

The Key Lessons for the State and the Tamil Minority Derived from the Civil War in Sri Lanka

Chaminda Abeysinghe

Department of International Studies
Faculty of Social Sciences
University of Kelaniya, Sri Lanka.

Correspondence: cabeysinghe@gmail.com

Abstract

The purpose of this study is to pinpoint the key lessons that the state and the Tamil minority groups can derive from the civil war that ended in 2009. The state, the minorities and international community are expected to have learnt some lessons from the consequences of the civil war that ravaged the country for 26 years and devastated the lives, property and economy of the country. This study uses a qualitative research approach that involves analysis of certain critical entities. The state, the society and some international players were the entities selected for assessment. Based on the lessons learned, the state could have introduced a few inclusive policies to accommodate the minorities into the state system. However, studies have revealed that contrary to the above course of action, the state decided to use the counter-insurgency approach to defeat the social forces that remained after the civil war. Further, the state sought to broadcast the message to the international community to follow the 'Sri Lankan model' for eliminating insurgency in those countries where intra-state contestations occur. As a result, post-war initiatives for installing inclusive mechanisms failed as usual. In fact, the state actually introduced exclusionary policies and consolidated its power, alienating the minorities further.

Keywords: International, lesson, majority, minority, society, state

1. Introduction

Sri Lanka has been home to a plural society for a long time.¹ With a centralised unitary structure as the model of the state, the country has witnessed perpetual power-based contestations between the state and minority groups during the post-colonial period. A defining issue in these contestations was that the larger segment of the society, the majority ethnic Sinhalese, constituted a part of the state, but the Tamil minority were discriminated against through state policies and mostly excluded from mainstream politics. Tamil political elites proposed a federal state model to avoid being placed at a disadvantage by the existing centralised unitary system (Kearny, 1967; Wilson, 1988, 2000; Orjuela, 2004; Manogaran, 2008; Uyangoda, 2012).² When state institutions attempted to respond to these minority demands by working out more equitable solutions by reconstituting the state, they were obstructed by the social forces of the majority ethnic group, the Sinhalese.

Rivalry for power domination in politics among Sinhalese elites also drove political parties such as the United National Party (UNP) and Sri Lanka Freedom Party (SLFP), to promote hard-line "Sinhala-only" nationalist ideas, by striving to capitalise on the voting tendency of this majority ethnic group (Uyangoda, 2007). Political contestations of this nature have proved to be obstacles to reconstituting the state in attempts to devolve power. Lack of progress due to such contestations culminated in secessionist

demands by the Tamils, including through military-type social forces³ funded by a well-organised Tamil diaspora (Orjuela, 2016)⁴ in Europe and North America. Support was also extended to minority militant forces by the Government of India. Over the years, the conflict escalated in the Northern and Eastern regions of the Island and subsequently turned into a full scale war between the government and the main Tamil movement, the Liberation Tigers of Tamil Eelam (LTTE). Thus, post-colonial Sri Lankan politics can be described as a continuing contestation between the majoritarian state and minority social forces.

After the government ended the separatist struggle of the LTTE in May 2009, the cessation of the destructive 30-year war should have created an opportunity for both state and society to learn many useful lessons. These lessons should have convinced them sufficiently to reconstitute the state as an inclusive institution, one in which the minorities could also participate to ensure a just and equitable future for all Sri Lankans.

This study intends to answer the question, “What are the key lessons for the state and the Tamil minority group that can be derived from the civil war that ended in 2009?” Based on the key question, the objective of this research is, “To study the lessons learnt by the state and society from the war.” This question examines state transformation as a strong centralised unitary state resulting from the defeat of the strong social force that challenged the sovereignty of the state in various ways during the war. It basically considers the effects of the conflict and war, which killed around 100,000 people, caused the displacement of millions of people internally and externally, and destroyed properties worth billions of rupees. The post-war scenario now provides a new context in which to re-examine the issue of state reconstitution in Sri Lanka by exploring this question deeply. Against this backdrop, the central argument of this study revolves around the extent to which the state and society have learnt from the protracted conflict and the consequences of the bloody war, as this knowledge could prove invaluable towards reconstituting the state with the inclusion of all stakeholders in order to avoid future contestations. Failure of all the parties concerned to learn from their past experiences in this post-war situation could prove very costly in the future, even to forthcoming generations. Therefore, in this connection it would be helpful to gain an insight into how the state transformed into a strong centralised unitary entity during the Rajapaksa regime and to examine how the counter forces responded to this situation. Exploring these recent phenomena would contribute much to the empirical literature on post-war political developments in Sri Lanka.

2. Methodology

This study is a qualitative analysis based on text analysis and supplemented with limited observations. In this section, the author discusses the methodology and its relevance to Sri Lanka. The main stakeholders of the state-minority contestations in Sri Lanka were considered as the key entities of this study, specifically, the state, society, and international actors. These key entities can be further divided into several sub-entities. The data for this research were collected using multiple methods, including an extensive literature survey covering documents written on post-independence state formation and state-minority contestations that occurred in the country. This was supplemented by a number of field observations and interviews. This two-step approach was followed for the qualitative data collection during the period 2013 to 2017.

Qualitative data analyses were conducted through critical and interpretative approaches. These approaches entailed classifying, weighing, and combining empirical materials. These processes were successfully followed in the current study. Thus, this paper reviews the new political trends that emerged after the end of the war, and provided opportunities to reconstitute the state based on lessons learnt from the war but not utilised by the state yet.

3. Results and Discussions

3.1 Lessons for the Key Actors

This section reviews the lessons learnt – and not learnt – by the key actors in this long drawn out conflict in Sri Lanka. Key actors are state, the minority and international entities.

