

## **Reconciliation through the Devolution of Powers in Post-War Sri Lanka: A Special Reference to Debates on 13<sup>th</sup> Amendment of the Constitution**

S.M.Aliff

*Senior Lecturer, Dept of Social Sciences, Faculty of Arts & Culture,  
South Eastern University of Sri Lanka  
smaaliff@gmail.com, smaliff@seu.ac.lk*

### **Abstract**

Reconciliation is a more forward-looking process of healing divisions between and within communities. It requires recognition of others' grievances and experiences and changes in policies that may have worsened the conflict or prevented greater cohesion. In the history of ethnic conflict in Sri Lanka, ethnicization of politics and politicization of ethnicity have become very common. The politicization of ethnic and religious revivalism as also assertion of various ethnic and regional identities is posing serious problems for the integrity of Sri Lanka. Post-colonial Sri Lanka followed strategies of modernity and economic progress. However, the modernization and development process led to the centralization of development progress. The negative connotation of such centralization was the manifestation of discriminatory attitudes in terms of ethnicities and region. Discriminatory distribution of rights and privileges together with the arbitrary attitude of power elites led to a feeling of deprivation among minority ethnic groups. The Sinhala elites largely failed to strengthen the democratic institutions by decentralizing political economic power. Instead, they responded by strengthening and using coercive powers to preserve regime interests against minorities which paved the way for a civil war. Four years since the end of civil war against the Liberation Tigers of Tamil Eelam (LTTE), Sri Lanka is farther from reconciliation than ever. Devolution of power to the north and east is essential to for sustainable peace. It has become no less urgent with the defeat of the LTTE; indeed, the end of the war and the return of normalcy in those areas make real power sharing all the more important. In this context, the government has essentially rejected the need for any political solution or power sharing with the Tamil-speaking-majority in North and East under the 13<sup>th</sup> amendment. This is a remarkable change from previous governments. The current chaos on devolution creates uncertainty and, therefore,

it is difficult to outline the future moves of the present government. But despite such problems, prospects for reconciliation through devolution should remain hopeful.

This study focuses on the current crisis of the 13<sup>th</sup> amendment of the constitution of the Sri Lanka. The prime objective of this study is to critically analyze the ongoing debates over the devolution of powers to minority under the 13<sup>th</sup> amendment. The fundamental questions of this research are the following: why does the present government deny provision of a reasonable devolution of power to minorities and its impact on reconciliation among the multi-ethnic society of Sri Lanka.

This research is a critical one based on interpretive analysis in which both quantitative and qualitative data have been used. Here, the stated purpose is being examined by studying both primary and secondary materials. This secondary data have been collected from books, reports, journals, news papers, official documents and research articles

**Key Words:** Ethnic Conflict, Politics of Sri Lanka, Reconciliation, Devolution of Power

## **Introduction**

Following the end of the thirty years of civil war in Sri Lanka, there were expectations that the post-war period would usher in peace, development and reconciliation. The last four years have witnessed several positive developments including resettlement of people and development of infrastructure. Nonetheless there are a range of problems and policy gaps that have hindered the transition from war to sustainable peace. A key post-war challenge is that of violence against religious sites and members of religious communities and delays in political settlement.

The end of the armed conflict offered an ideal opportunity for the present government to take up these challenges. But four years after having achieved what was ridiculous for many Sri Lankans at the end of the armed conflict, the government has shown few signs of tackling the underlying causes, i.e. minority grievances.

Prior to the end of the war, the GoSL has not revealed any political package for minorities. Although during the course of the conflict, successive governments of Sri Lanka have had several rounds of negotiations with the minorities during which, a number of proposals have been made for different levels of political autonomy for minorities especially in the north and east. Nevertheless the present government has begun an All Party Representative Committee (APRC) proceedings and Lessons Learnt Reconciliation Commission sittings (LLRC) in 2007 and 2010 respectively. However, APRC proceedings were undermined from the inception because it did not include

representatives from the Tamil National Alliance (TNA) (Crisis Group 2007). Subsequently a number of political parties, including the main opposition, the United National Party (UNP) boycotted the proceedings. In addition, Professor Tissa Vitharane, who headed the APRC, had reportedly given the President a final set of proposals on political autonomy for minorities. However, to date, there has been no official acknowledgement of these proposals from the government.

Similarly, until now there are no suggestions on what government plans to present to the minorities were expressed. There have been some guarantees given to different international leaders; here too the emphasis has been on finding a 'home grown' solution (*BBC* 2009). There are some speculations amongst political analysts in Sri Lanka that the President wants to conduct elections first with the expectation of returning with a stronger support base, rather than having to rely on Sinhala nationalist parties to pass a package for minorities through parliament. There is another speculation also that the President will offer a watered-down version of the APRC's and LLRA's proposals, and this may not even amount to a full implementation of the 13<sup>th</sup> Amendment which created provinces as the units to which powers, including land administration and police, would be devolved.

## **Reconciliation and Devolution in the Context**

Post-war reconciliation, development and peace building through power sharing require all measures that are necessary to help a country move from conflict to sustainable peace. Concerns about the best approaches and policy options available in post-war countries to ensure both sustainable peace and development have been the preoccupation of policy makers and development practitioners. Scholars in peace studies and democratic governance have been concerned about whether post-conflict development should be focused on the provision of short-term humanitarian assistance and rehabilitation, and the promoting of early reconciliation, or it should be anchored in long-term development. Policy makers in war-torn societies should also be concerned on how to deal with minorities' community demand for more autonomy and devolution of power issues in order to ensure durable peace and social harmony among the multi ethnic societies and economic development for the people.

Successful reconciliation in Sri Lanka will, to no small extent, depend on an intensive and effective devolution process which involves the empowerment of ethnic minorities at the regional level. Devolution entails a process of dividing and distributing authority, power and responsibility for formulating programmes and policy implementation to regions, as well as reassigning decision-making responsibilities to regional governmental units on a geographical basis. Thus Sri Lanka is in a dire need of democratic regional governance that harmonizes

the sharing of responsibility between the central government and the regional minorities, empowers people, democratizes society, and shares the responsibilities of deciding on policies which affect people's daily life without involvement and disruption of central government. On this backdrop, in this research article I describe post-conflict peace building broadly as a process that falls under the concepts of *reconciliation* and *devolution of power* that are widely used in the conflict resolution and political science literature.

