
PROPOSALS FOR AN INTERIM COUNCIL FOR THE NORTH AND EAST: A WAY OUT

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The idea of an Interim Council for the North and East is not new; it has been in political discourse since 1987, when suggestions were made to set up an interim administration for the Northern and Eastern Provinces. Under the Indo-Lanka Accord, the Government of Sri Lanka (GoSL) agreed to amend the Sri Lankan Constitution to create the Provincial Council (PC) system. The principal stakeholders were of the view that an interim administration be set up until elections for the PC, under the 13th Amendment to the constitution, were held. Thus, it was proposed only for a very short period.

However, the necessity of a long-term interim rule has emerged, since the destruction and destabilization of human life in the war-torn areas, due to intensified conditions of armed conflict, became more serious and, the Liberation Tigers of Tamil Eelam (LTTE) had set up its own military-administrative structure in some parts of the Northern and Eastern Provinces. Two main parties in the South, the United National Party (UNP) and the Peoples' Alliance (PA) have accepted, wittingly or unwittingly, the need for an interim arrangement, until the final solution to the ethnic conflict is negotiated. When negotiations between the LTTE and the GoSL recommenced in September 2002, everyone expected the parties to immediately start negotiations on the modalities and structures of the interim administration.

However, as Anton Balasingham has revealed in his latest book, Prof G.L. Peiris, the chief negotiator of the GoSL, derailed the whole process with banal legal arguments. As a substitution to the interim administration, it was agreed to set up three committees; but this mechanism eventually failed to achieve the intended objectives and aspirations of the Tamil people. The LTTE proposal for the Interim Self Governing Authority (ISGA) that was presented in October 2003 is a response to the failure of the GoSL to come up with a mutually acceptable set of proposals to meet the immediate demands of the war-torn areas. The ISGA proposals are understandably maximalist by nature; they seem to be oriented towards a confederalist solution.

Both the United National Front (UNF) government and the United Peoples Freedom Alliance (UPFA) government have indicated that the ISGA proposals, as they stand, are not acceptable to them and to the southern polity. According to the Knowledge, Attitudes and Practices Survey on the Sri Lankan Peace Process (KAPS), conducted by the Centre for Policy Alternatives (CPA), only 44 per cent of Sri Lankans think that some kind of devolved system is acceptable as a solution to the ethnic conflict, while an equal

percentage hold opposing views. And the opposition to a devolved system is stronger in the North-Central and Uva Provinces.

If 44 per cent of Sri Lankans oppose a devolved system of governance, it may be correct to advance a hypothesis that the same percentage of people, if not more, would oppose the setting up of an interim administration. This explains, partly, the opposition of the Janata Vimukthi Peramuna (JVP) even to begin talks on the basis of the ISGA proposals or, to set up a joint mechanism to deal with the tsunami reconstruction. The LTTE earlier insisted that it would not participate in talks, if the ISGA and its formation was not the basis for talks. But now it has changed its position and agreed to start talks on a joint mechanism for reconstruction. Closing this gap between two positions, i.e, positions of the JVP and LTTE, may be crucial to the future of the peace process.

A Proposal

In this article, I intend to propose an alternative path for commencement of talks between the LTTE and the GoSL. This idea may satisfy the needs of the LTTE and at the same time may contribute towards allaying the fears and suspicions of the JVP. When the UNF government announced that it would start negotiations with the LTTE soon, I suggested two things. First, holding a fresh election for the North-Eastern PC. As the second step, I wrote: "After the formation of a constitutionally constituted body, this PC could be given the powers specified in the 13th Amendment, including police powers. Under the UNF government, the police would come under a newly formed interior ministry, so there would not be much opposition in Parliament in passing necessary laws, to hand over those powers to the PCs. Meanwhile, Parliament can also pass the 18th Amendment to the Constitution, amending Article 76 (1), that limits law-making powers of the PCs over devolved subjects. The formal resumption of negotiations between the GoSL and the LTTE could take place along with the process of setting up the North-East PC." The UNF government did not follow this path for various reasons. Prof Peiris might have thought that the 13th Amendment was not his baby; and the UNF government and civil society organizations might have thought that there was a potential for more far-reaching reforms.

I still hold the view that similar measures with some added features would contribute in breaking the current impasse. The ISGA proposals of the LTTE suggest that an interim authority is needed "to promote the urgent needs of the people of the North-East by

formulating laws and policies and effectively and expeditiously executing all resettlement, rehabilitation, reconstruction and development in the North-East". Besides the rhetorical language for their self-satisfaction, the LTTE has, in their ISGA proposals, identified the following needs in order to carry out those tasks. Maintenance of law and order; raising revenue to meet urgent needs; and the control over land.

So it is clear that the powers suggested for the ISGA exceed the powers of the PCs under the 13th Amendment. This gap depends partly on the inherent limitations of the 13th Amendment. First, some of the powers given under the amendment have not yet been transferred to the PCs for unknown reasons, even 18 years after its enactment. Secondly, the concurrent list allows the central government to interfere and intervene in the affairs of the PCs. The Mangala Moonasinghe Committee has identified this as one of the serious weaknesses of the 13th Amendment. The gap between the powers of the ISGA and the powers given to the PCs by the Constitution may be closed without changing the Constitution in three ways.

Implementing, in full, the 13th Amendment, devolving all the powers, including police powers, in the provincial list to the PCs; Delegating to the newly elected Northern-Eastern PC, the powers listed in the concurrent list; Signing a memorandum of understanding between the President and the newly elected PCs for 5 years, that the President does not use the North-East Governor to control the PC and the Governor acts on the advice of the Chief Minister and his/her cabinet.

The first step can be taken with regard to all the PCs, while the second can be applied also for the Southern PC, as this area was badly affected by the tsunami.

Since all these steps are within the Constitution of Sri Lanka, I cannot see the reasons for the JVP or other extremist Sinhala parties, to oppose them. When there is no move for constructional change, it may be difficult for extremist parties to mobilize people, as there is nothing tangible to be opposed. However, there may be many issues that the LTTE and other Tamil parties would want settled. For example, the question of high security zones (HSZ) may be a moot point.

In November 2002, I wrote: "The first strategy is to start resettlement outside the HSZs. In fact, this was the agreement arrived at the fourth round of talks. Secondly, HSZs could be transformed into what I call peace zones, meaning, both the GOSL and the LTTE forces would stop carrying or placing arms, heavy or light, within these zones. This would satisfy both parties, the security forces and the LTTE. When these areas are declared arms-free zones, the security forces would feel less susceptible to threats upon withdrawal from these zones. At the same time the LTTE's demand that people be allowed to resettle could be met." This proposal would be more acceptable, when the areas are placed under the control of the elected PC.

The advantage of this path is it is reformist and does not involve any radical change. One party may think that it is not sufficient but it involves positive gains; the other party may think it is not too radical and it is not losing much. Since it is a transitional measure and lies within the broader constitutional framework, getting popular support may be easier. ■

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