3.1.1 Lessons for the State

This study highlights lessons from the civil war to illustrate what happens when the majoritarian state that predominantly represents the Sinhala political elites introduced policies that excluded the minorities from the state system by centralising all the government power under a unitary constitution. Tamil social forces demanded state reconstitution (i.e. a federal solution) and this led to state-sanctioned violence directed against the Tamil minority in 1956, 1958, 1977, 1981 and 1983. By the late 1970s, the ethnic Tamil social force demanding state reconstitution gradually transformed itself into a militant social force in the form of the LTTE, which began to fight for a separate state. With the passage of time, the conflict turned into a protracted civil war that wrought havoc and grievously hurt the state and society until it was brought to an end in May 2009. The civil war contains lessons warning all and sundry to avoid policies that exclude minorities.

One of the important lessons was the success of Sri Lanka's counterinsurgency efforts to defeat the strong militant social force that was the LTTE. Renowned academics, policymakers, and even the American Federal Bureau of Investigation (FBI) described the LTTE as "One of the world's most deadly, ruthless, dangerous, innovative, formidable and professional armed insurgent groups in the world." Led by Velupillai Prabhakaran, the LTTE gained international notoriety by pioneering the deployment of suicide bombers, female fighters, and even the use of chemical attacks (Lalwani, 2017). Thus, scholars specialising in counter-insurgency, terrorism, rebel governance, civil wars, and ethnic politics have all found the Sri Lankan government's decisive triumph over 'a strong militant social force' immensely surprising and worthy of further investigation (Lalwani, 2017). Sri Lanka's former Defence Secretary Gotabaya Rajapaksa went so far as to label Sri Lanka's success against the LTTE as the 'Sri Lankan Model' and encouraged other countries to follow Sri Lanka's approach in their counterterrorism/counterinsurgency efforts.⁵

The state also learned that it is necessary to prevent the formation of militant social forces in order to avoid other major contestations and the ensuing devastation. To this end, the state has taken meaningful action against the "Ava Group" which slowly grew and began to engage in violence in the Jaffna peninsula in the Northern Province of Sri Lanka where the LTTE had dominated earlier. The state introduced new law and order mechanisms to nip the activities of this group in the bud.

This particular victory over the LTTE is a lesson to the state and international community on how to defeat militant social forces that seek a separate state by resorting to the use of modern combat weaponry and tactics. However, the state's counter-insurgency drive involved the use of materials and methods that violated international laws.

After the war ended, the international community and human rights organisations levelled charges against the state of Sri Lanka and the LTTE alleging that war crimes were committed during the last phase of the war. UN Secretary-General Ban Ki-Moon appointed a three-member panel to investigate and report on the war crime allegations against both sides. After careful investigation, the UN Panel of Experts submitted their report to the Secretary-General on 12th April 2011 (Behuria, 2011). The report found the allegations that the GOSL and LTTE committed a series of violations of international humanitarian and

human rights laws to be quite credible (Hoglund & Orjuela, 2013, p. 308). Further, the report recommended an independent international inquiry into the war crimes purported to have been committed by both sides. President Rajapaksa kept putting it off for a year, but eventually, as a result of mounting international pressure, he appointed a commission of eight members to conduct an impartial investigation into the allegations of war crimes. This was named as the Lessons Learned and Reconciliation Commission (LLRC).

The much-anticipated final report of the LLRC was submitted to the President on 15th November 2011 and it was published on 16th December 2011. The commission was appointed to investigate the facts and circumstances of the failure of the Cease Fire Agreement that was operational from 22 February 2002. The commission had to follow up on the sequence of events thereafter up to 19 May 2009, when the war ended. It also had to report on the lessons that ought to be learnt from those events. The institutional, administrative and legislative aspects were also looked into in order to prevent any recurrence of misunderstandings in the future and to promote national unity and reconciliation among all communities (LLRC, 2011; Ratwatte, 2012). The limited mandate of the Commission, based only on the most fundamental requirements, inadequate witness protection, unsatisfactory composition, restricted legal framework of the operation, as well as the miserable record of previous similar bodies appointed in post-independent Sri Lanka, had led some to dismiss the LLRC as being unable to deal effectively with a significant assignment like that.⁶ The local and international communities criticised the report as it did not meet international standards nor result in any meaningful action. In March 2012, the UN Human Rights Council passed the United States sponsored resolution critical of the government, and there remains a possibility that an international commission of inquiry might ultimately be established (Lunn, 2012).

On 26th July 2012, the Government released a National Plan of Action (NPA) to implement the recommendations of the LLRC (*Daily FT*, 2015). This plan was formulated during Mahinda Rajapaksa's leadership. However, more than three years later, the overall implementation status of the LLRC recommendations have been disappointing. Meanwhile, newly-elected President Maithripala Sirisena and the national government pledged to implement the recommendations of the LLRC. Thus, according to the above observations, not only did the state of Sri Lanka learn lessons on how to manage international pressure via various strategies but also to get the support of the small states that were members of international bodies like the UNHRC. Through the special relationship with these countries, the state attempted to get support in the voting during the US sponsored resolutions against Sri Lanka in UNHRC on allegations of war crimes during the final stage of the war.

On the other hand, Sinhalese and Tamil political elites perceived that the adamant insistence of the LTTE for the formation of a separate state for Tamils was a fundamental obstacle that stood in the way of finding a resolution to the conflict through a power-sharing arrangement. It was in this context that many observers viewed the LTTE's defeat in May 2009 and end of the civil war as a decisive turning point in the history of the Island's ethnic conflict (Marcelline & Uyangoda, 2013). However, the state has not taken any meaningful initiatives so far to introduce inclusive policies to accommodate minorities into the state system. It means that Sri Lanka has not learned any lessons from the civil war that ended in 2009.

