

Sri Lankan Supreme Court ruling undermines basis for peace talks

Wije Dias

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In a major ruling on October 16, a five-judge bench of the Sri Lankan Supreme Court headed by Chief Justice Sarath N. Silva declared invalid the merger of the North and East provinces. The decision is a blow to the internationally-sponsored peace process because the merger of the provinces, which Tamil nationalists claim as their “traditional homeland,” has long been considered the basis for a political settlement of the country’s civil war.

The Sinhala extremist Janatha Vimukthi Peramuna (JVP), which brought the case before the Supreme Court, has been hostile to the “peace process” from the outset. It opposed the ceasefire signed in 2002 with the Liberation Tigers of Tamil Eelam (LTTE) and campaigned against peace talks in 2003. During those negotiations, the LTTE dropped its demand for a separate statelet of Tamil Eelam, in return for a significant political role in an administration of the merged North and East with enhanced powers.

The JVP vehemently opposed such a power-sharing arrangement but did not begin campaigning for the demerger of the two provinces until this year. Last November, the JVP backed Mahinda Rajapakse in the presidential election on the basis of an electoral agreement that made aggressive new demands on the LTTE, including a fundamental revision of the ceasefire agreement. The JVP launched its legal case this year emboldened after Rajapakse’s decision to escalate the armed conflict against the LTTE and effectively destroy the 2002 ceasefire.

The Supreme Court decision came amid preparations for a new round of peace talks in Geneva on the weekend of October 28-29. While the Rajapakse government was never serious about negotiating an end to the current fighting, the ruling was a further obstacle to any discussion on a political settlement. The talks broke up without any agreement, including on the date for another round. Two of the lawyers who argued the JVP’s case—H.L.de Silva and Gomin Dayasiri—were part of the government delegation.

The two provinces were merged following the Indo-Lanka Accord signed by Indian Prime Minister Rajiv Gandhi and Sri Lankan President J.R. Jayawardene on July 29, 1987.

The agreement was a desperate move to end the civil war, which began in 1983 and was destabilising the southern Indian state of Tamil Nadu, as well as Sri Lanka.

A provincial council for the merged North and East was a sop to the various Tamil separatist organisations, including the LTTE, which had been fighting for a separate Tamil state. India dispatched thousands of “peacekeepers,” ostensibly to oversee the Accord’s implementation, in particular the disarming of the LTTE and other Tamil guerrilla groups, all of which backed the agreement. In reality, the Indian Peace Keeping Force was dispatched to suppress the struggle for democratic rights by the Tamil minority in the north, and free the Sri Lankan army to deal with growing social unrest in the south.

The Accord stated: “A cessation of hostilities will come into effect all over the island within 48 hours of signing the agreement... The process of surrendering of arms [by the Tamil groups] and the confining of security personnel moving back to barracks shall be completed within 72 hours of the cessation of hostilities coming into effect.” None of this occurred. Tensions with the LTTE escalated once India made clear it would support only a limited role for the Tamil separatists.

President Jayawardene told parliament seven months later: “Peace prevailed in the north and the east for a few weeks after the agreement was signed. A formal handing over of arms took place on 5th August 1987... This process was not completed as one group, the LTTE, violated the agreement... Since then violence has continued in these areas and the Indian Peace Keeping Force was compelled to take firm action to recover arms and explosives and had therefore to increase their numbers in the north and east.”

Nevertheless, the 13th constitutional amendment providing for devolution of powers to provincial councils was passed in August 1987, as was a Provincial Council Act (PCA). The PCA made the merger of the North and East conditional on an end to hostilities and the surrender of arms. However, President Jayawardene signed an emergency regulation in September 1988, waiving the two conditions by saying that

their implementation had “commenced”.

Elections have been held for seven of the eight provincial councils ever since they were established. A north-east provincial council was elected in 1988 but arbitrarily dissolved within a few months and never reestablished. The two provinces remained merged, but were effectively ruled from Colombo via a governor appointed by the president. This form of rule is one of the anti-democratic methods used to suppress any opposition to what has been in effect a military occupation of the North and East for more than two decades. At present, the governor is retired Rear Admiral Mohan Wijewickrama.

The merger of the North and East has never been legally challenged. Eighteen years later, the Supreme Court has ruled that Jayawardene’s emergency regulation, and therefore the subsequent merger, was invalid. Any change to the PCA had to be made through parliament. The court has called for the holding of elections for a separate provincial council in the East.

The court decision directly assists the JVP’s communal agitation against the “peace process”. The JVP’s demand for a de-merger was not part of the electoral agreement with Rajapakse last November. However, after the government began launching open offensives against the LTTE in July, the JVP hardened its demands. In recent talks on a coalition with Rajapakse’s Sri Lanka Freedom Party (SLFP), the JVP included the de-merger of the two provinces as one of its essential conditions. The negotiations failed, but the JVP will undoubtedly exploit the court ruling as a vindication of its stance.

The ruling was also welcomed by the so-called Karuna group, which broke away from the LTTE in 2004, claiming that the LTTE leadership in the North was discriminating against “easterners”. The Karuna group functions as a paramilitary outfit and collaborates closely with the military against the LTTE. The organisation has been seeking to establish itself as a political party based on a narrow parochial appeal to eastern Tamils.

The LTTE and its parliamentary proxy, the Tamil National Alliance (TNA), opposed the court decision. LTTE political wing leader S.P.Tamilselvan declared: “As far as we are concerned Tamils cannot be divided. The Sri Lankan government has no right to decide whether to merge or de-merge Tamil land because the Tamil people have not accepted the constitution of the Sri Lankan government nor have we.”

TNA MPs disrupted parliamentary proceedings for three days to protest against the ruling. Spokesman Gajendra Ponnambalam demanded that the government make clear its own position on the de-merger of the North and East by November 7. The TNA also organised a protest that largely

shut down administration, schools, transport and businesses in the North and East.

The ruling poses a dilemma for the government. The major powers overseeing the peace process—the US, the EU, Japan and Norway—warned against the JVP’s demand for a de-merger even prior to the court decision. Following a meeting in Brussels on September 12, they issued a statement declaring, “there should be no change to the specific arrangements for the north and east which could endanger the achievement of peace”. During a visit to Colombo on October 20, US Assistant Secretary of State Richard Boucher told a press conference the court ruling had come “at an unfortunate time”.

The Rajapakse government could introduce new legislation into parliament to amend or replace the PCA and uphold the merger. Such a move, however, would be denounced by the JVP, which still supports the government in parliament. While Rajapakse has formed a formal alliance with the United National Party (UNP), rather than the JVP, he is acutely sensitive to the JVP’s Sinhala chauvinist agitation. His SLFP and the UNP are both based on communal politics.

In parliament yesterday, Prime Minister Ratnasiri Wickramanayake sought to evade the issue, despite being pressed by both the JVP and TNA. He said the government could not interfere with the court’s decision and indicated that any new legislation would have to be put to a referendum. He gave no indication as to when or how a referendum would be held in what are the country’s war zones.

The problems created for the government by the court ruling reflect the broader impasse posed for the ruling class as a whole by the island’s protracted civil war. Backed by the major powers, the “peace process” was to reach a power-sharing arrangement between the government and the LTTE to integrate the island into the global productive processes, particularly in South Asia. These economic objectives, however, have repeatedly run up against the obstacles created by the communal politics on which the political establishment and the Sri Lankan state has rested since 1948.



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