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Decentralisation, Devolution and Federalism

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Concepts of distribution of power with reference to Sri Lanka

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Special introduction for the participants at the conference "Consolidation in New Democracies"

Dear Colleagues

Perhaps you want to know why you should read a draft for a desk study about decentralisation, federalism and Sri Lanka? The background is the following. I am currently working on a Sarec (that is the research section of Sida - the Swedish International Development Co-operation Agency) financed research project focusing on decentralisation reforms in India. However, another section of Sida asked me (kindly) to write something about how we should think about decentralisation and federalism from an aid-oriented perspective and see if we could come up with useful analytical tools to be used when discussing reforms in other countries as well. In particular they were interested in looking closer at some proposals on paper for Sri Lanka. Therefore, this paper was produced since it gave me an opportunity to sharpen the analytical tools for the Sarec-study and to get closer to one of India's neighbours. There are two things I hope that can be discussed more in detail in connection with the presentation on Sunday:

* How far should one go in a discussion about the many dimensions of decentralisation? (see pp.5-9) Does it make sense to make a distinction between vertical decentralisation when powers are moved from the centre of public administration and down to offices at state or local level, and horizontal decentralisation when elected bodies are given powers previously held by the bureaucrats? Or should the word decentralisation be used mainly for describing when powers are moved from the top and down in the public administration, and another term be used when elected bodies are given new powers - for example "democratic proliferation"?

* What is best for peace in Sri Lanka? A federation or a federacy? (see pp. 24-26) I have stumbled in to a discussion with myself that has not moved the topic forward in a significant way. Looking forward to a stimulating debate on this.

Introduction

Defining concepts that can be used to describe how power in a state can be distributed is not only an exercise in semantics. For political actors in divided societies it can be a life and death issue. Sri Lanka is good example that can illustrate this point.

Aid agencies and political actors use several terms related to the distribution of power that, for them, are often value-laden in a positive way. Decentralisation, empowerment, and devolution are common concepts in the jargon used in policy proposals. Sometimes they appear with careful definitions and with clear operational functions discussed. More commonly, however, we find these terms used interchangeably, and when definitions appear they are too broad to be useful for analytical purposes. The concepts are usually used in discussions focused on how to bring "more power to the people". However aid proposals seldom take account of how highly politicised these issues are. To one actor "power sharing" means certain rights to decide about revenues for a region, for another it may be seen as synonymous with "separatism".

This article will explore some of these problems with reference to proposals for local governance reform in Sri Lanka. This report has been commissioned by the Swedish International Development Co-operation Agency, and will give attention to the relationship between various levels of government, the aims of decentralisation proposals and how they relate to federalism, and people's participation in democratic processes. The first part of the paper will explore the definitions of central concepts for power-sharing. Hopefully, we can agree on the use of analytical tools that are necessary not only when examining policy documents, with which this study is mostly concerned, but also empirical cases.

Next, we will look more closely at the case of Sri Lanka. This study will only discuss a limited number of documents relating to constitutional matters in Sri Lanka. In particular some proposals presented in a published government inquiry on local government reforms will be commented on and evaluated. The definitions of federalism, decentralisation and devolution we arrive at here should give some guidance for this process. The paper will end with a comment on the ongoing negotiations for peace in Sri Lanka and what kind of government structure may be the outcome of a process where both the wills of the government of Sri Lanka and the Liberation Tigers Tamil Eelam (LTTE) are accommodated.

Defining Decentralisation, Devolution and Federalism

Making an inventory of proposals on decentralisation from political actors and aid agencies is mostly a tedious exercise. The reason is that the bulk of the documentation is, from a more analytical perspective, not very useful when trying to understand the direction of reforms a country is about to take or the support strategies that will take place in a region. Documents that claim to make bold proposals for decentralisation, devolution and various forms of power-sharing, are, when it comes to definitions, usually vague. One reason for this can be that the author wants to keep avenues of negotiation open, another can be that the author

wants to avoid responsibility, and finally, a reason can be that the author is in fact not certain about what he or she is talking about - but at least he or she knows which key-words a "nice" policy document should contain.¹ The purpose of this section, however, is to explore the analytical tools that can be used to dissect the policies and proposals that are often so vague. Given that our interest is primarily oriented towards understanding attempts at redistributing power, in particular from a political centre to lower levels, or more peripheral areas of the public administration and political life, we should explore the distinctions that can be made between decentralisation, devolution, delegation of power and federalism. Some of these concepts can be, and have already been, defined so that we can produce at least a rough continuum along which we can place certain reform proposals. Such an exercise will naturally involve the exploration of several dimensions of power. Let us begin by looking closer at the concepts of decentralisation and devolution.

Decentralisation and devolution

After the somewhat cynical comments above about the lack of clear definitions of key concepts in policy documents, it is time to confess that the academic literature, although it is much better at defining concepts, provides very different conclusions about how concepts should be defined.

