

SRI LANKA'S PRESIDENTIAL ELECTIONS: PROGRESS, REGRESSION, OR PARALYSIS?

JEFFREY FELTMAN

APRIL 2019

EXECUTIVE SUMMARY

In what was seen as a political earthquake at the time, Mahinda Rajapaksa, president of Sri Lanka since 2005, unexpectedly lost his bid for a third term to Maithripala Sirisena in January 2015 elections. Sirisena and a supportive parliamentary majority (elected later in 2015) adopted an ambitious agenda to reverse the nearly autocratic powers Rajapaksa had amassed and to address the aftermath of Sri Lanka's 25-year civil war, including the question of accountability over alleged atrocities and war crimes committed by the Rajapaksa government in the May 2009 decisive defeat of the Tamil Tiger insurgents.

Despite some early reforms and symbolic steps, this progressive agenda became increasingly stalled, as relations between Sirisena and Prime Minister Ranil Wickremesinghe soured. In October 2018, Sirisena, in what has been described as a "constitutional coup," tried to swap out Wickremesinghe with Rajapaksa, the man he defeated, and to dissolve the parliament for its refusal to endorse Rajapaksa. With his moves declared unconstitutional by judges vetted in one of his earlier reform initiatives, Sirisena backed down, although leaving the coalition that elected him in 2015 in tatters.

Constitutionally, Sri Lankan presidential elections must be held by the end of 2019, with parliamentary elections to follow in 2020. The absence, so far, of any declared candidates seems to fuel rather than limit the speculation. Despite his 2015 and 2018 defeats, Rajapaksa appears to be on the threshold of a comeback. Now precluded from presidential elections by constitutional term limits adopted after Sirisena's victory, Rajapaksa can create a presidential front runner merely by lending the support of his enviable popular base of Sinhala voters who credit him with ending the civil war, and with it, the Tamil Tiger threat. Rajapaksa's options include anointing his brother Gotabhaya, minister of defense during the final, bloody stages of the civil war, as presidential candidate, or aspiring himself to become prime minister as head of a parliamentary majority. Political and civil society activists horrified by the prospects of Gotabhaya Rajapaksa in the presidency consider how to rally sufficient support behind Wickremesinghe or other candidates to defeat the Rajapaksa machine. They muse about adopting a constitutional amendment to abolish the executive presidency, an idea that seems fanciful in Sri Lanka's paralyzed political environment.

The outcome of the 2019 presidential and 2020 parliamentary elections will determine whether Sri Lanka renews its forward progress on the post-civil war homework of reconciliation and accountability, whether the country moves backward toward the autocratic and exclusionary policies of the previous Rajapaksa administration, or whether its institutions remains paralyzed. The results matter not only

in terms of Sri Lanka's long-term stability, especially the relations between the Sinhala majority and the country's minorities, but also regarding Sri Lanka's geostrategic position. Annoyed by human rights criticisms over his administration's handling of the war, Rajapaksa steered Sri Lanka politically and financially toward China, incurring tremendous debt to Beijing in the process. Sirisena, by contrast, has tried to steer a course more open to India and the West and to address concerns by the United States and others on human rights and other issues. Given increasing concern in Washington over the rise of China, the elections in Sri Lanka matter to U.S. interests.

INTRODUCTION

Political discussions in Sri Lanka have shifted from a dissection of the 52-day constitutional crisis (or constitutional "coup," as some dubbed it)¹ in October-November 2018, when President Sirisena's attempt to replace Prime Minister Ranil Wickremesinghe with former President Mahinda Rajapaksa was blocked by judicial and parliamentary action. Instead, the presidential elections to be held by the end of 2019 provoke feverish speculation. There are no declared candidates as of now, but there is no shortage of scenarios to debate, some of which seem fanciful at best, including the possible adoption of sweeping constitutional amendments in a political climate characterized by polarization and paralysis. Yet it is clear that the results of the upcoming electoral cycle—presidential elections in 2019, followed in 2020 by parliamentary and (probably) provincial elections—will determine the fate of the ambitious postwar agenda that helped sweep President Maithripala Sirisena into office in January 2015, but which is now largely stalled. For the time being, the momentum seems to be behind the camp associated with former President Mahinda Rajapaksa, the strongman former president unexpectedly defeated by Sirisena, notwithstanding the judicial and parliamentary rejection of his prime ministerial grab in October 2018.

