

I would like to pay your attention to following aspects of the [Interim Report of the Steering Committee](#) of the Constitutional Assembly appointed by the past (Yahapalana – Good Governance) government. **If you are a Tamil, please read [this section of this document first.](#)**

It suggests following a maximum devolution of Power

There are two main recommendations to follow on this regard in the 2nd chapter. 1st one of them is to apply the principle of subsidiary. Under that it says:

The principle of subsidiarity, (i.e. **whatever could be handled by the lowest tier should be vested in it**) has been generally accepted in submissions made before the Steering Committee, the Sub-Committees, as well as the Public Representations Committee for Constitutional Reforms.

This principle should be a guide in deciding on the allocation of subjects and functions between the three tiers of government.

The 2nd main recommendation under that topic is **“Province to be the Primary Unit of Devolution of the power.”**

Central government has only a limited power in regard of Provincial councils.

1. Under the number 4 of the chapter named “Principles of Devolution of Power”, it recommends abolishing the concurrent list and there should only be a National list and a Provincial list. Regarding the National list it says:

National List will include subjects which are necessary to ensure Sovereignty, Territorial Integrity, Defense/National Security and Economic Unity of Sri Lanka.

(It will be only included powers regarding these few fundamental areas, and rest will be left for the provincials.)

2. **Central government will only have a power to prescribing ‘National Standards’ and enacting ‘framework legislation’** and a power to formulation of the ‘national policy,’ regarding the subjects handling by the provincial councils also.
3. And it is said that **National Policy shall not override statutes by a Provincial Council** in respect of matters in the Provincial List.

National Policy shall not override statutes enacted by a Provincial Council in respect of matters in the Provincial List.

4. **The Governor will be deprived of his powers** and he should act according to the instructions by the cabinet of the Provincial council. And central government can enact legislations on subjects in the provincial list, only if all provincial councils agree to that legislation.

Chapter IV number 2 says:

The Centre may enact legislation on any subject in the Provincial List provided all Provincial Councils agree to such legislation.

Provided that the Centre should not legislate on matters on the Provincial Council list with regard to any Province that does not agree to such legislation, without recourse to adequate constitutional safeguards to ensure that powers devolved should not be taken back unilaterally from the Provinces.

The Steering Committee was of the view that the Governor should act on the advice of the Board of Ministers other than where he/she is specifically authorized by the Constitution.

5. **Parliament can't amend the constitution on its own power; parliament has to share that power with 2nd chamber which is 45 members of the total 55 members is coming from the provincial councils.**

It is suggested that the **Second Chamber should consist of 55 Members, 45 drawn from the Provincial Councils** (each PC nominating 5 Members of such PC on the basis of a Single Transferable vote), and 10 Members elected by Parliament on the basis of a Single Transferable Vote. Such 10 Members should be persons of eminence and integrity who have distinguished themselves in public or professional life.

No Constitutional Amendment shall be enacted into law unless passed by both Parliament and the Second Chamber, with special (2/3) majorities.

6. **According to the number 6 of the chapter 6 (second chamber) the power devolution can't be changed even by a constitutional amendment.**

Constitutional Amendments seeking to amend basic features of the Constitution including Fundamental Rights and Devolution may not be passed except by way of additional constitutional safeguards.

7. There are suggestions which are intended to appoint the president from the votes of the members of the parliament and most of the powers currently in the hand of president to be vested to the hands of the PM & to the hands of Independent commissions.
8. Prime minister and President have the powers to abolish a provincial council temporary and keep those powers in the hands of them, in a case of cessation/rebellion. This must be done on the permission of the parliament and once done it will be valid only for 6 months. After that, time must be renewed for another 6 months.

Following questions can be popped in a mind of an intelligent citizen who is looking at these suggestions in a neutral point of view.

Have any administrative benefit or benefit in any other field giving provincials such an extensive power and reducing the powers of central government and giving it a so limited amount of powers (powers to make national frameworks and to dissolve a provincial council in a case of rebellion) to interfere with the powers of provincials?

Will the administration become easy and common feeling of being Sri Lankan become strength if there will be different polices (law enforcement agencies), different school curriculums and by allowing to form different systems for other areas also? Or will it happen when all these deciding and controlling by a single center, making more uniqueness in the country? Though the country will not become divided into two separate countries or more, people will be mentally divided. Though the North won't become a separate country, a feeling of a separate country will emerge and can be sustained/strengthened by using these powers.

Although the Spain is a unitary state, Catalonia which was a part of it has decided to become a separate country thanks to the maximum power devolution in Spain.

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If the parliament can't amend the constitution on its sole authority, only by passing an amendment within it/without passing it from the 2 nd chamber which is the majority are appointed by provincial councils, then parliament's unique power to make laws to the whole country on its sole authority will become violated. And consider this with following words from the same report.

