

PEACE MONITOR

VOLUME 10 / ISSUE 2

SEPTEMBER 2013



THE CHALLENGE OF IMPLEMENTING THE **13th** AMENDMENT

CENTRE FOR POLICY ALTERNATIVES

PEACE MONITOR



Peace Monitor is a newsletter of the Centre for Policy Alternatives (CPA).

The CPA was formed in the firm belief that the civil society contribution to public policy debate is vital and in need of strengthening. In fulfillment of its mandate, CPA focuses on issues of governance and conflict resolution through programmes of research and advocacy.

Published since early 2002 as "Saama Kathaa" Peace Monitor is one of the many ways by which CPA seeks to foster and monitor dialogue on key current issues in Sri Lanka.

Saama Vimarshi and Saamathana Nokku are parallel Sinhala and Tamil publications. The views expressed here do not necessarily reflect the views of the CPA or its board of directors.

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Published Date : September 2013

Publication : Volume 10 / Issue 2

Printed By : Globe Printing Works - 0777 315971

Cover Photographs : from www.epdpnews.com and www.uktamilnews.com (front) and skyscrapercity.com, [Daily Mirror Graphics Desk](http://DailyMirrorGraphicsDesk.com) (back Cover)

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SOCIAL INDICATOR, CPA



SUSTAINING CONFLICT THROUGH THE DEVOLUTION DEBATE

DR. PAIKIASOTHY SARAVANAMUTTU

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By the same token, a Northern Provincial Council controlled by the TNA as is widely expected by most commentators, will have its work cut out for it, navigating the receding political waters of devolution, the everyday livelihood needs of its constituency and the determined attempts of the Sinhala right to portray it as unreasonably and irrelevantly obsessed with the politics of grievance.

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Devolution and the Thirteenth Amendment are once more at the centre of political debate. This stems from a number of factors – the most obvious being the first Northern Provincial Council election scheduled for the 21 September 2013. Other factors relevant to the current debate and its outcome are the outcome of the election and the integrity of the electoral process through which it is conducted, international and particularly Indian pressure to ensure non-dilution of the existing constitutional provisions on devolution on the one hand and on the other, the determination of those elements within the ruling coalition to reduce provincial devolution to an empty shell if not get rid of it altogether. The latter arises from the strong implicit belief of the government that a political solution is not necessary – military victory and centralized economic development are seen as paving the path to peace, prosperity, reconciliation and unity, on government terms.



At the heart of the anti-devolutionists' argument is the contention that national unity would be jeopardized, if the northern provincial council – their fears are really only about this council- were to exercise the constitutionally provided police and land powers. The president and his brothers in government plus a host of ideological fellow travellers insist that this could be the thin edge of the wedge, a posthumous political victory for the LTTE, which would pave the way for secession. It should be noted that the Supreme Court affirmed that the provincial devolution proposed was consistent with the unitary status of the state. In any event, the balance of powers in respect of provincial devolution is heavily weighted in favour of the centre – a power configuration upheld by the courts over the last twenty- five years. Furthermore, the provisions on land and police powers are not obstructive of central government authority or power and are capped – unless of course it is deemed that any form of consultation with a provincial government is beneath the dignity of the centre and injurious to its power and authority.

In the above respects, the anti- devolutionary position that stretches from gutting the Thirteenth Amendment to outright abolition – is primarily ideological. This is not surprising. The Rajapaksha regime has consistently demonstrated that the political education of its leadership and standard bearers was formed and concluded on these matters some forty years ago with the passage of the first republican constitution enshrining the unitary state, the official language provision and “foremost place” to Buddhism. The fear about secession at this point, real or imagined in their minds, is more about control of the state and its resources than it is about an imminent danger of it breaking up. A regime, which needs an “other” to consolidate its grip on power, has a vested interest in trumpeting the defeat of the “other” – be it a group or an idea –whilst at the same time maintaining that the return of the “other” in some shape or form, will always be a real and present danger.

Accordingly, the Thirteenth Amendment has always been a prime target of the current dispensation. They have cleverly managed to move debate from a rhetorical position on a political settlement they nicknamed Thirteen Plus, to dilution and abolition of the Thirteenth Amendment, whilst all the time maintaining a status quo of Thirteen Minus – land and police powers have never been devolved- and systematically working to chip away at the devolved powers through whole scale land grabbing to the Town and Country Planning Act to Divineguma.

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The fear about secession at this point, real or imagined in their minds, is more about control of the state and its resources than it is about an imminent danger of it breaking up.

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Preparing for CHOGM

The reaction to the latter in the Supreme Court clearly seems to have served as the catalyst for the impeachment of Chief Justice Bandaranayake.

There is now a parliamentary select committee to look into a political settlement. It is made up solely of SLFP members- no Tissa Vitharna of APRC fame and no Rauff Hakeem either. The committee is to look at the Thirteenth Amendment. When the parliamentary select committee was first mooted to the TNA, at a point at which the direct talks between them and the regime were going nowhere since the regime was unwilling or unable to put its proposals on the table, the Thirteenth Amendment was not the issue. The understanding was that the committee would go beyond it. It was the starting

point for deliberations and not the subject of debate. In this respect, the regime has shifted the goal posts. Put another way – it is rather like playing cards with a cheat!

Currently the “apeyaanduwa” - pun intended - reaction to devolution has been halted in its tracks; it has by no means been abandoned. The mention of the Northern Provincial Council election in the March 2013 resolution at the UN Human Rights Council (UNHRC), a presidential commitment to the Japanese government that it would be held and the danger in particular that were this not to be the case and/or the Thirteenth Amendment further amended, Indian pressure could be exerted to relocate the November 2013 Colombo Commonwealth Heads of Government Meeting (CHOGM), all

combined – especially the latter – to put the devolution debate on hold.

It will return. The LTTE bogey and the military victory are still the best things going for the regime in domestic political terms. Abolishing the Thirteenth Amendment or amending it to the point of extinction, is therefore the unfinished political business of the military defeat of the LTTE. And the best way to do it and probably the most likely would be its inclusion in an election manifesto for a presidential election that could take place hot on the heels of the CHOGM - in the first quarter of next year, perhaps? This would give the regime the popular mandate it needs to tell India and whoever else that the Sri Lankan electorate does not want devolution and in a functioning democracy the will of the electorate must be heeded.

Were this to be the case it would also be the case that the conflict will remain. So it will as long as the regime sees domestic political advantage in this, however short-sighted. By the same token, a Northern Provincial Council controlled by the TNA as is widely expected by most commentators, will have its work cut out for it, navigating the receding political waters of devolution, the everyday livelihood needs of its constituency and the determined attempts of the



13TH AMENDMENT: A LESSON FROM CONFUCIUS

PROF. JAYANTHA SENEVIRATNE

Today, when we see the false and shallow discourse woven around the 13th Amendment to the Constitution, one recalls the wisdom of Confucius, the 5th century Chinese thinker and religious leader, and his famous dialogues with students.

‘What are the factors that make us Human? His followers queried a student - Confucius responded by encouraging the students themselves to seek the answer. One student said that ‘we are human since we speak a language’. Another said because we build houses and use different kinds of transport. ‘Because of man’s shallow pretenses’, ‘we are human because of the jealousy, deceit, arrogance, and lust that lies within us’ said other students. When Confucius insisted that none of these qualities made us human, they requested the

Leader to provide the answer. He obliged by saying the question that was asked was incorrect. In order to determine as to what makes us human, the question that ought to be asked is ‘What is it that makes us become inhuman?’

Confucius in this particular Dialogue explained that we become inhuman when we rob the personal dignity of another. Flinging a person’s dignity is tantamount to stealing a person’s humanity. There are two aspects of personal dignity. Physical as well as spiritual well-being.

Physical well-being means the basic needs necessary for a person’s life. It includes food, clothing, habitat and security. Spiritual well-being means the freedom to enjoy the right to adhere to one’s own religious doctrine and profess one’s culture, as well

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The people in the North are now undergoing unbearable pressure. It is not even possible to fathom their economic, social and mental degradation. Along with this, the most dangerous consequence is the depth to which Sri Lankan society has morally sunk to.

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as the freedom to think and express one's ideas.

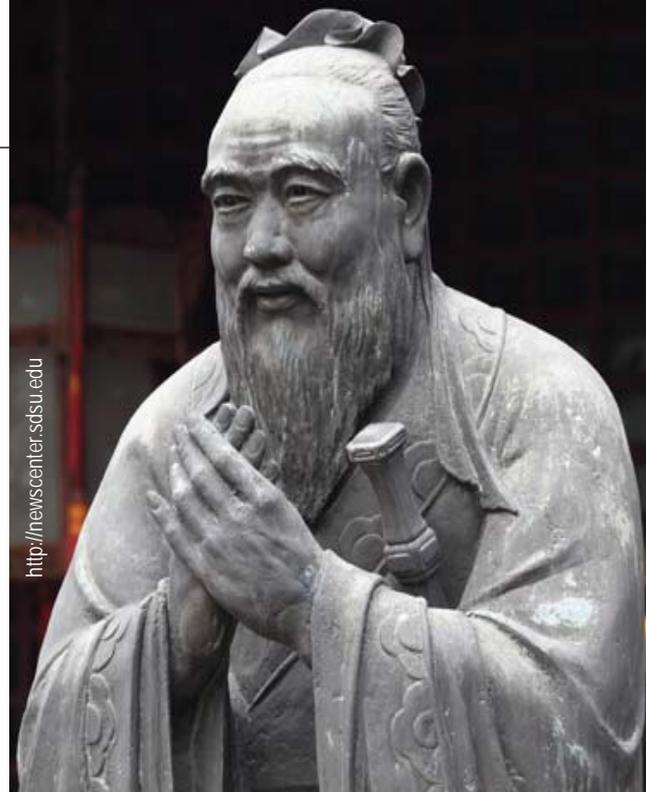
As we view the current debate, we see that the Sri Lankan Tamil populace too are demanding that their stolen dignity, be restored to them. Who robbed them thus? I know that this question that should not be asked once again. Anyone with a conscience knows this. Although the physical well-being of the Tamil people cannot be confined a mere matter of survival, sadly the people of the North have been compelled to live in such a manner and yet are engaged in an unrelenting struggle to somehow preserve their spiritual well-being. As Oscar Wilde observed, "...we are all in the gutter, but some of us are looking at the stars..." He was possibly referring to the fact that the person had in his/her possession, the power to think and to dream, which cannot be taken away by another. If one can, at least have

hope for a bright tomorrow, a person can bear the physical

'the soul of a country, is visible only if the rulers have the trust of all those who live in it.'

and mental travails one is compelled to undergo today. We must be aware that even if the Tamil populace in the North is in a situation to do so, it is at least due to the implementation of the 13th Amendment to the Constitution.

In 1987, when the 13th Amendment was being introduced to the Second Republican Constitution, we gave it our total support probably because at that moment, it was the possible 'political solution', aimed at the physical and spiritual well being of the Tamil people. Whatever be the demerits of that Amendment, it was a courageous and viable step forward, which was adopted to solve the ethnic issue. That it was introduced in the greater interest of India, is no secret. Personally I am happy that at least such a solution was brought about at that time since the Sri Lankan politicians were unable to offer their own solution to this burning issue. Moreover, it was because of such an intervention, that the opportunity was provided both for the politicians, as well the people in this country to think and act in a different manner, regarding such an important question. There is no country in the world, where such an issue, pertain-

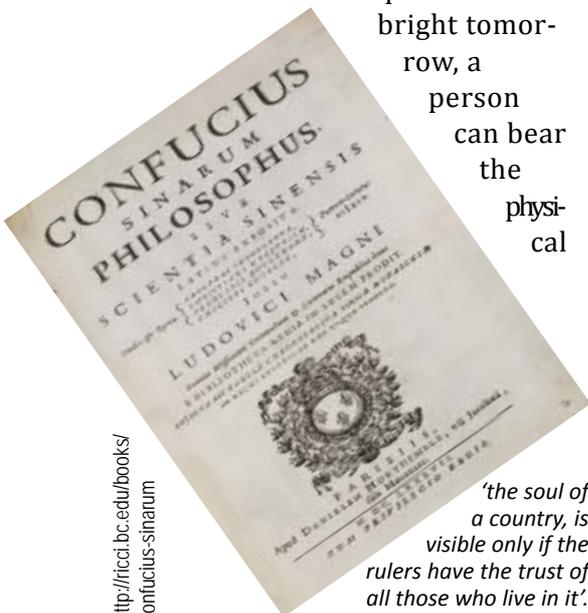


<http://newscenter.sdsu.edu>

Wisdom from the 5th Century

ing to the rights of the people was resolved with a political solution devoid of such international pressure.

This becomes relevant even today. Despite the fact that the 13th Amendment was introduced within a constitutional framework with a powerful Executive and paved the way for intensely centralized, authoritarian rule, and although when devolution was appended onto such harsh centralized rule, it became contradictory. It was indeed a novel experience for Sri Lankan politics. Following that Amendment, we know that every government that came into power since has utilized the Concurrent List as a powerful weapon against devolution and also for the teaching of a lesson to the Tamil people. This government is one, which does not accept the concept of the devolution of power. Thus they do respect either the Concurrent List, or



<http://ricci.bc.edu/books/confucius-sinarum>



the Provincial List. We also know that, in order to place obstacles in the way of implementation of the 13th Amendment, the present government is utilizing the legal framework incorporated in that Amendment, in a far more diabolical manner than which was visible in the political machinations followed by the Premadasa government. In addition, the government is engaged in reversing the culture that socialized devolution as a civilized political phenomenon, and which it now seeks to relegate to the lexicon of dirty words. This is not all. An anti-Indian campaign has now commenced, as in the days of Premadasa. It is indeed a matter of deep regret that the Malwatte and Asgiriya prelates have also fallen prey to such projects. At that time, in the face of the Premadasa anti - Indian campaign, there was only the support of Pakistan in the region, and the present government now has also drawn China to its side.

It is not necessary to state that, since the dawn of Independence in this country, no honest attempt was made to devolve Executive power, but instead only the strengthening of the Executive really prevailed. Even during the era when Parliament was Supreme, there were shrewd agendas to strengthen the Executive, which culminated with the 1972 Constitution. However, with the introduc-

tion of the post of Executive President to the 1978 Constitution, and the 13th Amendment in 1978, the concept of the Supremacy of Parliament was dissolved and diluted. Similarly, it was said that with the introduction of the 18th Amendment, Executive power reached its zenith. Today's Parliament is one which acts as per the whims of the Executive. In this context, the 13th Amendment still remains the only constitutional protection for the minorities. Although it has only but limited possibilities to satisfy the aspirations of the Tamil people for some measure of Provincial Autonomy, currently it becomes the only way, which would in some measure, enhance their physical and spiritual well-being. If this Amendment is removed from the Constitution, it would result in the peaking of Sinhala-Buddhist ethnic dominance. It is also unnecessary to repeat that It was such dominance which led the state to a war. Today, it has almost become impossible for us to recover from the cruelty that was sown in our society in that 30 year war. The people in the North are now undergoing unbearable pressure. It is not even possible to fathom their economic, social and mental degradation. Along with this, the most dangerous consequence is the depth to which Sri Lankan society has morally sunk to.

In a post- conflict society,

especially in a context where the state has no longer a military foe, the government should ensure the coexistence of all communities and initiate a political programme which seeks to accede to the desires of all. Today the government can once again win over the hearts of the Tamil people, only through fully implementing the 13th Amendment. If steps are taken to rescind that Amendment, the government is paving the way once again for a dark future. Abolishing that Amendment is allowing separatist ambitions to prevail once more. In the words of Confucius, 'the soul of a country, is visible only if the rulers have the trust of all those who live in it'. If such trust is forthcoming from the people, it is possible for the state to even ably conduct itself in the region, devoid of threats. Trust can be built only if the people are free. In a society, which is governed by a military hand, the people live in fear and trepidation. We cannot forget that for almost 40 years, the people in the North were living under a two -fold military spectre. The time has come to end this. The physical and spiritual aspirations of the Tamil people should be assured once more, which would surely result in the well-being of the entire state.

The full enactment of the 13th Amendment will ensure this.



THE CONSEQUENCES OF POLITICAL REPRESENTATION OR THE LACK THEREOF

BY DR. DEVANESAN NESIAH

The Northern Provincial Elections may be held in September 2013. I will elaborate on the likely consequences of representation, or the lack of it, drawing on past experience in Sri Lanka, India and the USA.

All over Sri Lanka the bulk of the Muslim population are Tamil speakers. It was so almost 100% at every socio- economic level when the Official Language Act was enacted in 1956. But at that time the political leadership of the Muslims were mostly Members of Parliament representing Sinhalese majority electorates. All these voted for Sinhala only, as desired by their mostly Sinhalese voters, even though they were themselves Tamil speaking. The Muslim MP's representing Eastern Province electorates voted against the Bill, as desired by their voters, nearly all of them Tamil speaking. In the Senate, AMA Azeez, who was not elected by Sinhalese voters, not only opposed the Bill but quit his party on this issue. One of the objectives in forming the SLMC, much later, under the leadership of Ashroff, based in the Eastern Province, was to ensure the election of Muslim MPs responsive to the wishes of the Muslim population.

In India, the Dalits / Harijan /Untouchables and Tribals have enjoyed quota reservations in political bodies and public institutions at all levels for close to a century. The practice had been that the reserved seats had been rotated from election to election with only Dalits standing for elections in the seats reserved for them. In the 1930s, about the same time as the Donoughmore Commission in Sri Lanka, a dispute arose between the Dalit leader Dr.B.Ambedkar and Mahatma Gandhi as to whether electorates should hitherto be purely territorial or whether Dalits should have separate electoral registers. Gandhi wanted the former, and Ambedkar the latter, but there was no dispute regarding the need for reservations.



Lord Donoughmore



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Hopefully the NPC elections will not only bring about changes in the administration of the Northern Province, but also compel Colombo to take into account the NPC leadership, which may be why these elections have been long delayed. The elections and their likely outcome will surely have a positive impact on the politics of Colombo and also on National Reconciliation
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Under Gandhi's proposal even in electorates for Dalits, the majority of the voters would be non- Dalits. Dr.Ambedkar argued that the Dalit candidates would then tailor their manifestos to suit the majority non-Dalit voters. In fact Dalit candidates seeking High Caste Hindu votes would often stand respectfully outside the house, declining any invitation to enter the house or to sit on a chair or to accept a cup of tea. Such practices helped to win High Caste votes. Dr. Ambedkar wanted Dalit candidate to adopt radical manifestos for 100% Dalit electorates. The British Colonial Government suspended progress towards independence till this issue was solved. Gandhi started a fast to death and was close to death when Ambedkar caved in, and agreed to purely territorial electorates with both Dalit and Non-Dalit voters in exchange for increased quotas for Dalits. It is this compromise that was embodied in the Indian Constitution drafted two decades later under the Chairmanship of Dr.Ambedkar.

In the USA, Governor Wallace of Alabama, perhaps the most racist of the Southern leaders, had Presidential ambitions. His state was

Black majority but he had ensured that, as in most Southern states, most of the Blacks were denied voting rights on some pretext or the other, such as illiteracy. The Whites all over the South were fearful of being swamped by Blacks if they gained voting rights. His 1962 campaign slogan was, "From the cradle of the Confederacy, this very heart of the great Anglo- Saxon Southland ... Segregation now! Segregation tomorrow! Segregation forever! He bitterly and violently opposed the Voting Rights Act, but when he found that he could not stop it, he did a U-turn on many issues. He there after supported many Black causes because his vote base was now more Black than White, though he remained as racist as ever.

Hopefully the NPC elections will not only bring about changes in the administration of the Northern Province, but also compel Colombo to take into account the NPC leadership, which may be why these elections have been long delayed. The elections and their likely outcome will surely have a positive impact on the politics of Colombo and also on National Reconciliation.

*Article source:
Groundviews.lk*



THE NORTHERN PROVINCIAL COUNCIL: PRUDENCE PREVAILS FOR NOW

DR. DAYAN JAYATILLEKA

Finally, a pragmatic perception, however episodic, of reality- and a prudent policy move results. With President Rajapaksa's decision to announce the holding of the election to the Northern Provincial Council after almost a quarter of a century (taken together with the re-arrest of the suspects in the murder of the Trinco 5), Sri Lanka seems about to take a significant step in the right direction; the next logical step forward – deferred imprudently for four years– after the victory over separatist terrorism in May 2009.

While conventional wisdom has it that the imminence of the Commonwealth summit and the signalling from India are the main factors behind the President's decision, my own explanation is that this

ignores the President's important visits to Japan and China, two Asian powers and traditional friends of Sri Lanka, and the assessment of Sri Lanka's overall economic and strategic-diplomatic situation that Mahinda Rajapaksa, the experienced and shrewdly pragmatic political animal that he is, would have made subsequent to those visits.

Crucial to that assessment would have been the international factor; the issue of devolution and the Northern provincial council seen in its international dimension. President Rajapaksa bought as much time as he could for those in his camp who wished to consolidate in the ground in the North in a political vacuum. He seems aware that time and space



Photo source <http://www.np.gov.lk>

Northern PC Governor and Douglas Devananda

are running out, that the risk of non-implementation would be prohibitive; that Sri Lanka would lack the economic and diplomatic capacity for the siege that would result not only from the unilateral redrawing of an inherited, uneven bilateral agreement but also the non-fulfilment of post-war international commitments far more freely entered into, coming as it did after the Sri Lankan military victory at the apogee of the achievement of the Sri Lankan state.

President Rajapaksa knows as the hawks in his camp do not, that the economic consequences of a Cold war with the neighbour and the larger world community would prise open as nothing else would, the politico-electoral space

for a Hassan Rowhani or Nawaz Sharif option.

More optimistically, he could also be weighing the possibilities of a different role, profile and pathway for both Sri Lanka and himself, with the assumption of the Commonwealth chairpersonship.

The process of the holding of the election is fraught, though. A battle is raging at the heart of the state. It is a battle over the Northern provincial council elections, the continued existence of the 13th amendment (certainly in its present form), and relations between Sri Lanka and the world (especially India), but taken as a totality it is nothing less than a battle over the future direction and destination of post-

war Sri Lanka.

The target of all strategy, says Sun Tzu, is the mind of the opposing commander. However, those waging the battle against the holding of the Northern provincial council election are targeting not the opposing commander, but the mind of the commander-in-chief, President Rajapaksa. There is a contest of political wills, and an arm-wrestling match has been underway to sway the President's decision to hold the election in September 2013.

It is against this backdrop that we must locate trends in the state media. The state-run media are the mirror or sensor of trends and shifting power balances in the state itself. The preponderant



ideology in and of the state media enable us to trace the pathways and production hubs of that ideology while indicating the networks that traverse the state apparatuses. Consider then a recent article by Mr HLD Mahindapala, prominent and prolix ideologue of the Sinhala supremacist expatriate network. He has a well deserved reputation for telling it as he sees it. While this may not always be the same as telling it like it is, this time his perception and the politico-ideological actuality coincide. He writes in the penultimate segment of his most recent polemic as follows:

“The issue facing the nation — and, of course, the President — is whether to perpetuate the illegally imposed injustice on the nation or not. Gotabhaya Rajapaksa has given the courageous lead in rejecting the 13th Amendment in toto...There isn't a single vestige in the Indo-Lanka Agreement, whether in its origins, its imposition or in its legacy, that makes it a benign or acceptable formula for all the peoples Sri Lanka to come together. It is an Indian solution to an Indian problem. It is divisive, corrosive and destructive. It has never been nor will it ever be the solution. The time has come to jump out of the box and re-imagine a new future. Gotabhaya Rajapaksa has taken the first step decisive step in redrawing the road map to the future.” (‘Marxists are like Indians’, Daily News,

July 5th 2013)

So, for HLD Mahindapala and his co-thinkers, while there is an issue facing the nation and the President, the lead is being given on this all-important political question by Mr Gotabhaya Rajapaksa. What is more striking is his assertion that “Gotabhaya Rajapaksa has taken the first step decisive step in redrawing the road map to the future.”

Thus the lead is being given and what is more, the first step towards redrawing the roadmap to the future is being taken not by the elected executive President, a politician with four decades experience, but by a highly placed unelected official, however competent in his field of experience and expertise, namely military affairs and their management. If “the road map to the future is being redrawn”, the question arises, who drew the original roadmap to the future which is being re-drawn by the highly competent official? Furthermore, from where and when did the mandate derive by which any unelected official can take the lead on a political and diplomatic question and go further to redraw the roadmap to the future?

