

A NEW DEVOLUTION SETTLEMENT FOR SRI LANKA

August 2016

Proceedings and Outcomes, Conference of
Provincial Councils

Edited by Asanga Welikala

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CENTRE FOR POLICY ALTERNATIVES
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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

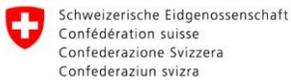
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FOREWORD

Since its inception in 1996, the Centre for Policy Alternatives (CPA) has engaged in extensive research and advocacy on devolution and power-sharing in a political and constitutional settlement of the ethnic conflict and as a means of bridging the governance deficit throughout the country. Accordingly, CPA has placed particular emphasis on its research and advocacy being informed by the experience to date of Provincial Councils, and in particular, the first-hand accounts of the key elected councillors and officials, of the challenges they encounter in their work.

As with a similar research programme in 2008, this current programme conducted in the context of the ongoing constitutional reform process brought together key elected councillors and officials from all Provincial Councils to share experiences and ideas for reform of the current system. CPA thanks the participants for their rich contribution in this regard and hopes that the deliberations of this conference will inform the discussions on devolution and power-sharing in the Constitutional Assembly.

Dr Paikiasothy Saravanamuttu

Executive Director

Centre for Policy Alternatives (CPA)

EDITOR'S INTRODUCTION

This publication arises from the Conference of Provincial Councils on a New Devolution Settlement for Sri Lanka held on 6th and 7th August 2016, at the Heritance Hotel, Negombo. The conference was organised by the Centre for Policy Alternatives (CPA) with the support of the Swiss Federal Department of Foreign Affairs (FDFA), Democracy Reporting International (DRI), and the Westminster Foundation for Democracy (WFD). Delegations from all nine Provincial Councils participated in the conference, as did local and international experts of comparative devolution and multilevel governance.

Participants at the conference engaged on issues regarding devolution of power through plenary discussions as well as in smaller breakout groups at the level of individual Provinces and on different thematic issues. The conference deliberations were rich in expertise and experience, and reflected the practical experience of over nearly three decades of working the existing framework of devolution under the Thirteenth Amendment to the Constitution. In the light of the strengths and weaknesses of that framework and experience, this publication draws attention to the key issues to be considered when designing a scheme of devolution under a new constitution. It is hoped that the Steering Committee of the Constitutional Assembly and the Constitutional Assembly itself will give serious and close consideration to contents of this document as they develop a new devolution settlement for Sri Lanka. It is also hoped that this publication would serve to broaden and deepen the public discussion about devolution that is taking place in society in the context of the constitution-making process.

The publication comprises the following substantive elements: the Concluding Text of Agreed Outcomes of the Conference of Provincial Councils; a Summary Report of the Conference Deliberations; the Recommendations of Individual Provincial Councils derived from the breakout sessions; and the Reflections of International Experts who resourced the conference.

I would like to thank all the participants for a lively engagement on these important issues over two days; CPA colleagues who contributed in numerous ways to the organisation of the conference, provided research support and acted as rapporteurs, and helped with the production of this publication; the international experts who provided much useful advice; and finally, CPA's partners who provided not merely financial support but also intellectual input into this initiative.

Dr Asanga Welikala

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THE DEVOLUTION OF POWER IN A NEW CONSTITUTION FOR SRI LANKA: RECOMMENDATIONS OF THE PROVINCIAL COUNCILS

Concluding Text of Agreed Outcomes

of the Conference of Provincial Councils, 7th August 2016

Introduction

This document represents the common minimum agreements reached by the participants at the Conference of Provincial Councils on a New Devolution Settlement for Sri Lanka held on 6th and 7th August 2016. The conference was organised by the Centre for Policy Alternatives (CPA) with the support of the Swiss Federal Department of Foreign Affairs (FDFA), Democracy Reporting International (DRI), and the Westminster Foundation for Democracy (WFD). Delegations from all nine Provincial Councils participated in the conference, and included the Governors of the Eastern, Northern, North Western, and Western Provinces, the Chief Ministers of the Central, Eastern, North Central, Southern, Uva, and Western Provinces, and Ministers and Members of all Provincial Councils. In addition to elected representatives, the delegations included members of the provincial public service, including Chief Secretaries, Chief Legal Officers, and other senior officers. The participants had the benefit of inputs from both local and international experts of comparative devolution and multilevel governance.

Participants at the conference engaged on issues regarding devolution of power through plenary discussions as well as in smaller breakout groups at the level of individual Provinces and on different thematic issues. This document was developed from proceedings during the final day, after considerable debate and discussion. It was circulated in draft form to all participants for comment after the conference, and this final version incorporates responses consistent with the tenor of the conference proceedings. The discussions reflected the practical experience of working the existing framework of devolution under the Thirteenth Amendment to the Constitution. In the light of the strengths and weaknesses of that framework and experience, this document draws attention to the key issues to be considered when designing a scheme of devolution under a new constitution. It is hoped that the Steering Committee of the Constitutional Assembly and the Constitutional Assembly itself will give serious and close consideration to the common minimum requirements for a viable system of devolution represented in this document, as reflective of the views of the current provincial tier of government as a whole.

Centre-Province Relations

There has to be a clearer demarcation of the national and provincial spheres in the new constitution. The Concurrent List must be abolished. The new constitution should reflect two lists of powers to be exercised by the central government and Provincial Councils respectively. There could also be a third list of powers that enumerates the functions of the local government authorities.

In determining how to allocate powers and functions between the national, provincial, and local spheres, the principles of non-replication, subsidiarity, and proportionality should inform the drafters of the new constitution. The principle of non-replication guarantees that, except in relation to those areas that necessarily require the co-operation of the national and provincial levels of government, functions and powers that are devolved to the Provinces are not replicated by central institutions. Replication denudes provincial autonomy. The principle of subsidiarity ensures that political decisions are taken as closely as possible to the citizen. Except for matters that are best dealt with at the national level (such as defence, international relations, currency and customs, national development, etc.), most or all other powers should be devolved to the provincial and local spheres. Normally, national institutions should only act when it is impossible, impractical, or inappropriate for the provincial and local institutions to deal with certain governmental functions. Where certain powers and functions are more effectively, efficiently, or appropriately exercised by national rather than provincial or local institutions, then the national institutions must act in conformity with the principle of proportionality, to ensure that its actions do not go beyond what is necessary to achieve legitimate national policy objectives within a multilevel system of government. The new constitution must also enshrine the principles of subsidiarity and proportionality within the future devolution framework, so that it can be interpreted, operated, and implemented in their spirit.

The powers of the Governor must be substantially reduced. Except in clearly identified emergency or other exceptional situations when the Governor may exercise certain powers (such as the dissolution of a Provincial Council) in his own discretion or on the direction of the President, executive powers within the Province must normally be fully exercised by the Chief Minister and the Board of Ministers who are democratically accountable to the Provincial Council and the people of the Province. Subject to constitutional safeguards and independent oversight mechanisms (such as the Provincial Public Service Commission, Provincial Police Commission, and the Finance Commission: see further below), the direction and control of the provincial public service, provincial public finance, and law and order must vest in the Chief Minister and the Board of Ministers. The nature and extent of these powers and the framework for their exercise must be laid down in the constitution itself. The constitution must prohibit the scope for these powers to be clawed back through national legislation (as has happened under the Thirteenth Amendment through legislation such as the Provincial Councils Act).

In general, the Governor should have no power to review, veto, or delay provincial legislation or public financial proposals of the Board of Ministers. It should be the constitutional role of the Provincial Council, and not the Governor, to ensure the political accountability of the Board of Ministers. This should include the power to withdraw confidence from the provincial administration leading to the latter's resignation. However, the constitution may specify certain classes of legislation that the Governor may reserve or send back for reconsideration. This must be strictly limited to areas such as the prevention of ethnic or religious discrimination, and there must be an express time limit within which the Governor must act in such rare cases. If such powers are provided to the Governor, then the Board of Ministers and the Provincial Council must be able, after due consideration of the Governor's views, to either accommodate or override the Governor. They must also be empowered to seek judicial review of the Governor's decisions. Both provincial legislation, and provincial executive and

administrative action, should be fully judicially reviewable by the courts for constitutionality at any time.

The present overbroad provision with regard to the power given to the national government to set 'National Policy on all Subjects and Functions' (first item on List II (Reserved List) of the Thirteenth Amendment) must be reformulated. When National Policy that impacts on the devolved provincial sphere is contemplated, there should be a mechanism for consultation with Provincial Councils, including to determine what is properly deemed 'national' policy and what is more appropriately dealt with by the Provinces.

Further devolution to the Provinces should be balanced by institutions and procedures for 'shared rule' at the centre. A second chamber in the national legislature is an indispensable element of shared rule in a system of multilevel governance. A suitably designed second chamber would give representation and a voice for the Provinces in the making of national legislation and in debating matters of national importance. It should be able to prevent, or at least, force the reconsideration of national legislation or executive measures which would impinge adversely on the provincial sphere or undermine the constitutional system of devolution. The new constitution should provide for the future second chamber to be composed mainly of representatives elected by the Provincial Councils. Provincial delegations to the national second chamber could include Chief Ministers and provincial Leaders of the Opposition. The second chamber should be a permanent body, i.e., not a body that is convened only on occasions when the national legislature is considering measures with significance for devolution.

The Chief Ministers' Conference, which at present functions informally, should be formalised. The recent practice of joint meetings of the national Cabinet with Chief Ministers should also be formalised. In addition, administrative arrangements should be put in place for regular coordination and consultations between national and provincial executives, to ensure the smooth functioning of multilevel governance.

Public Service and Administration

The Provincial Public Service Commission (PPSC), appointed by the President on the recommendation of the Constitutional Council, must be vested with powers over the appointment, promotion, transfer, disciplinary control, and dismissal of provincial public officers. Subject to these safeguards for the independence, impartiality, integrity, and professionalism of the provincial public service, provincial public officers should operate under the general policy direction of the Chief Minister and the Board of Ministers. The PPSC must be composed of five members, and they should include at least one member each from the fields of law, accounting, and planning. The Chief Minister and the Leader of Opposition of the Province may be consulted by the Constitutional Council in making appointments to the PPSC. Individuals aggrieved by PPSC decisions should have recourse to the Administrative Appeals Tribunal before resorting to courts.

Public officers appointed to the provincial service should be subject to provincial oversight, irrespective of whether their appointment originates from national-level appointing bodies (such as the All Island Service). All Service Minutes should be amended for consistency with the new devolution framework. There should be 'unity of command' within the provincial administration, and all officials providing public services (including medical officers, etc.) within the provincial sphere should come within the decision-making authority of the provincial public administration, including powers of transfer. The regulations on transfers should be simplified, and should facilitate mobilising resources within the Provinces to serve the needs of the Province.

Minimum recruitment criteria should be established for the provincial public service, and these may be formulated by the PPSC in consultation with the Chief Secretary. The employment benefits of provincial public officers should be equal to the benefits available to officials of the central government. The PPSC must be authorised to make cadre approvals, in consultation with the Management Services Division of the central government.

The *Grama Niladharis* and Divisional Secretaries should be brought under the purview of the Provincial Councils. The Government Agents (District Secretaries) must be restructured as Deputy Chief Secretaries of the Provincial Council.

Legislative Process and Legal Support

The general policy direction and programme of the provincial administration will be set by the Chief Minister and the Board of Ministers. The provincial public service will act under the general policy direction of the Chief Minister and the Board of Ministers in carrying out the programme. The capacity of the Provincial Legal Department (see below) must be strengthened to assist the provincial administration and the Provincial Council in drafting statutes, in consultation with the Chief Secretary, Secretaries to the Provincial Ministries or Heads of Provincial Departments relevant, as the case may be, to the subject matter of the statute.

Arrangements for the pre-enactment political and technical review of prospective provincial legislation should be established, including to ensure statutes' constitutionality and legality, financial implications, and other relevant considerations. These political accountability mechanisms should be part of the Provincial Councils' constitutional role as elected legislatures, including through effective committee systems. Consistent with the requirements of the constitution, the formulation and adoption of rules of procedure for the exercise of legislative powers by the Provincial Councils should be a matter for each Provincial Council. Provincial Councils should sit regularly to ensure scrutiny of legislation and the accountability of the provincial administration.

If the Governor's power of reservation with regard to draft statutes is retained in some areas (e.g., discrimination, see above), then any reference of the draft statute for a review of its constitutionality should be directly to the Constitutional Court or Constitutional Bench of the Supreme Court and not to the President. The constitution should provide for strict time limits for any such judicial proceeding. If

Acts of Parliament are exempted from post-enactment constitutional review in the new constitution, then the same principle should apply to statutes of Provincial Councils.

