



**PAFFREL**

# POLITICAL ANALYSIS FOR OCTOBER - 2023

## Executive Summary

Different statements about elections made over the last few weeks have given rise to speculation about a possible postponement of elections. This follows President Wickremesinghe's appointment of a commission of inquiry to investigate existing election laws and regulations and recommend changes.

Doubts about the government's commitment to hold the presidential elections on schedule before November 2024 increased with the announcement that the government is contemplating holding a referendum on abolishing the executive presidency. The announcement that Justice Minister Wijeyadasa Rajapakshe has drafted a cabinet paper to change the electoral system has added to these concerns. Electoral reforms just prior to elections evokes the possibility of a replay of the fiasco of purported electoral reforms that led to the provincial council elections scheduled to be held in 2017 to be indefinitely postponed till the present day. There appear to be feelers put out by government members that safeguarding the IMF programme may require a moratorium on elections. The government has shown itself willing to take this route ostensibly for the sake of the economy. The government's failure to obtain the second tranche of IMF support at the end of September was a wakeup call regarding the precarious condition of the economy. It has also said that the government has not met the economic targets set for it, particularly with regard to reducing the budget deficit due to a potential shortfall in government revenue generation. The failure of the government to fulfil many of the IMF's transparency requirements, such as posting its contracts and procurements on the website, and explain its rationale for tax holidays and those who benefit, have contributed to the loss of confidence in the government's commitment to the economic reform process. With unrest among the general population rising, the government appeared determined to go ahead with its plans to bring in laws that are restrictive of freedom of association and expression. The draft Anti-Terrorist Act and Online Safety Bill seriously impinge on the liberty and freedom of the people, and will have a serious impact on democracy and the rule of law in the country. In addition to these repressive laws, the government is coming up with other new laws the latest being the Office for National Unity and Reconciliation (ONUR) bill. What is common to these laws is that they have been prepared without transparency by unknown figures who keep to the background. Civil society groups have noted two serious concerns about

the draft law and urged the government to amend them prior to submitting it to parliament and using its majority to get its own way. They have expressed their concern about the role given to ONUR to be prescriptive vis a vis civil society by virtue of the power “to guide and facilitate peace and reconciliation programmes conducted by local organisations including community based organisations.” There are provisions in other section of the draft law that give ONUR the scope to monitor and review the work of civil society, which could become oppressive and burdensome in the context of the national policy on reconciliation and accompanying action plan that ONUR is expected to develop. The second area of concern is the appointment process of ONUR’s decision making body. According to the current draft of the law, the 11 members of the committee that will lead ONUR are to be selected by the minister under whose purview ONUR will come, and be appointed by the president. The selection process creates the possibility of unilateral decision making and political bias in the appointment of committee members. The members selected under the ONUR Act need to be non-partisan as envisaged by the 21st Amendment.

## Electoral Process

The issue of a possible postponement of elections came to the centre stage of national politics during this period. President Wickremesinghe’s appointment of a commission of inquiry to investigate existing election laws and regulations and recommend changes was non-transparent until brought to the notice of the general public by the president’s appointment of the commission. The commission has been tasked with examining all existing election laws and regulations and making recommendations to suit current needs. According to its terms of reference the factors to which special consideration would be given include increased women and youth representation, introduction of electronic voting using modern technology instead of printed ballot papers and providing facilities for voting by Sri Lankans overseas. These are valid areas for reform even if some of them have not been on top of the reform agenda. But the timing gives cause for concern. This Commission's mandate is to examine all existing election laws and regulations, ostensibly "to suit current needs" and make necessary recommendations for their amendment. It is Chaired by President’s Counsel and former Chief Justice Priyasath Dep. However, according to the Constitution, the Election Commission (EC) is already mandated to issue guidelines to the media and political parties for the proper conduct of elections. It has been appointed without any prior consultation, even with recognised political parties in the Parliament. There is an apprehension that these appointments might be intended to stall the electoral process in the country, especially when, according to the Constitution, the Presidential Election is just 11 months away and is set to be conducted between September and October of next year (2024). These suspicions take on credence in the context of local government elections and provincial council elections being postponed. <https://www.themorning.lk/articles/N9Z3OsoekTniRKiuXH8n>