James Manor and Richard Crook, who have made one of the most important and recent contributions to the decentralisation studies genre say that decentralisation is the more general term for "the transfer of power away from a central authority to lower levels in a territorial hierarchy."² This can happen in two ways, either by deconcentration or devolution, and each way has its own "logic". Deconcentration means that the centre "relocates" its

¹ I have personal experience of all of these from studying decentralisation reforms in India and working in collaboration with aid-agencies for several years. The politician that tries to hide his or her agenda can be quite intriguing, while the huge amount of policy documents from government agencies and some NGO's are usually the most depressing.

offices and officers to places located outside the administrative centre or the capital. The central government, however, does not give up any of its authority in this process.

Devolution, however, has the "opposite effect." It means that the central government gives up some of its power to, for example, tax and spend, and may even have limited or minor legislative competence." In other words, decentralisation is the umbrella term for re-allocating powers in certain ways, and devolution and deconcentration are two different methods used for different purposes.

Peter Whiteford, however turns Manor and Crook upside down in a contribution to the International Social Science Journal. He relies mainly on a definition where devolution is described as an "umbrella term that covers all forms of transfers of responsibility."³ The definition of decentralisation is similar to Manor's and Crook's definition of devolution although decentralisation "does not necessarily [provide] more financial independence." By deconcentration, Whiteford means about the same thing as Crook and Manor mean by delegation and decentralisation: responsibilities are transferred to field offices "or more autonomous agencies". By delegation, Whiteford means the same as Manor's and Crook's definition of deconcentration. An interesting thing we can observe here is that it seems possible to agree on what we should talk about, but different authors use labels in quite different ways.

But it should be noted that even when academics can agree on definitions, the conclusions drawn from studying empirical cases can naturally result in different interpretations. Decentralisation and devolution in the United Kingdom , according to Vernon Bogdanor, is mainly what we can call delegation. According to Bogdanor:

[t]he new Scottish Parliament, unlike its predecessor, is not intended to be the legislature either of an independent or federal state. It is to be a devolved body, with power being

² Manor and Crook, 1998:6.

³ Whiteford, 2001: 112. Whiteford describes and use the definitions provided by UNESCO in "Organisation for Economic Co-operation and Development. 1997. *Managing Across Levels of Government*. Paris: OECD

delegated to it from Westminster. It will be a constitutionally subordinate parliament. For devolution is intended to preserve the sovereignty of the Westminster Parliament.⁴

Nevertheless, the creation of the Scottish Parliament and the Assemblies for Wales and Northern Ireland, has, according to Diane Woodhouse, altered "the balance of [the] constitutional arrangements, moving power, in varying degrees, from Westminster and Whitehall to other legislative and administrative bodies".⁵

Beside the cases mentioned above, it seems that decentralisation and devolution are often used synonymously, or with very little difference in meaning attached to them. In general, the concepts refer to the transfer of power from a political or administrative centre to local or more peripherally located units. Therefore, if we want to, we can drop one of the two, or use them interchangeably. In my opinion it is compelling to use "devolution" sparingly since it is so much favoured by political actors that often claim to have created some new scheme for reform which is not much different from what we have been calling "decentralisation" for a long time.

With this in mind, we can arrive at the following definitions and categorisations. The guiding thought implicit here is, however, the extent powers are moved in relation to the "end-users", or simply; the people.

Concept	Transfer of power	Role of public sector and elected bodies and the geographical dimension
Decentralisation	The transfer of power from the centre of public administration at the state level or regional level, to	Often decentralisation schemes move powers to units physically located in other places than the centre, and with another legal status. However, a decentralisation scheme could include the transfer of power "downwards" within a section of the bureaucracy located in one place.

⁴ Bogdanor, 1999: 185.

⁵ Woodhouse, 1999:342.

	public administration units at a lower level of the bureaucratic hierarchy or elected bodies at the same level or a lower level.	
Terms related to decentralisation (not always mutually exclusive)		
Devolution	The same as decentralisation	
Deconcentration	The relocation of sections of the public administration to places outside the centre.	This simply means that offices of the public administration are relocated to other geographical places than the capital. The United States is the most common example used where "[a]lmost 90 percent of US federal civilian employees work away from Washington, D.C." ⁶ In Sweden, a significant reform that involved the relocation of ten thousand government employees was carried out in the 1970s.
Delegation	Mainly describes the responsibility for implementation	Delegation is usually a part of decentralisation scheme. In a "liberal" sense, a decentralisation reform can involve the transfer of responsibilities together with an increase of autonomy for a region and its bureaucracy. Many school and health reforms in Europe are good examples. On the other hand, a task or responsibility can be delegated in such a way that there is little possibility of influencing the design for implementation.
Privatisation/de-regulation	Powers are removed from the public administration or elected bodies.	In the politicised language, this is often called decentralisation. However, just because the state loses certain powers, it is not certain that "the people" get closer to them. But on the other hand, just because the state undertakes, or has the responsibility for, certain tasks, does not necessarily mean the people have more power or ability to influence them.