Paul Lederach identifies truth, justice, mercy, and peace as four components on which reconciliation can be built (Lederach and Maisee 2003; Samarasinghe 2009). But there is a psychological dimension to this as well. Reconciliation will play out in different societies in different ways depending on, among other things, culture, religion, social norms, and history. Reconciliation itself may be a long-term process. However, it carries immediacy in the sense that some degree of reconciliation has to take place as the initial short-term step of peace building process. The main requirement for this is mercy and forgiveness on the part of the protagonists for the mistakes that they have done during the conflict. The actual dynamic, especially the way in which justice is meted out, will depend very much on who won and who lost, and who wronged whom; and perceptions that the parties to the conflict have of what happened will matter as much as what actually happened. Particularly in a conflict where there is a clear-cut victor and a clear cut-loser, a greater responsibility lies with the former to bring about lasting reconciliation. The 1995 South African Truth and Reconciliation Commission (TRC), for example, was quite successful in reaching out to the White community at large to make them feel that they were wanted in a post-apartheid South Africa and also to convince the Blacks that reconciliation was essential for the success of the new South Africa. Since then a large number of other countries emerging from conflict have created their own versions of the TRC (Samarasinghe 2009).

Successful reconciliation is essential to lay the groundwork for long-term post conflict transformation that will bring about long-term peace. This is a challenging long-term process that requires transformation of a society in almost all its dimensions: political, economic, social, cultural, and psychological. It requires a voluntary coming together of protagonist groups that were bitter enemies not so long ago to work for the common good and for a higher purpose. This requires agreement on sharing resources and powers that are often in short supply in an equitable manner, and an agreement that, despite their apparent differences, be they racial, ethnic, religious or any other, there are higher common goals and purposes in their shared country.

James Manor and Richard Crook, who have made one of the most important and recent contributions to the decentralization and devolution studies, say that decentralization is the more general term for 'the transfer of power away from a central authority to lower levels in a territorial hierarchy' (Manor and Crook 1998: 6). Devolution, however, has the 'opposite effect'. It means that

the central government gives up some of its power, for example, to tax and spend, and may even have only limited or minor legislature competence. In other words, decentralization is the umbrella term for reallocating powers in certain ways, thus devolution and deconcentration are two different methods used for different purposes.

Peter Whiteford, however, relies mainly on a definition of devolution as an 'umbrella term that covers all forms of transfers of responsibility' (Jain 2007: 34). Whiteford means roughly what Crook and Manor mean by delegation and decentralization: responsibilities are transferred to field offices 'or more autonomous agencies'. Elsewhere, too, it seems that decentralization and devolution are often used synonymously, or with very little difference in meaning attached to them. In general, the concepts refer to the transfer of power from a political or administrative centre to local or more peripherally located units. The common way to see decentralization is to see 'power' only as being distributed up or down a hierarchy and perhaps between different actors. Although it is crucial to think more closely about who or which legal entities, if any, will receive new powers, and which legal entities will have powers taken away from them (Widmalm 2001).

## **Emergence of Devolution and Decentralization in the World**

The decades of 1950s and 1960s saw demands (Kueck et al. 1998) coming from the people and a number of civil society groups and regional minorities for a variety of development needs ranging from self-rule as well as poverty alleviation to reconciliation among the different communities.

During the years after 1970 many governments in the third world tried new approaches to economic and social policy-making that included "decentralized authority / Devolution of power for planning and administration to state, regional, district, and local agencies, field units of central ministries, local governments, and special-purpose organizations" (Mahler 1995: 54). India, Pakistan, Thailand, Malaysia, and the Philippines are some of the Asian nations that have undertaken experiments in devolution in the last two decades.

In Africa, in the case of Kenya in the early 1970s, the move to devolution was prompted by a dissatisfaction with the result of planning undertaken by the central government and by a desire on the part of local leaders and administrators to play a more active role in the overall planning process (Rondinelli 1983).

Devolution is often equated with maximum grass-roots participation, equality of opportunity, and reform. It is defined as a means of ensuring wider representation of legitimate interests and accountability to local communities, as well as instilling the feeling that ordinary citizens have a stake in the government. The premise is that devolution units are more acquainted with the problems and demands prevailing within their domain and range and, thus, lend more weight to them. Devolution, thus, involves a process of dividing and distributing authority and responsibility for programmes to administrative subunits as well as reassigning decision-making responsibilities to lower units on a geographical basis.

In essence, devolution is an interesting concept in the context of peace-building in Sri Lanka. Devolving powers to the lower levels of governance could, potentially, enable the minority population to “live with dignity and self respect in their native land” (ICES 2006:4). Especially within the context of the dominating state and authoritarian tendencies of the executive presidency, devolution could create possibilities for regional governments to address regional or minority grievances and counterbalance the political culture of centralization. The full implementation of devolution could provide the Tamil community the constitutional settlement through which the social, economic and political goals which they tried to achieve through war can be reached. Devolution is coupled with an accommodation of ethnic diversity for it can redress the imbalance in the relationship between the different ethnic groups.

## **Ethnic Conflict of Sri Lanka**

Sri Lanka has much more to deal with than the legacy of the long civil war between the government and the Tamil minority. The history of political violence in Sri Lanka holds lessons for the future. Nearly all the violence was a product of not only different visions for the country and its diverse communities, but also the centralized and authoritarian nature of the state. Since the introduction of the 1978 constitution, besides, the Sinhala bias in government policies has immensely contributed to alienating the minorities from the national mainstream. The Sinhalese majority has ruled the country in the name of democracy since Independence. Notwithstanding, the net effect of all the decisions of the government has been to ensure various benefits to the Sinhalese majority at the cost of the minorities (Kathiravelupillai 1979: 9).

