

PARLIAMENT WATCH – SRI LANKA*

1st QUARTERLY REPORT (APRIL-JUNE 2010)



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The United People's Freedom Alliance (UPFA) won the General Elections of 8th April 2010, by a landslide victory gaining 144 seats in the 225 member parliament¹ This victory was largely due to defeating the LTTE in May 2009, a strong performance by President Mahinda Rajapaksa at the 2010 January 26th presidential elections, the promised development drive and the request by the government for a two thirds majority in parliament for the drafting of a people friendly constitution.

This report reviews the conduct of the parliament during the honeymoon period of the government/ the first 100 days and how this overwhelming majority in parliament affects the transparency, good governance and human rights of the country. It also looks at the first steps taken by the government to counter criticism that Sri Lanka has not yet conducted an effective investigation into 'laws-of-war violations' by government forces and the LTTE in the final months of the war, by appointing the Lessons Learnt and Reconciliation Commission (LLRC) which the government claimed was based on the South African Truth Commission.

Background and Objectives

The General Election of Sri Lanka was held on the 8th of April and the UPFA government was reelected to power. This report focuses on parliamentary activity from 6th April 2010, the last session of the old parliament, to 30th June 2010.

The objectives of SAHR and TISL's Parliament Watch are to examine the legislations enacted for the implications for human rights of citizens, transparency and accountability of government, the parliamentary system and responsibilities of the executive in ensuring the rule of law and human rights.

Highlights

Before the elections on the 8th of April 2010, the ruling UPFA made clear pronouncements about relaxing the emergency regulations, introduced under the Public Security Ordinance (PSO) that restricts individual liberties to a significant extent. Therefore almost after one year since the end of the 26 year old civil war there was hope that the new legislature may take decisive action with regard to these restrictive laws, in a bid to pave the way for normalcy and de-militarisation in post war Sri Lanka.

It's worth noting that Sri Lanka has been ruled under the emergency regulations for over 24 years with a brief departure from this practice being during the 2002-2004 ceasefire with the LTTE.

Ironically the new parliament included the former Army Commander Sarath Fonseka who has been incarcerated by the government after he contested as the common opposition candidate at the 2010 January 26th presidential election, using the same emergency regulations.

¹ UPFA Wins 144 Seats in Parliament, The Sunday Leader, September 21, 2010, <http://www.thesundayleader.lk/2010/04/21/upfa-wins-144-seats-in-parliament>

However contrary to popular belief that the government will make broad changes to tackle growing international pressure to improve Sri Lanka's Human Rights record and transparency, only minimum amendments were made to the emergency regulations to the dismay of opposition MPs and civil rights groups.

Legislative process

1. Human Rights

1.1 Relaxation of Emergency Regulations

Ever since the end of the 26 year war with the LTTE the international community has been raising concerns about the Human Rights record of the Sri Lankan government. Although Sri Lanka successfully defended itself in the Human Rights Council in Geneva in mid 2009, it has been slowly losing its allies as it refused to relax/remove the strict emergency regulations which have been in force for over 20 years.

The government's use of the regulations to detain (March 7, 2008) and convict journalist, J. S. Tissainayagam was widely criticized by media and human rights groups. On August 31st, 2009 he was convicted by the Colombo High Court and sentenced to 20 years of rigorous imprisonment for inciting communal violence through his writings and receiving money from the LTTE².

The conviction as well as the continuation of the emergency regulations was criticized by both the United States of America (USA) and the European Union (EU.) The EU threatened to revoke the GSP+ trade concessions worth \$150 million, a facility that is tied to the beneficiary's respect for the Rule of Law and Human Rights³.

Facing the possibility of losing GSP+ and its international allies the government had given clear signals that the emergency regulations will be relaxed after the general election and expectations were high when the government presented the amendments to the emergency regulations on 3rd May 2010. The announcement also coincided with the presidential pardoning of journalist J. S. Tissainayagam⁴.