Each Province must have a Provincial Legal Department comprising an Office of the Advocate General and an Office of the Legal Draughtsman (these could also be constituted as separate departments). The role of the Advocate General is to be the chief legal advisor to the provincial administration, similar to the role of the Attorney General in relation to the national government. Both institutions must be made constitutionally independent. At both national and provincial levels, the enforcement of country-wide criminal law and procedure and the function of chief public prosecutor must be removed from the Attorney General and Advocate General, respectively, and be vested in a new independent Director of Public Prosecutions, which would have national and provincial offices working with national and provincial police services (see below).

Fiscal and Financial Arrangements

The expenditure responsibilities of the Provinces would increase if the new constitution devolves more powers and functions to the Provinces as recommended in this document. How to ensure that Provinces have adequate resources to discharge their expenditure responsibilities fully is a matter that requires careful consideration by the Constitutional Assembly. This will involve greater revenue (tax) raising powers as well as an effective system of fiscal equalisation (transfers) to address vertical and horizontal fiscal imbalances. Vertical imbalances occur when the constitution provides more expenditure responsibilities than revenue raising powers to the Provinces. In such a structure, the fiscal gap must be met through central transfers or by a guaranteed share of nationally collected tax revenue. Horizontal imbalances occur due to relative differences in economic strength of Provinces because of uneven development (e.g., Uva would require substantially more financial support than the Western Province) or other causes such as underdevelopment and destruction due to conflict (e.g., the Northern and Eastern Provinces would require special arrangements to overcome the economic legacy of the war). In all this, the role of a reconstituted Finance Commission is pivotal as are other mechanisms that should be established to ensure the smooth functioning of a multilevel system with national and provincial economies.

The Finance Commission should be restructured and strengthened. Its composition must include representation for all Provinces, or alternatively, if it is to be reconstituted as a body of independent experts, the Provinces must be empowered to nominate a section of its members. Its functions need to be expanded beyond merely recommending the apportionment of the pre-determined central allocation for the Provinces, to recommend to the central government how much and in what ways allocations ought to be made to the Provinces. It can be supported by semi-formal processes of inter-governmental consultations between the Ministry of Finance and the Chief Minister's Offices with regard to annual financial needs of the Provinces. Allocations to the Provinces under the national budget should include separate expenditure heads, and the central government must be required to show how its own funds are distributed geographically. These requirements can also be met by introducing the innovation of a Division of Revenue Act to accompany the annual Finance Act. The Division of Revenue Act would set out the agreed framework of financial provision for the Provinces,

and make any deviation politically and legally reviewable. Central transfers to the Provinces should be flexible and allow the Provincial Councils discretion to use the finances according to the evolving needs of the Provinces. There should be mechanisms in place to monitor and ensure that transfers received by the Provincial Councils are spent appropriately (the remit of national independent oversight commissions could be extended for this purpose), and the constitution could also establish the basic norms of public financial integrity and transparency for all levels of government.

A National Planning Commission should be established to determine the capital expenditure requirements of the Provinces for matters on the Provincial List, and this Commission should include the representation of all Provincial Councils. It should include the representation of the Finance Commission.

The political oversight of the finances of the provincial administration is to be carried out principally by the Provincial Council. The provincial administration should not be answerable to the central government or Parliament on the administration of provincial finances. The Chief Secretary should be the Chief Accounting Officer.

Foreign funding obtained by the central government for projects falling within provincial subject matter should be directed to the Provinces. The Province should be given implementation authority in respect of foreign-funded projects related to provincial subject matter. Provincial Councils must be empowered to enter into public-private partnerships independently with private entities and to obtain direct private investments. Provinces should be empowered to establish investment authorities that would liberalise and facilitate more private investments within the Provinces.

These enhanced fiscal and financial powers are to be appropriately countervailed by necessary oversight by, or requirements of consultation and concurrence of, central institutions in order to ensure the stability and soundness of the national economy.

Law and Order

Law and order powers and functions can be shared between national and provincial policing institutions without any prejudice or threat to the national unity or territorial integrity of Sri Lanka. The National Police Service should deal with serious matters that are more appropriately dealt with at the national level such as organised crime, terrorism, narcotics, databases and statistics, etc. The Provincial Police Service can deal with all other functions including community policing, minor crimes, traffic, etc. This would ensure a more efficient, effective, citizen-friendly, and accessible police service throughout the whole country.

A Provincial Police Commission (PPC) should be established and decide on the appointment, promotion, transfer, disciplinary control and dismissal of police officers within the Province. Appointments to the PPC could be made under one of two alternative mechanisms: (1) appointment by the Constitutional Council; (2) two appointees nominated by the Chief Minister, one appointee nominated by the provincial Leader of the Opposition, one appointee nominated by the PPSC, and the provincial Deputy Inspector General of Police (DIG) appointed *ex officio*. The Chief Minister, in

consultation with the Inspector General of Police, should appoint the provincial DIG, provided that any disagreement between them is settled conclusively by the President. The autonomy of the Provincial Police Commission should be ensured, where all decisions involving both the Provincial Police Commission and the National Police Commission (i.e., deciding cadre, seconding national police officers to the provincial level, etc.) are arrived at in consultation between the two. Any decision of the Provincial Police Commission should be appealable to the Administrative Appeals Tribunal. Each Province may also have a Police Complaints Commission to act as an ombudsman of the Provincial Police Service on behalf of the citizen.

All recruitments of lower level police officers are to be carried out by the Provincial Police Commission, and where appropriate and necessary, may be required to reflect the ethnic ratio of the Province. All police officers must be subject to national language proficiency requirements which are linked to promotions and emoluments, the framework for which is already provided by law. However, policies of time-bound exemptions and/or affirmative action may be implemented for Provinces affected by protracted conflict, in order to compensate for long-term disruptions to the public education system. It is also desirable that the Provincial Police Service should include at least twenty percent women officers.

Land and Natural Resources

A National Land Commission and a Provincial Land Commission must be established. The alienation of state land must be according to the principles formulated by these Commissions, having regard to the legitimate requirements of both national and provincial spheres. Associated matters such as forests, water resources, irrigation, non-renewable natural resources need also to be revisited with a view to clarifying the powers, functions, and responsibilities of the national and provincial spheres. These are areas in which there can be no exclusive division of powers and functions, and accordingly mechanisms need to be established for consultation and concurrence so that fair decisions are made with adequate regard to the interests of both national and provincial spheres. This principle must be applied immediately to existing national legislation (e.g., Mahaweli Authority of Sri Lanka Act, Urban Development Authority Act, Tourism Act, etc.).

Other Issues

There was extensive discussion during the plenary and breakout sessions about such matters as the nature of the Sri Lankan state, in particular the question of its self-description as a unitary or federal state. There was no clear consensus on this issue. However, there was broad acceptance that Sri Lanka's unity and territorial integrity must be safeguarded by the constitution while providing for the maximum possible devolution within that framework.

SUMMARY REPORT OF THE CONFERENCE PROCEEDINGS

The substantive discussions of the conference were structured around the themes of centre-province relations, fiscal and financial arrangements, public service and administration, and legislation and legal support. These were also the themes around which participants divided into groups for more detailed discussions. The following narrative report summarises the thematic group and plenary discussions of the conference.

Centre-Province Relations

*The Governor's Powers*¹

There was broad agreement that the powers of the Governor in relation to the Provincial Council should be reduced. In the current devolution framework, there is confusion as to whether provincial executive power extends to all subjects devolved to Provincial Councils² and about the relationship between the Governor and the Board of Ministers in the exercise of this power.³ The confusion primarily stems from the provisions of Article 154 C and 154 F of the constitution – an issue that repeatedly brought up during the plenary sessions of the conference. Except in clearly identified emergency situations when the Governor may exercise certain powers in his own discretion or on the direction of the President, executive powers within the Province must normally be fully exercised by the Chief Minister and the Board of Ministers who are democratically accountable to the Provincial Council and the people of the Province.

Furthermore, there was agreement that the nature and extent of the executive powers devolved to the Provincial Councils and the framework for their exercise must be laid down in the constitution itself. Within a constitutional scheme where there is both pre- and post-enactment judicial review, this would prevent these powers being taken back by the central government, through legislation (as has happened under the Thirteenth Amendment through legislation such as the Provincial Councils Act).

The Governor is vested with wide discretion on whether to grant assent to provincial statutes. A statute of a Provincial Council comes into force only after it receives the assent of the Governor.⁴ However, if s/he does not assent, s/he must return the statute to be reconsidered by the Provincial

¹ This section only looks at the Governor's powers in relation to the statute-making process in the exercise of his executive power under the Thirteenth Amendment. The Governor's powers in relation to provincial finance and the provincial public service are dealt with separately below.

² See A. Welikala (2011) *Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions, 2008-2010* (Colombo: Centre for Policy Alternatives): p.45, available at:

<http://www.cpalanka.org/devolution-in-the-eastern-province-implementation-of-the-thirteenth-amendment-and-public-perceptions-2008-2010/>

³ L. Ganeshathasan. 'The Devolution of Power and the Executive Presidency' in A. Welikala (Ed.) (2015) *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Colombo: Centre for Policy Alternatives): Ch.9, available at: <http://srilankanpresidentialism.org/wp-content/uploads/2015/01/17-Ganeshathansan.pdf>

⁴ Article 154H (1).

Council with or without recommendations for amendment.⁵ In such a situation, the Provincial Council will reconsider the statute, having regard to the Governor's message. The Provincial Council may pass the statute with or without amendment and re-present it to the Governor for assent.⁶ After the statute is presented for the second time, the Governor may either assent to it, or reserve it for reference by the President to the Supreme Court, for a determination on whether it is consistent with the provisions of the constitution. The Governor can assent to such a statute only if the Supreme Court determines that the statute is consistent with the provisions of the constitution.⁷

This legislative procedure suggests that the Governor is expected to act as a check on the manner in which Provincial Council exercises its legislative power, a fact which was highlighted by some participants at the conference. However, the consensus that emerged from the conference was that the circumstances that justified the inclusion of such a provision at the time of the enactment of the Thirteenth Amendment were no longer a consideration. As such there was in general an agreement that, the Governor should have no power to review, veto, or delay provincial legislation including on financial proposals of the Board of Ministers. It should be the constitutional role of the Provincial Council, and not the Governor, to ensure the political accountability of the Board of Ministers. This position was especially compelling considering the experience of the Northern and Eastern Provincial Councils, where the respective Governors were able to delay, sometimes indefinitely, certain provincial statutes.⁸

There was, however, the view that there is a need for the constitution to specify certain classes of legislation that the Governor may reserve or send back for reconsideration of the Provincial Council, or include a mechanism by which the Governor could raise concerns about legislation that could result in ethnic or religious discrimination. If such a mechanism is brought in, it must strictly be limited to these areas and there must be an express time-limit within which the Governor must act in such rare cases. If such powers are provided to the Governor, then the Board of Ministers and the Provincial Council must be able, after due consideration of the Governor's views, to either accommodate or override the Governor. They must also be empowered to seek judicial review of the Governor's decisions. Both provincial legislation, and provincial executive and administrative action, should be fully judicially reviewable by the courts for constitutionality at any time.

What is envisaged is the removal of the broad executive power vested with the Governor under the existing scheme of devolution and limiting the role of the Governor to a strictly ceremonial position with limited powers in emergency situations. In these circumstances, a question arose as to the need have provincial Governors at all. After some discussion it was agreed that of the available alternatives, having a specific individual occupying the office of Governor in all nine Provinces was the most desirable option.

⁵ Article 154H (2).

⁶ Article 154H (3).

⁷ Article 154H (4).

⁸ Chief Ministers Fund; Tourism Statute in the Eastern Province.

National Policy

At present ‘National Policy on all subjects and functions’ is a matter reserved to the central government.⁹ It was repeatedly highlighted that this was a mechanism used by the central government to take back powers devolved to the Provincial Councils.¹⁰ The lack of a mechanism for consultations between Provincial Councils and the central government, and the non-implementation of existing co-ordinating mechanisms such as the National Land Commission, were highlighted as primary factors in the central government being able to do as it pleased in this area. It was also pointed out that ‘national policy’ prescribed by the central government often does not take into consideration disparities among Provinces in terms of level of development, available resources, and other provincial considerations.¹¹ As such ‘national policies’ often do not have the desired impact and are out of touch with the needs within some provinces. There was broad agreement that when national policy is being formulated on subjects devolved to the Provincial Councils, there should be a mechanism for consultation with Provincial Councils. This includes consultations to determine what is properly deemed ‘national’ policy and what is more appropriately dealt with by the Provinces.