These are some of the analytical tools we will need to tell whether a policy reform or some amendments to a constitution are geared toward more or less distribution of power, who will lose some control and who will gain some autonomy. As indicated above to some extent,

⁶ Hague and Harrop, 2001:210

there are two important areas of interest that the word decentralisation often does not say anything about. First, decentralisation does not tell us what legal bodies/subjects will have powers taken away from them and what legal bodies/subjects, if any, will receive new powers.⁷ Should powers of the bureaucracy be transferred to other bureaucratic entities at a lower rung of the hierarchy or should they be moved to elected bodies? Secondly, it does not tell us whether a state that embarks on a decentralisation program will shift from being a unitary to a federal state system. The word decentralisation only tells us that powers will be moved from a centre, but not to what extent - or how centralised the state in question was to begin with. For this, we need other terms. Here it is natural to use the traditional distinctions between the unitary and the federal state.⁸

Federalism and the unitary state

Trying to define more exactly how to classify states along the unitary and federalism continuum is far beyond the scope of this paper. However, something brief can be said about the ideal or extreme positions and what broad criteria that can be used to place or rank states along this continuum. Let us begin with federalism that Riker more generally defined as:

[A] political organisation in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decision.⁹

In the unitary state, on the other hand, the:

[S]overeignty lies exclusively with the central government. Subnational authorities, whether regional or local, may make policy as well as implement it but they do so by permission of the centre.¹⁰

⁷ Widmalm 2001.

⁸ Hadenius, Axel. 2001. *Demokrati - en jämförande analys*. Liber: Stockholm; Lijphart, Arend. 1999. *Patterns of Democracy - Government Forms and Performance in Thirty-Six Countries*. Yale University Press: New Haven. Sigfridsson, Mattias. 2002. *Mestnoe samoupravlenie v sisteme protivovesov publiènoj vlasti - Kritičeskij vzgljad na klassičeskiju teoriju gosudarstvennogo ustrojstva*. Paper presented at the international conference on problems of Russian social-demographic history, 18th-20th cc., 20-25 May 2002, Tambov State University named after G.R. Derzhavin.

⁹ Riker, 1975:101.

To try to measure where states can end up along this continuum will have to involve several factors related to political and economic power. The powers, responsibilities and freedoms of the constituent governments in relation to the central government, the extent of centralisation of certain responsibilities for administration and fiscal autonomy, are crucial aspects. If a constituent government, or province or state, can make its own laws, if it has the freedom to create its own curriculum for the schools, if the health care system is not only a responsibility delegated to it, but it also has the power to design its own system, and if the constitution is designed so the central government cannot simply withdraw these rights, then we have something close to the ideal of a federal state. To ensure that federalism or the unitary state is preserved, the constitution provides the laws and directives. The judicial system, high or constitutional courts are there to put power behind the texts.¹¹ But before self-determination, if only at the state level, can be realised, the level of fiscal autonomy must also be quite high. Only the constituent governments that can raise their own funding for central policy fields can be said to be autonomous in relation to the central government.¹²

But, as Sigfridsson argues, we only get the full picture of how decentralised a state is by taking into account, not only the relationship between the central government and, to use Riker's terminology, the constituent governments.¹³ We also have to describe the relationship between the constituent governments and the local governments. Almost everything that is relevant in our analysis to determine the relationship between the centre and the constituent

¹⁰ Hague and Harrop, 2001:208

¹¹ Lane and Ersson have been able to quantify a measurement for fiscal autonomy where the central government's share of the total tax revenues express this relationship well. See Lijphart. 1999: chapter 10.

¹² Jan-Erik Lane's and Svante Ersson's study is quoted and used in combination with other measurements in Lijphart, 1999: chapter 10.

¹³ Sigfridsson

governments, is also relevant in the relationship between the constituent governments and the local government.¹⁴

Finally, in order to know if decentralisation measures will move a state close to, or actually turn it into, a federal system, depends, as mentioned in the discussion about decentralisation above, on the point of departure - where is the state in question positioned on a continuum between the unitary state and federalism when reforms are initiated?

Lijphart provides an interesting scale where states can be defined along a continuum that ranges from "Unitary and centralised", "Unitary and decentralised", "Semi-federal", "Federal and centralised", "Federal and decentralised". However, Lijphart is vague when he argues that decentralisation and federalism are not always the same thing. To clarify, he quotes Daniel J. Elazar who sees federalism as "the fundamental distribution of power among multiple centers...., not the devolution of powers from a single centre or down a pyramid."¹⁵ Personally, I am fond of that observation although I do not think we are necessarily dealing with incompatible views. It is not too difficult to find examples of tasks delegated from the centre to the states in a mixture that brings autonomy as well.

Lijphart's scale is useful seems to be empirically supported. For example, India which is categorised as "Federal and centralised" is widely recognised as a federal state, although the constitution never mentions the word. It has states with their own Legislative Assembly and powerful structure for governance. But on the other hand, the Indian bureaucracy and the system of governance are highly centralised.¹⁶ In particular, President's Rule (PR) is an often mentioned mechanism that allows the central government to take direct control over the states. This should only be done in emergencies but PR is known as one of the most abused parts of the constitution. Also, Sweden, which is characterised as "Unitary and decentralised"

¹⁴ Sigfridsson

¹⁵ Quoted in Lijphart, p.187.

captures well the far-reaching powers and responsibilities for education, health and fiscal matters, at the local level. The question now is, where should we place Sri Lanka?