3.1.2 Lessons for Minority

The Tamil minority are the real victims of the 26 years of civil war, predominantly those residing in the Northern and Eastern provinces of Sri Lanka. They should also have learned some lessons from this brutal civil war and its consequences.⁷ In the post-LTTE era, the TNA took on the responsibility to guide the Tamils, by keeping in mind the lessons learned from the civil war. They appreciated that it was impossible to gain inclusive policies and power-sharing through a military-based struggle. In this regard, they reverted to the democratic approach by working with the majoritarian Sinhala state and its elites

throughout the presidential, general, provincial and local government elections in the post-civil war period.

The TNA was keen to re-define the Tamil political project within the framework of devolution, in the new post-civil war political context in which the LTTE no longer shaped the minority rights discourse. There was a shift in policy from a pre-civil war attitude to a post-civil war outlook. In the pre-civil war period, the ethnic Tamil project for equal recognition and power sharing was based on a demand for internal self-determination in the form of a federal arrangement. Whereas in the post-civil war context, the Tamil project seems to have focused more on reconstituting the Sri Lankan state rather than seek federalism. This shift is seen in the consensus among most of the Tamil parties to advance their politics of group rights through an inclusive approach.

As a result of this opinion change among the Tamil minority, they began to consider the politics of compromise with the majority-controlled state in contemporary Sri Lanka. For this purpose, the TNA is seeking support from the international community and Tamil diaspora. The minority Tamil parties, which now began to maintain a coalition with the majority ruling elites, strongly believed that they could gain some benefits for the Tamil people only by integrating with the majority.

3.1.3 Lessons for International Community

About nine years after the civil war ended in Sri Lanka, the International Community (IC) still faces questions about the circumstances in which intervention can be justified. If ever a desperate need should arise to protect civilians when the rule of law becomes ineffective, lessons from the civil war of Sri Lanka will need to be revisited.

Post-September 11 developments and the GWOT to eradicate terrorist activities in the world had a negative impact on the 26 year struggle of the LTTE to carve out a separate state for Tamils. The IC, especially the US and its Western alliance, proscribed the LTTE as a terrorist organisation. Restrictions were imposed on the Tamil diaspora groups that were lobbying in the West to garner support for the LTTE while at the same time support actually increased for the government of Sri Lanka to defeat the social forces that fought for a separate state.

The IC tried to proceed with the GWOT but failed to counter China's successful diplomacy. Sri Lanka moved towards this Asian power for support. Thus, the mismanagement or diplomatic failure of the West meant that human rights violations continued unchecked in Sri Lanka's civil war.

The US continuously provided direct military assistance to Sri Lanka to defeat terrorism, but due to persistent reports of on-going human rights violations in Sri Lanka, the US stopped direct military aid in 2007. China strategically capitalised on the situation and began to provide military support to Sri Lanka. It increased its aid to nearly US \$1 Billion to become the Island's biggest donor, giving sophisticated weaponry worth tens of millions of US Dollars. It also gave a free gift of six F7 fighter jets to the Air Force of Sri Lanka. China then persuaded its ally Pakistan to sell more arms to Sri Lanka and provide pilot training to fly the new jet fighters. China used its influence to prevent the human rights issue in Sri Lanka from being included in the agenda of the UN Security Council, even though cruelty and brutality were rampant and out of control in the treatment of prisoners, suspects, opponents and even journalists. China, together with Russia, blocked Sri Lanka from being discussed by the UN Security Council (Genser & Colter, 2012).

Throughout the civil war period in Sri Lanka, numerous UN-based organisations, along with various other Inter-Governmental Organisations (IGOs), and International Non-Governmental Organisations (INGOs) operated in the war-torn areas. Unfortunately, as a consequence of the government's strict

instructions to UN agencies, these organisations were obliged to leave the war-torn areas where people faced a massive humanitarian disaster during the last months of the war (Perera, 2015).⁸

At the invitation of former President Mahinda Rajapaksa, the Secretary-General of the United Nations, Ban Ki-moon, paid a 24-hour visit to Sri Lanka on 23 May 2009 (UN, 2009). “The Secretary-General expressed his views on three key priorities: (a) ensuring adequate assistance to the nearly 300,000 persons who were displaced by the conflict; (b) the early resettlement of the IDPs and reconstruction of northern Sri Lanka; and (c) the need for political dialogue and reconciliation between the government and minority groups, particularly Tamils” (Moore, 2011).

Following the joint statement, there were delays on the part of the Sri Lankan government, which failed to implement the agreed upon assurances for a number of months, leading to pressure for an international probe. Consequently, Secretary-General Ban Ki-moon appointed a three-member panel of experts on 22 June 2010 to advise him on accountability issues relating to alleged violations of international human rights and humanitarian law during the final stages of the war in Sri Lanka that ended in May 2009.

The UN panel of experts recommended a comprehensive investigation into the suffering of the civilians during the final stage of the civil war and the actions of the UN agencies during that critical period. In response, the UN Secretary-General appointed an internal panel to act on the recommendation made by the previous three-member panel. After due investigations the internal panel issued a report. The report concluded that, “The United Nations system failed to meet its responsibilities, highlighting, in particular, the roles played by the Secretariat, the agencies and programs of the United Nations country team, and the members of the Security Council and Human Rights Council” (UN, 2012). After the civil war ended, the international community, especially the major powers, were criticised for their failure to take the appropriate action to avoid massive violations of human rights during the final stages of the war.