What, in Mr Mahindapala's rendition is that lead that has been taken? It is “rejecting the 13th amendment in toto”. Nowhere has the country's elected President and Commander-in chief rejected the 13th amendment in toto. He has just demonstrated con-

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A Sri Lankan army trooper patrols the island's northern town of Jaffna

Photo by Ishara S. Kodikara/AFP/Getty Images

spicuously that he entertains a rather different view, perhaps not out of conviction but an accurate perception of larger realities, including the economic. An important facet of that economic reality is best glimpsed in the recent news story 'Japan Overtakes China as Largest Lender to Lanka' (Daily Mirror, July 5, 2013).

The Mahindapala rendition is given some credibility by the interview (Daily Mirror, July 4, 2013) given by the Secretary to the Ministry of Defence and Urban Development, in which devolution is rejected, there seems to be a preference for the national ethnic ratios to be reflected in the Northern province, the BBS is but a reaction to over-assertion by minorities, criminals are to be treated as terrorists, and the Sri Lankan Tamil issue is pretty much said to be none of our neighbour's concern. The following quotes from the interview provide a microcosm of the perspective and paradigm:

"...It is nothing but true and correct that in the North and

East there must be the same percentage of the majority community. When 78% of this country comprises Sinhalese how does such a vast landmass in the North become 98% Tamil. Isn't this unnatural? This was forced. Natural growth was prevented"

"...No I don't believe in devolution because of the above points I mentioned. If devolution is for administrative purposes that is of course legitimate. But if one thinks that devolution would provide an answer to the national problem that is something that I don't agree with...I think that's [the complete repealing of the 13th amendment] the way forward..."

"This again I see as a reaction to some of the claims and things done by the minorities. We shouldn't let these things come out. Remember the majority community is 78% but if some 8% or 10% of the community tries to bring various issues all the time it creates a suspicion among the majority community. It creates insecurity within the majority community and obviously there will be sections reacting to that. This is what happened..." (I Deplore Any Form of Extremism', Daily Mirror July 4, 2013)

Mr Gotabhaya Rajapaksa's interview constitutes a useful discourse in that it is possible to discern the socio-political map of Sri Lanka after it has been 're-drawn' (as HLD Mahindapala puts it).

What this ideology corresponds to is the dangerous



phenomenon identified by the late Fred Halliday, Professor Emeritus of International Relations at the London School of Economics and research professor at the Barcelona Institute of International Studies. He defined it as 'The Miscalculations of Small Nations'. His case studies included Georgia and more classically Cyprus and he explores *"the self-inflating nationalist ideology...with its heady mix of vanity, presumption and miscalculation...miscalculations about the capabilities of one's own forces and the reactions of others"*. (*'Political Journeys'* 2011, p 241-247)

Since the emphasis in Sri Lanka is on the rejection of the foreign and the celebration of the national, and since a touch of retroactive intellectual nepotism will not be frowned upon, the volume 'Crisis Commentaries: Selected Political Writings of Mervyn de Silva', which contains his attempts to educate National Security Minister Lalith Athulathmudali on the abiding geopolitical realities that should disabuse us of the notion that we can emulate Israel in our treatment of the Tamils of the North.

Mervyn remarks "...It was the presence of Tamil Nadu, the south Indian state, which forced us to broaden the discussion and our perspective...if the arrival of a 60,000 strong Indian peace keeping force did nothing else, it certainly did compel us to widen the range of inquiry

further...a regional perspective is inescapable given the sub-continental cultural matrix and history. At a time when national borders are vanishing, the borders in our own minds need to be erased in the interest of serious inquiry and discussion". (*'Crisis Commentaries'*, 2001: P. 170)

The hubris of having defeated the LTTE must not delude us into thinking that we won a war against the source of the Indo-Lanka Accord. We must recognise the limits of our victory. We must also recognise the limits of our power. We must understand that however excellent our armed forces are and in whatever way we seek to configure their presence in the North, while attempting to re-configure the North itself, in a worst case scenario, which is not purely imaginary but is an extrapolation of our 1987 experience, we cannot ensure supplies of ammunition, fuel and food, for our island which is highly vulnerable to naval embargo and a no-fly zone. I would also recommend that the militant Sinhala ultranationalists read the famous 'Melian Dialogue' in Thucydides' 'History of the Peloponnesian Wars'. It is the exchange between the leaders of the small, strategically placed island of Melos and the Athenian envoys who made them an offer they shouldn't have refused but did, with disastrous consequences. That exchange is regarded as paradigmatic by the Realist school in politics, history and international affairs.

Article source: Groundviews.lk

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The hubris of having defeated the LTTE must not delude us into thinking that we won a war against the source of the Indo-Lanka Accord. We must recognise the limits of our victory. We must also recognise the limits of our power.

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PROVINCIAL COUNCILS ARE WHITE ELEPHANTS THAT MUST GO TOGETHER WITH THE 13TH AMENDMENT

BY S. L. GUNASEKARA

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Though India has acted and continues to act as the ‘Regional Thug’, the Indo-Lanka Accord is a dead letter and no longer of any force or avail if ever it was. One of the primary obligations of India according to that Accord was to ensure that all terrorist groups were disarmed within 120 hours of the signing thereof. Accordingly, the LTTE ought to have been disarmed by August 3, 1987.

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Sri Lanka has been plagued by Provincial Councils. (PCs) for the past 24 years. The debate about whether the 13th Amendment which gave birth to these Provincial Councils should remain or not, continues and has now gained some momentum with proposals being made by persons who are supposedly influential that it should be repealed.

What is interesting to note in the ongoing debate is that hardly anything that is said on either side has changed in any significant manner despite the bitter experience we have had with these ‘White Elephants’.

The proponents of PCs continue to say with a smug purported righteousness that the PSC provide for the devolution of power to the people; that scrapping them would be a retrograde step which would deprive the minorities of any ‘say’ in governance; that India is watching closely and is very anxious that the PCs should remain; and that those who propose the abolition of PCs are Sinhala supremacists or chauvinists who seek to deny the minorities their rights

On the other hand some opponents of the 13th Amendment continue to say that continued existence of PCs would pave the way for a the creation of separate state in that they establish the



Dominic Sansoni/ThreeBlindMen

Monk seated on the ground surrounded by tear gas. Pettah bus stand, Colombo, 28th July 1987. Protest at the signing of the Indo Lanka Peace Accord.

infrastructure therefore and accuse those who support the PC system of being unpatriotic and of being supporters of the LTTE and separation.

The tragedy that is evident in this debate is that neither party which has issued statements appears to have drawn on our experiences of PCs and founded any argument thereon.

One significant fact that appears to have eluded both parties in this debate is that far from ensuring or securing the devolution of power to the people, the 13th Amendment and the PCs have only resulted in conferring benefits on political parties, their leaders, supporters and their kith and kin and that the people at large or of any particular segment thereof are as bereft of power in the management of their affairs

as they were before, whatever their respective race, ethnicity, religion or political affiliation may be

An examination of our experiences of PCs will show that the people of any province are not given the opportunity of even nominating those whom they want to see guiding their destinies in respect of the devolved subjects for election, but that the only right they are given is to select the party they support, and to mark their preferences for persons named in the list of persons whom that party has purported to believe to be the most suitable persons to be PC members.

The voter must therefore cast a preference vote either for the candidate whom he considers to be the 'best' or 'least bad' of those selected by

the party of his choice or for none. In short his views do not matter, and he is compelled to subordinate his views for those of the party.

Even a candidate has no right to even hand in his own nomination paper to the Returning Officer. That right is preserved by law for a party official who may or may not choose to 'tippex' the name of such candidate from the list and replace it with another prior to handing it over to the Returning Officer!

The fact that nomination boards of various parties are often comprised senior officials of such parties and do not even comprise persons from the branches of such parties in the relevant provinces, and that those who purport to be the leaders of the several political parties often enter into 'horse deals'



pertaining to alliances of convenience with other parties without any kind of reference to the people of the area and/or getting their consent makes manifest the fact that no devolution of power of whatever nature to the people has been achieved by this obnoxious PC system.

All that the PC system has achieved is to further politicise our society and give to political parties and their 'leaders' more opportunities of advancing the fortunes of their otherwise unemployable kith and kin, supporters, hangers on, sycophants at the expense of the long suffering public.

As regards India's interest in the maintenance of the PCs, a fact that is invariably ignored by those who speak incessantly of India's stake in the matter is that India has no stake in the matter. The question of whether we retain PCs or not is a matter that effects the internal governance of this country and the people and is hence entirely a matter for us.

It is true that the birth of the PCs was a result of the Indo-Lanka Accord which was forced upon our people by India together with the then UNP government. Though India has acted and continues to act as the 'Regional Thug', the Indo-Lanka Accord is a dead letter and no longer of any force or avail if ever it was. One of the primary obligations of India according

to that Accord was to ensure that all terrorist groups were disarmed within 120 hours of the signing thereof.

Accordingly, the LTTE ought to have been disarmed by August 3, 1987.

However, they were completely disarmed by our Armed Forces and not by India only by about May 18/19, 2009. Thus, India which trained and armed the terrorists; India which foisted on Sri Lanka the PC system with its attendant unbearable waste of public funds; India which prevented Sri Lanka from destroying the Tigers and thereby paved the way for the deaths and mutilations of tens of thousands of our citizens, has reneged on its most fundamental obligation under the Accord and hence repudiated it over 25 years ago.

Our 24 years experience of PCs has shown that they only benefited the politicians, their kith and kin, their supporters and consequently the various political parties of our land at colossal expense to the long suffering people. The mad scramble for seats in PCs, the colossal amounts of money spent by candidates to win elections, the number of senior politicians' kith and kin striving for office and the fact that they even resort to violence to win provide manifest proof of who and who alone are benefited from this system.

It would indeed be worth a

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Thus, all these parties like the parties with Sinhalese majorities are engaged in politics only for their own benefit and the PCs provide the opportunity to enrich themselves at the cost and expense of the public and to enhance their powers. That is all that these PCs have achieved.

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Photo source: The Hindu

Prime Minister Rajiv Gandhi and Sri Lankan President J.R. Jayewardene sign the historic Indo-Sri Lanka accord in Colombo on July 29, 1987.

study to ascertain facts such as:

- a) **the quantum of public funds spent on Provincial Councils for the past 24 years including the sums spent on elections;**
- b) **the quantum of public funds spent on providing salaries and perquisites of office to Provincial Councillors;**
- c) **the quantum of public funds spent on putting up buildings for PCs;**
- d) **the quantum of public funds spent on the personal staff of Provincial Councillors and the number of members of the staff of Provincial Councillors who are kith and kin of the Provincial Councillors themselves;**

e) **the quantum of public funds spent on trips abroad for Provincial Councillors and**

f) **the quantum of public funds actually spent on the welfare of the public.**

A proper study would show that most of the money that could have been spent on the welfare of the people has been expended on rubbish such as extravagant lifestyles for Provincial Councillors, their kith and kin etc.

It may well be argued that such statistics that are available relate to provinces with Sinhala majorities and not to provinces with Tamil and/or Muslim majorities. However, there is no evidence whatsoever to indicate that the Tamil or Muslim politicians would be more responsible

and more concerned about the people than the Sinhalese politicians. They are, to my mind, all alike.

Starting with the Tamil National Alliance (TNA) which is evidently the most popular party among the Tamils, it is self evident that its members have not cared one whit for the welfare of the Tamil people. It was they who recognised the LTTE as being the "Sole Representatives of the Tamil People" and stood idly by, raising not a whimper of protest when the Tigers kidnapped Tamil children, murdered abducted and imprisoned Tamil adults and extorted their hard and money from them.

They have even been so base as to remain totally silent about the outrageous thefts of the means of livelihood of Tamil fishermen by the



fishermen of Tamil Nadu invading the rich fishing grounds off the Northern and Eastern coasts our land and stealing the fish that would otherwise have formed the 'catch' and hence the livelihood of so many of our Tamil fishermen.

On the other hand TNA members have done well for themselves from the suffering of the Tamil people. It would be remembered that the TNA delayed to nominate a person to the Parliamentary Select Committee which is probing the charges against the Chief on the ground that most of its MPs were abroad. How were the TNA MPs able to be abroad?

Did they go with their own funds or were they sponsored, and if so by whom?

Clearly they would not have been able to visit foreign countries as often as they do but for the fact that they are MPs of that party and purported to represent the Tamil people. This perhaps provides one reason why the TNA has refrained from making any comments or observations on behalf of the Tamil people with regard to the inhuman crimes committed by the LTTE or the Indian fishermen.

It is also significant to observe that like the disgusting Sinhalese politicians, the loyalty of the members of Tamil political parties has

been to themselves and to no other. Thus, when veteran Tamil politician V.

Anandasangaree who had turned against the LTTE was prevented from campaigning or even casting his vote at the elections of 2000 the TNA remained mum; similarly when TNA members were assaulted by the EPDP and other political parties which were finally opposed to the LTTE, the leadership of those parties remained mum; and by the same token when members of the EPDP and other parties such as EPRLF

placed on their supposed rights and liberties.

The Muslim politicians have been no better. The Sri Lanka Muslim Congress which first supported Sirimavo Bandaranaike, then President Premadasa, then Chandrika Kumaratunga, then Ranil Wickremesinghe and has now come back to Mahinda Rajapaksa with attendant benefits to themselves has proved itself in no uncertain terms to be nothing short of a political prostitute. Many SLMC MPs have deserted their party and been bought over by the Government with portfolios.

Thus, all these parties like the parties with Sinhalese majorities are engaged in politics only for their own benefit and the PCs provide the opportunity to enrich themselves at the

cost and expense of the public and to enhance their powers. That is all that these PCs have achieved.

Thus, even assuming without conceding that Provincial Councils will not pave the way for separation, our experience with these white elephants for 24 years clearly proves that they, together with the 13th Amendment must go.



Cartoon from DailyFT.com

which were against the LTTE were murdered by the LTTE the TNA remained mum.

They who spout so much about democracy and the rule of law have, in the ultimate analysis, acted on the basis that the suppression on the democratic rights of their opponents is good and proper and that all that is wrong is any kind of limitation being



THE NORTHERN PROVINCIAL COUNCIL ELECTION: GOOD GOVERNANCE AND WOMEN'S REPRESENTATION

BY THE WOMENS ACTION NETWORK

The merged North-Eastern Provincial Council was an administrative unit that came into being and existed as a structure in Sri Lankan administration. Consequent to the 1987 Indo-Lanka Accord and the enactment of the 13th Amendment to the 1978 Sri Lankan Constitution a degree of devolution was granted to the provinces. In terms of the Provincial Councils Act No. 42 of 1987 the Northern and Eastern Councils were merged to form as one provincial council to function thereof. The first election to the said merged N-E Province was held on the 10th December 1988 and Mr. Annamalai Varadaraja Perumal was chosen as its Chief Minister. The elected council was functional until Mr. Varadaraja Perumal chose to allegedly declare a Unilateral Declaration of Independence of the N-E Provincial Council into an independent State upon which the said Provincial Council was dissolved by the centre and the administration was brought under direct control of the centre by the then President Ranasinghe Premadasa. There were no elections held for the said provincial council thereafter until 2006. However, the Council as a Provincial Administrative Unit continued to function minus elected representatives until the year 2006 under the Governor. The Supreme Court in a judgment delivered in 2006 in cases filed by the Janatha Vimukthi Peramuna against the merger of the two provinces declared the said merger to be

invalid. Hence the merged provincial structure was demerged in 2006. Subsequently elections have been held in 2008 and 2012 for the Eastern Provincial Council.

Provincial council elections are to take place in the North for the first time since 1988. The minority communities that have suffered through the war and experienced multiple displacements and loss of life and resources are looking forward to this upcoming election. This election is considered an opportunity by the Tamils who have suffered great loss of life and property and also by the Muslim community who were evicted forcibly by the LTTE and had to bear the label of refugees for over 20 years. Both communities feel that this election



A Sri Lankan ethnic Tamil woman shows her identity cards before casting their vote at an election polling booth at Vavuniya

Photo source <http://www.telegraph.co.uk/AP>



Photo by Dushiyanthini Kanagasabapathipillai / <http://passionparade.blogspot.com>

TNA Candidate Ananthy Sasitharan faced unprecedented violence while contesting in an election for the first time



will provide them a space to protect their rights.

In this period, which is termed the development and post war phase, demands for women's rights and women's access to development and services have seen very little progress. Attention needs to be paid with regard to violence against women and young girls which has seen a drastic rise in the last few "post-war" years. Women who have lived in the north and east have suffered the consequences of the war and also the ethnic conflict and communal polarization. There have been planned steps taken to dilute democracy.

Human rights violations have been taking place openly through the militarization of the north. Due to this military entry to every possible civil structure several incidents of gross human rights violations have taken place. In Weliveriya the demand for clean water and the prevention of the pollution of ground water. led to the shooting of peaceful protesters by the Military and a 16 year old student became the first recent victim of the military in the south. The use of the military to quell dissent is symbolic of the state of democracy in Sri Lanka.

The right of every citizen in Sri Lanka to follow his/her religion has also come under attack in

recent times. The attacks on places of worship that belong to minority communities bring into question the right of religious freedom enshrined in the Constitution of Sri Lanka. Religious extremism and patriarchy have worked hand in hand to curtail women from their rights and freedom to choose their attire and reproductive function. The creation of allegedly Buddhist religious groups that use violence and propaganda to take away other religious communities' rights in the post war context has created great fear in the minds of Tamil and Muslim women. During her recent visit the U.N. High Commissioner for Human Rights Navaneetham Pillai stated that she is deeply concerned that Sri Lanka, despite the opportunity provided by the end of the war to construct a new vibrant, all-embracing state, is showing signs of heading in an increasingly authoritarian direction.

At a time when racism and religious extremism are gaining momentum in Sri Lanka. the northern provincial council elections should be viewed as a space for women to garner democratic support and political legitimacy. As citizens of this country women have the right to practice democracy and create democratic spaces. Gender equality, women's civil and political rights, women's right to employment, freedom from violence, political, social and cultural rights of women can only be ensured when there is a vibrant and healthy democratic structure in place.

In the upcoming elections there are a few women candidates as well. It must be noted that 13 women candidates are standing for elections as independent candidates. The party in power, the UFPA, and the opposition parties such as TNA and the UNP have provided very few opportunities for women to stand for elections. As usual when candidates were given nominations by these parties only a very few women were considered. Even some of the parties have publicly acknowledged that the majority of Vanni voters are women and that they have special needs and in need of assistance and protections etc., the main political parties have not come forward to promote women's political participation and leadership.



Photo by Dushiyanthini Kanagasabapathipillai ~ via flickr/PassionParade

A woman supporter pasting posters in Koovil, Jaffna District

Even though a large number of families are headed by women the promotion of women's economic and political rights as equal to men has not been advanced by these political parties. Democracy requires that all communities are represented in the political process so as to ensure the wellbeing of a nation. However in Sri Lanka democracy continues to be majoritarian be it in race or sex.

We will have to wait and see what these women candidates' future steps will be. However most of these candidates have suffered great losses due to the war and are clear that no one, especially no women should suffer the same kind of loss ever again. These women's participation in the elections asserts that democracy and rights need to be protected.

Mrs. Gnanasakthi Sritharan who is contesting under the UFPA banner states that 25 years ago when elections took place she was the only female member, 'as a woman I faced several challenges and threats. I had to go into hiding and was also forced to leave the country for my safety. 25 years later I still see that there is a lacuna when it comes to women candidates.' Narrating her experience she says that there were several obstacles for women to express their opinions. Family members objected to

women participating, society and political parties placed several obstacles and demands on us. There was the war due to which we could not mingle with the community. It was in such a context that I stood for elections. Even when you look at the LTTE which had been considering having progressive view of women there were several limitations and women had to follow the orders of these leaders, who were all men. Even in that space women's opinions could not be freely expressed. Even in India, where I had gone to due to the war I was not allowed to express my views freely. Due to threats and fear several of my writings were destroyed.

Elaborating further on women's participation in politics, Sritharan states that 'women must enter politics, they must become decision makers. Women's representation in political structures must increase, that is my primary aim. Secondly I wish to further equality between men and women in social economic and cultural spheres. Only then can a society grow. There are over 40,000 female headed households. Many of them are still suffering psychologically due to their losses. There is a need to build their economic independence. There is also a need to integrate affected women with



the rest of society. There is a need for society's acceptance and support of former women cadres and women who have lost their husbands. There is a need for us to ensure their protection and development."

Mrs. Ananthi Sasitharan who is standing under the TNA banner states that "there are several reasons I am standing for elections. I wish to ensure justice for the families whose loved ones surrendered to the government and have now gone missing; I also wish to ensure speedy trials and release of several Tamil political prisoners who have been languishing in detention centers for several years. I want to take steps to ensure that violence against women and young girls is prevented and that women should be able to live their life with dignity and enjoy the rights provided to us. This is why I am standing for elections. I also hope through this opportunity I will be able to raise the issues we have faced as a minority community at the national level and find solutions for the same. And in instances where solutions for our problems cannot be found locally I wish to take them to the international community. My victory in this election will provide me the space to do these things. Even though the powers of the provincial council have been diluted it is important for us to show the world our victory in these elections as several women have come forward to ensure that women's rights are in the forefront of this post war phase. Women are choosing the democratic method to win their rights. However yet again women are given very few spaces to stand in these elections.

In the current context women are the primary income earners in the family. Poverty has been imposed on women through several actions. Women's opinions are not being counted in developmental activities and women have faced several disadvantages and detrimental outcomes due to these developmental measures. Due to poverty women are forced to work in sectors that are unsafe, have no minimum/equal wage or job security and have no legal protection. Development is used as to



A woman supporter of Gnanasakthi Sritharan pasting posters in Koovil, Jaffna District ~ Picture by Dushiyanthini Kanagasabapathipillai ~ via flickr/PassionParade

ploy to appropriate women's resources such as land, water, jungles and other natural resources. Due to this teenage pregnancy, child marriages, rape and sexual abuse, poverty induced sex work, unequal treatment and abuse of women, economic dependence have risen.

Women have shown that when in positions of power they have taken decisions wisely and shy away from corrupt practices and have provided solutions for many problems faced by society. To date women have supported the victory of men in elections. It is important that men too support women to win the upcoming elections, as women bring their experiences and struggles and have the potential to lay the groundwork for a vibrant and healthy democracy.

There have been few reported acts of violence against women candidates at this election and we condemn these acts while saluting the bravery of these women candidates, wishing for their victory and looking forward to their entry into the Northern Provincial Council.

Women's Action Network is a collective of eight women's groups in the North and East of Sri Lanka.

Article source: Groundviews.lk



Photo source: Author Twitter account

NO STARTING POINT TO RESOLUTION

BY KUMARAVADIVEL GURUPARAN

The Northern Provincial Council (NPC) election is expected to take place later this year. Colombo is entertaining hopes that holding the elections will help win India's support in multilateral venues. New Delhi has made the 13th Amendment to the Sri Lankan Constitution – a by-product of the 1987 Indo-Lanka Accord – the centrepiece of a political solution.

The Indo-Lanka Accord purportedly addresses the Tamil issue but most importantly for India, also contains important provisions on security-related matters between the two States. Safeguarding the 13th Amendment in some form is important to keep the Indo-Lanka Accord alive. The Sri Lankan Government has been playing the 'China card' to lessen pressure from India. New Delhi returned the favour by its qualified support to the two US-sponsored resolutions on Sri Lanka at the UN Human Rights Council (UNHRC) in March 2012 and March 2013.

SHOW OF NATIONALISM

President Mahinda Rajapaksa would have liked to amend the 13th Amendment before the NPC election, but has no option but to leave it untouched, thanks to pressure exerted by India. Nonetheless, India's breathing down Colombo's neck is allowing for a more strident expression of Sinhala

Buddhist nationalism to take hold. As the calls for the 13th Amendment to be repealed or amended into nothing grow, President Rajapaksa's stance appears increasingly duplicitous – silently encouraging the anti-13th Amendment hysteria, while distancing himself from it to appear presentable to India and the West. For now, he seems to have shelved plans to dilute the 13th Amendment.