In this Article aekiya rajyaya / orumiththa nadu means a State which is undivided and indivisible, and in which the power to amend the Constitution, or to repeal and replace the Constitution, shall remain with the Parliament and the People of Sri Lanka as provided in this Constitution

But if the parliament have to share its power of amending the constitution with the 2 nd chamber, then will this proposed constitution in accordance with its proponents' own definition of 'aekiya rajyaya'? or with any other definition on 'Unitary state' ?

It should be think again that will so-called provisions against cessation be sufficient to prevent any kind of action detrimental to harmony and national unity (i.e. majoritarian activities in Tamil/Muslim dominated areas) in Tamil/Muslim majority areas. In my view when looking at powers recommended to be given to the provincial councils and powers remaining with central government, it's reasonable to assume such activities (like commemorating former LTTE members not as a religious activity but as a political action, and certain statutes passed by North provincial council, attempts to encroach some Buddhist archaeological sites) can be motivated further. Then not only it will damage to the National unity but also it will be tool for racists in south to spread hatred. Need not to say that such a situation is not beneficial to the country in any way. Country can be in a permanent chaos filled by racial conflicts and religious & ethnic tensions can become severe. And with the emergence of Islamic terrorism here there is a possibility of implementing Sharia in Eastern province using this power. Quazis and mosque federations in eastern province (and in other provinces) already giving flogging punishments to acts which is not a crime under SL law and without any legal power to give punishments to people (see page 27-28 of the English copy of "[Unequal Citizens](#)" by Hyshama Hameen and Hassana Cegu Issadheen)

It's true that a provincial council can be dissolved and keep its powers with the central government (temporary) in case of rebellion or cessation, but is it a thing that can be done in all the time? Imagine that certain provincial council has helped to terror groups for a long time secretly. Though we dissolve it after being revealed that, would that change the harm already happened? Isn't it better to devolving power in a way which no such possibility arising rather than giving measures on what should be done after "some unlucky event" happened? Isn't it true that prevention is better than treatment?

National security and the unity of the country can't be guaranteed only by keeping the powers which are necessarily needed for ensure national security and territorial integrity.

For instance it's dangerous to giving power to make separate textbooks to a provincial council (like North/East) than giving security powers to them. This is because it allows them to use subjects like history and religion to insert their extremist views to minds of the innocent children. Though they can begin only a single armed struggle using security powers, they can make whole generations who will be waging wars continuously against the Sinhalese/country by teaching children what they want. For example think about writing chapters in a history textbook of North province in separatist view (i.e. writing about the history of Tamil armed struggles in a heroic view or interpreting defeating the LTTE by Sri Lankan army as an invasion by Sinhalese people) or inserting fundamentalist (Salafi/Wahhabi) Islamic views to school textbooks on Islam in Eastern province.

But central government has no powers to check or prevent it in such an attempt. Though there's a power to dissolve a provincial council in a case of rebellion/cessation, since permission to do so depends on parliament and since the possibility of such dissolution of a council can be questioned at the constitutional court there's a question that whether subtle act of cessation (like inserting separatist/extremist views to school textbooks) will be permitted to interpret as an act of rebellion by the court or not? And will it be understand in that way by members of the parliament. Issues like this may happen in areas other than school curriculums also.

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Vesting powers into the hands of prime minister instead of to the hands president is also questionable since unlike the president, prime minister is a position which can be altered by majority of the parliament. This will allow Tamil or Muslim ethnicity based parties to exercise greater power in making who will be the leader (and hence what will be changes of in laws/constitution) and use that power to push Sinhalese leaders to support their separatist/extremist demands. There's no possibility of electing an extremist Tamil/Muslim (not a normal Sri Lankan Tamil/Muslim) as the main executive power holder of the country in an executive presidency which will be elected based on votes by every citizen of the country unlike with the executive prime ministry. **Some argue that before 1978 there was an executive prime minister and why it matters only now? But what they don't know or trying to conceal is that there was no provincial councils or high-power provincial councils like this in that era. In the Supreme Court decision on the 13th amendment, Sharvannada justice stated that 13th amendment take the Sri Lanka to the border of the unitary state and thanks to the executive presidency becoming Sri Lanka a federal state was being prevented.**

Reason given by them to the suggestion of new words to refer to the concept of Unitary State is as follows:

The classical definition of the English term "unitary state" has undergone change. In the United Kingdom, it is now possible for Northern Ireland and Scotland to move away from the union. Therefore, the English term "Unitary State" will not be appropriate for Sri Lanka. The Sinhala term "aekiya raajyaya" best describes an undivided and indivisible country. The Tamil language equivalent of this is "orumiththa nadu".