From 1956 onwards, Sri Lanka saw a series of increasingly violent attacks and discriminations on minorities with growing government complicity, culminating in the July 1983 ethnic riot in Colombo, which paved the way for a full-scale war between the government and the Liberation Tiger of Tamil Ealam (LTTE) and other Tamil militant groups. The anti-Tamil attacks paralleled a series of discriminatory government policies, starting with the 1956 Sinhala Only language act, the 1972 constitution according Buddhism the “foremost place”, reforms

of the education system and civil service that disproportionately harmed Tamils and Muslims, as well as government programs to settle Sinhalese peasants in the Tamil and Muslim-majority areas of the Eastern province. From the 1980s through May 2009, the civil war raged, interrupted by occasional ceasefires and peace talks. The government along with the increasingly powerful LTTE engaged in widespread atrocities, often against unarmed civilians. Hence, government forces are believed to have been responsible for thousands of disappearances of Tamils, mostly in the north and east, through 2008. War crimes by both sides in the last year of fighting may have contributed to as many as 40,000 Tamil civilian deaths.

### **Indo-Sri Lanka Accord and 13<sup>th</sup> Amendment of the Constitution and Provincial Council System**

In an attempt to resolve the ethnic conflict in Sri Lanka, the 13th amendment to the Constitution introduced the system of provincial councils. It is being alleged that the Indo-Sri Lanka Accord, its constitutional manifestation of the 13<sup>th</sup> Amendment, and its legal manifestation of the Provincial Councils (PCs) Act No. 42 of 1987, provided a lasting, satisfactory solution to the ethnic conflict in Sri Lanka. The devolution package of 1987 marked a somewhat abrupt break in the centralizing tendency of the Sri Lankan state (Uyngoda 1994: 84). In fact the 13<sup>th</sup> Amendment was a product of the geo-political environment in which India played the role of regional security manager. The 13th Amendment was India's solution to India's neo-colonial problems caused by India's determination to get a foothold in Sri Lanka. (Mahindapala 2013). It was not the domestic actors but Sri Lanka's Big Neighbour India, for the sake of her national interest, that played the key role in shaping the idea of Provincial Councils which become a part of the Constitution of Sri Lanka (Bandara 2010: 35).

Thus, the provisions in the Accord relating to the conflict in Sri Lanka were significant. It agreed to temporarily merge the Northern and Eastern Provinces of Sri Lanka, with Tamils and Muslims predominant in the Northern and Eastern provinces of Sri Lanka, respectively, thereby creating a large unit where Tamils would form the overwhelming majority. Furthermore, the Accord recognized "the Northern and Eastern Provinces of Sri Lanka as historical habitation of Sri Lanka Tamils". Similarly, it is being said that the provincial council system enables the minority to run their internal administration and to control their affairs in the Northern and Eastern provinces. Nevertheless, it is being opposed by the Sinhalese that the Provincial Councils violate the unitary character of Sri Lanka (Rudrakumaran 1990: 70). It is being urged by the Indian Government that the Tamils should accept the provincial councils and give up the struggle for self-determination.

The devolution of power under the 13<sup>th</sup> amendment in Sri Lanka is quite different compared to other country's experiences. Although measures for decentralization or devolution of powers are to be found in many unitary states these days, the central government remains the pre-eminent level of government and retains the power to revoke any devolution or decentralization unilaterally (CPA 2010: 11). This is certainly noticeable in Sri Lanka. The dominance of the center is embedded in the very design of the system of devolution. The practice of devolution which entails direct interference by a range of central authorities and indirect control through the allocation of funds and political pressure has reinforced this dominance. The prevailing reality of having the same political party controlling both the central and provincial governments tends to make the provincial authorities routinely look to the center for guidance instead of being assertive and cater to the specific needs of the provinces (ICES 2010: ix).

Under the current legislative framework, the 13<sup>th</sup> Amendment to the Constitution, the Provincial Councils enabling legislation, provides for some level of devolution of powers to provinces. But the 13<sup>th</sup> Amendment is limited both on paper and in practice. The accord established provincial councils for each of the nine provinces, while the north and east were merged into one unit. Members of the council and the Chief Minister who heads the council are elected by the people in the province. The council has legislative powers over certain subjects or issues (those itemized on the 'provincial list' and the 'concurrent list'). Subjects or issues that remain with the centre are on the 'reserved' list. Executive powers in the province lie with the provincial ministers and the Governor, who is a presidential appointee. The Governor has significant powers over appointments to public service, and in signing of the budget and calling for it to be debated by the council. In theory, the Governor is a figurehead, but this is not the case in practice. Leaving executive powers with the Governor is a major limitation of the 13<sup>th</sup> Amendment (CPA 2010). However, based on the Supreme Court judgment in October 2006, the Northern and Eastern Provinces were de-merged (CPA 2010).

Political history has shown that when in power, both major ruling parties' (UNP and SLFP) attempts to disempower the provincial councils and consolidate power at the centre (Edrisinha 1994:17). The result therefore has been an increase in centralization resulting in the lack of sense of community ownership over local infrastructure and services. Instead, people regard the centre as the provider of services, (Wanasinghe 1999: 9), which defeats the purpose of devolution. Provincial councils are now mere administrative units of the centre and thus have 'continue[d] to remain trapped in a primarily administrative role and function, responsible only for the continued operation of the service delivery infrastructures that were handed down when taking over the district operations of the Central line agencies' (Gunawardena 2004: 29). It was doomed from the beginning as the centre, which was determined to give only minimal powers to the provinces,

as well as draft the amendment in a manner that enabled the centre to interfere in virtually all affairs of the provinces. To begin with, there is no clear demarcation of power between the centre and the provinces (Edrisinha 1999: 172).

The current framework under the 13th Amendment provides only modest protection to minority peoples in the event that Parliament seeks to legislate on a subject on the Provincial Council List. Article 154(G)(3) is a measure to prevent the central government from legislating on subjects allocated to the Provincial Councils (PCs) without first obtaining the consent of all PCs. Where one or more PC does not consent to a proposed bill, the central government has the power to either pass the bill by a simple majority, in which case the bill will become law applicable only to the Provinces where the PCs agreed to the bill, or to do so by a two-thirds majority in which case the bill will become law applicable to the entire country. The government's proposal to remove this safeguard will in effect render the 13th Amendment in terms of devolution of legislative power meaningless, as the central government at any given time could take away any or all powers vested in the PCs by passing legislation with a simple majority.