After several efforts, allegations of war crimes were brought to the UN Human Rights Council (HRC) in March 2012 when, “A U.S. sponsored resolution on promoting reconciliation and accountability in Sri Lanka was adopted by a majority of the member states,” which included Sri Lanka’s powerful neighbour, India (UNHRC, 2012, as cited in ICG, 2013). The resolution called on Sri Lanka to adopt the recommendations of President Rajapaksa’s own Lessons Learnt and Reconciliation Commission (LLRC).⁹ The HRC’s second resolution (A/HRC/22/L.1/Rev.1) on promoting reconciliation and accountability in Sri Lanka was adopted by a vote on 21-03-2013 (25 in favour, 13 against, 8 abstentions). Therefore, the resolution formally “calls upon the Government of Sri Lanka to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law, as applicable” (UNHRC, 2013).¹⁰

The US and other member states sponsored a third resolution against Sri Lanka at the 25th session of the UNHRC in March 2014. According to Bruce (2014), despite the fierce objections of Sri Lanka, the UNHRC went ahead and voted for an international investigation into possible war crimes committed by both the Sri Lankan government and the Tamil Tiger rebels. Of the council’s 47 members, votes were 23 for and 12 against, with 12 abstentions in favour of a resolution sponsored by a core group of nations, which included the US, that called upon the Office of the High Commissioner for Human Rights to conduct a comprehensive investigation into allegations of serious violations and abuses of human rights by both sides.

Another crucial matter relating to the resolution passed at the 30th session of the UNHRC was that the Sri Lankan government was requested to form a Hybrid Special Court. A UN report published on 16th September 2015 identified patterns of grave violations that had occurred in Sri Lanka between 2002 and

2011, strongly suggesting that war crimes and crimes against humanity were “most likely committed by both sides to the conflict. The report recommends the establishment of a hybrid special court that included international judges, prosecutors, lawyers and investigators, as an essential step towards justice” (Zeid, 2015). As a result of the discussion among representatives of member states, and explanation of the Foreign Affairs Minister of Sri Lanka, Mangala Samaraweera, the term ‘Hybrid’ was omitted, and it was agreed to re-name it as a ‘special court’ in the resolution. The Resolution (A/HRC/30/L.29) was adopted without a vote at UNHRC in order to promote reconciliation, accountability and human rights in Sri Lanka (01-10-2015).

3.1.4 Lessons for the Tamil Diaspora

At the time of the civil war in Sri Lanka, the Tamil diaspora actively participated by financing and providing propaganda backing for a separate state (Orjuela, 2017). The Tamil diaspora’s activities shifted from the battlefield to strategic diplomacy that mounted pressure on the state of Sri Lanka through lobbying activities in the international bodies and forums.

The Tamil diaspora organisations in the West worked by lobbying state authorities, political parties, local representatives as well as international institutions to bring pressure on the state of Sri Lanka to implement policies accommodative to the Tamil minority. They tried to influence the international community by making allegations of war crimes against the state security forces and calling for acknowledging the status of Tamils. Nevertheless, the diaspora did not propose a solution to address the root causes of the conflict (Guyot, 2017). In view of the Buddhist instigated, majoritarian government sponsored violations against the Tamils in post-war Sri Lanka, the Tamil diaspora organisations also called for action to safeguard Tamils from ethnic violence and political persecution.

The actions of these organisations could take the form of direct lobbying, awareness campaigns or public protests on occasions such as the anniversary of the 2009 massacres, the sessions of the Human Rights Council in Geneva or the visit of a Sri Lankan political leader to some event in a Western country. As can be seen from the approach of several Tamil lobbyists, Tamil activism has evolved from holding large public protests as happened after the war to more professional lobbying conducted by only a few activists, as a result of the stronger links built with Western decision-makers.

Wherever the Tamil population constitutes a large part of the electorate, such as in certain constituencies of London, Paris or Toronto, local Western politicians tend to make strong statements in favour of the Tamil cause, including the Tamils’ right to self-determination. Such support is also visible at the national level, especially at election times, since Tamil organisations try to channel the votes of the community towards the candidates who support Tamil claims most assiduously.

3.2 State and Minority Re-Contestations

This section examines the minority contestations in the post-civil war situation by examining the policies of exclusion and counter political activities of the remaining social forces of the Tamil minority. It explores how the strong unitary state consolidated its power through policies of discrimination.

3.2.1 Image and Actual Practices of the State: Policies of Discrimination and Exclusion

It was expected that the post-war situation would provide the opportunity to find a solution to the ethnic conflict by way of devolution of power to the periphery and inclusion of minorities into the state system. However, post-war initiatives to install inclusive mechanisms failed as usual. Thus, the exclusive policies were entrenched further and the state consolidated its power. Rajapaksa and his government focused more on making amendments to the constitution such as the 18th Amendment, Divineguma Bill, and

conducting impeachment proceedings against the former Chief Justice. These centralisation activities of state power and misuse of power are examined below.

3.2.2 The 18th Amendment and its Impact on the State Reform Debate

The reconstitution measure embodied in the 18th Amendment to the 1978 Constitution came in the wake of the presidential and parliamentary elections that ensured a second term for the UPFA coalition regime led by President Rajapaksa. The enactment of the 18th Amendment to the constitution was done at a crucial moment in Sri Lanka's post-civil war history. The state reconstitution process was designed to achieve further centralisation of state power and place all of it in the office of the President and in the hands of the person who holds that office. A key feature of the 18th Amendment was the repeal of the 17th Amendment, which had provided for a constitutional mechanism known as the Constitutional Council, to check some of the powers of the Executive President, such as the power to make key public service appointments. The 18th Amendment also curtailed some of the powers of several important public service bodies such as the Public Service Commission, the National Police Commission and the Elections Commission, which had to cede those powers to the Executive.

