A Dangerous Sea Change in Sri Lanka

Since his election on 16 November 2019, Sri Lankan President Gotabaya Rajapaksa and his brother, Prime Minister Mahinda Rajapaksa, have initiated fundamental changes to policies on ethnic relations, the legacy of a 26-year civil war, and the rule of law. Mahinda had previously served as Sri Lanka’s president and Gotabaya as defence minister during the brutal final phase of the country’s civil war, when troops under their command, as well as the separatist Tamil Tigers they fought, are credibly alleged to have committed grave violations of the laws of war. The new Rajapaksa government has reversed or announced its intention to abandon many key legislative achievements and policy commitments of the preceding United National Party (UNP) government, including promises on post-war reconciliation, accountability and inclusive governance made to the UN Human Rights Council and to the EU. The shift in policy, rooted in part in the ethno-nationalism of many among Sri Lanka’s Sinhala and Buddhist majority, threatens to increase ethnic and religious tensions and dangerously weaken checks on executive and state power.

The changes pose a deep challenge to EU policy in Sri Lanka, which has supported ethnic reconciliation, human rights and political stability rooted in inclusive governance – and which now finds itself at cross-purposes with the country’s leadership. Against this backdrop, the EU and member states should continue to press Colombo to strengthen rights-respecting governance while making clear that it will not support programs which encourage political repression or discrimination.

Specifically, the EU and member states should:

- Reiterate support for the reconciliation and accountability agenda agreed to by Sri Lanka at the UN Human Rights Council (UNHRC) in Resolution 30/1 (2015) and work to build support on the council for continued UNHRC engagement beyond the resolution’s expiration in 2021.

- Communicate clearly in upcoming high-level meetings with the new Sri Lankan government that the EU has begun an informal review of the Generalised Scheme of Preferences trade and tariff concessions extended to Sri Lanka (known as “GSP+”) and that continued benefits are at risk if...
Colombo continues on its present course.

- Review funding for UN-administered Counter-Terrorism and Preventing Violent Extremism programs, avoiding support for activities with a discriminatory focus on Muslims, and avoiding any engagement with planned “deradicalisation” or “rehabilitation” programs targeted at Muslims accused of involvement in militant activities without strict human rights protections in place.

- Launch a full review of all policies and programs in Sri Lanka, including development cooperation and contributions to the UN-administered Priority Peacebuilding Plan, to ensure they support efforts consistent with European conflict prevention and human rights objectives.

A New Government and a Sea Change in Policy

The results of Sri Lanka’s presidential election in November 2019 reflect a deeply polarised country. Gotabaya Rajapaksa campaigned on a Sinhala nationalist platform and won thanks to unprecedented levels of support from ethnic majority Sinhalese voters, while Tamil and Muslim voters overwhelmingly rejected him. Among Rajapaksa’s 54 ministers are only two Tamils, and, for the first time since the nation became independent in 1948, no Muslim minister at all; there is only one female minister. Citing opposition among the Sinhala majority, Rajapaksa has repeatedly rejected any further devolution of power to the provinces, including what is mandated in the current constitution, thereby neutralising a mechanism intended to give ethnic minorities greater self-governance. Past statements by Gotabaya calling the large Tamil majority in the north “unnatural” heighten fears of military- and state-supported population transfer designed to change the demographic picture.

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The status of Muslims as full participants in the country’s social, political and economic life is also at growing risk. Following the ISIS-inspired 2019 Easter bombings – which killed more than 260, mostly Christian worshippers, and wounded many more – Muslims, especially Muslim women, whose use of face veils was briefly banned, have faced increased social discrimination and damaging economic boycotts. Radical Buddhist militants who back – and have in past had the backing of – Gotabaya Rajapaksa, have targeted Muslims for discrimination. All Sinhala suspects arrested for anti-Muslim violence have been released, with no prosecutions likely, while hundreds of Muslims remain in custody under the Prevention of Terrorism Act, many detained following the Easter bombings on questionable grounds and some reportedly suffering physical abuse and extortion.

Following a post-election statement by Mahinda Rajapaksa that indicated a desire to weaken religious and ethnic-based parties, Rajapaksa’s allies proposed a constitutional amendment that would dilute minority representation in parliament by increasing the threshold of votes needed for parties to be represented from 5 to 12 percent. Should the government endorse the amendment and gain the two-thirds parliamentary support needed to pass it, Muslim political parties would be unlikely to obtain any seats. This would further marginalise and anger a community that already feels under siege.

The Rajapaksas have also taken dramatic steps to consolidate their family’s control of the government. A 10 December presidential decree assigned responsibility for one third of all government departments to ministries headed by one of three Rajapaksa brothers, including, aside from Gotabaya and Mahinda,

Chamal Rajapaksa, Minister of Mahaweli Development, Agriculture and Trade and State Minister of Defence. Gotabaya and other officials have announced their desire to reverse prior reforms that had reined in the presidency’s power. A proposed constitutional amendment would allow the president once again to hold multiple ministerial portfolios, and unilaterally to appoint judges, the attorney general, the police chief and other senior officials, without involvement of the constitutional council.

