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Power Sharing in Sri Lanka

Some comments and recommendationsto the constitutional debate from a comparative perspective

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I. Introduction

Acting upon requests from local stakeholders, the Embassy of Switzerland in Colombo decided to provide expert inputs on constitutional models of power sharing and mandated the Institute of Fed-eralism (IFF) to conduct a number of conferences and workshops in Sri Lanka. The expert team was composed of Prof Eva Maria Belser and Maurizio Maggetti-Waser from the IFF, and Prof Nico Steytler from the Omar Dullah Institute in Cape Town, South Africa. In January 2016, the team participated in ten public events organised in Jaffna, Kandy and Colombo, attended by Members of Parliament and Provincial Councils, academics and students, journalists as well as representatives of the civil society, ethnic groups and political parties[1]. The text reflects the state of discussions in Sri Lanka at the beginning of the year 2016[2].

After some introductory statements on the experiences made by the members of the delegation (II.), this report will give a short overview on the main issues being discussed during the workshops and identify some of the constitutional matters appearing to be of particular legal and political importance (III.). It will conclude with a few ideas about the future engagement of the international community in the Sri Lankan constitution reform process (IV.).

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1 The team members had the chance to discuss the constitutional process with a number of experts on the current situation in Sri Lanka, namely Ambassador Heinz Walker-Nederkoorn, Martin Stürzinger, Senior Adviser in the Federal Ministry of Foreign Affairs, and Davide Vignati, First secretary of the Embassy, and . They also had the opportunity to debate the constitutional process and the controversies involved with Sri Lankan constitutional experts, namely Jayampathy Wickramaratne and Rohan Edrisinha.

2 Some complements have been added based on a follow-up visit by Prof Nico Steytler in August 2016.

II. Looking at Sri Lanka's Next Constitution

After having gone through a period of constitutional hardships, Sri Lanka has embarked on a consti-tutional reform process. Many stakeholders consider the year 2016 to be a historic opportunity to solve some of the countries lingering problems and give great importance to the exploration of different models of power sharing, including federalism and devolution; others express their apprehensions that the reform process would be made too hastily and superficially, do not expect real changes or fear their potential effect on the country.

Knowledge about constitutional power-sharing mechanisms is very unequally shared in the country of Sri Lanka. While a very limited number of highly experienced experts in the field dominate the debates, the broader public (including parliamentarians, academics and journalists) are often unfamiliar with the main characteristics of the concepts of self-determination, federalism, autonomy and decentralisation. Misunderstandings about the very idea of power-sharing are wide-spread (and used to raise scepticism and fear). Like in many other countries, federalism is either seen as a panacea to all sorts of conflicts and state failures or as a threat to the territorial integrity of the country and a first step to secession. For a participatory and inclusive constitution-making process and in view of the popular referendum, it seems crucial to narrow the knowledge gap between expert groups and the broader public and to provide more people with the terminological tools to meaningfully intervene into the debates. If this is not the case there is a risk that an elite constitution will not convince the public – or will be accepted by the Sinhalese majority without addressing legitimate concerns of minorities.

The delegation visited Sri Lanka at a crucial time of the reform process. The constitutional process had just been officially launched, but no drafts were yet circulating. There was palpable interest in the country's constitutional future. The process of the constitutional reform, its effect on transitional justice, the different models of power-sharing and their impact on regional autonomy, the protection of diversity and the unity of the country and other related issues received broad public attention. In general, the constitutional reform process was widely viewed as crucial for the country's future and not as an ineffective alibi exercise. Hence, there was a wide interest in understanding different models of power-sharing and the experiences of other countries.

1. Commenting from a Comparative Perspective

Comparative comments to constitutional processes cannot be done in abstract but have to match past experiences and current controversies of a state. The members of the delegation have therefore tailored their inputs to the questions at stake in Sri Lanka and have attempted to adapt their com-parative comments with current controversies in Sri Lanka. The overall aim of their intervention was to offer insights into crucial matters of constitutional power sharing models, to clarify concepts currently being discussed in the country, to dispose of erroneous notions and misunderstandings and to share relevant experiences of other countries. In such a knowledge sharing process, neither the Swiss or the South African constitutional choices, or any other country , can be presented and should be seen as models for Sri Lanka but used to

draw lessons from diverse constitutional experiences, to present chances and pitfalls of power-sharing and to look at theoretical concepts and practical implementation.