However if looked at the power devolution of the proposed constitution which we discussed above, this reasoning is sarcastic and there's reasonable doubts about real intention about this suggestion. As we know it's not the meaning of the word may cause for a cessation from the country, but separatist views (i.e. Nationalism) and unwise power devolutions like this.

This is not a writing about a Leviathan or seeing wrong in everything, since the law of the country must be compatible with every possible situation (there must be measures to prevent any harmful move to the country by whatever group) we don't need a law if we are going to live under the consolation of people will behave well.

However there's a suggestion which must be appreciated.

Following formulation has been recommended additionally to the recommendation of keeping the existing 9th article.

Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while **treating all religions and beliefs with honour and dignity, and without discrimination, and guaranteeing to all persons the fundamental rights guaranteed by the Constitution.**

We must appreciate the attempt to give more respectful state to the fellow religions of the country by the language used in this formulation. However in the debates of constitutional assembly this whole report was subjected to harsh criticisms including this suggestion. Those who do not like to treat other religions respectfully and in dignity can't be Buddhists in any way.

- Sachintha Madushan

PS: I wasn't a hardliner Sinhala nationalist before few years ago. I was a strong Marxist until I read a column written by Nalin De Silva to the Vidusara newspaper in the time of my AL s. It was in 14 years old I firstly read 'Origin of the Family and Private Property' by Fredrick Engels. Wicramabahu Karunarathna was my favorite politician when I was a Marxist. However now my view on Nationality has been changed and now I'm a follower of Gunadasa Amarasekara, Nalin de Silva et al. It's after I understood they are correct. Origin of LTTE may be a reaction to oppression by Sinhalese at its first stages, but major motive of that struggle and current struggle to win federalism for North-Eastern by Tamil politicians is motivated by geopolitical factors affects the North province, like influences coming from Thamilnadu and nostalgia for the Tamil kingdom of Yapanaya which is historically a myth. Muslim people also have joined Tamil people's cause for wining federalism in an expectation to implement Sharia in eastern province as a 1st step of Islamizing Sri Lanka. We know how '[Biased Community](#)' of Sri Lanka wrongly understood anti-Islamic movements arose in post war Sri Lanka as a hysteric moment of Sinhala-Buddhist nationalist movement or as finding another enemy to be defeated after defeating the 'Tamil enemy'. But Easter terror attack proved that they were wrong and that anti-Muslim rhetoric was a protective reaction for an ongoing threat. They have been wrong about both situations. This is because 'biased community' have been formed in single intention to carry on the discrimination and oppression on Sinhala-Buddhists and to be carry on divide and rule policy started by the British, by promoting and supporting extremist agendas by minorities. One may wonder about the political change I have been undergone, but this is what happens when you realized the truth.

I like to quote following passages also which were taken from the observation of Jathika Hela Urumaya (JHU) on the interim report of the Steering Committee of the Constitutional Council. It's written by Patali Champika Ranawaka as the general secretary of the party and

named as D1 and has been attached to afore mentioned report of the steering committee. (Original letter written by Mr: Ranawka is in Sinhala language, this is the English translation attached with the English version of the report.)

From JHUs observation (by Champika)

The drafters have proposed to vest in the central government only “the subjects necessary for ensuring Sri Lanka’s sovereignty, territorial integrity, defence / national security and economic uniformity”. Although many words have been used there, all of the words “Sri Lanka’s sovereignty, territorial integrity, defence / national security” refer to the subject we usually call national security. Although it is broadly interpreted, it does not include anything more than a few aspects such as foreign relations and immigration and emigration. At the same time, it is not clear what is exactly meant by ‘economic uniformity, the other factors included in it’. It can be interpreted broadly to cover many subjects if necessary. Or else, it may be a mere embellishment which does not legally pronounce anything definite, like the ‘Guiding Principles of Government Policy’ contained in the Constitution. What becomes manifest by the aspirations hitherto unveiled by the drafters of this set of proposals is that they do not have any readiness to give any significant power to the central government. What ultimately happens by this weakening of the centre is that Sri Lanka state will find itself in an inefficient and anarchic situation in which it is incapable of achieving economic, social and finally political goals.

The proposal mentioned under number six of this section clearly depicts the true intention of the drafters. According to it ‘a constitutional reform which aims to curb the powers that have been decentralized to Provinces cannot be adopted.’ Therefore, supremacy of the future generation has been abolished from this article. What is expected by including such an eternal clause that cannot be amended by following a certain procedure or under any circumstance?