Furthermore, the new devolution settlement should specify the form in which such ‘national’ policy manifests itself. Several instances were highlighted where letters and circulars issued by central government actors were considered to amount to national policy. Within the sphere of the central government it is Parliament that is competent to formulate national policy, in terms of the Thirteenth Amendment. However, administrative practice and the culture of centralisation makes it possible for central executive actors including bureaucrats to set national policy at will.¹²

The Concurrent List

The constitution contains three lists¹³ which enumerates subject areas on which Provincial Councils can make statutes (Provincial Council List or List I), subject areas on which Provincial Councils have no power to make statutes (The Reserved List or List II), and subject areas on which both Parliament and Provincial Councils have legislative competence, subject to consultation with the other (The Concurrent List or List III). On a first glance it appears that both Parliament and Provincial Councils have equal status when legislating in respect of concurrent subjects. However, the obligations on ‘appropriate consultation’ is more stringent on Provincial Councils as opposed to Parliament. Beyond the existing culture of centralisation of power, this is particularly a result of the control exercised by

⁹ See Item 1 on List II (Reserved List) of the Thirteenth Amendment.

¹⁰ See Welikala (2011): p.34.

¹¹ The Chief Minister of the Eastern Province brought out the example of the maximum age prescribed for recruiting graduate trainees (to persons below the age of 35 years) causing hardship in the Eastern Province which was directly impacted by the war.

¹² See Welikala (2011): p.74 -76; L. Ganeshathasan & M. Mendis (2015) *Devolution in the Northern Province: September 2013 – February 2015* (Colombo: Centre for Policy Alternatives): p.22- 23, available at:

<http://www.cpalanka.org/devolution-in-the-northern-province-september-2013-february-2015/>

¹³ See Ninth Schedule to the Constitution.

the central government on the provincial statute-making process, the constitutional protection afforded to central legislation,¹⁴ and the pre-eminence of Parliament in the legislative sphere.¹⁵

Provincial Council statutes on concurrent subjects may prevail over central legislation, which existed on the date on which the Thirteenth Amendment came into effect, but Parliament can by resolution override the application of such statutes,¹⁶ and any future central legislation on a concurrent subject has pre-eminence over a provincial statute.¹⁷ Due to these reasons, the concept of concurrency in the Thirteenth Amendment has been described as one of ‘central field pre-emption’¹⁸ and the Concurrent List is viewed as another means by which the power over subjects devolved to Provincial Councils can be centralised.

It is in this context that the call for the abolition of the Concurrent List has become increasingly strident by provincial officials. The need for a clear demarcation of subjects between the central government and Provincial Councils was repeatedly highlighted during the conference. In order to achieve this, there was agreement that the Concurrent List must be abolished and any new devolution settlement should reflect two lists of powers to be exercised by the central government and Provincial Councils respectively.¹⁹

There was little discussion on which subjects on the Concurrent list should be allocated to Provincial List and which subjects should be allocated to the Reserved List or on the criteria to be followed when deciding this. However, it was accepted that the abolition of the Concurrent List would not remove the need for cooperation between the different tiers of government. Even with separate lists of subjects divided between Provincial Councils and the central government, there would still be areas where there is a spill-over from one tier to the other, and which would require co-operation (e.g., in a situation where the centre is responsible for energy and the provinces is responsible for environmental protection). A multi-tiered system of government would thus need inter-governmental mechanisms to facilitate co-operation and to provide for mechanisms of dispute resolution. Several formal and informal mechanisms were proposed in this regard. These included a second chamber of Parliament and a formalisation of certain existing arrangements such as the recent innovation of a regular meeting Chief Ministers with the central Cabinet of Ministers.

¹⁴ Article 80 (3) provides that, “Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever.”

¹⁵ Articles 76, 154G (10) and (11).

¹⁶ Article 154G (9) provides that, “Where there is a law with respect to a matter on the Concurrent List on the date on which this Chapter comes into force and a Provincial Council established for a Province subsequently makes a statute on the same matter inconsistent with that law, the provisions of that law shall, unless Parliament, by resolution, decides to the contrary, remain suspended and be inoperative within that Province, with effect from the date on which that statute receives assent and so long only as that statute is in force.”

¹⁷ See further Article 154G (6), read with Article 154G (5)(a).

¹⁸ See Welikala (2011): p. 36-39.

¹⁹ It was suggested by some that a third list of powers that enumerates the functions of the local government authorities be included in the constitution. However, there was also the view that local government should remain a subject matter of Provincial Councils.

A second chamber in the central legislature will be a useful mechanism to create a dialogue between the political authority in the provinces and the centre. The second chamber could be of particular use as a mechanism to discuss and formulate 'national policy'. In addition to this, the second chamber should be able to block or delay legislation that has an adverse impact on devolution. Constitutional amendment in general and those impacting the scheme of devolution in particular could be subject to approval of the second chamber in addition to the existing safeguards. If the predominant role of the second chamber is to do with devolution of power, it can be constituted with representatives of Provincial Councils, either with members of the Provincial Councils themselves, or with members elected through electoral colleges of Provincial Councils or with a mix of both.

Having members of Provincial Councils themselves, and especially members or representatives of the provincial Board of Ministers, in the second chamber creates a stronger link between the province and the centre, which in turn makes co-operation more feasible. It would also be less costly for the public as it would not create another category of representatives of the people, and would serve to raise the profile of Provincial Councillors.

There was widespread agreement that existing informal co-ordination mechanisms such as the Chief Minister's Conference and inviting Chief Ministers to attend Cabinet meetings once every two months, should be formalised.

Law and Order

Item 1 of the Provincial Councils List read with Appendix I of the constitution sets out the power of Provincial Councils in relation to police and law and order. Accordingly, Provincial Councils can exercise powers relating to public order and police powers, to the extent set out in Appendix I, within the Province. Such power would not include national defence, national security, and the use of any armed forces or any other forces under the control of the government of Sri Lanka in aid of the civil power.

Appendix I further elaborates on the composition of the Provincial Police Division²⁰ and Provincial Police Commission²¹ and provisions relating to the cadre, ammunition, and uniforms of the Provincial Division. The Provincial Division is responsible for the preservation of public order within the Province and the prevention, detection, and investigation of all offences, except the eleven classes of

²⁰ A Provincial Division shall consist of the Deputy Inspector General of Police (DIG), the Senior Superintendent of Police, the Superintendent of Police, and the Assistant Superintendent of Police, all seconded from the National Division, and the Provincial Assistant Superintendents of Police, Chief Inspectors, Inspectors, Sub-Inspectors, Sergeants, and Constables recruited in the Province. Members of the Provincial Division shall be eligible for promotion to the National Division.

²¹ The Provincial Police Commission shall be composed of: (a) the DIG. of the Province; (b) a person nominated by the Public Service Commission in consultation with the President; and (c) a nominee of the Chief Minister of the Province. The DIG of the Province is appointed by the Inspector-General of Police (IGP) with the concurrence of the Chief Minister of the Province. However, where there is no agreement between the IGP and the Chief Minister, the matter will be referred to the National Police Commission, which, after due consultations with the Chief Minister, shall make the appointment.

offences specified in the Schedule to Appendix I. The Chief Minister may request the assistance of the central Criminal Investigation Department (CID) or other unit of the national police in any investigation. Where the Inspector General of Police (IGP), with the approval of the Attorney General, decides in the 'public interest' that an investigation requires the CID or other unit of the national police to be deployed in the Province, he must do so only after consultation with the Chief Minister.

The Deputy Inspector General of Police (DIG) of the Province is responsible to and under the control of the Chief Minister, except in situations where the President has declared a state of emergency. However, where there is a grave internal disturbance requiring the deployment of the national police within the Province, but which does not require the declaration of a state of emergency, the President does so in consultation with the Chief Minister. Where the Chief Minister seeks the assistance of the national police division in the preservation of public order within the Province, the IGP must deploy such personnel as are necessary for the purpose and place them under the control of the DIG of the Province.

These detailed constitutional provisions relating to devolution of police powers have never been implemented. This is also despite the central government enacting the Police Commission Act, No. 1 of 1990. Several participants at the conference noted that the President had not issued an order bringing this Act into operation. Even attempts by the Eastern Provincial Council to enact a police statute in 2009 were not successful.²² The non-implementation of these provisions is indicative of the deep-seated fear and suspicion within the southern polity that an armed Provincial Police Division in the North and East would be a tool in the hands of secessionist forces – a fear that was expressed during the conference when several representatives repeatedly emphasised the need to protect the unity and territorial integrity of Sri Lanka.

Several detailed recommendations were made by the thematic group dealing with law and order. These recommendations were also the subject of discussion in the subsequent plenary discussion. Law and order powers and functions can be shared between national and provincial policing institutions without any prejudice to the national unity or territorial integrity of Sri Lanka. The National Police Service should deal with serious matters that are more appropriately dealt with at the national level such as organised crime, terrorism, narcotics, databases and statistics etc. The Provincial Police Service can deal with all other functions including community policing, minor crimes, traffic, etc. This would ensure a more efficient, effective, citizen-friendly, and accessible police service throughout the whole country.

A Provincial Police Commission (PPC) should be established and decide on the appointment, promotion, transfer, disciplinary control, and dismissal of police officers within the Province. Participants at the conference suggested two alternative mechanisms for the appointments to be made for the PPC: (1) Bring appointments in line with appointments to the National Police Commission by involving the Constitutional Council; or (2) two appointees nominated by the Chief Minister, one appointee nominated by the provincial Leader of the Opposition, one appointee nominated by the

²² See Welikala (2011): p.31-42.

Provincial Public Service Commission (PPSC), and the provincial Deputy Inspector General of Police (DIG) appointed *ex officio*.

The Chief Minister, in consultation with the Inspector General of Police, should appoint the provincial DIG, provided that any disagreement between them is settled conclusively by the President. The autonomy of the Provincial Police Commission should be ensured, where all decisions involving both the Provincial Police Commission and the National Police Commission (i.e., deciding cadre, seconding national police officers to the provincial level, etc.) are arrived at in consultation between the two. Any decision of the Provincial Police Commission in respect of disciplinary proceedings should be appealable to the Administrative Appeals Tribunal. Each Province may also have a Police Complaints Commission to act as an ombudsman of the Provincial Police Service on behalf of the citizen.

All recruitments of lower level police officers are to be carried out by the Provincial Police Commission, and where appropriate and necessary, may be required to reflect the ethnic ratio of the Province. All police officers must be subject to national language proficiency requirements which are linked to promotions and emoluments, the framework for which is already provided by law. It is also desirable that the Provincial Police Service should include at least twenty percent women officers.

Land and Natural Resources

Item 18 of the Provincial List describes land including rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement as being part of the sphere of competence of Provincial Councils to the extent set out in Appendix II. Appendix II subjects the powers detailed therein to the caveat that land shall continue to vest in the Republic and may be disposed of in accordance with Article 33(d) of the constitution²³ and written law²⁴ governing this matter. It provides for the use of state land by Provincial Councils and the central government, inter-provincial irrigation and land development projects, and the establishment and functions of the National Land Commission.

The questions of what land powers were devolved to Provincial Councils and to what extent was sought to be determined in the case of *The Superintendent, Stafford Estate v Solaimuthu Rasa*.²⁵ The judgment of the court which consisted three separate but concurring opinions is a departure from previous case law on the subject. The court concluded that that the advice of the Provincial Council was not an essential prerequisite for the disposition of state land within a province.²⁶ The court further held that Provincial Councils have the power to make statutes in relation to state land within the province, only if the government makes such state land available to the Provincial Councils for a

²³ Now Article 33(2)(f), as enacted by the Nineteenth Amendment to the Constitution (2015).

²⁴ In terms of Article 170 of the constitution, written law means any law and subordinate legislation and includes statutes made by a Provincial Council, Orders, Proclamations, Rules, By-laws and Regulations made or issued by any body or person having power or authority under any law to make or issue the same.

²⁵ S.C. Appeal 21/2013.

²⁶ Particularly assertively in the judgment of Chief Justice Mohan Peiris.

Provincial Council subject.²⁷ This judgment of the Supreme Court has created significant doubt about the nature and extent of devolution of land powers to provincial councils.

As with law and order, several detailed recommendations were made by the thematic group dealing with land and natural resources. These recommendations were also the subject of discussion in the subsequent plenary discussion. A National Land Commission and a Provincial Land Commission must be established with adequate representation from Provincial Councils. The alienation of state land must be according to the principles formulated by these Commissions, having regard to the legitimate requirements of both national and provincial spheres. Associated matters such as forests, water resources, irrigation, non-renewable natural resources need also to be revisited with a view to clarifying the powers, functions, and responsibilities of the national and provincial spheres. These are areas in which there can be no exclusive division of powers and functions, and accordingly mechanisms need to be established for consultation and concurrence so that fair decisions are made with adequate regard to the interests of both national and provincial spheres.