Minister of External Affairs, Professor G. L Peiris, who often plays the role of chief theoretician of the administration, explained to the Legislature the exact amendments made to the regulations and those retained in original form.

² J.S. Tissainayagam, journalist lauded by Obama, is jailed in Sri Lanka, Rhys Blakely, The Times. <http://www.timesonline.co.uk/tol/news/world/asia/article6815885.ece>

³ EU decides to suspend GSP to Sri Lanka. http://www.lankaeverything.com/index.php?option=com_content&view=article&id=2246:eu-decides-to-suspend-gsp-to-sri-lanka&catid=19:srilanka&Itemid=145

⁴ J. S Tissainayagam, first Journalist convicted under Sri Lanka's prevention of terrorism act to be given Presidential pardon, by.D. B.S. Jeyara. http://transcurrents.com/tc/2010/05/j_s_tissainayagam_first_sri_la.html

Among the key provisions withdrawn are the provision with regard to the imposition of curfew, rules requiring householders to furnish information on inmates, powers conferred upon security forces personnel to enter private properties to conduct search operations and regulations restricting processions and meetings that could be construed as being detrimental to national security. Any residual problems in this regard could be dealt with under the Police Ordinance, Penal Code, and the Prevention of Terrorism Act⁵.

But these measures have also been called too little too late by many opposition party MPs who point out that while the government expects the people to be grateful for the relaxation of certain aspects of emergency laws and the pardoning of JS Tissainayagam the military continues to have police powers under the remaining emergency law. Nominated Tamil National Alliance (TNA) legislator and reputed human rights lawyer, M.A. Sumanthiran offered an elaborate explanation on the threats posed to democracy, human rights and good governance in Sri Lanka through the provisions retained. He also questioned the State's inherent practice of committing excesses by going well beyond the powers of Emergency Regulations and the Prevention of Terrorism Act (PTA)⁶.

It was pointed out that that President Rajapaksa has taken over the Attorney General's (AG's) Department and that taking the Department under his direct purview is a clear departure from the well - established practice of maintaining independence of the legal institutions. This decision attracted considerable criticism and is considered by some as an ill- concealed attempt to subject the Attorney General's Department to direct political control of the incumbency.

For a country that is grappling with issues of governance particularly in the areas of transparent decision making, accountability in practice and respect for human rights and basic Rule of Law, the assigning of this vital Department under the direct control of the President by Gazette No 1651/20 of 30th April 2010, is a clear undermining of its independence. In the long term, this will have an adverse impact and debilitate any efforts made to uphold democratic aspirations, especially in the area of legal accountability which has a direct impact on human rights and governance.

1.2 Rights of minorities

As the supreme law making body and the assembly of democratic political representation, it is but only right that the Legislature ensures the rights of all communities. The need to assure all communities of the protection of their rights was stressed upon in the new Parliament where MPs of the TNA highlighted that the new Parliament, unlike others before, had a golden opportunity to move forward and to address issues that could not be openly discussed during the Sixth Parliament.

⁵ Hansard, Volume 188 no 1, May 04 2010, pages 42-44

⁶ Hansard, Volume 188 no 2, May 5, 2010, pages 171 – 173

Leader of the TNA, Trincomalee District MP, R. Sampanthan stated that this Parliament has the chance to discuss issues that could not be addressed in the previous Legislature, giving it a chance to take action towards resolving issues faced by minorities⁷.

It is in this backdrop that the administration announced the appointment of a Lessons Learnt and Reconciliation Commission in Sri Lanka for what the State called “the commencement of a healing process”. Ironically enough, as the new Commission was being set up, other moves were underway to bring the vital Attorney General’s Department under the direct purview of the President in a move that significantly undermined the principle of separation of power and the legal structures within the country.

The said Commission is largely viewed as an attempt to divert the United Nations’ attention and even indirectly discourage the appointment of a UN panel to investigate war crimes during the final phase of the war. The apparent dragging of feet on the part of the UN too was often constructed as an indication that the UN preferred to witness some structure being put into place’ by the Government without stepping in directly.