However, addressing the UNP’s national convention as its party leader President Wickremesinghe said that the presidential election is scheduled for 2024 followed by parliamentary elections. His declaration that the local government elections are expected to take place only in the first half of 2025 undermined his professed commitment to the election timetable. This is because the local government elections should have been held in March and not two years into the future which is contrary to the law. In keeping with legal provisions, and demonstrating a measure of independence, the Commissioner General of Elections said that they have asked the Treasury to allocate funding to hold a presidential, provincial, and local government elections in 2024.

“There are no scheduled elections in Sri Lanka. Provincial councils have not been held for years, but those in power can hold them anytime they want. So in the past few years, when a Budget is being prepared, and we are asked by the Treasury to provide an estimate, we always ask for funding to hold the provincial elections. We have asked for 30 billion rupees for these elections. We have also told the Treasury that a general election will cost 11 billion rupees. If the President dissolves Parliament, he is anyway bound by the Constitution to provide us with money,” he said. [https://island.lk/ec-seeks-rs-30-bn-for-polls-next-year/Governance reform](https://island.lk/ec-seeks-rs-30-bn-for-polls-next-year/Governance%20reform)

There appear to be feelers put out by government members that safeguarding the IMF programme may require a moratorium on elections. The government has shown itself willing to take this route ostensibly for the sake of the economy. Doubts about the government’s commitment to hold the presidential elections on schedule before November 2024 increased with the announcement that the government is contemplating holding a referendum on abolishing the executive presidency. Discussions to this effect have already been held by President Ranil Wickremesinghe and Justice Minister Wijeyadasa Rajapaksha has already drafted a cabinet paper to change the electoral system. This cabinet paper is part of the step which might eventually lead to a public referendum being called to see if the Executive Presidency should be abolished and Parliament being further strengthened with an executive prime minister. There have been proposals to abolish this institution for the past three decades with contestants for the post pledging to abolish the presidency once they have been elected. The basic issue with the presidency is the accumulation of power in the hands of a single individual. On this occasion, a new reason is being adduced. The reported concern is that no candidate at presidential elections to be held next year will achieve the 50 percent mark to win the presidency at the first round of elections itself. The justification to abolish the executive presidency before the Presidential Election next year is that no candidate or political party will be able to secure an over 50 percent win at the polls. However, most of the main political parties, after hearing of such moves have stated that they will object to such a move when it is raised in Parliament.

Apart from the proposal to abolish the presidency on this tenuous basis, there are also plans to change the electoral system. The Minister of Justice Dr Wijayadasa Rajapaksha has said the reforms envisaged will see the election of 160 members to Parliament under the first-past-the-post system. The remaining 65 members from a 225-seat Parliament would be represented by the National list and District list depending on the number of voters under the proportional voting system. Both proposals are issues of epic proportions. They have been canvassed in the past, both individually and jointly, and by ad hoc means as well as part of systematic efforts to devise a new constitution as occurred in 2000 and again in 2015. But on each and every occasion there have been objections and challenges from different political parties and interest groups, and the electoral reform process has stalled. Electoral reforms just prior to elections evokes the possibility of a replay of the fiasco that led to the provincial council elections scheduled to be held in 2017 to be indefinitely postponed till the present day. Shortly before those elections were to fall due, the government proposed to introduce some positive reforms to the election law, including bringing in a women’s quota. But once the prevailing law under which elections to the provincial councils had been repealed, the government failed to enact the reformed law. This has led to the provincial councils being in a state of limbo ever since. A similar situation arising in the case of parliament would be a disaster for democracy in the country as it would have neither an elected president, parliament, provincial councils or local government authorities. Instead it will have government leaders with expired mandates.