Merging of Provinces

The possibility of merging two or more Provinces was discussed extensively and constructively, especially in relation to the north and east. A number of different options were identified. There was no consensus on these options, but there was a readiness to discuss further. The options discussed included: merging upfront while introducing special safeguards for minorities within Provinces; not to merge, but to introduce provisions for an ‘apex council’ or a structure that allows for sectoral cooperation among two or more provinces; to maintain the status quo, i.e., not to merge while keeping merger provision in the constitution; and lastly, to amend the merger provision in a way that would allow for boundary shifts at lower levels (e.g., switch of divisions or districts from one to another province).

Fiscal and Financial Arrangements

There are twenty sources of revenue currently allocated to the provinces under Item 36 of the Provincial List. Of these, the main source of revenue is the Turnover Tax, which the central government had replaced with the Nation Building Tax in 2010 through a government circular. It was recommended that Provincial Councils be allowed to directly collect turnover taxes. It was further recommended that procedures and limitations be established in the constitution to limit the central government’s ability to control the taxation powers devolved to the provinces.

Currently, the constitution does not stipulate any requirements on the amount of funds transferred by the central government to the provinces as a whole. It only establishes a Finance Commission to make recommendations on how an amount allocated by the central government should be shared among the different provinces. Thus, it was recommended that the constitution make provisions concerning the amount of funds to be transferred to the provinces by the centre, particularly in ensuring that the

²⁷ For a more detailed discussion of this case see L. Ganeshathan & M. Mendis (2015) *Devolution in the Northern Province: September 2013 – February 2015* (Colombo: The Centre for Policy Alternatives): p.46-48.

amounts transferred are commensurate to the responsibilities devolved to the provinces under the constitution. The establishment of a National Planning Commission was recommended to determine the capital expenditure needs of the provinces for matters on the Provincial List, and this Commission should include the representation of all nine provincial councils as well as the Finance Commission. It was further recommended that allocations to the provinces under the national budget should be specified under separate expenditure heads. The central government should also indicate how its own expenditure allocations are distributed geographically among the provinces. The need for central transfers to the provinces to be flexible and allow the provincial councils discretions to use them according to the evolving needs of the provinces was also recognised. Currently, under the grants structure of the Finance Commission, the most important grant from the central government, the Province-Specific Development Grant, comes with specific instructions and guidelines on how it should be spent, obstructing the need for flexibility felt at the level of the province.

The need to constitutionalise any measures necessary to ensure the oversight of provincial financial matters was identified. In this regard, the abolition of the Governor's powers of financial review was strongly advocated. The Governor's discretionary powers with regard to provincial financial statutes are significant: all statutes involving revenue or expenditure can only be introduced, moved or passed by the Provincial Council on the prior recommendation of such a statute by the Governor; all demands for central grants to the Provincial Council require the Governor's recommendation; the annual budget of the provincial administration is presented to the Provincial Council by the Governor. Although the latter requires the Council's final approval, the Appropriation Statute required to give effect to the budget not only requires the Governor's recommendation to be introduced in the Council for debate, it also requires his assent, after its passage in the Council, in order to be validly enacted. The audited accounts of the provincial administration are submitted to the Provincial Council by the Governor, while demands for supplementary grants or votes on account during a financial year are also only initiated by him. The Governor makes the rules governing all aspects of provincial finance, including the Provincial Fund and the Emergency Fund of the Province. Financial oversight of the provincial administration is to be carried out by the Provincial Council, and further oversight by the Governor and Parliament was deemed an unnecessary intrusion into provincial autonomy by the centre. Provincial administration officials should not be answerable to the central government or Parliament on the administration of provincial finances. However, to streamline the financial administration in the provinces, it was recommended that the Chief Secretary be also recognised as the Chief Accounting Officer. In discussing constitutional review of provincial statutes, a question was also raised on the need for financial review of provincial statutes, noting that this is putatively the function of the Governor. No conclusions were arrived at on this issue, though the consensus was that the Governor's powers of fiscal control were inimical to devolution of power.

Provincial ownership of foreign funded projects was also discussed at some length. It was recommended that foreign funding obtained by the central government for projects falling within provincial subject matter should be directed to the provinces. The province should be given the implementation authority in respect of foreign-funded projects related to provincial subject matter. In this connection, the precedent of entering into tripartite agreements with donor agencies was noted,

where the donor enters into an agreement with the central government's External Resources Department as the executive authority, and with the provincial administration as the implementation authority, so that the province may work directly with the donor agency on matters relating to the implementation of a project. Though there were no precise conclusions on this aspect of the matter, there was a clear consensus that foreign funding secured by the central government for projects falling within provincial subject matter need not be channelled to the line ministry in charge of the subject; instead, the funding should be channelled directly to the province, so that the relevant provincial ministry may access it directly.

A recommendation was made that Provincial Councils must be empowered to enter into public-private partnerships independently with private entities and to obtain direct private investments. A recommendation was also made that provinces be empowered to establish 'Investment Authorities' or 'Investment Forums' that would liberalise and facilitate private investments within the provinces.

Public Service and Administration

Currently, the Governor is vested with the power to vary the decisions of the Provincial Public Service Commission (PPSC) relating to provincial administration personnel. The abolition of this power was advocated for, with the argument that appeals against the PPSC could lie in the Administrative Appeals Tribunal or courts, without the need for interference by the Governor. To ensure its competence, the composition of the PPSC was recommended to consist of five members, including at least one member each from the fields of law, accounting, and planning. In making appointments to the PPSC, the Governor should be required to consult the Chief Minister and the Leader of Opposition of the Provincial Council.

Public servants appointed to provide services falling within provincial subject matter were recommended to be made amenable only to provincial oversight, regardless of whether their appointment originated from central/national-level appointing bodies (such as the All Island Service). This is so that there is 'unity of command' within the provincial administration, and all officials providing public services (including medical officers, etc.) within provincial subject matter falls within the decision-making authority of the provincial public administration, including powers of transferral. In this regard, the regulations on transferrals should be simplified, and should facilitate mobilising resources within the provinces to serve the needs of the province. Though there was a suggestion that services relevant to provincial subject matter should come under provincial services bodies and removed from the purview of the All Island Service, it was identified that doing so would conflict with Service Minutes, which is the product of negotiations with a vast range of stakeholders in the public service.

Minimum recruitment criteria should be established for provincial personnel, and these may be provided for by the Management Services Department. Their employment benefits should be equal to the benefits available to officials of the central government. The PPSC must be authorised to make

The Grama Niladharis and Divisional Secretaries should be brought under the purview of the Provincial Councils. The Government Agents (District Secretaries) must be restructured as Deputy Chief Secretaries of the Provincial Council.

Legislation and Legal Support

There are significant difficulties faced by the provinces in drafting new statutes. Most provinces have enacted a very few statutes since their inception. The main issue is the lack of personnel with the necessary expertise in legal drafting. Another issue is the lack of personnel with the necessary expertise to translate drafted statutes to all three languages. In recognition of these issues, it was recommended that an office be created within a proposed provincial legal department to facilitate these needs. In drafting statutes, the Chief Minister and Board of Ministers will provide the necessary policy framework. Based on this, the provincial legal department will draft the statute in consultation with the secretaries of the ministries or departments relevant to the statute. This would ensure that statutes are not merely technical instruments, but also reflect the needs of the province.

Even if the governor's power to refer a draft statute back to the Provincial Council is retained, his power to refer it, in the second instance, to the President to be referred to the Supreme Court should be abolished. In previous instances, statutes referred to the President to be referred to the Supreme Court had been allowed to remain in limbo, with the President exercising his discretion to not act on the Governor's reference. Accordingly, it was recommended that any draft statute thought to require constitutional review by the Governor to be referred directly to the Supreme Court (or future Constitutional Court). There should be a time restriction imposed on the court to making a determination on a draft statute that has been referred to it. Post-enactment review of provincial draft statutes should be allowed only to the extent the same is applicable to Parliament in the new constitution.

Bodies equivalent to the Attorney General's Department and Legal Draftsperson's Department should be established at the provincial level to serve the provincial administration and council. These bodies could be within a unified department known as the Provincial Legal Department, or separately. The functions and powers must be on par with the equivalent central departments, and relate to the provincial subject matter under the new devolution framework of the constitution. At the central government level, the functions of the Attorney General as the lawyer of the government must be separated from his functions as the public prosecutor. The latter functions should be placed within a separate office. The functions of the AG as the government's lawyer should be separated between the AG and the chief legal official of the province. Further study is required to determine whether a similar approach of devolution should be adopted in terms of prosecutions and other criminal law matters.

RECOMMENDATIONS OF INDIVIDUAL PROVINCIAL COUNCILS

Editor’s Note: These recommendations are reproduced verbatim as they were presented by the individual Provincial Councils following discussions within breakout groups during which delegations from each Council had an opportunity to articulate their concerns and requirements.

CENTRAL PROVINCE

	Problem	Status Quo	Recommendation
General	Provincial Councils precluded from local administration	Carried out by the Centre	Bring it under the Provincial Councils
	Central institutions issuing various circulars on matters coming under Provincial Councils’ subject matter	Carried out under the guise of national policy	National policy to be determined only by Parliament, and making Provincial Council consultations mandatory in formulating national policies
	No technical services for the All Island Service	Carried out by the PSC	Take needs of the provinces into account
	The need for central approval for provincial recruitment and promotions	Under the control of the Management Services Department and Salaries and Cadres Commission	Establishing similar institutions within the provinces
	Disparities in employees’ benefits between provincial and central public servants	Central officials entitled to higher benefits	Equalising benefits between both tiers
F	Appointments and salary	Appointment made	New appointments

	increments being confirmed without reference to the financial capacity of the province	by the Centre, and then referred to the PC	and increments to be issued with the necessary financial provisions
	Provincial taxation powers being taken over by the Centre without due process	Used to pass budget proposals	Reactivating taxation powers devolved to provinces
	Provisions mentioned in the Capital Estimates not being transferred to the provinces on time	Not made even when verbally requested	Due transfers must be guaranteed
	The removal of the expenditure head for specific provincial councils	Transfers made under the ministry of provincial councils	A guarantee that transfers are made under an independent expenditure head for provincial councils
	Disparities in employees' benefits between provincial and central public servants	Central officials entitled to higher benefits	Equalising benefits between both tiers
Legislative Issues	The positions of the opposition leader, chairman and opposition and government whip not recognised in the Constitution		Constitutional reforms
	The lack of due mechanism to coordinate between provincial level and centre	Provincial matters done under the ministry for provincial councils	Establishment of a separate body that includes provincial representation
	Central legislation on concurrent	Carried out by the	Restrictions on

	subjects and provincial subjects without provincial consultations	Parliament	Parliament to not legislate on subjects under the provincial list A provincial list instead of a concurrent list
	The need for central approval for provincial recruitment and promotions	Under the control of the Management Services Department and Salaries and Cadres Commission	Establishing similar institutions within the provinces
	Disparities in employees' benefits between provincial and central public servants	Central officials entitled to higher benefits	Equalising benefits between both tiers

SOUTHERN PROVINCE

1. Specifying an expenditure head for provincial councils in the national budget proposal (a specific fiscal provision)
2. The Finance Commission must be made independent. The powers and authorities necessary for this must be allocated, and provincial representation within the Finance Commission must be ensured.
3. When provincial subject matters are handled by line ministries, due approval from the provincial councils should be sought.
4. Accepts on principle the need to allocate land and police powers to the provincial councils, but in a manner that ensures the independence, sovereignty and territorial integrity of the country.
5. The offices of opposition leader, chairman, government whip and opposition whip that currently exist within the provincial councils should be included in law and formalised
6. Consultation with provincial councils should be mandatory for formulating national policies
7. Liberalise the regulation of provincial statute-making procedures
8. Enacting a provincial statute equivalent to Parliamentary (Powers and Privileges) Act
9. An established framework to resolve centre-periphery disputes
10. Implementing the powers devolved to the provinces on provincial administration under the 13th amendment
11. Establishing a Provincial State Service for officers of the All Island Service
12. Seeking the consent of provinces when central ministries implement projects within provincial jurisdiction

