

A Right Path to True Peace

Proper Implementation of the 13th Amendment

To A Step Forward

1. In General, Devolution Promises and the 13th Amendment

- 1) Many have a series of serious questions with regard to the 13th Amendment (made in 1987 and said to be in compliance with the **Indo-Lanka Peace Accord**) to the 1978 Constitution of Sri Lanka, since it does already provide legislative arrangements for the establishment and functions of the Provincial level autonomous governing system. It is meant as a political solution to the ethnic crisis in Sri Lanka. But it is almost defunct or made irrelevant to the existing crisis in the North-East of Sri Lanka and the Provincial Councils in the Sinhala areas too are understood to be the ‘white elephants’ to the country. However, there is a new thinking recently rising among some persons whether the 13th Amendment can be reviewed for making it as a step towards the political solution to the Tamils’ problem in Sri Lanka;
- 2) If the 13th amendment should be considered as a step towards the resolution of the conflict the following issues has to be addressed: then, (a) what are the real defects in the 13th Amendment?, (b) what are the problems to be faced in case of implementation?, and (c) what are the requirements to rectify the defects without major constitutional amendments, and how to take steps to implement it?;
- 3) It is obvious that the 13th Amendment as such with its present contents and format cannot provide a satisfactory political set up that could lead to a permanent solution to the Tamils’ problem in Sri Lanka. Apart from the defects and shortcomings of the 13th Amendment, the time and circumstances and consequently the demands and resolutions have changed during the last 16 years. Former President Chandrika Kumaratunge and a large number of her Ministers of the SLFP unwaveringly committed for a political package of a near-federal system, The former Prime Minister Ranil Wickramasinghe and a number of Ministers of the UNP had openly expressed their support for

a clear federal solution not only among the people of Sri Lanka, but also they declared it in the international forums, Tamils at large aspire for a political solution of a higher degree of federal system. The LTTE demands a political package that should accept its sovereignty over the land, sea and air. In this situation, it would be inadequate to propose that the restoration of the existing 13th Amendment itself could bring a political solution;

- 4) President Mahinda Rajapakse has repeatedly said that the political system followed by India is suitable to the Sri Lankan crisis, although his latest opinion is to evolve a Sri Lanka's own model with maximum devolution. Many believe that the President Rajapakse indeed means devolution of powers to the level of Indian system, without removing the unitary feature of the Constitution. "Unitary or Federal" has been continued as a debate in Sri Lanka for the last many decades particularly since the Indo-Lanka Peace Accord. Even J.R.Jeyawardane once said, after his retirement, that the time has come for Sri Lanka to adopt a federal political system. To achieve a compromise, 1995 to 2000 Chandrika's proposal paved the way for removing the term 'Unitary' from the Constitution but instead not inserting the term 'Federal'. Has President Rajapakse the will and wish to remove the term 'Unitary' from the Constitution?. There is another view on the devolution of powers as in the UK, because the United Kingdom has devolved the powers substantially to Wales, Scotland and Northern Ireland while it maintains the Unitary Constitution and superiority of the British Parliament. Had the 13th amendment been made without ambiguities and other legislative and administrative defects, it could have perhaps dynamically contributed to the devolution process for a perpetual advancement. When leaders like Mrs.Chandrika Kumaratunge, Ranil Wickramasinghe and Mahinda Rajapakse could have easily made further improvements consistently to the devolutionary development. Thus, the process would have progressed towards a fully developed Federal, Democratic, Socialist and Secular Republic of Sri Lanka;
- 5) Resolution of the First North-East Provincial Council of 1988-90 proposed for a constitutional reform to devolve the powers up to the level of those in the Constitution of India. During the period of the Mangala Moonasingha's Parliamentary Committee of 1990-1993, all major Tamil democratic political parties demanded greater devolution, not the federal system. Mr.Mangala Moonasingha too recommended devolving the powers not less than to the level of the Indian Constitution. Recent position of all the Tamil democratic parties is also

a demand (from the Rajapakse Govt.) for an immediate political step to establish a provincial / regional system that has powers not less than those of the Indian regional States;