RAJAPAKSA AS KINGMAKER RATHER THAN KING

Much of the speculation revolves around trying to determine Rajapaksa's intentions. Considered the most popular politician by Sri Lanka's Sinhalese majority, he would be an immediate populist front runner, were he not prohibited from running by constitutional term limits restored in 2015 (a successful reform that reversed an earlier Rajapaksa-initiated elimination of term limits). Rajapaksa so far has been coy about who would get his endorsement, regularly referring (including to this author) to the need for a decision from his party, the Sri Lanka Podujana Peramuna (SLPP), rather than from him or his family.

Whoever Rajapaksa anoints is assured of a wide segment of the Sinhala vote, but would also need to attract some votes from Sri Lanka's minorities to be assured of victory. Tamils, with just over 11 percent of the population, comprise the largest minority group, but they are generally hostile to Rajapaksa for his handling of the final years of Sri Lanka's civil war (which ended with the defeat of the Tamil Tigers in May 2009, when the Sri Lankan army, under the leadership of the president's brother Gotabhaya, killed tens of thousands of Tamil insurgents and civilians alike). Rejecting post-war accountability and reconciliation initiatives, the Rajapaksa administration relied on economic development and infrastructure improvements in Tamil-dominated areas to appeal to the Tamils and

to move past their controversial civil war legacy. Yet even Tamil National Alliance (TNA) leaders—representing mainstream and moderate Tamil views rather than the pro-independence demands of the defeated Tamil Tigers—insist that economic development, while welcome, is insufficient for Tamil support. They maintain that a political shift toward devolution is essential, giving the Tamils concentrated in Sri Lanka’s north and east more control over their daily lives.

The widespread presumption is that Rajapaksa will endorse a presidential bid by his brother Gotabhaya Rajapaksa, the former minister of defense during the brutal final stages of the civil war. A potential Gotabhaya campaign excites the SLPP’s conservative-nationalist Sinhala base, which considers Gotabhaya as a national hero for ending the decades-long terrorist threat of the Tamil Tigers, and horrifies those who see him as a power-hungry, corrupt war criminal guilty of atrocities. Sri Lankan rules require Gotabhaya to renounce his U.S. citizenship to run, a process not yet concluded. In reacting to the prospect of a Gotabhaya presidency, some civil society activists suddenly look upon Mahinda in a more positive light, as the lesser of two evils. Some note grimly the prospect of a Gotabhaya presidential victory followed by a possible SLPP parliamentary share that could lead to Mahinda as prime minister, leaving two Rajapaksas in the top executive positions.

THE UNITED NATIONAL PARTY CONSIDERS ITS OPTIONS

The United National Party (UNP), headed since 1994 by current Prime Minister Ranil Wickremesinghe, also has not announced its presidential candidate. While Wickremesinghe was strengthened by surviving the failed Sirisena attempt to replace him with Rajapaksa in October 2018, the political and judicial support he received was related more to constitutional integrity than to his personal popularity. Although Wickremesinghe is reportedly exceptionally savvy in terms of backroom political maneuvering and dealmaking, charismatic he is

not. Especially with Sri Lanka’s lackluster economic performance and credible reports of corruption, the government’s record is not a particularly winning platform to generate positive election fever. In light of the Sirisena-Wickremesinghe public falling out and stalled government initiatives, the excitement generated in 2015 by Sirisena’s reform and reconciliation agenda in the presidential elections and by Wickremesinghe’s UNP in parliamentary elections has evaporated.

