

Speech by M.A. Sumanthiran - Congressional caucus briefing 14th June 2015

Thank you, Mr. Moderator. Your Excellency, ladies and gentlemen, it gives me great pleasure to address all of you in this forum. I have been asked to make a few remarks with regard to Sri Lanka's progress in this transitional phase. The transition commenced in January last year when there was a change in the office of the President. Just prior to that, most friends of Sri Lanka were gravely concerned that Sri Lanka was going down the precipice, in that it was moving towards an authoritarian regime. The Constitution had been amended; we had an executive presidential system with a two term limit that had been amended to enable the incumbent to run for however many times that he wanted to and there were very serious concerns with regard to democracy deficit and accountability and non-accommodation of dissent and so on.

But when the change came, it came with a promise of turning back and making various reforms, the rapprochement with the Tamil community not being the least of those. That is because in the post-independence history of the country there has been an alienation between the majority community who are Sinhalese and the Tamil community in the country which widened as time went on - in the 1950s by enactment of certain legislation, then further - as we enacted our first Republican Constitution in the early '70s - exclusion of the Tamil representatives from that process which was later repeated in the Second Republican Constitution of 1978 and which led to an armed revolt by Tamil youth seeking to establish - or rather re-establish - their lost sovereignty as a separate state in that island. The armed conflict came to an end in 2009 May and although various concerns were raised with regard to how that was brought to an end in violation of various norms and international law and so forth, the then Government did not pay heed to valid concerns that were raised, despite giving assurances. There was a joint communique made with the Secretary General of the UN on the 26th of May 2009 that all of those issues will be looked into and the displaced people would be all resettled within that year and a political solution to the long standing issue will be found on extensive devolution, but none of that happened.

When the change came the communities that are small in number - the Tamil and Muslim communities - voted in large numbers. 80-90% of their vote went for change and President Maithripala Sirisena came into office promising various things. Some of those were abolishing the executive presidency and bringing about a permanent solution to what has come to be known as the ethnic conflict and in that process he also gave promises that lands

from which the Tamil people had been displaced due to the war would be returned to them. It was a written promise given at the time of his election and thereafter there was a process that had been ongoing in the UN Human Rights Council; three resolutions have been adopted and after the change, last year in the September session on the First of October a resolution was adopted with Sri Lanka co-sponsoring it, agreeing to certain measures that were to be taken. The text of that resolution was negotiated and compromise found and Sri Lanka accepted it as its own resolution. There are various features in that resolution and in a couple of days the High Commissioner will give an oral update to the Council with regard to progress in that regard; in that there have been various concerns we have raised - as the moderator said - slowness of progress; not just merely slow, there is serious concern when the progress is slow that it can even slide back. I am not going to go into much of that at the moment but focus on a positive, which is the constitution making process which will potentially bring to an end a seventy year old conflict.

The process has started and is moving fairly swiftly but it has certain knotty issues and I want to highlight one or two of those. Sri Lanka has been ruled by a simple majoritarian rule. That is the system of government. And when you have permanent majorities and permanent minorities in numbers that can always lead to oppression and that is what happened in Sri Lanka. Majoritarianism takes over. So one of the antidotes of that has been the suggestion that at least in the areas in which the other communities are a majority you devolve power so that certain aspects of governance, they will have a say in. So we have asked for a federal form of government rather than a unitary form of government, and that's one of the issues. The other of course is that although it is now conceded that power must be devolved to the provinces, there are nine provinces according to the administrative boundaries drawn by the British. Two of those provinces are Tamil speaking majorities and the concern of the Tamil people is that those two areas must form one unit of devolution. This is something that is not understood very well around the world. People ask me the question "why should only two provinces be merged?" But this has been something that has been agreed to from 1957 onwards. The first pact that was signed between the Tamil leaders and rulers in Sri Lanka - Prime Minister Mr. Bandaranaike in 1957 - provided for a merger of these two provinces and every negotiation thereafter provided for these two units to come together. So that remains a fundamental political aspiration of the Tamil people. Even in 1987 when the Constitution was amended to what is known as the 13th amendment to the Constitution - which we rejected as being meaningless provisions of devolution - still the

unit of North and East was merged on a temporary basis and existed for 18 long years until the Supreme Court of Sri Lanka did away with that merger on a technicality rather than any particular principle. So that is the other issue that remains to be resolved. I would actually stop with that -highlighting these two issues in a process which has come about as a great opportunity that we have now because two main political parties of the country are together in government. This is an opportunity that we must all grasp and resolve, but the resolution must necessarily be something that particularly the victim community, the Tamil community, must express satisfaction over.

