



# Sri Lanka: Stepping Back from a Constitutional Crisis

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**What's new?** On 26 October, Sri Lanka's President Maithripala Sirisena abruptly dismissed the prime minister, Ranil Wickremesinghe, and appointed controversial former President Mahinda Rajapaksa to the premier's post, in a move that contravenes the constitution and threatens to destabilise the country.

**Why does it matter?** Rajapaksa's appointment has already emboldened his supporters, with their actions provoking violence. More unrest is likely as the president and the new prime minister seek to consolidate support. The struggle for power jeopardises progress on reforms, ethnic reconciliation, and prospects for peaceful and fair elections in 2019.

**What should be done?** The U.S., EU and other international actors should continue to urge Sirisena to reconvene parliament to select a prime minister through legal channels. They should back these calls by making clear that Rajapaksa's appointment, if it stands, threatens the future of security and economic cooperation.

## I. Overview

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President Maithripala Sirisena's unexpected decision on 26 October to sack Prime Minister Ranil Wickremesinghe and replace him with the former president, Mahinda Rajapaksa, could seriously destabilise and set back Sri Lanka. In failing to follow established legal procedures, Rajapaksa's appointment, should it stand, would be the country's first ever unconstitutional transfer of power. The power struggle now underway between Rajapaksa and Wickremesinghe has already turned violent, with the new prime minister's supporters attempting to stop a recently ousted minister from entering his office and clashing with his security detail. Risks of further bloodshed are high, particularly if mass protests by Wickremesinghe loyalists continue over the coming days. Questions over the legitimacy of Rajapaksa's administration could heighten tensions in the run-up to local and national elections scheduled over the next year.

The U.S., EU, India and other governments with influence should press for parliament to be immediately convened so that Sri Lanka's elected representatives can choose a prime minister through constitutional procedures. The U.S., EU and European governments should stress to President Sirisena that retaining Rajapaksa without parliamentary approval jeopardises the future of economic support and security cooperation.

## II. An Unconstitutional Change of Power

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The current crisis carries many contradictions. Sirisena was elected president in January 2015 after he left then-president Mahinda Rajapaksa's cabinet and challenged him with the backing of Wickremesinghe's United National Party (UNP), a wide network of civil society groups, and a small number from Sirisena's – and Rajapaksa's – Sri Lanka Freedom Party (SLFP). Sirisena was elected on a platform of democratic renewal and reconciliation, and backed by an unusual coalition of Tamil, Muslim and more liberal Sinhalese voters. He promised to hold members of the Rajapaksa administration and family accountable for alleged corruption and assassinations, and to deliver justice for war crimes committed during the military campaign against the Tamil Tigers. He also pledged to end the executive powers of the presidency, which long have been criticised as anti-democratic and have contributed to Sri Lanka's history of political instability and grave human rights abuses.<sup>1</sup>

Within months of taking office, Sirisena won parliamentary approval for the 19th amendment to the constitution, which weakened – but did not remove – the president's executive powers, restored the independence of several government oversight bodies, and reimposed the two-term limit on the presidency, which Rajapaksa had lifted in 2010.<sup>2</sup> In the August 2015 parliamentary elections, the UNP won a strong plurality of votes and formed a national unity government with the United People's Freedom Alliance (UPFA), the coalition headed by Sirisena's party.

The national unity government, headed jointly by Sirisena and Wickremesinghe, succeeded in restoring media freedoms and the independence of the police and judiciary, at least as compared to the situation under Rajapaksa. But its failure to improve the economy for most Sri Lankans, widely publicised reports of ongoing corruption by senior UNP figures – which they strenuously deny – and the lack of prosecutions for high-profile crimes committed during the Rajapaksa presidency have severely damaged its credibility as an engine of reform. The government has grown increasingly unpopular over the past year, as the population contends with rising oil prices and a falling rupee, and as Sirisena and Wickremesinghe have regularly and publicly reversed each other's policies – notably on the economy and ethnic reconciliation. The president and the prime minister have never formed a strong working relationship. Each has taken steps to undermine the trust and respect of the other.