- 6) One thing that has to be kept in mind here is that India is in fact gradually moving from present quasi-federal system, towards reforming its constitutional and institutional arrangements for it to have a real full-fledged federal political system. At the same time, the present Constitution of India provides special powers like, Jammu-Kashmir to have its own constitution and many other States like Himachal Pradesh and the Seven Sister States in the North-East, to have powers to prevent the settlement of any citizen from other parts of India, in their states. So Sri Lanka also should evolve its own federal system and various political institutions that would lead the country to highly uphold and sincerely practice the principles:- People's democracy, highest degree of federalism, True Secularism, Righteous Judiciary, all Freedoms to all the people, and Equality of all the nationalities / communities;
- 7) However, a long-lasting permanent political solution to the ethnic crisis of Sri Lanka there cannot be achieved by a 'quick-fix' or in **one go** manner. The Sinhala people's confidence has to be established; the trust and acceptance of the Tamils have to be built up not by promises but by real devolutionary political practices; and there must be a compromise with the sensitive demands of the Muslim people, in the country. There is a need for the emergence of a new political culture among the Sri Lankan leaders of all communities – of working together with equal partnership in developing all the provinces and securing the interests of the all the communities;
- 8) Non-ending talks on talks and talks on 'permanent political solution' without talks have so far proved a farce and have only aggravated the crisis more and more towards non-resolvable complications and helped only the extremists to stall all the political process at their mercy. As a result, the common people are alienated and made frustrated and the democratic forces of the Tamils are driven towards a complete isolation. Therefore, practicing the available possibilities and gradually advancing towards legislative reforms, have to be put into a dynamic process so that the negotiated agreements and practical implementations can positively push forward one towards the other with the confidence and cooperation of all the people of all communities in the country;

- 9) Above all, the primary need at first is that the President, the Ministers, Political leaders and representatives must make their own mind set to come out of the tradition of Colombo-centric regimentation set by the British colonialists Colebrook and Cameron of 1835 and their successors, and to be consciously and wholeheartedly adopting to and assimilate with the new realities and political cultures of devolving powers at maximum to the provinces and equally accommodating the basic aspirations of the minority nationalities. Accordingly, the bureaucratic formations of administrations have to be restructured and all the institutional reformation should be implemented;
- 10) Contrarily, if the Sinhala leaders use the terms ‘devolution of powers’, ‘federalism’, ‘Indian system’ ‘Sri Lanka’s own Devolution Model’, etc. only for the purpose of populist rhetoric and tricks, or for conveniently passing the time of the crisis, or if they believe that they too cleverly deceive the trusted section of the Tamils and the international community as well by pretending that they are so seriously committed for a political solution providing a higher degree of devolution of powers in addition to the resolutions to the other non-constitutional problems, then the country could not, by anyone or with anyone’s support, be able to rescue itself from the present state of shambles and the people irrespective of communities would continue to be left at the mercy of the psychopathic human-butchers led by the political barbarians.
- 11) Already the Tamil society in the North-East of Sri Lanka has been reduced to have only the weaker and diseased section of the people to be ruled and oppressed by the iron hands of barbarians disguised as the liberators and exploited by the “Tamil” business and administrative leeches. As both the Sri Lankan government and the international community are indifferent towards the Tamil people’s basic right of life which has been completely deprived of by the LTTE and the imminence of war, the peace-loving and hard working cultured Tamil people who comprise more than 50%, particularly younger generation, have already ran away or chased away from their own home land and this exodus continue even today, to run away seeking refuge anywhere in the world in order to save their lives and earn their livelihood with dignity. Similarly, the honest and democracy-loving intellectuals have also already left the country and the remaining sections have muted themselves from talking of socio-political issues, to save them from fanatic killers. Not only Tamils, the lives of the Muslims are also in great danger. Muslim people of the North were already cleared out of

their home lands, by the Tamil parochial chauvinists. The Muslim populations in Trincomalee and Batticaloa districts too are in danger of facing similar fate at anytime. Present developing situations indicate that days are not far away to see the carnages in the Sinahala areas too. But, the major Sinhala political parties and the international community are playing a game of “Catching the Tigers by Battering their Eyes”, at the cost of democracy, basic human rights and many hundreds of human lives.