SABARAGAMUWA PROVINCE

Problem	Recommendation
Lack of officials	Reforms within the parliamentary framework
Lack of mechanism to properly distinguish national policies and provincial policies	Establishing an institution that can offer technical assistance in line with the provinces
Ambiguities in subject matter belonging to the provinces and those under the concurrent list	Provide provincial representation in the finance commission
The lack of independence in the provincial public service commission	Ensure appointment of the PPSC is done through a provincial level “constitutional council”
Appointment of Governor	Appoint according to recommendations made by the Constitutional Council
Local administration is outside the provincial councils’ purview	Bring local administration within provincial council purview

WESTERN PROVINCE

Problem	Recommendation
Political challenges against decisions made by the Chief Minister on issues falling under the provincial council	Constitutional protections to the decisions and authority of the Chief Minister
Lack of provincial representation in the Finance Commission, in both financial allocations and planning work	Constitutional reform to ensure the independence of the Finance Commission and to ensure full provincial representation in Finance Commission work
Inter-provincial disputes	A Joint Commission to resolve inter-provincial disputes, with an appeal to the Constitutional Court
Inability to implement decisions made at the Chief Minister's Conference	Constitutionalise the Chief Minister's Conference
Officials of the provincial public service do not receive equal rights (benefits)	Equalising all the benefits available to state officials, without a distinction between the centre and provinces (salary, benefits, leave)
Hearing appeals from state officials not approved by the provincial public service commission	Provisions to refer to Chief Minister and Board of Ministers
The absence of provincial representatives in constitutional decision-making related to the provinces	Establishing an apex body of ministers representing provincial interests to assist in making constitutional decisions involving provincial councils and power devolution
Foreign funding is not received directly by provincial councils	Introducing constitutional reforms to ensure that foreign funds are directly received by the provincial council through a tripartite

	agreement (between provincial council, donor, and External Resources Department), instead of the central government directing the funds to the line ministry
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NORTH CENTRAL PROVINCE

Problem	Status Quo	Recommendation
Underutilisation of resources	<p>Lack of industries in paddy and other cultivable items</p> <p>Lack of a stable price</p> <p>Non-utilisation of the irrigation economy</p> <p>The failure to broaden the tourism industry</p> <p>The non-utilisation of wildlife resources</p>	<p>Initiation of projects and industries with the participation of the private sector</p> <p>Making provisions to fund the freshwater fisheries industry</p> <p>Improving the tourism industry</p> <p>Utilising the phosphate sources</p>
High poverty rates	Relationship between the poverty life cycle and dependent mentality; lack of job opportunities; drug use; lack of basic facilities	Job training; improving the freshwater fisheries industry; introduction of new technologies; initiating revenue-generating projects; combating drugs
Low educational facilities	Worsening of the problem of teachers; lack of physical resources; priority being given to national schools; low income within the family unit	Vesting provincial councils with the power to recruit the required amount of teachers' improving the schools system; sustainable educational development
Worsening of health problems	Spread of kidney cancers and other diseases; use of agro chemicals; deficiency of doctors, nurses and medicines; control of health matters by the central	Making the necessary provisions; awareness raising on diseases; conducting tests for doctors; broadening health facilities

	government	
	Financial provisions are at the lowest point; allocated funds are not received on time; elimination of the expenditure head	Recognising the Chief Secretary as also the Chief Accounting Officer; causing funds from other ministries to be received directly by the Chief Secretary; increasing funds in essential areas (irrigation, agriculture, roadways, education, health); Vesting powers of making financial provisions and recruiting personnel in provincial councils; making the necessary financial allocations; training officials
Problems related to human resources	Deficiency in state-appointed officials; deficiency in qualified personnel; officers leaving employment in provincial councils	

UVA PROVINCE

Problem	Status Quo	Recommendation
Concurrent List	The need to obtain parliamentary approval for statutes dealing with concurrent subject matter, and the time taken to do this	Abolition of the Concurrent List, and reallocating its subjects with more specificity
The implementation of national plans by the central government within the province. Ex: Samurdhi, Divineguma, Maganeguma The control of provincial subject matter by the Ministry of Provincial Councils		Plans relating to provincial subjects should be implemented by the provincial council The unnecessariness of the Ministry of Provincial Councils and Local Administration to control provincial councils
Specifying the powers of the province and increasing the subjects given to the provinces		Stipulating the number of ministries for the province at 7
The need to consult the Attorney-General at the national level		Establishing a provincial legal department Judicial affairs
Difficulties faced by people within provinces in filing fundamental rights applications		Devolving jurisdiction on such cases to provincial courts
Ambiguities on the limits on the police powers of the provincial council		Establishing and empowering a provincial commission that operates under a national-level joint

		commission
Provincial cadre recruitments require approval from the central government		Establishing a provincial management and services director to fulfil the needs of the provincial public service
The inability to utilise personnel appointed in the province for matters dealt by the provincial council		Bringing the consolidated services under the purview of the provincial councils

NORTH WESTERN PROVINCE

Problem: The lack of consultations with provincial councils in adopting national policies

Recommendations:

1. Providing a constitutional framework to incorporate provincial councils into national policy making
2. While the number of ministries under the provincial councils should be fixed and specified, the central government must not alter it or take over provincial ministries or their subject matter
3. It is unsuitable for provincial matters to be overseen by a ministry on provincial matters at the centre. Provincial matters should be within the province's powers; the Ministry of Provincial Councils should be coordinated through the president's office.
4. Finances should be allocated to the provinces to reflect the subject matter devolved to the provinces; no finances should be allocated to the centre to be used in areas within the purview of the provinces.
5. Is the concurrent list problematic? Should it be abolished and its subjects be reallocated within the provincial and reserved lists? How should this be achieved? If the concurrent list is retained, provincial statute making within the concurrent list should be efficient.
6. Any technical expertise or finances received from foreign sources on provincial subject matter should be received directly by the Provincial Councils through the External Resources Department
7. Provincial councils should have the constitutional authority and discretion to delegate certain responsibilities to the divisional secretariats

NORTHERN PROVINCE

1. Nature of State
Non unitary. Article 2
2. Concurrence List
Removal of concurrent list
3. Reserved List
National Policy in Reserved List Item 1
4. Provincial List
Land Powers
Police Powers
Appendix II 2 – Inter provincial irrigation
All the subjects that the provinces can handle except Defense, Foreign Relations etc.

5. Powers of the Governor

- 5.1 Provisions empowering the Governor to act on his own discretion need to be repealed. Particularly Article 154C and 154F of the constitution.

Article 154C –

‘either directly or through the Board of Ministers or through officers subordinate to him in accordance with Article 154F’

Article 154F –

154F(1) ‘Governor shall, in the exercise of his functions, act in accordance with such advice, except in circumstances where he is by or *under* the Constitution required to exercise his discretion.’

154F(2) in case any dispute arises as to whether any matter is or is not a matter in respect of which the Governor could act in his discretion, the decision of the Governor shall be final and the validity of such decision can’t be called in question in any Court.

- 5.2 the Provincial Councils Act No. 42 of 1987 need to be repealed in toto, particularly the provisions empowering the Governor with powers for the appointment, transfer and promotion of public servants

- 5.3 The requirement of Governors assent for the statutes passed by the Provincial

Council to be done away with. 154H(1)

5.4 The recommendation of the Governor required for statutes that has financial implication also to be done away with. PC Act

5.5 The Governor should be a nominal head, similar to the Governor under the Soulbury Constitution.

5.6 The Governor should be appointed by the President with the concurrence of the Chief Minister.

6. Fiscal Devolution

6.1 The constitution should provide the criteria for financial allocation to the peripheral units, which the Finance Commission has to strictly follow. 154R or

6.2 adequate fiscal for the provinces to collect its own revenue to meet with its expenditure.

7 District Administration

7.1 Devolution of powers has not only to be effective but also devoid of duality. For this purpose, we propose that the district administration to be restructured so as to form part of the provincial administration. Thus the Government Agents and the Divisional Secretaries should belong to an All Island Service and hold the rank of an Additional Chief Secretary and Deputy Chief Secretary respectively.

7.2 All Grama Niladharis in a provinces should also be absorbed into the Public Service of that Province.

8. Provincial Public Service (Provincial Councils Act No. 42 of 1987)

8.1 There should be an Independent Provincial Public Service Commission appointed by a body similar to the Constitutional Council at provincial level that would be vested with the powers of recruitment, appointment, transfer, disciplinary control and dismissal of the permanent officers of the PPS. The members of PPSCs should be of high integrity with required knowledge and experience to handle the disciplinary and human resources matters of provincial public service.

8.2 The PPSC should have the power to determine all matters relating to officers of the provincial public service, including the formulation of schemes of recruitment and codes of conduct for such officers, the principle to be followed in, making promotions and transfers, and the procedure for the exercise and the delegation of any of such powers to the Chief Secretary or any other officers of the province.

8.3 The PPSC of each province should also have the power to decide the cadre need of the respective provinces, based on a criteria equally applicable to all the provinces.

8.4 The All Island Services should be limited to selected few services such as the Sri Lanka Administrative Service, Sri Lanka Engineering Service, Government Medical Officers etc. The provinces should have the authority to create its own Provincial Public Service and absorb all the service personnel needed for the effective functioning of the subject matters assigned to the province into it.

8.5 Public servants belonging to similar category and rank should be equal in every respect and remunerated equally with the same facilities, irrespective of whether they belong to All Island Service, Provincial Public Service.

9. Acts of Parliament to be amended

Mahaweli Act

UDA Act

Tourism Act

Police Commission Act

Agrarian Development Act

10. Reconciliation

Prerequisite for constitutional amendment

Land in occupation by SF

Other Issues

Colonization

Accountability with regard to missing persons

Accountability – war crimes

EASTERN PROVINCE

Secretaries of ministries should only be appointed on the recommendation of the Chief Minister and Board of Ministers. In making recommendations, twice the number of required secretaries should be nominated, and gender imbalances and other relevant factors should be considered. A special grade should be instituted within the All Island Service for this purpose.

- Provincial councils should be empowered to enter into public-private partnerships
- The Divisional Secretariat and Grama Niladhari systems should be integrated into the provincial council structure
- An office equivalent to that of the Attorney General should be established for the provinces as well
- The Chief Minister's Conference should be constitutionalised
- Public Service Commission and the Provincial Public Service Commission should be constitutionalised
- The Chief Minister's Fund should also be constitutionalised

Remarks on the Conference of Provincial Councils for a New Devolution Settlement in Sri Lanka

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1. Introduction

The following remarks are prompted by the discussions of the delegates of Provincial Councils with regard to the drafting of a new constitution for Sri Lanka. I have also included some remarks about matters that were not touched upon or only tangentially, but which may be relevant in the ongoing debate.

Much of the debate was about the unfulfilled promise of the Thirteenth Amendment. It is, of course, difficult to judge the success of a system which has not yet been fully implemented in practice. A number of delegates have argued that all that needs to be done is to implement the Amendment, while others do not see the Amendment as the starting point. It would appear that both sides are correct, but only to some degree. The Thirteenth Amendment contains most of the usual elements of devolution, but there are also many aspects that do not fit within a modern devolved system. In drafting a new constitution, the basic principle of devolution embedded in the Thirteenth Amendment can be used, but they are to be looked at afresh, also focusing on broader aspects of devolution not included in the Amendment.

Strong arguments have been made by delegates about the value of devolution: responsiveness to local demands for service; accommodating language-specific concerns; equitable distribution of resources across the country; and the likely efficiency of the system. What was striking was the level of common ground about the need for devolution, but with differences of emphasis on the extent of devolution.

The overall impression is that the discussion focused on many discrete aspects of devolution. Once that has been done, one should take a step back and considered what the whole picture looks like. How do the various parts fit together? How are the elements of self-rule linked to elements of shared rule? What may look like a weakness in one area may be compensated by measures in a another. The final questions therefore are: what does the full package of devolution measures look like? Do they cohere? And, can the package meet the objectives of devolution?

2. Number of levels of government

There was some discussion on the role of local government, articulating the value of the local communities and structures in advancing development. Yet there was little discussion about whether and, if so, local government should be recognised in the new constitution. In most

modern constitutions, local government is indeed constitutionally recognised because without such recognition, local authorities are often neglected or marginalised. The most basic step is to declare that there should be democratically elected local authorities, with the power to manage matters of local concern (e.g., as is done in Germany and Russia). The next step up is to spell out what these matters of local concern are, usually by compiling a list of competences. Once such a list is done, then there are various ways in which a local authority can exercise the powers on that list. First, local authorities could be allowed to do so only when permitted by a province (e.g., in India and Nigeria); second, they may exercise the powers but then in terms of framework legislation (e.g., South Africa); and third, they may exercise the competences as an exclusive power (e.g., Nepal). What is further important to discuss is the role of central government in respect of regulating local authorities (no role, as in Canada and Germany, leaving it totally to the provinces), or a shared role (as in South Africa).