The divisions and mistrust between the two men grew sharper after elections in February 2018 when Rajapaksa's newly formed Sri Lanka Podujana Peramuna (SLPP) won a large majority of local councils and humiliated both Sirisena's and Wickremesinghe's parties, which campaigned more against each other than against the SLPP. With the SLPP widely expected to win the next presidential and parliamentary elections, Sirisena has struggled to find a way to remain in power after his term expires at the end of 2019. Blaming the prime minister and the UNP for his precarious situation, Sirisena has been actively searching for ways to remove Wickremesinghe. With the failure of a parliamentary no-confidence vote against Wickre-

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<sup>1</sup> For an analysis of Sirisena's original reform agenda and the initial months of the Sirisena-Wickremesinghe coalition, see Crisis Group Commentary, *A New Sri Lanka?*, 18 May 2015 and Crisis Group Asia Report N°272, *Sri Lanka Between Elections*, 12 August 2015.

<sup>2</sup> On the 19th amendment, see Crisis Group Report, *Sri Lanka Between Elections*, op. cit., pp. 8-9.

mesinghe in March, which Sirisena was widely believed to support – he made little secret of his desire to see the prime minister defeated – the president was known to be in discussions with Rajapaksa and the SLPP about a new governing coalition. Given Wickremesinghe’s ability to retain majority support in parliament, however, it seemed Sirisena would be forced to maintain the status quo until the presidential election due by November 2019.

The timing and the procedure used to remove Wickremesinghe as prime minister on 26 October thus came as a surprise. Sirisena and supporters argue that the president’s formal withdrawal of the SLFP-led UPFA from the national unity government meant the cabinet was dissolved – and this in turn meant that the prime minister’s position was vacated.<sup>3</sup> Few independent constitutional experts accept this reasoning, pointing to clear provisions in the constitution stipulating that the prime minister can be removed only if the government has been defeated at the formal statement of its policy during the first sitting of a new parliamentary session, at the presentation of the budget or through a no-confidence vote.<sup>4</sup>

Sirisena’s decision on 27 October to suspend parliament for three weeks suggests that he and Rajapaksa do not believe that they have the votes yet to defeat Wickremesinghe in the legislature. Suspending parliament further undermines the legality of Wickremesinghe’s dismissal, who has from the beginning claimed he retains majority support and demanded a chance to prove it in a vote. Sirisena’s and Rajapaksa’s strategy seems to assume that they have a better chance of gaining a majority in parliament once the latter is installed alongside new cabinet ministers who control all levers of state power, a process that began on 29 October. Sri Lanka has a long tradition of parliamentary crossovers from one party to another, which in the past allegedly have been induced by offers of money and perks, and sometimes by threats.<sup>5</sup>

Rajapaksa’s appointment has generated resistance among parliamentarians. The speaker, Karu Jayasuriya, a veteran of the UNP but a man respected for his non-partisan approach, has written to Sirisena challenging the prime minister’s removal and calling on him to reconvene parliament. The head of the main Tamil party, the Tamil National Alliance (TNA), Rajavaritham Sampanthan, who is also the official leader of the opposition, has written to the speaker and urged him to “uphold the rule of law by summoning parliament forthwith”.<sup>6</sup> The leftist Janatha Vimukthi Peramuna (JVP), a bitter critic of both Rajapaksa and the UNP, has also called for parliament to be recalled immediately.

The levels of support Wickremesinghe and Rajapaksa currently enjoy in parliament are uncertain. Prior to Wickremesinghe’s dismissal, the UNP had the backing of 106 parliamentarians, while Sirisena’s UPFA, now fully behind Rajapaksa, had 95. Were

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<sup>3</sup> “GL explains how PM was removed and why Parliament was prorogued”, Adaderana.lk, 27 October 2018

<sup>4</sup> Articles 46 and 48, 19th amendment to the Sri Lankan constitution; Crisis Group interviews, constitutional scholars, October 2018. For an extended analysis of these questions, see Asanga Welikala, “Paradise lost? Preliminary notes on a constitutional coup”, *Groundviews*, 27 October 2018.

<sup>5</sup> Crisis Group phone interviews, politicians, lawyers and journalists, October 2018.

<sup>6</sup> “Hon. Sampanthan Writes to the Speaker to Summon the Parliament”, Tamil National Alliance, 28 October 2018; “Sri Lanka parliament speaker recognises Ranil Wickremesinghe as prime minister”, PTI, 28 October; “JVP, too, asks Speaker to reconvene parliament immediately”, *Island*, 30 October 2018.

the 225-member parliament to choose a new premier (likely through a vote of no confidence in Rajapaksa), then 113 votes would carry the day. That said, were the JVP's six parliamentarians to abstain in their anger at both candidates, as most observers expect, 110 votes would be enough. In the days since Rajapaksa claimed the prime minister's office, he appears to have won the support of at least six additional members, leaving him with nine more to win over.<sup>7</sup> For Wickremesinghe to survive, he will almost certainly require the backing of all sixteen votes from the Tamil party, the TNA, which are not guaranteed.