Sri Lanka

Other scholars provide us with the information to position Sri Lanka along the unitary-federalism continuum. After doing so we will take a look at a recent policy document and the current situation in Sri Lanka and discuss where the country may be going.

A brief description of federalism and decentralisation in Sri Lanka

The Indo-Lanka accord of 1987 contained provisions for decentralisation that were later expressed in the 13th amendment to the Sri Lanka Constitution. Hopes that this amendment, which was introduced in 1988, would provide radical changes geared toward decentralisation or even move the country toward a more federal structure have not been realised. To understand why we need to make a quick glance backward at prior changes to the laws and the constitution, in for example 1956, 1972 and 1978, which will help us understand how highly centralised Sri Lanka has been since independence.¹⁷

The British colonial powers favoured the Tamils in Ceylon, providing elite education and attractive posts in the public administration to such extent that Tamils, who constitute about eighteen percent of the population became clearly overrepresented in public offices by independence. Consequently, Tamil leaders expected their positions soon to be challenged. In spite of proposals to safeguard some powers, a federal structure never materialised. The victory of the People's United Front and the Sri Lanka Freedom Party over the "conservative" United National Party in the 1956 election paved the way for policies

¹⁶ See Kohli.

¹⁷ See; Report on the Commission of Inquiry on Local Government Reforms 1999. Sessional Paper no. I - 1999. The Democratic Socialist Republic of Sri Lanka.;

designed to remove English as the elite language and what was seen as the unfair advantage of the Tamils.¹⁸ The new "Sinhala Only" policy was manifested in the Official Language Act of July 1956 that made Sinhala the only official language and this led to the widespread political protests from Tamils and also violent confrontations. According to Neil DeVotta, this unleashed the politics of "ethnic outbidding" that has plagued the country ever since.¹⁹

An interesting parallel here can be drawn with the development in Sri Lanka's huge neighbour, India. There, the prerequisites for a similar development were present but the outcome was different.

In the decades immediately before Indian independence the Dravidian movement, based in today's Tamil Nadu, formulated demands for a separate state - Dravida Nadu. Erode V. Ramaswami Naicker led the Self-Respect Movement and then the Justice Party, which openly argued for a separate state. These organisations then merged and created the Dravida Kazhagam - the party organisation from which today's two largest parties in Tamil Nadu stem. In India the threats of separatism were effectively defused and the tool was a functioning democracy.

The central government allowed the opposition to flourish in Tamil Nadu and the Congress party worked out a strategy of co-operating and making alliances with the locally strong parties. Gradually the demand for a separate state became less attractive to local political leaders. At some points the central government attempted to introduce Hindi as the only official language of India but backed when protests became too widespread. It seems that the Indian Prime Minister Jawaharlal Nehru realised in the early 1960s there was more to gain by declaring that the plans for making Hindi the official language should be postponed indefinitely than by unleashing the forces of separatism. About a year after Nehru's death in 1964 the central government made a final attempt to introduce Hindi as the only official

¹⁸ Nissan, Elisabeth. Historical Context. In Accord, 1998. http://www.c-r-org/accord/acc_sri/ (15 May 2002).

language but gave up after two months of rioting in Tamil Nadu.²⁰ Since then Tamil Nadu has been effectively integrated in to the Indian Union, although Tamil Politicians will continue to emphasise the uniqueness of Tamil identity in their political messages.

This parallel supports some of the observations by Neil DeVotta about what went wrong in the case of Sri Lanka. The reason why the Sinhalese leaders began to politically exploit their advantage as a majority group was *the electoral system* and *the unitary state structure*.²¹ The first-past-the-post system would work in favour of the majority groups, making alliances with the minorities less attractive. This effect would be more dramatic than in India since India has a federal state structure and Sri Lanka not. Had the provinces of Sri Lanka had the same status as the Indian states, the outcome would most likely have been different. But in the Sri Lanka case, the unitary state structure would, as DeVotta points out, provide no "substantive minority guarantees."²² DeVotta suggests that Sri Lanka would have needed some of the crucial ingredients from the consociational formula provided by Arend Lijphart, to avoid the ethnic outbidding that took over hand of politics.²³

After making Sinhala the official language, Sri Lanka continued a path of political development where Tamils gradually became more excluded from political arenas and gradually lost status as citizens. For example, DeVotta writes the following about the policies pursued by Sirimavo Bandaranaike:

As prime minister 1960-65, and 1970-77, she pushed for a strict enforcement of the Sinhala-Only Act, banned the importation from India of Tamil-language films and periodicals, and in general displayed no qualms about utterly marginalizing her country's largest minority. Her

¹⁹ DeVotta 2002.

²⁰ In particular see Barnett, Marguerite Ross. 1976. *The Politics of Cultural Nationalism in South India*. Princeton: Princeton University Press. Also see Widmalm, Sten. 2002. *Kashmir in Comparative Perspective - Democracy and Violent Separatism in India*. London: Curzon/Routledge.

²¹ See DeVotta, Neil. 2002. *Illiberalism and Ethnic Conflict in Sri Lanka*. *Journal of Democracy*, volume 13, number 1, January 2002.

²² DeVotta 2002.