3. Powers of provinces

3.1 Concurrent powers and overlaps

The Thirteenth Amendment, like most devolved constitutions, provides for exclusive central and provincial powers, as well as a list of concurrent powers shared by the two governments. As in other devolved countries concurrent powers are usually dominated by the central government for a variety of reasons (mostly financial). The reform initiative in Germany in 2006 sought to deal with this problem by reducing the number of concurrent powers (either making them central or provincial powers). However, it did not do away with the concurrent list altogether; it realised that because of the complexity of life, it is impossible to compile clear watertight compartments of exclusive powers. The focus then shifts to the management of concurrency. First, with regard to the adoption of national laws in the concurrent areas: (a) a national law could be dependent on certain criteria being met: e.g., when uniformity is required; (b) the second chamber, if it is representative of the provinces, plays a crucial role in the approval of such legislation (either a veto, or a veto which could be overridden by the first house with a qualified majority). Second, the implementation of the national law: the general rule could be that the provinces implement the central law. Third, compliance with the requirements for the exercise of concurrent powers can be judicially reviewed.

3.2 Provinces as implementers of national legislation in concurrent areas

In many devolved countries, sub-state governments play an important role in administering matters that fall under the central government's exclusive or concurrent jurisdiction. In the case of central exclusive powers, if an administrative role is delegated to provinces, it often overburdens such governments with unfunded mandates. In the case of concurrent powers, the constitution may provide that the provinces are entitled to implement national legislation in these areas. In both cases there should be a broad principle in the constitution that states that provinces should have sufficient funding for the tasks allocated to them.

4. Financial arrangements

4.1 Sources of funding

(a) Own revenue

Much of the discussion on this topic comprised of complaining that the central government was not giving enough money to provinces to enable the latter to perform their functions. There was some mention of business turnover taxes as a source of provincial revenue. Experience worldwide shows that where sub-state governments rely largely on transfers from the centre, their autonomy is commensurately diminished. Autonomy to deal with specific local matters in innovative ways is usually compromised even where transfers are made in terms of a formula and provinces have full discretion as to their spending. The current list of taxing powers in the Thirteenth Amendment is substantial and could be refined. The importance of collecting own revenue is the level of autonomy that is achieved while at the same time enhancing political accountability to the taxpayers at the provincial level. Thus, the new principle: No representation without taxation.

(b) Shared taxes

A further source of own revenue is sharing the proceeds of a tax imposed nationally but generated locally. A sales tax could be set and collected nationally but each province gets a fixed percentage of the proceeds generated in its area.

(c) Borrowing

No mention was made of the crucial area of provincial borrowing. A new constitution should address this issue, by recognising this provincial power, but also placing it firmly under the control of the central government in terms of a set of clear principles.

4.2 Transfers and the Finance Commission

As noted above, much of the discussion focused on the insufficient amounts received from the central government in the form of transfers. Given that in most devolved systems the central government controls the major revenue sources and that only in very few countries are the states self-sufficient (e.g., the United States where the states shares the same tax sources as the federal government, except for customs duties). In the rest there is an equalisation scheme in terms of which provinces are compensated for their inability to collect sufficient taxes to cover their functions. Moreover, as provinces are not equal in their capacity to collect the same amounts of own revenue due to their different economic contexts, the lack of equality should be addressed.

In the new constitution it would be advisable that transfers should be conceived of differently than it is currently done in terms of the Thirteenth Amendment. The transfers are now an item of the central government's annual budget. This suggests that such transfers are from the 'central government's money'. A new conception of the transfers would entail that the taxes collected by the central government belongs to the nation as a whole (central, provincial and local government

alike), to which each level is entitled as of right (not as largesse) to a fair share. This would be the vertical division of revenue raised nationally in terms of a Division of Revenue Act.

As the division of revenue is always the most contentious matter (money is after all power), the division should have the trust of all stakeholders concerned. Such trust is built on two legs: who makes the decision, and how the decision is made. Trust is engendered if the body making the decision is both independent, knowledgeable, and hold the interests of all the stakeholders at heart. The Finance Commission that is currently performing this function should be reviewed along the following lines: its composition does not reflect provincial interests. Without having to have direct provincial representation in the Commission, they should at least play a direct role in appointing a portion of the experts who could then act independently. The policy choice is then whether the Commission is to make the final decision on the division of revenue or merely be advisory.

The second element of transparency is the methodology of effecting the horizontal division. The most open and transparent method is to make use of a formula, based on the factors listed in the constitution. It should be further added that the objectivity of this approach is dependent on having sound and reliable data on population distribution, underdevelopment, and inequality. A central, independent body generating reliable and current data is of vital importance.

In view of complaints that transfers are not made at set times, the constitution could specify that dates for the payment of tranches should be set in legislation.

5. Administration

On the provincial administrations two issues arose: the nature of the provincial public service and the appointments, promotions, and dismissals of personnel. On the first issue the All Island Service seems to have a dominant role, but only for some provincial posts. It begs the question whether a provincial public service should be a stand-alone or an integrated state-wide public service. One delegate mentioned that when he resigned from the central administration to join a provincial administration, he lost his central pension. This state of affairs provides one of the arguments for the establishment of one public service. Such a single public service should, however, be concerned only with a uniform legal framework with regard to qualifications required, standard conditions of employment, and one pension fund. In the latter case, a single pension fund would enable ready movement of personnel up and down between the central administration and provincial administrations, as well as between provinces.

Even if there is a single public service, it is a separate question of who hires and fires provincial personnel. There seems to be agreement that it cannot be done by the Public Service Commission, but by the Provincial Public Service Commissions (the appointments to these bodies were again robustly debated but there appeared to be consensus on the principle that the provincial framework should ensure the same standard of independence as the national framework following the Nineteenth Amendment). It would be clear that the provinces should be the final authority with regard to personnel matters which could be done through a Provincial Public Service Commission.

A key concern uniformly expressed was the role that the central government plays in provinces through the district and divisional secretaries. There appears to be competition between the provincial and central administrations. There seems to be two problems areas: the first is the possible duplication of services by the two levels of government with the attendant waste of resources and confusion of citizens (as happens in Spain), and the second, the crowding out of the provincial administration. In this situation, the role of the governor, as focal point of the national administration, becomes contested as he or she may appear to be a rival executive authority with the Chief Minister and the provincial council.

6. Supervision

An aspect that was not touched upon was the central supervision of provinces, although there are provisions to this effect in the Thirteenth Amendment. It is widely accepted that there is a need for the supervision of sub-state governments because, for a variety reasons (lack of capacity, corruption, instability) state failure may occur at that level. There are also examples (e.g., India) where the supervisory powers have been abused by the central government for political reasons (getting rid of opposition parties who gain control of a province). Careful thought should thus be given to the checks and balances needed to avoid such abuse. They would include: setting clear grounds for intervention, determining the central powers after an intervention, and the termination of such intervention. There could be checks within the political system, but judicial review remains vital.

7. Shared rule: the second chamber

As intimated above, the Senate should form a key component of the devolution architecture. If it does, the role of the Senate must be clarified. It can no longer be a House of Lords-type institution of second thought on all matters (with delaying powers only), although these aspects may be retained in one form or another. As a component part of devolution, it must serve the interests of the provinces in policy formulation in matters that affect provinces. In a devolved political system the second chamber is then an important intergovernmental forum on legislative and other matters. The method of appointment is then of considerable importance: indirect representation (the provincial councils electing the senators directly) forges the strongest link between the provincial councils and the national parliament.

8. Shared rule: Executive intergovernmental relations

Not much was said about the relations between the executives of the central government and provinces. As part of the 'package of devolution' attention should be given to: the values and principles of intergovernmental relations (including the goal of cooperative government); structures for regular consultation; the processes for routine consultation; and dispute resolution mechanisms.

Many delegates expressed their gratitude for being able to have had the space to make their provincial voices heard. In the future, consideration should be given in the constitution or at least

informally, for the regular meetings of Chief Ministers as a learning network as well as building consensus among themselves when dealing with the central government.

9. Shared rule: the inclusive character of the central government

There were some remarks about the lack of inclusivity in the national public service. There is now wide experience in countries emerging from conflict that the focus should not only be on establishing institutions of self-rule, but also on how previously marginalised groups should also be included in the national administration. This principle should also apply to high profile positions such as ambassadors and commanding officers in the armed forces.

10. Provinces adding value to governance

The provinces may themselves pose the biggest danger to devolution by destroying its legitimacy through maladministration and corruption. Where a provincial council serves ultimately only its own interests rather than those of its residents, the latter quickly loses faith in the system of devolution and clamour grows for centralised rule. Maladministration and corruption also invite central intervention. How can there be safeguards against these eventualities? The first is that provincial councils through their internal organisation of committees should promote accountability. The second is external controls. The Auditor-General should play the key role of auditing all provincial councils. But it has to have the trust of the provinces as an independent institution that is not beholden to the national government (the new National Audit Commission established by the Nineteenth Amendment can play a useful role here). Further it must also have some executive powers; merely providing opinions, practice elsewhere has shown, can be ineffective. A second state-wide institution is some kind of ombudsman, investigating maladministration, again with some executive powers (the role of the existing Parliamentary Commissioner for Administration can be extended through the establishment of provincial offices, although this institution's capacity must be substantially strengthened for it to be able play a meaningful role).

Reflections on the Conference of Provincial Councils, Negombo, 5-7 August 2016

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1. Preliminary Remarks

First of all, I would wish to express my gratitude to the conference organisers and participants for their valuable contributions in the debate on Sri Lanka's process of constitutional reform. I have learned a great deal from the conference and certainly have gained a better understanding of the main issues in your current process of constitutional reform. I have been asked to share some comparative observations and reflections with you, based on my own knowledge of similar processes of constitutional reform or the operation of structures of multilevel government elsewhere. In what follows, I first provide some general remarks on devolution as a process; its promise (and limits) for holding together a state with several linguistic, religious, or ethnic groups; the importance of institutional design (how many units, and the balance between provincial autonomy (self-rule) and shared rule (or power-sharing); and the need to think through how devolution interacts with society at large (party politics, civil society, and the media). Subsequently, I will share some comparative reflections on self-rule and shared rule which may be of use in the process of writing the new constitution. In my comparative observations I have used the term 'province' to refer to the intermediate tier of government below the national level but above the local level across a range of multilevel polities. In reality this tier may go by the name of 'state' (India, Australia, US), 'Land' (Germany, Austria), 'canton' (Switzerland), 'province' (Sri Lanka, South Africa, Canada), 'autonomous community' (Spain), 'Region and Community' (Belgium), or even 'nation' (UK).

2. Devolution: Basic Structure and Dynamics

As a preliminary remark, I should emphasise that *devolution does not necessarily mean fragmentation or division*. It provides a constitutional roadmap, which if **designed properly can help to hold Sri Lanka together**, not divide it. It can create opportunities for policies to be brought closer

to the people *without* undermining their loyalties to the Sri Lankan state as a whole. There are plenty of examples of ‘devolved’ or ‘federal’ structures of government which have helped the holding together of countries with multiple linguistic, religious, or ethnic groups. India, or further afield, South Africa, Kenya, Belgium, Spain, the UK, or Switzerland illustrate this point. Conversely, the refusal to recognise provincial rights can trigger secession. For instance, for decades the Pakistani state (1947-1971) refused to pay heed to the linguistic and self-rule demands of its Bengali population and therefore provoked its secession (and the birth of Bangladesh) in 1971.

However, we should also acknowledge that **devolution itself is not a panacea**: much will depend on **how you design your devolved structures** (how many provincial units do you create; what powers do you give them; how do you involve the provinces in some central decisions which may affect their autonomy; how do you strike a balance between provincial autonomy and national solidarity; how do you protect minority communities at the national *and* sub-national level) and **on how your devolved structures interact with society at large** (political parties, media, etc.).

In this sense, I am encouraged that you have developed a structure *with nine and not just two provinces*. We know from comparative experience that a state with two or only a few devolved units is more unstable as it is easier to frame politics in a bipolar (‘us-versus-them’) way – the Belgian federal state which has been built around two dominant units, Flanders and Wallonia, each of which is coterminous with the large linguistic groups in the country, sometimes falls prone to such a bipolar logic. I also find encouragement in the fact that *no single Sri Lankan provincial unit is set to dominate the others* in terms of its popular or economic weight. Comparisons show us that devolved arrangements are more open to contestation when they have one large dominant unit which can easily trump the interests of the others. The disintegration of the Soviet Union was reflective of the dominance of Russia within it. Similarly, the present Pakistani federation is said to be unstable because the province of Punjab dominates the other provinces (Sindh, Balochistan, Khyber Pakhtunkwa), demographically, militarily, and economically.