An appeal by Wickremesinghe or others to the Supreme Court is possible. But the Court is unlikely to intervene or to rule against Sirisena's appointment of Rajapaksa. That appointment has generated a great deal of criticism within politically engaged circles in the capital Colombo and among UNP supporters, but there is as yet no sign of widespread public resistance, in part because Rajapaksa remains popular among many Sinhalese who make up three quarters of the population, and even more so when contrasted with the increasingly dysfunctional Sirisena-Wickremesinghe "unity government".

### III. The Risks Ahead

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Should Sirisena stick to his guns, as appears likely, Sri Lanka's political stability will be at risk. As the president and Rajapaksa spend the next three weeks jockeying for support and buying votes in parliament, the struggle for power could easily turn violent as both sides try to prove they have support on the streets. While Rajapaksa may not yet have the votes in parliament, he is believed to have the backing of much of the military, police and key supporters with a track record of using threats and violence.<sup>8</sup>

One person died and two others were wounded when pro-Rajapaksa crowds attempted to prevent the dismissed petroleum minister, Arjuna Ranatunga, from entering his ministry on 28 October and Ranatunga's bodyguard opened fire (the bodyguard and Ranatunga have both been arrested in connection with the shooting).<sup>9</sup> Crowds of government employees from pro-Rajapaksa unions forcibly occupied government TV stations after Wickremesinghe's dismissal. Former minister and close Rajapaksa ally Wimal Weerawansa has threatened that his supporters will remove Wickremesinghe by force if he fails to leave his official residence.<sup>10</sup> The UNP's large public protest to support the ousted prime minister in Colombo on 30 October passed peacefully, but future protests could turn violent, with many fearing that the security forces will use a heavy hand or fail to prevent attacks on those opposing Wickremesinghe's removal.<sup>11</sup>

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<sup>7</sup> "Wijeyadasa, three other UNPers get portfolios", *Island*, 30 October 2018.

<sup>8</sup> Crisis Group Asia Report N°253, *Sri Lanka's Potemkin Peace: Democracy Under Fire*, 13 November 2013.

<sup>9</sup> Ranatunga was reportedly arrested for trespassing and was released on bail; his bodyguard was arrested for the shooting itself. "MP Arjuna released on bail, MSD officer remanded", *Daily Mirror Online*, 29 October 2018.

<sup>10</sup> "JO warns it will storm Temple Trees if Ranil stays", *Colombo Gazette*, 26 October 2018.

<sup>11</sup> Crisis Group phone interviews, politicians and lawyers, October 2018; "UNP holds massive rally in the vicinity of Temple Trees", *Colombo Telegraph*, 30 October 2018.

If Rajapaksa succeeds in establishing himself and a new government in power on the basis of an unconstitutional manoeuvre, Sri Lanka will face other dangers. In a context of heightened tensions and political polarisation, the provincial and parliamentary elections Rajapaksa has said he is committed to holding as soon as possible could also see violence, with pro-Rajapaksa SLPP supporters feeling empowered to attack UNP candidates and supporters, many of whom may already be primed to avenge their loss of power.

Should Rajapaksa's position as prime minister be ratified in parliament, his return to power will likely end Sri Lanka's flagging efforts at ethnic reconciliation. He will almost certainly try to weaken or abolish the recently established Office of Missing Persons, tasked with determining the fate of thousands missing or forcibly disappeared during the war, and the Reparations Office, which is designed to compensate those who suffered damages from the war, both of which Rajapaksa and the SLPP campaigned against. He is likely to maintain or strengthen the heavy presence and activities of the military in Tamil-majority areas in the north and east. Tamil activists and journalists, who already face intense police and military surveillance, as well as threats of violence, will be at risk of increased harassment or worse. So, too, will critics of the Rajapaksa family and dissenters throughout the country.

Tamils are already frustrated at the failure of the current government to deliver on its most important promises. These include drafting a new constitution with greater devolution of power to the provinces, establishing a hybrid court to prosecute war crimes, demilitarising and reforming the security sector, repealing the Prevention of Terrorism Act and releasing Tamils detained under its harsh provisions. A strong Sinhala nationalist, Rajapaksa will only accelerate the spread of political alienation among Tamils and bolster those in the security services who favour tough measures to suppress dissent.