- 12) Sri Lankan government and Sinhala and Tamil democratic and progressive leaders must, therefore, get together at the earliest to plan a programme for rescuing the country and the people from the LTTE's agenda of long-protracted divisive plans, and put the political process of the country into the righteous path of positive and constructive plan of action, thus defeating the hidden destructive and damaging agenda of the chauvinists of both sides. Here perhaps the primary enemy of a reasonable and practicable political solution is neither the LTTE nor the Sinhala extremists, but selfish-introverted polity of the major ruling parties. Had these two parties honestly worked together for a reasonably acceptable political package with the concurrence of the Tamil democratic political parties, peace and prosperity could have been achieved by the country long before. Political observers could simply identify that the conflict between the SLFP and UNP provides a convenient environment to the LTTE and weaken the Tamil democratic parties and mislead the international community in understanding the real problem and related issues of Sri Lankan ethnic conflict. In addition, these two parties were responsible in compelling a substantial number of Tamil representatives to become the political slaves / stooges of the LTTE under the formation of the present TNA. ACTC was not pro-LTTE until 1996; TELO was anti-LTTE until 1999; and only in 2001 TULF leaders, except its president Mr. Anandasangaree, became the mouthpieces of LTTE. By supporting the LTTE the leaders of these Tamil parties have ensured their physical safety and material welfare; politically they can move freely in their constituencies; they enjoy the powers and privileges of the parliamentarians; they can move around and meet anyone anywhere in the world. But the positions of the parties who oppose the LTTE are other-way-round and in worst conditions. The LTTE have very cunningly branded them as ‘government-supported paramilitary forces’. The leaders and a number of their cadres have been systematically and villainously killed by the LTTE one after the other and the surviving members also are so to pass their living as death from the LTTE killers looms over every one of them any moment. These unfortunate democracy- believers have to stay in hiding even in

Colombo and in Western countries as well. Materially they are poor and many of them are married with families to be supported. It is extremely difficult for the leaders of these parties to maintain their presence and to meet the minimum needs of their cadres and their families; International community is very naïve, indifferent and negligent in seriously considering the fundamental problems and difficulties of these parties. The SL government does not politically deal with them as considering as their friendly counterparts of the Tamil people and necessary forces for the restoration of democracy and maintenance of unity of the country, but in contrast, treat them with some pitiful attitudes. For the major opposition parties these Tamil parties are insignificant since they neither have the capacity to determine the number games in the parliament nor been holding capabilities to terrorize any section of the population or the political forces. Moreover, the State institutions view them only as here and there useful as their fifth columns or mercenaries. **However the present scenario, anyone may have any opinion about these parties' smallness and weaknesses because of the present status of political confusion and complication, an obvious truth is that without these democratic Tamil parties' commitments and sacrifices no political solution within a united Sri Lanka can be implemented by any force in the world, be it the Sri Lankan Government alone or with the support of all-powerful nations in the world.**

- 13) The Sri Lankan rulers and the world community, therefore, have to prove themselves instead of hypocritically lip-serving about Liberty, Equality, Democracy and Pluralism. First of all they have to protect and strengthen the democratic forces among the Tamils while attempting to 'tame the Tigers' for democratic life and peace-loving behaviour. Really peace-willing International Community should understand that the strength of the Tamil democratic forces and the separatist intransigency of the LTTE have inverse relationship. Therefore, the President himself along with the support of the international community especially India, should initiate a definite programme to revalidate and rejuvenate the democratic Tamil parties in all the grounds including providing them a substantial strength to play a positive and constructive political role, and to relate with them as the main Tamil representative consultants to the President and his concerned Ministers in finding national resolutions to solve the long-protracted ethnic conflict in Sri Lanka. It shall not at all mean to ignore the negotiations with the LTTE. Instead, it emphasizes that placing all the political moves in the North-East, under a moratorium until achieving the concurrence of the LTTE is not only undemocratic but also a clear violation of the Constitution.

- 14) Rather than waiting for the ‘imagined star’ of a “permanent political solution with the concurrence of LTTE” or the long-pending dream of “Comprehensive Constitutional Reforms”, immediately the Sri Lankan democratic leaders should get-together to commit themselves in implementing the provisions of the 13th amendment with the true spirit of the Constitutional practices of India, since it seems that now there is a wider general agreement among the Sinhala and Tamil democratic leaders in advancing the Sri Lankan political system towards that of the Indian system. Both can sit together and talk about the details for the Constitutional and Institutional reforms to the level of those arrangements in India. However it would definitely need a long time. Therefore, first to start with what is in hand should be the approach. Sri Lankan Government should establish a **“Devolution Commission”** to study, recommend and support the devolutionary process. Further the government can establish an **“International Devolution Experts Association”** with the support of India and other relevant international communities to provide advice in legislative formations and support in practical implementation. This approach in turn would bring in a ground-level positive involvement and commitment of India and the international community to take forward the peace process by simultaneously moving political actions on the ground for resolving the real issues / demands of the people of the North-East Province;
- 15) For revitalizing the 13th Amendment in the political actions there must be a clear and thorough understanding by finding answers to the questions such as (1) Why the First Provincial Council itself became a failure in the North-East?, (2) How much the other Seven (7) Provincial Councils in the South have meaningfully been functioning for the last 18 years from 1988?, (3) What are the basic legislative defects and other problems of the 13th Amendment from the point of view of the Tamil’s political aspirations, other than the legislative and institutional problems in properly implementing it?, (4) How to correct the defects and resolve the problems and (5) what is the road map including contingency plan of actions, in case to face possible harsh realities of LTTE’s oppositions, in stepping up the implementation?.