Comparative evidence also shows us that the stability of devolved arrangements is as much the result of *shared rule* (institutions which give the provinces a stake in some key decisions and institutions of the centre) as of *self-rule* (provincial autonomy). Shared rule arrangements give provincial elites a stake or interest in central policy-making and national party politics, not just in provincial politics. In my view, the current devolution arrangements under the Thirteenth Amendment provide very *few* shared rule mechanisms. I would encourage these to be strengthened (see point 4 below) through the operationalisation of a **legislative second chamber** in which provinces find representation *and* through the **institutionalisation of a set of ‘intergovernmental’ procedural and institutional mechanisms enabling centre-provincial coordination on executive matters of mutual interest**.

As a final general remark, I should emphasise that devolved institutions interact with **party politics, electoral politics, civil society, and the media**. The success of a devolved settlement hinges

on the ability of political parties to give its provincial politicians the space to craft policies, within their constitutional remit, which best suit the interests of their province. This may require parties to adjust their internal structure so that provincial wings (should they already exist) be given a degree of autonomy in processes of candidate selection, provincial policy-making and campaigning, *and* some representation in the central party executive. It also requires civil society to buy into the process of devolution; to participate in the advocacy of devolution ahead of a constitutional referendum or in the operation of devolved politics thereafter. It requires media to emphasise the potential benefits of devolution for Sri Lankan society. And it may require politicians, media, and civil society to adopt a different mindset in which some divergence in provincial policies in education, land, or policing, is not necessarily seen as undermining unity, but as a means to tailor such policies to specific provincial needs, or indeed through sharing best practices to help improve standards in these areas across Sri Lanka as a whole.

In all of this, we need to be aware that ‘**devolution is a process, not an event**’ as a prominent Welsh politician once said. The processual or indeed open-ended nature of devolution results from the dynamics of multilevel politics, from the need to adapt the multilevel structure of the state to future challenges which may not be foreseeable at the time of constitution-making. **This need not worry you.** After all, as the noted political scientist Ronald L. Watts once said, “some devolved polities are difficult to govern, *not* because they are devolved, but they are devolved because they are difficult to govern.” In practical terms, this implies that you need to build your devolved structure on some fixed **common ground or principles**, yet also incorporate an element of *flexibility* which enables their adjustment ‘when time and circumstances require’ (I am paraphrasing Dr Ambedkar here, the formidable chairman of the drafting committee of the Indian constitution). To protect common principles of devolution, constitutions need to build in safeguards which protect the rights of minorities and the guarantee of provincial self-rule and shared rule. For instance, the German constitution stipulates that constitutional amendments which seek to negate the nature of the state as ‘social’, ‘federal’, and ‘democratic’ are unconstitutional. Yet, this has not stopped German legislators from periodically adjusting how the centre and the Länder (provinces) are funded or what goes in the central or concurrent list. Alternatively, through judicial review the Indian Supreme Court has incorporated India’s ‘federal’ system into the ‘basic structure’ of the Indian constitution, effectively anchoring India as a ‘union’ made up of a centre and the states. Yet, this has not stopped the Indian centre from intervening in state politics in the case of an emergency (for instance by suspending state autonomy when a state falls prone to communal violence or when the normal functioning of state politics has become impossible), nor has it stopped the Indian centre from discussing a nation-wide Goods and Services Tax which will have major ramifications for how the union and the Indian states and territories are funded.

3. Self-Rule

Self-rule implies a discussion on the **substance** (who does what) **and form** (how do you write down who does what) of provincial powers. In terms of **substance**, there is no particular blueprint to follow. Most states will keep monetary policy, foreign policy, and defence, as national subjects. As the central institutions of the state are often tasked with overseeing macro-economic stability, the revenue-raising of the most progressive taxes (i.e., taxes that are most sensitive to changes in the economic cycle) are often kept central. The mobility of a potential tax base (such as corporation tax as opposed to property tax) is also often used as an argument to keep it central.

Provinces are often made responsible for the delivery of health and education, or land and agriculture, because needs in health, education, policing, land ownership, or agricultural practices are likely to vary from one province to another (or even from one locality to another). Therefore, the quality of service delivery is often improved when policies are made closer to the intended recipients. However, the degree to which such policies are fully devolved to the provinces varies from one multilevel polity to another.

In some cases, central governments are concerned with the delivery of minimum standards in social policy, especially education and health. They worry about a lack of resource capacity among some provinces to deliver these social policies on their own in a satisfactory way and for that reason wish to retain an element of central involvement. In Germany, for instance, the leading political parties consider comparable social outcomes (or at least opportunities) as a normative commitment to which the state as a whole should subscribe. Hence, the German constitution contains a clause which prescribes comparable social 'living conditions' across the various Länder of the federation. In contrast, no such commitment (or constitutional clause) can be observed in the USA. Apart from framework legislation which enables the centre to draft minimum social policy standards which applies to all the German provinces, German fiscal federalism is quite centralised to enable the equalisation of resources from resource-rich to resource-poor provinces. Therefore, the German provinces have few taxes over which they control the base, rate, and administration. In the US on the other hand, differential outcomes in social policy are more easily accepted, and they go hand in hand with a much more decentralised tax system.

Finally, social welfare or social security policies may also be seen as an important policy tool to create shared loyalties within the state (or, in a much narrower sense, to build loyalty in relation to the political parties in power at the centre). For instance, in India the central government, through so-called Centrally Sponsored Schemes or National Development Schemes, operates directly in state (provincial) competences, from the construction of rural roads to the guaranteeing of a minimum of 100 days of annual employment for the rurally unemployed. These 'National Flagship Programmes' promote the role of centre in the states, but they have been heavily criticised by Chief Ministers for hollowing out state autonomy (for instance, why should the centre build rural roads

in Tamil Nadu when its rural villages are already relatively well connected, unlike the villages in Bihar?).

In sum, the mix of self-rule powers varies from one multilevel polity to another especially in social policy and finance. **Importantly, although territorial finance and material competences are often treated under different headings in a constitution, they very much hang together.** Therefore, it is important to think through the financial implications of putting a substantive power in the provincial or concurrent list or moving it from one list to another. In this regard, refer to the Eighteenth Amendment to the constitution of Pakistan which scrapped all items in the concurrent list and brought them into the provincial list *without* a commensurate increase in their funding.

In terms of **form**, some reference was made during the conference discussions to the concurrent list, the residual powers, and the exclusive central list. The provinces in Germany and India have complained about how the centre has widely interpreted the powers under the concurrent list to deprive them of any residual autonomy under this list and to eat into the exclusive provincial list. The limited experience of Sri Lanka with a concurrent list seems to have generated similar concerns. Belgium on the other hand has followed a system of exclusive provincial powers with all residual powers remaining with the centre. The Belgian constitution contains a clause which enables the eventual transfer of residual powers to the provinces, but only if the latter can agree on which powers should remain with the centre. In other words, instead of an exclusive provincial list, there would then have to be an exclusive central list.

While a system of exclusive lists may protect provincial (or central) autonomy, it is not likely to resolve the problem of both levels having to share powers on certain issues. The Belgian practice of exclusive provincial lists and the absence of a 'hierarchy of norms' between central and provincial legislation has led to a tendency among legislators to enumerate the exclusive legislative competencies of the provinces in *extreme* detail (these are contained in 'special majority' or constitutional laws which add up to hundreds of pages! – they have a de facto constitutional status on which basis the Constitutional Court can strike down federal and provincial law). However, despite this excessive detail, or perhaps sometimes because of it, the need for centre-provincial cooperation and coordination arises, simply because (1) policy areas in which the centre is exclusively competent (e.g., energy) impact upon policy areas in which the provinces hold competence (e.g., environment) or (2) aspects of a policy area in which one level is exclusively competent (e.g., the centre in determining unemployment insurance) overlap with provincial responsibilities in the same policy field (e.g., labour market policy). Hence, the absence of concurrency may reduce central overreach but it does not necessarily reduce the need for intergovernmental cooperation (see below). Furthermore, concurrency may play a useful role, for instance in determining the minimum requirements of personnel for services which may otherwise be decentralised (say police, teachers, or civil servants). Its intrusive properties could be contained when concurrent powers are more clearly delineated and their exercise is subject to shared rule (see below).

In terms of the form of **fiscal legislation** which is adopted (only a brief summary here as my colleague Professor Steytler has elaborated on this in greater detail), various options could be followed. 'Fiscal decentralisation' addresses the distribution of tax revenue between the centre and the provinces and the distribution of the latter among the provinces themselves. One option is to put the distribution of some key shared taxes **in the constitutional text** itself. In Germany, this applies to the corporate and personal income tax. Although VAT revenues are shared too, the centre-provincial distribution key is stipulated in a federal law requiring the consent of the German second chamber. This provides an element of flexibility in what is otherwise a centralised but also 'co-operative' and constitutionally anchored fiscal arrangement.

In contrast, in India, the Finance Commission determines the centre-provincial and inter-provincial distribution of shared tax revenues (the so-called 'divisible pool of revenues.' The **Finance Commission** is entirely made up of *experts* and only serves for five years. It does not have a fixed secretariat, is independent of the Treasury, but relies on financial statistics provided by a range of offices including the Reserve Bank of India, Treasury, National Office of Statistics, and a range of fact-finding missions to each of the Indian provinces). Each Finance Commission issues recommendations for a five-year period, which – with minor exceptions – have almost been fully implemented by successive Indian governments. There are **no** ex officio representatives of the state or central governments in the Indian Finance Commission. As in South Africa, the Finance Commission applies a formula which considers provincial needs and capacity. Until 2015, India also had a **Planning Commission** which had a stronger stake in determining a set of conditional and discretionary grants to the states. The scrapping of the Planning Commission in 2015 has reduced the discretion of the centre in grant-making, especially since the Treasury (for now) has extended the application of the Finance Commission formulae to the inter-provincial distribution of a range of National Development Schemes. As of 2017 it is estimated that a new **Goods and Services Tax** will come into place, which will replace and harmonise a set of central and states' sales taxes. Not the Finance Commission, but a specially created **GST Council** will oversee the distribution of GST revenue between the centre, provinces, and the inter-provincial allocation. It will be comprised of central representatives and the provincial (state) ministers of finance. Each state will be equally represented. The proposed GST constitutional amendment gained the consent of the Rajya Sabha (second chamber) in August 2016 in spite of a walkout of the delegates from Tamil Nadu (who fear the erosion of state fiscal autonomy as a result). Therefore, India will have **both an expert-driven** and a more **politicised intergovernmental body** tasked with the intergovernmental distribution of key tax resources. More politicised bodies often generate intergovernmental disputes. This even applies to the largely harmonious and co-operative German federation, in which some provinces have sued the federal government or other provincial governments for alleged violations of the constitutional fiscal equalisation provisions.

Many participants in the conference complained about the intrusion of the centre in provincial politics as a result of actions by the **governor and the centralised bureaucracy**. Again, the

limitations of such powers could be more clearly prescribed or policed (as the Indian Supreme Court eventually did in the case of President's Rule there, but only so in a political context in which regional parties had become more powerful during the early 1990s). Similarly, India, like Sri Lanka has an **integrated national elite civil service**. Yet, a measure of political accountability at the provincial level is provided in a sense that state governments have the ability to request transfers of Indian Administrative Service (IAS) officers who are deemed to obstruct the implementation of provincial policies (unfortunately such transfers have happened not only because civil servants have been perceived as 'agents' of the centre, but as often because they have operated as whistle-blowers pointing out severe cases of corruption at the provincial level). Even so, even in India, the bulk of civil servants at the level of the provinces are not IAS officers, but lower-rank officers recruited by the province (or state). In any case, when lower civil servants work against the interests of the provincial councils, this ultimately undermines the political accountability of the councils in the running of their province. Therefore, there is a strong case to make provinces responsible for the recruitment of civil servants at all but the senior-most levels (subject to perhaps a national-level framework law which sets out some minimum requirements with which all civil servants in the country need to comply).

Finally, and only meant as food for thought in terms of self-rule: where provinces express clear differences in the willingness to take on provincial powers, it is not unheard of to find arrangements in multilevel states in which provinces which seek more autonomy can opt into certain policies whereas others stay out. This need not upset constitutional symmetry so long as the option to opt-in is open in principle to all provinces and the conditions which provinces need to fulfil before they can exert such provincial 'opt-ins' are clearly stipulated and if needed made subject to further intergovernmental agreement or national legislation. Although it may be sensitive to conceive of such inter-provincial variations in the current devolution scheme in Sri Lanka, variable 'opt-ins' could be tested at the sub-provincial level first (for instance, in the extent to which provinces have different preferences with regard to how they wish to structure local government).