²³ DeVotta, 2002:85-86.

second government introduced higher-education policies that drastically increased the number of Sinhalese who gained admission to universities while better qualified Tamils were turned away as members of a statistically "overrepresented" group. The government refused to allocate certain scarce resources to Tamil areas and sometimes even shelved internationally sponsored development projects in these regions.²⁴

In 1972 this order was manifested by the introduction of a new constitution that significantly widened the ethnic divides on the island. Besides giving Sinhala the status of the only official language for the "Republic of Sri Lanka" it "afforded Buddhism the 'foremost place' in the state".²⁵ Also, measures were taken to nationalise economic enterprises during the first term in office. During the second term these measures were carried out more extensively. The 1972 constitution provided that the president would be the head of the state although the executive powers "remained with the prime minister and the cabinet."²⁶

After the United National Party (UNP) under the leadership of J.R. Jayawardene won the election at the cost of the Sri Lanka Freedom Party in 1977 a new constitution was adopted in 1978 which gave "new executive power to the President as head of government".²⁷ Some of the nationalisation programmes were halted and for a while it seemed that concessions were made to the Tamils with regard to language rights and provisions for proportional representation on national politics issues.²⁸ Nevertheless, the more extensive promises presented in the election campaign by the UNP never materialised and a year later in 1979 the increased polarisation in the country was expressed through the implementation of the Prevention of Terrorism Act which delivered a hard blow for the protection of human

²⁴ Ibid. 89.

²⁵ Nissan, 1998:5

²⁶ See "Sri Lanka" *Encyclopædia Britannica* <<http://search.eb.com/eb/article?eu=115233>> [Accessed May 17, 2002].

²⁷ Ibid.

²⁸ Nissan, 1998:7. Also, De Silva writes: "The 1978 constitution attempted to ensure access to university education to all groups by requiring that if the state directly or indirectly provides courses in one national language, it must also provide them in other national languages." De Silva, Chandra R. 1999. *The Role of Education in Ameleorating Political Violence in Sri Lanka* in in Robert I. Rötberg (Ed.) *Creating Peace in Sri Lanka - Civil War and Reconciliation*. The World Peace Foundation and the Belfer Center for Science and International Affairs: Cambridge, Massachusetts.

rights at Sri Lanka. To borrow Lijphart's terminology that was discussed above, the state in Sri Lanka for the whole period discussed can be characterised as unitary and centralised.

Tamil political forces that had been working for a more federal structure for Sri Lanka during the 1960s and 1970s had begun increasingly, from the 1970s, to demand secession. For example, the Tamil United Liberation Front (TULF) that was established in 1976 stated that decentralisation and federalism were no longer enough to secure Tamil interests, and that a separate state would be the solution.²⁹ Unlike TULF, who would pursue politics via the parliament, the Liberation Tigers of Tamil Eelam (LTTE) was founded in the early 1970s by Vellupillai Prabhakaran and would promote other means for struggle to achieve the goal of a separate state. The LTTE gradually stepped up its violent actions and in 1983, members of the organisation killed 13 soldiers near Jaffna. This sparked the beginning of attacks where hundreds of Tamils were killed within a short time, and it also marked the beginning of the civil war which has last until today.

India began to play a dual role in this conflict. First, Tamil separatists received some support from the Indian government. Leaders and soldiers of the LTTE retreated to Tamil Nadu, where training camps were established. But around 1987, the Indian government reversed its position, partly from fear of stirring to life some kind of neo-Draavidian movement and partly since the military offensives of the Sri Lanka army aimed at Jaffna risked affecting Tamil Nadu more directly. In this context, the Indo-Lanka accord of 1987 was created. It led to India giving assistance to Sri Lanka in its effort to "disarm" the LTTE - a campaign which failed, leading to the withdrawal of the Indian Peace Keeping Forces (IPKF) in 1989.³⁰ However, as mentioned above, it also led to an attempt to decentralise the government structure at Sri Lanka with the introduction of the 13th amendment to the constitution.

²⁹ Nissan, 1987.

The 13th amendment could have been, it seems, a significant decentralisation reform where Provincial Councils were created not only with administrative responsibilities but also with some legislative powers. The Local Government structure became a subject under the Provincial Councils that should be elected every five years.³¹ This structure, it seems, could have meant a step towards a more decentralised and perhaps even a federal model for Sri Lanka. Nevertheless, the powers that could potentially be distributed under the 13th amendment have, according to many observers, been severely undermined by provisions and clauses that effectively give the central government the power to withdraw any decentralised responsibilities at any time. Rohan Edrisinha, for example, writes that "[p]erhaps the greatest obstacle to practical devolution was the first phrase of the Reserved List which provided for 'National Policy on all Subjects and Functions' to be determined by Parliament."³² Furthermore, from a local governance perspective the reform was not successful. In the "Report of the Commission of Inquiry on Local Government Reforms 1999" it is stated that "[w]ith Local Government becoming a function of the Provincial Council less attention was paid and less assistance given to Local Government." However, according to the report "[t]he background to this situation had already been created even prior to the passage of the 13th amendment."³³

It seems that Sri Lanka has attempted to take steps towards decentralisation that, if implementation had been effective, could have moved the country towards the "Unitary and decentralised" category according to Lijphart's scale. But although new suggestions brought

³⁰ Smith, Chris. 1999. "South Asia's Enduring War" in Robert I. Rotberg (Ed.) *Creating Peace in Sri Lanka - Civil War and Reconciliation*. The World Peace Foundation and the Belfer Center for Science and International Affairs: Cambridge, Massachusetts.

