-law-presidential-secretariat>

³ <http://www.thesundayleader.lk/2011/11/06/revival-of-underperforming-enterprises-and-underutilized-assets-bill/>

⁴ Hansard of November, 08, 2011 page 1015, Dayasiri Jayasekara.

<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB3563>

⁵ SRI LANKA: Report on the examination of the third and fourth periodic reports of Sri Lanka by the UN Committee against Torture, AHRC, November, 28, 2011. <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-061-2011>

amidst scuffles between opposition and government MPs, culminating in a walkout of UNP members led by Opposition Leader, Ranil Wickremesinghe.⁶

Revival of Underperforming Enterprises and Underutilized Assets Act – the debate

Following cabinet approval, the Revival of Underperforming Enterprises and Underutilized Assets Act was submitted to the Supreme Court by the Government, on 24th October, to get it declared as an urgent bill.⁷ Similar to the 18th Amendment to the Constitution and the Pensions for Private Sector Act, this bill was submitted to the Supreme Court, a process that deprives the affected parties to seek redress in the courts of law and through public lobbying.⁸

The President of the Bar Association of Sri Lanka (BASL), Shibly Aziz, issued a media statement stating that urgent bills are a departure from the normal course provided by the Constitution for the introduction of legislation. He added that it removes the opportunity granted to any concerned citizen to go before the Supreme Court, “as to whether the law or any part of it is inconsistent with any provision(s) of the Constitution, and if so, whether the Bill (or any part of it) requires a majority of at least two-thirds of the Members of Parliament as well as whether a Referendum would also be required additionally.”⁹ A fundamental argument in favour of the normal course of legislating is that the urgent process denies the opportunity to challenge the bill and effectively debars parliamentary and in effect, public debate. On the other hand, there is no provision to challenge a law after it has been passed in Parliament and certified by the Speaker, even if it contains provisions that are unconstitutional or even if it violates fundamental rights of affected persons.¹⁰ The absence of a legal review process continues to affect the quality of Sri Lankan legislation.

During the parliamentary debate, the Supreme Court and the Cabinet came under heavy criticism by TNA member, M.A. Sumanthiran. According to him, the Cabinet was not justified in, and abused its powers by, submitting the bill to the Supreme Court to have it endorsed as an urgent bill.¹¹ He added that the Supreme Court was not fit to rule that a particular company was indeed underperforming or was underutilised without scrutinising the accounts of the company in question.¹²

⁶ <http://dbsjeyaraj.com/dbsj/archives/2966>

⁷ Govt. means business: Sends SC urgent bill to takeover underperforming State enterprises. Daily FT, October 25, 2011. <http://www.ft.lk/2011/10/25/govt-means-business-sends-sc-urgent-bill-to-takeover-underperforming-state-enterprises/>

⁸ May 4, 2011, Colombo Page, “Supreme Court verdict on private sector pensions act of Sri Lanka to be delivered to parliament tomorrow”,

http://www.colombopage.com/archive_11/May03_1304434376JR.php

September 7, 2011, “Sri Lanka Supreme Court approves amendments to Constitution,

http://www.colombopage.com/archive_10B/Sep07_1283865491CH.php

⁹ Bar Association wants Government to withdraw new “fast tracked” enterprises and assets take over bill by Shibly Aziz PC, November 4, 2011. <http://transcurrents.com/news-views/archives/5623>

¹⁰ *ibid*

¹¹ Parliament is also an underperforming enterprise, AP, November, 13, 2011

<http://www.lankanewspapers.com/news/2011/11/72450.html>

¹² *ibid*

The Supreme Court took up the Bill on October 24th and the Bench that considered the draft law consisted of Chief Justice, Shirani A. Bandaranayake, Justices P. A Ratnayake and Chandra Ekanayake. The Court ruled that the Bill was in line with the Constitution and the decision was conveyed to Parliament two days later, on October 26th.¹³ According to Sumanthiran, the Supreme Court came to this decision in only one hearing, in which the only other person present was the Attorney General, representing the Government of Sri Lanka.¹⁴

Parliament was not provided with adequate information to decide whether these listed institutions are indeed enterprises that are running at a loss.¹⁵ The Members of Parliament were not provided with recent balance sheets of the enterprises and in some instances there were counter arguments that some institutions were actually making profit. Sumanthiran expressed his concern on this issue, stating, “By this Bill certain enterprises, companies that are listed in the Schedules to this Bill are described as underperforming enterprises or underutilized assets. There is no information available to this Parliament to intelligently discuss as to whether each of these items under the Schedules that appear in the Bill are, in fact, underutilized assets or underperforming enterprises.”¹⁶ The TNA MP added: “This House has been reduced to a mere rubber stamp and when you place your signature on this after the supposed passage of this Bill, this is also an underperforming enterprise.”¹⁷ However, the Minister of Economic Development, Basil Rajapaksa, read out from various reports and documents, which Sumanthiran alleged, was not made available to other parliamentarians.¹⁸