4. Shared Rule

The last aspect concerns the need for **shared rule**, i.e., the requirement to take certain central decisions (executive or legislative) with the advice or consent of the provinces where they directly concern their interests.

Provincial input may be required when the central government adopts legislation which affects the legislative powers of the provinces, for instance national road construction for which land under provincial control needs to be appropriated; or it may be required for a national development programme which needs to be implemented in part or in full by the provinces. Multilevel states have various shared rule mechanisms.

In **legislative matters** the possible contribution of a **second chamber** is frequently highlighted. Often, but not always, provinces are equally **represented** (as in the US, Switzerland, or most of the Latin American federations; in some second chambers the small states are over-represented, but not to the extent of having the same representation as the largest provinces, e.g., Germany) and in fewer multilevel states there is not much difference at all in the relative size of each provincial contingent within both chambers of parliament (e.g., India). Arguably some over-representation of the smaller provinces in a second chamber is warranted to protect their interests against the most populous provinces which benefit from higher representation in the lower house (and in a parliamentary system, therefore also often in the cabinet). However, more important in my view is the extent to which the members of a province are well placed to represent the interests of their provinces. The **directly elected** US senators may be powerful, but they are more likely to adopt a national profile than their colleagues from the same state/province who reside in the House of Representatives. Provincial representation is more effective if the provincial delegation in a second chamber **has a more direct link with the institutions of provincial governance**. Hence, the members of a second chamber **could be indirectly elected by the provincial councils** (as in India), or they could be elected **by and from within** such councils (as for a category of senators in Belgium), or they could be delegated **by (and from within) the provincial executives** (as in the German Bundesrat). In a parliamentary system, the political heavyweights often end up in ministerial or executive positions. Therefore, Chief Ministers and provincial ministers are more likely to be in a position to stand up against their party colleagues in the lower house, including the central Prime Minister and other cabinet ministers – or even the President – than members of a second chamber who would owe their seat to an indirect election by the provincial councils. In Germany at least this provincial link is strengthened further by requiring **that all the members of the same Länder or province in the second chamber cast a uniform vote**.

As important as composition is the **power of the second chamber**. The stronger the share of concurrent or overlapping competences (either because the centre and the provinces occupy the same legislative field or because the provinces are tasked with implementing provincial legislation), the stronger the need to seek the endorsement of the second chamber. The same goes for constitutional amendments or finance bills which affect the distribution or exercise of provincial powers or finance. The second chamber may also have to agree to emergency provisions enabling the central government to intrude or suspend provincial powers. In some federal states, it also needs to consent to the nomination of Supreme Court judges.

Not all second chambers in multilevel polities are effective in the representation of provincial interests. The Canadian Senate for instance, whose members are entirely nominated by the national Prime Minister is entirely inadequate in the representation of provincial interests. In such cases other mechanisms may have to develop to channel provincial interests into national politics. These channels are often **'executive'** in nature, and they even appear in multilevel polities that have a better equipped second chamber to represent the interests of the provinces, such as Germany. At

the highest level they bring Chief Ministers (sometimes with, sometimes without the Prime Minister) together to address issues of mutual concern, but similar meetings can occur at ministerial level or at the levels of the senior civil service. Multilevel polities vary however in the extent to which such meetings are institutionalised (i.e., referred to as statutory requirements, equipped with their own secretariat, subordinated to the office of a minister, such as the Home Ministry as in the case of the Inter-State Council in India, or the Prime Minister). In Belgium for instance, the implementation of many national legislative provisions which affect the provinces requires the subsequent approval by intergovernmental accord or on some occasions the prior (but non-binding) advice of the provinces.

The above shared rule mechanisms may slow down the process of national decision-making and make it less majoritarian in nature. Yet, these mechanisms also give the provinces a stronger stake in key national policies which affect their interests, directly or indirectly. To secure provincial input in such decisions early on is to avoid implementation deficits further down the line and to vest the provinces with an interest in national politics. In some multilevel states that are also multi-lingual, shared rule may even take the form of multi-lingual (as opposed to provincial) consent. Hence, in Belgium MPs are divided in linguistic and not provincial groups in the second chamber (and lower house) and some legislation requires majority approval in each linguistic group (in each chamber). Such a provision may be useful if a language is only dominant in one or two provinces and therefore a national language bill could harm the interests of that language community even if it is supported by a majority of the provinces.

Finally, shared rule mechanism may not just be required at the centre, they may also be needed in provinces that are ethnically heterogeneous. Dividing these provinces even further into ethnically more homogenous units may not always be possible, let alone desirable. The instability of several North-East Indian states (Assam, Nagaland, Mizoram) has many causes. Yet, one of these is the ability of one ethnic group within those provinces to monopolise political power at the expense of significant minority groups. A bill of rights may go some way to protect those rights. Yet, how likely are such minority rights to be enforced if the institutions of a multi-ethnic province, such as the executive and police, are dominated by a single ethnic group? Considerable ethnic violence in the North-East of India could have been prevented had the governance of these highly heterogenous provinces yielded stronger mechanisms for shared rule or power-sharing at the provincial level. Thus shared rule can provide a measure of stability in multi-ethnic states and in multi-ethnic provinces. For the holding together of Sri Lanka, shared rule is at least as important as self-rule.

By way of conclusion let me convey my best wishes for your constitutional negotiations. I would be more than happy to address any further concerns or thoughts which you may have (see my e-mail address above).

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Obagē Vyavasthā sākacchā saṅdahā magē subha pætum

உங்கள் அரசியலமைப்பு பேச்சுவார்த்தைகளுக்கு என் வாழ்த்துக்கள்
Uṅkaḷ araciyalamaippu pēccuvārttaikaḷukku eṅ vāḷttukkaḷ

**Conference of Provincial Councils
on a New Devolution Settlement for Sri Lanka
5th to 7th August 2016, Heritance Hotel, Negombo**

Agenda

Friday 5th August 2016

20:00 Conference Dinner

Saturday 6th August 2016

09:00-09:30 Welcome & Explanation of Objectives of the Conference

09:30-11:00 Plenary Discussion: Provincial Councils' Perspectives on Past Experience and Future Needs

11:00-11:30 Break

11:30-13:00 Plenary Discussion continued, concluding with input from experts: Overview of the Experience under the Thirteenth Amendment and Prospects for Greater Devolution

13:00-14:00 Lunch

14:00-16:00 Break-Out Sessions: discussion within each Provincial Council delegation about specific concerns, needs and aspirations

16:00-16:30 Break

16:30-18:30 Report Back (15 minutes each for Provincial Councils to report back summary of main issues)

19:30 Reception and Dinner

Sunday 7th August 2016

09:00-11:00 Thematic Break-Out Sessions (police powers, state land, finance, concurrency, others; resourced by experts)

11:00-11:30 Break

11:30-13:30 Report Back (15 minutes each for thematic groups to report back summary of main issues)

13:30-14:30 Lunch

14:30-15:00 Plenary Discussion on Common Concerns and Needs

15:00-15:15 Break

15:15-17:00 Agreeing a Text on Common Concerns and Needs

17:00 Press Conference

LIST OF PARTICIPANTS

Conference of Provincial Councils on a New Devolution Settlement for Sri Lanka

6th and 7th August 2016, Heritance Hotel, Negombo

No	Name	Designation
01.	A.C.G. Attanayake	
02.	A.M.Anif Lebbe	Chief Legal Officer, Eastern Provincial Council
03.	A.M. Navaratna Bandara	Committee of Experts, Constitutional Assembly
04.	A.M.S. Abeygunaratne	
05.	A.M.S.N. Atapatta	
06.	Hon. Ajith Jhoshap Dabarera	Member, North Western Province Council
07.	Hon. Amara Piyaseeli Ratnayake	Governor, North Western Provincial Council
08.	Ananda Kularathne	Representative for Hon. P.B. Dissanayake, Governor, North Central Province

09.	Hon. Austin Fernando	Governor, Eastern Province
10.	C.D. Bhagya Manori	Legal Officer, Western Province
11.	C. Luxman	
12.	Hon. D.A. Chamara Sampath Dasanayaka	Chief Minister, Uva Province
13.	D.M.L.Bandaranayake	Representative of Mr. Gamini Rajakaruna, Chief Secretary Uva Provincial Council
14.	Mr. Damiano Angelo Sguaitamatti	Programme Officer, Swiss Federal Department of Foreign Affairs
15.	Mr. Dharmasiri Dissanayake	Chief Minister, North Western Province
16.	Dilan Wijesekara	
17.	Dr. K. Vigneswaran	Expert
18.	Ms. Gayathri Narmadha De Silva	Representative of Governor, Southern Provincial Council
19.	H.D.S. Indrajith	CPA

20.	Herath.P. Kularathna	Chief Secretary, Sabaragamuwa Provincial Council
21.	Hon. Shan Wijayalal de Silva	Chief Minister, Southern Provincial Council
22.	I.L. Dissanayake	Legal Officer, Western Province
23.	Hon. Indrani Dassanayaka	Member, North Western Provincial Council
24.	Hon. Isura Dewapriya	Chief Minister, Western Province
25.	J. Suresh Kumar	CPA
26.	Jayantha Wijerathne	Chief Secretary, North Western Province
27.	K.A. Thilakarathne	Chief Secretary , North Central Province
28.	Hon. K.C. Logeswaran	Governor, Western Province
29.	K.M.Z. Himali Priyangika	Chief Legal Officer, Uva Provincial Council
		Advisor to the Governor, on behalf of Hon. Niluka Ekanayake, Governor, Central Provincial Council

30.	Keerthi Rajapakse	
31.	Lahiru Kithalagama	CPA
32.	Lal Wijenaik	Expert
33.	Lalith Dodawarakotuwa	
34.	Leo Fernando	Expert
35.	M.S. Premawansa	Chief Secretary, Central Provincial Council
36.	M.V.B. Janath Chithral Fernando	Member, North Western Province
37.	Manjula Gajanayake	CPA
38.	Meera Saeed Uthumalebbe	Member, Eastern Provincial Council
39.	Michael Mendis	CPA
40.	S. Sivagurunathan	CPA
41.	N.M.S.K. Nawaraykeh	
		CPA

42.	N. Suganthi	
43.	Nelum Wijepala	
44.	Nicolaas Steytler	Expert
45.	Nilshan Fonseka	DRI
46.	P. Ayngaranesan	Minister, Northern Provincial Council
47.	P.W.K. Disna Chandrasekara	Chief Legal Officer, Sabaragamuwa Provincial Council
48.	Palitha Nanayakkara	
49.	Parakrama Dahanayake	
50.	Paul Knipe	DRI
51.	Priyanga Hettiarachi	WFD
52.	Hon. R.M. Rathnayake	Leader of the Opposition, Uva Province
53.	R. Vemunanyka	
54.	Hon. Reginold Cooray	Governor, Northern Province

55.	Hon. Renuka Herath	Leader of Opposition, Central Provincial Council
56.	Rohaha Bandara Wijesundara	
57.	Ruwendi Wakwella	CPA
58.	S.A.M. Shafraz	CPA
59.	S.L. Munas	
60.	Hon. S.M. Peshala Jayarathne Bandara	Chief Minister, North Central Province
61.	S.M.S. Tennakoon	
62.	S. Maheswaran	
63.	S. Sivagurunathan	CPA
64.	Hon. S. Sritharan	Member of Parliament
65.	Hon. S. Thandayuthapani	Leader of Opposition, Eastern Province
		Leader Of Opposition, Northern

66.	Hon. S. Thavarajah	Provincial Council
67.	S.Y. Saranya	CPA
68.	Saman Senanayake	Director, North Western Province
69.	Hon. Sarath Ekanayake	Chief Minister, Central Province
70.	Shehara Athukorale	CPA
71.	Mr. Suren Fernando	Committee of Experts, Constitutional Assembly
72.	Tharinda Liyanage	
73.	Hon. Thennakoon Nilame	Leader of the Opposition, Southern Province Council
74.	Thimbiriyagama Bandara	CPA
75.	Hon. U. Susil Kindelpitiya	Member, Western Provincial Council
76.	Udaya Edirimanna	CPA
77.	V.K. Nanayakkara	Advisor to the Minister of Provincial Councils and Local Government

78.	Velayudam Reethudeepan	Member, Uva Provincial Council
79.	Paikiasothy Saravanamuttu	CPA
80.	Wilfried Swenden	Expert
81.	W. Somadasa	Leader of Opposition, Sabaragamuwa Provincial Council
82.	Asanga Welikala	CPA
83.	Hon. Z.A. Nazeer Ahamed	Chief Minister, Eastern Province