2. Making of the 13th Amendment:

- 1) Let us see first the background of the Thirteenth Amendment. First of all it did come from the heart of the Sri Lankan ruling leaders; It was not the outcome of the sincere negotiations between the Sri Lankan

Sinhala and Tamil leaders; In those days, the Sinhalese rulers were not prepared for any sort of reasonable compromise in sharing political powers with the Tamil leaders while the Tamil leaders were intransigent in continuing their separatist – independent Eelam slogans. When, in 1987, the ethnic based war was at its worst conditions, India had to move for enforcing the Sinhalese and Tamil leaders to accept a political system perhaps similar to that practiced in India, with an expectation that the Sri Lankan leaders of both communities, when the processes progressed, would accept the political realities and compromise their long-term mutual aspirations. It did not happen. Largely the Sinhalese electoral leaders wanted to continue their ‘Sinhala-Buddhist hegemonic programme’ while Tamil elites and LTTE were still pursuing the movement for creating a separate and independent “Tamil Eelam”. India had to sacrifice more than two thousand soldiers. The Tamil parties like the EPRLF, ENDLF, and TELO who supported India’s efforts, lost their cadres in many hundreds; and Sinhala progressive and left parties also lost many of their cadres for supporting the devolution-based political solution to the Tamil problem. Above all, great leaders like Rajiv Gandhi, Vijaya Kumaratunge and Padhmanbha had to sacrifice their lives for their unflinching stand to the principles of Universal Rights and justice.

- 2) Let us focus on the Act, 13th Amendment. The Bill for this amendment was prepared by the then President J.R.Jayawardene (JR) and his close associates, in a hurry (October-November 1987) and secretly during the Prime Minister of India and his Ministers were inevitably engaged their concentration on the IPKF’s fights with the LTTE. But, J.R.Jayawardene using the diverted concentrations of the Government of India (GOI) and the Tamil leaders, and with a pretension of security measures after the grenade attack in parliament by the JVP injuring the Minister Mr.Athulathmudali, kept all the UNP parliament members in a hotel, escorted them to the parliament, and the business of making the Bill into an Act was over within a day. **No time was provided for discussion, debates or making corrections. Neither the Indian leaders nor the Tamil leaders were consulted over the draft. Nor were they provided time to study the Bill and make their opinions over the amendments to the Constitution.** Later Mr Narasimha Rao, the then Minister of Foreign Affairs of the GOI, visited Colombo and tried to discuss about the issues of devolution with President JR. But, JR very smartly and firmly gave the picture that he had done everything on his part related to the matter of devolution of powers to the Provincial Councils and he had only a few residual matters to talk to the GOI with

regard to the future relations between India and Sri Lanka, and that India only had yet to complete the disarmament of the Tamil militants;

- 3) The 13th Amendment to the Constitution of Sri Lanka does overtly seem to be almost resembling the Constitution of India on the devolution of powers to and the formation of the Provincial Councils:- Devolving the Legislative and Executive powers through the Three Lists:- (1) National List (2) Provincial List and (3) Concurrent List; Provincial Council Formation:- (1) The Governor, (2) The Chief Minister, (3) The Board of Ministers, (4) The Provincial Assembly, (5) Chairman (Speaker), and (6) The Provincial Council Members.

3. The failure of the 13th Amendment are to be seen from two points of defects:-

- 1) Legislative Defects, and**
- 2) Administrative Defects;**

3.1 Legislative defects of the Constitutional arrangements are:

i. Ambiguity:

Ambiguous form of clauses on important subjects like Police powers, Land powers, Inter-provincial-rivers irrigation, National Highways, National Schools and so on;

ii. Concurrent List

Concurrent List has been inundated with wide-ranging subjects and made as a competitive list between the Union and the Provincial governments. Interpretation to the term “Concurrent” is completely deviated from that of the Indian Constitution. Thereby, provincial powers of a large number of main subjects are in effect considered not to be devolved. In Indian system the only over-riding legislative powers are given to the Centre on the subjects listed in the Concurrent list, but, executive powers of the subjects are vested with the provinces, unless and otherwise the Parliament by law provides exclusively to the Union government. In Sri Lanka the legislative provision has been made for both Parliament and Provincial assembly to have legislative powers in addition to the superiority of the related laws of the parliament, and both to have executive powers. Thereby, executive powers of the provinces are largely

deprived, and expensive administrative duplications are made inevitable.