As Saravanamuttu notes, the “18th Amendment must be seen as yet another decisive step towards the centralisation of power in the executive – a recurring theme of our country's constitutional evolution” (Saravanamuttu, 2010, p. 13). Yet, it is also of significance that the further entrenchment of state power in the Executive President had the support of some leaders of ethnic minority communities as well. The EPDP, TMVP and the CWC, along with members of the ruling UPFA and the SLMC, crossed over from the opposition to provide the government with the two-thirds majority it needed to pass the 18th Amendment. After this, there were doubts about the government's commitment to both devolution and democratic governance.

The idea of a constitutional amendment to remove the presidential term limit of two so that an incumbent could contest for another term did not feature during the presidential or parliamentary election campaigns, although there were occasional references to it in the media. Nor was space allowed for a public debate on this important constitutional amendment, because the government pre-empted that possibility by referring this matter to the Supreme Court and asking for a quick ruling as it was ‘urgent and in the national interest’ (Saravanamuttu, 2010, p. 14). When policy matters are referred to the Supreme Court as urgent, the Court has to give a verdict within a very limited time frame of just two weeks, within which it has to hear the petition, inquire and make a determination. After the Supreme Court determination is conveyed to the Speaker, such ‘urgent’ legislation is then debated and passed in such a hurry in parliament that there is hardly any public debate possible within the extremely restricted timeframe. Moreover, despite certain provisions in the 18th Amendment negatively impacting on the devolution of power, specifically regarding the finances of provincial councils and law and order (i.e. police powers), the government bypassed the Provincial Councils in enacting this constitutional amendment (Jayakody, 2010, pp. 52–58).

Despite these faults in both the content and the process, the 18th Amendment received the support of the ‘old left’, the Lanka Sama Samaja Party (LSSP), the Communist Party of Sri Lanka (CPSL) and the Democratic Left Front (DLF), which were partners of the ruling UPFA coalition. Meanwhile, the ethnic minority parties supported the 18th Amendment for a variety of pragmatic reasons. For example, the SLMC supported the Bill while being in the opposition to keep the party unity intact when it appeared that some of its MPs might vote with the government. Immediately following its support for the 18th Amendment, the SLMC joined the UPFA coalition. As the National Organiser of the SLMC put it, “our only option was to either join the government and survive or face elimination through crossovers. We

also believe that any party must become stakeholders of the government if it wanted benefits to trickle down to its voters” (Rajabdeen, 2010).

There is a strong political irony in this support provided by some ethnic minority elites for legislative measures such as the 18th Amendment. Excessive centralisation of state power, as envisaged by the 18th Amendment, could only lead to further consolidation of the unitary state. It is diametrically opposed to any plan for decentralisation of state power to facilitate power-sharing at the periphery. As pointed out by the TNA, one of the ethnic Tamil parties that voted against the 18th Amendment, this legislative measure was the culmination of a process of centralisation of power begun in 1972 by the predominantly Sinhala ruling elites. The Tamil political leaders of the TNA viewed such measures as steps to further entrench the unitary structure of the state. Moreover, the TNA interprets these measures as going counter to the democratic verdicts given by the Tamil electorate that has demonstrated a tendency to vote for parties espousing an agenda of power sharing since the 1950s. This legislation opens the opportunity for soft authoritarianism, establishment of a family dynasty, and the continuous exclusion of minorities from the governance structure.

3.2.3 Divineguma Bill and Impeachment of the Chief Justice

Migdal (1998) declared that one of the features of the strong state is to ‘use resources appropriately’ to maintain its domination and centralisation of state power. Further, as stated by De Votta, “all parties in power seek to weaken their respective opponents but those that are part of soft authoritarian regimes resort to unethical, extrajudicial, and unconstitutional methods to do so” (2010). The pronouncements of both these scholars aptly describe the Rajapaksa regime in Sri Lanka. For example, the Divineguma bill and impeachment of the former Chief Justice had promoted a strong state exercising soft authoritarianism.

Several observers noted that the Chief Justice was unduly close to the executive in the past, and many of the rulings she made contributed to facilitate the centralisation of power that had taken place in Sri Lanka in recent years. The International Bar Association’s (IBA) report notes in particular that she chaired a Supreme Court panel in August 2010, which upheld the constitutionality of the 18th Amendment (International Bar Association’s Human Rights Institute [IBAHRI], 2013).

IBAHRI (2013, p. 20) summarised the Bill and impeachment as follows: Despite the blemish in her record, it was her concern to protect the rights devolved to the provinces by the Constitution that first brought Chief Justice Bandaranayake into conflict with the Government. The clash began to build up after a decision on December 2011, made by a Supreme Court panel that Bandaranayake chaired, which ruled that a piece of draft legislation known as the Town and Country (Amendment) Bill could become law only after Sri Lanka’s nine Provincial Councils had been consulted about its provisions. President Rajapaksa’s government abandoned the measure as a consequence, but the same issue then re-emerged in August 2012, when the UPFA introduced the so-called Divineguma Bill. This aimed to extend central control over Sri Lanka’s provinces in a number of ways and to expand the regulatory powers entrusted to Basil Rajapaksa, the Minister of Economic Development and a younger brother of the President. Members of the IBAHRI delegation were told that the Bill would also have the effect of authorising the transfer of 480 Billion Rupees (roughly £2.5 Billion) into an executive-controlled fund exempt from ordinary parliamentary oversight and that secrecy about some of its key features was to be enforced by the imposition of fines and prison terms.