Even though the Amendment's requirement of a two-thirds rather than a simple majority provides some degree of constitutional protection to the ethnic minorities, this protection is not absolute in its present form. It should be noted that in Sri Lanka the ethnic majority, the Sinhalese, constitutes not only a simple, but also a two-thirds population majority. Therefore, the possibility of a unilateral abolition of a provincial council or arbitrary curtailment of its powers by a combined ethnic Sinhala majority, without the consent of the minorities, always exists under Section 154 G(2) of the Amendment. In short, under the 13<sup>th</sup> Amendment as presently written, the fate of the provincial councils, and with it the ability of the minorities to control their own internal affairs, will always depend solely on the political sufferance and uncertain good will of the Sinhala majority.

For a period of seven years, out of twenty-five year existence, the PCs had worked with the UNP-led central government, while the balance period of eighteen years the PCs had worked with regimes that led to the Sri Lanka Freedom Party (SLFP), which clearly opposed the very idea of a Provincial Council. In both regime periods, instead of implementing the 13<sup>th</sup> Amendment properly, they had been actually engaged in recentralization of powers granted to the PCs. Notwithstanding, they were silent onlookers when the central bureaucracy curtailed the legal, fiscal and administrative capacities of the PCs. Consequently, prior this incident, the people of Sri Lanka have not received an opportunity to experience the benefit of having sub-national governments serving the regional communities and attending to planned regional development (Bandara 2010: 35).

In 2008, after the military captured the Eastern Province from the LTTE, the government declared Eastern PC (EPC) elections. S. Chandrakathan, known as Pillayan, a former LTTE child soldier, was elected Chief Minister of the province (Page 2010). This was the first functioning provincial council in the former conflict areas and was used by the government as a show-case of successful political autonomy for minorities (*Asian Tribune* 2010). The council, though, has been far from autonomous, and has been crippled by a powerful Governor as well as weaknesses in the system. The Chief Minister has faced difficulties in making public service appointments. A senior official of the EPC said:

*'In Colombo, the President has executive powers but he is elected. Here you find the Governor who is not elected having more power than the elected Chief Minister. He can override the Chief Minister whenever he wants. The Chief Minister can't even appoint secretaries to the provincial ministries.'*(Minority Rights Group International 2011).

The failure of the provincial council system may be attributed to the fact the government never intended to devolve power in an effective manner, which is illustrated by article 2 of the Constitution which states that Sri Lanka is a unitary state (Constitution of Sri Lanka 1978) with the executive and legislative power vested in the centre, i.e. only the centre is considered sovereign. Furthermore, article 2 is an entrenched provision, which can be amended only by a two-thirds majority and referendum. The fact that the government enacted the Provincial Councils Act without amending the unitary state provision in the Constitution is proof that effective devolution was never intended. Thus when the Provincial Councils Bill was challenged on the basis that it changed the unitary nature of the state and hence a two-thirds majority and a referendum were required to pass the bill, the Supreme Court decided that a referendum was not necessary and the Bill could be passed after the deletion of one particular provision. By so deciding the Court was effectively stating that the bill did not change the unitary nature of the state. (Edrisinha 1994)

## **Sinhala Hegemonic Nationalism, Conflict Resolution and Devolution Debates in Sri Lanka**

In the modern political history of Sri Lanka, Sinhalese nationalist anxieties had reached a considerable height as a result of accommodating some kind of political settlement to the minorities. For the last three decades, Sri Lanka has been plagued by an acute and intractable ethnic problem that has threatened to destroy the territorial integrity of the country. The Sri Lanka's constitutional history has been dominated by question of sharing political power between the majority Sinhalese and minorities, and a fierce debate continues to rage over the appropriate model for devolution (Ghosh 2003; Kukreja 2008: 236). The Sri Lanka Freedom

Party's (SLFP) victory over the United National Party (UNP) in 1956 with the slogan of 'Sinhala only' also marked the first phase of Sri Lanka's ethnic conflict in the post- Independence era, in the re-assertion of indigenous values emphasizing an ethnic identity, based on religion and language. The influence of Buddhist ideas grew considerably from 1956 onwards (de Silva 1988: 135). This was the beginning of prolonged ethnic conflict in Sri Lanka.

The major causes of the conflict between the Sinhalese and minorities have been multidimensional, including ethnic, religious and linguistic differences. These differences have been sharpened in the post-independence period due to increasing conflict of political and economic interests. The fact that religion is tied to ethnicity among the Sri Lankans has its implications for an overall lack of ideology of pluralization. The manifestation of this implication is very well captured in the phrase: 'Sinhala Buddhist Nationalism'. The Sri Lankan state made Buddhism the state religion and introduced clauses in the Constitution which provided, amongst others, the clauses that Buddhism should be protected by the state, thereby giving a privileged position to Buddhism, the religion of the majority Sinhalese (Thiruchandran 2003: 63). At the same time, Sri Lanka was regarded as the holy island of Buddhism (Phadnis 1976). The strategy of regarding the Sinhalese as the 'chosen' people was not compatible with the basic character of a multi-ethnic society and resulted in ideological prejudices. In this context, Singer concisely remarks that'... the Sinhalese have surely never understood the concept of "federalism" (Singer 1992: 713). 'Therefore, decentralization became politicized and the term federalism became synonymous with the issue of separatism' (de Silva 1993: 102). The possibility of a separate Tamil state emerging in the North-East was a proposition that Sinhalese society could in no way accept. Besides, in the past, all attempts towards various forms of devolution had been effectively resisted by Sinhalese nationalist forces on the premise that political concessions to minorities would have amounted to the eventual break-up of Sri Lanka (Uyangoda 1994: 85). The first was the attempt made by SWRD Badaranaike in 1957 to come to an understanding with the Federal Party to form regional councils as a measure of decentralization. The second instance was in 1965, when Dudley Senanayake acceded to the Federal Party's suggestion establishing a system of District Councils. The third was Provincial Council as devolutionary reforms in 1987 were vehemently opposed by Sinhalese society to such a major re- arrangement of the political order. Moreover, there was Sinhalese resistance, well-organized and violent, to the very idea of devolution, The Sinhalese nationalist forces argument was that within united Sri Lanka any accommodation with the demand for devolution would amount to eventual disintegration of the state. These are the very important aspects of Sinhalese nationalist resistance to attempts at widening the ethnic relations of the Sri Lanka state and lead to ethnic war and pave the way for failure of accommodation for ethnic minorities' aspiration.