Therefore the Parliament was not surprised to find Prof. G L Peiris playing the role of apologist for the Rajapaksa administration as he sought to impress upon both sides of the House on the validity of such an exercise. Speaking during the parliamentary debate on the extension of emergency in May Prof. Peiris remarked that the proposed Commission would be styled similar to the well-known South African model introduced to mark the end of Apartheid.

He said: “This will essentially enable all the people who had suffered to put behind them that pain and that anguish, to pick up the pieces and to get on with life. This is why we are taking action to establish a Reconciliation Commission. That has been a feature of many post-conflict countries. Sri Lanka also needs healing rapprochement at this time.”⁸

The government-proposed Reconciliation Commission did not inspire confidence in the opposition however. TNA MPs, who represents Tamil interests in the North and the East stressed on the need to have attitudinal changes taking place first in order to facilitate a process of true reconciliation in the conflict-ridden land.

They also pointed out that despite government’s declarations of reconciliation they were still carrying out activities that increase the suspicion of the Tamil population. “The High Security Zone in Vallikamam in Jaffna and the forcible internment of displaced persons in Vavuniya. Neither of these two examples that I cite come under any Emergency Regulation whatsoever. All that becomes useless when the Government acts totally outside the powers that are given through these extraordinary powers of Emergency Regulations,” said TNA MP M. A Sumanthiran.⁹

We have a long history of creating ad hoc commissions to deflect criticism over allegations of human rights violation. Since independence, successive governments have set up around 10 such

⁷ Hansard Report, April 22, 2010, pages 21-22

⁸ Hansard, Volume 188 no 1, May 04 2010, page 54

⁹ Hansard, Volume 188 no 2, May 5, 2010, pages 171 – 173

commissions, with little significant results. Nevertheless, irrespective of these factors it's a responsibility of a sovereign state to inquire into structural deficits, policy gaps, discriminations and other psycho-social reasons that led to a brutal war.

In that sense, although the mandate is restricted LLRC process is a worthy effort to be mentioned and it is great opportunity for the government and the Chairman of the Commission CR de Silva whose independence and impartiality have been questioned, due to his close relationship with President Rajapaksa and his involvement in the failed Commission of Inquiries of 2007, to prove their critics wrong and set an example that could benefit the entire South Asian region.

Accountability and governance

2.1 Functioning of Parliamentary Committees

In the previous years the Parliamentary Committee on Public Enterprise (COPE) and Public Account Committee (PAC) have played an important role in keeping a tab on financial irregularities of state institutions. A few years ago COPE and PAC made startling revelations about bribery and corruption in the state sector earning the respect of the general public as an independent and important watch dog on the countries financial affairs.

The COPE ensures the observance of financial discipline in Public Corporations and other Semi – Governmental bodies in which the Government has a financial stake while the PAC exercises oversight in the financial performance of Government Institutions.

Traditionally the chairmen of the two committees were appointed from the opposition since it is unrealistic to expect government MPs to remain objective while investigating the affairs of their fellow party members. But despite appeals by the opposition political parties and civil society organizations to exclude Ministers and Deputy Ministers from the two committees and to hand over the chairmanship to a member of the opposition the government appointed Deputy Minister of Finance and Planning Dr. Sarath Amunugama as the chairman of the PAC while Minister of Rehabilitation and Prison Reforms D.E.W. Gunasekera was appointed the chairman of COPE on June, 8, 2010.¹⁰

Appointing ministers as chairmen of the two committees and the fact that the committees contain a majority of UPFA members is an indication that the authority the [Parliament](#) has on financial affairs of the [country](#) will further diminish. Stuffing the two committees with government MPs will have an adverse impact on the objectivity of its activities. Government MPs/ministers investigating government MPs/ministers, gives a major blow to good governance and reinforces international community/investors views that Sri Lanka is a country rampant with corruption.