UNP supporters muse about whether and how to defy Sri Lanka’s usual hierarchical deference in order to bypass Wickremesinghe as presidential candidate in favor of either Parliament Speaker Karu Jayasuriya or Sajith Premadasa, the son of Sri Lanka’s third president. Maybe, some say unconvincingly, a ticket with Wickremesinghe as presidential candidate and Premadasa as the UNP’s prime ministerial candidate (should the UNP build a dominant coalition after the subsequent parliamentary elections) can generate a surge of enthusiasm for the UNP that is sufficient to check a surge of Sinhala support for the Rajapaksa camp. Some muse that the UNP’s internal rules could potentially be changed so that Wickremesinghe can remain party leader while another UNP representative could head a UNP electoral ticket. Other UNP supporters hope the Rajapaksas will so overplay their hand, appealing so blatantly to Sinhalese extremists, that they will create a useful counter-reaction, a groundswell of high voter turnout for the UNP and its allies.

Unless Wickremesinghe himself concludes that his odds of winning are too low, a face-saving way of finding another UNP candidate probably falls into the category of magical thinking. Wickremesinghe stood aside and did not contest the presidency in 2015, in favor of the unlikely coalition, now severed, that created the Sirisena victory. Given Sirisena’s subsequent attempt to bypass and then oust him even though he delivered most of the votes that led to the Sirisena victory, Wickremesinghe may see no reason to defer his candidacy again, especially when the Sri Lankan Freedom Party

(SLFP) has held the presidency uninterrupted for decades. While the TNA is unlikely to be lured into the Rajapaksa camp, moderate Tamil leaders may face challenges in generating renewed enthusiasm for a UNP candidate. The Tamils, whose support was essential to the Sirisena and UNP victories, are disappointed with, inter alia, the government's failure to follow through on promises regarding civil war accountability and, especially, to devolve political power to local authorities, the TNA's top demand.

INCUMBENCY NOT ALWAYS AN ASSET

Sri Lankans assume that President Sirisena will also jump into the race despite his past promise to serve only a single term, his seeming abandonment of the original presidential platform, and the undermining of the alliance with the UNP that unexpectedly swept him to office. But after the events he initiated in October-November 2018, he cannot count on the UNP support he received in 2015. Conservative Sinhala voters will take their cue from Rajapaksa, not Sirisena, no matter how much Sirisena backtracks from his 2015 positions to curry favor with the Rajapaksa base.

TNA leaders tend to give Sirisena the benefit of the doubt on intentions, citing important but symbolic steps he has taken—traveling more to the Tamil-dominated north than any other Sri Lankan president and initiating the practice of having the national anthem sung in Tamil as well as Sinhalese. But citing their hopes for tangible steps on accountability and devolution, the same TNA leaders give him low marks on follow-through. Moreover, the minorities who appreciate Sirisena's more inclusive approach to governance are not sufficient by themselves to assure him of a second term. The return of lands seized by the military during the civil war will be of less benefit to Sirisena in terms of Tamil support than he may believe he deserves, given intra-Tamil squabbles about original land ownership that have complicated some of the land returns. Moreover, Sirisena heads an SLFP that is itself only a rump of its earlier strength. The breakaway Rajapaksa

branch of the party, the SLPP, sapped support and trounced the SLFP and other parties in 2018 local council elections. Indeed, had Sirisena relied primarily on SLFP votes in 2015, he would have lost the elections. Given his self-inflicted wounds of the cross-party, cross-ethnic coalition that supported him in 2015, it is not clear what a realistic path to a Sirisena victory would be, short of a deal cut with the Rajapaksas (the anticipation or conclusion of which, some say, explain Sirisena's abandonment of the 2015 coalition).

WILD-CARD CANDIDATES

In addition, the Marxist-Leninist party Janatha Vimukthi Peramuna (JVP), with six MPs, contemplates running a presidential candidate. Former chief minister of the Northern District, C. V. Vigneswaran, a hardline Tamil, has mused about running, but neither a JVP candidate nor Vigneswaran has any prospect of winning. However, their potential candidacies would attract voters from the mainstream parties (including, in Vigneswaran's case, from the moderate TNA) and could even tip the results toward Rajapaksa's chosen candidate in a potentially extremely close presidential election. Cynics say that Vigneswaran (who, from my handful of meetings with him, I would describe as a charming rogue) would use a spoiler candidate to reduce votes for the TNA in the hope of throwing the elections to the Rajapaksas. This is borne of the belief that a Rajapaksa presidency would take a harder line toward Tamil demands, reigniting international attention to Tamil grievances and (in another example of magical thinking) generate momentum toward potential international intervention on behalf of the Tamils.