Since the role of foreign expert raised a number of questions, the members of the delegation at-tempted to clarify their mission at the beginning of each public session. It seemed important to un-derline that foreign experts had no role in the drafting process of the new constitution. The purpose of comparative perspectives and the intervention of experts that convey them are not to be prescriptive. The credibility and the competence of the team were considerably increased by its international composition. From the fact that Swiss and South African experts would both share the experiences of their countries and of the countries in which they had worked made it clear that there was no intention to «sell» a specific type of power-sharing model or to intervene into the constitutional debates in any other way than be increasing the expertise of Sri Lankan stakeholders. The value of comparative perspectives is enhanced if learnings from the global north and the global south are combined.

2. Sharing Ideas on Power Sharing

Like in most other states confronted with fierce divides and internal conflicts, power-sharing in all its forms is highly controversial. During the current constitutional reform process, power-sharing at the same time appears to be most crucial: While many see no hope for a peaceful and prosperous future of the country if the issue of power concentration at the centre is not effectively addressed, others are convinced that some models of power-sharing (or any form of power-sharing) would threaten the stability and/or unity of the country. It is therefore of utmost importance to clarify concepts of power-sharing as they affect the centre and the centre's relations to the periphery.

Federalism, devolution and decentralisation are seen by some as a possible option «to solve the ethnic issues» or «to accommodate the North and East». However, in our view, the debates on power-sharing would greatly profit by moving beyond this single purpose: Globally, federalism, devolution and decentralisation are not only seen as effective mechanisms to accommodate diversity or to overcome ethnic conflict but also as powerful tools to strengthen democracy and public accountability and as a real chance for economic and social development. Seen from this perspective, power-sharing is much more than an ethnic issue and a matter of interest for the minority of the Tamils (and the Muslims). It offers new opportunities for all provinces, including the provinces in the Centre, South and the West. Seen the conflicts of the past and the current dissatisfaction in the relations between Colombo and the (all) provinces (e.g. in the field of financial transfers), participation by all provinces in the debates about power-sharing and (re-)discovering their interest in autonomy arrangements could be beneficial. Seen the composition of the Sri Lankan population and the current power relations, Tamils and other minority groups have limited hopes to have their concerns being addressed in a new constitution (or, if so, only superficially and with no real intention of implementation). For a real power-sharing arrangement to take off, it therefore seems necessary to more strongly involve the Southern and Western parts of the country.

III. Main Issues at Stake

1. Fighting about Words

Many Sri Lankan minds are occupied by issues of terminology. Some actors and groups insist on the use of the terms federalism, self-determination or devolution in the constitutional text (and on the deletion of the term unitary), others refuse at the outset to consider a constitution that does not insist on the unity of Sri Lanka and the unitary character of the state. The highly emotional debates that seem to stand in the way of the discussion of other matters (such as competences of provinces, financial arrangements) are further complicated by the fact that understandings of the terms «unitary», «self-determination», etc. differ greatly among those who use them.

Terms are used differently in different contexts and constitutional terms and constitutional realities often do not match (either because the constitution drafters have avoided politically sensitive terms, the constitution has not been (fully) implemented or because the situation on the ground has evolved over time). Numerous de facto federal states do not use the term, a number of officially unitary states are strongly decentralised in practice. Unitary states, one the one hand, are not necessarily states allowing for no autonomy and providing for uniform laws throughout the country; often, they just exclude the right to secession (e.g. China). Federal states, on the other hand, do not necessarily protect diversity and accommodate minorities (e.g. Russia). The constitutional regime hiding behind the words being used therefore seems much more important and worthy of public debate.

The experiences of other countries are that terms used for devolution in a constitution should be context-specific (home-grown) concepts, which then avoid emotional, ambivalent and controversial terms. The notion 'Bund' in German e.g. stands for alliance and is evocative of a bouquet/a bundle of flowers (flowers hold together to a 'Bund`). Switzerland, as one of the most non-centralised federal systems, does not use 'federal' in its constitutional text and is officially denominated 'Eidgenossenschaft' evocating its corporative character ('Genossenschaft') and the solemnness of the corporation ('Eid' = Oath). The possibility should also be explored of using the (non-binding) preamble to express a change in the understanding of unity (e.g. «determined to uphold the territorial unity of Sri Lanka while respecting its cultural diversity» – «based on the unity of the state and the autonomy of its regions») or to define or clarify crucial terms and their meaning in the constitution («Sri Lanka is an indivisible (unitary) state.» – «Sri Lanka is an indivisible (federal) state.» – «Sri Lanka is a unitary state composed by its provinces» «Sri Lanka respects the autonomy of its minorities and protects the integrity of the territory.» – «Sri Lanka is an indivisible regional state.»).