Nevertheless, as Minister for Economic Development, Basil Rajapaksa's recent interview to *The Hindu* ('Cannot risk a parallel Army in North: Basil', 19 July 2013) confirms, Colombo has not given up totally on this goal – presumably, the 13th Amendment will be watered down after the NPC election. Given the state of the judiciary in Sri Lanka, following the impeachment of the Chief Justice of the Supreme Court in January 2013, as well as the two-thirds majority Rajapaksa enjoys in Parliament, there seems to be no significant challenge to passing these amendments post elections. While some left leaning parties in Rajapaksa's coalition and the Sri Lanka Muslim Congress (SLMC) have asserted that they will not support any such move, these critics have previously proved themselves to be politically amenable. For India, the NPC election being held without any amendments to the 13th Amendment will



suffice.

The Tamil people have been reduced to mere spectators in this powwow between the two governments. No one has asked the Tamil people what they stand to gain by holding the Northern Provincial Council election or more widely, with the 13th Amendment.

TAMIL CONCERNS

The 13th Amendment is no starting point to a political solution. It sits within a highly inflexible unitary State framework. The Governor of the Province, a Presidential appointee, must consent to any Bill that has financial consequences and can delay legislation brought before the provincial council under the pretext of unconstitutionality. He/she has plenary powers (appointment, dismissal and transfer powers) over the Provincial Public Service. State land alienation, prime among Tamil concerns, continues to be vested almost exclusively with the President. Most policing

powers remain retained for the National Police. Meanwhile, appointments to the Provincial Police Service will be strictly controlled by the Central Government.

Even the appointment of the Deputy Inspector General of Police of the Province – in the eventuality that the Chief Minister and the IGP fail to reach a consensus – becomes a matter for the President. Crucially, issues relating to the developmental and livelihood needs of the Tamil people are not ‘devolved’ to the Provincial Councils. For example, ‘planning’ is mentioned in

the Provincial Council list but is also a subject in the concurrent list. The concurrent list incorporates all that is crucial for the immediate reconstruction of the livelihood of the war-affected population, including fisheries, agriculture, social services, and employment planning at the

provincial level. On top of all this, there is the unconstitutional, illegal Presidential Task Force, which has to approve every single developmental programme carried out in the North. As it is, the 13th Amendment has been further weakened by successive governments through unilateral Central Government legislation and executive fiat.

Up to the end of the armed conflict, Tamils have consistently rejected the 13th Amendment – not only the LTTE, but also the Tamil United Liberation Front (TULF) which had initially been engaged in a dialogue with Prime Minister Rajiv Gandhi regarding its contents. Poignantly, at that time, the TULF asserted that Sri Lanka

did not show the final version of the 13th Amendment to India before it was presented to Parliament.

PART OF THE TRIO

Current Leader of the Tamil National Alliance (TNA), R. Sampanthan, was part of the trio who represented the TULF, in the TULF-Rajiv Gandhi talks.

The TNA is under pressure from India to accept a solution based on the 13th Amendment, and does not want to be seen as rejecting something that President

The Tamil people have been reduced to mere spectators in this powwow between the two governments. No one has asked them what they stand to gain by holding the Northern Provincial Council election or more widely, with the 13th Amendment.



Photo source: npc.gov.lk

Northern Province Governor meeting with the NPC

Rajapaksa is reluctant to offer. As a result, Tamil representatives are engaged in a futile battle with those who call for it to be repealed, to save whatever little is left in the 13th Amendment. It is a wholly nonsensical debate: Those who want to repeal the 13th Amendment argue, quite misleadingly, that it significantly devolves land and police powers to the provinces. They also call for Parliament to be stripped of its powers to enable a merger of the North and Eastern Provinces – when even the main Opposition Party (the United National Party) is against such a move. Just as misleading are attempts by those campaigning for the 13th Amendment, including India and the TNA, to convey to the Tamil people that it is a good starting point to a political solution.

What then is the future of the 13th Amendment? The more prudent sections of the Sri Lankan Government are likely to prevail and the amendment, in some form or the other, will be retained. However, it is probable that the Government after the Northern Provincial Council election may try to remove the symbolic references in the 13th Amendment that create the impression of granting land and police powers to the province; and make a merger of the North and East a legal impossibility. India may object to such measures: but in the midst of all this hysteria, any attempt towards finding a genuine political solution will be lost.

(Kumaravadivel Guruparan is a lecturer in law at the University of Jaffna. This article was originally published in "The Hindu")



RADICAL UNP AND ITS NEW CONSTITUTIONAL PROPOSALS: A RADICAL FARCE?

BY KALANA SENARATNE



Photo source: www.colombotelegraph.com

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When regimes are dictatorial and dangerous, alternative forces which promise a better society and future do tend to be taken seriously by the people.

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When regimes are dictatorial and dangerous, alternative forces which promise a better society and future do tend to be taken seriously by the people. This, quite simply, is because the future promised by such alternative forces tends to be better than the present. But one thing many people can't do about the present UNP is to take it seriously. The UNP's new constitutional proposals/principles – which it claims will shape and form the new constitution it hopes to place before the people once elected to power – tell us why this is the case (see, 'UNP draft proposal for new constitution', *The Island*, 30 May 2013). Apart from a few grand promises, the UNP's guiding constitutional principles are generally known to the people and can be easily found, stated in different words, in the 1978 Constitution.

The new set of constitutional principles and proposals needs to be viewed in the context of the grand promise of radical transformation of party and polity which the UNP started making sometime ago; a 'radical change' (see "UNP's

'radical change' before Exec. Comm", *Sri Lanka Mirror*, 12 Oct 2012). What transpired on further inspection was that the UNP's promise of radicalism was firstly to keep Mr. Ranil Wickremasinghe as its leader. This 'radicalism' was followed by Mr. Sajith Premadasa's own brand of radicalism when he recently admitted (on the *Derana 360* programme) that his attempt to oust Mr. Wickremasinghe may have been a bit premature.

So it is this 'radical' UNP that now comes up with a document promising a more democratic country. But even before you proceed to the end of the Preamble of the document, it begins to appear why the grand promise of the UNP amounts to yet another grand farce.

For example, the UNP begins by stating that: "During the last several years under Mahinda Rajapaksa's regime, the office of Executive President has been completely desecrated, by destroying all the checks and balances that were built into the system." The UNP also states that the "dignity and integrity of that office has been



Ranil presenting the Republican Constitution proposal, May 2013

reduced to a despicable state...”

While it is true that the incumbent has done much to desecrate the office of Executive President (and much more), what is alarming here is the implication of the statement: i.e. the UNP believes that the Executive Presidential system that the UNP introduced was actually one which had a lot of checks and balances. In other words, the UNP’s alleged radical programme begins by justifying the 1978 Constitution as well as the Executive Presidential system in particular, which it promises (somewhat dubiously) to abolish. It constructs the idea that there was a ‘pure’ form of Executive Presidency and a ‘pure’ 1978 Constitution which the Rajapaksa-regime has now desecrated. This is reason enough to make anyone cynical about the UNP’s promise of abolishing the Executive Presidency or

radically changing the current constitutional framework. So the UNP begins its discourse by glorifying the very thing that it seeks to reform/abolish. And the internal contradiction becomes clear. And furthermore, what was that statement made recently by the likes of Mr. Wijedasa Rajapaksa that the Executive Presidency will not be abolished but be reformed? (see ‘Video: UNP says no abolishing of Executive Presidency’, Daily Mirror, 16 May 2013).

Apart from such total confusion, it is also to be noted that any call for the abolition of the Executive Presidency, has to be accompanied by a serious and radical transformation of a number of fundamental principles and policies underlying the current constitution. The abolition of the Executive Presidency will not mean much, and cannot take place, without a more meaningful

and palpable restructuring of the State and its policies towards religion, devolution, etc. Without such changes, there will only be symbolic changes, a different set of words and phrases to explain the post of ‘Executive President’.

That the UNP is nowhere near of promising such a radical transformation becomes very clear when one observes its principles concerning ‘Restoration of the People’s Sovereignty’ and ‘Devolution of Powers’.

So, for example, the UNP states that: “Buddhism will be given the foremost place while assuring the rights of all other religions in compliance with the International Covenant on Civil and Political Rights (ICCPR).” But what’s the difference between this promise and the current constitutional provision on Buddhism (Article 9 of the current Consti-



tution)? The only difference is the deceiving and perhaps meaningless reference to the ICCPR. Not that the ICCPR is meaningless, but inserting reference to the ICCPR is meaningless if you are still going to give 'foremost place' to Buddhism.

The UNP cannot explain why Buddhism should be given the foremost place if all other religions are also to be accorded non-discriminatory status as per the provisions of the ICCPR. To do so, it will have to adopt the line of the Sinhala-Buddhist nationalists. But the moment it does so, the relevance of UNP's 'radical' alternative becomes useless. For the people, it would be far better to stick to the current regime and its Sinhala-Buddhist nationalist groups who would do the same job for them.

So too is the case about the UNP's principles on devolution of powers. When the UNP said it is going to be radical about such matters, one thought whether its plan was to perhaps discuss a political solution on the lines of extensive devolution or perhaps some form of a policy akin to that advocated by the likes of Mr. S. Kajendren of the TNPF (i.e. 'two nations, one country'). Not in a hundred years, the UNP says. What the UNP is promising is as unclear as the promise made by the present regime. For example, the UNP states that the country shall be a "unitary state" (but then, we have Article 2 of the current Constitution which sets that out in very clear and unambiguous terms). And this, to be sure, will not take you any further than the 13th Amend-

ment under current circumstances. If then, what's so different between the UNP and what's being promised by the current regime (or the present Constitution)?

And in yet another meaningless fashion, the UNP promises that in this regard, it will take into consideration a number of documents such as the Rajapaksa-Ban Ki Moon joint communiqué, the UNHRC resolutions on Sri Lanka and the LLRC report. Also promised is the taking into consideration of the Tissa Vitarana Report and the papers exchanged between the SLFP and the TNA. The UNP also states that it will take into consideration President Rajapaksa's speech of May 2009!

At best, what these documents promise you is the 13th Amendment. But if 13th Amendment is what can be promised, why not stick to the present Constitution and the present regime. Furthermore, there's nothing clearly stated about devolution in a number of these documents except for the promise to implement the 13th Amendment. The UNP does not make clear whether its version of implementing provincial-level devolution includes the devolution of land and police powers, for example. Obviously it cannot do so, given that it was only recently that the UNP stated that it is open to change on devolution (see 'UNP is open to change on devolution', Daily Mirror, 22 May 2013). And it was stressed therein that the UNP would even think of constructing a new mechanism based on the will of the people. What that is going to be, if opinion polls are to considered

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somewhat accurate, tells us that the best one could expect from the UNP is either the 13th Amendment (sans land/police powers) or the reversion to a different model, perhaps district-level devolution. So there's no meaningful difference between this UNP and the current regime.

Also, one of the contentious issues concerning the 13th Amendment is the fact that the Governor is appointed directly by the President, and has significant powers which negate the essence and relevance of devolution and autonomy at the periphery. One of the proposals of the UNP is to abolish the post of Governor and then give all those powers to the Head of State. So the UNP pretends to address the problem and then re-introduces it in a different form. And it's unclear how the rest of the proposed provisions on devolution can be meaningful when all that has happened is simply a change of heads (from Governor to Head of State).

Given that the UNP's policies on some of the most contentious issues affecting the country are similar to those of the present regime, it is questionable how useful the rest of the constitutional principles (on the judiciary, independent institutions, etc) would be. Also, promising people that they will have rights such as a "right to good administration" is practically questionable given the absence of 'good administrators'.

In a sense, it does seem that the UNP is stuck between the

Sinhala-Buddhist community (which it has to please) and the international community (which it attempts to please by referring to the ICCPR, the Latimer House Principles, the Rajapaksa-Moon communiqué, the LLRC report, the UNHRC resolutions, etc., in its proposals). Ultimately, it knows that the former will be the deciding force; hence the need to affirm the unitary character of the State, the need to give Buddhism its foremost place, the need to be extremely vague about devolution, the need to show that it's confused about the Executive Presidency, etc. This is why the people will ultimately decide that rather than going with the confused and deceiving pseudo-Sinhala Buddhist nationalists, it's better to go with the real thing: the Rajapaksa regime and the whole BBS/Sinhala Ravaya jingbang.

In short, the UNP claims that it's promising a radical future. What it seems to be promising rather is a radical farce. The UNP shows no meaningful hope in terms of radically changing the current political and constitutional framework governing the country. In fact, it seems to be mimicking the Rajapaksa-regime. What is necessary, it seems, is not a new leader for the UNP. What is required is an entirely different political formation; one which treats the UNP, not as an alternative force but as part of the current regime – for that's what the UNP actually is.

[Editors note: This is an expanded version of an article that first appeared elsewhere on the web.]

Article source: *Groundviews.lk*

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THE 13TH AMENDMENT AND EASTERN MUSLIMS

MOHAMED FASLAN

This article focuses on Muslim provincial council politics in a context where issues related to the 13th amendment, powers of provincial councils, and elections to these, are being heatedly debated again in Sri Lankan politics. As far as provincial councils are concerned, Muslims do not have an influential role except in the Eastern Provincial Council. There is no single Muslim minister in any provincial council other than the Eastern Provincial Council. Therefore it is undeniable that any discourse regarding Muslim provincial council politics essentially should concentrate on the Eastern province.

The 13th amendment to the constitution was brought about by a Sri Lanka – India pact on July 29th 1987. Ensuring political rights for minorities in the North and East was the main objective of the amendment, under which the provincial council system was established. It was agreed, according to the pact, to establish a provincial council system, to merge provinces, to hold elections to the councils, to conduct a referendum in eastern province, and to implement an official language policy. Muslims are the second minority in Sri Lanka and they comprise 9% of the total population. Their proportion out of the total population in the eastern province is 32%. Since 1988, Muslim politics was centered in the Eastern province; in particular, the unique space created under the leadership of Ashraf stemmed from there.

Elections were held for the merged Northern and Eastern Provinces in 1988 and Muslims, who were previously the majority with 33% of the total population, became politically helpless soon after the merging of North and East. Afterwards,

occasional clashes between Muslims and Tamils, and the inactivity of the Indian military to defuse the situation collectively increased Muslims' disappointment in the system.

As far as Muslims are concerned, though they were not keen on devolution of power, and the provincial council system was initially a big disappointment for them. Then President J.R. Jayawardhana's executive power was a cause for concern for Muslims, who expected to transform the Eastern province into a main political platform for their politics. In a nutshell, elections for the merged Northern and Eastern provinces eliminated the aspirations of the Tamil and Muslim minorities. The Liberation Tigers of Tamil Eelam (LTTE) too opposed this election. Only people who were sponsored by the Indian military and representatives of J.R. Jayawardhana's government were appointed in the North - East province.

The inception of the provincial council system itself was a disappointment for Muslims, and the system did not effectively function in the North and East due to the conflict. However, the merged North - East provincial council system was in existence until 2006 despite the objection of the Muslims. In 2006, the North and East provinces were de-merged separately in compliance with a decree by the Supreme Court.

In the following election to the Eastern Province in 2008, the United People Freedom Alliance (UPFA) won the election, with 52% of the votes. Sivenesathurai Chandirakanthan alias Pillayan, who was a former rebel of the Liberation Tigers of Tamil Eelam (LTTE) took office as the chief minister. The Sri Lanka Muslim Congress



(SLMC), which contested with the United National Party (UNP) could not win in this election and also the dream of Hisbullah, who contested under UPFA, to become a chief minister did not prosper. As a result, Muslims were disappointed for the second time in the provincial council system.

In the second election to the Eastern Province in 2012 the SLMC jointly formed the government with its 7 seats and the 14 seats won by UPFA. For the first time a Muslim was appointed as the chief minister to the Eastern Provincial Council. The SLMC contested in this election with an objective to appoint a Muslim as a chief minister. However, Muslims were again disappointed when the SLMC joined the UPFA to form the government, securing Muslim votes after campaigning against the government on its activities and approaches to the Dambulla Mosque and Halal issues, also atrocities against Muslims by Bodhu Bala Sena. Though the Tamil National Alliance (TNA) secured 11 seats, they did not have enough power to form a government. However it was criticized that the SLMC misused an opportunity - that was created by the outcome of the election - to form a government by minorities and that this was another example of SLMC's self-gaining politics to save ministerial posts and other benefits.

Now Muslims have been given ministerial posts and as a result, the benefits of developmental activities have reached Muslim areas as well. Nevertheless, the powers of the governor of the Eastern Provincial Council cannot be underestimated as he remains as a one who executes presidential powers directly within the province. This is why the Chief Minister of the council recently insisted on more powers to the council.

Once again, discussions are on increase about the 13th amendment, where elections have been announced to the Northern Province. The government is of the opinion that the powers related to police, land and merging provinces, given under the 13th amendment, should be either reduced or controlled. The hard line Sinhala extremist parties expect that these powers should not go to Tamil minorities, if the TNA were to win in the Northern Provincial Council Election. A parliamentary select committee to discuss proposals to amend the 13th amendment also has been appointed. However,



representatives from SLMC were not included to the committee as they oppose the proposed amendments.

Eastern Muslims and the SLMC have never demanded a similar devolution system that Tamils continue to demand but their demand was, during the peace talks with LTTE, to provide powers to them as well if powers are to be devolved to Tamils. They did not demand for a separate power devolution system. This demand by Muslims may be seen as a consequence of the bitter experiences caused by liberation to them in the 1990s.

The stand taken by the Muslim Congress, for the first time, to oppose the move by the government to reduce the powers of provincial councils should be welcomed as far as minorities are concerned in Sri Lanka. Nonetheless, it cannot be compared to the struggle by Tamils for the devolution of powers, as this stand by the SLMC is with the objective to sustain the political and economical benefits enjoyed by the Eastern Muslims. Tamils' struggle to devolve the power is a psychological need which cannot be solved easily but the struggle for the same by Muslims is a material need which can be solved by providing some economical benefits. The SLMC and some Muslim politicians who usually withdraw their opposition for posts and benefits is a clear example which explains the above situation.

Within the provincial council system established by the 13th amendment, particularly in the Eastern Provincial Council, Muslims have started to enjoy the power only since 2012. Therefore, it is not a surprise that the SLMC, which is based in the East, opposes the move to reduce the powers of provincial councils.

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INTERVIEW WITH CHANDRIKA BANDARANAYAKE KUMARATUNGA

BY LIONEL GURUGE

(Based on a translation of the original interview in Sinhala)

Q: The thirteenth amendment to the Constitution transformed the existing unitary framework of the state to a broader arrangement of devolution of power. Whatever the opinion of the people, at that time both you and Vijaya Kumaratunga were in favour of this. what is your opinion now?

In order to maintain the unitary status of this country, the peace between all ethnic groups and minority communities can be strengthened by the 13th amendment, which is absolutely necessary. Even minorities in other countries have asked for a different form of government, if they, for whatever reason, are not treated as well as others. In some countries, a broader devolution of power (federalism) has been demanded. In some forms of power devolution, either by a amendment to the constitution or by a less powerful distribution of power, the problem has been

solved satisfactorily. I can give any number of examples in the world including India.

As soon as India gained independence, if a federal government had not been established and power had not been given to the communities in those regions, by now India would be divided. I think that the 13th amendment is a satisfactory solution to maintain the unity and the unitary status of this country by not allowing it to be divided into two states.

The policy of “let us distribute power and not divide the country” (*lit “balaya beda rata no bedamu”*) during the time of my presidency, is still relevant. People who did not understand this policy protested loudly. How many of these laymen and non laymen have been to university? I am not saying that going to a university is such a great thing (but) people who have had a higher education can read and understand. This is relevant to some of the leaders of this country. I see this as a ploy for some to remain in power, in order to gain political advantage and to rouse the

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The army personnel said “Madam, they are terrorists.” I said even if they are terrorists they are my citizens.

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population, at times when they (the people) are dissatisfied with the current regime.

If Sri Lanka adopted a federal constitution like India, this situation would change. There is no need to distribute a very wide range of power. I think that the least that a government with a political vision should do, is to adopt the 13th amendment.

During the time I was president, the devolution package and power sharing was proposed. At that time there was a war in the country - I did not need to go crazy making new amendments at such a time.

In 1994 when I came into power, there were five districts in the north under the rule of the Liberation Tigers of Tamil Eelam (LTTE) Prabhakaran was seated in the Jaffna Kachcheri, giving orders to all the officers like a king. The government had control only in 5 or 6 army camps - Palali, Kankesanthurai, Mullaitivu, Silawathura, Vavunia, and Mannar were the limits of the army camps. Our soldiers who were in Palali, could not drink the water as it was brackish. When they needed water they had to call Prabhakaran and get his permission to go to a well outside. Only with his permission could they venture outside Palali!

We saw this, which is why we are saying this. Vijaya, who was in the Mahajana Party reported this to us. He stayed two days in that camp. So the entire North was relieved of this problem; during my rule

75% of the LTTE controlled areas were freed.

When we came, the LTTE said that the problem could be solved by the devolution of power. Eight months after this discussion, Prabhakaran kicked the whole decision and left without any reason. Next, the war started. I said if it is war, it is war, peace if it is peace. We too fought the war.

Eight months after he commenced the war, we had the entire Jaffna Peninsula liberated. I did not achieve this alone - my deputy minister Anuruddha Ratwatta and the army commanders at the time carried out a great service. At the time, all the soldiers contributed to and worked according to the plan.

I found the money (for this effort), I curbed crime and thefts as much as possible, and finally, when I handed over the government to Mahinda Rajapakse there was only 25% of the North to be recovered.

They (the LTTE) had only Mullaitivu and the area around Kilinochchi. Many people have asked me why I was unable to forcibly go and take the rest, the way they did. If we had taken the remaining 25% what happened now would have happened then - still many are questioning the actual happenings of the last phase of the war and disputing that two or three lakhs of innocent people would have been killed because of the heinous act Prabhakaran did.



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After the Tsunami, when the LTTE were helpless, they went everywhere in the world, trying to find donations, asking for funds to be given directly to them. In every country, they were reminded that this was not necessary and Chandrika's government was requesting them to come and settle the war
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In Jaffna at the time we chased the LTTE, about five lakhs of people in the Jaffna peninsular were forcibly taken away at gun point by Prabhakaran. That was a guerrilla tactic - the belief was that when they were surrounded by civilians, the Sri Lankan army would not be able to approach and kill them. It was my plan to get them back to Jaffna before they go to stay in Mullaitivu. I could not allow them to stay near Prabhakaran. The army personnel said *"Madam, they are terrorists."* I said *"even if they are terrorists they are my citizens."* My aim was to convert terrorists into good citizens. Therefore Prabhakaran had to be singled out and something had to be done. We knew that we could not save him, he was a terrorist to the core, he would never change. In order to corner Prabhakaran, these people had to be taken away - they were mostly ordinary civilians - Prabhakaran had forcefully used them - they were not terrorists.

Somehow I sent them very powerful loudspeakers called "loud hedges". The people had faith in the army, yet some sections did not approve. These loudspeakers were given to trusted army personnel at the borders - they stayed in Kilinochchi and Mullaitivu in the jungles with nowhere to go and no place to sleep other than on tree tops. Announcements were made to the extent possible and leaflets were dropped by air. *"Come back, we wont harm any of you. We would only check for weapons, we didn't want anything"*

We couldn't ask for ID cards at that time, the way they were asking - how could we ask for ID cards from refugees who had run away?

Out of five lakhs of people, around three and a half lakhs had returned. We settled them gradually. Many went back to their own homes. During our attempt to capture Jaffna, many homes had been destroyed. It did not take three years for us to build them like it has now. I gave them money immediately, we also received a great deal of international aid - we gave funds to them to rebuild their homes - we were experiencing shortages of materials - whatever cement we had, we shipped it there.

Somehow Prabhakaran forcibly detained about one and a half lakhs of people - among them some stayed willingly. These one and a half lakhs of people are the ones who lived surrounding the luxurious bunkers in which Prabhakaran and the LTTE commandos hid. Surrounding these were two or three circles of civilians, living in houses.

In order to capture the LTTE leaders, all of these people would have to be killed. To prevent this loss of life, I dispatched the (Catholic) bishops, continuously asking them to come for negotiations (they had good relations with them,) but they did not come.

Later on, Norway sent international negotiators. During Ranil Wickremasinghe's time, a settlement of sorts was reached. When my government was in power, an

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Isn't it reasonable for the Tamil people in the North and East to be afraid when Sinhalese people attack them, burn their houses, dismember and kill them?

