

Chandrika suspends Parliament

Prorogation

SRI LANKAN PRESIDENT Chandrika Kumaratunge delivered a bombshell when she issued a proclamation on 10 July proroguing Parliament under constitutional powers (Article 70), to outmanoeuvre the opposition in a battle that threatens the political stability of the island.

Parliament must be summoned within two months of prorogation in terms of the Constitution [Article 70 (3)]. The presidential proclamation says that Parliament will reconvene on 7 September.

Some observers believe that after Parliament meets on 7 September, the President may prorogue the legislature again, to avoid the opposition's no-confidence motion against the ruling People's Alliance (PA) government, until fresh elections are announced.

The Constitution does not preclude the President from proroguing Parliament again. However, the political fall out from such a course of action may prove to be too great for the President to handle. The scene may then shift to a different arena - to the streets as the opposition is certain to rouse its supporters, or to the courts.

The President issued the Proclamation after 115 opposi-

I do not need all the powers entrenched in the office of the Executive President which are against the aspirations of the people.

President Chandrika Kumaratunge

tion MPs petitioned the Speaker of Parliament, Anura Bandaranaike, on 10 July, demanding a debate on the no-confidence motion on 18 July.

Earlier, the debate had been announced for 16 July, but the Director General of Census opposed this date, saying that it will affect national census fixed for 17 July. The last national census was held in 1981 and the Director was unwilling to postpone after having made all arrangements.

The no-confidence motion signed by 98 parliamentarians was tabled on 21 June, accusing the government of failing to solve the ethnic problem and mishandling the economy. The proclamation proroguing Parliament is clearly aimed at pre-empting opposition designs to defeat the government in the confidence vote.

The Sri Lankan Constitution provides that Parliament cannot be dissolved before the expiry of one year from the

date of a general election [70 (1) (a)]. The last election was held on 10 October 2000 and therefore, Parliament can be dissolved only after 10 October 2001 and fresh elections called.

Opposition MPs urged Speaker Bandaranaike to reconvene Parliament. The main opposition United National Party's (UNP) constitutional expert KN Choksy says that the President's action had arrested the legislative power of the people. He claims that in such circumstances, the prorogation is invalid and will not bind Parliament.

The UNP has also pointed to Article 42 of the constitution which states that the President shall be responsible to Parliament for the due exercise, performance and discharge of powers, duties and functions under the constitution, including powers relating to public security.

But Mr Bandaranaike, after discussions with the President who is his sister, ruled on 15 July that a Speaker has no legal authority to reconvene Parliament, which has been prorogued by a President.

The opposition parties have appointed a committee headed by Mr Choksy to draft an impeachment motion against President Chandrika, which will lead to an enquiry by the Supreme Court.

If such a motion is signed by not less than two-thirds of the MPs (ie.150) then the Speaker is obliged to accept it. If the motion is signed by less than two-thirds, but by more than half (ie.113) then the Speaker must be satisfied that the allegations against the President merit an enquiry by the Supreme Court.

But with the Speaker having declared that he has no power to summon Parliament, the opposition faces difficulty in presenting the motion.

Dismissal

The crisis was precipitated after President Chandrika sacked Sri Lanka Muslim Congress (SLMC) leader and Trade minister Rauf Hakeem from the Cabinet, after he allegedly signed an agreement with the UNP on 20 June. Mr Hakeem denies the accusation.

Seven members of the SLMC, including Mr Hakeem, who had all been elected on the PA ticket, joined the opposition ranks in Parliament. Earlier, the government had 116 seats in the 225-member Parliament with the support the SLMC, the Ceylon Workers Congress (CWC) led by Arumugan Thondaman and Douglas Devananda's Eelam People's Democratic Party (EPDP). After the defection of the SLMC, the government has 109 seats against combined opposition's 116.

In order to avert the crisis some politicians had proposed a 'government of national reconciliation' with current Fisheries minister Mahinda

Rajapakse or UNP leader Ranil Wickremasinghe as Prime Minister, who would consult all parties on matters of national importance.