2.2 Declaration of Assets and Liabilities

According to Declaration of Assets and Liabilities, Law No 1 of 1975, it is mandatory for several categories of individuals associated with the public sector to declare their assets and liabilities.

¹⁰ Amunugama heads PAC, D.E.W. gets COPE, June 8, 2010, Ada Derana.
<http://www.adaderana.lk/news.php?nid=8442>

When the Section 2, sub-section (1), paragraph (d) of Law No 1 of 1975 was amended by Act No 74 of 1988, Declaration of Assets and Liabilities (Amendment) the law makers made it mandatory for Presidential Candidates also to declare their assets.

Although candidates are expected to submit their assets and liabilities declarations before they begin to function in whatever position they occupy only a handful of candidates do so before the Parliamentary election. It was reported that only 13 out of 7168 candidates submitted their declarations before April 8th, 2010. The Commissioner of Elections claims that there is no provision to reject nominations because of the lack of such declarations. This makes it virtually impossible for anti corruption watch dogs/media to investigate/prove whether a MP is making money through unacceptable means during his tenure in parliament.¹¹

Another problem is that although these documents are public, in many instances the media is denied access to even the limited number of declarations.

2.3 Constitutional reforms

There had been general consensus that J. R Jayewardene's Second Republican Constitution of 1978 and the state structure created in 1978 had led to the deterioration of the rule of law and paved the way for the concentration of executive power. Since the 1990s, there had been wide support for the overhauling of the constitution. One of the main promises of the UPFA before the general election was the creation of a more people friendly constitution.

Successive SLFP-led governments since 1994 have made electoral pledges to abolish the executive presidency, a promise reiterated by President Mahinda Rajapaksa in his 2005 and 2010 election manifestos titled Mahinda Chintana (2005) and Mahinda Chinthana Idiri Dekma.¹²

In addition to above changes, Mahinda Chinthana of 2005 promised to improve the human rights situation by the introduction of a Bill of Rights to the Constitution. It states "Steps will be taken to include 'A Charter of Rights' into the Constitution based on the Declaration of the United Nations and other international treaties to uphold and protect social, cultural, political, economic and civil rights of all Sri Lankans."¹³

In the 2010 Presidential and Parliamentary Elections, the United Peoples' Freedom Alliance(UPFA) requested the people to provide it with a two thirds majority in Parliament to amend the Constitution to reintroduce the first past the poll system and to amend the powers relating to the executive. But after the elections it was revealed that the main feature of the new constitutional reforms was the enhancement of the powers of the President and the annulment of

¹¹ Only 13 candidates declared assets to polls chief – MENIKE by Dilanthi

Jayamanne.http://www.newslanka.net/design%20comp/images/Issues/Archive/Issue_957.pdf

¹² "I expect to present a constitution that will propose the abolition of the executive presidency," Mahinda Chinthana, 2005, pg 97

¹³ Mahinda Chinthana, 2005, pg 98

the 17th Amendment. The opposition MPs continue to protest that the proposed abolition of the CC is aimed at further concentration of political power.¹⁴

But the government which has an overwhelming majority in the parliament and confident of reaching a two third majority in parliament with opposition MPs contemplating crossing over, defended this move claiming that the people have mandated President Rajapakse as well as the government to introduce the necessary constitutional changes.

Referring to the defunct status of the independent commissions at present, a one time proponent of the Seventeenth Amendment, Minister of Construction, Engineering Services, Housing & Common Amenities Wimal Weerawansa summed up the sentiments of the government when he told the House “Why should we give that power to a few old men in Commissions? No matter what you say, we will make the necessary changes.”¹⁵

Conclusion

The first three months after the election concluded with an increasing push towards a new constitutional amendment. The events of June gave an indication of what might occur in the next few months when the government cleared the obstacles in its path to get a two thirds majority to pass amendments which creates a virtual constitutional dictatorship. If there are individuals who believe that we have a strong enough democratic tradition to weather this constitutional storm, the business in parliament from April to June prove otherwise.