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Chandrika Kumaratunga

agreement was signed. I believe this was the best agreement signed by the LTTE with the Sri Lankan government. It was a forward looking agreement. If it had been allowed to become reality, we could have solved the problem to a great extent.

After the Tsunami, when the LTTE were helpless, they went everywhere in the world, trying to find donations, asking them to be given directly to them. In every country, they were reminded that this was not necessary and Chandrika's government was requesting them to come and settle the war – in effect: *“Stop the war and we will give the government funds, it can be taken from there.”*

At that time, they arrived at a good decision and without our asking, the LTTE came to us and requested a discussion

and stated that they were willing to work with us. Let us rebuild this again.

After that, in my Peace Secretariat, Dr Jayantha Dhanapala and others discussed this with Pulidevan and others sent by Prabhakaran, and we signed an agreement. For the first time, the LTTE accepted the government of Sri Lanka. Until then they had considered it as the Colombo government and North government. For the first time they also joined the Sri Lankan government and sat in committees and agreed to accept their policies on reconstruction and redevelopment.

What happened next is that Mahinda Rajapakse struck up a secret pact with Sarath Silva, the then Chief Justice - he told the CJ he wanted to defeat the LTTE, he issued that Supreme

Court decision. Three months later he issued the other decree. Actually he did not completely discard the relief mechanism- yet he set aside its most important components, saying they were against the law. The LTTE then said that (that accord) was of no use to them.

I told them not to worry about them - due to the executive power I cannot be jailed. I will sign all proposals as if the disregarded portions are still valid, and we will be able to act accordingly. Let us carry it out. I told him to believe in me. The LTTE did not say anything - they just waited. Then I was told to go home. From that moment everything was over. It can be said that Sarath Silva caused that.

Now they are voluble about the 13th Amendment. I think that you should have got some clear



answers to your questions. The 13th Amendment will definitely not cause division of the country into two.

A country that is going to be divided can be united again. The Tamil population say a great injustice has been done to them - some people ask what is the injustice done - injustice has been done. I have worked in the public service. They will swear at me in filth, and it is not impossible to throw a bomb at me, but I have to speak the truth. I have been in public service for 5 years in the Agricultural Ministry in the Land Reform Commission in 1972.

In the Land Reform Commission, nearly 500 people were working - not a single Tamil person worked there. Later when my department was in need of an accountant, we chose the most suitable person after several interviews (he had worked in the parliament also). Then my chief officers rushed over and asked me: “*Madam, why have you chosen a Tamil person?*” (In 1973) there had been no Tamil problem, by then all government officers had the same problem. After that I began to make inquiries about the question.

I employed a person who had the suitable qualifications I needed. By then I was a Marxist. With my Marxist ideas I began to pry into government departments. Only a few Tamil people worked in these departments.

Q: The Secretary of Defence and other parties proclaimed that giving

Provincial Councils police and land powers would cause considerable problems. Is there any truth in that?

The Secretary of Defence has not made any inquiries about this. Possibly, it is only recently that he heard about power sharing. There is no need to name others. Many educated ministers of the government had answered this, saying that it is not so. I think so too. There were so many newspaper articles about it. It was the government that also made some people scold those people.

It is not right to hit the south, saying that police powers were given - the police are only given the problems under their jurisdiction.

When a Provincial Council is established, they appoint a DIG to handle issues in the region. But the overall control of the Police is by the Centrally appointed Inspector General of Police (IGP) He becomes in effect the head, in charge of the North, and the police. It is the I.G.P. who takes complete responsibility – so how can it be said, that they (the Provincial Council) are doing anything they want?

We will look at this practically – since such a thing has happened in Sri Lanka, it’s the LTTE who became a threat when such a thing is being done. The LTTE did not take over the Sri Lankan army, they gathered another army and hit. It is true we have to be careful; however nobody from the police or army went to join

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In truth the Provincial Councils were brought under the 13th Amendment, in order to solve the problem in the North and East.

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them like they do in other countries. In Syria for example, large numbers of police and army personnel joined the rebels. Such a thing never happened in Sri Lanka.

Isn't it reasonable for the Tamil people in the North and East to be afraid when Sinhalese people attack them, burn their houses, dismember and kill them? In spite of the prevailing peace, some members of the security forces rape Tamil widows. About one year after the war was over, a large number of 13, 14, and 15 year old girls were found to be pregnant. Is it reasonable to put some of our own people to the police force to prevent such crimes from happening? It is under the D.I.G's command that these cases can be investigated. Also these people want to catch the previous LTTE people - this should be done carefully.

There is control from the moment these people are taken on. Also the army personnel are everywhere in the North. In truth the police is a force only concerned with civil matters.

During the time of my government, Minister Ratwatta argued with me that the police should be involved in the war. For several years I refused this, and I agreed to finally accept it. Later on, unprecedented levels of corruption began to occur in the police. Therefore we cannot take as an example what happened in the past. The Sri Lankan army was not present in the north when the LTTE started to collect cadre

and amass an army that went on to prepare for a massive war. Therefore they had the freedom to collect and train cadre. Only a few police stations were present in the North, with 4 or 5 police officers - they were not given sufficient arms.

Now when military camps are present everywhere, equipped with the most sophisticated weapons in the world (mostly what I supplied), how can they use police power, even if it is given to them? Even if people say no, I challenge you! Am I to say that 83 Black July did not happen? That in 1958 people were not attacked? That even after the war ended, the Tamil civilians who were captured did not have problems from this government? Then, is it not reasonable for them to say that they needed a police force under their democratically elected provincial councils, parliamentary officials, at least those who will protect them and not harm them? But the police force has to be controlled. If President Mahinda Rajapakse wants, I can give him a plan of how this can be done.

Q: There is an accusation that during the ten years of your stay, you did not give the necessary powers (Land and Police powers) to strengthen the provincial councils. Please explain.

The main reason for that is the provincial council system was brought about without the Sinhalese people even asking for it. Now the extremist groups like the Bodu Bala Sena(BBS) and Jathika Hela Urumaya,(JHU) and a few extremists in the Sri Lanka



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Our country is supposed to be a democracy according to the constitution but that democracy is not implemented. There are white vans, threats, and murders.

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Freedom Party (SLFP) say it was forcefully brought up, without the Sinhala people asking for it. Therefore they want to completely abolish the provincial councils. Even Min. Wimal Weerawansa says so - there is a certain truth in it - without the Sinhalese people even asking, it has been given to the whole country. After this, the bad thing President J. R. Jayawardene did was to not give a cent to the originally formed North and East Provincial councils, thereby making them redundant.

After that, Prabhakaran did the remaining things to destroy them. In truth the Provincial Councils were set up under the 13th Amendment, in order to solve the problem in the North and East. If this was done, it would have been best to do the same to the other regions also. It was generally accepted that in that case power sharing was a good thing.

Without the North and East Provincial Councils, my government deceitfully giving all powers to the other areas but nothing to the North and East, is not reasonable. That's the main reason. This is why I said that someday when the North and East war is over, we will devolve power by some means; it has to be given to everyone somehow. Without this happening in the necessary PCs, giving others such powers is no use.

The most important thing in Provincial Councils is statutes which devolve power and promote a culture supportive of devolution. In the case of statute formulation the Wayamba PC is ahead of the

other regions, then the tasking of taking a democratically obtained development to reach the citizens of those regions.

But Provincial Councils have many more powers to be implemented. They did a lot of work in Education and Health.

I have something else to say: the system of national education was started by the UNP. The ministers in the Central government are constantly asking for more powers to be given to the Health and Education ministers. The cabinet worked to get schools and hospitals under the Provincial Councils, to be nationalised. I rejected this. I didn't legalise the taking over of things, not under the Central government by the Provincial Councils

Q: In Sri Lanka as a primary form of power devolution, they are attempting to hold elections, instead of giving power to the existing Provincial Councils. We are coming close to being ostracised by India and neighbouring countries. Madam, what kind of reconciliation do you recommend?

Personally I don't see any other solution. The present government need their brains cleared. With a clear mind, realising the seed of this problem and evaluating it, they need to work on giving some rights to the minority Tamil and Muslim people, for governing their own interests, under the control of the Central government.

If what I said earlier is solved, this also would be solved automatically. Some Tamil sections of people in India have brotherly connections with Tamil people in Sri Lanka. They ask that Tamil people here be given their rights back at least now. If the Sri Lanka government gives power to Tamil people here, the animosity with the Tamil people in India will be cleared. The Indian government is asking why the 13th Amendment can't be implemented.

Q. The LLRC report has said that in order to strengthen this 13th amendment, there should be more devolution of power. Next the independent commissions brought by the constitution should be strengthened and brought back again. The recommendations of the LLRC which was formulated after the war, have not been implemented. What are your views regarding this?

This question has to be posed to President Mahinda Rajapakse. It is he who formed the commission. It was not formed as a joke - it should be implemented, as it was formed, wasting the money of the public, wasn't it? The president should be aware that it should be implemented.

Q. In your opinion, by abolishing the 17th Amendment to the Constitution and establishing the 18th Amendment, how practical are the powers in the 13th Amendment?



I am saying that the 17th Amendment should also be given. The 18th should be abolished. I am the one who brought about the 17th Amendment. I didn't keep on appointing sham committees like these people did. This is what we brought about by asking the people to share ideas, and evaluating them thoroughly.

Q. So do you think that we can achieve positive results by keeping the 13th Amendment and 17th Amendment parallel?

This is absolutely right - it will happen so.

Q. Madam, do you think the present political parties in Sri Lanka are democratic? Is the SLFP a democratic party?

Yes, the SLFP was democratic until recently. I have said so in public speeches. In a free Sri Lanka, the most democratic party was and still is the SLFP. On principal never killing people (for our advantage.) The United National Party (UNP) government killed Tamil people. We have never done this. The two Marxist parties also didn't do this. In communist countries during certain times, such things have happened, but it didn't happen in our country. The LTTE has murdered people.

Within our party, officials were always appointed democratically. I, my mother and father have been lead characters for over 62 years. Those days according to the constitution, chairmen were

selected every 2 or 3 years. In the present party, that democracy is in name only. They hold elections fraudulently, and threaten people. Now, democracy is by name only, in the constitution of the party, and they don't allow it to be implemented.



Our country is supposed to be a democracy according to the constitution but that democracy is not implemented. There are white vans, threats, and murders. Also there are issues within the party. The moment he came to power, the president had told all the ministers to take care not to talk to me. Now people run away in fear when they see me. But when they speak to me confidentially, they are summoned and scolded. An example is Mangala Samaraweera.

The constituents committees are made of all party members in a village. In the committees it is the person one likes who becomes the candidate. Now

in both these governments, instead of choosing from bottom to top, the person who suits the party leader is chosen as party organiser. In this case, internal democracy (the right for people in the party to choose their representative has been lost for both parties. If there was a democratic structure it would have been more successful, wouldn't it? The structure is available legally in the SLFP. During the 62 years that we were the chairman in our party, we did not force anything.

If the extreme majority of village wise committee, some organisers joined their seats. They called everybody and controlled them? During the time I was chairperson of the party, the officers of party branches were elected democratically. If democracy was strong, there is no such thing as being unable to tell the party chairman anything. The party chairman has democratic rights to appear in the place of someone else. Both parties had rights. The population will elect the best person (until June 1996 the constitution of the party was that.)

If there were to be a democratic culture there would have been a solution to this problem, to a large extent. This problem is not only in Sri Lanka but in India also. In truth, this method should be expanded.

(Based on a translation of an interview originally in Sinhala)



OPTIONS FOR PROCRASTINATING ON THE 13TH AMENDMENT

By Gomin Dayasri

Hark, hark, dogs do bark; sleeping dogs – the procrastinators, warm stools in high places without attending to the imperatives after securing a 2/3 majority. Awake before it's too late- this could be the last call on the 13th Amendment.

The impact of the 13th amendment can be diminished or demolished, satisfactorily, if the legitimate grievances of Tamils, as identified in the LLRC report and accepted by the government in its Action Plan presented to Hillary Clinton, is implemented/ This is a preferred alternative. It means directly addressing the problems of Tamil people in the North/East, satisfying their prime necessities. Political power the TNA seeks through the 13th amendment to reach a circumscribed federal status is ancillary and could be averted.

Difference stands out - the TNA is greedy for power while Tamil people seek relief for many of their unresolved problems. The TNA will never seek reconciliation between the Sinhalese and the Tamils, with or without the 13th amendment, since it needs the issue survival and strives for acrimony between communities, as did the LTTE.

Procrastination on the LLRC/ Action Plan will be felt more in March 2013 than November 2012 at the UNHCR. Be ready to face allegations of sub-standard and undone work at the coming sessions. Peel every bell in temple, kovil or church - it falls on deaf ears. Failure to push officials who failed to present positive results gives us a bad name. Timely action on promised premise would have assuaged India and the USA and helped

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Option A is comprehensively outside the Rajapaksa agenda and probably not favored by the UNP in conferring police powers to the Provincial Councils.

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<http://www.np.gov.lk/>

Governors Convention

to prevent efforts of a silent regime change that is being engineered from outside our shores.

The government specifically sought a 2/3 majority and voters nearly provided it to a government that had gained confidence by successfully wiping out terrorism. Defections that followed provided the needed numbers. Has anything worthwhile materialized out of this majority? Why was it sought and why was it provided? The answer is obvious - to change the constitution.

Imposed forcibly by India, it being no home grown remedy: the 13th amendment has been in existence for nearly 30 years, without any beneficial impact. It's a wasteful extravagance that has remained without repair or replacement: no undertaking to rectify or revoke its obnoxious provi-

sions, notwithstanding talk and more talk. A task, only Mahinda Rajapaksa is capable of fulfilling in the present political context if he is sufficiently fired up and possesses a team to achieve it - instead of nitwit voodoo advisors.

Government faults the 13th amendment and there is little else beside its loose talk of a 13 plus/minus situation to irritate India: the Opposition supports the 13th amendment and is totally discounted, as shown when the vote is exercised at elections. The 13th amendment continues to reign supreme and a woeful future awaits Sri Lanka if the tendency to dawdle remains untouched.

National experience shows Sri Lankans can make things turn for the better if decisions, however hard, are made. Rallying around the national flag the people undertook a

mission to back the security forces to the hilt, in more gruesome times, to snatch a victory from the jaws of defeat. Sri Lankans have the spirit and the dedication to achieve the impossible, asking hostile nations to mind their affairs without interfering in our domestic matters.

Has Lanka's euphoria waned and the dedication dimmed with the post war architecture where skeptics have gained ground? Gone back for a snooze in the land of nod? It's more convenient to do nothing and sit on your rear, allowing the 13th amendment to wend its way on tiptoe on interpretations given by the judiciary. Unconsciously, we are entrusting the upkeep of the constitution to the judiciary - a matter that was never contemplated by the founding fathers who later had to helplessly watch the weaving of an Indian



National Freedom Front leader Minister Wimal Weerawansa signs his party's public petition to collect two million signatures urging the Government not to go ahead with the Northern Provincial Council elections.

design around the 13th amendment, mother of most problems, in the time of J.R. Jayewardene.

The 13th amendment has resurfaced with suggestions it be leveled to the ground, ironically coming from sources deemed influential and persuasive. The country is in its last lap with a 2/3 majority on its final journey before being laid to rest- it's a now or never opportunity - with five options to choose from- (A) Confer powers so far not delegated, including police and land powers, to the Provincial Councils and attach the concurrent list to the provincial council list. (B) Leave the 13th amendment as it is and procrastinate with idle small talk. (C) Eliminate police and land powers conferred on the provincial councils and redistribute the subjects dealt in the three schedules whereby national interest is safeguarded (D) Take the 13th amendment comprehensively off the constitutional map and redraft provisions to provide for the hiatus, (E) Leave it to judiciary through interpretation to determine whether Sri Lanka's constitutional character is bent towards a exclu-

sively unitary or a semi-federal structure. If judicial interpretation swings in favor of the 'federophiles' it would lead to federalism and a division of the country.

Option A:

This is the desire of the TNA and left elements within and outside the government. The TNA craves through the 13th amendment and with favorable judicial interpretations, to reach the promised land of Eelam via federalism through a legislative cum judicial process. For the left, with its ageing leadership more ready for nursing homes than parliament, their political philosophy been laid to rest in the mausoleums of Stalin and Mao Tse-tung by the voters. They do not count any more except as votes in securing a desired majority in Parliament - a heavy price to be paid for having them as appointed MPs on the parliamentary payroll.

Option A is comprehensively outside the Rajapaksa agenda and probably not favored by the UNP in conferring police powers to the Provincial Councils. But the trends in judicial interpretations are

unpredictable. It was safe under Sarath Silva in the Supreme Court as in his patriotic moments he would not permit a swing towards federalism after his decision in the de-merger case.

Option B

This is the procrastinators' dream world and a likely eventuality that will be satisfactorily to the TNA, as they would look forward to achieving their objective in the years ahead through a Supreme Court veering towards their thinking under a changed administration. Leaving the 13th amendment in its present form places the Supreme Court in a pivotal position to interpret the constitution to confer more or less powers to Provincial Councils - like tossing a coin in the air to watch whether it flips heads or tails. Such are the ways of interpretation.

Option C

If a constitutional change is envisaged, it is the least controversial route to take on the 13th amendment. If properly marketed using a bipartisan approach, the UNP may come on board. Only a few left



leaners will be left out from the southern block. More likely, the UNP may change course to use it as a bargaining chip to make inroads into the minority vote. If the wrong option is taken, the UNP will have many more years in the opposition if the national fervor reaches a climax. If option C is taken the venomous sting is de-fanged out of the 13th amendment but the extravagances associate with the Provincial Councils will remain. To reach grassroots, Grama Sabha system would be an imperative need to supplement the vacant mezzanine floor that exists between the tiers of the Central Government and the People at ground level.

Option D

This is the most favorable option from a country perspective to restructure the entire constitution to satisfy the needs of people after ending terrorism - jettisoning the Indian edition of the 13th amendment. It requires a bold initiative President Rajapaksa alone is capable of taking and if accomplished satisfactorily will be of lasting value. The people will undergo any economic hardship to achieve the objective if attended with a sense of justice and equity. Opposition from hostile local and international forces would be immense. Would the government be strong enough to overcome the onslaught as during the war? The blessing of the majority will be with such a venture.

Option E

The Supreme Court can freely interpret the Constitution and should not be faulted on interpretation with the

13th amendment in place: the dividing line is running thin - a most disturbing aspect. This is the route to follow to get on the federal highway and the TNA is already on a by-road. Jurisprudential schools believe that interpretation by the judiciary is often a discretionary inclination based on individuality and is the reason for a judge in the USA to have his track record minutely examined before appointment. The fault is more with the legislature for placing the judiciary in jeopardy by introducing the dubious 13th amendment to the constitution leaving scope for interpretation. Leaving such power of interpretation in a body not elected by the people means that the fate of a nation could be decided by a few. Loyalty of the Supreme Court to a unitary state as declared by the Constitution, will be the decider and composition of a single bench to hear a crucial case can change history.

Sinhala lobbyists maintain that grievances are common to the people of all communities which is an over simplification of a grave issue. True, most grievances are but not all, with a few of the prominent being exclusive to varied ethnic groups. Language rights in the use of Tamil conferred in 1958 by legislation have yet to be fully functional and are indeed belated for which all governments should take the blame. If a trilingual society emerges, as currently envisaged, problems can be solved by a direct dialogue and learning the others language has been endorsed by 94% of the Tamils

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It's a wasteful extravagance that has remained without repair or replacement: no undertaking to rectify or revoke its obnoxious provisions, notwithstanding talk and more talk. A task, only Mahinda Rajapaksa is capable of fulfilling in the present political context if he is sufficiently fired up and possesses a team to achieve it - instead of nitwit voodoo advisors.

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in the North /East and 92% of the Sinhalese in the South as revealed at recent survey undertaken by the government. Naturally the TNA does not support the venture.

Even at the cost of being accused of being chauvinists by the extreme Tamil elements and as 'Tigers' in sheep's clothing by a few in the Sinhala diaspora, we must realize that we can live in harmony provided we understand rationally the problems others face instead of thinking only of our problems alone.

Article Source: www.island.lk



THE POLITICS OF THE 13TH AMENDMENT AND ELECTION TO THE NORTHERN PROVINCIAL COUNCIL:



Photo source: Colombo Telegraph

THE STAKES INVOLVED - PERSPECTIVE FROM THE LEFT

SURENDRA AJIT RUPASINGHE

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What is the driving need for the Regime to establish this chauvinist supremacy and enforce this form of absolute hegemonic dictatorship?
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The constitutional assault on the 13A is the follow up to the military conquest and occupation and political subjugation of the Tamil Nation by the Sri Lankan State commanded by the Rajapakse Regime. The legal and constitutional denial of any form of nationhood and statehood to the Tamil people cohabiting historically in the North-East is the singular objective behind the mounting assault on the 13A. This assault is to constitutionally declare the nullification of the political and legal status of the Tamil Nation and establish the undivided and undisputed supremacy of the Sinhala-Buddhist Nation throughout the Land. What is the driving need for the Regime to establish this chauvinist supremacy and

enforce this form of absolute hegemonic dictatorship? It is not a simply a problem of a poisoned ideology, nor of a deranged megalomania. It is not an issue about extremism and fundamentalist forces on the fringe bearing on the Regime. The legal and constitutional decimation of the 13th Amendment has to do with the political economy of the Regime and its conditions of survival. The construction of a highly centralized unitary State under the banner of Sinhala Buddhist supremacy whose absolute writ shall prevail throughout the length and breadth of the country is the prerequisite for the consolidation, expansion and perpetuation of the Rajapakse dynasty and its Regime. The insatiable appe-



Uma Maheswaran

tite for absolute power, wealth and glory and the need to perpetuate it through dynastic succession has to be fed by a particular form of political economy. A political economy based on astronomical corruption and illicit, underground financial transaction that can grease the machinery of a crony-mafia-narco political economy. Securing untrammelled access to the economic exploitation and plunder of the human and natural resources of the North-East region, in alliance with foreign predatory powers is a foremost economic compulsion and priority of the Regime. It is backed by a whole range of corrupt, parasitic class agents tied to the Regime. It is the foul smell of filthy lucre, of naked plunder, pillage and profit that drives the political economy of the Regime and its retinue.

The North-East region is being opened up as one of the most lucrative regions for wholesale pillage and plunder. The concentration on building infrastructure as opposed to giving priority to issues of livelihood, security, dignity, justice and democratic freedom has its economic logic. Maintaining the Tamil and Moslem people

of the region in a state of political subjugation and military occupation provides the economic basis for driving the neo-liberal, crony-mafia Comprador Capitalist agenda of the Rajapakse Regime. A subject mass of dispossessed, oppressed people, deprived of any means of survival, desperate, dependent and vulnerable offer the most fertile soil for unmitigated expropriation, exploitation and plunder. The envisioned – and on-going-expansion of tourism, agro-industry, trade and commercial activities, and sprawling development zones require the priority given to mega infrastructural projects. Projects which are also the sources of immediate commissions of truly astronomical proportion, feeding a class of parasitic contractors and a whole state bureaucracy, tied to the comprador economy. This development agenda and its political economy requires exercising unlimited, untrammelled and undisputed political hegemony and territorial consolidation of the entire North-East Region. Like the rest of the country, the North-East is being split up between China, India, US, EU, Japan,

Pakistan and other foreign powers, like slicing a cake. This is while the World Bank and the IMF devour the life lines of our economy. The 18th Amendment, then the Divi Neguma, followed by the impeachment of the Chief Justice and her replacement by a trusted agent of the Regime, and now the assault on 13A are ultimately driven by the political economy of the Regime. It is the condition for consolidating and perpetuating dynastic Comprador Capitalist rule and ensuring uninterrupted succession.