The military victory in 2009 is perceived not merely the defeat of a militant terrorist group by the state, but also the routing of the Tamil Nationalism. For some it is also a victory for Buddhism (CPA 2013). This 'revival' is being felt both not only in the dominance of Sinhala nationalism in government policy but also at a society level. Nevertheless, the dominant fear is that ultra Sinhala Buddhist nationalism remains a potent force both within and outside the Government in the post-war context and has not spent itself in the war. In previous decades, there have been Buddhist organizations attempting to mobilize the polity and society, some of which remain active including the National Bhikku Front and the Jathika Hela Urmaya (JHU) (National Legacy Party). The JHU is a coalition member of the present SLFP led government but the Sinhala Buddhist focus is also believed to be driven by others including from within the SLFP, despite its multi-ethnic credentials. Therefore, these groups have also used new media and social networks effectively to disseminate hate speech, against the minorities of Sri Lanka.

### **APRC Recommendations and Devolution Debates**

In 2007, President Mahinda Rajapaksa appointed an All Party Representative Committee (APRC), formed by representatives from all of the political parties elected to parliament, to provide recommendations on a new Constitution (International Crisis Group 2008) and the president said after the formation of APRC as follows:

*"People in their own localities must take charge of their destiny and control their politico-economic environment..., any solution needs to as a matter of urgency devolve power for people to take charge of their own destiny. ... Any solution must be seen as one that stretches to the maximum possible devolution without sacrificing the sovereignty of the country, given the background of the conflict"* (Sumanthiran 2013).

At the 10<sup>th</sup> Session of the United Nations Human Rights Council (UNHRC) in March 2009, Minister Mahinda Samarasinghe reiterated the President's pledge, saying as follows:

*"Our national discourse has been dominated for decades by an ethnic issue, which requires a political solution as a means to resolve problems. On a recommendation of the All Party Representatives Committee, we are able to properly implement the 13<sup>th</sup> Amendment to the Constitution, which was passed in 1987"* (Daily Mirror 2013).

While, in May 2011, in a joint press statement with the Minister of External Affairs of India, External Affairs Minister of Sri Lanka affirmed as follows:

*“...his government’s commitment to ensuring expeditious and concrete progress in the ongoing dialogue between the Government of Sri Lanka and representatives of Tamil parties. A devolution package, building upon the 13th Amendment, would contribute towards creating the necessary conditions for such reconciliation.”*  
(Daily Mirror 2013)

From its inception the credibility of the APRC was challenged because of Presidential interference and criticisms from different political parties. The Tamil National Alliance (TNA), the largest Tamil political party in parliament, was not invited to join the APRC (*Tamil Guardian* 2010). The main opposition, the United National Party (UNP), left the APRC early. (*TamilNet* 2007). Two major Sinhala nationalist parties also pulled out in the middle of the process. The APRC tried to achieve a balance between minority demands and the criticisms of Sinhala nationalists. In order to achieve this, the APRC compromised on some issues, including the term used to describe the political system. The expert group recommended three options: to keep the current term (unitary state); to describe it as a federal state; and not to classify the nature of the state. The APRC decided to settle for the latter. A second area of compromise was in avoiding the issue of the merger of the north and east, as it is a matter of contention between Tamil and Muslim parties. As mentioned above, the 13th Amendment created one north-east provincial council, which was de-merged after a Supreme Court decision in 2006. De-merging the North-East by the Supreme Court remains the biggest blow to the 13th Amendment, apart from the non-implementation of important elements, namely land and police powers (*Daily Mirror* 2013). Tamil nationalist groups considered the north and east as the traditional homeland of Tamil-speaking people, but Muslims prefer the de-merger as they are the majority in the east but a minority in the merged province. Hence, achieving agreement on this issue is important for minorities to be able to press ahead with demands for political autonomy.

According to members of the APRC, the President of Sri Lanka at the time was under pressure from India to fully implement the 13<sup>th</sup> Amendment in the Eastern Province (Minority Rights Group International 2011). Thus, members of the committee believe that, as it was only an interim measure, they recommended what became known as ‘13+’, which in summary meant full implementation of 13<sup>th</sup> Amendment with limitations on the centre’s intervention in the provinces. ‘Just two days before handing over this report, pressure was put on the committee to change from 13+ to 13- as the President was supposedly under pressure from Sinhala nationalist allies. Finally the committee agreed to the bare minimum, implementation of the 13<sup>th</sup> Amendment (Minority Rights Group International 2011). Since the end of the war, the President appears to have

shelved the APRC report and has made scant mention of a comprehensive political solution for minorities or of a new constitution. Although, he has hinted that there are other constitutional amendments to come, including some which offer minority protection, but little is known about this (Minority Rights Group International 2011). In this regard one member of the APRC summed up the situation:

*'Let the record bear once again, as the Tamils always said, the Sinhalese government will cheat them the moment terrorism is defeated. Even though we hated terrorism, once it was defeated, it is clear that the political will is not there to offer minorities anything.'* (Minority Rights Group International 2011).

### **Attempt to Repeal the 13<sup>th</sup> Amendment**

The Government is working out how the 19<sup>th</sup> Amendment to the Constitution would incorporate a new devolution package to address Tamil grievances and replace the existing PC system. The government is under pressure from both inside and outside to repeal the PCs system since the 13th Amendment has become a hot talk among the Sinhala peoples of the country. Notwithstanding, discussions around the implementation of the 13th Amendment of the Constitution have involved prevarication, and often divergent voices within the government.