When we delve deeper into the Divineguma bill, it raises crucial arguments about the provincial councils set up under the 13th Amendment to the constitution, which devolved power to the provinces. This amendment was brought as a way of resolving the protracted ethnic conflict in Sri Lanka and it was

relatively well received and accepted by all the parties. However, the Divineguma bill partially diluted the devolved financial powers to the provincial councils, raising questions about the future functioning of the councils as a result of the reconstitution attempts of the state. This bill, if enacted into law, would surely undermine the minority rights granted by the devolution of powers under the 13th Amendment. A number of interested parties challenged the draft statute's constitutionality for these and other reasons. Hearings in the case began on 27 August 2012, and a Supreme Court panel chaired by Chief Justice Bandaranayake ruled in mid-September that the government was required to submit the Divineguma Bill to Sri Lanka's nine Provincial Councils 'for the expression of [their] views thereon' under Article 154 of the Constitution. It could not be enacted until this took place. This judgement was presented to Parliament on 18 September 2012 (IBAHRI, 2013).

On 23 November 2012, impeachment proceedings on charges of professional and financial misconduct and abuse of power began against Chief Justice Shirani Bandaranayake. Lawyers and Sri Lankan civil society suspected that the proceedings were connected to Bandaranayake's opposition to the Divineguma Bill. The Supreme Court decreed that Parliament cannot hold such an inquiry against a judge without passing a specific law to that effect. Further questions regarding the proceedings arose when it was reported that when a former Chief Justice asked why he was moving to impeach Bandaranayake, the President responded: "I did not want to, but she got too big for her boots."

Bandaranayake was found guilty on three of the five charges and was impeached by Parliament on 11 January 2013. The Court of Appeal declared the impeachment unconstitutional. Despite significant opposition, the President's senior adviser, Mohan Peiris was appointed and sworn-in as the new Chief Justice. The impeachment and subsequent appointment of the Chief Justice had drawn criticism from the US, UK and the Commonwealth, among others, and condemnation from the International Commission of Jurists, and public declarations from the Bar Association of Sri Lanka and the Lawyers Collective that they refused to recognise the legal standing of the new Chief Justice (Human Rights Council [HRC], 2013, p. 4). Interestingly, the impeachment was brought against the Chief Justice due to her judgement in favour of the minority group and the existing law, providing further evidence that state-minority contestations as well as ethnic discrimination persisted after the war too.

However, the Tamil minority and international community expected that the state must introduce inclusive policy mechanisms as a solution to the conflict. The state should have taken measures to avoid another major contestation through the lessons learned from the civil war. Attempts were made to introduce inclusive policies to find a solution through state reconstitution. These can be described as the home-grown solution, Local level power sharing, and Government - TNA talks. Unfortunately, all these efforts failed to deliver sustainable peace.

3.2.4 Regime Change and National Government in Power

After the war victory in 2009, Rajapaksa served his second term as President after winning both the parliamentary and presidential elections by majority votes in 2010. It provided the ideal environment to rehabilitate, reconstruct and develop the country. But President Mahinda Rajapaksa and his family started dominating the entire ruling system of the country after he appointed a large number of his and his wife's relatives to key posts. This inevitably led to an increase in corruption and soft-authoritarianism in his regime.

President Mahinda Rajapaksa lost the presidential election in January 2015 owing to his unpopularity over charges of corruption, oppression of the minorities, undemocratic rule, militarization and centralization of state power, etc. "President Rajapaksa's former Minister Maithripala Sirisena secured a surprise win as the common opposition candidate on the promise of implementing a 100-day programme of constitutional

and governance reforms, after which parliamentary elections were to be held” (Welikala, 2015). During the oath taking ceremony at the Independence Square on 09-01-2015, the newly elected president was sworn-in as the sixth Executive President before the Chief Justice. Afterwards, leader of the United National Party (UNP) Ranil Wickremasinghe was sworn-in as the Prime Minister before President Maithripala Sirisena (Adaderana, 2015, January 09). In a historic turn of events the main opposition political party joined the rainbow coalition government by accepting 11 cabinet ministerial portfolios, five state ministerial portfolios and 10 deputy ministerial positions. The new Ministers were sworn in by President Maithripala Sirisena in the presence of Prime Minister Ranil Wickremesinghe (DailyFT, 2015, March 23). In August 2015, the 08th General Elections were held. As no party obtained the majority in the parliamentary elections, a national government was formed. Interestingly, the TNA, the prominent Tamil party secured the position of opposition party at the parliament.

3.2.5 Announcement of a New Constitution

The new regime’s agenda for state reconstitution on the basis of devolution of power emerged from Sirisena’s Prime Minister Ranil Wickremesinghe, who declared after assuming office that his government would implement the 13th Amendment to the country’s constitution. Despite the passage of 30 years the amendment, which provides for the devolution of power to the Tamil minorities in the north and east, had never been implemented fully (Wijesiriwardena, 2015, January 27). Not surprisingly, the promise made by the present PM has also not materialized so far, just as it has been in the case of similar promises made by previous leaders.

Remarkably, another historical policy document was released by the UNP’s coalition of parties that was getting ready for the General Elections on 23rd July, 2015. The manifesto declared the policy of the UNP led Front for the Next Five Years. Its five points were, economic growth, fighting corruption, ensuring freedom for all, infrastructure investment and improving the education system (Asian Tribune, 2015, July 24). The third point of the document was “Ensuring Freedom for All” and under that, “steps would be taken to introduce a new Constitution. The United National Party said measures will be taken to devolve maximum power with everyone’s consent under a singular state” (News 1st, 2015, July 23). This standpoint of the new GOSL was based on the recommendations of both the national commission (LLRC) and UNHRC resolution in the post-war years, which stress the importance of “reaching a political settlement” to the ethnic conflict (LLRC, 2011; UNHRC, 2012).

