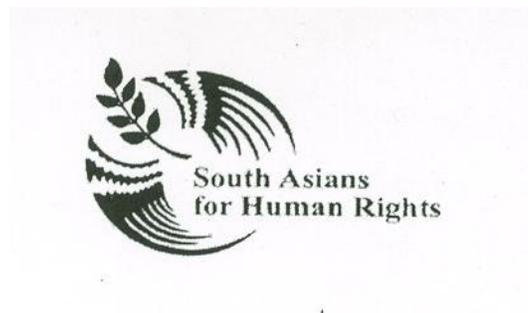


PARLIAMENT WATCH – SRI LANKA*

MAY 2010



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Legislative focus in the month of May predictably fell on the government's move to amend the Emergency Regulations, promulgated under the Public Security Ordinance (PSO). It is noteworthy that Sri Lanka had been ruled under Emergency for over two decades.

The decision to amend the regulations generated a significant amount of legislative debate both on the merits and demerits of the existing Emergency Regulations and the implications of the proposed amendments on the rights of citizens.

In the aftermath of the conclusion of the Parliamentary Elections on April 26, a highly concerned international community continued to raise concerns with regard to the Sri Lankan human rights situation.

Forced to contend with the grave possibility of losing the GSP+ concession that is decidedly tied to the human rights record of the beneficiary state, the government resorted to defending the socio-economic impact in the event of such a withdrawal while the opposition used this as a platform to generate heated parliamentary debate in relation to the projected loss of millions of jobs particularly those in the apparel industry.

In addition, the legislative sessions also delved into the appointment of a UN expert panel to probe war crimes allegedly committed by the Sri Lankan armed forces during the final phase of the war.

These concerns were reflected in parliamentary debates immediately after the convening of the Seventh Parliament causing the Government to immediately be on its back foot, two convincing electoral victories notwithstanding.

The United Peoples' Freedom Alliance (UPFA) appeared to be taking several quick steps to demonstrate to the international community of its conscious efforts to restore normalcy and re-confer civil liberties upon the citizenry, a year after the war.

Among the significant steps taken during the single month to demonstrate fresh commitment were the relaxation of Emergency Regulations, the presidential pardoning of prominent journalist J. S Tissainayagam who was sentenced to 20 years of imprisonment and the appointment of a Lessons Learnt and Reconciliation Commission to augment a healing process post war.

Emergency amended

As a first priority, the Sri Lankan Government relaxed its powerful wartime Emergency Regulations on May 3, 2010, the day before the inaugural session of the new legislature. The State's position appeared to be that such a gesture would count in giving a boost to investment opportunities, to regain the vital GSP+ concession and to deflect criticism over the country's much-critiqued human rights record. The decision also coincided with the presidential pardoning of journalist J. S Tissainayagam.

The past two years have witnessed a gradual deterioration in Sri Lanka's relationship with the European nations en bloc. The European countries have been exerting pressure on the

Rajapakse led administration to relax legal provisions that significantly restrict civil liberties. In May came the announcement that the European Union would hold back trade concessions worth \$150 million, a facility that is tied to the beneficiary's respect for the Rule of Law and human rights in particular.

In response to mounting international pressure that threatened to impact heavily on the Sri Lankan economy with a specifically debilitating impact on the apparel sector, the Government resorted to some quick fixes during the first sitting day of the newly convened Parliament by hurriedly amending the emergency regulations.

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.

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 Act,” explained Prof. Peiris.²

The redundancy of amendments to the Emergency Regulations and the possibilities of using the unamended provisions to curb freedoms became the thrust of a thought-provoking delivery by nominated Tamil National Alliance (TNA) legislator M.A. Sumanthiran, a reputed human rights lawyer.

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).

“We can discuss and debate what is printed under the Emergency Regulations. But, I can provide two examples of instances where even the powers that are given under the Emergency Regulations are not utilized. One is the High Security Zone in Vallikamam in Jaffna. The other is the forcible internment of displaced persons in Vavuniya. Neither of these two examples that I cite come under any Emergency Regulation whatsoever. So the point I am making is that, it is well and good to discuss what powers are being removed, how we intend moving forward step by step, but all that is irrelevant. All that becomes useless when the Government acts totally outside the powers that are given through these extraordinary powers of Emergency Regulations,” Sumanthiran noted.³

² Hansard, Volume 188 no 1, May 04 2010, pages 42-44

³ Hansard, Volume 188 no 2, May 5, 2010, pages 171 - 173

Pardoning Tissainayagam

In addition to amending the Emergency Regulations, May 3 also marked the official announcement of the presidential pardoning of journalist J S Tissainayagam. His imprisonment, the first such arrest of a journalist under the Prevention of Terrorism Act (PTA) drew much criticism both locally and internationally. Tissainayagam's case became a key highlight in international media rights debates even earning a worth mention by the US President Barack Obama who called upon the Sri Lankan Government to release the well known journalist without pre-conditions.

Parliamentary mention was made to this much-highlighted case by External Affairs Minister Prof. G L Peiris. However, this gesture is largely viewed as one aimed at blunting criticism of the incumbency's lack of respect for democratic rights including media freedom and interpreted as a move designed to appease the US and European powers.

