

Sri Lanka's court rubberstamps Rajapakse's bid for third presidential term

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At the instigation of President Mahinda Rajapakse, the Sri Lankan Supreme Court last week ruled that he can contest a presidential election for a third term, and call the election this year, two years before his current term ends in 2016.

Rajapakse sought an opinion by the country's highest court in order to thwart a developing media and public debate, involving establishment politicians, legal professionals, academics and civil rights organisations, over his eligibility for a third term of office.

Clause 31(2) of the 1978 Presidential Constitution states that once a president has been elected for a second time he is disqualified from further presidential elections. But parliament passed Rajapakse's notorious 18th constitutional amendment in October 2010, nine months after he was elected for a second term, to remove that two-term limit.

Over recent weeks, the government and its opponents have been engaged in a constitutional wrangle. The opposition argued that the amendment did not remove Rajapakse's disqualification because it was passed after his election and did not apply retrospectively. Rajapakse's supporters insisted that although he was elected in January 2010, he took his oath of office on November 19, 2010, after the constitution was amended.

The Supreme Court's favourable opinion was not unexpected. It was Chief Justice Mohan Peiris, then the attorney general, who argued before the court to have Rajapakse's 18th constitutional amendment sanctioned as an Emergency Act to be presented in parliament.

The appointment of all higher court judges is the president's unrestricted prerogative. In January last year, for the first time in the country's history, Shirani Bandaranayake, the former Chief Justice, was impeached and removed on concocted charges.

Rajapakse then appointed Peiris, who had been a presidential adviser since retiring as attorney general.

The court was effectively given only two days to consider the amendment's compatibility with the constitution. The chief justice gave the Bar Association of Sri Lanka only half a day to make a written submission.

Chief Justice Peiris then hurriedly appointed all the judges available, except for one who was overseas, to consider the required opinion. The full bench sat for just a few hours before issuing a unanimous decision in Rajapakse's favour.

The whole process, initiated by the president himself, was to preempt any legal or political challenge to his attempt to continue in office, violating basic democratic norms.

Rajapakse invoked clause 129 of the Constitution, which allows the president to seek an opinion of the Supreme Court on an issue of public importance. The court denied the Bar Association's request to allow oral submissions before delivering its opinion, under a confidential cover, to the president on November 10. The ruling was announced in parliament the following day, but the full text has still not been made public.

The ruling quashed the plans of political parties which intended to mount a legal challenge to Rajapakse's bid for a third term. The Janatha Vimukthi Peramuna (JVP) had conducted a campaign, utilising the services of another former chief justice, Sarath N. de Silva to prepare a legal case. After the Supreme Court's opinion was issued, de Silva stated: "Now we have nowhere to go."

The Jathika Hela Urumaya (JHU), a partner in Rajapakse's ruling coalition, lamented that the court's decision would damage the judiciary's credibility. A JHU leader, Buddhist monk and parliamentarian

Athuraliye Rathana, told the media: “With this decision, the public confidence in the judiciary will decline.”

The JVP and JHU both supported Rajapakse’s election in 2005 and were in the forefront of the campaign backing his regime’s war against the separatist Liberation Tigers of Tamil Eelam (LTTE). While the JVP supported Rajapakse’s anti-working class policies from outside, the JHU joined the government to support his pro-business economic policies and anti-democratic measures, including the 18th amendment to the constitution.

Rajapakse’s decision to run for a third term and call an early election is bound up with the increasing crisis his government is facing amid the protracted breakdown of the world capitalist economy. Despite promises of a few handouts for working people and promises of improved social services in the government’s recent budget, which was geared to an early presidential election, drastic measures will inevitably be imposed when the latest International Monetary Fund-dictated budget cuts are implemented next year.

The level of support whipped up by a chauvinist campaign around Rajapakse and his government following the LTTE’s defeat in 2009 has already largely evaporated. Several recent provincial council elections underlined the decline in the government’s popularity. In the latest result, the Uva provincial council election saw the vote for Rajapakse’s Sri Lanka Freedom Party fall by 21 percentage points, from 72 percent in 2009 to 51 percent.

Working people and youth are not only disillusioned with Rajapakse and his government, but with the entire political establishment.

The posturing of opposition parties such as the JVP and United National Party against the autocratic methods of the government, including Rajapakse’s manoeuvring for a third term, is a desperate bid to appeal to alienated voters. Both of these parties, however, have a record of their own of abusing basic democratic rights, are committed to imposing the IMF’s pro-market austerity agenda and will not hesitate to ruthlessly suppress any opposition by the working class.

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