In our view it would thus be constructive to consider the following:

- First, the fight about terms and the clearly established approaches to the use of unitary and federal seem to block negotiations about the real issues of power-sharing, such as attribution of competences, financial transfers, and participation, veto and intervention rights. Shifting the attention to those issues (e.g. education, police, land

use) and to find an agreement on the extent and content of power-sharing, before putting a name to it, might be useful. Once an agreement on power-sharing has been found and accepted by all (most) stakeholders, it should be less controversial to give it a label.

- Secondly, instead of using labels from abroad loaded with meanings and associations, it could be helpful to come home with home grown, indigenous terms (such as «Bund»).
- Thirdly, if 'unitary' remains in the constitution; its meaning could be clarified in the text (indivisible, no right to secession); the same goes for other terms used.
- Fourthly, the preamble can be used to set the tone of the constitution and guide its implementation (e.g. by recognizing the cultural, linguistic and religious diversity of the country; the condemnation of violence as a mean to solve conflict).

2. Drawing Boundaries and Merging Provinces

The drawing of subnational boundaries and the territorial geometry of a country are often critical issues. To put it simply, there are two approaches to drawing boundaries in multi-ethnic and ethnically divided states: ethnicity/language as the organizing principle or ethnicity/language as one factor among others. Ethnic, linguistic or religious groups asking for internal self-determination often insist on ethnicity-based units (if possible named after their group) and have been accommodated in a number of federal and regional states. Especially formerly (or currently) disadvantaged, marginalised and discriminated groups often feel that they can only be «safe» and take ownership of the state if they have their «own» subnational unit to govern. However, ethnic based subnational units are frequently confronted with fierce opposition as they are seen as perpetuating ethnic divides and raise the fear that internal self-determination could develop into external self-determination and threaten the unity of the country. The drawing of ethnic based units is also confronted with practical difficulties: ethnic borders are never clear-cut and create a risk of «ethnic cleansing»; accommodating ethnic communities always creates minorities within minorities that need to be respected and protected; ethnically «owned» subnational units risks to disenfranchise individuals and groups not belonging to the dominant group; and scattered, non-territorial and migrant groups cannot be accommodated.

Seen the complexities and controversies involved in drawing borders, different states have found different solutions over time. In Nepal, the subject was delegated to a commission, because no agreement was found in the Constitutional Assembly. The design of provinces is, however, still con-troversial. In Ethiopia and India ethnicity and language are at the base of the (most) subnational state formations. However, many of the units group a number of ethnic groups and all are confronted with challenges linked to the protection of minorities within minorities. Kenya did not want to consolidate large ethnic communities in regions, and therefore opted for 47 counties which were a British legacy. In South Africa seven of the nine provinces have a linguistic majority; in drawing the new administrative landscape, the ethnic factor

was one aspect among others, e.g. geography and economy were as important. The boundaries of the Swiss Cantons do sometimes but not always follow linguistic or religious divides but crosscut culture differences; the overlap of differences and borders contribute to the overall stability of the state and allow for multiple and flexible identities and cross-border cooperation. Some countries, usually labelled regional states, have negotiated «ethnic» based special regimes to answer to requests of self-determination (e.g. Belgium, Italy, Philippines, United Kingdom). These newer phenomena of «regionalisation» could potentially be interesting for the Sri Lankan context.

In regard to the Sri Lankan subnational units – nine provinces composed of 25 districts – and the provincial borders two main issues are currently being discussed: First, a re-merger of the Northern and Eastern Province into a North-eastern Province, as it already existed between 1988 and 2006; and secondly, the request formulated by Muslim political actors to create a Muslim province, comprising territories around Puttalam and Amparai in the Eastern Province.

The re-merger of the Northern (NP) and Eastern Province (EP), on the one hand, would allow Tamil (politicians) to control a large area and to bring the traditionally Tamil areas under one government. At the same time, such an «ethnic-based» territorial structure carries the risk of ethnising and polarising politics in the country («we» – «the others») and of feeding fears of secession. Having more than one «Tamil» province, on the other hand, would allow for policy-based cooperation across borders and could potentially strengthen the political weight of Tamils at the centre, in particular with the reform of the Senate to reflect provincial interests. In both cases, issues of protecting minorities within minorities would have to be addressed (in particular by the nation-wide protection of minority and human rights).

To answer the requests of the Muslim community would probably require the creation of non-contingent provinces. Non-contingent units do exist in some countries but are confronted with in-numerable administrative difficulties. Borders should therefore not only be seen in the light of cultural identity but also discussed in view of infrastructure and efficient service delivery. Very small communities (that provide for maximum cultural homogeneity) are likely to depend on others for finances and services (e.g. hospitals) and risk to end up with «paper» autonomy.