## Crossovers in parliament can lose seat

The Supreme Court verdict that upheld the expulsion of former Sri Lanka Muslim Congress (SLMC) Parliamentarian and Minister Naseer Ahamed by the party following his defection to the Government has sent shockwaves among politicians in the Government and Opposition sides. The Supreme Court, in its ruling with regard to a petition filed by Ahamed challenging the SLMC's decision to expel him from the party, stated that the SLMC's decision was valid and lawful. The Supreme Court unseated Naseer Ahamed on the grounds that he had repeatedly violated his party's stated rules on parliamentary voting, despite being given enough opportunity to retrace his steps. The ruling has been widely hailed as the right approach given the laws of the land. SLMC Secretary General Nizam Kariyapar said he believes it serves as a stern reminder to politicians contemplating party-switching for personal gain, thus upholding the sanctity of political affiliations. "The Supreme Court's decision to validate my letter expelling him, who acquired ministerial positions, is a watershed moment. It distinguishes as a prominent deterrent for those considering party changes for ministerial posts," said Kariyapar. TNA MP M.A. Sumanthiran PC echoed Kariyapar's sentiments. He hailed the unanimous agreement of the judges, underscoring its relevance in the historical context. "This is a noteworthy decision. For years, similar cases have invariably been settled to favour the disputing side...". <https://bnn.network/politics/sc-determines-minister-ahameds-expulsion-from-slmc-valid/>

## Economic recovery

The government's failure to obtain the second tranche of IMF support at the end of September was a wakeup call regarding the precarious condition of the economy. It has also said that the government has not met the economic targets set for it, particularly with regard to reducing the budget deficit due to a potential shortfall in government revenue generation. The failure of the government to fulfil many of the IMF's transparency requirements, such as posting its contracts and procurements on the website, and explain its rationale for tax holidays and those who benefit, have contributed to the loss of confidence in the government's commitment to the economic reform process. The IMF has recommended sixteen priority actions in its recently released Governance Diagnostic Assessment (GDA) on Sri Lanka to address systematic and severe governance weaknesses and deep-rooted corruption vulnerabilities across State functions. The IMF noted that "The technical assistance report released last week revealed widespread corruption vulnerabilities and governance weaknesses originating from ad-hoc tax policy practices, half-baked approaches to Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT), lack of a robust legal framework and poor processes utilized in SOEs, the absence of public procurement legislation, ad-hoc tax policy practices frequently modifying tax laws etc."

In delaying the disbursement of its second tranche, the IMF informed the government that it is not collecting enough revenue and needs to meet the commitments it has made. Both direct and indirect taxes are likely to increase further squeezing those who have already been squeezed to their limit. The majority who are now paying their taxes were people who were barely able to cover their expenses prior to the tax hikes. It appears that the IMF is not targeting them for higher taxes. The problem is that the government is not taxing a wide

swathe of the wealthiest sectors of the population and not putting a stop to corruption and tax fraud. These include not only the banks and big registered businesses, it also includes politicians, commission agents, drug dealers and unregistered businesses. An indicator of the high level of uncontrollable corruption in the government at present can be seen in the crisis in the health system. The IMF has also called for more regular civil society participation in oversight and monitoring of government actions which have been restricted by limited transparency, the lack of platforms for inclusive and participatory governance, and by the broad application of counter-terrorism rules." Sri Lanka is today at risk of losing support from the international community. IMF support cannot be taken for granted any more. It requires major changes in governance, or at least evidence of a start in that direction. One of the IMF requirements is that the new Anti Corruption law should be implemented.