WISHFUL THINKING, OR A WAY FORWARD?

Civil society members and politicians who were overjoyed with the unanticipated political change in 2015 (and whose enthusiasm was fleetingly reignited with the popular and judicial rejection of Sirisena's October 2018 plan to remove the prime minister) puzzle over ways to block a Gotabhaya

Rajapaksa presidency. A new Rajapaksa presidency, they assume, would reincarnate the climate of fear, impunity, corruption, and exclusionary policies regarding minorities that characterized the Mahinda Rajapaksa presidency.

Under Sri Lanka's constitution, Sirisena can now call early presidential elections if he declares himself a candidate. This would, in theory, corner the Rajapaksa brothers, since Gotabhaya would be ineligible to run if Sirisena moves faster than Gotabhaya's renunciation of his U.S. citizenship. (Some Sri Lankans in the anti-Rajapaksa camp wishfully hope that the United States could solve the problem for them, by delaying the conclusion of his request until it is too late for him to run.) But angering the Rajapaksas—after Sirisena's October alienation of UNP supporters and the TNA's disappointment over stalled devolution—would make Sirisena's chances of victory even more remote. A parliamentary sleight of hand, by which Sirisena could eject the Rajapaksas' SLPP MPs (who were elected as SLFP candidates, as the formal party split came later), would lead to the same unpromising results. Sirisena's actions, such as his recent appointment of a controversial Rajapaksa ally with a deeply troubling record as army chief of staff and his interventions to protect Rajapaksa family members and allies from corruption indictments, do not hint at any pending break with this Rajapaksas, but rather reinforce the rumors of attempted deals with them.

So, civil society activists ask, what about the abolishment of the executive presidency, something proposed and debated for decades? Supporters of this proposal argue that it has something for everyone: Mahinda Rajapaksa could pin his hopes on regaining power through the premiership, which has no term limits; Wickremesinghe may have a better chance returning as a newly empowered prime minister (as the head of a sizable parliamentary coalition) than being elected to the presidency in a face-to-face race with a Rajapaksa-anointed candidate; Sirisena might be willing to accept a ceremonial second presidential term, which

parliament would select in a horse-trading deal rather than the general electorate; the TNA and JVP leaders have long advocated for the abolishment of the executive presidency. An additional theoretical advantage for Mahinda Rajapaksa is that, if he would become prime minister, he could keep the seat of power warm for his son Namal, who is shy of the 35-year age eligibility for the presidency; if Gotabhaya is elected president, the political heir apparent of the family would shift to his lineage, or so the pundits argue.

In listening to these arguments during my recent trip to Colombo, I expressed disbelief that in Sri Lanka's paralyzed and polarized political atmosphere, it would be possible to adopt the requisite constitutional amendment (requiring a two-thirds parliamentary vote and a popular referendum) and related legislation in the few months remaining in this presidency. After all, the proposal to abolish the executive presidency has been debated for years. The nationalist-rightest Sinhala voters are believed to oppose the idea, given that the executive power would depend on shifting parliamentary alliances (meaning that minorities might have an outsized influence compared to the Sinhalese majority in determining a prime minister's fate). The Rajapaksas would defy their own Sinhala base by supporting this. Some interlocutors pushed back, saying that, if the political leaders agree and Mahinda Rajapaksa indicates to his supporters that (while it may not be something he personally advocates) he can live with the reform, then the amendment, referendum, and some electoral changes intended to "stabilize" an empowered prime minister's legislative support could come together quickly and pass. Much has been drafted already.