Addressing Parliament a day before the debate, Kurunegala District UNP MP Dayasiri Jayasekara requested the Speaker to postpone the debate till the verdicts of three Fundamental Rights cases filed against the bill are delivered.¹⁹ Countering Jayasekara’s request Minister Nimal Siripala de Silva stated that the Supreme Court had already given a verdict stating that the Bill was constitutional. He added that the parliamentary activities should not be impeded by court rulings.²⁰

Presenting the controversial bill the next day, Prime Minister D.M. Jayaratne told Parliament that these institutions, which are to be reacquired, were once property of the government and that they were privatized so that they could be better utilized. However, the new owners have not been able to fulfill these expectations. “So shouldn’t we take back under-performing enterprises and give them to people who are capable, people who are talented and those who can make them profit-making

¹³ ibid

¹⁴ ibid

¹⁵ Parliament is also an underperforming enterprise, AP, November, 13, 2011
<http://www.lankanewspapers.com/news/2011/11/72450.html>

¹⁶ Hansard of November, 08, 2011 page 1054, M.A. Sumanthiran.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB3563>

¹⁷ Hansard of November, 08, 2011 page 1056, M.A. Sumanthiran.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB3563>

¹⁸ Parliament is also an underperforming enterprise, AP, November, 13, 2011
<http://www.lankanewspapers.com/news/2011/11/72450.html>

¹⁹ Hansard of November, 08, 2011 page 773, Dayasiri Jayasekara.

<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB3563>

²⁰ Hansard of November, 08, 2011 page 775, Nimal Siripala de Silva.

<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB3563>

ventures.”²¹ Who are these ‘capable’ individuals/entrepreneurs and how will they be chosen? Has the government already identified these capable people and if so through what process of selection? Also, how will these properties be transferred and will the process be transparent? The Prime Minister has not answered these questions.

In addition, some businesses to be re-acquired, like Sevanagala Sugar, are profitable ventures that belonged to reputed businessmen who support the UNP. Sevanagala Sugar owner, Daya Gamage, bankrolled the UNP’s 2010 General Election campaign and is a key funder of the party. “When Daya Gamage took over Sevanagala in 2002 it was incurring huge losses. But now it makes a profit of Rs. 200 million. BOI is there to look at underperforming enterprises and it has a clear mandate to investigate and take action against if enterprises are not acting according to the agreements they made.”²²

Therefore, it is possible that the intention of the government was to take back government property that was possibly sold at low prices to businessmen who were backing the UNP during the time the UNP government was in power, and distribute them among UPFA supporters.

In the course of the current international economic crisis many governments around the world offered bailout packages to businesses that were making a significant loss and to release the owners temporarily of the expenses they have to incur by acquiring these institutions to the government. However, the fact that the government brought this in as an urgent bill, minimizing the chances for public debate, shows that the government may easily acquire businesses and transfer their ownership, without any transparency.

On the other hand, perhaps, fuelled by their desperation on their inability to stop the government juggernaut, several UNP MPs accused the government of attempting to destroy the Sinhala Buddhist business class, instead of posing any serious criticism to the practices of the government. “The bill has been brought to throttle local businessmen. If we look at the percentage of the population there is only a limited number of Sinhala Buddhist entrepreneurs. This bill attempts to cripple the Sinhala business community and to prevent the emergence of a Sinhala business class from emerging,” said UNP MP Wijeyadasa Rajapakshe.²³ However, at a time when the government has strong support amongst nationalist elements and also with the UNHCR sessions looming, the UNP’s tactic did not seem to have any effect. The Bill was passed with 122 members voting for and 46 against.

It was reported in the week after the debate, that despite splitting hairs about the right to own property and extensive arguments on how this Act would affect investor confidence and foreign direct investment, the main opposition UNP wanted to support the government on this bill if it agreed to exclude Sevanagala Sugar Corporation,

²¹ Hansard of November, 09, pages 1010-13, Revival of Underperforming Enterprises and Underutilized Assets Bill, D.M. Jayaratne - Prime Minister, Minister of Buddha Sasana and Religious Affairs. <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB3569>

²² Hansard of November, 08, 2011 page 1015, Dayasiri Jayasekara. <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB3563>