The search for compromises can be facilitated by the introduction and entrenchment of a third tier of government, local authorities (including village councils), that can be used to accommodate smaller and dispersed ethnic groups (as this has been done in the Swiss Canton of Graubünden and in Ethiopia).

Borders can also be made more acceptable for minorities within minorities and individuals when autonomy regimes are complemented by nation-wide mechanisms of minority protection («national minorities») and a bill of right implemented by reliable institutions. Such a combination of group autonomy and individual rights guaranteed to all citizens independent of their ethnicity and residence is characteristic for most multinational states based on power-sharing. The more vivid memories of past injustices are (such as systematic discrimination, suppression of minority cultures, forced resettlement, land seizures) the more important it is to provide for constitutional mechanism and institutions that can credibly prevent the wrongs of the past.

In our view it would thus be constructive to consider the following:

- First, the question of borders and potential mergers should be addressed by the constitution or delegated to an independent body accepted by all major stakeholders. The matter should not be left to the legislator tempted to impose a majoritarian answer to a minority concern.
- Secondly, the introduction of a third level of elected government can accommodate the needs of small and dispersed groups.
- Thirdly, the recognition of cultural identities and the constitutionally guaranteed respect for linguistic and religious rights can mitigate requests for territorial autonomy and prevent territorial fragmentation into units with little meaningful autonomy.
- Fourthly, mechanisms for cross-border cooperation should be put in place. They could allow communes and provinces to share forces in fields of common concerns.
- Fifthly, the protection of minorities within minorities has to be addressed. Even ethnic based borders are not «clear-cut»; ethnic groups living in the «wrong» province or commune (such as Tamils in Colombo, Singhalese in the North, Muslims) have to be able to rely on a nation-wide protection of their minority and human rights.

3. Entrenching Levels of Government

While the first devolved states opted for a two-level government, more and more decentralised states entrench a third level of government in their constitutions (e.g. India, South Africa, Brazil and to a limited extent Switzerland). The strengthening of local governance can remove tensions regarding provincial borders and better accommodate the needs of smaller and dispersed groups (see above). It can also play a determinant role for democracy and development. Decentralising the state to the local level will bring it closer to the people and their needs and make it more responsive to regional and local political priorities and development needs. Local governments also offer new avenues for inclusive and participatory governance and contribute to the empowerment of women. Local autonomy can support the adaption of tailor-made solutions fitting the needs of the population and allow for innovation in basic service delivery. Reliable and inclusive local governments providing all groups with reliable services on a non-discriminatory basis can thereby contribute to the overall stabilisation and legitimacy of the state.

An increase of state levels can allow more groups to be integrated into the state and to take responsibility for regional or local policies. They limit majoritarian decision-making and allow smaller groups («minorities within minorities») to live their differences where no uniformity is required, to be governed and administered by members of their group and to train politicians and officials that can become powerful players at the regional and central level. The main role of local government is therefore to accommodate smaller groups, to strengthen bottom-up democracy and inclusiveness and to reliably provide basic services, such as water, sanitation, electricity, housing, basic health and education services, roads. Decentralising the state to the

local level can also have positive impacts on accountability, in particular if local units have taxing powers (see below).

In drawing local boundaries similar chances and risks must be taken into account as in the case of provinces. In case of strong demands, ethnicity and local identities can be taken into account but should not be the sole criterion. Equally, local governments must be obliged and equipped to guarantee equal democratic right to all and to protect smaller groups and individual rights. When entrenching levels of governments, care must be taken to clarify competences and responsibilities and to provide for adequate resources and supervision.

In our view it would thus be constructive to consider the following:

- First, three levels of government can render the territorial geometry more flexible and accommodate more groups. The recognition of local governance in the national constitution can therefore be a mechanism to mitigate conflicts about provincial borders.
- Secondly, minorities at national and regional level can be majorities at the local level and feel less alienated from the state. They can autonomously decide on local matters and can see their own people in charge.
- Thirdly, local governments can render the state more inclusive and more responsive to local priorities and needs. They can therefore be central for deepening democracy and foster local development.
- Fourthly, local service delivery can be more effective then central planning and allow central institutions to concentrate on planning, support and supervision.