iii. Appendices to the Lists of subjects

The 13th Amendment has Three Appendices on Police and Law and order, State Lands, and Education and Schools. These appendices can be seen as a loophole or a withdrawal mechanism of the powers, on the other side that were one side devolved on the subjects in the Provincial List so that exclusiveness of the legislative and executive powers of the provinces on the subjects in the provincial list too have been limited and curtailed;

i. Police and Law and Order:

- b- Police Force continue to be kept under the Central authority, while the law and order is a subject devolved to the Provincial Government (PG). This renders the devolution on this subject meaningless.
- c- It reserves a large list of police powers to the Central (called National) Police and thus the Provincial Police becomes ineffective.
- d- In practice even the separation of functions and other formations and modalities of the Central and the Provincial Polices have not taken place yet.

ii. State Land and Inter – Provincial River Irrigation :-

- a- In the ethnic conflict, the state-aided Sinhala colonization on the State lands is the major issue. One of the primary demands of the Tamils is that the Sinhala colonization should be stopped and entire rights over all the lands in the North-East should be vested with the Provincial state;
- b- It is well acknowledged that the Bandaranaike-Chelvanayagam Pact of 1957, Dudley Senanayake - Chelvanayagam Accord of 1965 and 1988 Presidential Election Manifesto of Mrs. Shrimavo Bandaranaike clearly committed not only for stopping the Sinhala Colonization, but

also to take corrective measures with regard to the already commissioned such colonizations in the North-East.

- c- Contrary to this , the appendix on the State Lands and the Inter-Provincial-River Projects has been made deliberately to serve the purpose of continuing the State-Aided Sinhala Colonization that deprive the basic rights of life and security of the Tamils in their own traditional habitat areas as it had done in the past;

iii. Education and Schools :-

- a- The appendix on Education and Schools has been made in such a format it deprives the provincial authority of recruitment and appointment of principals to the schools, to decide curriculum and non-curriculum syllabuses, and the rights to maintain and promote the language and culture of the different nationalities in the province;
- b- Under the guise of ‘national school’, almost all the schools having the classes up to 12th / GCE (A-L) have been kept/brought under the management, administration and control of the Central government.

iv. Financial Devolution :-

- a- As it is in India, Sri Lankan Constitution too has provision for setting up of National Finance Commission. But, it has so far never been appointed. Even if it is appointed, it is not clear how it would function with regard to the financial devolution and distributions. Noticing the practice, **in India almost 60 to 70 per cent of the total expenditures of the governance of whole India is spent or administered by the authorities of the Provincial States** and in addition some of the Central government’s projects like maintenance and construction of national highways or bridges over the railway lines and Public Distribution systems are administered by the Provincial authorities only. But, **as per the experience of the last 18 years of the Provincial Councils in Sri Lanka, only about 10 percent of the total expenditures of the governance of whole Sri Lanka are administered by the Provincial**

Councils. That too is largely the clerical administration of recurring expenditures, mainly the salary payments;

- b- It is clear that **the Sri Lanka's provincial system on the financial devolution or distribution neither constitutionally have the provisions so as in the Constitution of India, nor it follows the Indian tradition;**
- c- It should be accepted that the lack of Financial devolution does clearly undermine the devolution of subjects in addition to all the defects and complications of the devolution of powers on the subjects;
- d- In fact, the Sinhala leaders in Colombo Centre have to understand that **as long as they aspire to keep larger proportion of financial and executive powers in their control, they will not prove themselves that they are really sincere to the devolution of powers to provinces. The devolution of financial powers and the devolution of powers of the subjects have to be compatible to each other.** Otherwise it is to be, without any doubt, considered a deceit.

v. Disguise of National Importance :-

- a- Provincial powers on various subjects listed in the 'Provincial List' are curtailed / hindered by using the term 'national importance' repeatedly. In other words it can be said that the devolution of powers provided on the subjects in the Provincial List has largely been deprived under the cover of so called '**national importance**'. It appears that this terminology is also another way of distorting the devolution of powers and intended to disable the Provincial Council system.