The majority of the government believes that the provincial council system will lead to another conflict in the country in the future and will be a hindrance to the development of the country. Prior to this therefore, Sri Lanka's Sinhala National and Buddhist Organizations presently have commenced collecting one million signatures for a petition demanding the abolition of 13<sup>th</sup> Amendment to the Constitution. (*Colombo Page* 2012) In effect, the proposed 19<sup>th</sup> Amendment will replace the existing 13<sup>th</sup> Amendment to the Constitution. Moreover, at least two ministers who lead constituent parties of the UPFA Government and hard line Sinhalese Nationalist political party in which JHU, and breakaway faction of *Janatha Vimikthi Peramuna* (JVP- People Liberation Front), National Freedom Front (NFF), have already launched a campaign for the repeal of the 13th Amendment. Similarly, a Private Member's Bill was presented to Parliament by the JHU to abolish the 13<sup>th</sup> Amendment to the Constitution as they fear that it would pave the way for a separation of the country.

The Bill states that the 13th Amendment seeks to weaken the Government of Sri Lanka whilst strengthening the PCs and thereby destroying the unitary character of the state, territorial integrity, and the sovereignty of the people. Sri Lanka is a free, sovereign, independent and unitary state and it is the duty of the state to safeguard the independence, sovereignty, unity and the territorial integrity of Sri Lanka and the provisions of the 13th Amendment are a threat

to the independence, sovereignty, unity and the territorial integrity of Sri Lanka. (*The Island* 2013; *Daily News* 2013).

The Government seems to be bent on amending the 13<sup>th</sup> Amendment to the Constitution. The JHU 19<sup>th</sup> Amendment wants to repeal the entire chapter in the 13<sup>th</sup> Amendment titled Chapter XVIIA which sets up the PCs. In short it wants to abolish PCs. The Government seems only to repeal the police powers and the land powers given to the PCs and to amend the clause which requires the approval of all the PCs to any proposed laws which affect the functions or the PCs. Thus, the government wants to rephrase such required approval of the PCs, to read as a majority of the PCs, instead of all the Councils. But any unilateral changes in the 13<sup>th</sup> Amendment will only open the way to the whole ethnic issue including the right to secession (*Senanayake* 2013).

On this note, Minister Gunawardena had earlier stated that “the provincial council system has created a harmful impact on the country's national security, unitary nature and the development of the country”. He further observed that “the 13<sup>th</sup> Amendment has been brought forward without any extensive dialogue on the issue and as a result of the absence of an in depth analysis of the system, many serious problems have been created” (*Colombo Page* 2012). The campaign in Sri Lanka to repeal the provincial council system brought into existence by the 13<sup>th</sup> Amendment is growing momentum as the major Tamil party, Tamil National Alliance, refuses to participate in the Parliamentary Select Committee proposed by the government to devolve power. In addition, the prime Buddhist organization such as the Chief Prelate of Asgiriya Chapter of Siyam Nikaya, Ven. Udugama Buddharakkhitha Thero (Buddhist prime clergy) has noted that “the Provincial Council system was not suitable for the country and pointed out that there were objections to the Provincial Council system since its inception under the influence of India” (*Colombo Page* 2012).

Now the government is in process to move a 19<sup>th</sup> Amendment to the Constitution as an “Urgent Bill” and try to pass it with a two-thirds majority. It will seek to repeal Article 154 A (3) of the 13<sup>th</sup> amendment of the constitution that allows “two or three adjoining provinces to form one administrative unit with one elected PC, one Chief Minister and one Board of Ministers.”

The move appears as a design to allay fears in some influential quarters of the UPFA Government. A Northern Provincial Council elected in September, they are worried, could merge with the Eastern PC (EPC) if the constitutional provision is allowed to remain. The JHU and NFF, both partners of the Sri Lanka Freedom Party-led UPFA have demanded that the amendment be nullified. JVP has also made a similar demand and also Sinhala Buddhist organizations including the ruling coalition party's JHU and other hard-line Buddhist nationalists organized a rally to abolish the 13<sup>th</sup> amendment to the constitution.

***Not only has the government failed to keep its many promises to move towards a political settlement based on the full implementation of the 13th Amendment and build on it so as to achieve meaningful devolution of powers, but also it has shamelessly proposed to strip away the limited concession to devolution that exists! The proposed amendment is majoritarian on two counts. First, it imposes the majority will of PCs on a particular province by empowering Parliament to enact - through a simple majority legislation on any Provincial List subject, provided a majority of PCs agree to the proposed bill. Second, it imposes the majority will of Parliament on a particular province, as it empowers Parliament to enact such legislation through a simple majority rather than a special majority. A special majority is required only if a majority of PCs disagree with the proposed Bill (Sumanthiran 2013).***

It was noted that the proposed changes raised doubts about the commitments made by the Sri Lankan Government to India and the international community, including the United Nations, on a political settlement in Sri Lanka that would go beyond the 13<sup>th</sup> Amendment. However, the changes would also be incompatible with the recommendation of the Lessons Learnt and Reconciliation Commission (LLRC), set up by the Government of Sri Lanka, which calls for a political settlement based on the devolution of power to the provinces. Also, India has repeatedly urged Sri Lanka not to make any “unilateral” changes in the 13<sup>th</sup> Amendment (*Sunday Times* 2013). Thus, India and many others have suggested not only a full implementation of the provisions of the 13<sup>th</sup> Amendment to the Constitution with additional measures to make the devolution more effective but also the most feasible way of meeting the aspirations of the Tamils. One of the coalition parties in government, the Sri Lanka Muslim Congress, (SLMC) was the first to offer a dissenting view of the amendment and strongly opposed to rushing through amendments and urged that all matters be placed before a Parliamentary Select Committee and same were view expressed by others from the other parties of the ruling coalition (*Sunday Times* 2013).