Sri Lanka's Muslims, who suffered four days of violent attacks on mosques, businesses and homes by militant Buddhist nationalists in March, could also be at greater risk under a resurgent Rajapaksa administration. A key suspect in the anti-Muslim violence was released on bail from prison on 29 October, following a concerted campaign by Sinhala nationalists with connections to the military and to Gotabaya Rajapaksa, Mahinda's powerful brother, formerly in charge of the police and military.<sup>12</sup> Two days earlier, Gotabaya held a press conference to defend Wickremesinghe's removal in the company of the Buddhist monk Ittakande Saddhatissa, who has been arrested multiple times for his involvement in violent protests.<sup>13</sup>

Rajapaksa's government also can be expected to reverse the growing independence of the judiciary, police, Human Rights Commission and other bodies. Police investigations and prosecutions of crimes allegedly committed by members of Rajapaksa's family and close associates when they held power have been proceeding, albeit slowly. They will almost certainly be halted, with many believing that a desire to hamstring the judicial process was one of the Rajapaksas' main motivations to return to power now, rather than wait for elections in 2019 and 2020. The small remaining

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<sup>12</sup> "Mahason Balakaya leader granted bail", *Island*, 30 October 2018.

<sup>13</sup> Ittakande Sadhatissa denies the charges. "Ven. Ittakande Sadhatissa, Ven. Bengamuwe Nalaka, two other monks granted bail", *Daily News*, 4 September 2018; "Leaders of extremist Buddhist groups in Sri Lanka surrender to police", *Colombopage.com*, 15 February 2016.

window of opportunity to challenge the culture of impunity for grave human rights violations, which has plagued Sri Lanka for decades, will likely close.

#### **IV. What Can Be Done**

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While Sirisena and Rajapaksa may currently have the upper hand, the outcome of the power struggle is still undecided. Influential governments and international institutions should support those who are peacefully challenging Rajapaksa's appointment from within the country by sending strong messages that the unconstitutional move will bring significant costs for Sirisena, Rajapaksa and the Sri Lankan state. They should continue to call on Sirisena to reverse his decision and allow parliament to reconvene with immediate effect, follow the constitutionally sanctioned process and allow the two sides to test their support through a vote of no confidence.

The U.S., EU, UK, Australia, India and all governments with influence should urge the military and police to enforce the law fairly and without bias and refrain from cracking down on peaceful protest by the UNP or citizens' groups, as far as possible. They should make clear that they will reduce or end training programs and other forms of cooperation with Sri Lanka's military and police if those bodies actively back Rajapaksa's power grab.

Foreign governments and organisations also should reconsider any economic support linked to democratic governance. The EU should make clear that preferential trade benefits, only restored to Sri Lanka in 2017 thanks to its improved compliance with human rights treaties, could be lost again should Rajapaksa retain the premiership on the basis of an unconstitutional change of power. The U.S. should immediately suspend the process for final approval of \$450 million in economic development funding from the Millennium Challenge Corporation, a program designed in part to reward good governance. Governments should also begin to consider applying targeted sanctions against Sirisena, Rajapaksa, their families and their close associates should Sri Lanka's constitutional coup proceed.

A reborn Sirisena-Rajapaksa alliance with illegitimate beginnings will increase concern among some member states of the UN Human Rights Council when it considers Sri Lanka's situation in March 2019. Many governments on the council are already unhappy with the limited progress Sri Lanka has made in implementing the reforms stipulated in the Council's 2015 resolution on reconciliation and accountability. This is particularly true with regard to Sri Lanka's failure to investigate credible allegations of war crimes and grave human rights abuses that took place during Rajapaksa's presidency, including by both government forces and the Tamil Tigers, whose separatist military campaign was defeated in May 2009. With a Rajapaksa-led government likely to scrap most, if not all, of the reforms the Sirisena-Wickremesinghe government initiated, Council member states should commit to working toward a new resolution that will maintain its oversight role and continued reporting by the Office of the High Commissioner for Human Rights, which will otherwise expire in March 2019.

Domestic and international resistance to Sri Lanka's change of government is not about rescuing Ranil Wickremesinghe and the UNP. Their many mistakes over the past three and a half years have directly contributed to the difficult situation they

face. But much more is at stake than the relative power of Sri Lanka's different political parties. An unconstitutional change of power puts at risk Sri Lanka's democracy itself, which, while deeply flawed and regularly failing to represent and protect ethnic and religious minorities, nonetheless has provided an important safety valve for conflict over the decades. To prevent Sri Lanka's descent into a darker future, and to limit the risks of violence and lasting political instability this would bring, urgent action from within and outside the island is needed.

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