vi. Territorial Unit of Devolution :-

- i. From 1977 onwards, the basic Tamils demands was that their province should be the undivided North-East Province;
- ii. In 1986, this issue was discussed between the GOSL and the GOI;

- iii. Unity of North and East Province is a basic problem while the Muslim people's demand too is to be seriously considered;
- iv. The 13th Amendment to the Constitution does not provide any special solutions to the critical issues of the minorities in any province in Sri Lanka;
- v. The provision in the 13th Amendment on the Referendum for determining the future of the Eastern province has been a basic hurdle in creating an environment for a smooth implementation of the devolution;
- vi. Successive Governments and the Sinhala leaders do always raise the issues of the Sinhalese people in the North-East Province, while they have conveniently been neglecting their position in making the legislative and institutional arrangements to safeguard the interests of the Tamil and Muslim minorities in the Southern Provinces. However, the necessary political systems to protect and care of the interests of the minority nationalities, not only in the provincial levels but also at the Central system, have to be discussed in a comprehensive manner.

3.2 Administrative defects of the existing Provincial system in Sri Lanka :

- i. North-East Provincial Government has to satisfy all three main communities and represent about one third of the country in terms of geographical area. But, the total number of ministers is limited only to five;
- ii. Colombo government does not treat the Provincial governments as a constitutionally established autonomous system of governance. By an administrative order, former President late Mr. Premadasa created a legacy of preventing the Provincial governments to call themselves as 'governments' although it was many times Mr.J.R.Jeyawardene pronounced them as "Provincial Governments and Governments of the Provinces" during the negotiations and in the Parliament speeches. It was to be seen as a deliberate attempt of Mr.Premadasa for undermining the understanding between the GOSL and the GOI during the negotiations in 1985 and 1986. By ignorance or

deliberately, his premise was that one country could have only one government and others can be only councils like municipal councils;

- iii. By appointing the Central government secretaries in-service or serving Army Generals to the post of Governors, the Sri Lankan Central government has very clearly degraded the Provincial councils as its departmental units;
- iv. Not only in the Governors' appointments, but also in many aspects of the Centre-Provincial relations, either no protocol or confused protocol is maintained. As a result, the elected representatives and the bureaucrats consider that the Provincial Councils are so inferior for them to enjoy powers, privileges and status. It is obvious that a political representative in Sri Lanka would prefer to become a Deputy Minister at the Centre rather than becoming a Chief Minister of a province and similarly a senior administrator would prefer to continue to be an additional secretary at the Centre rather than going for the post of the Chief Secretary of a province. This trend clearly reflects the basic weaknesses and defective status of the Provincial Councils established by the 13th Amendment to the 1978 Constitution
- v. Provincial Public and Administrative services have not yet been established. Even after 18 years of establishment, the Provincial Councils are administered by the officers transferred from the Central offices and consequently the Centre continues to keep its full control of all the provinces. The provincial cadres of the All Sri Lankan Services have not yet been established. The Constitutional provisions are too ambiguous on the public service relations between the Centre and Provinces. Moreover, Provincial Public Service Commission is treated as a subordinate office of and controlled by the Central Public Service Commission;
- vi. The Central government has too many Ministers on the subjects listed in the Provincial and Concurrent lists. These ministers behave as superior ministers to the provinces on the subjects; they, rather than monitoring the provinces regarding their subjects and allocate money from the central budget on the projects-based or as programmed-packages, directly involve in the projects and programmes on the ground by over-ruling or sidelining the Provincial governments and administrations. This has been one of the main reasons that have made the Provincial Councils unimportant and irrelevant to the people;

- vii. Constitutional provision for the Provincial Police Commission too has practically made it a toothless unit and still is controlled by the IGP of the Centre since the DIGs of all the provinces are made organizationally and administratively as serving under the IGP of the Centre. The DIGs are traditionally the deputies of the IGP. Therefore, the continuation of the term “DIG” to the heads of the Provincial Police Forces itself creates such confusion. To clear this confusion, Chandrika’s proposal renamed it as “Regional Police Commissioner” independent from the Police Commissioner of the Union.