But this proposal is not acceptable to many stalwarts in the ruling PA, including current Prime Minister Ratnasiri Wickremanayake, who called off informal discussions between the PA and the UNP on the formation of a national government.

Attempts to bring back Mr Hakeem into the Cabinet failed, as the government continued to look for ways to strengthen his main rival in the SLMC, Ferial Ashraff, the wife of former Rehabilitation minister MHM Ashraff.

Referendum

On 10 July, the President also announced that a national referendum would be held on 21 August regarding a new constitution which would incorporate the government's devolution proposals.

The present constitution provides (Article 82) that for the amendment or the repeal of the constitution a two-thirds majority in Parliament is required. But approval at a national referendum, in addition to the two-thirds majority in Parliament, is needed for amendment or repeal of certain provisions [Articles 1-3, 6-11, 30(2), 62 (2)].

Because of these entrenched provisions, the replacement of the present constitution by a new one requires a two-thirds majority in Parliament and approval in a referendum.

The government has lost even its simple majority in Parliament and appears to plan to by-pass Parliament and seek approval in a referendum for the appointment of a Constituent Assembly to adopt a new constitution.

In an address to the nation on 19 July, the President declared that the present constitution, which was introduced in 1978, is the principle cause behind serious crises in the country.

It is necessary to introduce constitutional reforms, which are compatible with the needs and aspirations of the people, the President claims. The following changes are envisaged:

1. The process of counting votes and determination of results under the current proportional representation electoral system distorts the expression of the people's view. This system, which has ensured that no political party is able to establish a stable government, will be changed through the new constitution, by a combination of electoral systems in other democracies and a system of proportional representation.

2. The new constitution will provide for four independent commissions on Elections, Finance, Police and Public Administration.

3. The new constitution will provide for constitutional and political solutions to the ethnic problem. The constitution will also include provisions for the implementation of the proposed solutions.

4. The new constitution will abolish the office of the executive president.

Analysts say that the referendum also has motives other than seeking a mandate for replacing the constitution. In the light of the no-confidence motion by the Opposition, President Chandrika may wish to establish, through a referendum, that the Sri Lankan people still have confidence in her, when she is unable to dissolve Parliament immediately and call for elections because of constitutional difficulties.

Observers believe that the appointment of a three-member Truth Commission, headed by former Chief Justice Sharvananda, is another weapon in the President's arsenal to hit back at the UNP.

The Commission is mandated to enquire into the violence against the Tamil community between 1981 and 1984, particularly the 1983 pogrom, in which senior UNP government officers, including ministers, are said to have been involved.

Challenge

The government say that the referendum question to the people will be as follows:

"Are you in agreement with the proposal that the country needs a new constitution, which is nationally important and an essential requirement?"

The President's referendum announcement at the Cabinet meeting on 11 July came as a shock even to many ministers. Several of them, including Constitutional Affairs minister GL Peiris, had not been consulted. Mr Peiris is reported to have told President Chandrika that the referendum question

lacks clarity and will have no legal validity due to ambiguity.

Justice Minister Batty Weerakoon says that the referendum is only to ascertain the opinion of the people and would be non-binding. According to him, if the people agree for a new constitution in the referendum on 21 August, then a draft Bill will be tabled in Parliament and then placed before the people in a second referendum. The cost of the first referendum has been estimated at Rs 600 million (\$6.7 million) and there is no parliamentary approval for the expenditure.

Rural Development minister SB Dissanayake who is also the General Secretary of the PA coalition's main constituent, the Sri Lanka Freedom Party (SLFP), is also unhappy with President Chandrika's decisions and has warned that they will adversely affect the PA's political future.

Lawyer Dharmadasa Gomez has filed application in the Court of Appeal challenging President Chandrika's decision to hold a referendum. He claims that Parliament cannot be by-passed when constitutional issues are involved.

The Tamil parties have declared that they would not support any move for constitutional reform, which is not preceded by negotiations with the Liberation Tigers of Tamil Eelam (LTTE).