## Undemocratic Laws

The Office of the UN High Commissioner for Human Rights (OHCHR) said it has serious concerns over two bills under consideration in the Sri Lankan Parliament - the revised Anti-Terrorism Bill and the Online Safety Bill - which give the authorities a range of expansive powers and can impose restrictions on human rights, not in line with international human rights law. Spokesman for the UN High Commissioner for Human Rights Ravina Shamdasani said the Anti-Terrorism Bill is intended to replace the Prevention of Terrorism Act, which has long been of concern to the UN human rights mechanisms. "While some positive revisions have been made in the draft, including the removal of the death penalty as a possible punishment, there are still major concerns about the scope and discriminatory effects of many provisions in the revised draft. Restrictions to the rights to freedom of expression and peaceful assembly are very likely to fail to meet requirements of necessity and proportionality," she said, according to briefing notes circulated to the press. "The Bill still includes an overly broad definition of terrorism and grants wide powers to the police - and to the military - to stop, question and search, and to arrest and detain people, with inadequate judicial oversight. Other issues remain over the imposition of curfews, restriction orders and the designation of prohibited places, all of which raise concerns about the scope of powers granted to the executive without sufficient checks and balances. With respect to the Online Safety Bill, we believe it will severely regulate and restrict online communication, including by the public, and will give authorities unfettered discretion to label and restrict expressions they disagree with as "false statements". Many sections of the Bill contain vaguely defined terms and definitions of offences which leave significant room for arbitrary and subjective interpretation, and could potentially criminalize nearly all forms of legitimate expression, creating an environment that has a chilling effect on freedom of expression. The UN Human Rights Office urges the Government to undertake further meaningful consultation with civil society and UN independent experts and to make substantial revisions of the draft laws in order to bring them into full compliance with Sri Lanka's international human rights obligations," she said. <https://www.dailymirror.lk/breaking-news/OHCHR-concerned-about-Anti-Terrorism-Bill-Online-Safety-Bill/108-269172>

Despite protests by political parties, civil society and international human rights groups, the government appeared determined to go ahead with its plans to bring in laws that are restrictive of freedom of association and expression. The Bar Association has said that both the draft Anti-Terrorist Act and Online Safety Bill seriously impinge on the liberty and

freedom of the people, will have a serious impact on democracy and the rule of law in the country and called for their withdrawal. If these two laws are passed by parliament, they will make it more difficult to challenge the government even when it is going on a wrong path. The Online Safety Bill has clauses that make it detrimental to the freedom of expression. The proposed bill consists of an overbroad and vague definition such as “statement of facts” and it is not clear as to who decides its definition. Furthermore, the Online Safety Commission, appointed by the Executive, has the power to issue notices and the ability to stop the spread of ‘false’ statements. This raises concerns on the potential misuse of the term “false statement” and its interpretation. U. S. Ambassador Julie Chung said stability should not come at the sacrifice of the values of freedom of expression, whether through peaceful protest, expression through the arts, or through social media. There were 45 cases filed in the Supreme Court challenging the online safety bill. The substantial number of cases suggests a significant public interest or concern regarding the implications of the online safety bill. Archbishop of Colombo Cardinal Malcolm Ranjith was one of the petitioners to move the Supreme Court against the Bill.

<https://www.dailymirror.lk/breaking-news/Stability-should-not-come-at-the-sacrifice-of-values-of-freedom-of-expression-U-S-Ambassador/108-267816>

However, the government appears to be having second thoughts with regard to the anti terrorism bill. The Supreme Court halted the proceedings of all petitions against the Anti-Terrorism Draft Bill. The three-judge bench led by Chief Justice Jayantha Jayasuriya announced that since the Speaker of the parliament had confirmed that the relevant Bill in question had not been presented to Parliament yet, the court could not have a hearing thereon. It appears that the government is being strategic in withdrawing the ATA as it has the equally draconian PTA which is the prevailing law as its backup.

## Reconciliation

The government is coming up with many new laws the latest being the Office for National Unity and Reconciliation (ONUR) bill. What is common to these laws is that they have been prepared without transparency by unknown figures who keep to the background. The ONUR bill is a broad one encompassing ethnic, religious and social harmony issues. The office that is set up will be mandated to make necessary recommendations to the government and relevant authorities towards achieving national unity, reconciliation, and durable peace in the country and formulate a national policy and national action plan on reconciliation and coexistence. It proposes to establish an office with eleven members. The office will consist of one ex-officio member not below the rank of an Additional Secretary to a Ministry and ten others based on the recommendations of the Ministers. All members are to be appointed by the President. The powers given to the new office are considerable.

