

RECONCILIATION BEFORE DEVOLUTION

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There is a need to consider the feasibility of government proposals for resolution of the ethnic problem, in terms of background of causes leading to conflict and state of polarization between Sinhala and Tamil communities. From such a perspective it would appear that proposals for devolution can be counterproductive. In the absence of goodwill and cooperation between the two groups of people, it can result in an exacerbation of the division and be a catalyst for separation as envisaged by the LTTE.

It is important to remember that in addition to a period of civil war extending for sixteen years, there was a long period of agitation and disputes leading to polarization between the two groups from about the mid-fifties. If we look further into the pre-independence period from about the beginning of the twentieth century, we can trace a long period of friction between the politicians and leaders of the two ethnic groups for power sharing and constitutional reform.

Tamil grievances can be traced back to language and education policies of governments over four decades, state-sponsored discrimination and persecution resulting in onset of a militant youth uprising in the north. It is evident in absence of effective provisions in successive constitutions to protect minority interests, continuation of language and education policies which are detrimental to progress of youth in all communities, contributing in no small measure to a breakdown of communication, and inadequate participation of minorities in government.

Many people do not seem to realize that Sri Lanka has come a long way from the days when Chelvenayagam and Naganathan demanded Federalism and were assaulted at Galle Face for performing *sathyagraha*! It is no longer a matter of sweeping the dirt under the mat in terms of disregarding minority demands. It is a situation that extends beyond satisfying aspirations of any one group, and involves a threat to national security and unity, which regrettably has not been understood by many. There is not merely a polarization between Sinhalese and Tamils, which is also spreading globally to countries where they are domiciled in other parts of the world; there has been a de facto separation of north and east from rest of the country for nearly two decades, and physical unity has been sustained only by an army of occupation and continuing warfare to hold back the rebels. It underlines a complete breakdown of trust and confidence between the two groups, which is being constantly aggravated by Sinhala chauvinism in the south, such as opposition to the proposed Equal Opportunity legislation of the government, agitation against any form of devolution (which by itself is certainly not the solution) and Tamil militancy spearheaded by the LTTE, with no compromise on separation as the ultimate goal.

In such a state of affairs there is a need to restore good relations between people and build up confidence for cooperation and working together in a united country. An important step in this direction

is the need to improve communication between people speaking only Tamil and Sinhala. English as a link language can also provide a passport to employment and success of youth in all groups. There is a need to restore English education not merely as a single language, but as a medium of education to make people internationally competitive for employment locally and overseas, which in the long term can be the solution to the problem of youth both in the north and south. There is also a need to implement the policy of bilingualism for communication in state departments. Answer to shortage of English teachers in the short term, would be to import them from overseas to cover at least up to provincial schools and public schools, to break the monopoly of international schools, which is creating a privileged class.

Equality of opportunity by introducing suitable legislation with exemptions where appropriate, and set up anti-discrimination boards at district, provincial and national levels. There is a need to ensure not merely equality before the law but also equality in schools, universities and the workplace to realize social justice for all. Violation of such a basic principle can be regarded as justification for youth militancy, which again needs to be understood and appreciated by those reluctant to support such legislation.

Reform of central government is another important and long overdue need to ensure that democracy is available to all sections of the community and not merely the majority. The Westminster system of government, with emphasis on majority rule and absence of protection for minorities against discriminatory legislation, has been prevalent for too long and aggravated by constitutional revisions in 1972 and 1978. Executive Committee system is one possible option which may be on the agenda of the present government. There is also the need for checks and balances by considering a bi-cameral legislature with an upper house to allow greater representation for minorities and with teeth to veto legislation, say by a two-thirds majority or a suitable formula.

There is also need for complete independence of public service and judiciary from political interference by implementing effective measures to ensure autonomy of such divisions. Finally, there is the need to ensure that effective steps are taken to minimize corruption at all levels of society.