Thus, Tamil hopes of devolution beyond the current provincial council system are unlikely to be realized in the foreseeable future. They believe that the full implementation of the PC system will achieve a large measure of devolution and would probably satisfy those Tamils who wish to work within a united Sri Lanka. Nevertheless, the evidence that is available indicates that even the thirteenth amendment is unlikely to be implemented fully in the manner the current statutes permit. One reason is that the ruling coalition is sharply divided on devolution of power and on the role of the provincial councils. The Sinhalese nationalists within its ranks believe in the inviolability of the “unitary” state (Samarasinghe 2009).

This might have prompted President Rajapaksa at the ceremonial opening of the Fourth Session of the Sixth Parliament when he stressed the necessity of finding a solution that is very own and not an imported solution. Nevertheless, he further stressed that there is no time to be experimenting with the solutions suggested by other countries and any solution should be acceptable to all sections of the people. Thus Sri Lanka feel that the 13th Amendment to the Constitution, forced on Sri Lanka by India, is certainly imported and not a 'home made'. Furthermore, the Amendment is not acceptable to all sections of the people.

As such, there are serious concerns relating to the Government's commitment and political will to address the fundamental issues relating to devolution and reconciliation. In particular there has been no substantive progress in achieving a political solution. Hence, there are clear indications that the Government is attempting to eat away at the existing framework for a political solution enshrined in the Constitution – the Government has proposed a number of bills that take away powers granted to the Provincial Councils under the Thirteenth Amendment.

### **Reconciliation, Devolution of power and Present Chaos**

Post-conflict efforts to bring societies together are always fraught with difficulties, particularly in cases of deep ethnic division. In Sri Lanka the challenge is even greater, because the government denies ethnicity as the driving factor behind the civil war. Instead it appropriated the language of the "war on terror", dehumanizing its enemies and dismissing the possibility that they, or those they claimed to represent, have legitimate grievances, despite the fact that it has controlled the narratives of the conflict both within and outside the country, reacting furiously to any challenge to the integrity of Sri Lanka.

The President told Parliament after the victory over the LTTE that, "A change in the prevailing Provincial Council system is necessary to make devolution more meaningful to our people. He said, "Devolution should not be a political reform that will lead us to separation but instead it should be one that unifies all of us." Pointing out that "national standards" were the main weapon for national reconciliation, he said, the Government remains committed to ensure that these "aspirations of our people will be fulfilled" (*The Sunday Times* 2012). It was dimmed even further when the president announced in June 2011 his intention to establish a parliamentary select committee with the responsibility of formulating a consensus political solution. In mid-August 2012, a motion was tabled in Parliament to create a parliamentary select committee including representatives of all political parties to find a political solution to the "national question." The select committee was finally constituted in November with a stated remit to discuss a political settlement within six months. However, many observers see this as a delay tactic, and the evidence suggests that power is moving in the opposite direction toward increased centralization.

Similarly, the PC system has faced a stiff resistance from a section within the government ruling party and a section of hard line Buddhist organizations. Furthermore, it provided an impetus to the *Hela Urmaya*, *Sinhala Rawaya* and *Bothu Bala Sena* which were pro-Buddhist nationalist organizations among the Sinhalese population launching violent hate campaigns and protests against the PC system after the end of the war. Its opponents identified it as a foreign element imposed on the country by interested powers. During the process of implementation of the 13<sup>th</sup> Amendment the political regimes in power had used the PCs as an instrument to achieve their power objectives. Instead of devolving power stipulated in the Constitution, successive governments were engaged in recentralization of the powers already given. Therefore, it would not be an exaggeration to say that the recentralization became a hallmark of the operation of PCs in the last twenty five years.

After all conflicts, issues of reconciliation and accountability arise. In Sri Lanka the government has tried to collapse the two and has stated that both can be dealt with through domestic mechanisms, starting with its ongoing Lessons Learnt and Reconciliation Commission (LLRC). But these concepts are distinct. Accountability is a process of holding individuals and groups responsible for abuses, ideally to mark a decisive break with a culture of impunity. Reconciliation is a more forward-looking process of healing divisions between and within communities. It requires recognition of others' grievances and experiences as well as changes in policies that may have worsened the conflict or prevented greater cohesion. It often takes years. Notwithstanding, both require a truthful accounting of the past, something most of Sri Lanka's leaders - and especially the government of President Mahinda Rajapaksa have refused to undertake post-war developments in the north and east. However, this is not to suggest that the situation in the east is any less important to Sri Lanka's prospects for reconciliation. A careful study has been made of the government's public statements, but officials in the country were not interviewed.

In this context, the government has essentially rejected the need for any political solution or power sharing with the Tamil-speaking-majority north and east. Thus, there is a marked change from previous governments, both SLFP and UNP led, which explicitly recognized the existence of an ethnic conflict that required negotiations leading to power sharing between the central government and representatives from the north and east. While the government has been in talks with the TNA since January 2011, prospects for a credible, negotiated settlement have never been good given the Rajapaksas' clear preference for authoritarian, centralized decision-making.

Rather than applying his popularity and extraordinary executive powers in an attempt at forging a lasting political settlement, the president seems more interested in continuing to parlay his military victory over the LTTE into a full political victory for Sinhala nationalism, which is as

much a means to consolidate power as an end in itself. In continuing down this triumphalism path, the Rajapaksas risk ignoring not only the deep-seated grievances of the minority communities, but also the concerns that cut across all ethnic communities, including the Sinhalese, such as over the increasing cost of living, consolidation of wealth in Colombo and the overall culture of corruption and unaccountable authorities.

## **Conclusion and Recommendations**

Reconciling Sri Lanka's ethnic communities through the 13<sup>th</sup> Amendment is an enormous task. The policies pursued by President Mahinda Rajapaksa since the end of the war have only made it harder. Thus getting to a point where Sinhalese, Tamils and Muslims have meaningful understandings of each other's experiences and concerns surely will take years. What is critical in the short term is preventing relations from deteriorating further and creating the conditions on which reconciliation eventually can be based. Foremost among those conditions is the opening of political and social space so that people can move, speak and live without the fear that now pervades the country.