This Constitution making process has proposed a very feeble Central Government and federal governance made up of powerful provincial administrative units. **It is evident that the drafters of the Constitution believe that devolving on land based on the province is the best method of redressing the grievances of the minority communities of Sri Lanka. A close scrutiny of things shows that this is merely a political demand and a slogan far from a logical solution that seeks to address the genuine grievances of the people. A look at the ethnic distribution and**

composition of Sri Lanka shows that the province is in no way a logical political unit. For example only 32 per cent of total Tamil population of the country and 43 per cent of the Sri Lankan Tamils live in the Northern Province, the only province which can be won by a political party based on Tamil nationality. Accordingly, it is clear that in a system of devolution of power based on the province aimed at addressing the grievances of the ethnic Tamil people, 68 per cent of the total Tamil population of the country has been excluded from that system. If the language problem is sought to be solved by devolving powers on the province, only 44 per cent of the total Tamil-speaking people will be benefitted out of that solution even if that language policy is implemented in the Eastern Province too in addition to the Northern Province. If police powers are devolved only 32 per cent of the total Tamil people will benefit of it. As far as police powers are concerned, the situation of Muslims is far worse. The system prevailing in India, which was used as the model in introducing the provincial council system in Sri Lanka, is totally different to ours. 92 per cent of the Tamils of India live in the State of Tamil Nadu. This type of situation needed to be deeply considered when introducing a new Constitution. Therefore, given the ethnic distribution and composition of Sri Lanka the most effective channel through which ethnic grievances and aspirations can be addressed is national level reforms and not devolving powers based on provinces. Language problem, if for example considered as one of the main grievances of the Tamil polity, can only be solved through the national level. Religious freedom too can only be guaranteed through a national endeavor and not within provinces. All these direct us towards a national level reform process. In addition to this, if we consider the issue of grassroots level political participation, the impediments that can be seen at the provincial level are the same at the national level too. For example, there is no big difference for a person in Dehiattakandiya to reach the Eastern Provincial Council located in Trincomalee and the Central Government in Colombo. Smaller units are required for this purpose. Therefore, the Jathika Hela Urumaya considers the local government area as the unit of decentralization. This should function based on a village council system which will ensure public participation while protecting the element of transparency. Further, the borders of the existing local government units in Sri Lanka should be scientifically demarcated based on demography, ethnic composition and economic factors, a new. This will help form the most effective administrative unit of devolution. Unlike in the province, it is easy to form a local government area in a manner that ensures the representation and participation of a specific population. It is only in relation to Tamil people living in the Northern Province who can at the least keep some hope that grievances of a minority community will, to some extent be solved in the system of devolution of power based on provinces. But that, at the same time neglects the minorities in almost all other provinces. If the local government area is used as the unit of devolution, then the Sinhala people in the Northern Province (ex. Vavuniya South), Tamil people in the Eastern Province (eg. Thirukkivil), Muslims in the Eastern Province

(eg. Sammanthurai) and Upcountry Tamil people in the Central Province (eg. Thalawakele) will be able to ensure their effective political participation.

The stand of the Jaathika Hela Urumaya is that it is through the conferring of maximum possible power to the local authorities, which is the lowest governance structure, that maximum people's participation in the governance process can be guaranteed and both the goals of democracy and goals of economic development can most productively be achieved without collision between each other. When we compare Sri Lanka's ethnic and urban-rural aspects of the incidence of the population, it is evident that the most productive one is a local level decentralization, rather than a Provincial level devolution. Eastern Province is one of the best examples to understand this fact. A resident of the Eastern Province will get no unique identity or direct political or economic benefit merely because he or she is called an Eastern Province citizen. If the residents of Kokkadicholai, Samanthurai or Padiyathalawa are to link with authority with their political and economic aspirations in a logical and fruitful manner, it is necessary to localize that power as much as possible. Accordingly, examined from whatever perspective including political, geographical, ethnic and economic perspectives, Sri Lanka has the need for governance structures of two tiers, i.e. the national and the local. In other words, there is no logical need in Sri Lanka for a governance tier called Provincial except for mere political interests. **What we have been doing since 1987 maintaining under the artificial institutions called Provincial Councils some functions, which the central or local levels could have performed very easily and efficiently, having snatched them away from the central or local levels and vested in the said Provincial Councils. This is an impediment to national economic development, which is our immediate and essential need at present. Therefore, it needs be subjected to some open-minded thinking.**

Law and Order should further be a national matter. But with parallel to it, it is compulsory to assign Police Officers who have knowledge of Tamil language to serve in Police stations situated in areas where considerable number of Tamil people lives. Furthermore, the suppression and the distress caused to the public by the Police should be curbed while the mechanisms and systems at national level to grant relief to the victims should be further strengthened. One of the points that should be clearly stated is that 57 % of Sri Lankan Tamils and 68 % of the entire Tamil population live outside of the Northern Province. Therefore, if the intention of granting Police powers to the Provincial Council is to address an 'ethnic grievance', it

is evident that this measure will not serve that purpose. This is why our party believes that it will be meaningless to address the 'ethnic grievances' from devolution of power based on the land, when the composition and the demography of communities are taken into consideration.