4. Devolutionary Movement

Revitalization of the 13th Amendment itself cannot be an end. Instead, it should of course be a part of the long-term devolution process towards full-fledged Federal political system. Therefore the government has to take steps as follows:

- 1) The President should establish a **“Devolution Negotiation Forum”** comprising constitutional experts who has positive view about federalism, selected representatives of the UNP, SLFP, JVP, LSSP, CPSL and the Tamil and Muslim democratic parties. This should precede confidential discussion with the relevant parties’ leaders and some advisory representatives from India and a few other concerned countries. This forum shall be engaged with twin tasks, one is **to advice the President to make corrections to the defects and provide solutions to the problems in implementing process of the 13th amendment (already the defects in and other problems of the 13th Amendment have been listed above), and two, is to make realistic proposals for advancing the devolutionary political system to a new stage;** The President shall discuss the proposals and recommendations of the forum with the leaders of all the main political parties, in order to establish a national consensus.
- 2) The President is to establish a **“Devolution Commission”** with a particular number of constitutional and administrative experts, who make proper interpretations and provide guidelines to the 13th amendment with a view of advancing the devolution of powers to the provinces, and shall advice the Ministers and bureaucrats at the Centre as well as at the Provinces on the new understanding and accordingly to implement the 13th Amendment so that it can administratively advance the devolution further. It could make the political parties and people in general to understand and accept the advancement of devolution by practice, and

thereby make it easy for the parliament to reform the Constitution gradually as a process of legalizing the accepted devolutionary practices in progress.

- 3) The President is to request India and other relevant countries to support to establish an **international committee** for observing the implementation of devolutionary process, and make sure that the international community would take all efforts either to get somehow the cooperation of the LTTE or prevent the LTTE from disturbing, while he ensures that every reasonable demand or request of the LTTE would be accommodated in the devolutionary process.
- 4) In the North-East Province, there is no possibility for holding a free and fair election for the Provincial council in the near future. A favourable situation has to evolve through the peace process or to be created by some other appropriate means. However, the quality of the North-East Provincial State structure at present is not compatible to implement an improved version of the 13th Amendment since it has been dismantled and neglected over the last 16 years. Moreover, the present structure is already filled with corrupted, fraudulent and lethargic personnel. In addition the Colombo Ministers and bureaucrats have made all the provincial councils as their underdogs, particularly the North-East Provincial State has been degraded to the level of a departmental unit. Therefore the President must take initiative with a personal care and active interest and administratively to do the following in the North-East:
 - i. Appoint a politically and administratively efficient Governor and provide him a Seventeen members team of advisors from political parties and civil services, not necessary to make representation of political parties;
 - ii. The Seventeen members to the team of political advisors should be distributed as one (1) member representing the people of Indian origin in the NEP, three (3) members to represent the Sinhalese people in the NEP, Four (4) members representing the Muslim population in the NEP, and Nine (9) members to represent the North-East Tamils. This appointment should be made in consultation and cooperation with the democratic Tamil parties, for advising and assisting the Governor in implementing all the institutional and economic development projects in the Province. The members should have the abilities and experiences, not be the nominal representation of the political parties, because these members are

meant for creating institutions and environments for establishing the democratic governance of the political parties;

- iii. Appoint a senior and effective administrator to the post of Chief Secretary and similarly ten to fourteen Ministerial Secretaries;
- iv. Appoint the Provincial Attorney General and legal expert team to establish the provincial legal department and assist the Provincial State on legal matters;
- v. Appoint the Provincial Public Service Commission (PPSC) and make sure that all the recruitment to the Provincial administration on the subjects in the Provincial and the Concurrent lists are made by the Provincial PPSC only. Direct the PPSC to recruit necessary number of Provincial Administrative Service (PAS) personnel and all kinds of Subordinate Service personnel and the Class IV government servants of the Province. In addition direct the national Public Service Commission to recruit necessary number of All Sri Lankan Administrative Service personnel to the provincial administration;
- vi. Appoint the Provincial Police Commission (PPC) and start recruitment to the Provincial Police personnel. In addition, order the National Police Commission to recruit the personnel of the Sri Lanka Police Service (SLPS), required to the Provincial Police Force.
- vii. Make an ordinance to place all the Government Agents and his subordinate officers and staffs to become the offices of the Provincial States, while they are responsible and answerable to the Central government on the relevant subjects listed in the “Reserved List”. If not, Create an office called ‘District Commissioner’s Secretariat’ to every district under the Provincial State to administer all the relevant subjects in the “Provincial List” and the “Concurrent List”, and the present office of the Government Agents would administer only the relevant subjects in the “Reserved List” for the Centre at the district levels.
- viii. Confirm Trincomalee as the permanent Capital of the North-East Province and build the Provincial Assembly. Provincial Chief Secretariat and all Ministerial Secretariats and Departmental headquarters;