³¹ Earlier, Local Government had been the subject of the Central Government Ministry. See Report of the Commission of Enquiry on Local Government Reforms 1999. 1999: 17-40.

³² Rohan Edrisinha. 1998. *Trying Times - Constitutional attempts to resolve armed conflict in Sri Lanka*. p. 2. in Accord.

³³ Report of the Commission of Inquiry on Local Government Reforms 1999. p.18.

forward for decentralisation beyond the 13th amendment,³⁴ the strong powers vested with the Presidency and the Parliament mean that Sri Lanka remains a "Unitary and centralised" state. Most proposals for reform and, in particular, decentralisation have not taken effect. Some of these proposals should be mentioned before we move forward to discuss the political negotiations that will play the largest part in deciding on any future reforms.

Reform proposals for decentralisation presented in the 1990s

As mentioned above, the reform which created the Provincial Councils has not had any substantial effect on the level or quality of democracy. For example, Rohan Edrisinha refers to a statement made in 1997 by the minister of justice regarding the reforms:

[Gamini L.] Peiris correctly describes the Thirteenth Amendment (1987) - which provides for decentralisation of government power - as a sham, citing the example of the National Transport Commission Act to demonstrate how easy it is for the central parliament to undermine devolution of power. But he steadfastly refuses to introduce the mechanism which acts as the most effective check on the temptation to concentrate power in the center: judicial review of legislation.³⁵

Nevertheless, in 1994 the People's Alliance (PA) came to power with an election manifesto that promised to produce a new constitution that would solve the problems of centralism and ethnic conflict. It seems, however, that the PA government failed to build a consensus around the new proposal and the UNP instead decided produce its own proposition. The new proposal that was released by the PA government in 1997 included some improvements providing for decentralisation, but according Edrisinha, the document was "woefully inadequate" if one was interested in solving the difficult underlying problems of separatism. Edrisinha writes that: "[The PA proposal] is simply a reconditioned version of the 1978 constitution. The basic structure remains the same and vast chunks were reproduced

³⁴ See De Silva, 1999:113. Also, see the proposals brought forward by the Mangala Monesighe parliamentary select committee and proposals of the PA government and the UNP "counter-proposals" that followed in the mid- and late 1990s. Edrisinha, 1998:1-10.

verbatim."³⁶ It seems that the process of decentralisation, where power is moved from the central government to the states or provinces, has not progressed. The unwillingness of the political elite at the centre to let go of power is naturally connected with the ongoing violent conflict on Sri Lanka. This will be discussed further below but before that, we should pay some attention to the power structure at the local level as well.

In 1998 the President Chandrika Bandaranaike Kumaratunga commissioned an inquiry into the problems of local government and how they should be remedied. In 1999 a 630-page "Report of the Commission of Inquiry on Local Government Reforms" was published that contained an overview the responsibilities of the public sector and, literally, hundreds of recommendations collected from Local Authorities. We will take a brief look at what proposals the report makes about local autonomy and people's participation in local government.

Local government in Sri Lanka, it seems, has so far mainly functioned as institutions to which the central government has delegated tasks and projects. The Commission report asks that a new system based on three tiers - Central government, Provincial Government and Local Government - should be defined in constitutional provisions. The commission compares enviously the situation in India where two chapters of the constitution have been devoted to regulating the powers and obligations of local government.³⁷ A problem of the commission report, however, is that it makes no specific recommendation on how a certain degree of autonomy should be established by revision the constitution. It merely says that the role of local government activities should be defined - not how it should be defined. What we would have expected here would be, for example, specific views on fiscal control - in

³⁵ Edrisinha 1999:173, in Rotberg (Ed.). Peiris will most likely lead the Sri Lanka negotiation team in June/July.

³⁶ Edrisinha 1999:171.

³⁷ Report. p. 42.

particular the right of taxation, and judicial control - or provisions for law-making capabilities.

Financial matters are discussed under "Budget formulation " and "Collection of Revenue." But in these sections the spectre of centralised control raises its head when, for example, specific recommendations on road maintenance are made.³⁸

The commission recommends that local authorities always have to sanction all "activities relating to Local Government". This should provide some protection against central-government-initiated projects being implemented at the local level without any say for the local government authorities. Nevertheless, this is quite a long way from any substantive measure for providing local autonomy.