Devolution of power to the traditionally Tamil-speaking north and east is essential to a sustainable peace. Obviously, it has become no less urgent with the defeat of the LTTE; indeed, the end of the war and the return of some normalcy in those areas make real power sharing all the more important, as critical decisions are being taken about residents' economic and political futures. But any devolution package – whether it builds on the still-unimplemented Thirteenth Amendment or is devised otherwise – will be meaningless unless the government also curbs its growing authoritarianism and centralization of power.

The government should also commit publicly to the goal of reaching a political settlement on devolution in the ongoing talks with all the concerned parties. Agreement in those talks should be followed by a process that includes independent representatives of Muslims in the north and east to finalize a settlement acceptable to all communities. The TNA for its part needs to reach out to the Tamil community in the north and east to better understand their views and needs. The government needs to allow this to happen without intimidation or military interference.

Therefore, full implementation of the 13th Amendment is now being promoted as a possible political settlement for minorities. In addition, some political analysts in Sri Lanka believe that in the current political climate it is the furthest this government is likely to go. The proposal of full implementation of the 13th Amendment has India's blessing. However, as the above section explains, the 13<sup>th</sup> Amendment is far from being adequate to fulfill minority aspirations to self-rule in the north and east.

Thus, given the existing situation, it seems that the PC system is here to stay, but as presently constituted, neither does it provide a solution or nor steps taken to strengthen the PC system to the ethnic problem of Sri Lanka. Failing a peaceful political settlement, it seems that a solution through international community could take place. If a peaceful and democratic settlement is to be negotiated, the Sri Lankan government will have to make substantial concessions to its minorities in the form of enhancing the 13<sup>th</sup> amendment or some model of federalism to resolve the ethnic conflict.

Reconciliation after long periods of conflict never happens quickly. But in Sri Lanka there is a serious risk it may not happen at all. The government's intransigence and triumphalism a full four years after declaring victory over the LTTE has meant the country is yet to see any semblance of compromise or inclusiveness. Instead, President Rajapaksa and his powerful family members have maintained their war-time "with us or against us" mentality and continued to consolidate power and wealth, shaping much of the country as they wish. The refusal of much of the Tamil Diaspora to recognize the brutality of the LTTE and its share of responsibility for Tamil suffering only bolsters their position. The government tells a very different story to the international community and to its own people about its agenda, claiming that it is pursuing reconciliation and taking care of all those who suffered in the war. But the reality on the ground, promoting Buddhist hegemony and supporting violence against another minority such as Muslims after the war, in which Muslim culture, practices and mosques have been targeted by Buddhist monks and its underground fanatic organization has led to more than twenty four mosques being damaged (*Virakesari* 2013) and several shopping centres of Muslims targeted, while the factors that caused the conflict remain.

The Sri Lankan post-war situation can primarily be described as a series of missed opportunities with regards to political reform. The President has consolidated political power in a series of provincial elections as well as in the Presidential and parliamentary elections in January and April 2010. This consolidation of power could have been used to carry through with the reforms of the state structures in favour of devolution of power and decentralization of the state, which have been on the political agenda as a solution to the conflict for decades (Uyangoda 2010). Instead, the consolidation of power has entrenched the reform resistance which has dominated Sri Lankan politics. There have also been no signs of political will to implement important amendments to the constitution.

Sri Lanka faces a number of challenges that need to be urgently addressed to ensure durable peace. While a post-war context in many countries creates opportunities for a move towards further democratization, Sri Lanka instead appears to be consolidating on a semi-authoritarian and highly centralized state (DeVotta 2010). But a significant amount of time has

passed and the Sri Lankan government has shown little inclination to resolve long-standing issues such as devolution of power to the minorities of Sri Lanka. Nor has there been an attempt to negotiate a political autonomy package. Human rights violations against Tamils and Muslims continue in a climate of impunity, and efforts towards achieving justice, accountability and post-conflict reconciliation for all communities are neither credible nor impartial. This contributes to a sense of dejection, fear, defeat and hopelessness among minorities, particularly those living in the north and east.

The international influence in the political arena is limited. Although Western powers, such as the United States and the European Union, continue to argue for the need of a political solution to the conflict over minority concerns, they have little influence over Sri Lanka's government. The country with most economic influence—China—remains silent on political issues. The only outward sign is on the part of India, which hosts a large Tamil minority. India has also been raising the concern of devolution of power. This has influenced Colombo in its deliberations as seen in the government's delay in presenting the 19th amendment, which contains the proposed changes, in parliament, with little success (*Sunday Times* 2013). The narrative of this process is important as it shows government's lack of commitment to offering a political solution to minorities.

To avoid an eventual return to violence from minorities, the government must change course drastically. The 30-year emergency needs to come to an end, and government repression of the media and political opponents must stop. Restoring the rule of law and accountability is essential, as is a political settlement to provide real devolution of power. Attention must also be paid to the many victims of these three decades of war and political violence from all three main ethnic groups – Sinhalese, Tamils and Muslims. Indeed, rebuilding relations among those communities and getting to a point where each has some real understanding of what the others have gone through should be a central goal. All of this will take years, but the sooner it starts the more likely renewed conflict will be avoided. These issues are of crucial importance to minorities, both in terms of reconciling their suffering and to help bridge the gap between the majority and minority communities. The government should allow civil society to play a role in beginning community-level discussions while a national level plan of justice and reconciliation is developed and implemented.

While the factors that caused the conflict remain, the situation for minorities augurs only further insecurity, fears and concerns that could see a return to conflict. The ending of the war has had severe implications for minority politics in Sri Lanka. The political representation of the Tamil population remains an unsolved issue. For decades, the LTTE's military strength gave it credence to push for a political solution. With the end of the war, the Tamil community's position has been severely weakened and their issue of concern has been close to being obliterated. Although,

there have been many lost opportunities in Sri Lankan history to resolve these issues. If Sri Lanka is to have a lasting peace, dealing with historic injustices towards minorities and showing a serious commitment to improving the current situation of Tamils and Muslims is imperative. Therefore, this should not become another wasted opportunity to achieve reconciliation through devolution of power in Sri Lankan history.

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