The GOSL was making an attempt to form a new constitution, as mentioned in its policy manifesto. The initiative for new constitutional drafting and minority expectation of state reconstitution once more opened an avenue for debate on the sharing of state power between the majority and minorities. It was on November 16 that President Maithripala Sirisena proposed to the cabinet that a sub-committee would be formed under the Prime Minister, who will be in charge of preparing a “conceptual note” on constitutional changes that will be submitted for approval to the Cabinet of Ministers. In accordance with this proposal, the PM appointed the cabinet sub-committee on 2nd December, 2015. The concept note was to review the necessity and way forward to form a new constitution (Balachandran, 2015, December 3). The cabinet sub-committee comprised representatives from the United National Party (UNP), Sri Lanka Freedom Party (SLFP), Sri Lanka Muslim Congress (SLMC), All Ceylon Makkal Congress (ACMC), Jathika Hela Urumaya (JHU), and Tamil Progressive Alliance (TPA). The 11-member committee had seven Sinhalese, two Tamils, and two Muslims. The cabinet sub-committee was headed by Prime Minister Ranil Wickremesinghe, and comprised Nimal Siripala De Silva, Lakshman Kiriella, Rauff Hakeem, Susil Premachandra, Rishard Badiudeen, Patali Champika Ranawaka, Wijeyadasa Rajapakshe, DM. Swaminathan, Mano Ganesan and Malik Samarawickrama (EyeSriLanka 2019, March 15). The President had directed the sub-committee to consult various political groups and representatives of public organizations. The cabinet sub-committee then prepared a conceptual note and submitted it to the PM.

This note was approved by the Cabinet and on 9th of January 2016, just as President Sirisena completed his first year in office, PM Wickremasinghe placed this proposal in Parliament. The framework was for forming a new constitution and converting the parliament into a “Constitutional Assembly,” thus starting the formal procedures for implementing President Sirisena’s policy document issued just before the election (Ramakrishnan, 2016). PM Wickremasinghe spoke in the parliament on the occasion of his submission of the draft resolution saying, “We will involve the whole Parliament in formulating the Constitution unlike in previous instances when the Constitutions were drafted outside the Parliament” (Singh, 2016). After two months, on 9th March, 2016, the Parliament passed the proposal of the PM. “The government boasted that the resolution was passed unanimously, but the process dragged out for two months amidst infighting within the ruling elites. About two dozen parliamentarians aligned with Rajapakse opposed the resolution unless it incorporated their demands” (De Silva, 2016).

On March 9, 2016, the Sri Lankan Parliament without a vote unanimously approved the present Parliament being changed into a Constitutional Assembly (CA) to draft a new Constitution for the island nation, declaring, “WHEREAS there is broad agreement among the People of Sri Lanka that it is necessary to enact a Constitution for Sri Lanka; This Parliament Resolves that—There shall be a Committee which shall have the powers of a Committee of the whole Parliament consisting of all Members of Parliament, for the purpose of deliberating, and seeking the views and advice of the People, on a Constitution for Sri Lanka, and preparing a draft of a Constitution Bill for the consideration of Parliament in the exercise of its powers under Article 75 of the Constitution” (Parliament, 2016; ColomboPage, 2016, March 9).

Welikala (2016) explains about the CA and its activities in his scholarly work as follows. The CA will include all the Members of Parliament but will operate as a separate institution. The thinking behind this mechanism is both inclusivity and flexibility; i.e. all MPs of all parties will have a role to play and rigidity of parliamentary procedure and standing orders could be avoided. The CA is led by a Steering Committee chaired by the Prime Minister and includes all parliamentary party leaders and other MPs. The CA is also divided into sub-committees chaired by senior MPs, which will report on fundamental rights, the judiciary, public finance, the public service, law and order, and centre-periphery relations. The areas of electoral reform, devolution, and the central executive are dealt with directly by the Steering Committee. The Steering Committee and the sub-committees were studying their assigned thematic areas, including taking evidence from experts and civil society. The sub-committees were expected to submit reports towards the end of July 2016.

To ensure that the constitution making process was more participatory, Prime Minister Wickremasinghe, with the approval of Cabinet appointed a 24-member Public Representations Committee on Constitutional Reforms (PRCCR) on December 29, 2015. This committee was comprised of academics, lawyers, civil society representatives and political party representatives, in order to gather public opinion on the formation of a new constitution. The PRCCR got to work to collect grassroots public opinion on January 18 and finished its work across the country on February 29 (Singh, 2016). This committee submitted its final report of 333 pages to the government and released it to the public as well. According to their records, over 2500 persons and organizations participated and shared their opinions orally and in writing. A further 800 opinions were shared via e-mail, 150 messages were received by fax while 700 were received by post or hand delivery (Report on Public Representations on Constitutional Reforms, May 2016).

Work on the new constitutional draft is being carried out by the steering committee at present. News media reports highlighted that “Ranil Wickremesinghe is aiming for the presentation of a draft Constitution Bill by the end of this year,” quoting Lal Wijenayake, Chairman of the Public Representations Committee on Constitutional Reforms (Ramakrishnan, 2016, June 3; Eyesrilanka, 2016,

June 3). He further clarified that six sub-committees were dealing with various subjects, as spelt out by the committee. On completion of work by each of the sub-committees, their findings would be submitted to the Steering Committee, which in turn, will present a report to the Constitutional Assembly along with a draft proposal (Ramakrishnan, 2016, June 3; Eyesrilanka, 2016, June 3).