Peiris told Parliament: "His Excellency the President decided yesterday, to coincide with the World Press Freedom Day to grant a pardon to Mr. Tissainayagam. Of course, there are certain procedural steps to be taken because Mr. Tissainayagam has lodged an appeal. He has to withdraw that appeal. His Excellency will use his prerogative powers under the Constitution of Sri Lanka to confer a pardon on Mr. Tissainayagam. The President is the only person who has the legal capability to do that."⁴

A move that was widely welcomed, Tissainayagam's freeing did not necessarily mean that the journalistic community in Sri Lanka felt less under pressure during May. There were several recorded instances of freedom of expression violations while controversial political cartoonist Prageeth Ekneligoda continues to be missing.

Lessons Learnt and Reconciliation Commission

May was a month that recorded significant pressure on the State to seriously reconsider its militaristic approach to the rights and liberties of the citizenry. Multiple compulsions led the Sri Lankan government to take several forward- looking steps, a stance that is largely viewed as an effort to qualify for economic support and to attract foreign direct investment.

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, others 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

⁴ Hansard, Volume 188 no 1, May 04 2010, page 54

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, 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."⁵

The government-proposed Reconciliation Commission did not inspire confidence in the opposition however. TNA MP M. A Sumanthiran was heard stressing on the need to have attitudinal changes taking place first in order to facilitate a process of true reconciliation in the conflict-ridden land.

"The very fact that the Hon. Minister says that reconciliation is necessary is enough proof that the Government concedes that as a result of this protracted war, communities in this country have been alienated from each other and we need a processes of reconciliation. For that to happen, attitudes must change", insisted MP Sumanthiran.⁶

Fonseka's privileges

Among the key criticisms continuously leveled against the Rajapakse administration is the systematic concentration of power and the moves to curb democratic opposition. Whilst the government's record in the calculated distribution of political and military authority among a select few, a clear demonstration of this was witnessed with the unanimous election of the President's elder brother Chamal Rajapaksa to become the Speaker of Parliament.

There is a well- founded argument that the said appointment clearly undermined the representative nature of Parliament and brought to the fore, conflict of interest and the new Speaker's ability to exercise his duty in an impartial manner.

As Speaker, Chamal Rajapaksa is charged with the duty of serving the legislature and the members without a trace of bias. But the very appointment of a Rajapaksa bears witness to the fact that the incumbency is no respecter of parliamentary traditions with the proliferation of family members in high posts, significantly undermining transparency and accountability in legislative decision making.

⁵ Hansard, Volume 188 no 1, May 04 2010, page 54

⁶ Hansard, Volume 188 no 2, May 05 2010, pages 173-174

It is noteworthy that Speaker Rajapaksa's ability to exercise his mandate in an impartial manner was put to the test in two separate occasions during the very first week after the convening of the Seventh Parliament. Rajapaksa was required to rule on breach of parliamentary privileges concerning two detained MPs-UNP Kalutara District parliamentarian Palitha Theverapperuma and Democratic National Alliance (DNA) Leader, Retd. Gen. Sarath Fonseka. Both MPs were prevented from attending Parliament by the prison authorities.

Despite repeated assurances from Speaker Rajapaksa that both legislators will not encounter any problems with regard to attending parliamentary sessions, both had to forego the right to attend parliamentary sessions on a particular day.

When Retd. General Fonseka was allowed to attend parliament on May 4 it was on the condition that he would undertake to leave parliament by 2 p.m. to face a military court of inquiry convened at the Navy Headquarters in Colombo. The opposition MPs brought the matter to the notice of the Speaker who ruled that the DNA Leader had the right to attend the sessions until the conclusion of the day's proceedings. Fonseka was not escorted to Parliament the next day as the court martial was reconvened on the same day in a clear violation of the legislator's rights and privileges as a sitting Member of Parliament.

This breach particularly in relation to Fonseka did not merit quick action on the part of the Speaker despite the main opposition United national Party(UNP) and the Democratic National Alliance(DNA) calling for a directive by the Speaker to rectify the situation. From the Government benches, Fonseka was supported by Minister Wimal Weerawansa, a vitriolic critic of Fonseka during the run up to the presidential election who nevertheless emphasized on the role of the Speaker in safeguarding the privileges of MPs and the resultant breach of Fonseka's parliamentary privileges.

"Whatever his previous roles may have been, today he is Sarath Fonseka, a Member of Parliament and he has every right to enjoy those privileges," Minister Weerawansa defended, insisting that a breach has been committed whereby the MP was forced to forgo the opportunity to participate in a full day parliamentary session.⁷

The Speaker's failure to ensure Fonseka's rights and privileges as an opposition MP signifies the lukewarm attitude adopted towards opposition MPs' rights and privileges by the administration. The impact could prove debilitating in the backdrop of a powerful presidency that appears to be focused on systematic centralization of economic, legal and political authority.

Concentration of power

During the period under review, President Rajapakse brought the Department of the Attorney General under his direct purview, recording a clear departure from the well- established practice of maintaining independence of the legal institutions.

⁷ Hansard, Volume 188 no 2, May 05 2010, page 144

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. The importance of the Attorney General, an independent prosecutor not placed under any line ministry was strongly emphasized by a Special Commission on the Constitution in 1928 and was also upheld by the 1994 Commissions of Inquiry into Enforced Disappearances.

Over the years, the perceived ineffectiveness of the Attorney General's Department has provided the basis for much public and media debate and strident criticism. Notwithstanding the dilution of its independence or evidence of ineffectiveness at times in furtherance of justice, there is no gainsaying that placed under the Executive President's direct control; the degree of independence witnessed so far may suffer further erosion.

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-April 30, 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.