The accountability issues which arose as a result of how the war was prosecuted and ended also remain. Justice to the victims and reparation and guarantee of non-recurrence were all promises that were made in that resolution that I referred to. Most of it has not been addressed as yet. Only the Office of Missing Persons legislation has been gazetted about which we have expressed our satisfaction. But that is just a tiny step. There is a whole host of events that has been promised that need to be addressed and moved on.

On the change that has taken place in the life of the Tamil People since 2015:

Well, there is some change. The anxiety of having to face a hostile military of what we call the deep state - which is translated into military intelligence personnel prying into their private affairs and so on - a lot of that has changed. There is greater freedom to move around and so on. So people can genuinely feel the change - which is more freedom. But once that has been realised, day to day issues have not changed, primarily because most of them haven't been able to recover themselves from the war devastation that is all around. A lot of them are not permitted to go to their own land which is occupied by the military and this is what I referred to in my presentation - that there was a promise to release all private lands which hasn't been realised as yet. A small portion has been released in stages, but the promise was to release all of it in 100 days from January 2015 and one and a half years later about 70% still remains in the hands of the military and people can actually see that the rate has slowed down and there's very little movement in that respect, and so their sense of frustration is growing. The military not only occupies people's land but they cultivate it. They grow vegetables in it and they sell it at the market for lower prices than what the other farmers are able to sell. So that has an implication on their livelihood. They are running 18 tourist hotels in those places. This is just one aspect. Return to normality in terms of getting

back to normal civilian life has not yet happened to the people. People understand that they need to be patient and so on, but their patience is running out. We had an adjournment debate in Parliament just a couple of days ago and all our representatives from the North and East listed out various issues that affect the people and warned the Government that the goodwill may not last very long if these issues are not addressed. Our people feel very strongly that we brought about the change, we voted in full numbers to bring about a change, and that was done on certain promises which are yet to be realised. In a short answer, there was hope, there was initial euphoria, which is now turning into frustration and disappointment.

On the merger of the North and East:

A: I have some statistics which tell the story fairly clearly. In about 1887 there was a census and there were only 9 Sinhalese living in the Eastern Province, all men. By the time Independence came the Sinhalese population in the East was 9%. Now between 1947 and 1981 the Sinhalese population in the whole country grew by 238% (2 ½ times) and during the same time the Sinhala population in the Eastern Province grew by 888% (9 times), primarily or solely due to a state sponsored colonisation scheme that sought to forcibly change the demography of the Eastern Province. This has been a bone of contention and that is why the Bandaranaike- Chelvanayagam pact in 1957 addressed that issue very specifically and provided for a merger of the North and East Provinces. It very specifically provided this, even in 1957, but that accord was not honoured. In 1965 (there was) yet another accord signed between Prime Minister Dudley Senanayake and S.J.V. Chelvanayagam which again addressed this crucial issue of colonisation as to who will get priority to be colonised in the Eastern province and that also was not honoured. So this is the background to why these two provinces must remain together. This is not something that has arisen now. At least from 1957 onwards we have had agreements to merge the two provinces, particularly in 1983 after the violence against the Tamil people and India offered its good offices and the Indo-Lanka Accord was signed. There is provision in the Indo-Lanka Accord that the Northern and Eastern provinces are areas of historical habitation of the Tamil speaking People. So there is that recognition that Sri Lanka also signed an international bi-lateral treaty, which gives that recognition of a linguistic character to the two provinces together and in that accord there is provision made also for the North and East to be merged together. So this has been a fundamental feature and all of the promises given - even by the previous Rajapaksa regime, there are at least three joint communiques that I can count.

Ambassador Kariyawasam was in Delhi at that time so he will be very familiar with those. The Government of Sri Lanka at that time, with the Prime Minister of India once and the Indian foreign minister twice, agreed that the 13th amendment to the Constitution which provided for a merger as well, will be fully implemented and go beyond to achieve meaningful devolution. So even when a promise was given that greater devolution will be granted, the fundamentals of the 13th amendment, which included a merger, was agreed to. Every effort thereafter from 1993 to 2000 to 2006 - even under the Rajapaksa regime there was an All Party Representative Committee and I have one of the documents here which provides for the merger of the two provinces. So it is a deviation from the normal devolution to the provinces as they are, but because of this serious issue of - well it's called gerrymandering here, but it is not gerrymandering but actually diluting a population and changing the demography which governments have consistently admitted to - and as a measure of arresting that trend and providing the Tamil speaking people in this area a certain measure of autonomy and a unit in which they can exercise political power as one group rather than two separate groups. So that's the justification for it.