4. Attributing Powers and Functions

In decentralised and federal states, powers and functions are attributed to different levels of gov-ernment. The entrenchment of power-sharing rules and competences in the constitution can render the arrangement more reliable for all actors involved. The clearer the constitution is in regard to powers and functions, the better it can be implemented. Ambiguity as well as very broad and unclear terms and overlaps of competences (characteristics of the 13th Amendment) hinder an effective power-sharing arrangement and generally favour the centre. The entrenchment of clear rules on the division of competencies and functions guarantees the stability needed to build-up reliable subnational units and to provide them with the necessary capacities and (financial) resources. To ensure implementation, it is essential to establish mechanisms and institutions overseeing and guaranteeing the timely enforcement of power transfers. Often, there is a need for a new and independent body enjoying the trust all the different groups and levels of states mandated to monitor the delegation of powers and functions. As power-sharing arrangements are never clear-cut but involve ambiguities and overlaps, a neutral arbiter is necessary to solve disputes (see below).

Constitutions usually provide for exclusive and concurrent competences of the centre and the subna-tional units as well as for residual competences. The attribution of competences is context-specific. Typically, foreign affairs, currency, military and external trade are exclusive com-

petencies of the centre; culturally-sensitive issues and those requiring local knowledge such as basic education, local planning and infrastructure, are usually left to subnational units. Concurrent competencies respond to the need to take actions on all levels of the state and to guarantee the flexibility of the system; they are common in relation to the protection of economic, social and cultural rights, development, internal security, etc. In divided societies, minorities can be accommodated if at least a limited number of clearly defined competences are devolved to autonomous regions. Political consideration (respect of diversity, difficulty to find agreement) and economic concerns (economies of scale) equally impact on the constitutional choices.

An important matter a constitution has to address is the symmetry or asymmetry of powers and competences of subnational units. The first federal and decentralised states (e.g. USA, Switzerland) were characterised by the symmetry of powers delegated or left to the provinces. In a symmetric system all subnational units enjoy the same or very similar rights and duties irrespective of their size, population and (strong or weak) local identity. Asymmetric designs allowing for differentiated treatment of regions have become more and more widespread in recent years, in particular in states confronted with internal cleavages and requests for autonomy or self-determination. Asymmetry allows to flexibly react to special geographic circumstances (e.g. islands) or to the special requests of ethnic groups and can be useful in situation where demands for self-autonomy are not equally present (and strong) in the different regions of a country (se e.g. the special regimes for the Aaland Islands, Greenland, Quebec, Mindanao, South Tyrol, Northern Ireland or the Basque country). Asymmetry of subna-tional regimes can be acceptable to those enjoying less autonomy then others as long as special powers and functions correspond to special duties and responsibilities of the region (especially in the field of financial issues).

Another important question in relation to powers and functions relates to the entity to which they are attributed. Competences are most often linked to territories such as regions or provinces («territorial federalism») but they can also be delegated to specific groups such as linguistic or religious communities («personal federalism»). While territorial patterns of power-sharing are much more common, personal elements have the advantage of accommodating those individuals who belong to an autonomous group or minority but live outside their traditional territory (e.g. Romansh speakers in Zurich, Tamil-speakers in Colombo), migrant workers and their families as well as dispersed and small groups settling outside their territory or having none (e.g. Roma, Jews and other minority religions). Such «personal federalism» is typically linked to personal, family and inheritance law as well as religious and cultural matters (e.g. marriage, language promotion). Its aim is to protect diversity and prevent (forced) assimilation.

Any power-sharing arrangement has to equally respect competencies and functions and insist on cooperation and intergovernmental relations. The exchange of information, mutual consultations and a mind-set of partnership are essential to build trust and to avoid unnecessary policy contradictions and governance gaps. Formal and informal fora for cooperation are equally important.

In our view it would thus be constructive to consider the following:

- First, the attribution of powers and functions should be entrenched in the constitution. Provisions (and possibly institutions) for the enforcement of the power sharing regime should also be adopted. In particular, a neutral arbiter enjoying the trust of all stakeholders (such as a constitutional court) should be mandated to adjudicate constitutional matters and decide on power-sharing disputes between the centre and the provinces or between provinces.

- Secondly, while concurrent competencies are necessary in many fields, they but most often lead to the dominance of the centre in those fields. Some emphasis should therefore be placed on determining a limited number of exclusive subnational competences that are essential to respond to requests for regional autonomy.

- Thirdly, service delivery and numerous other state functions are territory-based and so should competences be. Some personal elements can, however, make the power-sharing system more responsive to the needs of groups living outside of their traditional territory or having none.

- Fourthly, formal and informal mechanisms of cooperation between different provinces and between provinces and the centre are crucial. Intergovernmental institutions and processes ensure information, consultation and coordination. They can also play a useful role in the identification of common interests between representatives of different groups (e.g. developmental needs of urban centres or remote areas of the North and the South, common concerns about financial transfers).