Emergency

The PA government reintroduced Emergency on 24 October 1994 under the Public

Security Ordinance of 1947, after the assassination of presidential candidate Gamini Dissanayake. Under the law, Emergency must be approved by Parliament every month. Because of lack of majority in Parliament, the government did not submit a motion for the extension of Emergency on 6 July 2001 and allowed the Emergency to lapse, which means all Emergency regulations became void on 6 July.

As a result of prorogation, Parliament has no opportunity to vote on the extension of Emergency. Even if the President declares a state of Emergency again, the declaration must be approved by Parliament within 14 days.

The end of Emergency appeared to relax the dictatorial grip of the government on the country through Emergency regulations. The proscription of the LTTE also lapsed, as the Tigers were banned under Emergency regulations made in January 1998, following the attack on the Buddhist holy site, the *Dalada Maligawa* in Kandy.

The President, as Minister of Defence issued Regulations, which is a statutory instrument, under the Prevention of Terrorism Act (PTA), on 11 July and re-imposed a ban on the LTTE.

All 25 administrative districts were declared as security areas under the PTA. Colombo has been declared a "high security zone" and heavy vehicles are banned into the city to prevent suicide attacks.

In an "affirmative procedure" relating to the approval

of a statutory instrument, regulations enter into force only after acceptance by Parliament. The PTA provides for the "negative procedure".

Section 27 (2) of the Act says "Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation". This means that the regulation is already in force.

Section 27 (3) of the PTA provides "Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette* be brought before Parliament for its approval...." The government would argue that it is not "convenient" at present, as Parliament is not in sessions.

Most of the Tamil parties, encouraged by the UNP, have been vigorously campaigning for the removal of the ban on the LTTE under Emergency regulations.

All Ceylon Tamil Congress (ACTC) MP Appadurai Vinayagamoorthy has argued that the LTTE cannot be proscribed under the PTA for the reason that a provision of the same Act (Section 30) repealed an earlier law (The Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organizations Act No. 16 of 1978) that banned the LTTE.

Mr Vinayagamoorthy contends that a law removing the ban of the LTTE cannot be used to ban the same organization. Analysts say the argument is flawed. According to this argument, the LTTE cannot be

proscribed under the PTA, but any other organisation can be banned.

The UNP did not use this argument, but had declared that there are methods other than the use of Emergency regulations to ban the LTTE, clearly indicating the use of the PTA. Tamil observers claim that the motive of the UNP has always been to have the LTTE banned under the PTA. The Tamil parties, they say, have been taken in by the UNP to support the removal of the ban under Emergency regulations.

As pointed out earlier, Emergency regulations lapse as soon as Emergency lapses. Even when Emergency was in force, the repeal of the regulations banning the LTTE could have been effected by the President through an order published in the *Gazette*.

But since 11 July the LTTE have been banned by regulations under the PTA, which is permanent legislation made by Parliament. As only Parliament has the power to repeal or amend a statutory instrument, the removal of the current ban on the LTTE will be much more difficult than under Emergency regulations.

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Essential services

On 11 July, President Chandrika also invoked provisions of Part III of the Public Security Ordinance, which grant her powers, without declaring a state of Emergency. Section 12 (1) of the Ordinance says: "Where circumstances endangering public security in any area have arisen or are imminent and the President is of the opinion that the police are inadequate..he may..call out..the armed forces for the maintenance of public order..."

Many of the powers exercised under Emergency regulations, are available under this law, including declaration of curfew and essential services.

Under these provisions, the President called out the armed forces to maintain public order in all 25 administrative districts and territorial waters. She also declared the following as essential services:

"Supply, preservation and distribution of food and drink, supply of fuel, including petroleum products and gas, supply of electricity. transport services for passengers and commodities, water supply, postal, telephone, telegraphic and broadcasting services".

Peace

The machinations of the parties for political survival have relegated the peace process. The NGO-led National Peace Council has called on 'the people and civil society organisations not to permit politicians to strengthen their own positions to the detriment of national harmony'.