The war to militarily liquidate the LTTE and eradicate the threat of 'separatist terrorism' paved the way for the establishment of the political and ideological hegemony of the Rajapakse dynasty. The move to decimate the 13th Amendment has now become the centerpiece for entrenching and enforcing a Sinhala-Buddhist, chauvinist-militarist, hegemonic dictatorship under the Rajapakse troika. The proposed amendments are designed to strip the Provincial Councils of any real power and any sense of autonomy, while centralizing and concentrating even more State power in the Executive Presidency. This agenda requires a continual stoking of religious and communal hatred against all 'aliens'. This ideological rot is manufactured, reproduced and multiplied in a routine and incessant way - institutionally, socially, culturally and psychologically. This is the role of grandiose victory parades and constructing houses and war memorials for the armed forces, while desecrating and



erasing all monuments, memory and legacy of the Tamil national liberation struggle. This ideological rot is served to infuse, energize and mobilize an inspired, noble, self-sacrificing sense of patriotism equated with blind, devoted allegiance to the Regime. When you have a political ideology that deeply invokes a sense of religious devotion and faith and identifies this passion and devotion with the ruling regime; When the Regime is identified as being the historic repository of that faith, along with its ancient civilization, as its true guardian and defender, then you have a most potent form of wielding a neo-fascist Capitalist dictatorship, based on a solid ideological core among the predominant majority of Sinhala and Buddhist masses. This political and ideological hegemony has its social base in this predominant majority which effectively wields political and administrative dominance- and bureaucratic privilege- at all levels of state power –national, regional and local- through its political representatives. This ideology gives expression to a wide range of highly privileged and upwardly mobile, urban and semi-urban bourgeois and petit-bourgeois economic and technocratic strata. This comprador agenda falls in line with the new and rising Sinhala mercantile, commercial and industrial bourgeois class who would frequent Odel, Keells and the Cinnamon Grand, live in luxury residential complexes, drive around in BMW's and educate their children in elite private educational institutions. This is

besides the traditional social base consisting of the backward and superstitious rural Sinhala masses that feed the Buddhist priesthood. A priesthood which has become a powerful political and ideological institution of hierarchic privilege and obscurantist reaction. A political marriage between the rot of an archaic feudalism and a corrupt, crony, neo-colonial Capitalism. The Rajapakse agenda is greased by a political economy that is entrenched in a whole range of corrupt financial brokers, speculators and racketeers, cohabiting alongside drug lords, war lords and casino barons. A whole class of marauding crony-mafia-narco Capitalists. When you combine these economic, political and ideological elements, you have a Regime that can exercise absolute, hegemonic power- that is, undisputed and undivided dictatorship. A Regime that rules with inimitable semi-fascist sophistication, under the cover of a five star democracy.

This ideology and its political agenda is most cleverly manipulated from the within the subliminal consciousness of powerless, hopeless and terrified masses, who are made to feel some sense of self-worth, dignity and pride – some misguided, deluded arrogance- in being Sinhala and Buddhist. This false consciousness could be- and has been – used to incite racial hatred and violent conflict of the most bestial and gruesome order. The long litany of communal pogroms and genocidal atrocities, and the war itself,



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provide ample testimony. The overarching sweep, depth and power of this perverted and inverted consciousness is all the more potent when it is fed with doses of hyped-up ‘anti-imperialist’ bourgeois nationalist jingoism. Creating a sense of being besieged and threatened by enemies both from outside and inside is crucial for the Regime. It manufactures a solidarity of fear and survival. It invokes a sense of a collective, tribal, historical destiny at a most ‘perilous’ hour. This is



the daily infusion of patriotic blood that is driven into the veins of the Sinhala masses, where the Tamil Nation, along with other nationalities and ethnic-religious communities, are made out to be the devouring enemy. This is the ideological blood being fed into the veins of the armed forces. In the most ironic historical logic, the semi-fascist, barbaric terrorism of the LTTE, although a reaction to the structured and systemic fascism of the State, has fed into this agenda. When these aspects are combined into a form of image manufacture, it confers the aura of mystique of a legendary warrior conqueror/ liberator upon the reigning King, his State, his Retinue and his Realm. Besides, any loosening up of the iron dictatorship would let the steam out and blow the whole game to history. Neither the UNP nor the SLFP and all their class allies- none of the corrupt, criminal, parasitic agents that live by robbing and terrorizing the people- could face a People's Revolutionary Tribunal. Certainly not the Rajapakse Regime. So, by all means, absolute power must be consolidated and perpetuated. The feigned malaise, decrepitude and political impotence displayed by Ranil Wickremasinghe is very much part of the game of preserving the system and the Capitalist dictatorship. You cannot rock the boat when it is about to be overturned in mid-sea by desperate masses. This is what he means when he mutters that "overthrowing the Rajapakse Regime is not on the agenda. The need of the hour is

to reinstate the 17th Amendment!" Once the blood has been spilt, Ranil will clean up the mess with a new Constitution and hope to revive the game wearing a clean shirt- just as Chandrika did. Only to spill more genocidal blood in the name of democracy! The emerging political scenario and the cut-throat drama being shaped over the 13th Amendment to the Constitution and the proposed election to the Northern Provincial Council is portentous and decisive. It could have the most dire consequences beyond our borders. The future of the Tamil nation and of the people of Lanka will be decided by the intensifying rivalry and contention among the various imperialist and regional hegemonic powers, and the role of the puppet neo-colonial ruling class in keeping the system afloat. There is a pitched effort to place the 13A and the proposed election to the Northern Provincial Council at the center of the political stage. This issue is being intensified into a most momentous and decisive political confrontation, wherein the existence of the Tamil people as a Nation is to be decided and settled, once and for all. The military liquidation of the LTTE is now to be followed by a political-constitutional decimation of the historical status of the Tamil Nation. The Bodu Bala Sena, the Sinhala Ravaya, the Mahasona Brigade and such are the ideological shock troops of the agenda. The JHU and the NFF function as the ideological vanguard of the rise of semi-fascism. The emerging



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This ideology and its political agenda is most cleverly manipulated from the within the subliminal consciousness of powerless, hopeless and terrified masses, who are made to feel some sense of self-worth, dignity and pride – some misguided, deluded arrogance- in being Sinhala and Buddhist.

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and intensifying conjuncture would be most decisive, having an impact on the evolution and definition of the Land and the People of Lanka. The defense of 13A is not only an issue of the Tamil Nation. It is a decisive historic battle in defending freedom and democracy against semi-fascist dictatorship in the Land of Lanka. *The writer is the Secretary: Ceylon Communist Party (Maoist)*
Article source: <http://www.srilankabrief.org/>



Photo source: YATV screen capture

GENDER ISSUES IN CONSTITUTIONAL REFORM: A REVIEW OF THE REPUBLIC AT 40

by Kumudini Samuel

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Finally the author goes beyond review to warn that constitutions are often drafted by men who assume that the interests of women are similar to that of men.

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The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice, edited by Asanga Welikala is an important contribution to the discussion on the problems concerning the republican constitutions of Sri Lanka and constitution-making projects and processes.

The volume contains three chapters dealing specifically with gender concerns in relation to Sri Lanka's constitutional history which I subject to brief review here.

The chapter authored by Maithree Wickremesinghe and Chulani Kodikara deals with “Representation in Politics: Women and Gender in the Sri Lankan Republic”. The inadequacy of women's representation in politics has been a vexed subject for Sri Lankan

activists, advocates and feminists alike and has been written about fairly extensively. This chapter extends and nuances this discussion significantly, offering a timely exploration of political representation within the Sri Lankan republic *vis-à-vis* its women citizens and gender issues. It asks critically if the state has indeed represented the interests of women as a collective sex/gender; looks at the dominant political representation of women within the state, their exclusions and inclusions and the problems relating to such representation.

The chapter offers new insights to dispel a number of popular beliefs – among them that women enter or are compelled to enter the political arena primarily to strengthen family or party politics; and



The Soulbury commissioners

that women only enter politics at the death of a husband or relative relying on family connections. The authors argue instead that there is an often-ignored element of political persuasion behind such compulsion and that women do exercise agency in such decisions. It also points out that reliance on family connections is a phenomenon that holds true in the case of both males and females entering politics, as parties rely on these connections to garner votes where 'nepotism is not only a customary political stipulation but has also become an acceptable political practice.'

Interesting discussions on women's campaigning and strategising to increase political representation historically and in the current context and parliamentary debates on the issue underpin the analysis

and critiques. This is a timely analysis that melds activism, advocacy and scholarship in an attempt to understand women's citizenship and formal political engagement and representation in Sri Lanka today. Discussing the framing of constitutions – a central theme of the book – the authors note that the republican constitutions were inherently framed to promote Sinhala Buddhist interests and had no intent to protect citizenship and rights of any disadvantaged category including women. Thus the authors note that women have not been able to rely on the republican state to deliver on their rights in the face of other dominant identity interests and politics (especially when founded on religion and ethnicity).

This deep-seated flaw in the constitution is discussed in the

context of the over-dependence on formal equality, which has failed to increase women's representation in politics at either the national or the local level. The discussion is further extended to interrogate the refusal to accept identity and difference, and a rejection of any form of affirmative action in favour of women despite the rhetoric. In a comprehensive discussion of the sexual contract of the liberal democratic project, which privileges the male subject – conceptualising equality as sameness starting with the assumption of formal equality and not with the concept of difference – the authors note the insufficiency of this approach to deal with the question of the inclusion/exclusion of women in politics and in the exercise of their citizenship.

The chapter by Susan H. Williams discusses *"Gender Equality in Constitutional Design: An Overview for Sri Lankan Drafters"*. Her overview includes commentary on the structure of rights, looking at the distinction between positive and negative rights, and the distinction between the vertical and horizontal application of rights: both basic issues that have profound implications for the ability of women to use and enjoy their constitutional rights effectively, and goes on to interrogate the effect and desirability of limitation clauses. The author discusses extensively the over-dependence on formal equality in constitutions and its shortcomings, and makes a strong case for adopting a substantive



The 'Republic at 40' edited by Asanga Welikala/available at <http://republicat40.org/>

model of equality in constitutions. Bringing in an important insight, the author notes that constitution drafters often limit their thinking on women's equality to rights provisions and moves on to consider many of the structural aspects of a constitution that can have critical impact on the realisation of gender equality. In this context she discusses structural provisions such as electoral systems and quotas to increase women's representation, and decentralisation that can enhance and enable gender equality. As importantly, she notes that there is an opportunity to promote gender equality in the section of the constitution that addresses the legislative process. Also discussed are provisions concerning the executive and provisions concerning the

status of religious or customary law – here the author notes that the harmonisation of customary/religious law and gender equality is a delicate and important issue in many countries and a timely consideration for Sri Lanka. An interesting commentary is also made on the role of international law, making a call for the constitution to provide for a mechanism for women to use powerful international legal instruments such as CEDAW effectively in the domestic arena. In an important endeavour to assist future constitution drafting, the chapter reviews the Sri Lankan constitutions of 1972 and 1978 in terms of these issues.

Finally the author goes beyond review to warn that constitutions are often drafted by men

who assume that the interests of women are similar to that of men. Therefore the author calls for serious consideration of the ways different constitutional choices affect women and makes a fervent case for taking women's interests and perspectives seriously in every aspect of constitutional design and at every stage of the process. In a perceptive proposition, she calls for 'fully internalising the simple but shocking idea that the constitution should be as much the product of women's concerns and perspectives as men's.' This idea, she notes, will revolutionise everything about constitution design and drafting and enable the equal citizenship of women.

Ambika Satkunanathan writes a refreshingly different



chapter in style and approach on *“Whose Nation? Power, Agency, Gender and Tamil Nationalism”*. The discussion is placed in the context of post-war Sri Lanka, but looks at narratives, personal journeys, reflections, strategising and activism of Tamil women who engaged with Tamil nationalism in its formative years post-independence, to those within the armed movements, and to those who chose to challenge Tamil nationalism from outside and create alternative forms of engagement.

The uniqueness and importance of the chapter is in its new empirical evidence that seeks to ‘nuance and problematise existing scholarship on women and Tamil nationalism.’ It asks if the ‘reproduction of norms in the course of women’s participation result in re-making gendered reality along new lines...Were women able to exercise agency even within very restrictive contexts, and thereby shape and even challenge the Tamil nationalist struggle?’ It thus looks at the ‘domestic sphere as a site of political resistance’ over the years of the multi-faceted Tamil nationalist struggle, arguing that women who engaged in political activism within party structures ‘unwittingly transgressed and thereby challenged traditional norms and restrictions’ on their agency, an historic legacy that allowed latter day Tamil women to leverage engagement within the militant movements. Despite this, Tamil

woman remained ‘largely invisible within Tamil party politics’ even when they were active in the public sphere, and the author goes on to critique the historical inability of Tamil political parties to acknowledge women’s concerns and provide space for their political participation, a situation that continues to date.

Another interesting proposition made by the author is that the LTTE’s puritanical rules on sexual behaviour were used ‘to create an environment which was conducive for the participation of women; an environment that would be acceptable to conservative Tamil society.’

However, with the end of the war, Tamil women combatants are impaled on the horns of a dilemma. Through a set of poignant vignettes the author records the narrations of former women combatants who trace their agency within the LTTE and their current conundrum of having to deal with the securitised state that continues to perceive them as the enemy ‘other,’ and a resurging conservatism within Tamil society that also seeks to erase them from history for the very ‘transgressions’ they were once valorised. The author suggests that this is to be expected in a community that sees themselves under siege, and makes a strong case for recording ‘Tamil women’s civic and political activism in the past to mobilise women to become active participants in social change’ in the present.

Article source: Groundviews.lk

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Discussing the framing of constitutions – a central theme of the book – the authors note that the republican constitutions were inherently framed to promote Sinhala Buddhist interests and had no intent to protect citizenship and rights of any disadvantaged category including women.

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THE APRC: A FORGOTTEN RESOLUTION

by Amita Arudpragasam

Four years after the end of the Sri Lankan civil war, Hindu temples are being destroyed in the North, Muslim retail stores are being attacked in the South and Sinhala Buddhist extremism has become organized into its own brand. In other words, ethnic-religious tension within the nation is still very much alive. The Round Table conference convened in 1984 by J. R. Jayewardene, the All Party Conference convened by President Premadasa in August 1989 and the draft constitution titled 'The Government's Proposal for Constitutional Reform' fashioned under President Chandrika Kumaratunga are all initiatives by Sri Lankan Presidencies to deal with the ethnic conflict through constitutional reform. They are key not only because they paved the way for future reforms but also because they were the basis for change, the result of significant positive political will and because they promised the re-evaluation of past failures in constructing new strategies of dealing with

an ethnic conflict that has blighted Sri Lanka for decades. Similarly, the All Party Representative Committee (APRC) was instituted by the Rajapaksa administration to resolve the nation question. The APRC's recommendations imagined a more pluralistic, accommodative and inclusive state within the constraints of a unitary framework. The expectations and hype fabricated around it led to an anticlimactic conclusion unworthy of its grand conception, steady evolution, and notable final products. This paper explores not why the highly commended APRC was so hastily dismissed, but what it actually was and why it is still important.

What is the APRC?

The 11th of July 2006 was an important day in the history of Sri Lanka. It marked the date on which the President made credible first steps towards seeking a political solution to the national question, and the date on which the All Party

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After three years of deliberation and 128 meetings, the APRC ended uneventfully and without anything to show for it.

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Professor Tissa Vitharana

Representative Committee (APRC) came into existence. Fifteen political parties were initially represented at the APRC. It consisted of a seventeen-member expert panel to facilitate the process, one representative from each political party, and the chairman Professor Tissa Vitharana. The members of the APRC met weekly, almost every week, deliberating more than three to four hours each time.

Besides the prolific time and energy spent on the APRC the APRC was a momentous feat because it represented a local solution to resolving the national question. Unlike the recent Parliamentary Select Committee that was founded to address similar issues, it acknowledged several different perspectives, bestowing them each with a degree of political influence over what was assumed would become the future constitution of the Sri Lankan nation. It was a political arena in which these eclectic views, representative of Sri Lanka's ethno-cultural diversity, clashed, converged and reached consensus. Perhaps not itself a lone-

standing solution to the ethnic conflict, it was certainly a platform for dialogue through which solutions could be envisaged and advanced.

The APRC produced quite a few documents. The expert panel produced two reports, called the Majority Report, and the Minority Report in December 2006. Tissa Vitharana amalgamated these reports to produce "Main proposals to form the Basis of a future Constitution" (also called the Vitharana Proposals) in January 2007. A document known as the Interim report, "*Action to be taken by the President to fully implement relevant provisions of the present Constitution as a prelude to the APRC proposals*", recommending that the government endeavor to implement the 13th Amendment and adequate funds be provided to facilitate the effective functioning of Provincial Councils was released in January 2008. Finally on July 19th 2010, R. Yogarajan UNP MP and M Nizam Kariapper Deputy Secretary General of the Sri Lanka Muslim Congress released a final report without

government approval based on the final draft discussion papers and amendments made by the APRC at the final APRC meetings.

The unofficial Final Report, arguably the most important of the documents produced at the APRC, recommends a Parliament at the Centre comprising the House of Representatives elected by the people and the Senate elected by the provincial legislatures. It recommends that the unit of devolution be the province, that law and order including public order and the exercise of police powers be devolved on the provinces, and that a provincial Government be entitled to exercise rights in or over State land that the province should take over within the province (subject to the rights of persons in lawful possession or occupation of such land). In addition, the Final Report recognizes the supremacy of the Constitution, and advocates that a Constitutional Court protect it, identifies Tamil and Sinhala as national languages and recognizes group and individual rights. Among these promises, the APRC Final Report conceptualizes the state as an undivided, unitary and integrated state structure where state power is shared between the Centre and the provinces.

Failed Promises and Expectations

"Finding a political and constitutional solution to the national question requires a multi-party effort and an inclusive approach", announced president Rajapaksa at the inaugural meeting of the



All Party Representative Committee in 2006, “I will take whatever measures necessary to bring peace with honour and justice to my country; your country; our country.”[1] The solution to the national question, to the achievement of peace on behalf of all Sri Lanka’s people, he declared, would be the APRC. The APRC was promoted as the solution to ethnic conflict both locally and internationally to Indian Prime Minister Dr. Manmohan Singh, the government of Japan and the U.S’s Robert Blake, among others.

An Official Spokesperson for the High Commission of India in a Press Release[2] on 25 January 2008, called the APRC “a welcome first step”, a statement issued by the Japanese Foreign Ministry[3] said “the Government of Japan appreciates this as an important step towards the political solution of the conflict” and U.S’s Robert Blake said “Sri Lanka now has an important opportunity finally to achieve peace and that opportunity must be seized.” [4] But although on the international stage the APRC was being promoted as an important political step towards resolving the ethnic conflict, some local observers were more skeptical. They argued that the APRC was merely a tool used to counter international pressure on Sri Lanka, and to distract the international community away from the war that was reaching its climax in the North.

In an interview[5] in May 2010, Suresh Premachandran of the Tamil National Alliance, said “The APRC is a farce of the



Robert Blake

Sri Lanka government.” He argued that it was always used as a façade for India and the International Community, and that if the farce was continually tolerated that “they [the international community] will only be abetting the genocidal program of Colombo.” Others also shared this view. For example, Dr. Paikiyasothi Saravanamuttu, director of Colombo-based think-tank, in the Saturday edition of Daily Mirror[6] said that Professor Tissa Vitharana’s omission from the ministerial list “reinforces the contention that the APRC [All Party Representative Committee] was set up for the sole purpose of placating the international community and India in particular.”

After three years of deliberation and 128 meetings, the APRC ended uneventfully and without fruit. The government failed to publish the final proposals even over a year after the APRC Chairman presented the draft report to President Mahinda Rajapaksa in May 2009. In January 2010, President Rajapakse publicly rejected proposals put forward by the APRC and instead said, “after the present election I am going to put forward my own solution to the problem”. [7] On July 20 2010, the much-awaited Final Report of the APRC was tabled in parliament by United National Party

(UNP), and thwarted by the government on the grounds that the report did not have authority to be tabled. The APRC was forgotten, and the promises extolled to the international community and to Sri Lanka about striving for peace and justice through finding a political solution to the national question remained unfulfilled.

Why the APRC is still important

Under the façade of Victory Day parades, development and construction, newly erected monuments in praise of the military, and reconciliation aligned cultural and sporting events, a deep underlying disharmony permeates Sri Lankan society, fracturing the nation along linguistic and ethnic lines. This is reflected in the polarization of Sinhala and Tamil local news-media on events such as the U.S. resolution on Sri Lanka at the UNHRC, the Halal controversy and the Northern Provincial Council (NPC) elections. The trauma of the Tamil community from over thirty years of war, the rising hostility against Muslims, and the outrage of the International community will continue to foster unrest and discord if there is no clear political resolution reflecting genuine conciliation with Sri Lanka’s minority groups. That seemingly superficial ethnic tension can lead to large-scale military movements, which then threaten the unity of the state, is a truth ascertained through Sri Lanka’s turbulent history. At this juncture, four years after the war and in the midst of reconciliation efforts,



preventative strategies for the future are necessary.

In June 28 2009,[8] the JHU Spokesperson, Nishantha Sri Warnasingha said “There’s no validity in APRC after elimination of the Liberation Tigers of Tamil Eelam (LTTE) on May 18. [The] APRC was set up back in 2006 to bring about a political settlement when the LTTE had significant military power.” The insinuation, therefore, is that without the military parity of the LTTE, political concessions to the minority, and especially Tamil, communities do not need to be made. However, that line of thinking is in itself responsible for encouraging minority communities to take up arms. If military power is a requirement for political parity and for devolution and power sharing, then does this not incentivize fringe communities to take up arms?

For genuine reconciliation, the words of the president in 2006 still ring true. Political accommodation of historically oppressed groups must parallel assimilatory and difference-blind models of national citizenship. Peace, honour and justice for this country, our country, require a political solution that is agreeable to all the parties representative of our multi-ethnic society if we are to evolve into a truly pluralistic state. The defeat of the LTTE does not imply that the Tamil community ceases to have sincere socio-political concerns. Land grabbing in and militarization of the North are genuine issues that the Tamil community, and thus the Sri Lankan nation, face today. The Parliamentary

Select Committee has been criticized heavily because of its inability to give voice to opposition views. To date, in light of its non-majoritarian, representative and multipronged approach and the fact that it is the most recent document on power

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Land grabbing in and militarization of the North are genuine issues that the Tamil community, and thus the Sri Lankan nation, face today.

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sharing receiving Southern consensus, the APRC Final Report is still one of the most relevant modern strategies for tackling the continuing national question. One way forward is to actually officially publish the Final Report produced by the APRC; another step would be to evaluate seriously the suggestions contained within it as the basis for future negotiations. In light of the crisis of the dilution of the 13th Amendment and the failures of the PSC, it is imperative to hold the President to the words he uttered in 2006, and to the promises preached in the hopes of a better future for every Sri Lankan.

[1] “Only alternative to Peace is Peace” – H.E. The

President, Wednesday, May 15, 2013, Ministry of Defence and Urban Development, http://www.defence.lk/newasp?fname=20060711_04

- [2] PACT Jan 2008, <http://pact.lk/24-january-2008/>
- [3] Japan welcomes APRC proposals, 31 January 2008, <http://www.dailynews.lk/2008/01/31/pol01.asp>
- [4] February 21, 2007, Remarks by U.S. Ambassador Robert Blake at the National Peace Council Symposium, <http://srilanka.usembassy.gov/feb212007.html>
- [5] Tamil Net, Final nail in APRC’s coffin , Tamil Guardian, Wednesday May 12, 2010, <http://www.tamilguardian.com/tg417/p14.pdf>
- [6] Tamil Net, Final nail in APRC’s coffin , Tamil Guardian, Wednesday May 12, 2010, <http://www.tamilguardian.com/tg417/p14.pdf>
- [7] Charles Haviland, President rejects APRC proposals, January 2010, http://www.bbc.co.uk/sinhala/news/story/2010/01/100115_mahinda_tamil.shtml
- [8] Warnasingha, APRC does not represent all parties, The Nation, June 28 2009, <http://www.nation.lk/2009/06/28/inter1.htm>

Article source: Groundviews.lk



CELEBRATORY MEMOIRS OF THE LIFE OF COMRADE SUNILA ABEYSEKERA



by Lionel Bopage

Last Thursday, I was reading an article about Joan Jara, the widow of renowned Chilean activist, singer, songwriter and theatre director Victor Jara, and her family. They are seeking long-delayed justice for the kidnap, torture and brutal murder of Victor in 1973, by the Chilean secret police. My memories immediately went back to November 1977, when all political prisoners including me were released in Sri Lanka. A couple of months later, comrade Sunila Abeysekera and I were discussing at her parents' house in Nawala, the inspiration Victor Jara brought to those who were working for social change for a better world. This morning, Chitra and I were greatly saddened by the news that comrade Sunila, one of the best, exceptional and inspiring human rights activists of our time, had passed away in Sri Lanka.