4. Conclusion

This study has analysed the recent political developments, identifying the key lessons for the state, Tamil minority and international community that were derived from the civil war. It mainly explored how the state learned the lessons needed to overcome an insurgency when a militant social force attempts to challenge the sovereignty of the state and form a separate state. At the same time, the mainstream political representative of the Tamils in the post-LTTE era, the Tamil National Alliance learned lessons about the consequences of the war resulting from the traditional Tamil demand for self-determination; this has persuaded them to pursue compromise politics with the majoritarian state, and contest the state via democratic processes. But another grouping of social forces with the backing of the Tamil diaspora is contesting the state by demanding an inclusive approach for the betterment of the Tamil minority. The International Community learned that their mechanisms failed to safeguard civilians during the final stage of the war. But the International Community has not yet made any meaningful attempt to find a solution to the conflict through the lessons learned from the civil war. Then it dealt with the recent debate on the state-minority mutual transformation process in Sri Lanka. It focused on how the state became stronger and society became weaker as a result of the defeat of the militant social force of the minority. The UPFA government's attempts at state reconstitution have been examined with the post-civil war political development. This study also analysed the problems caused by the post-war state policies of exclusion. Thus, this study leads to the important conclusion that the state has learned the lesson that granting any greater devolution or allowing the strength of the Tamil minority to grow would harm the sovereignty of the unitary state. In view of this possibility the state centralized and consolidated state power in post-war Sri Lanka.

Notes

1. The Sri Lanka census of 2012 classified the population into Sinhalese (74.9%), Sri Lanka Tamils (11.2%), Indian Tamils (4.1%), Sri Lanka Moors (9.3%), and others (0.5%) (Department of Census & Statistics, 2012, p. 20).
2. State–society contestations began when Tamil political elites demanded a reconstitution of the unitary constitution of Sri Lanka to gain regional autonomy for the North and East (Kearny, 1967; Wilson, 1988 & 2000; Orjuela, 2004; Manogaran, 2008; Uyangoda, 2012). Six decades have passed, yet this state reconstitution attempt remains a controversial project in the Sri Lankan political arena.
3. By the mid-1970s, Tamil politicians shifted from supporting federalism to demanding a separate Tamil state or “Tamil Eelam” in Northern and Eastern Sri Lanka, areas of traditional Tamil settlement. In the 1977 elections, the Tamil United Liberation Front (TULF) won all the seats in Tamil areas on a separatist platform (US Department of State, 2006, as cited in Fazil, 2016). Other groups, particularly the Liberation Tigers of Tamil Eelam (LTTE or Tamil Tigers) sought to establish an independent state through military activities. The 1983 pogrom against the Tamils in Sri Lanka led to full-scale conflict. At first, the conflict involved only smaller groups of armed Tamil militants who started to attack specific targets associated with the state.
4. In the armed conflict in Sri Lanka (1983–2009), the diaspora was actively involved, most importantly by providing financial and political support to the Tamil separatists (Orjuela, 2016).
5. The Asian Age, “Any Country Facing Terrorism.”

6. For example, see the joint letter of Amnesty International, Human Rights Watch, and the International Crisis Group to the LLRC outlining their decision not to testify before it. Retrieved from http://www.hrw.org/sites/default/files/related_material/LLRC%20joint%20letter%20FINAL%202013%20Oct%202010.pdf
7. During the period of the civil war, i.e. from 1983 to 2009, an estimated 100,000 Sri Lankans were killed, 40,000 of them in the last month of fighting (ABCnet, 2014; Yass, 2014). About 800,000 people were forced to flee during the civil war (Internal Displacement Monitoring Centre [IDMC], 2014); of those, over 280,000 became IDPs in the last phase. A large number of the survivors were wounded and/ proved to be psychological casualties of the civil war (Ruwan, 2014). Reports by international organisations also provide evidence that war crimes were committed by the government, the military and the LTTE. Thus, the protracted ethnic conflict and the civil war should have provided lessons for minority Tamils.
8. During the three decades in which internal conflict raged in Sri Lanka, several UN agencies, along with various other Inter Governmental Organisations (IGOs) and International Non-Governmental Organisations (INGOs) were based in the North and East, serving the affected people in the conflict zone. The situation provided ample opportunity for these international organisations to obtain an insiders' view and a good understanding of the difficulties faced by civilians living in these areas, while they were providing them with much needed aid. It has been widely reported that towards the end of the war, on the directive of Sri Lanka's Defence Ministry, the UN agencies as well as the other local and international organisations were ordered to leave the areas demarcated as the war zone, in spite of the large number of civilian demonstrations pleading with the UN agencies to stay because of the protection their presence would ensure. The Petrie Report asserts that the closure of offices and the subsequent withdrawal of UN agencies from the war-affected regions represented a failure on the part of the UN to "...act within the scope of institutional mandates to meet protection responsibilities" (pp. 27).
9. The HRC's resolution was also critical of the report but nevertheless called for the implementation of the constructive recommendations made by the LLRC. This conveys the message that the HRC agreed with and therefore requested the implementation of the recommendations of the LLRC, of which the international community also approved.
10. The UNHRC resolution is critical of the unsatisfactory implementation of the previous resolution because "the national plan of action does not adequately address all of the findings and constructive recommendations of the Commission." The second resolution also requested the Sri Lankan government to conduct a domestic inquiry into the matter of accountability, which was another resolution asking this government to implement the national commission's findings.

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