The new government also quickly rolled back police investigations into a series of high-profile political killings and disappearances during the Mahinda Rajapaksa administration – many, according to detailed evidence submitted to courts, allegedly committed by military intelligence units at a time when Gotabaya was defence secretary. Courts have released suspects in virtually all of the so-called “emblematic cases” of serious human rights violations and political crimes. Within days of Gotabaya’s election, the new government removed the lead police investigators’ security details, transferred them to menial jobs, and denounced them as traitors. The most prominent investigator, Nishantha Silva, fled the country fearing for his safety. The government has launched a review of all prosecutions of Mahinda-era abuses, which the Rajapaksas and supporters have long called politically motivated, and announced a presidential commission to investigate police and other officials responsible for the alleged “witch hunt”.

Gotabaya and Mahinda have long argued that the UN Human Rights Council’s Resolution 30/1 (2015) – which addresses reconciliation, accountability and human rights in Sri Lanka – infringes on the country’s sovereignty and betrays its war heroes. They particularly object to the provision for a special court to investigate and prosecute alleged war crimes (something to which the UNP-led government was never fully committed). Gotabaya has made clear his government rejects the entire UN process and the commitments undertaken in that context by the previous UNP-led government. The current government’s blanket denial of any violations by the military or police requiring investigation or prosecution has returned Sri Lanka to the hardline positions of 2009-10, rolling back even the modest recognition of government excesses found in the conclusions of the 2011 Lessons Learnt and Reconciliation Commission. The Justice Ministry has announced its intention to “review” the legislation establishing the Office of Missing Persons, one of two transitional justice institutions established by the previous government; many observers expect its powers will be restricted, or the office eliminated entirely.

**Recommendations to the EU and Member States**

EU policies in Sri Lanka will not reverse Sinhala Buddhist majoritarianism, nor prevent the return to authoritarian rule that the Rajapaksas have already set in motion. Sinhala and Buddhist nationalism has deep roots, and challenges to Sinhala nationalism from outside Sri Lanka could further inflame nationalist sensitivities. Nonetheless, stressing the dangers posed from abandoning commitments on reconciliation and the rule of law to all Sri Lankans – and particularly about the importance of keeping open democratic space so citizens can challenge discriminatory and militarist policies, and build cross-ethnic political alliances to counter ethnic polarisation – is important. The EU, together with Sri Lanka’s other international partners, can and should also work to ensure their funding or other support does not inadvertently help implement policies that further marginalise minorities and threaten their rights – and thereby increase tensions that exacerbate the risks of violent conflict.

The EU’s first challenge will come in late February, when the Human Rights Council considers the latest update report from the UN High Commissioner on Sri Lanka’s implementation of the 2015 resolution. Should Sri Lanka put forward a resolution to formally repudiate and reverse 30/1, European members of the Council should throw their efforts into building a coalition able to win a contested vote. If Sri Lanka does not put forward such a resolution, members should reiterate their strong support for the reconciliation and accountability agenda agreed to by Sri Lanka as an essential element of the country’s
long-term stability, while working toward a council coalition for follow-up action in 2021, when the current resolution expires.

The EU’s 2016 decision to reinstate GSP+ trade preferences to Sri Lanka, which gave a significant boost to its economy, was predicated on government commitments to implement a wide range of international human rights treaties. Particularly important was its promise to repeal the Prevention of Terrorism Act and replace it with new, human rights-compliant counter-terrorism legislation – a promise the new government reversed in January. The government has also rejected or appears unlikely to advance other rule of law and governance initiatives linked to GSP+ and discussed through the EU-Sri Lanka joint committee process – including prosecutions in the “emblematic cases”. After the biannual GSP+ monitoring report due in early February – which will consider only the previous government’s actions – the next report is not due until 2022. The European Commission and European External Action Service can use the leverage that GSP+ benefits provide by communicating in its next joint commission meeting and working group on governance that an informal review is already under way, and that the continuation of benefits hinges on whether the government corrects course and begins meeting commitments underlying the EU’s 2016 decision.

"The EU should make clear it supports the ongoing UN human rights due diligence review of its engagement with Sri Lankan security forces."

With the return to power of a government whose senior officials are credibly alleged to have overseen grave human rights violations under the claimed rubric of counter-terrorism, the EU’s funding for UN-administered Counter-Terrorism and Preventing Violent Extremism programs needs to be carefully reviewed to ensure strict human rights protections are in place, including respect for women’s civil and religious rights as outlined in UN guidelines. The EU should make clear it supports the ongoing UN human rights due diligence review of its engagement with Sri Lankan security forces, and should avoid funding “deradicalisation” or “rehabilitation” programs targeted solely at Muslims accused of involvement in militant activities. The EU also should make clear to its implementing partners, UN Office on Drugs and Crime and UN Development Programme, that, if need be, they should redirect EU funding following a full review of their programs’ impact on conflict risk in Sri Lanka.

A full review of EU policies toward Sri Lanka and how they affect conflict risk and human rights probably will indicate that large portions of the UN-administered Peacebuilding Priority Plan (PPP) – a framework for coordinating international support to transitional justice, reconciliation and good governance, which the EU supports financially – will be difficult if not impossible to implement in the current political climate. The EU should support a full review and reframing of the PPP in light of this and should consider prioritising support to human rights defenders and independent media. The EU’s conflict review should also extend to its development cooperation. Development assistance – either directly from the EU or through multilateral institutions that receive EU financing – could unintentionally support government-sponsored population transfers designed to dilute the Tamil majority in the northern province and parts of the east.