I first met Sunila in late 1977 at a bookshop in Colombo, to mainly discuss the formation of a grass roots based human

rights organisation. My first impression of her is indelibly etched in my mind. I saw an attractive young woman of about 25 years of age, vehemently striking a manual typewriter trying to finish off an article she was writing. I remember her apologetically asking me to wait a little while. That was our first encounter.

Later on, I came to know that she had deep roots in theatre and music. In the 60s and 70s, she had taken the Sinhala theatre by storm with her haunting voice and breathtaking performances. She had been conducting notable performances on stage in her early twenties, in Indian classical and Kandyan dance. In the seventies, she had commenced lending her voice to film music and had also become a familiar figure at concerts. Even to date, the beautiful melodies 'Udumbara Hinahenawa' (*Udumbara smiling*) in 'Bambaru Avith' (*Wasps are Here*) and 'Hemin Sare Piya Sala' (*Flying Slowly*)

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During the periods of armed conflict in Sri Lanka, Sunila denounced human rights violations committed by all parties to conflicts.

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Sunila Abeysekera, 2007

The 1971 youth insurrection had left an indelible mark on Sunila's conscience. In her early 20s, Sunila with other young colleagues had started visiting young detainees held in Sri Lankan prisons. Taking them food and clothing, letters from family, she gradually became involved with their legal defence. It was at this time that she left the stage and began her life of activism.

When we finally organised the 'Human Rights Organisation' (HRO), its President was Regi Siriwardena, a former LSSP veteran, with Sunila as the Secretary. The HRO opened branches in rural areas, and the JVP was also looking for recruits for the HRO among the clergy and the intellectuals. Sunila had known Chitra before I came to know her. It was while working in these projects that Sunila became the intermediary of my relationship with Chitra leading to our life partnership.

I recollect grabbing Sunila from a film studio in Narahenpita, where she was recording the theme song of the film 'Bambaru Avith', to record 'Vimukthi Gee' songs at Ogee Studio in Bambalapitiya. On another occasion, I attended her singing, when she contributed to the popular drama 'Angara Ganga Gala Basee' (River Angara Flows Down). However, her appearance on the 'Vimukthi Gee' stage in the late seventies and early eighties was very different from her previous role as an artiste. Now she was singing for the ordinary folk in villages and towns where she with other

in 'Hansa Vilak' (A Swan Lake) continues to resonate and be in demand in Sri Lanka.

How did such a vibrant artistic career in film and music give way to human rights activism? Human rights had emerged as a major issue in the 1970s, as successive governments in Sri Lanka responded to youth militancy in the south and north with repressive legislation, arbitrary arrest and detention, torture and curbs on the freedom of expression, including censorship. Sunila had been active in civil society groups since the late 1970s, untiringly working for the release of political prisoners and advocating a negotiated political solution to the national question.

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She was branded a traitor and an enemy of the state. A woman from the Sinhala majority defending the rights of Tamils,

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singers and musicians, sang

songs of struggle, protest and liberation. She was the best female vocalist in the troupe.

At the time, she was also working as a writer and translator for the journal 'Red Power,' which I was editing. She also did political work on behalf of the party in the lower middle and upper-class niches in Colombo. This was the time, when the second wave of feminism had reached a high water mark in Western countries. The JVP manifesto supported the rights of women in terms of a fair wage and appropriate working conditions. The idea of the person being political, a woman being an independent sexual being, that the home was just as exploitative as the workplace and that patriarchy, not capitalism, was the primary cause of the oppression of women had not touched the political consciousness of a JVP cadre.

Therefore, Sunila's journey had several major hiccups. Being brought up in the better part of Colombo and having received a western tertiary education, her work and cultural ethic was so different to the rural Sinhala, Buddhist, semi-proletarian and lower middle-class background of the average JVP cadre. They were extremely conservative and patriarchal in their thinking on cultural issues. Sunila was passionate, bohemian and demonstrative; we of the JVP were the complete opposite. Ultimately, the relationship between her and the party came to an abrupt end. Later, in the eighties, I met Sunila a couple of times, but the intensity of our friendship has not been the same. Yet we contin-

ued to keep in touch.

In my mind, this did not and should not diminish the role she played in defending human rights including the rights of women and non-majoritarian communities in Sri Lanka. She was a powerful figure not only in the Sri Lanka women's movement of Sri Lanka, but also of the international movement. She played a major role in the collective effort to draw the UN's attention to the need to include women's concerns, voices, and perspectives in peace building and conflict-transformation. Her work extended to the situation of civilians in war-affected areas, the rights of communities such as sex workers, people living with HIV/AIDS, and lesbian, gay, and transgender persons, and sexual and reproductive rights of women.

During the periods of armed conflict in Sri Lanka, Sunila denounced human rights violations committed by all parties to conflicts. She was one of the first Sri Lankans to raise the issue of disappearances in the nineties, when hundreds of young people, particularly in the South were disappearing at the hands of the State and the JVP. She addressed the United Nations Human Rights Council at its opening session in 2006. Being critical of the government, she shrugged off the risks that posed to her own safety. She was branded a traitor and an enemy of the state. A woman from the Sinhala majority defending the rights of Tamils, they could not stand. However, she never wavered. Hers was

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Sunila was an enormously courageous and inspiring friend, a caring mother, a tireless and committed activist, a professional artiste, writer and critic, and an ardent feminist.

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an uncompromising struggle against the entrenched culture of impunity of withholding accountability of those who had been responsible for enforced disappearances and killings of civilians.

She began highlighting rights violations in Sri Lanka, perpetrated under the guise of the Prevention of Terrorism Act and later through the promulgation of Emergency rule and the various Emergency regulations. Her work also included protection of the displaced due to armed conflict. At peak periods of repression, she arranged to document disappearances, and frequently took this information to the UN and other international agencies. Because of her fearless and tireless advocacy and commitment to human rights and social justice, she faced death threats and had to leave the country, as her life was in danger in the nineties and in recent times. In recognition of her human rights activism, she was awarded the 1998 UN Human Rights Award for Asia and the Pacific.

The last time we sang together as a group was in the year 2008, in Colombo in commemoration of those who laid down their lives during the April 1971 insurrection in Sri Lanka. In 2010, Chitra and I had the occasion to visit Sunila in Malaysia, when she was undergoing treatment for cancer. She was as determined as ever to carry on with her struggle for human rights and social justice.

Sunila was an enormously

courageous and inspiring friend, a caring mother, a tireless and committed activist, a professional artiste, writer and critic, and an ardent feminist. She struggled for four decades seeking justice for victims of human rights abuses in Sri Lanka. We, including all those who suffered and continue to suffer human rights violations are going to miss her deeply. The only way to fill the vacuum she has left and her legacy is to further strengthen our role in the protection of human rights and unswervingly commit to the cause of social justice.

We extend our sincere and most heartfelt sympathies to her family and friends. Her friendship, commitment to social justice and activism on behalf of the dispossessed will be solely missed by us all.

The author was jailed twice and tortured for his role as a former leader of a mass liberation movement in Sri Lanka in the 1970s and 1980s, called the Janatha Vimukthi Peramuna (People's Liberation Front). He rose to the position of general secretary of the JVP but resigned from the group in 1984 over a number of differences, including his principled support for the right of national self-determination for the Tamil people. He was eventually forced into political exile together with his wife, Chitra. They now live in Melbourne, Australia, where they continue to be outspoken defenders of human rights and social justice.

(Article Source : Green Left Weekly/Groundviews.lk



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She had been active in civil society groups since the late 1970s, untiringly working for the release of political prisoners and advocating a negotiated political solution to the national question.

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CENTRE FOR POLICY ALTERNATIVES
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மீதர்ப்புக் கொள்கைகளுக்கான நிறுவனம்

PRESS RELEASE ON NEW LAWS SEEKING ACTION AGAINST PUBLICATIONS THAT ‘DEFAME THE ORIGINAL TEACHINGS AND TRADITIONS OF THE MAJOR RELIGIONS’

21 AUGUST 2013, COLOMBO, SRI LANKA: The Centre for Policy Alternatives (CPA) is deeply concerned by reports that the Ministry of Buddha Sasana and Religious Affairs is to introduce new laws seeking action against publications that ‘defame the original teachings and traditions of the major religions’. These reports state that as a first step, a draft Bill providing for the establishment of a ‘Buddhist Publications Regulatory Board’ that will be empowered to regulate any publication purportedly ‘in violation of Buddhism, its philosophy or traditions,’ has been sent to the Attorney General for review. We are at a loss to understand how such a measure is a priority, when so many other matters demanding the urgent attention of the government in respect of communal reconciliation and amity have not received the same consideration, including implementing the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) on promoting religious harmony. CPA also notes the context in which these measures are proposed is one in which national security considerations, as defined by the government, consistently override democratic freedoms, and serious incursions are being made into

academic freedom and minority cultural rights.

The Bill, if enacted into law, will stamp a further official seal of approval on Sri Lanka’s slide towards majoritarian religious extremism and sectarian violence. The recent upsurge in ultranationalist violence by certain Buddhist groups, marked by numerous attacks on Islamic and Christian places of worship, threatens to further undermine the fragile peace in post-war Sri Lanka. There is a very real danger that by seeking to protect ‘the original teachings and traditions’ of religions, the Bill will lead to the arbitrary imposition of government-sanctioned versions of religious belief on the public and effectively prohibit theological teaching, academic inquiry or critical commentary, across all media, that questions government orthodoxy. Inevitably, the passage of the Bill will seriously threaten efforts to interpret religious teaching in a manner that is respectful of dialogue and tolerance.

The draft Bill, if enacted, will also manifestly violate Article 10 of the Constitution, which guarantees to any person the ‘freedom of thought, conscience and religion, including



the freedom to have or to adopt a religion or belief of his choice.' The Constitution, it is important to recall, does not permit any restriction whatsoever on this fundamental right. The measure would also have a chilling effect on the freedom of speech and expression including publication protected by Article 14 of the Constitution, and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Sri Lanka is a state-party. In our contention, neither the Constitution nor the ICCPR permits the wide variety of potential restrictions on the freedom of expression that may be imposed by the new measures, including of course, the scope for abuse that is inherent in any attempt at state regulation of religious faith and morality.

CPA also notes that existing legislation already prohibits the inciting of violence through hate speech. Section 3 of the ICCPR Act of 2007 prohibits the advocacy of 'national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.' In this respect, we are concerned that the proposed Bill will be selectively applied to harass and persecute dissenting voices. We are mindful that section 2(1)(h) of the Prevention of Terrorism Act (PTA) that prohibits speech which 'causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups' has been exclusively used in the recent past to detain and prosecute journalists and opponents of the regime; including

Jayaprakash Tissainayagam, Sarath Fonseka and more recently, Azath Salley. Yet, the same provisions have not been used to prohibit and prosecute brazen acts of physical violence on places of minority religious worship. This history of selective application of other

restrictions on free speech seriously calls into question the motives behind the introduction of the instant draft Bill.

CPA therefore calls on the government to desist from introducing the draft Bill to Parliament. We also call on all those concerned with the rule of law, fundamental rights and religious harmony in Sri Lanka to

prevail on the government that the draft Bill – and the motives for its introduction – are utterly unacceptable.

CPA further recommends that if the government is truly serious about arresting the rise of religious extremism and intolerance and promoting religious co-existence, it should:

1. Take immediate steps to implement the LLRC recommendations on promoting religious harmony and co-existence, which call for establishing a mechanism in consultation with inter-faith groups that can serve as an early warning and diffusing system of potential religious tension, and which has not been included in the government's LLRC Action Plan.
2. Put an end to the culture of impunity and ensure that law enforcement authorities investigate, arrest and prosecute perpetrators of attacks on places of religious worship.

CPA also notes that existing legislation already prohibits the inciting of violence through hate speech.



real life army drill at Weliweriya

STATEMENT ON THE VIOLENCE IN WELIWERIYA

CENTRE FOR POLICY ALTERNATIVES

6th August 2013, Colombo, Sri Lanka: The Centre for Policy Alternatives (CPA) notes with the greatest alarm and anxiety the distressing events that transpired at Weliweriya in the Gampaha District of the Western Province last Thursday, 1st August 2013. It is not the first instance in post-war Sri Lanka of unarmed citizens exercising their democratic right to protest being tear-gassed, fired upon and killed by the security forces: in the export processing zone at Katunayaka in 2011 and in Chilaw in 2012, respectively, 01 innocent citizen was killed. Likewise, media personnel covering the event were manhandled and their equipment confiscated, damaged or destroyed. The number of fatalities recorded in Weliweriya currently stands at 03, with many more injured.

These incidents of the killing of unarmed citizens – and in the Weliweriya incident, two young students reportedly not directly involved in the protest – are tragic and shameful reminders of the collapse of the rule of law in our country, and most importantly, of the mind-set of the government in respect



of the exercise of democratic rights by its citizens. Serious and fundamental questions come to the fore with regard to the rule of law and the maintenance of law and order by the government, in the context of the complete disregard of the constitutional and legal framework governing the circumstances in which the armed forces may legitimately be called out in aid of the civil power. In this extra-legal sphere, is it now a standard operating procedure for the police to abdicate its responsibilities for law and order, on account of incapacity or otherwise, and call in special forces and the army? What are the orders given to the latter in such a situation? Use live ammunition? Shoot and shoot to kill? Indeed, who gives such orders? Who takes responsibility for them? What is the operational chain of command and who answers to Parliament? What are the prospects for an unhindered judicial process?

An internal inquiry has been ordered by the new Commander of the Army, on whose first day of office, this reprehensible event occurred. There is also, apparently, an on-going police investigation. The Human Rights Commission too, has commenced an investigation. Adding insult to injury, government spokespersons are also quoted as alleging foreign involvement in the event, political party sponsorship of the violence, and ascribing responsibility to the media for the events. Not only does it seem that the Sri Lankan state is fast becoming a predator rather than a protector of the people, but also that it holds the credulity and goodwill of its citizens in utter contempt.

Nothing short of a credible, independent and impartial investigation, the findings of which should be made public, can allay the concerns of the citizens of Sri Lanka as to the alarming extent of the collapse of the rule of law and law and order in the country. The failure to conduct such an investigation, and the necessary judicial punishment of the perpetrators, would be a major miscarriage of justice, a fundamental failure of the primary duty of protection that the state owes its people, and an invitation to continued adverse international attention to Sri Lanka's human rights record. The government and its political allies including sections of the clergy would do well to heed these considerations in their response to the Weliveriya incident.

The fullest demonstration of the government's genuine commitment to the rule of law and law and order with regard to this incident should be seen in turn as a measure of its willingness and ability to ensure democratic governance in Sri Lanka. Its failure to do so will only further increase the burgeoning democratic deficit and retard our prospects for reconciliation, unity and prosperity.

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It is not the first instance in post-war Sri Lanka of unarmed citizens exercising their democratic right to protest being tear-gassed, fired upon and killed by the security forces

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SUPREME COURT DECISION ON LAND POWERS 26 SEPTEMBER 2013

MOHAN PIERIS - CHIEF JUSTICE



In the matter of an Application for Special Leave to Appeal against judgment of Court of Appeal dated 08.08.12 in Case No. CA (PHC) Appeal 37/2001 and in the High Court (Kandy) of the Central Province Case No. Certi 42/97.

Solaimuthu Rasu,
Dickson Corner Colony,
Stafford Estate,
Ragala,
Halgranaoya.

Petitioner-Appellant
S.C. Appeal No. 21/13
S.C: Spl. LA 203/ 12
CA/PHC/Appeal No. 37/2001
HC/CP Certi. 42/97

Vs.

1. The Superintendent
Stafford Estate,
Ragala,
Halgranaoya.

2. S.C.K. De Alwis
Consultant/Plantation Expert,
Plantation Reform Project,
Ministry of Plantation
Industries,
Colombo 04.

3. The Attorney-General,
Attorney-General's
Department,
Colombo 12.

Respondent-Respondents

AND NOW BETWEEN

1. The Superintendent
Stafford Estate,
Ragala,
Halgranaoya.

2. S.C.K. De Alwis
Consultant/Plantation Expert,
Plantation Reform Project,
Ministry of Plantation
Industries,
Colombo 04.

3. The Attorney-General,
Attorney-General's
Department,
Colombo 12.

Respondents-Respondents-
Petitioners

Vs.

Solaimuthy Rasu,
Dickson Corner Colony,
Stafford Estate,
Ragala,
Halgranaoya.

Petitioner -Appellant-
Respondent

BEFORE: : Mohan Pieris, P.C.,
C.J., Sripavan, J. Wanasundera,
P.CJ.

COUNSEL : Manohara de Silva,
P.C. with Palitha Gamage for
the 1st Respondent-
Respondent Petitioner. Gomin
Dayasiri with Palitha Gamage
and Ms. Manoli Jinadasa and
Rakitha Abeygunawardena for

the 2nd Respondent-
Respondent-Petitioner.

Y.J.W. Wijayatillake, P.C.
Solicitor General with Vikum
de Abrew, S.S.C. And Yuresha

Fernando, S.C. for the 3rd
Respondent- Respondent-
Petitioner.

M.A. Sumanthiran with
Ganesharajah and Rakitha
Abeyasinghe for the Petitioner
Appellant-Respondent.

WRITTEN SUBMISSIONS By
the 2nd Respondent Petitioner
on: 24th July 2013 and 23rd
August 2013.

FILED : By the 3rd Respondent
- Respondent Petitioner on:
13th March 2013 and 25th
July 2013

ARGUED ON : 11th July 2013
17th July 2013

DECIDED ON : 26th September
2013

Mohan Pieris, PC CJ

This is an application for
special leave to appeal from
the judgment of the Court of
Appeal dated 08.08.12
wherein the Court of Appeal
set aside the judgment of the



Provincial High Court dated 25.10.2000. I have read in draft the judgment of my brother Sripavan J and while I agree with his reasoning and conclusion on the matter, I would set down my own views on the question of law before us.

The instant application before us raises important questions of law and at the inception of the judgment it is pertinent to observe that the Respondent-Respondent-Petitioners (hereinafter called and referred to as "Petitioners") obtained special leave from this Court on the following two questions -

(i) Did the Court of Appeal err by deciding that the Provincial High Court has jurisdiction to hear cases where dispossession or encroachment or alienation of State Lands is/are in issue?

(ii) Did the Court of Appeal err by failing to consider whether there is a right of appeal against the Order of the High Court dismissing the application in limine for want of jurisdiction? Be that as it may, when this matter came up before us on 17.07.13, all Counsel agreed that they would make their submissions only on the first question of law and accordingly this Court proceeds to make its determination on the first question.

The Facts

The 2nd Petitioner the competent authority initiated proceedings to recover a State Land in respect of an illegal occupation in the Magistrate's

Court of Nuwara Eliya in terms of the provisions of the State Lands (Recovery of Possession) Act No 7 of 1979. The Petitioner-Appellant-Respondent (hereinafter referred to as the "Respondent") filed an application in the High Court of the Province holden in Kandy praying for a writ of certiorari to quash the quit notice filed in the case. The 2nd Petitioner filed statement of objections and affidavit, on 27.02.96 and raised the following preliminary objections.'

(a) The said land is a State Land.

(b) The second Petitioner, as the duly designated competent authority in terms of the provisions of the State Lands (Recovery of Possession) Act No 7 of 1979 issued quit notice dated 7.10.1997 to the Respondent by virtue of Section 3 of the said Act;

(c) Thus the Respondent has no legal basis to invoke the writ jurisdiction of the Provincial High Court;

(d) The High Court of the Province stands denuded of jurisdiction to hear and determine the matter as the subject of the action pertains to State lands and the subject does not fall within the Provincial Council List - namely List I.

The Provincial High Court, after hearing the oral submissions and written submissions of the parties, by Order dated 17.11.2000, held that it had no jurisdiction to hear and determine the

application and upheld the preliminary objection.

Thereupon the Respondent preferred an appeal dated 22.11.2000 to the Court of Appeal on the basis that the reasoning of the Learned High Court judge was erroneous vis-à-vis the provisions of the Constitution of the Democratic Socialist Republic of Sri Lanka.

It was the contention of the Respondent that the Provincial High Court had misdirected itself in holding that the Court was devoid of jurisdiction to inquire into and determine the application for writs in respect of notices filed under the provisions of the State Lands (Recovery of Possession) Act No 7 of 1979 as amended. By its judgment dated 08.08.12 the Court of Appeal states, inter alia, as follows

(i) The subject of State Land is included in Appendix II of the "Provincial Council List" (List I) to the 9th Schedule to the 13th Amendment to the Constitution;

(ii) Therefore State Land becomes the subject of the Provincial Council List even though State Land continues to vest in the Republic; (iii) Therefore, the High Court of the Provinces has the power to hear and determine applications for prerogative remedies filed to quash quit notices issued under the State Lands (Recovery of Possession) Act No 7 of 1979 as amended.

The Court of Appeal in arriving at its conclusion placed reliance on the Determination of this Court



dated 10.02.2013 on the Bill titled "Land Ownership" (S.D. No. 26/2003 - 36/2003). The Court of Appeal has also alluded to the judgment of the Supreme Court in *Vasudeva Nanayakkara v Choksy and Others* (John Keells case) {2008} I Sri.LR 134 wherein it was stated - "a precondition laid down in paragraph 1:3 is that an alienation of land or disposition of State Land within a province shall be done in terms of the applicable law only on the advice of the Provincial Council. The advice would be of the Board of Ministers communicated through the Governor, the Board of Ministers being responsible in this regard to the Provincial Council." In the end after having stated that it was bound by the principles laid down in the judicial decisions, the Court of Appeal concluded that State Land becomes the subject of the Provincial Council.

It is from the said judgment of the Court of Appeal that the petitioners have preferred this appeal and submissions of Counsel were addressed to us, as I have stated at the beginning of this judgment, on the question of law-

Did the Court of Appeal err by deciding that the Provincial High Court has jurisdiction to hear cases where dispossession or encroachment or alienation of State lands is/are in issue?

It remains now for this Court to engage in an analysis of the Constitutional provisions and the judicial precedents to determine whether the Court

of Appeal came to the correct finding when it held that the Provincial High Court could exercise writ jurisdiction in respect of quit notices issued under the provisions of the State Lands (Recovery of Possession) Act No 7 of 1979 as amended.

The resolution of this question necessarily involves an examination of the nature and content of the subject matter of State Land that lies with a Province by virtue of the 13th Amendment to the Constitution and it is quite convenient to begin this examination by looking at the apportionment of land as delineated by the terms of the Supreme Law of the country that are found in the 13th Amendment. The 13th Amendment to the Constitution refers to State Land and Land in two different and distinct places. In my view the entirety of State Land is referred to in List II (Reserved List) and it is only from this germinal origin that the Republic could assign to the Provincial Councils land for whatever purposes which are deemed appropriate. It is therefore axiomatic that the greater includes the lesser (*Omne majus continent in se minus*) and having regard to the fact that in a unitary state of government no cession of dominium takes place, the Centre has not ceded its dominium over State Lands to the Provincial Councils except in some limited circumstances as would appear later in the judgment.

It is only from a reserve or pool or a mass that a portion

could be translocated and if the entirety of state land is not assigned but a portion with conditions, these are the attendant circumstances that would demonstrate an unequivocal intention not to cede what belongs to the Republic. One would be driven to the conclusion that the subject matter in its entirety would belong to the dominant owner of property.

If there is a reservation in List II, the inescapable inference follows that what is reserved to the Republic could only be the larger entirety out of which the 13th Amendment chose to assign some portions of State Land to the Provincial Councils and the pertinent question before us is the parameters with which of what is entrusted to the Provinces. All this has to be gathered from the settlement that the 13th amendment chose to make in 1987 and one cannot resile from their explicit terms of the 13th Amendment and there must be deference to that intent. If the Constitution contains provisions which impose restraints on institutions wielding power, there cannot be derogations from such limitations in the name of a liberal approach. It must be remembered that a Constitution is a totally different kind of enactment than ordinary statute. It is an organic instrument defining and regulating the power structure and power relationship; it embodies the hopes and aspirations of the people; it projects certain basic values and it sets out objectives and goals. I now



proceed to indulge into an inquiry as to the power structure and power relationship as delineated in the 13th Amendment to the Constitution.

