

Sri Lanka: A revealing breach of the constitution

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Just before Sri Lanka's general election last Thursday, the government prevented three opposition MPs from the United National Party (UNP) from taking their oaths and parliamentary seats. While the immediate issue has been superseded by the poll results, the incident underlines President Mahinda Rajapakse's contempt for parliamentary norms and the country's constitution.

The wrangling over the seats began after two UNP MPs—Johnston Fernando and Indika Bandaranayake—crossed the floor and joined the government last year. Rajapakse's fragile ruling coalition was built by using various political inducements to encourage such cross-overs. The two MPs were given ministerial posts, but challenged the UNP's attempts to expel them in the courts. Another parliamentarian, M.M.M. Mustafa, resigned to contest the presidential election in January.

After winning a second term as president, Rajapakse prorogued parliament and called a general election for April 8. Central to the ruling coalition's campaign has been the call for a two-thirds majority, which would give the government the ability to change the constitution. Rajapakse has not spelt out why he wants that power, other than to say that he needs "a strong government" to press his economic agenda.

Even though the parliament had been dissolved, it was recalled twice to rubberstamp the country's state of emergency, which has continued despite the army's defeat of the separatist Liberation Tigers of Tamil Eelam (LTTE). Under the emergency, the president has a series of far-reaching powers to censor the media, ban industrial action and authorise arrests without charge or

trial.

Previous UNP cross-overs have obtained court orders to prevent their expulsion and retain their seats. But as parliament was dissolved, a court dismissed the cases brought by Fernando and Bandaranayake as no longer valid. The UNP expelled the MPs and proposed replacements. Elections Commissioner Dayananda Dissanayake formally announced their appointments on March 22 in a gazette notification. Traditionally they should have been sworn in at the next parliamentary session on April 6, called to ratify the state of emergency.

On March 25, International Trade Minister G.L. Peiris argued at a press conference that the UNP MPs could not be sworn in as the parliament had to remain as it was prior to its dissolution. He insisted that Fernando and Bandaranayake continued to hold their seats and remained as ministers based on the advice of the Attorney General Mohan Peiris. Asked about the Elections Commissioner's notification, the minister baldly declared that the government would take legal action to ensure the constitution was not violated.

When parliament met last week, the speaker, W.J.M. Lokubandara, refused to allow the new UNP parliamentarians to be sworn in, saying that the session had been called only to approve the renewal of the state of emergency. Government parliamentary leader Nimal Siripala de Silva defended the decision, declaring that this could be a constitutional lapse, but it was not the time to correct it.

The issue may appear to be a minor point of parliamentary etiquette. Even if the UNP

parliamentarians had been seated, it would have been only for two days. The UNP certainly used the question as a political diversion from the fact that it mounted no serious opposition on the far more important issue before the parliament: the reimposition of the state of emergency.

Nevertheless, the government's decision to ignore the Elections Commissioner and openly breach the constitution underscores its autocratic character. Ministers can take advice from different sources, including the Attorney General, but the decision of the Elections Commissioner can only be overridden through a legal challenge in the courts. As UNP leader Ranil Wickremesinghe noted in a letter to the parliamentary speaker, "the Attorney General has no power vested in him to interpret the Constitution; that lies elsewhere".

Last week's incident is not an aberration. In the course of the past four years, Rajapakse has increasingly flouted parliamentary norms, the legal system and the constitution. In conducting the renewed war against the LTTE, the president increasingly relied on a small cabal of generals, relatives and close advisers who ruthlessly prosecuted military operations that killed thousands of civilians and trampled on basic democratic rights.

After the LTTE's defeat last May, the army incarcerated more than a quarter of a million Tamil civilians in detention camps in flagrant breach of their basic legal rights under the constitution. The government claimed that these prisons were "welfare villages" for refugees, but men, women and children were treated as prisoners of war. They were not allowed to leave and visitors were subject to rigorous screening.

Rajapakse has also explicitly ignored the constitution. Under the 17th Amendment to the constitution, the president is required, in consultation with opposition parties, to appoint a constitutional council, which in turn establishes other commissions on elections, the public service, police and bribery and corruption. When the Supreme Court directed the president to abide by the amendment, Rajapakse refused to do so.

The amendment was introduced into the constitution after successive governments politicised key government institutions. That process has only intensified under Rajapakse, with his loyalists being installed in the police, judiciary, state bureaucracy and armed forces. To implement the amendment would have cut directly across Rajapakse's network of patronage and undermined his ability to wield the state apparatus against his political opponents.

The results of last week's election are yet to be finalised. While it clearly won a majority, it appears that the ruling coalition may fall short of its two-thirds majority. Undoubtedly Rajapakse will seek to obtain the necessary numbers by enticing opposition MPs to cross the floor. Obviously, he did not want a precedent set by the replacement of Fernando and Bandaranayake that would undermine this sordid manoeuvring.

If it achieves a two-thirds majority, the government has indicated that it will change the voting system—in order to further entrench itself in power—and alter the 17th Amendment—to ensure that Rajapakse's appointments are not threatened. But the regime will not stop there. Its economic agenda involves the imposition of austerity measures that will inevitably provoke widespread resistance from working people. Rajapakse wants the power to alter the constitution in order to legitimise police-state measures to suppress any political opposition.



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