Such an outcome sounded like wishful thinking to me, but seemed to some Sri Lankan interlocutors to be more of a fail-safe method than relying on credible presidential elections to block a Gotabhaya presidency. Certainly an appealing case can be made, but for this to work, everything would need to be in place in just a few months. Shifting from talk

to implementation will require Sri Lanka's political leaders to work together in ways they have not done since many of them came together in a relatively short time in late 2014 to create the coalition that elected Sirisena and backed the Wickremesinghe government. And, unlike in 2014-15, this time Mahinda Rajapaksa's implicit support would be needed, and, after the October 2018 drama, he probably sees little benefit in a constitutional amendment that could improve Wickremesinghe's prime ministerial prospects. Finally, the general electorate seems weary of upheaval and ready for stability, sentiments that the Rajapaksas can use to oppose the abolishment of the executive presidency.

IMPLICATIONS FOR THE UNITED STATES AND FOR SRI LANKA

Washington's scratchy relationship with Colombo during the Rajapaksa presidency was dominated by three issues: terrorism and the conduct of the civil war itself; related human rights concerns (including war-related atrocities and the treatment of minorities); and China. Arguably, that last concern has grown even more intense in recent years, as China's influence and interests in Sri Lanka have increased. Sri Lankans would be wise to anticipate that any U.S. administration will evaluate Sri Lanka's leaders in light of how they manage the country's ties to China. With Sri Lanka now heavily indebted to Beijing, the Rajapaksa record is not encouraging. The conduct of the war under the Rajapaksa presidency led to a shunning of Sri Lanka by Western financial institutions, giving Rajapaksa a ready-made explanation for why he turned so readily and frequently to Beijing for financial support (as well as political protection from U.N. Security Council scrutiny over the war).

While the Trump administration has not placed the same priority on human rights as previous U.S. administrations of both parties, the Sri Lankans should take note of ongoing congressional debates regarding Saudi Arabia. They should not assume that the United States has dropped its human

rights concerns or its leverage just because the Trump administration itself is generally less vocal (except in notable politicized exceptions such as Cuba, Venezuela, and Iran). In addition, in a November 2018 move linked to U.S. opposition to the October "coup," the Millennium Challenge Corporation delayed moving forward with a \$480 million compact disbursement for Colombo. Moreover, just one year after taking office, Sri Lanka's next president could face a new American president with more traditional and principled positions regarding human rights.

In some ways, the Rajapaksa brothers as president and defense minister were ahead of their time: Their populist, us-versus-them, strongman, take-no-prisoners, law and order (with "law" largely a subjective term) model now seems to be on the ascendency globally. This might again be a winning formula in Sri Lanka. In what should be a cautionary note for the anti-Rajapaksa forces in the country, Western democracies have not coalesced around any kind of unified strategy to respond to the rise of autocratic-leaning, Rajapaksa-like approaches elsewhere. A return to Rajapaksa rule in Sri Lanka, without the horrors of terrorism and civil war to attract international attention, may not provoke the same Western reactions and coordinated pressure Rajapaksa previously faced, especially after the bloody conclusion of the civil war in 2009 and his administration's failure to address accountability issues. (The West's human rights concerns, decried by Rajapaksa's supporters as outside interference provoked by extremist Tamil expatriate propaganda, also served the Rajapaksas well politically, giving them a ready tool to anger and excite their base.) The China factor may also temper Western and Indian reactions to the Rajapaksas, for fear that too much pressure will drive Sri Lanka even more deeply into China's sphere of influence.

What happens with Sri Lanka's presidential elections, of course, depends on the Sri Lankans themselves, not any potential international reaction. At stake is the country's future direction and the unfinished business lingering 10 years

after the end of the civil war. However imperfect and incomplete the results, the initial accomplishments of the now defunct Sirisena-Wickremesinghe partnership of convenience demonstrated a sharp contrast with the Rajapaksa era, at levels both individual (with average citizens no longer afraid to express their views or wary of ubiquitous hostile surveillance) and institutional (such as presidential term limits and the belated establishment of the Office of Missing Persons).