¹⁴ ‘Sri Lanka plans Constitutional reform,’ Ada Derana, 11 June 2010. Accessed at <http://www.adaderana.lk/news.php?nid=8486>

¹⁵ Hansard, Volume 189 - No. 1, pages 84, 08th June, 2010. Accessed at <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2599>

Recommendations

1. Limit the time taken by Ministers to answer questions posed by opposition MPs. Most of the time a Minister/Chief Government whip asks for additional time to answer questions and as it is sometimes it takes months to get an answer.
2. Introduce a culture of tolerance in parliament. Since the UPFA has an overwhelming majority in parliament they disturb the speeches of opposition MPs.
3. Take practical measures to control unruly MPs. There are some MPs who use language not suitable for the august assembly.
4. Increase the question and answer session to at least one and a half hours from one hour. Sometimes around 15 questions have to be answered in 60 minutes.
5. Broadcast parliamentary sessions unedited via internet. This would give the people a chance to see how their representatives behave in parliament and whether they voice shared concerns.
6. Close the gap between the people and parliament. Since the war is over make it easier for the interested to visit parliament and observe the sessions.
7. Establish an information Centre which educates the people about what is discussed in parliament. As it is people have no idea about decisions taken which affect their everyday life.
8. Appoint opposition MPs as chairmen of parliamentary committees, specially COPE and PAC and exclude Ministers and deputy ministers from the committees.
9. Ensure the privileges of MPs and re-establish parliament's authority over state finances.

Date	Business
April 6, 2010	1. Public Security Proclamation
April 22, 2010	1. Election Of Deputy Speaker And Chairman Of Committees 2. Election Of Deputy Chairman Of Committees
May 4, 2010	1. Committee Of Selection 2. Public Security Proclamation
May 5, 2010	1. Privilege : Participation of Hon. General Sarath Fonseka in Parliamentary 2. Sessions Consultative Committees and Standing Committees

	<p>(Legislative)</p> <p>House Committee</p> <p>Committee on Standing Orders</p> <p>Committee on Parliament Business</p> <p>Committee on Public Accounts</p> <p>Committee on Public Enterprises</p> <p>Committee on Privileges</p> <p>Committee on Public Petitions</p> <p>Committee on High Posts</p> <p>3. PUBLIC SECURITY PROCLAMATION</p>
May 6, 2010	1. REPORT OF COMMITTEE OF SELECTION
May 7, 2010	<p>1. Public Security Proclamation</p> <p>2. Adjournment Motion:</p> <p>Disappearance of Journalist Prageeth Eknaligoda</p>
May 19, 2010	<p>1. Question by Private Notice:</p> <p>Heavy dearth of Drugs in Government Hospitals</p> <p>2. Adjournment</p> <p>Problems arisen in the field of Education</p>
May 20, 2010	<p>A N N OUNCEMENTS:</p> <p>Legislative Standing Committees</p> <p>House Committee</p>

	<p>Committee on Standing Orders</p> <p>Committee on Public Accounts</p> <p>Committee on Public Enterprises</p> <p>Committee on Privileges</p> <p>Committee on Public Petitions</p> <p>Committee on High Posts</p>
June 8, 2010	<p>Public Security Proclamation</p> <p>Privilege:</p> <p>Non-grant of Permission to Hon. Palitha Tewarapperuma to Attend Parliament precluding Participation at Parliament Sitting on 5th May 2010</p> <p>APPROPRIATION BILL:</p> <p>Read the First time</p>
June 9, 2010	<p>QUESTION BY PRIVATE NOTICE:</p> <p>Current Situation in Vanni</p>
June 10, 2010	<p>FINANCE ACT:</p>
June 11, 2010	<p>Private members' motions: Registration of Weapons</p> <p>Adjournment motion: Forcible Demolition of Several Houses at Mews Street</p>
June 29, 2010	<p>Appropriation bill, 2010:</p> <p>Second Reading – Debate Adjourned</p>
June 30, 2010	<p>Privilege :Non-reporting of facts and views expressed in Parliament</p>