- Fifthly, transfers of competences have to be carefully planned and implemented. A sudden decentralisation of state tasks that is not rooted in a coherently designed (legal, administrative, fiscal) system is unlikely to be successful. Institutions at the subnational level must be prepared for new responsibilities and those at the national level also have to adapt to new rules (e.g. strategic planning, supervision). Some transitional hick-ups may be unavoidable. However, the lack of preparedness by subnational units should not be misused to unduly delay or refuse transfers of power.

5. Funding Provincial and Local Governments

Powers without funding are empty shells. Any power-sharing arrangement therefore has to ensure that those entities responsible for state services have the means to fulfil their tasks. Fiscal decentralisation is therefore an essential element of any power-sharing arrangement. Although financial issues might seem a first glance as technical matters they are at the core of autonomy: without a reliable access to finances, subnational government cannot function autonomously. The transfer of power without the transfer of funds can lead to state failure and have a negative effect on the entire devolution project. Self-reliance can be achieved through the allocation of taxing powers. However, most decentralised countries have transfer and equalization mechanisms in terms of which subnational units are entitled to share in the revenue raised nationally on an equitable basis.

Taxing powers (and the responsibility to raise taxes) are more and more widely seen as very effective instruments to strengthen the accountability and responsiveness of state actors. In particular, local taxing powers contribute to increased control of all state activities by the subjects of taxes. Decentralised taxing powers therefore have the potential to positively impact on anti-corruption schemes and strengthen overall accountability of politicians and officials.

In our view it would thus be constructive to consider the following:

- First, the right to collect taxes, to spend and to borrow has to be clarified for each level of government.
- Secondly, clear rules on the funding of provinces (and local governments) increase the chances of efficient subnational units with real autonomy and prevent disputes on financial matters.
- Thirdly, powers and funds should match (fiscal equivalence); this usually requires financial transfers and equalization mechanisms. Those equalization mechanisms should be regulated in the constitution or delegated to an independent body (such as a Finance Commission) that enjoys the trust of all stakeholders.
- Fourthly, the right and the duty to raise tax are keys to autonomy and an efficient mechanism to strengthen state accountability.

6. Supervising Provincial and Local Governments

Power-sharing is based on both diversity and unity. When making use of their autonomy, provincial and local governments must comply with national law (e.g. minority and human rights, democracy and the rule of law) and national standards of law-making and law-implementation. As a consequence, the centre plays an important role in supervising subnational units and enforcing shared rules while respecting self-rule.

Due to capacity challenges state failure by subnational units is not uncommon in newly devolved systems. It is thus essential that the central institutions prevent state failures on all levels, guarantee minimum standards to all citizens, supervise provincial and local governments and intervene in case of need. The central power to intervene in the constitutional space of subnational units must, however, be constitutionally regulated and constrained. The role of existing institutions has to be examined and, if need be, adapted to the new power-sharing model. In order to prevent political abuses of central supervision and intervention powers, the constitution drafters need to build safeguards in the constitution. It is crucial to find a balance between enough authority for the centre to impose neces-sary standards and to guarantee, at the same time, the autonomy of the provinces. It must be defined and made transparent in which areas the centre is granted the right to supervise and intervene – and which institutions are responsible to ensure that the power is not abused (parliament, executive, judiciary). Apart from the constitutional provisions, the behaviour of the actors plays an important role: supervision and intervention produce better results if they are performed in a spirit of cooperation, mutual respect and consultation.

In our view it would thus be constructive to consider the following:

- First, the issue of supervision and intervention should be addressed in the constitution.
- Secondly, there should be a clear set of grounds in terms of which the centre can supervise (and intervene) and its limits, as well as a description of the supervision and intervention mechanisms and an assignment of the responsible institutions.
- Thirdly, the role of existing institutions should be clarified and adapted to a new system of power-sharing.

7. Sharing Power at the Centre

Power sharing relies on a combination of shared rule and self-rule. While the guarantee of self-rule opens constitutional spaces for autonomy of subnational units and provides for diversity, shared rule guarantees a common destiny of the country and common standards that are applicable throughout the country. For a power sharing system to function, it is essential that the role of subnational units is not limited to the regions but also relate to the centre. The constitution therefore also has to ensure power-sharing at the centre and to protect and promote diversity and inclusive governance.

The concept of power sharing at the centre applies to all central powers, the parliament, the presi-dency, the cabinet, the administration, the military, the diplomatic corps, the judiciary, etc. In situations of diversity within subnational units the respect of concepts of central power-sharing and inclusiveness need also to be considered in relation to provincial (and local) institutions. Inclusive government at the centre (and on all levels of state) facilitates vertical cooperation with provinces and local governments as well as horizontal cooperation and contribute to the overall coherence and legitimacy of the power-sharing state.