But...whether it is being communicated properly - no it is not. These facts that I have given, I think form a base or a right kind of justification that must be communicated which will then enable the majority community to realise why there has to be certain special provisions that are not afforded to the other provinces.

On the role of the Government of India:

This particular Indian Government has also reiterated to us their role in exercising those good offices that brought them to sign the Accord continues. India in a sense signed the Accord on behalf of the Tamil people. It was not necessary for a neighbouring country to sign an accord with Sri Lanka providing for power sharing and one unit of devolution and so on. It's in the context of serious violence that was being perpetrated against the Tamils in Sri Lanka and that also had a long history culminating in the very serious one that happened in 1983 and the fleeing of refugees to India. Even today there are 168,000 Sri Lankan Tamil refugees who are living in South India. So it's a legitimate concern of India - that India under-wrote this agreement on behalf of the Tamil people. But international politics - what it is today - may not show India directly dictating as what it were, what should happen in Sri Lanka. That is not how things are done. But India's legitimate concern continues to remain in enforcing all of the provisions of the Indo-Lanka Accord.

On repeal of the PTA and the military presence in the North and East:

Like the promise to release all land to civilians - and that has been confirmed by the Ambassador as well - The PTA (actually called the Prevention of Terrorism (Temporary Provisions) Act) of 1979 was brought in for a period of six months but is still in our statute books. (It's) one of the most draconian pieces of legislation you can read and in the consensus Resolution of October 2015, the Sri Lankan Government agreed to repeal the PTA and replace it with a legislation that accords with international best practices - that also, I am glad Ambassador Kariyawasam confirmed and he said that it will happen if not immediately, soon. But I have a grave concern about the process of that. I am aware that the Sri Lankan Law Commission was tasked with the drafting of the new law to replace the PTA. I was also interviewed by the Law Commission and I made significant contribution in that respect. I understand that they produced a draft law, a new national security law, and presented it to the Government, but on protest by the security sector I am given to understand that the draft has been dumped and a new committee formed now, most of whom are from the security sector, and a new piece of legislation has been drafted which I am told is worse than the PTA. So that is a very serious concern and we have raised this with the Government and I hope the Government pays heed and reverses this trend and brings back the draft that the Law Commission of Sri Lanka drafted.

On the role of the US.

I think the US has played a very significant role already in the resolutions that it mooted in the UN Human Rights Council encouraging changes, and therefore must continue to play that role. It is true that there has been a significant change, a monumental change as described by the Ambassador, but the foot must not be taken off the pedal too early. For the simple reason that we have seen change, as a result of some pressure, some encouragement, some nudging and those must continue... Our plea to the US Government would be don't express satisfaction too early as there is still a lot to do during that phase.

On international involvement in the accountability process:

If you ask me about international involvement in the accountability process, as far as I know the Government has not said 'no' to international involvement. All the multiple voices that you talk about say 'international involvement - yes, but not judges'. Now I take great exception to that, because as I said at the beginning, the text of the 2015 Resolution is a negotiated text. We asked for (an) international inquiry, and we settled for a hybrid model. So that was negotiated with the Government of Sri Lanka. And having compromised and settled to a model which in the Resolution doesn't merely say hybrid but explains in detail judges, prosecutors, defence attorneys and investigators, it obviously means judge qua judges, prosecutors qua prosecutors, so on and so forth. So it does not mean (for) judges to be advisors or judges to be involved in some other capacity. And that was well understood. I was personally involved in the negotiations, with the United States of America also participating in that particular process. There were some doubts created, as to whether the Constitution of Sri Lanka would allow for foreign nationals to function as judges and we went into that question, clarified it, and said yes they can and that is how that phraseology was agreed upon. And so, to us having negotiated and compromised and agreed that there would be a hybrid tribunal to try these mass atrocities, it is not open for the Government now to shift its stance and say 'well, international involvement yes ,but it's in a different form, now...'. That is not acceptable to us at all. And we have said this. Quite openly I have spoken in Parliament at least two or three times and the Government has not contested me on that. We have said it to the President when he called for an all party conference on the implementation on the UN resolution, and he has not contested us on that. But as you say, in the public there are different voices that we hear. So we are concerned as much as people are, with regard to this particular issue, wondering if the Government is shifting its stance. However, such a mechanism has not been brought about as yet. So we will wait until we reach that particular point of setting up a court of the Special Counsel's office and so on and so forth and insist that every word, and spirit, in that resolution will be complied with.