Teleological as it may appear, one has to go from List II to List I. As the Counsel for the 2nd Petitioner submitted, Land in Sri Lanka consists of lands belonging to individuals, corporate bodies, unincorporated bodies, charitable, social institutions, local authorities, temples, kovils, churches, mosques and trusts etc. The bulk of the land is vested in the state as state lands and are held by the state and/or its agencies.

State can make grants absolutely and more often it does so provisionally with conditions attached or by way of leases, permits, licenses as per provisions governing disposition of state lands. Such conveyances can be made by the State to any person/ organization entitled to hold land including Provincial Councils. All this partakes of the dominium that the State enjoys in having ownership and its attendant incidents of ownership such as its use and consistent with these characteristics it is pertinent to observe that the Constitution unequivocally in List II and in Appendix II has placed State Lands with the Centre, "Except to extent specified in item 18 of List I" [quoted from List II]. Thus the Constitution as far as State Land is concerned traverses from List II via List I to final destination Appendix II.

List II and List I

In List II (Reserved) it reads as follows:

"State Lands and Foreshore except to the extent specified in item 18 of List I"

In List I (Provincial Council) appearing in item 18 the sentence reads as follows

"Land - Land that is to say, rights in and over land, land settlement, land tenure, transfer and alienation of land, land use, land settlement and land improvement to the extent set out in Appendix II"

A perusal of the above two provisions unequivocally points to the fact that State Lands as referred to in List II embraces the comprehensive entirety of the corpus of State Land out of what is carved out Land. It is not just land but land that is to say, rights in and over land, land settlement, land tenure, transfer and alienation of land, land use, land settlement and land improvement to the extent set out in Appendix II"

List II connotes the greater mass of State Land that includes List 1 as the lesser. But what has been given as land for purposes to be gathered from Appendix II is itself circumscribed by the qualification

-That is to say... One begins from the larger namely List II out of which List I originates. What is allocated remains embedded in item 18 of List I which demarcates the extent delivered to Provincial Councils.

As contended by the Learned Counsel for the 2nd Petitioner, the use of the phrase "that is to say" carries with it the notion that what is allocated as land is all that is specified in item 18 and nothing more. Having set out a narrow scope of the corpus of land in item 18, the Constitution in the same breath answers the question as to what extent land powers have been extended to Provincial Councils. The next phrase delineates and demarcates the extension - "rights in and over land, land settlement, Land tenure, transfer and alienation of land, land use, land settlement and land improvement to the extent set out in Appendix II".

Thus the Constitution, in item 18 of List I circumscribes the land powers in that there are two terminals between which one encompasses the land given to provincial councils. The first terminal, namely the use of the phrase "that is to say" indicates the limited powers conferred on the Provincial Councils and the second terminal "to the extent set out in Appendix II" indicates as to how far Provincial Councils can go in exercising the land powers that have been bestowed namely - "rights in and over land, Land settlement, land tenure, transfer and alienation of Land, Land use, land settlement and land improvement."

I now proceed to examine Appendix II which is an annexe to List 1.



We have seen that it was the intention of the framers of the Constitution to give an exalted position to State Lands in List II and leave it in the hands of the Republic and deliver a specified portion of State Lands to the Provinces namely - "rights in and over land, land settlement, land tenure, transfer and alienation of Land, land use, land settlement and land improvement." and call it "Land" in List I. The lesser nomenclature "Land" in List I connotes the subsidiarity of the role that lands assigned to Provincial Councils play and it becomes patently clear upon a reading of Appendix II which brings out the purposes for which land has been assigned to Provincial Councils.

Appendix II

Appendix II begins with an unequivocal opener - "State Land shall continue to vest in the Republic and may be disposed of, in accordance with Article 33 (d) and written laws governing the matter. "This peremptory declaration is a pointer to the fact that State Land belongs to the Republic and not to a Province. The notion of disposition of State Land in accordance with Article 33 (d) and written laws governing the matter establishes beyond doubt that dominium over all "State Land" lies with the Republic and not with the Provincial Councils. In fact the relevant portion of Article 33 (d) would read as follows - "33 (d) - to keep the Public Seal of the Republic, and to make and execute under the Public Seal, the acts of appointment of the Prime

Minister and other Ministers of the Cabinet of Ministers, the Chief Justice and other Judges of the Supreme Court, such grounds and disposition of lands and immovable property listed in the Republic as he is by law required or empowered to do, and use the Public Seal for sending all this whatsoever that shall pass the Seal"

Limited Extents of Powers Over Lands

Having set out the overarching dominium of State Lands with the Centre, Appendix II sets out special provisions which would qualify as further limitations on State Lands assigned to Provincial Councils. These special provisions apart from demonstrating the limited extents of Provincial Councils over Land also display unmistakably that State Land continue to be a subject of the Centre.

Having grafted the brooding presence of the Republic on all State Lands in List II, List I and then the Appendix II and subject to these pervasive provisions, State Land is declared to be a Provincial Council Subject in the second paragraph of Appendix II but that declaration is only explanatory of the purposes for which the Provincial Councils have been assigned with lands. Those purposes are evident in the special provisions 1.1, 1.2 and 1.3 of Appendix II.

These special provisions also strengthen the position that State Lands continue to be a subject located in the Centre.

Special Provision 1.1 - State Land required by the Government of Sri Lanka

State land required for the purposes of the government in a Province, in respect of a reserved or concurrent subject may be utilised by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilisation of such land in respect of such subject.

The consultation specified in this special provision would not mean that the Government has to obtain the concurrence of the relevant Provincial Council. State Land continues to vest in the Republic and if there is a law as defined in Article 170 of the Constitution that governs the matter it is open to the Government to make use of the State Land in the province of the purposes of a reserved or concurrent subject. Consultation would mean conference between the Government and the Provincial Council to enable them to reach some kind of agreement - *S.P. Gupta v Union of India A.I.R 1982 SC 140*. Such consultation would not detract from the fact that that particular State Land which the government requires continues to vest in the Republic.

Special Provision 1.2

Government shall make available to every Provincial Council State Land within the Province required by such Council for a Provincial Council subject. The Provincial



Council shall administer, control and utilize such State Land, in accordance with the laws and statutes governing the matter.

We saw in item 18 of List 1 that the Provincial Councils have “rights in and over land, land settlement, land tenure, transfer and alienation of land, land use, land settlement and land improvement.” These rights, as item 18 of List I itself states, are subject to the special provision 1.2 of Appendix II.

The resulting position, on a harmonious interpretation of the Constitution would be that when the State makes available to every Provincial Council State Land within the Province required by such Council for a Provincial Council subject, the Provincial Council shall administer, control and utilize such State Land, in accordance with the laws and statutes governing the matter.

In other words, Provincial Councils in exercising “rights in and over Land, land settlement, land tenure, transfer and alienation of land, land use, Land settlement and land improvement to the extent set out in Appendix II (conferred by List I) are limited to administering, controlling and utilizing such State Lands as are given to them. In terms of Article 1.2 State Land is made available to the Provincial Council by the Government. In the background of this constitutional arrangement it defies logic and reason to conclude that State Lands is a Provincial Council Subject in

the absence of a total subjection of State Lands to the domain of Provincial Councils.

A perusal of the special provision 1.3 also strengthens the view that State Lands do not lie with Provincial Councils.

Special Provision 1.3

Alienation or disposition of the State Land within a Province to any citizen or to any organization shall be by the President, on the advice of the relevant Provincial Council in accordance with the laws governing the matter.

The provision once again emphasizes the overarching position inherent in the 13th Amendment to the Constitution that State Land will continue to vest in the Republic and may be disposed of by the President in accordance with Article 33 (d) and written laws governing the matter. The use of the definite article “the” before the word State Land in this provision conclusively proves that the state land referred to in this provision is confined to the land made available to the Provincial Council for utilization for a Provincial Council subject by virtue of 1.2. If after having made available to a Provincial Council a state land for use, the government decides to dispose of this land to a citizen or organization, the government can take back the land but an element of advice has been introduced to facilitate such alienation or disposition. In the same way the Provincial Council too can initiate advice

for the purpose of persuading the government to alienate or dispose of the land made available for a worthy cause. It has to be noted that the absence of the word “only” before the word advice indicates the non-binding nature of the advice the Provincial Council proffers. Thus these inbuilt limitations on the part of the Provincial Council establish beyond scintilla of doubt that the Centre continues to have State Lands as its subject and it does not fall within the province of Provincial Councils.

This Court observes that if the advice of the Provincial Council is non binding, the power of the President to alienate or dispose of State Land in terms of Article 33 (d) of the Constitution and other written laws remains unfettered. In the circumstances I cannot but disagree with the erroneous proposition of the law which this Court expressed in the determination on the Land Ownership Bill (SD Nos. 26 - 36/2003) that the power of disposition by the President in terms of Article 33 (d) has been qualified by 1.3 of Appendix II. This view expressed in that determination is patently in error and unacceptable in view of the overall scheme of the 13th amendment which I have discussed herein. In the same breath the observations of the Supreme Court in *Vasudeva Nanayakkara v Choksy and Others* (John Keells case) {2008} 1 Sri.LR 134 that “a precondition laid down in



paragraph 1:3 is that an alienation of land or disposition of State Land within a province shall be done in terms of the applicable law only on the advice of the Provincial Council” is also not supportable having regard to the reasoning I have adopted in the consideration of this all important question of Law. This reason is a non sequitur if one were to hold the advice of the Provincial Council binding having regard to the absence of the word “only” in 1.3 and the inextricable nexus between 1.2 and 1.3.

It is unfortunate that the Court of Appeal fell into the cardinal error of holding that the Provincial Council has jurisdiction to hear and determine applications for discretionary remedies in respect of quit notices under the provisions of the State Lands (Recovery of Possession) Act No 7 of 1979 as amended. This wrong reasoning of the Court of Appeal is indubitably due to the unsatisfactory treatment of the provisions of the 13th Amendment that resulted in patently unacceptable precedents that need a revisit in the light of the fact neither Counsel nor the Bench in the cases cited above has subjected the relevant provisions to careful scrutiny.

Be that as it may, I would observe that the national policy on all subjects and functions which include State Lands in terms of List II is also dispositive of the question within whose competence State Lands lie. Paragraph 3 of

Appendix II which provides for the establishment of a National Land Commission by the Government declares in 3.1 that the National Land Commission will be responsible for the formulation of national policy with regard to the use of State Land. It is apparent that Provincial Councils will have to be guided by the directions issued by the National Land Commission and this too reinforces the contention that State Lands lie with the Centre and not with Provincial Councils.

Further there are other provisions that indicate that State Lands lie within the legislative competence of the Centre. Article 154 (G) (7) of the Constitution provides that a Provincial Council has no power to make statutes on any matter set out in List II (Reserved List). One of the matters referred to in that List is “State Lands and Foreshore” except to the extent specified in item 18 of List I. Thus, it is within the legislative competence of Parliament to enact laws in respect of “State Lands” bypassing the powers assigned with Provincial Council, on the premise that the subjects and functions not specified in List I and List II fall within the domain of the Reserved List. The Provincial Councils are also expressly debarred from enacting statutes on matters coming within the purview of the **Reserved List**.

All these features I have adumbrated above features redolent of the unitary nature of the state. Sharvananda C.J in

Re The Thirteenth Amendment to the Constitution (1987) 2 Sri. LR 312 at p 319 referred to the two essential qualities of a Unitary State as (1) the supremacy of the Central Parliament and (2) the absence of subsidiary sovereign bodies. He analyzed the provisions of the 13th Amendment Bill in order to find out whether the Provincial Council system proposed in the Bills was contrary to these two principles. He referred to the essential qualities of a federal state and compared them with those of the unitary state. It is pertinent to recall what he stated in the judgment.

The term “Unitary” in Article 2 is used in contradistinction to the term “Federal” which means an association of semiautonomous units with the distribution of sovereign powers between the units and the Centre. In a Unitary State the national government is legally supreme over all other levels. The essence of a Unitary State is that this sovereignty is undivided - in other words, that the powers of the Central Government power are unrestricted. The two essential qualities of a Unitary State are (1) the supremacy of the Central Parliament and (2) the absence of subsidiary sovereign bodies. It does not mean the essence of subsidiary lawmaking bodies, but it does mean that they may exist and can be abolished at the discretion of the central authority. It does, therefore, mean that by no stretch of meaning of words can



subsidiary bodies be called subsidiary sovereign bodies and finally, it means that there is no possibility of the Central and the other authorities come into conflicts with which the Central Government has not the legal power to cope....

On the other, in a Federal State the field of government is divided between the Federal and State governments which are not subordinate one to another, but are co-ordinate and independent within the sphere allotted to them. The existence of co-ordinate authorities independent of each other is the gist of the federal principle. The Federal Government is sovereign in some matters and the State governments are sovereign in others. Each within its own sphere exercises its powers without control from the other. Neither is subordinate to the other. It is this feature which distinguishes a Federal from a Unitary Constitution, in the latter sovereignty rests only with the Central Government.

It is my considered view that the reasoning I have adopted having regard to structure of power sharing accords with the gladsome jurisprudence set out as above by Sharvannda C.J.

Having adopted the above analysis and in light of the structure and scheme of the constitutional settlement in the 13th amendment to the Constitution, the irresistible conclusion is that Provincial Council subject matter in relation to State Lands would only mean that the Provincial

Councils would have legislative competence to make statutes only to administer, control and utilize State Land, if such State Land is made available to the Provincial Councils by the Government for a Provincial Council subject. As I pointed out above, if and when a National Land Commission is in place, the guidelines formulated by such Commission would govern the power of the Provincial Councils over the subject matter as interpreted in this judgement in relation to State Lands.

When one transposes this interpretation on the phrase “any matter set out in the Provincial Council List” that is determinative on the ingredient necessary to issue a writ in the Provincial High Court in relation to State Land, the vital precondition which is found in Article 154P 4 (b) of the Constitution is sadly lacking in the instant case. In terms of that Article, a Provincial Council is empowered to issue prerogative remedies, according to law, only on the following grounds –

- (a) There must be a person within the province who must have exercised power under
- (b) Any law or
- (c) Any statute made by the Provincial Council
- (d) In respect of any matter set out in the Provincial Council List.

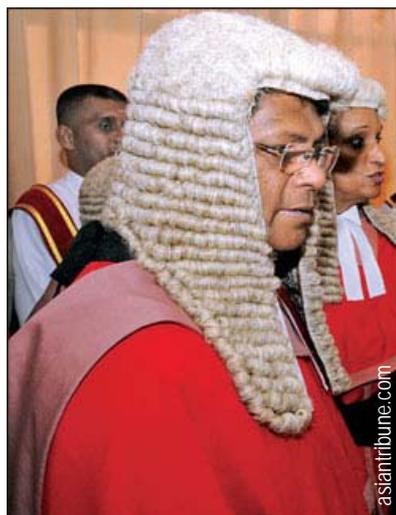
No doubt the Competent authority in the instant

exercised his power of issuing a quit notice under a law namely State Lands (Recovery of Possession) Act as amended. But was it in respect of any matter set out in the Provincial Council List? Certainly the answer to the question must respond to the qualifications contained in 1.2 of Appendix II namely administering, controlling and utilizing a State Land made available to a Provincial Council. The power exercised must have been in respect of these activities. The act of the Competent authority in issuing a quit notice for ejection does not fall within the extents of matters specified in the Provincial Council List and therefore the Provincial High Court would have no jurisdiction to exercise writ jurisdiction in respect of quit notices issued under State Lands (Recovery of Possession) Act as amended.

In the circumstances the Court of Appeal erred in law in holding that the Provincial High Court of Kandy had jurisdiction to issue a writ of certiorari in respect of a quit notice issued under State Lands (Recovery of Possession) Act as amended. The order made by the Court of Appeal dated 08.08.12 is set aside and the order of the Provincial High Court of Kandy dated 25.10.2000 is affirmed.

The question of law considered by this Court is thus answered in the affirmative.

*document source:
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SUPREME COURT DECISION ON LAND POWERS 26 SEPTEMBER 2013

JUSTICE SIRIPAVAN

In the Supreme court of the **Democratic Socialist Republic of Sri Lanka** In the matter of an Application for Special Leave to Appeal against Judgment of Court of Appeal dated 08.08.12 in Case No. CA(PHC) Appeal 37/2001 and in the High Court (Kandy) of the Central Province Case No. Certi 42/97. Solaimuthu Rasu, Dickson Corner Colony, Stafford Estate, Ragala, Halgranaoya. *Petitioner-Appellant* Vs. S.C. Appeal No. 21/13 S.C.Spl. LA 203/12 CA/PHC/Appeal No. 37/2001 HC/CP Certi. 42/97 1. The Superintendent Stafford Estate, Ragala, Halgranaoya. 2. S.C.K. De Alwis Consultant/ Plantation Expert, - Plantation Reform Project, Ministry of Plantation Industries, Colombo 04.

3. The Attorney-General, Attorney-General's Department, Colombo 12. *Respondent-Respondents*

AND NOW BETWEEN

1. The Superintendent Stafford Estate, Ragala, Halgranaoya. 2. S.C.K. De Alwis Consultant/ Plantation Expert, Plantation Reform Project, Ministry of Plantation Industries, Colombo 04.

3. The Attorney-General, Attorney-General's Department, Colombo 12. *Respondents-Respondents-Petitioners* Vs. Solaimuthu Rasu, Dickson Corner Colony, Stafford Estate, Ragala, Halgranaoya. *Petitioner-Appellant-Respondent* **BEFORE** : Mohan Pieris, P.C.,C.J., Sripavan, J. Wanasundera, P.C.,J.

COUNSEL : Manohara de Silva, P.C. with Palitha Gamage for the 1st Respondent-Respondent-Petitioner. Gomin Dayasiri with Palitha Gamage and Ms. Manoli Jinadasa for the 2nd Respondent-Respondent-Petitioner. Y.J.W. Wijayatillake, P.C.,Solicitor General with Vikum de Abrew, S.S.C. And Yuresha Fernando, S.C. For the 3rd Respondent-Respondent-Petitioner. M.A.Sumanthiran with Ganesharajah and Rajitha Abeysinghe for the Petitioner-Appellant-Respondent. **ARGUED ON** : 11th July 2013 17th July 2013 **WRITTEN SUBMISSIONS FILED** : By the 2nd Respondent-Respondent-Petitioner on :- 24th July 2013 & 23rd August 2013 By the 3rd Respondent-Respondent-Petitioner on :- 13th March 2013 & 25th July 2013. **DECIDED ON** : 26th September 2013 The Respondent-Respondent-Petitioners(hereinafter called and referred to as the



“Petitioners”) sought, special leave to appeal against the judgment of the Court of Appeal dated 08-08-12 whereby the Court

of Appeal set aside the judgment of the Provincial High Court dated 25-10-2000, holden at Kandy.

On 31.01.13 this Court granted Special Leave to Appeal on the following two questions :-

(i) Did the Court of Appeal err by deciding that the Provincial High Court has jurisdiction to hear cases where dispossession or encroachment or alienation of State Lands, is/are in issue?

(ii) Did the Court of Appeal err by failing to consider whether there is a right of appeal against the order of

the High Court dismissing the application in limine for want of jurisdiction?

However, at the hearing before us on 17.07.13, all Counsel agreed to confine their submissions only on the first question referred to above; thus, this Court did not consider the second question in this judgment.

The facts in this application were not disputed by Counsel. It would appear that the Petitioner-Appellant-Respondent (hereinafter called and referred to as the “Respondent”) instituted an action in the Provincial

High Court of Kandy seeking, inter-alia -

(a) A Writ of Certiorari to quash a quit notice issued on

him by the second Petitioner in terms of the State Lands (Recovery of Possession) Act No.7 of 1979 as amended ,

(b) A Writ of Prohibition, prohibiting the first and the second Petitioners from proceeding any further with the Writ of Execution evicting him from the land more fully described in the schedule to the petition; and (c) A Writ of Mandamus directing the First and the Second Petitioners not to interfere with his lawful possession of the said land. The Petitioners filed their Statement of Objections on 27.02.96 and took up the position that :-

(a) the land in question is “State Land”;

(b) the “quit notice” dated 07.10.97 was issued by the designated Competent Authority in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended;

(c) the Respondent has no legal basis to invoke the writ jurisdiction of the Provincial High Court in view of the facts of the case; and

(d) in any event, the High Court of the Province lacks jurisdiction to hear and determine the matter as it relates to a “State Land”.

The jurisdictional issue with regard to the powers of a Provincial High Court to grant a Writ of Certiorari to quash the quit notice issued under the provisions of the State Lands (Recovery of Possession) Act was taken up

as a preliminary matter. The Provincial High Court after hearing oral and written submissions of the parties, by its order dated 25.10.2000 held that the Provincial High Court had no jurisdiction to entertain the said application and dismissed the same. The Respondent thereafter on 22.11.2000 preferred an appeal to the Court of Appeal on the basis that the Provincial High Court had misdirected itself by holding that the Court lacks jurisdiction to inquire into and to make a determination relating to notices filed under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended. The Court of Appeal delivered its judgment on 08.08.12 holding, inter-alia, as follows :-

(i) that the subject of “State Land” is included in Appendix II of the “Provincial Council List” (List 1) to the 9th Schedule to the 13th Amendment to the Constitution. (ii) that therefore “State Land” becomes a subject of the Provincial Council List even though State Land continues to vest in the Republic. (iii) that therefore, the High Court of the Provinces has jurisdiction to hear and determine Writ Applications filed to quash the quit notice issued under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended. It must be noted that the demarcation between the Centre and the Provinces with regard to “State Land” must be clearly identified.



As observed by Fernando, J. in the Determination of the Agrarian Services. (Amendment) Bill [S.C. Special Determination 2/91 and 4/91], it is not possible to decide whether a matter is a List 1 or List 111 subject by merely looking at the headings in those lists. The headings may not be comprehensive and the descriptions which follow do not purport to be all inclusive definitions of the headings. Exclusions may be set out in the detailed descriptions which again may indicate that the headings are not comprehensive. As far as possible, an attempt must be made to reconcile entries in Lists I, II and III of the Constitution and the Court must avoid attributing any conflict between the powers of the Centre and the Provinces.

Therefore it becomes necessary to examine and scrutinize the relevant Articles contained in the Constitution in relation to "Land" and "State Land". Article 154(G)(1) grants power to every Provincial Council to make statutes applicable to the Province for which it is established with regard to any matter set out in List 1 of the Ninth Schedule (hereinafter referred to as the "Provincial Council List"). On an examination of the Provincial Council List, it would appear at item 18 as follows :

"Land- Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II "

Appendix II sets out as follows:

Land and Land Settlement

"State Land shall continue to vest in the Republic and may be disposed of in accordance with Article 33(d) and written law governing this matter. Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following special provisions:-

1. State land -

1.1 State Land required for the purposes of the Government in a Province, in respect of a reserved or concurrent subject may be utilized by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilization of such land in respect of such subject.

1.2 Government shall make available to every Provincial Council State land within the Province required by such Council for a Provincial Council subject. The Provincial Council shall administer, control and utilize such State land, in accordance with the laws and statutes governing the matter.

1.3 Alienation or disposition of the State Land within a Province to any citizen or to any organization shall be by the President on the advice of the relevant Provincial Council, in accordance with the laws governing the matter." (emphasis added)

Thus, it is important to bear in mind that "land" is a Provincial Council subject only to the extent set out in Appendix II.

This Appendix imposes the restriction on the land powers given to Provincial Councils.

The Constitutional limitations imposed by the legislature shows that in the exercise of its legislative powers, no exclusive power is vested in the Provincial Councils with regard to the subject of "land". The restrictions and/or limitations in respect of the utilization of "State Land" as stated in Appendix II may be summarized as follows:-

1. In terms of 1.1 above, the Government of Sri Lanka can utilize State Land "in respect of a reserved or concurrent subject." However, this could only be done in compliance with the laws passed by Parliament and in consultation with the relevant Provincial Council, so that the Government and the Provincial Council reach consensus with regard to the use of such "State Land".