The proposals made for the collection of revenue include new economic activities that can be brought under the tax system. It is unclear, however, to what extent that the Local Government can keep the funds it brings in on taxation. For example, in the list of proposals it is stated that "A certain percentage of the revenue derived from the annual licensing of vehicles registered in the Local Authority area to be made available to Local Authorities."³⁹ From the report, it cannot be said what shares of other revenues Local Authorities are allowed to keep, and it is unclear what percentage of the national budget will be allocated to Local Government. Under recommendations on Grants System the proposal is to "[m]ake it mandatory by Constitutional provision for the allocation to Local Authorities of a reasonable percentage of the total state revenue provided for in the national budget." "Reasonable" is not defined and it is not discussed what role the Provincial Councils should have in allocating funds. It is only stated that "Provincial Councils should be made aware of the grants which

³⁸ Report, p.362.

³⁹ Ibid. p. 365

should be made available to Local Authorities direct."⁴⁰ In other words the structure that we can see emerging from the proposal does not provide for more decentralised structure. The unitary and centralised state remains firmly rooted.

The recommendations for promoting people's participation are almost as vague and here a "shopping list syndrome" is frequent. Under the headline of "Development and Physical Planning" it is recommended that "Local Authorities to promote vigorous participation of people in the planning process".⁴¹ Nothing is said or discussed about how this should be done. Several of the proposals are also quite confusing:

Attempts should always be made to muster people's participation in development projects and whenever such participation is forthcoming, costs of labour and materials provided should be excluded from payments.⁴²

Does this mean that people who have been mobilised to participate in development projects cannot have salaries drawn from the project budget? Does it mean that voluntary workers can simply replace paid labour?

The section on "Public Participation and Social Development" is to some extent more encouraging since it makes specific recommendations for providing against discrimination against ethnic groups. It proposes that "Equal importance to be accorded to proposals submitted by every ethnic group" and that Resources of the Local Authority be distributed equitably among all ethnic groups". Certainly, these provisions could be more detailed but at least they take a stand for *proportionality* in a more specific manner than most of the other proposals.⁴³

When it comes to the details on "Public Participation", however, the proposals are top-down oriented and without clear outlines. They simply state that committees of various kinds

⁴⁰ Ibid. p.366.

⁴¹ Ibid. 367.

⁴² Ibid. p.370.

should be established at various levels of government, without any detailed suggestions for mechanisms or functions that provide for increased democratic governance. Whether powers should be decentralised or delegated is unclear.

Finally, the sections discussing "Central control and Supervision", and the sub-sections on government at Provincial and District level do not, it seems, make any proposals that would significantly alter the established system of governance. In fact, the proposals are specifically constructed so that, for example, the "powers and responsibilities of the Provincial Governors in relation to Local Government (to) be retained."

To sum up, the "Report of the Commission of Inquiry on Local Government Reforms" does not contain clear and elaborated suggestions on decentralisation that could be used to move Sri Lanka towards a federal structure. Although it claims to take a bottom-up approach to reforms, and that includes a people's perspective on participation, it seems that the document still will represent a rather centralised view on governance in Sri Lanka. To some extent the document take into account the problems of accommodating ethnic tension, but there is still quite a long way to go to work out mechanisms along the lines of, for example, a consociational structure of governance. All that has been reviewed here indicates that the bottom-up approach that the documents claim to have will make little or no difference in increasing participation or improving democratic performance.⁴⁴

If we want to find out where Sri Lanka is going, the real focus for our attention should be the ongoing peace process. That is where the most crucial issues regarding decentralisation and federalism will be decided. This struggle is about unitarianism and federalism and this process has a clear top-down character.

The peace process and alternatives to the unitary centralised state

⁴³ Ibid. p. 386.

Expectations of the ongoing peace process in Sri Lanka can be measured quantitatively. The ten percent increase of the Colombo stock market this year can mainly be attributed to increases in May.⁴⁵ On May 28 the highest level for four years was reached. To some extent these increases can be attributed to privatisation efforts in the industrial sector but most analysts say that it is the high expectations of peace that have been reflected in a new confidence in the market.⁴⁶ The Norwegians have assisted in creating a cease-fire agreement between the Sri Lanka government and the LTTE which started on 24 December 2002 and was put in writing in February this year. In June or July a new round of talks is due to be held in Thailand.

It seems fitting to end this article by discussing, from a very broad perspective, some possible outcomes of the peace process with the focus on the state structure and decentralisation. The point to be made here is that the negotiating process is centred on issues relating to decentralisation, federalism and group rights. The peace process will determine, more than anything else, whether Sri Lanka will remain a unitary and centralised state or if it will decentralise powers and, to some extent adopt a federal structure.

According to DeVotta, "[f]rom the 1950s through the 1980s, Sinhalese political entrepreneurs had deliberately misconstrued the Tamil quest for federalism as an attempt to sunder the country."⁴⁷ Since the LTTE started to demand a separate state and as the polarisation between the Tamil and Sinhalese community has increased demands for federalism have even more strongly equated with separatism. It is easy to imagine here how any proposals for decentralisation and federalism have easily been labelled, through

⁴⁴ For a discussion on this topic, see Gustavsson, 2002: 87-118.

⁴⁵ ⁴⁵ http://news.bbc.co.uk/hi/english/business/newsid_2012000/2012644.stm (accessed 29 May 2002).

⁴⁶ See for example http://news.bbc.co.uk/hi/english/business/newsid_2012000/2012644.stm (accessed 29 May 2002).