When it comes to the presidency, methods of elections and other safeguards are essential (e.g. vice-presidency guaranteeing diversity, principle of rotation). Even more obvious is the need to represent the diversity of a country and its different groups in cabinet. A cabinet that is inclusive and represents all important groups of the country is more legitimate; it is also more effective as its decisions are more likely to be accepted throughout the country. In case of historic marginalisation of some groups, representation (even over-representation) of these groups in cabinet can be essential factors in the creation of ownership and feeling of belonging to the state while an exclusive cabinet representing exclusively majority groups runs the risk of alienating minorities (even more) from government.

Parliaments in devolved systems of government are typically bicameral; bicameralism ensures the institutionalised participation of subnational units in central law-making and serves as an anti-majoritarian device. Depending on the institutional design, a second-chamber can be used to ensure acceptance of central decisions and to meet fears of permanent outvoting. Often, other mechanisms of participation are used, such as consultation, and usually contribute to the quality and acceptance of central law-making.

Power-sharing is also essential in central administration. Policies of inclusiveness in all central administrations (including independent and supervisory bodies, military and police forces, etc.) are essential, but often underestimated, elements of multinational decentralised states. They ensure ownership of the state and, by opening career opportunities, also raise interest in the state and its fate. The same applies to the judiciary where (formal or informal) quotas are sometimes used to ensure repre-sentativeness of judges.

The guarantee of power-sharing at the centre may require some constitutional guarantees and safe-guards as well laws and policies. Institutions must be ready and prepared to promote diversity and to welcome and accommodate it within their organisations (e.g. in recruiting staff from different regions, cultural, religious or ethnic background). Strategies of inclusiveness also require adequate reporting and monitoring.

In our view it would thus be constructive to consider the following:

- First, the constitution should address self-rule as well as shared rule and guarantee institutionalised rights to participation and inclusion at the centre.
- Secondly, constitutional and legal provisions should ensure fair representation of all major groups in parliament, government, administration and in the judiciary.
- Thirdly, policies of diversity and inclusion as well as reporting and monitoring mechanisms should be established to ensure that all major groups play an equitable role in law-making and law-implementation.
- Fourthly, the central government while complying with the principles of inclusive governance should also endorse linguistic, cultural and religious diversity as an asset of the country and promote dialogue and cross-cutting cooperation. It should also play an important role in facilitating inclusive governance approaches at the regional (and local) level (e.g. by taking active measures to promote plurilingualism and religious tolerance).

8. Implementing New Constitutional Rules

Once a new constitution is enacted, the challenge is to transform the new rules into legal and political practice. This typically requires the adoption of new laws, adjustment of institutions to new roles, training and capacity building at the subnational and at the national level, new formal and informal means of consultation and cooperation, and the change of mind-sets.

The supremacy of the constitution (and in particular the devolution project) is at stake if the constitu-tion is not or only partially enforced. Those who have gone through the political struggle for power-sharing risk then to be alienated from the state and to lose trust in peaceful (constitutional) ways of transforming the system. Taking implementation seriously and planning for it throughout the consti-tutional drafting process are therefore essential. Transitional planning therefore should not follow the adoption of a new constitution but be part of the negotiations and the drafting process.

When new rules on vertical power-sharing are to be adopted attention should be paid to the prepa-ration of the involved institutions, politicians and officials. All stakeholders must be aware of their new functions and responsibilities and must have all relevant resources at their disposal: national and regional acts and the mechanisms to adapt and revise them, finances (e.g. taxing powers, reliable transfers), trained officials, infrastructure, etc. The transition period therefore needs a thorough assessment and careful planning; a step-by-step (progressive and/or asymmetric) implementation can be envisaged. It is essential to keep in mind that power-sharing projects affect all state levels; institutional training and transformation is not only required at the subnational level (where institutions and officials have to take up new functions); it is as necessary at the national level (where institutions and officials have to give up some powers and take over new roles of planning, consulting, standard-setting and supervision). Continuous horizontal and vertical consultation and cooperation are crucial for the process. The need to prepare for the new functions can require a constitutional transformation by stages; it seems, however, important not to delay the devolution process and to immediately transfer a limited number of competences to the regional and local level in order to build up trust in the new system and to allow subnational units to adapt to new responsibilities.

Apart from transforming existing institutions, constitutional changes often require the creation of new bodies and institutions (e.g. fiscal bodies, a Constitutional Court). While the transformation of existing institutions ensures that know-how and experiences in government and administration are preserved, new institutions can be essential to secure trust and inclusiveness.