The foregoing measures can be implemented without delay and obtaining consent of other political parties or the LTTE. Such confidence-building measures are long overdue, and absence of any action over a long period has given impetus to the LTTE and the separatist movement. There is a need for greater credibility in government and a level playing field in education, employment and opportunities for a better life for all. No doubt such measures call for leadership/ statesmanship, courage and political maturity, which sadly seems to have been lacking for several decades, while the country has been torn apart by extremists on both sides.

If and when active steps are taken to rectify shortcomings highlighted above, we can consider the prospect of allowing effective devolution of power to the north and east. In this regard it is evident that the Provincial Council system has been a failure in other parts of the country, in the absence of genuine devolution of authority. In order to allow an appreciable level of devolution to the minorities, there is a need to consider a Federal system of government, provided the south has the confidence to grant such autonomy without fear of aggravating separatist tendencies, and the north can accept it as part of an overall solution to the problem on the basis of restored credibility of a government that is looking beyond political expediency. Such measures will ensure a sense of unity in diversity which is strongly needed to arrest the present polarization leading to national disaster. In considering devolution of state power, it is important to understand the nature of society as being plural or multicultural with a strong minority culture in the north, which

needs to be safeguarded as part of the national wealth. There is also the matter of governing a section of the country over which the government has very limited control, and the need to allow people in the north a measure of autonomy as a cushion against abuses of power from the south. Autonomy should never be considered in a climate of fear in the south or militancy in the north, which is presently evident.

While showing some resilience in maintaining democratic institutions and government since independence over fifty years, Sri Lanka has been lacking in political maturity among a majority of people and leadership/ statesmanship, to come to grips with the greatest threat to its survival as a nation-state, and resolve these issues in a spirit of goodwill and cooperation, by transcending parochial values and politics of opportunism, which have been characteristic of its society for several decades. ■

PROMOTING A CULTURE OF CONSTITUTIONALISM AND DEMOCRACY

Recommendations to Commonwealth Heads of Government Commonwealth Human Rights Initiative 1999

Introduction

The Commonwealth Human Rights Initiative (CHRI) is an international, independent non-profit organization headquartered in India. Its objectives are to promote the practical realization of human rights in the Commonwealth. It educates on human rights issues and advocates for greater adherence to human rights standards.

CHRI believes Commonwealth human rights defenders must develop and share amongst themselves good practice in pressuring state agents to respect human rights. Human rights advocacy and education are core elements of CHRI's approach. CHRI's strategies are:

Researching successful strategies and methods and advocacy in adverse circumstances, **Collaboration** with various groups such as NGOs, lawyers, journalists, parliamentarians, doctors, and others, **Developing** a curriculum with Commonwealth-wide application to strengthen the advocacy strategies of human rights defenders, **Conferences Advocacy** around particular issues of concern for human rights. Constitution-making was a key area identified for collaborative action by civil society at the Conference on Pan-Commonwealth Advocacy for Peace, Good Governance and Human Rights held by the Commonwealth Human Rights Initiative (CHRI) in Harare in January 1999. Constitution-making was seen as so important because it is a key way in which citizens can

participate in governance. For this reason CHRI's advocacy focuses on the participatory aspects of the process, with an aim towards finding strategies for deepening democracy. To take two extraordinary examples, the South African and Uganda experiences proved that citizen input can have serious impact in making and reforming constitutions into democratic documents that can be said to truly belong to the people.

In August 1999, CHRI convened a working group in Pretoria, South Africa to develop a position paper on best practices in constitution making. The recommendations which resulted have been circulated to the wider human rights community and experts across the Commonwealth for their comments and endorsement. The need to follow the principles set down in the Harare Declaration (1991) and the Millbrook Plan of Action (1995) are more relevant now than ever. CHRI now takes these recommendations on participatory constitution-making to Commonwealth Heads of Government and urges them to take their commitments to human rights and good governance seriously.

The following recommendations were made at the end of the CHRI consultation held on August 16-17, 1999 at Burgerspark, Pretoria. The recommendations were submitted to the Commonwealth Heads of Governments Meeting of 1999.