⁴⁷ DeVotta, 2002:95.

mechanisms of guilt by association, as coming from the separatist camp. But any "deal" that may emerge from the ongoing negotiation process will revolve around this topic.

Sri Lanka will not agree to a separate state for the Tamils. However, it agrees that "some form of devolution is possible".⁴⁸ Again, the use of the word devolution is somewhat enigmatic. Is the word decentralisation to be avoided since it suggests that too few concessions will be made to provide for real self-governance? Is the word devolution used since, in some way, it implies provision for autonomy and measures to promote a federal state structure? We know from the discussion above that the word devolution has no such fixed meaning, and perhaps that is why it is chosen. It is convenient because it is imprecise - therefore it shows that the party that uses it is ready to negotiate but not precisely about what. It is the negotiation process that will give meaning to the term when it becomes clear how much power the central government in Sri Lanka will be willing to cede, and how much the LTTE will agree to settle for. We can use not only Lijphart but also Alfred Stepan to reveal the paths that Sri Lanka can tread.

Stepan observes that "every single longstanding democracy in a territorially based multilingual and multinational polity is a federal state", but also warns that the fact that nations like India, Canada, Belgium, Switzerland, Spain and the United States "chose to adopt a federal system does not prove anything; it does, however, suggest that federalism may help these countries manage the problems that come with ethnic and linguistic diversity." The question is then if Sri Lanka will in the peace negotiations aim to achieve a federal state or what Stepan calls a "federacy"?

A federacy is the only variation between a unitary state and federal states. It is a political system in which an otherwise unitary state develops a federal relationship with a territorially,

⁴⁸ http://news.bbc.co.uk/1/hi/english/world/south_asia/newsid_2011000/2011115.stm (accessed 28 May 2002)

ethnically, or culturally distinct community while all the other parts of the state remain under unitary rule.⁴⁹

If Sri Lanka were to move beyond the federacy model it would need to give special and exclusive competence to the provincial councils and add a legislative chamber at the centre that represents the territorial principle. Still, such a Sri Lanka would most likely end up as an asymmetrical federation rather than a symmetrical one like the US. In the asymmetrical model "different competences and group-specific rights" are given to different states⁵⁰ Although any democracy has to be based on individual rights, Stepan points out that in multinational polities "some groups may be able to participate fully as individual citizens only if they acquire, as a group, the right to have schooling, mass media, and religious or even legal structures that correspond to their language and culture." This is the challenge for Sri Lanka: that the centre must protect individual rights on a universal basis and still provide for group rights in the different regions of the country.

Provided that individual and group rights can be protected to some extent at least, we can discuss the pros and cons of federacy and federalism for a state such as Sri Lanka. Both what is a possible or likely outcome of the negotiations, and the effects of the structure chosen, will be given some comment.

DeVotta speaks in favour of a federal structure and points out that such a system would bring forward the desired effects of the proportional representation introduced in the electoral system in 1978 as well as the France-inspired model adopted for electing the President.⁵¹ Provided that these mechanisms would function in a federal structure, ethnic accommodation would have good chances of being achieved. It can be useful to speculate about this. Such a model could perhaps be appealing to the Sinhalese community since group-

⁴⁹ Stepan 1999:20

⁵⁰ Stepan 1999:21

based rights would be established in all states rather than in only one part of the country which would be the case in a federacy.⁵² Another advantage of the federal model could also be that it could defuse the demand of LTTE to merge the Northern and Eastern provinces. The federal model could then provide group-based rights in both provinces for Tamils. If the federacy is the model to be argued for, LTTE will most likely push hard for the demand that the Northern and Eastern provinces be merged and included in the area that will have group-specific rights for Tamils. Could the Sinhala parties agree to such a structure that would separate about a third of the country? Or will it prefer to retain the present division with nine provinces but with group rights provided for all?

Some observations speak in favour of a federacy. Perhaps it is most likely that the majority community of Sri Lanka will only agree to the creation of a more limited autonomous unit - like the Northern province - and that the unitary state structure should be retained for the rest of the country.⁵³ The federacy has been a successful solution for Denmark and its relation to Greenland and the Faroe Islands, and Finland's relation to Aaland. But these comparisons will not take us far enough, since the federacy solution in these cases only affect a small minority of the population of around one percent, as compared to the Tamil population of around eighteen percent in Sri Lanka. The Sinhala community will perhaps perceive that a federacy that would provide autonomy for almost one-fifth of the population as too much of a political counterweight to the rest of the country governed by the unitary structure?

But should a federacy and federalism not have the same chances of accommodating the parties in the conflict? This can be argued from one perspective, since the absolute amount of autonomy and the extent of group rights could be same for Tamils in a federacy as in a

⁵¹ DeVotta 2000:67-68.

⁵² Perhaps one reply to this argument from a Tamil perspective would be that the present unitary state has always served mainly to protect group based rights for the Sinhala community.

⁵³ See Suranimala, 2002, *Kumaratunga's strategy for sabotage*. in Tamil Guardian, 1 May 2002.

federation. However, the relative position of the Tamils to the Sinhala community is important too.

Conclusion

Looking forward to writing this part after the conference...