The planning of transition should be transparent and agreed upon in a participatory way. A campaign to make the new constitution and the novel roles and functions known to all stakeholders and the broader public seems important (What is the new constitution all about? What is the timing of transition? Who is responsible for what at what time?).

In our view it would thus be constructive to consider the following:

- First, constitutional changes need time and require timely and adequate planning (including resource planning). Progressive enforcement of devolution must be agreed upon with relevant stakeholders.
- Secondly, resistance from «old» institutions and elites must be expected and addressed (e.g. by offering new functions in supervisory or monitoring bodies).
- Thirdly, training of national, regional and local politicians and officials is essential for successful implementation.
- Fourthly, new inclusive institutions and bodies for horizontal and vertical intergovernmen-tal relations ensure an open and transparent transition processes based on mutual information and cooperation. Inter-regional bodies can also contribute to overcoming divides and to focusing on common cross-cutting interests (e.g. of Northern and Southern provinces).
- Fifthly, the broader public should be included into the transition process and be prepared to support it (e.g. watchdog function of media and NGOs).

IV. Recommendations for the International Community

International involvement can be envisaged in three fields of action: First, the exchange of information and experience in the field of devolution and decentralisation in general; secondly, the scientific support of the constitution-making process and thirdly, the support of the transitional phase. In case a new constitution based on power-sharing should be adopted, foreign assistance during the implementation process also seems to be crucial.

1. Providing Information and Experiences

There is a wide information gap on the key issues of power-sharing in Sri Lanka. While some experts are very familiar with the different concepts of mechanisms of power-sharing, the broader public (including academics, politicians and journalists) has only limited information about different designs of power-sharing and experiences of other countries. More information about the numerous functions of power-sharing and their potential effects on diversity, peace, democracy and development therefore seems crucial for an inclusive constitution-making process to which all major groups and the broader public can contribute.

It would seem important to not only focus on the «Tamil question» or the «ethnic problem» but to present power-sharing as a system with great potential for all regions and groups. Ideally workshops would be offered to Provincial Councils, civil society representatives and universities. In addition to cultural diversity, the focus should also bottom-up democracy and regional and local economic de-velopment more directly. As this term is controversial, federalism would not need to be the main topic (or title) of the information events; the design and implementation of a new constitution and the establishment of legitimate and inclusive institutions and processes could be the focal point of the workshops. The credibility of the intervention would be enhanced if knowledge sharing offers a wide variety of experiences, from the North and the South.

2. Backing the Constitutional Process

As the current constitution-making process (despite of some consultation going on) is expert-driven and many groups continue to express doubts about the real political will to address issues of power-sharing, a monitoring of the process by actors, who are neither directly involved nor directly affected by the outcome could contribute to the credibility of the process.

The constitution-making process is proceeding apace and the various committees of the Constitutional Assembly are preparing reports and draft texts. The international community may support this process by providing support, through academic institutions, by, for example, commenting on constitutional drafts, participating in discussions on relevant issues, and by making available comparative experiences and solutions (e.g. in the field of power distribution, fiscal decentralisation, boundary demarcations, bi-cameral parliaments or intergovernmental relations).

3. Supporting the Transition

When a new constitution based on power-sharing is adopted, the challenges of implementation lie ahead. International support during the transition process could be very useful as training on all levels of government will be needed.

When the centre and the subnational units have to take over novel functions and take on different roles, it is essential that they are empowered to reliably fulfil their new tasks. One way forward is the design of courses which are adapted to the Sri Lankan context and which bring together relevant actors of different state levels (e.g. national and regional parliamentarians, national and regional officials working in the field of internal security, education and health, etc.). Adequate training of officials and politicians would ensure that all stakeholders can rely on relevant information and know-how, level the field and ensure fair negotiation and bargaining processes. Training workshops could also contribute to trust-building and lay the ground for future inter-governmental relations. The same is true for study tours to different states that allow the members of the delegation to familiarise themselves with «living» mechanisms of power-sharing; the exposure of representatives of different groups to similar (foreign) experiences could also help creating common ground for discussion.

Universities are important actors in shaping the knowledge base for the new constitutional realities. University cooperation can rely on existing networks and could be expanded to more partners, e.g. the Eastern University in Batticaloa, the Ruhuna and Peradeniya Universities. Another important player in training state employees is the Sri Lankan Institute for Development in Administration (SLIDA). In order to make use of multiplying effects, it could be beneficial to support SLIDA and its staff in regard to matters relating to decentralisation and minority and human rights. Teachers exchange, tailor-made courses and an increased participation of Sri Lankan academics in international research programmes could also be helpful in creating a new and broader group of experts in the field of power-sharing.