Sadly overlooked in the March 2019 oral accounting of Sri Lanka's human rights record by U.N. High Commissioner for Human Rights Michelle Bachelet was something that would have been inconceivable under the Rajapaksa administration: the Supreme Court's rejection as unconstitutional of Sirisena's autumn 2018 dissolution of parliament and his call for early parliamentary elections.² To his credit, Sirisena accepted the ruling. This extraordinary assertion of judicial power to defend constitutional integrity was possible because of the constitutional council created early in the Sirisena-Wickremesinghe alliance, in order to vet judges for impartiality and nonpolitical qualifications and to break the judiciary's subservience to the Rajapaksas. One can assume that the Rajapaksas are already plotting how to reverse such important institutional independence, should they return to power. Bachelet missed an important opportunity to underscore the importance of the constitutional council's judicial vetting, as demonstrated just a few months ago, and thus to put down a warning against meddling with its independence. (Bachelet's neglect of the constitutional council's rulings in her public remarks also reinforced the Rajapaksa camp's arguments against trying to address international human rights concerns: "See, no matter what the government does to try to satisfy the international community, it's never enough to overcome Western hostility; so why try?")

Unfortunately, the list of unfinished homework—on issues ranging from anti-corruption measures and economic development to truth and reconciliation, reparations, and modern counterterrorism legislation—remains dispiritingly long. In particular, the dilemma of what to do about people considered war heroes by some Sri Lankans and war criminals by others is likely to continue to haunt Sri Lanka for years to come, no matter who wins the elections and no matter what international human rights activists say.

As the Rajapaksas themselves must know from the 2015 presidential defeat and the 2018 failure of Sirisena's effort to install Mahinda as prime minister, they cannot count with certainty on a Gotabhaya victory. But their pathway to a potential victory is made easier by Sirisena's seeming abandonment of his winning 2015 platform, his undermining of the unlikely coalition that elected him, and the Wickremesinghe cabinet's failure to muster strong leadership to implement the 2015 agenda and combat endemic corruption. Sri Lankan political activists, whether they are for or against the Rajapaksas, point to the record of the Rajapaksa presidency to talk with certainty about what a return of the family would mean in terms of "back-to-the-future" governance and abandonment of the unfinished postwar homework. If the Rajapaksas do not prevail, however, it is less clear whether the next government and parliament will be any more successful than the current ones in moving the country decisively forward. Unfortunately, paralysis rather than momentum seems to be the default option.

REFERENCES

- 1 Jeffrey Feltman, “Sri Lanka: An urgent case for conflict prevention,” *Brookings Institution*, October 31, 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/10/31/sri-lanka-an-urgent-case-for-conflict-prevention/>.
- 2 Michelle Bachelet, “Presentation of the High Commissioner’s report on Promoting reconciliation, accountability and human rights in Sri Lanka (Item 2),” (speech, Geneva, March 20, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24371&LangID=E>.

ABOUT THE AUTHORS

Jeffrey Feltman is the John C. Whitehead visiting fellow in international diplomacy at the Brookings Institution. He is also a senior fellow at the U.N. Foundation. He previously served as United Nations under-secretary-general for political affairs (2012-18) and U.S. assistant secretary of state for Near Eastern affairs (2009-12). His postings in the U.S. Foreign Service included Beirut, Baghdad, Jerusalem, Tunis, Tel Aviv, Amman, Budapest, and Port-au-Prince. He is also a member of the Dialogue Advisory Group's Board of Advisors.

ACKNOWLEDGEMENTS

The author would like to thank the Dialogue Advisory Group in Amsterdam for supporting his March 2019 travel to Sri Lanka, which made this policy brief possible.

The Brookings Institution is a nonprofit organization devoted to independent research and policy solutions. Its mission is to conduct high-quality, independent research and, based on that research, to provide innovative, practical recommendations for policymakers and the public. The conclusions and recommendations of any Brookings publication are solely those of its author(s), and do not reflect the views of the Institution, its management, or its other scholars.