2. According to 1.2 above, it is important to note that a Provincial Council can utilize "State Land" only upon it being made available to it by the Government. It therefore implies that a Provincial Council cannot appropriate to itself without the government making "State Land" available to such Council. Such "State Land" can be made available by the Government only in respect of a Provincial Council subject. The only power casts upon the Provincial Council is to administer, control and utilize such "State Land" in accordance with the laws passed by Parliament and the



statutes made by the Provincial Council.(emphasis added)

3. Paragraph 1.3 above, deals with alienation or disposition of "State Land" within a province upon an advice made by such Provincial Council. It cannot be construed that the advice tendered by the Provincial Council binds the President. However it must be emphasized that if the President after an opinion or advice given, decides to dispose of the State Land, such disposal has to be in compliance with the laws enacted by Parliament. Thus, with regard to the administration, control and utilization of "State Land", the legislative power of a Provincial Council is confined and restricted to the extent set out in paragraph 2 above. The Provincial Councils do not therefore exercise sovereign legislative powers and are only subsidiary bodies, exercising limited legislative powers subordinate to that of Parliament.

At this stage, it may be relevant to quote the observation made by Sharvananda C.J. *Re The Thirteenth Amendment to the Constitution* [(1987) 2 S.L.R. 312 at 320]. *"The question that arises is whether the 13th Amendment Bill under consideration creates institutions of government which are supreme, independent and not subordinate within their defined spheres. Application of this test demonstrates that both in respect of the exercise of its legislative powers and in respect of exercise of executive*

powers no exclusive or independent power is vested in the Provincial Councils. The Parliament and President have ultimate control over them and remain supreme."

Shirani A. Bandaranayake, J. too in the Determination of the Bill titled "Land Ownership" [S.D. No. 26/2003 – 36/2003 Determination dated 10th December 2003] noted as follows:-

"With the passing of the Thirteenth Amendment to the Constitution, such Constitutional power vested with the President was qualified by virtue of paragraph 1:3 of Appendix II to the Ninth Schedule to the Constitution. By such provision the authority for alienation or disposition of the State land within a province to any citizen or to any organization was yet vested with the President..... In effect, even after the establishment of Provincial Councils in 1987, State land continued to be vested in the Republic and disposition could be carried out only in accordance with Article 33(d) of the Constitution read with 1:3 of Appendix II to the Ninth Schedule to the Constitution."

Learned President's Counsel for the First Petitioner drew the attention of Court to item 9:1 of the Provincial Council list under the heading of "Agriculture and Agrarian Services" which reads thus:- Agriculture, including agricultural extension, promotion and education for provincial purposes (other than inter-provincial irrigation

and land settlement schemes, State Land and plantation agriculture) Here again, the subject relating to "State Land and plantation agriculture" is excluded from the legislative competence of Provincial Councils.

Article 154 (G)(7) further provides that a Provincial Council has no power to make statutes on any matter set out in List II of the Ninth Schedule (hereinafter referred to as the "Reserved List"). One of the matters referred to in the Reserved List is "State Lands and Foreshore, except to the extent specified in Item 18 of List I". Thus, it is competent for the Centre to enact laws in respect of "State Lands" avoiding the powers given to the Provincial Councils as specified in item 18 of the Provincial Council List, on the basis that the subjects and functions not specified in List I (Provincial Council List) and List III fall within the ambit of the Reserved List.

In view of the foregoing analysis, and considering the true nature and character of the legislative powers given to Provincial Councils one could safely conclude that "Provincial Councils can only make statutes to administer, control and utilize State Land, if such State Land is made available to the Provincial Council by the Government for a Provincial Council subject. It must be emphasized that Appendix II in item 3:4 provides that the powers of the Provincial Councils shall be exercised having due regard to the national policy formulated



by The National Land Commission. The National Land Commission which includes representatives of all Provincial Councils would be responsible for the formulation of the National Policy with regard to the use of State Lands.

There is nothing to indicate that "State Land" which is the subject matter of this application and in respect of which a quit notice was issued by the second petitioner was a land, made available to the relevant Provincial Council by the Government for a Provincial Council subject. Hence, the said land is not under the administration and control of the relevant Provincial Council and no statute could have possibly been passed by the said Provincial Council with regard to the utilization of such Land. Therefore, this land does not fall within the ambit of any matters set out in the Provincial Council list. Even if the Government makes available State Land to a Provincial Council, the title to the land still vests with the State. In such a situation, one has to consider whether recovery of possession of State Land is a Provincial Council subject.

The jurisdiction conferred upon on Provincial High Court with regard to the issue of writs is contained in Article 154P 4(b) of the Constitution.

According to the said Article, a Provincial High Court shall have jurisdiction to issue, according to law:- *Order in the nature of Writs of Certiorari, prohibition, procedendo, mandamus and quo-warranto against any persons exercising, within the Province, any power under:-*

(I) any law; or

(II) any statute made by the Provincial Council established for that Province;

in respect of any matter set out in the Provincial Council List

(emphasis added) There is much significance in the use of the words "any matter set out in the Provincial Council List." The fundamental principle of constitutional construction is to give effect to the intent of the framers and of the people adopting it. Therefore, it is the paramount duty of this Court to apply the words as used in the Constitution and construe them within its four corners. In *Weragama Vs. Eksath Lanka Wathu Kamkaru Samithiya & Others* (1994) 1 S.L.R. 293, this Court opined that a Provincial High Court could in fact entertain matters that are strictly within the purview of the devolution of powers with regard to the subject matter as set out in the Provincial Council List. Fernando, J. at page 298 said "*As to the intention of Parliament in adopting the Thirteenth Amendment, this Court cannot*

attribute an intention except that which appears from the words used by Parliament. I find nothing suggesting a general intention of devolving power to the Provinces; insofar as the three Lists are concerned, only what was specifically mentioned was devolved, and "all subjects and functions not specified in List I or List II" were reserved – thus contradicting any such general intentions.... There was nothing more than a re-arrangement of the jurisdictions of the judiciary." If powers relating to Recovery/dispossession of State Lands, encroachment or alienation of State Lands are not in the Provincial Council List, matters relating to them cannot be gone into by a High Court of the Province. Accordingly, I hold that the Court of Appeal erred in holding that the Provincial High Court of Kandy had jurisdiction to issue a Writ of Certiorari, in respect of a quit notice issued under the State Lands (Recovery of Possession) Act. The order made by the Court of Appeal dated 08.08.12 is set aside and the order of the Provincial High Court of Kandy dated 25.10.2000 is affirmed.

The question of law, considered by this Court is thus answered in the affirmative.

*document source:
Supremecourt.lk*



SUPREME COURT DECISION ON LAND POWERS 26 SEPTEMBER 2013



JUSTICE EVA WANASUNDERA

In the Supreme court of the Democratic Socialist Republic of Sri Lanka In the matter of an application for Special Leave to Appeal against Judgment of Court of Appeal dated 08.08.12 in Case No. CA (PHC) Appeal 37/2001 and in the High Court (Kandy) of the Central Province Case No. Certi. 42/97.

Solaimuthu Rasu,
Dickson Corner Colony,
Stafford Estate,
Ragala,
Halgranaoya
Petitioner-Appellant
Vs.

SC. Appeal 21/2013
S.C. Spl. LA. 203/12
CA/PHC/Appeal No. 37/2001
HC/CP Certi. 42/97
1. The Superintendent
Stafford Estate,
Ragala,
Halgranaoya.

2. S.C.K. De Alwis
Consultant/Plantation Expert,
Plantation Reform Project,
Ministry of Plantation
Industries,
Colombo 04.
3. The Attorney General,
Attorney General's
Department,
Colombo 12.
Respondent-Respondents

**SC. Appeal 21/2013
AND NOW BETWEEN**

1. The Superintendent
Stafford Estate,
Ragala,
Halgranaoya.
2. S.C.K. De Alwis
Consultant/Plantation Expert,
Plantation Reform Project,
Ministry of Plantation
Industries,
Colombo 04.
3. The Attorney General,
Attorney General's
Department,
Colombo 12.

**Respondent-Respondents-
Petitioners**
Vs.
Solaimuthu Rasu,
Dickson Corner Colony,
Stafford Estate,
Ragala,
Halgranaoya
**Petitioner-Appellant-
Respondent**

SC. Appeal 21/2013
Before : Mohan Pieris, P.C.
C.J.,
Sripavan, J
Wanasundera, P.C.J.
Counsel : Manohara de Silva,
P.C. with Palitha Gamage for
the 1st
Respondent.
Gomin Dayasiri with Palitha
Gamage and Ms. Manoli
Jinadasa and
Rakitha Abeygunawardena
for the 2nd Respondent-
Respondent-
Petitioner.



Y.J.W. Wijayatillake, P.C.,
Solicitor General with Vikum
de Abrew,
SSC. And Yuresha Fernando,
SC. for the 3rd Respondent-
Respondent-Petitioner.
M.A. Sumanthiran with
Ganesharajah and Rakitha
Abeyasinghe for
the Petitioner –Appellant-
Respondent.

Argued On : 11th July 2013
17th July 2013

Written Submissions:

By the 2nd Respondent-
Respondent-Petitioner

Filed : on : 24th July & 23rd
August 2013.

: By the 3rd Respondent-
Respondent-Petitioner
on: 13th March 2013 & 25th
July 2013

Decided On : 26th
September 2013

Wanasundera, P.C.J.

An application was filed for special leave to appeal from the impugned judgment of the Court of Appeal dated 08-08.12 wherein the Court of Appeal set aside the judgment dated 25th October 2000 of the Provincial High Court. I have had the benefit of reading in draft the erudite judgments of my brothers, His Lordship the Chief Justice and His Lordship Justice Sripavan with both of which I agree. I would also, however, set down in brief my own views on the single important question of law which this Court decided and that is whether the Court of Appeal erred in deciding that the Provincial High Court

had jurisdiction to hear cases where disposition or encroachment or alienations of state lands is/are in issue or where there is a challenge to a quit notice issued in respect of a State Land.

At this point may I quote Lord Denning in *Magor and St. Nallons RDC. Vs. Newport Corporation (1950) 2 AER 1226, 1236 CA* with regard to the onus of a Judge, “We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.” As such, I am strongly of the view that the interpretation and analysis the provisions in the Thirteenth Amendment to the Constitution should never pave way to destruction of any sort. I would refrain from going into the facts in the case as they have been dealt with exhaustively in the judgments of my brothers. It is abundantly clear that land in item 18 cannot include the dominium over State Land except the powers given over State Land in terms of the Constitution and any other powers given by virtue of any enactment. The devolution of State Land to the Provinces undoubtedly is subject to

state land continuing to be vested in the Republic. There is no doubt that the President’s power to make grants and dispositions according to existing law remains unfettered. The interpretation in my view to be given to all the provisions governing this matter as set out in the judgments of my brothers is that the exercise of existing rights of ownership of state lands is unaffected but restricted to the limits of the powers given to Provincial Councils which must be exercised having regard to the national policy, that is, to be formulated by the National Land Commission. This Court’s determination in the Land Ownership Bill (S.D. No. 26/2003 – 36/2003) ignores everything else in the 9th schedule and errs in its interpretation of Appendix II 1.2. The resultant position is that the centre would cede its seisin over state lands to the Provincial Councils except in some limited circumstances as set out in the judgments of my brothers. It is observed that the draftsmen of our Constitution have given List II primacy leaving state lands in the safe dominium of the Republic and only delivered a specified segments of state lands in well delineated situations namely - “rights in and over land, land settlement, land tenure, transfer and alienation of land, land use, land settlement and land improvement” and this is what is described as land in



list I. As His Lordship the Chief Justice has adumbrated in his judgment, item 18 of List I is itself qualified by paragraph 1.2 of Appendix II namely Government shall **make available** to every Provincial Council State Land within the Province required by such Council for a Provincial Council subject. The Provincial Council shall **administer, control and utilize such State land, in accordance with the laws and statutes governing the matter.** This limited cession of state lands which must be for purposes of **administration, control and utilization of State lands made available by the government to a provincial council subject** must be understood in the context of the two important features of a unitary state when examining the matters in issue. His Lordship Chief Justice Sharvananda in *The Thirteenth Amendment to*

the Constitution (1987) 2 Sri. LR 312 went on to explain the term unitary in contrast with the term Federal. His Lordship went on to identify the supremacy of Central Parliament and the absence of subsidiary sovereign bodies as two essential qualities in a unitary state and that subsidiary bodies should never be equated or treated as being subsidiary sovereign bodies and that it finally means that there was no possibility of a conflict arising between the Centre and other authorities under a unitary Constitution. The Federal bodies are co-ordinate and independent of each other. In other words, a federal body can exercise its own powers within its jurisdiction without control from the other. In a Unitary state sovereignty of legislative power rests only with the centre. I am also mindful of Mark Fernando J's observations in **Weragama**

vs Eksath Lanka Wathu Kamkaru Samitiya and others (1994) 4 Sri.LR 293 when he went on to observe that as to the intention of Parliament in adopting the 13th Amendment, the Court cannot attribute the intention except that which appears from the words used by Parliament and that all subjects and functions not specified in list 1 or list II were reserved thereby contradicting any such general intention to do otherwise. It is also my view that if powers relating to recovery/disposition of state lands, encroachment or alienation of state lands are not in the Provincial Council list, any review pertaining to such matters cannot be gone into by the Provincial High Court.

*document source:
supremecourt.lk*

*(The Supreme Court decision will
be reviewed in the next issue of
Peace Monitor)*

Social Indicator, the survey research unit of the Centre for Policy Alternatives, conducted an opinion poll in August 2013 in the run up to the Northern Provincial Council Elections.

Provincial Elections in the Northern Province will be held on the 21st of September 2013 - the first time in 25 years. According to the Department of Elections, 714,488 people are registered to vote.



Photography by Vikalpa

NORTHERN PROVINCIAL COUNCIL PRE ELECTION SURVEY

SEPTEMBER 2013

SOCIAL INDICATOR, CPA

KEY FINDINGS

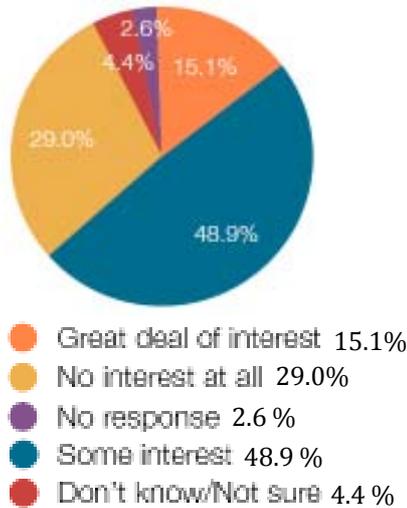
This poll did not intend to forecast the election results but rather to assess the views of the people with regard to the upcoming election, issues that are important to the community and changes experienced since the end of war.

Job opportunities, improving education, housing and improving roads and transport appear to be the most important issues for people and their community. In the last four years, majority of the respondents (63.7%) believe that development in the Northern Province has somewhat improved while 26.1% say that it has greatly improved. When it comes to personal security, 41.3% state that it has somewhat improved in the last four years while 21.6% say that there has been no change. Almost 40% believe that their livelihoods have somewhat improved while 33.9% say that there has been no change.

When selecting candidates the most important factor that matter to most respondents is that candidates are engaged in community service and village development while honest, suitable candidates with good policies come a close second. Most respondents appear optimistic about the upcoming election with 34.2% believing that the NPC elections will be free and fair and while 24% say they maybe free and fair. Almost 34% of respondents believe that the TNA will win the elections while 21.7% believe it will be the UPFA.



Leaving aside the period of elections, how much interest would you say you have in politics and public affairs in general?



The three most important issues to the local community -

1. Job opportunities
2. Improving education
3. Housing

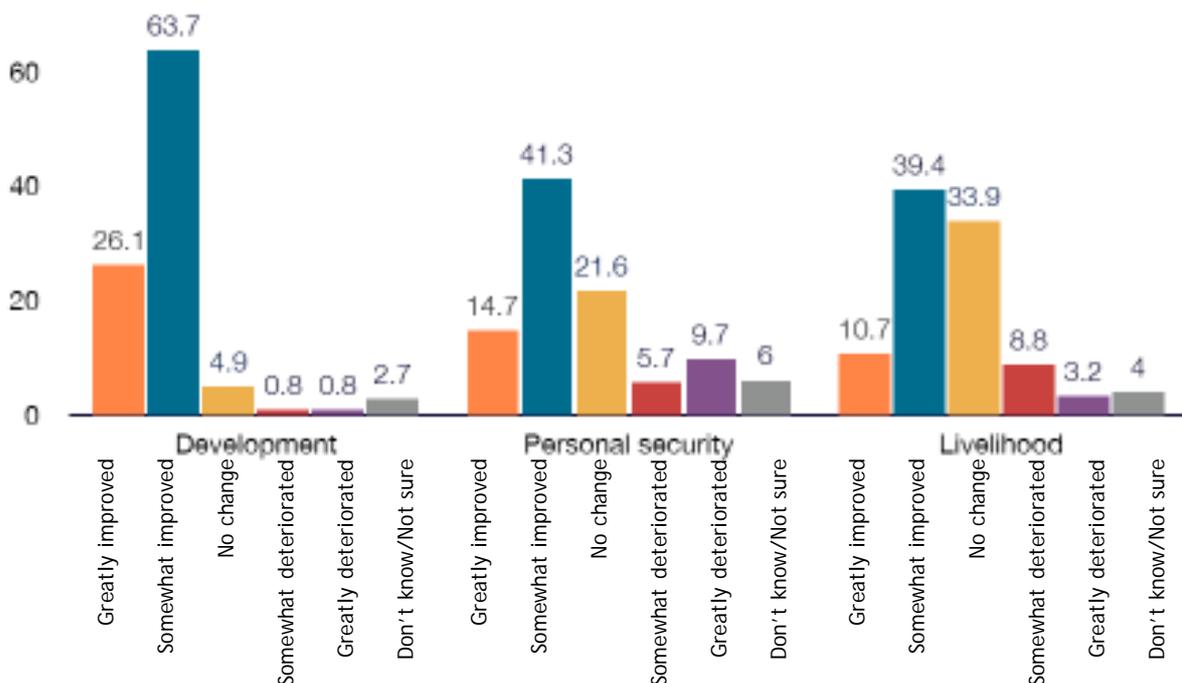
What is the basic objective of the 13th Amendment?

- Strengthen the power of the President against Parliament – **9.7%**
- Devolve more powers to the Provinces – **24.1%**
- Make Sinhala an official language of Sri Lanka – **2.6%**
- Increase the centralisation of power in Sri Lanka – **3.9%**
- Don't know/ Not sure – **38.1%**
- No response **26.1%**

88.8% of respondents were aware of the Government's development programme 'Uthuru Wasanthaya' (Northern Spring). When asked if they have benefited from the programme, 54.2% said no while 11.6% said they have got roads and 9.8% said they have got electricity.

Uthuru Wasanthaya was launched in 2009 with a focus on three main aspects - security, resettlement and infrastructure development, to be implemented in three stages - a 180 day plan, short term plan and long term plan.

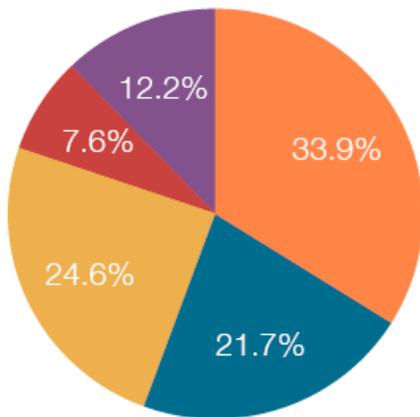
Please state to what extent the following conditions have changed in the Northern Province over the last four years?





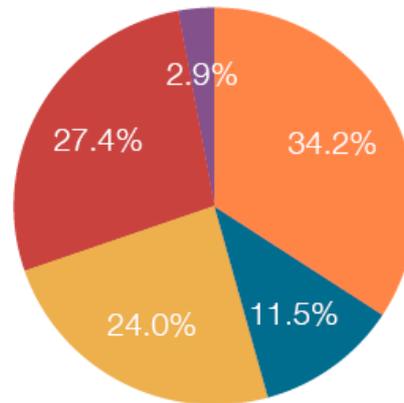
With regard to the upcoming NPC elections, which party do you think will win?

- TNA 33.9%
- UPFA 21.7%
- Don't know/Not sure 24.6%
- Other 7.6%
- No response 12.2%



Do you think the NPC elections will be free and fair?

- Yes 34.2%
- No 11.5%
- Maybe 24.0%
- Don't Know/Not sure 27.4%
- No response 2.9%



When selecting your candidate, what is the most important factor that matter to you?

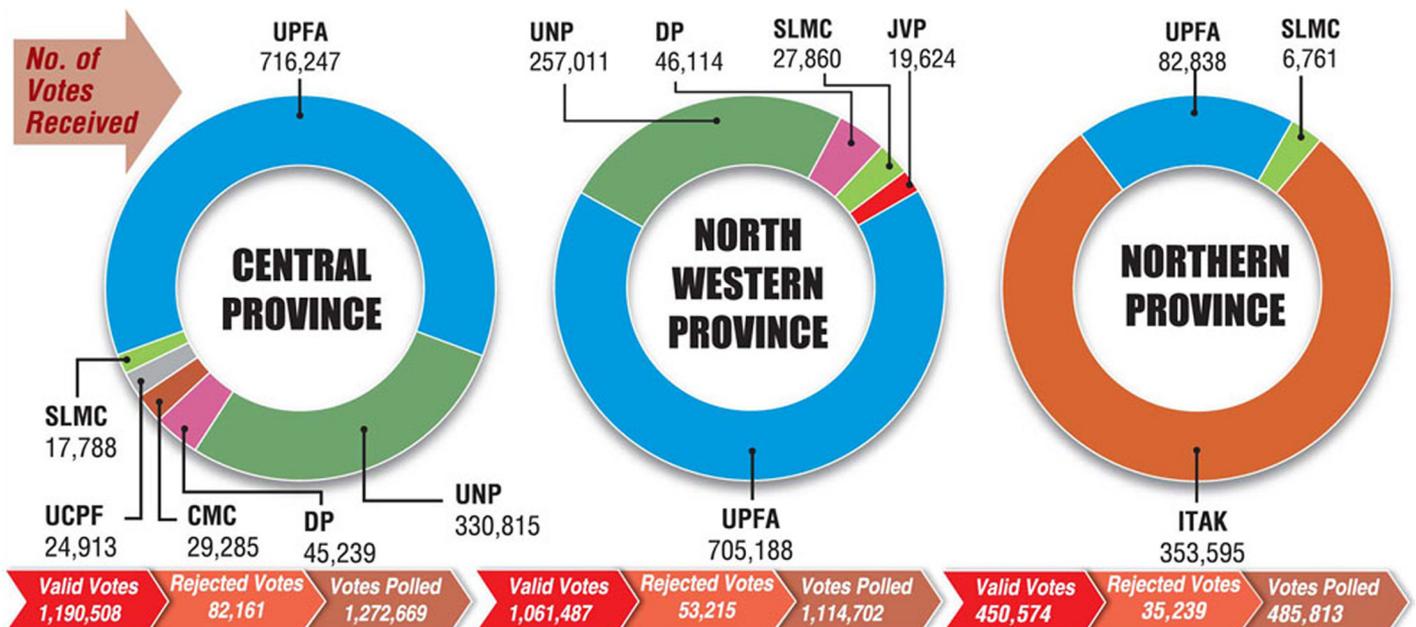
- Involvement in community service/village development – 26.4%
- Honest and suitable candidates with good policies – 26.1%

METHODOLOGY

This poll was conducted among 617 registered voters in the Northern Province. 54.5% of respondents were male and 45.5% were female. The sample was spread across the 5 districts in the Northern Province (Jaffna, Mullaitivu, Kilinochchi, Vavuniya and Mannar) using Population Proportionate Sampling based on the 2010 Census of the Northern Province. Ethnic proportions were accounted for. The sample was stratified across districts and within each district electorates were selected randomly. 60 respondents were selected in each selected electorate using the snowball method due to the current situation in those areas. However, up to the selection of electorates, random sampling techniques were employed. Fieldwork was conducted by 11 field researchers from 5 – 15 August 2013.

PROVINCIAL COUNCIL ELECTIONS 2013

The ruling United People's Freedom Alliance (UPFA) swept the polls in the Northwest Western and Central provinces clinching 34 and 36 seats respectively – with a comfortable majority to run the Councils. However, it was subjected to a crushing political defeat in the north where the TNA won with 30 seats. The UPFA won only seven seats.



GRAPHIC BY SURESH FERNANDO / DAILY MIRROR