Civil society groups have noted two serious concerns about the draft law and urges the government to amend them prior to submitting it to parliament and using its majority to get its own way. They have expressed their concern about the role given to ONUR to be prescriptive vis a vis civil society by virtue of the power “to guide and facilitate peace and reconciliation programmes conducted by local organisations including community based organisations.” There are provisions in other section of the draft law that give ONUR the scope to monitor and review the work of civil society, which could become oppressive and burdensome in the context of the national policy on reconciliation and accompanying action plan that ONUR is expected to develop. The second area of concern is the appointment

process of ONUR's decision making body. According to the current draft of the law, the 11 members of the committee that will lead ONUR are to be selected by the minister under whose purview ONUR will come, and be appointed by the president. The selection process creates the possibility of unilateral decision making and political bias in the appointment of committee members that appointments by the Constitutional Council under 21st Amendment was meant to forestall. The members selected under the ONUR Act need to be non-partisan as envisaged by the 21st Amendment. It is noteworthy that the proposed ONUR office follows the recent pattern of new institutions being created in which those who will head them are to be appointed by the president at his discretion.

Particular reference needs to be made to two areas of conflict which could become flashpoints in the future. In both of these cases there have been attempts made by members of the majority community to intrude into areas traditionally seen to be the preserve of the ethnic minority communities, such as the cattle grazing fields of the east. These lands which are owned by the state, and on which the Tamil and Muslim farmers have no solid legal claim, they are being asked to leave to prepare the land to be handed over to Sinhalese farmers along with their families. In the north the problem is liable to be taken in the direction of religious extremism by taking Buddhist statues to be placed in shrines that have last been Hindu, but in some cases were preceded by the presence of Hindu religious sites many hundreds of years ago. The president has issued orders to reduce the intensity of this conflict, but in the unfortunate case that the president is akin to a "voice in the wilderness" who makes a big noise but no follow up action is thereafter is not taken.

## Civil society

The High-Level Launch of the 'Civil Society Governance Diagnostic Report on Sri Lanka' took place on Wednesday, 13th September at the BMICH in Colombo. The event saw the participation of policymakers, representatives from the International Monetary Fund (IMF), diplomatic missions, international funding institutions, civil society organizations, academics, and distinguished guests from various other sectors. This collaborative effort, reflecting the crucial socio-political moment of reform in Sri Lanka, was led by Transparency International Sri Lanka (TISL) in partnership with a core group consisting of Verité Research, the Centre for Policy Alternatives (CPA), Sarvodaya, People's Action for Free and Fair Elections (PAFFREL) and the National Peace Council (NPC). Together, they formed the "Civil Society Initiative on Anti-Corruption Reform for Economic Recovery", with the shared understanding that the country is in a governance crisis embedded in deep rooted corruption, which must be addressed, if we are to strive towards actual, sustainable and equitable economic recovery. The Diagnostic Report introduced a comprehensive set of governance reform recommendations designed to address the root causes to the current crisis in the nation. The report benefited from input provided by over 250 participants representing diverse sectors, geographical locations, ethnic, religious, and cultural groups. Prof. Arjuna Parakrama conducted the research for the Civil Society Initiative. The report revealed that among the high-probability and high-risk tactics used in Sri Lanka are the structural weakening of the country's accountability framework, influence and interference with public officials, abuse of state-owned enterprises, manipulation of public procurement procedures, suppression of civil society, and the use of illicit financial transactions.

## PAFFREL takes initiative on LGBTIQ+ rights

PAFFREL organized a discussion with organizations representing the community, in collaboration with the Election Commission, on October 6th in Colombo. Some communities face obstacles, problems, and challenges in exercising their franchise. One community deserving special attention is the LGBTIQ+ community. It is not an exaggeration to say that the verdict given by the Supreme Court strongly indicates that society's attitude towards this community should change. In August 2022, a Private Members' Bill was initiated by one of Sri Lanka's main political parties, calling for the decriminalisation of homosexuality and for the amendment of sections 365 and 365A of the Penal Code. Despite the said Bill being challenged by certain petitioners on various grounds, the Supreme Court gave the green light to the said Bill and held that the Private Member's Bill as a whole or as any provision thereof is not inconsistent with the Constitution of Sri Lanka. The Government also stated that it will support its position of decriminalising same-sex relationships. A revised version of the Bill was gazetted on 23 March 2023. The Bill was presented to Parliament on 4 April 2023. With the determination by the Supreme Court regarding the Bill's constitutionality, the Bill now requires a simple majority in Parliament to become law. However, since April no action has been taken in this regard which motivated PAFFREL to meet with the Election Commission. The Discussion was supported by Diakonia Sri Lanka. Every eligible citizen should have the opportunity to exercise the right to vote, which is an element of popular sovereignty, without any hindrance.