²³ Hansard of November, 08, 2011 page 1060, Wijeyadasa Rajapakshe. <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB3563>

owned by one of the main funders of UNP funder and husband of UNP MP, Daya Gamage.²⁴ Incidentally, the UNP Leader Ranil Wickremesinghe left the country a day before this important debate, appointing Chief Opposition Whip John Amaratunga to act on his behalf. This move, when he could have given the position to either of the Deputy Leaders, Sajith Premadasa and Karu Jayasuriya, created anger amongst the UNP MPs which led to division in the party preventing them from fully focusing their attention on the debate on the bill.²⁵

The division within the UNP prevented the opposition from exploiting the obvious grumbling about the bill by the two main nationalistic constituent parties of the government, the Jathika Hela Urumaya (JHU) and the National Freedom Front (NFF). These parties expressed their displeasure with the bill but the two main JHU MPs, Minister Champika Ranawaka was away in Malé, with President Mahinda Rajapaksa, attending the SAARC Summit, while its other member, Ven. Athuraliye Rathana Thero did not attend sittings.²⁶

Sri Lanka reviewed at Committee Against Torture (CAT)

The Committee Against Torture (CAT) reviewed the third and fourth periodic reports submitted by Sri Lanka, pursuant to Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on November 8-9. The Sri Lankan delegation was led by Senior Legal Advisor to the Cabinet of Ministers of Sri Lanka and former Attorney-General, Mohan Peiris.

During the review, the co-rapporteur of the Committee on Sri Lanka, Ms. Felice Gaer stated that the Committee had seen three worrying trends: the lack of data, the lack of independent investigations and prosecutions, and the continuing threats to civil society, journalists, lawyers, and other dissenting voices.²⁷ She also noted that Sri Lanka had the largest number of disappearance cases registered with the UN Working Group on Enforced or Involuntary Disappearances of any country in the world.²⁸ A further reading of the transcript of the proceedings show further evidence of the inability of the Sri Lankan delegation to sufficiently address the questions put to them at the review. What is striking is that, leading up to the review or after it, the Sri Lankan Parliament did not engage in any discussions related to the topics that were raised in Geneva. The CAT discussions and the complications for Sri Lanka were only discussed in small advocacy group meetings and the issues raised never provided the basis of a much larger public discussion.

²⁴ “Looming sugar shortage”, Daily Mirror, November 4, 2011. <http://www.dailymirror.lk/news/14562-looming-sugar-shortage-unp.html>

²⁵ The Nation Political Column, November 13, 2011. <http://www.nation.lk/2011/11/13/politics.htm>

²⁶ *ibid*

²⁷ SRI LANKA: Report on the examination of the third and fourth periodic reports of Sri Lanka by the UN Committee against Torture, AHRC, November, 28, 2011. <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-061-2011>

²⁸ *ibid*

MPs brawl during budget speech

On November 21st, the President presented the 2012 Budget to Parliament, amidst scuffles between MPs. The President entered the Chamber at 1.53pm, and minutes into his speech, he directed his ire at the UNP, saying the nation had been placed on a very destructive path since 1977, the year the UNP came into power, after seven years of rule by an SLFP-led government. “This path was overshadowed by neo-liberal economic policies, on one hand and separatist terrorist activities, on the other. This caused tremendous hardships to the general public. The whole nation became victims of terrorism. Democratic values eroded. A revengeful culture came into being,” the President said, which led to some objections from UNP members.²⁹

At this point several UNP parliamentarians stood holding up posters with the word “Shame” (*lajja*) and a few other slogans.³⁰ Soon after, several government MPs led by Deputy Minister Lalith Dissanayake crossed the well of the House, grabbed posters from UNP MPs and manhandled several UNP MPs.³¹

Eventually, the UNP MPs walked out of the House in protest, as Speaker Chamal Rajapaksa was unable to control the situation. Although according to tradition a budget speech is not interrupted in any manner, the reaction by some of the government MPs was excessive, compared to the mode of protest adopted by the UNP.

This display of violence and intolerance at the highest realm of decision-making in the country is not only a reflection of the culture of impunity which prevails in the country as well as the inability of the opposition to put pressure on the government at any phase of the legislative process. It demonstrates in equal measure, the government’s intolerance for dissent and the lack of space for diverse opinion.

Conclusion

November showcased government impunity in the manner with which they passed the Revival of Underperforming Enterprises and Underutilized Enterprises Act, and the Opposition’s inability to make the Government accountable, in the matter of the Act and the alleged human rights abuses of the Government.

²⁹ Pandemonium in parliament as UPFA-UNP MPs clash during budget speech by DBS Jeyaraj, November, 22, 2011. <http://dbsjeyaraj.com/dbsj/archives/2966>

³⁰ <http://www.asianewsnet.net/home/news.php?id=24183&sec=3>

³¹ Pandemonium in parliament as UPFA-UNP MPs clash during budget speech by DBS Jeyaraj, November, 22, 2011. <http://dbsjeyaraj.com/dbsj/archives/2966>