- ix. Ensure that all the governmental activities whether it is rehabilitation, relief, reconstruction or developmental programmes of all sectors, except a few central government projects related to defence, telecommunication, railway, export and import, etc., must be implemented by the institutions of the Provincial Councils only. For any reason, the Sri Lankan government should not by-pass the Provincial governments and should not create any authority or ruling formation beyond the control of the Provincial governments. Creating RAAN, RADA, P-TOMS or ISGA and so on are to be considered unconstitutional and it would undermine the legitimacy and authority of the provincial system. Provincial governments are competent or should be made competent to deal with all the problems of the common people of their provinces;
- x. Ask the Devolution Negotiation Forum to recommend an immediate / temporary political formation for taking care of the Muslim people in the North-East;
- xi. Since the North-East represent 12 per cent of the country's population, the Provincial Government has to get at least 6 per cent of the total revenue and capital receipts of the whole governance in addition to the specific allocations of the Centre to the programmes like rural development, special housing, poverty alleviation, disaster relief, reconstruction, etc., and all the special aids provided by foreign countries and international agencies for rehabilitation and the general development purposes of the provinces;
- xii. The President has to formulate a time-bound- implementation strategy to increase the personnel of SLAS and other national services from Tamils at least in keeping with their percentage in the country;
- xiii. President has to make a decree binding all the Ministries to follow the Indian system of the Centre – States administrative relationship, particularly with regard to the national services personnel. Accordingly, all the personnel of the SLAS, the SLPS, the SLES, the SLEAS, and all similar Sri Lankan Services have to be distributed according to their home province at the time of joining the service, to the cadres of the provinces and work out the secondment to the Centre by a speedy bookwork method. In fact the present administrative relations, in practice, between the States and the Centre do not have any clear-cut policy formula although the 13th Amendment of the Constitution is perhaps meant to adopt the Indian

system and thereby the administrators of the Centre and the Provincial States are in utter confusion about the relations among them;

- xiv. It was Chandrika's political package of 1995, 1997 and 2000 that divided or separated the two services as the Central Services and the Regional Services. It should be understood that complete separation of administrative services would create a competition and contradiction as the Centre Vs the Provinces, and is not good for the country's unity as well as to the administrative cooperation between the officers of the Central and the Provincial governments. So it is better to unambiguously follow India's IAS and IPS system. The 13th Amendment should be interpreted accordingly or administratively rearrangements have to be made, with proper understanding;
 - xv. At present, there are many duplicate departments at the Centre instead of devolving them fully to the Provinces and making them to be useful for both the Centre and the Provinces to implement the programmes and projects of the same subjects. It is in fact a mistake resulted mainly through misunderstanding of the basic legislative and functional philosophy of the Concurrent List. By following the Indian system of administrative coordination at departmental level the present duplication could be avoided. So, the President has to direct all the Central Ministries except the Defence, Central Police, Foreign Affairs. Railways, Telecommunication, Revenue departments other than the departments collecting VAT and other taxes and fees listed in the "Provincial List", Export-Import Trade, Air transport and so on, to devolve properties and personnel to the Provincial States / Councils.
 - xvi. The Devolution Commission has to study the Indian Protocol system and make sure that it is appropriately followed in Sri Lanka, in order to create a proper tradition in the political and administrative relations in the system of governance;
- 5) The President should establish a non-partition and non-governmental **National Integration Council** with wider representation of all communities for making national consensus on the government's resolutions and decisions regarding the practices and further advancements of the devolution process on the basis of some accepted principles, and discuss the solutions to the non-constitutional issues of the ethnic conflict; Negotiations with the LTTE can continue side by side with the implementation of existing constitutional system of devolution

with the necessary corrections for providing maximum devolution within the constitution; Whatever the improvement is agreed upon by the major Sinhala parties with the Tamil Parties in Devolution Negotiation Forum, can be added continuously and appropriately in practice and amend the legislations accordingly; Similarly, the extension of the devolution can further advance if and when the Government and the LTTE achieve agreements by their negotiations; Tamil people can satisfactorily assimilate with the process and Sinhala people can accommodate the development without any fear and apprehensions; Let the political parties and groups continue their struggles non-violently for achieving their democratic and constitutional and other political demands, and the political culture and the system progress through non-violent democratic struggles, negotiations, alliances and compromises.

The urgent need of the hour for the country, is a sincere united effort of the major Sinhala parties, SLFP and UNP – if possible JVP too, along with the democratic Tamil parties in founding just and long-lasting political solutions to all the critical issues related to the national crisis in Sri Lanka.

If there is a will there is a way.

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