## Excerpts from Relevant News reports

### ❖ Electoral reform report not acceptable to all political parties

State Minister of Provincial Councils and Local Government Janaka Wakkumbura said that the report of the National Delimitation Committee chaired by former ECSL Chairman Mahinda Deshapriya has not been published because many political parties were not in favour of it. The preliminary draft of the report was handed over to Prime Minister Dinesh Gunawardena by the committee chairman on 11th April 2023 and the final report was handed over to the President subsequently.

<https://island.lk/political-parties-not-in-favour-of-national-delimitation-committee-report-state-minister/>

### ❖ Plan to abolish presidency soon

Moves are underway to abolish the executive presidency before the Presidential Election next year as no candidate or political party will be able to secure an over 50 percent win at the polls.

<https://www.dailymirror.lk/breaking-news/Will-the-executive-presidency-be-abolished-before-the-polls-next-year/108-269063>

### ❖ JVP brings concerns regarding elections to US Ambassador's attention

Ahead of his planned visit to the United States, National People's Power (NPP) leader Anura Kumara Dissanayake met U.S. Ambassador Julie Chung and brought her attention to what he termed planned moves by the government to postpone the Presidential elections.

<https://www.dailymirror.lk/breaking-news/Ahead-of-American-visit-AKD-toys-USA/108-269629>

### ❖ Parliamentarians to visit US Congress to study its committee system

A team including chairpersons and members of the Sectoral Oversight Committees of Parliament of Sri Lanka visited the United States of America on October 21 and 22 to study the committee process of the United States Congress, with the full financial sponsorship of the United States Agency for International Development (USAID) and the technical and coordination assistance of the National Democratic Institute (NDI).

<https://www.dailymirror.lk/breaking-news/Committee-excellence-mission-Sri-Lankan-MPs-seek-inspiration-from-U-S-Congress/108-269623>

### ❖ **Lawyers collective opposes electoral reforms**

The Lawyers' Collective expressed its profound concern about President Ranil Wickremesinghe's recent appointment of a Commission of Inquiry, with retired Chief Justice Priyasath Dep PC as its chair. The Lawyers' Collective is very concerned about the timing of this particular proposal due to apprehension that these appointments might be intended to stall the electoral process.

<https://island.lk/lawyers-collective-expresses-concern-over-commission-of-inquiry-on-electoral-process/>

### ❖ **All opposition parties oppose government's planned electoral reform**

The meeting called by Prime Minister Dinesh Gunawardene ended without a final decision as opposition parties rejected the proposed amendment of the parliamentary electoral reforms though allies of the ruling party had reached a consensus.

<https://www.dailymirror.lk/breaking-news/Parties-fail-to-reach-agreement-on-amending-parliamentary-electoral-reforms/108-269474>

### ❖ **New party floated for presidential race**

Leading businessman Dilith Jayaweera said the country was heading for an election year, his political party, Mawbima Janatha Pakshaya (MJP), expected to attract floating votes which were increasing.

<https://island.lk/dilith-jayaweera-launches-new-political-party-to-tap-rising-floating-vote/>

### ❖ **Religiously fanned extremism on the rise**

Opposition Tamil National Alliance (TNA) parliamentarian M A Sumanthiran writing to the Inspector General of Police (IGP) said Mangalaramaya Ampitiya Sumana Thero has threatened to cut Tamils living in Sri Lanka's south "to pieces"..."Action taken/not taken on this matter will show us if the ICCPR Act is only to be used against those opposed to the government, Tamils and Muslims in Sri Lanka or if it is against hate speech," he said.

<https://island.lk/tamil-mps-question-alleged-inaction-on-monks-racist-outburst/>



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